Solicitors Regulation Authority

Application for approval of alterations to Regulatory Arrangements

17 March 2011

Application by the Solicitors Regulation Authority to the Legal Services Board to request approval of new rules and changes to existing rules

Introduction

1 The Solicitors Regulation Authority (SRA) is seeking approval from the Legal Services Board (LSB) for changes to our regulatory regime under rules made by the Legal Services Board pursuant to paragraphs 20(1) and 23(3) of Part 3 of Schedule 4 to the Legal Services Act (LSA).

2 The changes to the SRA's regulatory regime are largely driven by:

- the introduction of a new, outcomes-focused approach to regulation (primarily expressed in the draft SRA Principles, SRA Code of Conduct and the introductions to each section of the Handbook);
- revisions required to accommodate alternative business structures (ABSs);
- the introduction of a new SRA Handbook Glossary containing all definitions.

Changes made to the regulatory regime

3 The LSB will be aware that the SRA has developed a new Handbook which, for the first time, brings together all of our regulatory requirements. The Handbook[1] accompanies this document. Revisions to the rules are shown:

- in red and blue to reflect changes made as a result of our October Consultation;
- in pink and green to reflect changes made as a result of our discussions with the LSB.

4 The following sets of rules will be submitted for approval to the LSB in April:

- SRA Indemnity Insurance Rules 2011;
- Solicitors Keeping of the Roll Regulations 2011.

5 An explanation of proposed changes to the SRA's regulatory arrangements is provided in matrices attached as **Annex A**.

Comments on key elements of the Handbook

Principles

6 The starting point for our regulatory arrangements is our ten Principles which apply to all solicitors (whether working in an authorised body or as in-house solicitors) and to all authorised bodies and those working within them. These Principles are mandatory and there is no differentiation in their application to

[1]The Handbook contains two sets of rules that are not changing and therefore do not require approval under this process. These are the Qualified Lawyers Transfer Regulations 2009 and the Higher Courts Qualification Regulations 2000

recognised or to licensed bodies. These Principles are a new set of regulatory requirements but are based on Rule 1 of the current Code of Conduct.

7 These Principles, included in our regulatory arrangements, and supported by our education and training requirements and our operational approach to authorisation, supervision and enforcement, meet the regulatory objectives, particularly: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; protecting and promoting the interests of consumers; encouraging a strong, diverse and effective legal profession; and promoting and maintaining adherence to the professional principles. There is a very strong correlation between our Principles and the five professional principles set out in s.1(3) of the LSA.

SRA Code of Conduct

8 Our outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect clients and the public. The Code sets out our outcomes-focused conduct requirements. These requirements require individual solicitors and authorised bodies to consider what are the right outcomes for their clients taking into account the way that their firm, or in-house practice, works and its client base. We expect all those we regulate to uphold the spirit of the Code as well as the letter.

9 The Code is divided into chapters dealing with particular regulatory issues and these chapters show how the Principles apply in certain contexts through mandatory and non-mandatory provisions. The Code supports all aspects of the regulatory objectives, including the professional principles, and our approach to the Code, particularly through focusing on outcomes that must be achieved for clients, is consistent with best regulatory practice.

Our regulatory approach

10. Fundamental to our approach is our commitment that we should produce a single set of regulatory arrangements that apply equally to recognised and to licensed bodies. Within the regulatory arrangements we vary our requirements only to the extent that:

- statutory provisions require us to make different provisions for licensed and for recognised bodies. Our powers to regulate flow from three separate acts of Parliament (the Solicitors Act 1974, the Administration of Justice Act 1985 and the Legal Services Act 2007) and in some respects Parliament has provided for different requirements for different types of body; and

- where there is an identified risk to the achievement of the regulatory objectives in respect of a particular type of body and we have judged that the mitigation of that risk requires specific provision in the regulatory arrangements.

11. Our judgement is that this approach supports the LSA regulatory objectives, particularly: improving access to justice, protecting and promoting the interests of consumers; promoting competition in the provision of legal services; encouraging an independent, strong, diverse and effective legal profession; and promoting and maintaining adherence to the professional principles. In addition, through a common set of regulatory arrangements, we

promote the professional principles across the regulated community and will require the same high ethical standards from recognised and licensed bodies, from all those working in them, and from all solicitors, regardless of the entity within which they are working. This approach is also wholly consistent with the better regulation principles and regulatory best practice.

12. It is important also to note that, as a risk-based regulator, we will address risk not only through our regulatory arrangements but also in our operational delivery of our regulatory functions. Therefore, within the common set of regulatory standards, we will make individual decisions appropriate to the risks posed by individual firms, particular types of firm and particular categories of business. Again, we see this as a key principle of best regulatory practice.

Approach to policy making

13. The SRA's approach to policy making is evidence-based. This approach takes into account the information that we have received from firms through annual returns, visits to firms, disciplinary cases and from other sources (e.g., the experience of other regulators in the legal and other markets), and uses the information to identify key risks to the regulatory objectives, and the most proportionate regulatory means of mitigating these risks.

14. Consideration is given throughout the policy making process to the necessity to make regulatory changes, and whether identified risks might be mitigated by some other means, such as through supervisory activity. We also assess the impact of our changes across all types of firm and practitioner, the extent to which policy proposals comply with the Better Regulation Principles and the potential unintended consequences that might flow from any changes to our requirements. As part of the development of the Handbook, we established a Policy Working Group of senior-level SRA staff representing policy, supervision, enforcement, investigations and operations, specifically to give consideration to each of these issues. Significant policy issues have also been approved by our Standards Committee, a sub-committee of the SRA Board.

15. Rule changes flowing from a policy decision have then been subject to a further review by the Policy Working Group before being submitted to the Standards and other Board sub-committees for approval.

Consultations

16. Changes to the SRA's regulatory regime have been the subject of extensive consultations in May 2010 (**Annex B**) and October 2010 (**Annex C** - the October Consultation was both a response to the May Consultation and a fresh consultation). Our final response on the policy issues is set out in our Policy Statement, to be published on 6 April (**Annex D**). Having analysed the combined responses to the May and October Consultations, we made our final decisions on relevant policy matters and any necessary changes to the rules.

17. Final versions of all revised rules will be published with our Policy Statement.

18. During the consultation periods, we also conducted roadshows and webinars to raise the profile of the consultations and explain our outcomes-focused approach to regulation. We have also conducted informal consultation through our Financial Assurance Reference Group (consisting of

representatives from firms, potential ABS investors, large accountancy firms and other regulators) and our ABS Reference Group. We have also held discussions with other special interest groups, e.g. in-house lawyers, sole practitioners and those representing minority groups. We have published articles in the legal press and posted information on our website.

19. The SRA has also responded to consultations of other regulators. Details of these are set out below:

Body conducting consultation	**Name of consultation**	**Date**
Legal Services Board	Consultation on regulatory independence	March 2009
Bar Standards Board	Review of the Code of Conduct	June 2009
Legal Services Board	Designating new approved regulators and approving rule changes	July 2009
Legal Services Board	Compliance and Enforcement – Statement of Policy	August 2009
Legal Services Board	Rules on oral and written representations and evidence in relation to investigation under Schedule 6	August 2009
Legal Services Board	Proposed rules to be made under sections 30 and 51 of the Legal Services Act	August 2009
Legal Services Board	Alternative Business Structures: approaches to licensing	November 2009
Legal Services Board	Draft Equality Scheme	December 2009
Legal Services Board	Compliance and Enforcement – Statement of Policy in relation to cancellation of designation as a Licensing Authority	December 2009
Legal Services Board	Designating approved regulators as licensing authorities	December 2009

Legal Services Board	First-tier complaints handling	December 2009
Legal Services Board	LSB open letter on section 69 orders	February 2010
ILEX Professional Standards	Associate Prosecutor Rights/Probate Rights/Advocacy Rights	April 2010
Legal Services Board	Welsh Language Scheme	May 2010
Bar Standards Board	Development of authorisation to practice arrangements	June 2010
Council for Licensed Conveyancers	Application to license rights of audience/litigation	June 2010
IPREG	Consultations on Litigators' Code/New Rules	June 2010
Legal Services Board	The Levy	July 2010
Legal Services Board	ABS appeal arrangements	August 2010
Legal Services Board	Rules relating to the Solicitors Disciplinary Tribunal	September 2010
Legal Services Board	Section 69 of the Legal Services Act	September 2010
Legal Services Board	Referral fees, referral arrangements and fee sharing	September 2010
Legal Services Board	Rules for applications for qualifying regulatory status	November 2010
Legal Services Board	ABS consultation – further rules regarding licensed bodies	December 2010
Legal Services Board	Increasing Diversity in the Workforce	December 2010
Legal Services Board	Setting the maximum financial penalty for ABS	December 2010
Bar Standards Board	Equality and Diversity Code amendments	December 2010

Assurance work

20. The following assurance work has been conducted throughout the development of the new Handbook:

- **Cost-benefit analysis** – our cost-benefit analysis work has been conducted in phases as our Handbook requirements were developed. To date, no requirements have been assessed as disproportionately costly.

  Key cost issues are:

  - new information requirements to support risk-based regulation;
  - new authorisation requirements;
  - the requirement to appoint a COLP and COFA; and
  - the impact of an outcomes-focused regulatory regime without prescriptive rules.

  We intend to build on our cost-benefit analysis work to date by conducting a base-lining exercise to establish the cost of current requirements. On a periodic basis we will gather further data from firms to enable us to monitor any variances in costs and benefits derived from the Handbook.

  Key benefits are:

  - risk-based regulation enables the SRA to focus resources on higher risk or problem firms, which should enhance public confidence in the provision of legal services and drive down the costs associated with regulating higher risk or problem firms;
  - OFR benefits are increased flexibility, reduced bureaucracy and better client service.

- **Human rights audit** – all Handbook requirements have been assessed for compliance with human rights legislation. No significant issues have been identified. Having said that, we recognise that much will depend on the manner in which our requirements are implemented, for example, how the regulatory process for firms and individuals works in practice.

- **Competition analysis** – no rule has been identified which, on its face, obviously failed the test that any restriction of competition was the minimum reasonably necessary to achieve its objective. Where potential issues have been raised we have taken account of these when finalising our rules.

- **Equality impact assessment** – this work is ongoing. Where indirect impacts have been identified, we are assessing the impacts to ensure that these are justified in the interests of public protection. A summary Equality Impact Assessment for the Handbook is attached at **Annex E**.

Assessment of desired outcomes and post-implementation monitoring

21. The SRA Policy team will work in conjunction with supervision colleagues to monitor the impact of the Handbook on an ongoing basis. High risk types of work or areas of regulation will be the subject of thematic supervision work. Our supervision work will include an assessment of the extent to which the desired outcomes set out in the matrices have been achieved. This assessment will be made through:

- information provided by firms on their annual return;
- analysis of notifications to the SRA of breaches of the Handbook;
- results of thematic visits; and
- results of supervision visits to higher risk firms.

Regulatory overlap

22. The SRA regime, including the current Solicitors' Code of Conduct, applies to firms, within which individuals authorised by other regulators work (for example, licensed conveyancers). The SRA already has in place procedures for dealing with situations in which two regulators may be involved. These procedures are supported, where necessary, by memoranda of understanding. However, the introduction of ABSs will increase the risk of regulatory overlap.

23. The LSB will be aware that the SRA is working with other regulators to address issues that may arise from regulatory overlap. In particular, our Framework Memorandum of Understanding (FMoU) (reflecting the outcome of discussions with other regulators on multi-disciplinary practices in the MDP Working Group), together with our bilateral memoranda of understanding with other regulators and professional bodies, are aimed at resolving regulatory overlap where this may arise.

24. The objectives of the MDP Working Group are as follows:

- to discuss proposals presented by the sub-committees[2] in relation to addressing the issues associated with MDPs and approve the proposals or recommend improvements;
- to agree a Memorandum of Understanding (MOU), or multiple MOUs, between regulators, ombudsmen and other relevant parties in relation to MDPs based on the proposals of the sub-committees;
- to develop other means by which regulators will work together to facilitate the regulation of MDPs. Such means may include protocols for sharing information, procedures for joint enforcement action, proposals for greater harmonisation of regulation;
- to ensure that there is a feedback loop to the LSB via the ABS Implementation Group;

[2] When initially established, the MDP Working Group had sub-committees. The Working Group felt that these were unnecessary and meets on a bi-monthly basis to discuss proposals.

- to share information in relation to MDPs based on research and experience; and
- to have regard to the impact of its proposals on equality and diversity.

25. A copy of the draft FMoU is attached as **Annex F**.

26. We intend that the FMoU will be signed in April 2011. Subsequently, the MDP Working Party will be a forum for monitoring the operation of the FMoU, addressing issues of regulatory overlap and working together to promote harmonisation of regulation.

27. Nevertheless, as will be seen from the matrices, we do not anticipate significant areas of regulatory overlap either with other potential licensing authorities and other regulators or professional bodies.

SRA Handbook Glossary

28. The Glossary is central to the bringing together of the elements of the Handbook and will be an overarching set of definitions which will apply to all elements of the Handbook. Our objectives in creating the single Glossary were to:

- rationalise the terminology used throughout the Handbook; and
- bring greater harmonisation and consistency to the sets of rules.

29. The Glossary is being implemented in two stages. At both stages when accessing the online version of any set of rules in the Handbook, readers will be able to "hover" over a defined term (indicated in italics) and see the definition. The stages for implementing the Glossary are as follows:

Stage 1 (now complete) – a full set of definitions has been compiled and all sets of rules have been checked to ensure they reflect that set of definitions. In Stage 1 each set of rules retains its own definitions, amended to reflect the development of the Glossary. We anticipate further minor changes to the Glossary in Stage 2, in particular once the SRA Indemnity Insurance Rules have been revised to take account of the financial protection review.

Stage 2 – all definitions will be removed from each set of rules and will be located in the Glossary. The Glossary terms will be applied to all rules in the Handbook, except in limited circumstances where it has not been possible for a term to be defined in the same way across the entire Handbook. Any such variations will be reflected in the Glossary. This will also necessitate minor changes to numbering and cross-referencing.

Implementation timeline

30. The proposed implementation timetable for the new Handbook is illustrated in Schedule 1 below.

Request for approval

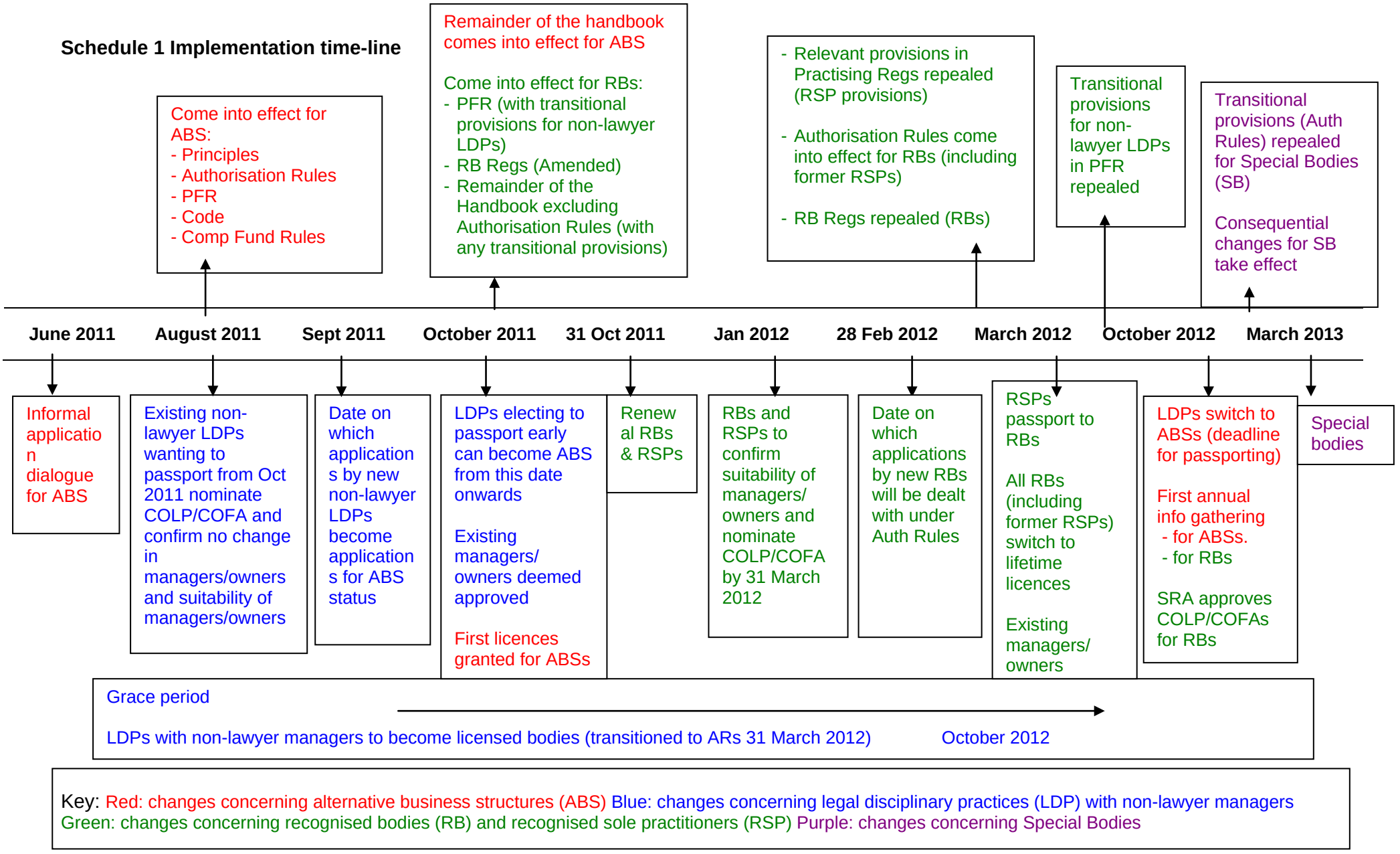
31. The LSB is asked to approve the new rules and changes to regulatory arrangements identified in the matrices.

32. Queries concerning this application should be addressed to:

Richard Collins
Head of Standards
Solicitors Regulation Authority
Ipsley Court
Berrington Close
Redditch
Worcestershire B98 0TD

Direct dial: 0207 320 5652
Email: richard.collins@sra.org.uk

Schedule 1 Implementation time-line



Key: Red: changes concerning alternative business structures (ABS) Blue: changes concerning legal disciplinary practices (LDP) with non-lawyer managers
Green: changes concerning recognised bodies (RB) and recognised sole practitioners (RSP) Purple: changes concerning Special Bodies

Matrix to accompany draft Handbook for LSB

March 2011

SRA Principles

Overview of SRA Principles

P1	**Nature and effect of the existing provisions (if applicable)**	The Principles express the fundamental values/duties which clients, the courts, third parties and other stakeholders expect of legal services providers, whether they are individuals, traditional law firms or ABSs. These Principles draw on Rule 1 of the Solicitors' Code of Conduct 2007 (the 2007 Code) and are supplemented by new Principles relating to equality and diversity, management of firms, co-operating with your regulator and protecting client money and assets.
P2	**Are the provisions to be applied to ABS? If so, why?**	The Principles will be applied to ABSs in light of their significance and our intention to create a common standard of consumer protection across the legal services market.
P3	**Nature and effect of the proposed changes**	As stated above, we have created a standalone set of Principles. All other requirements of the SRA (ie, the Code, other sets of Rules) must be read in conjunction with the Principles. This is a departure from having Principles as part of the Code (in the form of Rule 1). The "new" Principles are: • Principle 7 – "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner." Note that equivalent obligations are contained in Rule 20 of the 2007 Code. • Principle 8 – "You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles."

		Note that this Principle largely mirrors the requirements of Rule 5 of the 2007 Code. • Principle 9 – "You must run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity." Note that we have modified this Principle following feedback received during our consultation. It broadly reflects the requirements in Rule 6 of the 2007 Code. • Principle 10 – "You must protect client money and assets." Note that this Principle elaborates on the duty to act in clients' best interests and reflects the requirements of the Accounts Rules. The Principles apply to all overseas practice in addition to practice in England and Wales.
P4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	Our proposals, by virtue of their content, promote the regulatory objectives and are intended to focus the minds of firms and individuals on those objectives, rather than simply on the detail of rules. Our proposals also support the principles of better regulation by providing transparency in our expectations and encouraging accountability in the relationship with the regulator. In forming part of our move to outcomes-focused regulation, the Principles are proportionate, i.e. we are encouraging firms to develop systems and controls that are proportionate to their business and the needs of their clients, rather than enforcing a "one size fits all" approach. Our guidance notes to the Principles make it clear that our supervision and enforcement of the Principles will be proportionate and targeted.

Specific proposals – SRA Principles

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so,**	**Are these provisions dependant**

				how will such conflicts be addressed?	**upon a S:69 Order?**
P5	New set of Principles	Principles 1-10	Purpose is to encourage firms and individuals to act in a principled manner. Desired outcome is: • promotion of the regulatory objectives by focusing on the long-term objectives ("principles") by reference to which firms should be operating, rather than simply on compliance with detailed rules.	No; the application of the Principles is limited to those activities for which the SRA regulates firms so to that extent does not create regulatory overlap.	No
P6	Dealing with your regulator in an open, timely and co-operative manner	Principle 7	Purpose is to encourage firms to deal with the SRA in an open manner. The desired outcomes are: • the SRA is aware of key risks associated with that firm, so that we can risk assess the firm/individual; • the SRA can respond appropriately and swiftly in terms of supervision and enforcement to identified issues; • trust is built between the SRA and its regulated community.	No; the application of the Principles is limited to those activities for which the SRA regulates firms so to that extent does not create regulatory overlap. Further, we believe that (in the case of MDPs) this Principle will facilitate the sharing of information between regulators and professional bodies.	No
P7	Running your business or carrying out your role in the business with proper governance, etc.	Principle 8	Purpose is to encourage effective management of firms at all levels within the firm. The desired outcomes are: • firms are properly governed; • firms identify their risks and implement appropriate controls to mitigate those risks; • financial dishonesty is reduced through	No; the application of the Principles is limited to those activities for which the SRA regulates firms so to that extent does not create regulatory overlap.	No

			stronger financial oversight of firms by their management; • risks associated with firm failure (including the significant costs of interventions in firms) are mitigated either through reduced volumes of failures or through effective wind-down of firms; • staff within firms are properly supervised encouraging better service to clients and more effective risk mitigation.		
P8	Running your business in a way that encourages equality of opportunity and respect for diversity	Principle 9	Purpose is to encourage firms to act in accordance with the regulatory objective concerning diversity. The desired outcomes are: • firms respect equality and diversity; • firms, in their recruitment and management of staff, encourage equality of opportunity; • firms respect clients, regardless of equality strand.	No; the application of the Principles is limited to those activities for which the SRA regulates firms so to that extent does not create regulatory overlap.	No
P9	Protect client money and assets	Principle 10	Purpose to ensure that client money and assets are properly protected. Desired outcomes are: • client money is ring-fenced to reduce the risk of misappropriation and prevent clients from being impacted when a firm fails; • claims on the compensation fund are reduced through greater protection of client money.	No; the application of the Principles is limited to those activities for which the SRA regulates firms so to that extent does not create regulatory overlap.	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Code of Conduct [2011]

Overview of Code of Conduct

C1	**Nature and effect of the existing provisions (if applicable)**	The existing Solicitors' Code of Conduct 2007 sets out professional conduct requirements, through core duties, prescriptive rules and detailed non-mandatory guidance. The rules in the current Code focus on the process for complying with key obligations rather than focussing on achieving the right outcomes for clients.
C2	**Are the provisions to be applied to ABS? If so, why?**	Yes. Our intention is to establish common standards of conduct across all types of firm, both traditional and ABSs, and for all authorised individuals. This will: • provide the same degree of consumer protection for clients of firms of solicitors and ABSs; • facilitate transition between the two statutory regimes (i.e. for recognised bodies and licensed bodies) since there is a high likelihood that firms will switch status between the two statutory regimes.
C3	**Nature and effect of the proposed changes**	The new SRA Code of Conduct (the Code) will: (i) require firms to focus on achieving positive outcomes for clients. Each chapter of 'The Code' will contain 'mandatory outcomes' which are requirements that would meet the Principles in a particular context, such as, client care. There will also be indicative behaviours which will be non-mandatory but will provide examples of the types of behaviour which may tend to demonstrate compliance with, or contravention of, the outcomes and therefore the Principles. Our approach to compiling the Code has been risk-based, ie, prescription is limited to those areas where we need expressly to delineate the obligations of a firm/individual (eg, in relation to conflicts of interests).

		(ii) create new obligations to increase consumer protection such as requiring firms to assess the risks to compliance with the outcomes (chapter 7), to have systems and controls to monitor the financial stability of a firm (chapter 7) and requiring firms to notify the SRA of serious financial difficulty or any information which might affect the SRA's risk assessment of a firm (chapter 10); (ii) remove requirements in the current Solicitors Code of Conduct 2007 that do not relate to professional conduct into other parts of the Handbook of regulatory requirements such as the recognised body regulations; Generally the outcomes have been targeted at areas where clients' interests are most at risk, and have been kept to a minimum. Care has been taken to ensure that information in relation to processes is kept in the form of non-mandatory indicative behaviours so that the overall effect of the new SRA Code of Conduct is that firms will have greater flexibility in how they can comply with the Principles and achieve proper outcomes for clients.
C4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The proposed Code of Conduct will promote all of the regulatory objectives. Examples are: • access to justice – the Code enables firms to operate through a variety of business models since our outcomes are flexible rather than prescriptive. Also, we allow firms to enter into referral arrangements (and outsource operations) provided that these do not jeopardise standards of conduct and service; • competition – again, firms can operate using diverse business models, facilitating greater competition within the legal services market; • rule of law – the Code defines those situations where a firm/individual has an overriding duty to the Courts and to the administration of justice; • public interest and the interests of consumers – the main focus and justification for the new Code is the protection of consumers and the public interest generally. Provisions in the previous Code which were not thought to be necessary in the public interest have not been carried forward into the new Code. The effect of all the requirements in the Code is to target areas where clients interests are most at risk.

		The new SRA Code fulfils the five principles of good regulation as the Code clearly sets out conduct requirements. A key focus in developing the Code has been on proportionality, ie, what is a proportionate regulatory response to the risks that we identified to the regulatory objectives. Moreover, whilst we have adopted a flexible approach to outcomes, the outcomes are targeted at mitigating specific risks; this in turn will allow for a targeted approach to be adopted for supervision and enforcement. The Code structure and format aims to deliver transparency of regulatory obligations.

Specific proposals – Code of Conduct

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
C5	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to client care	Chapter 1 SRA Code of Conduct	The purpose of this chapter is to ensure that clients receive a proper standard of service, which takes into account the client's individual needs and circumstances. This includes providing clients with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost. The chapter is also about ensuring that if clients are unhappy with the services they have received, they know how to make a complaint and that all complaints are dealt with properly. It is intended that rather than prescribing the	No risk of conflict has been identified. The SRA is engaging with other approved regulators in order to ensure the workability of the new regulatory frameworks in general including a framework Memorandum of Association. This engagement will allow for the resolution of any unforeseen issues arising in practice.	No

			information that should be given to every client the outcomes illustrate what should be achieved and methods of how the outcomes are achieved will be determined by the type of firm and the needs of individual clients. There is greater emphasis on the needs of vulnerable clients and there is now a specific requirement to tell clients about their right to complain to the Legal Ombudsman. The intended outcomes are set out clearly in the chapter.		
C6	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to equality and diversity	Chapter 2	The purpose of this chapter is to encourage equality of opportunity and respect for diversity and to prevent unlawful discrimination. In particular it requires firms to have a policy for preventing discrimination and harassment This chapter is not a significant departure from the current Code of Conduct but the outcomes reflect the greater prominence of equality and diversity as required by Principle 9. The intended outcomes are set out clearly in the chapter.	See C5 above	No
C7	Code to include a chapter setting out the mandatory outcomes to be achieved in	Chapter 3	The purpose of this chapter is to ensure that firms properly identify and deal with conflicts between their own interests and those of their clients and between clients. This is a crucial client protection. In particular firms are required to have effective systems for identifying and assessing potential	The integrated approach to conveyancing conflicts is closer to the licensed conveyancers' approach. However, the licensed conceyancers are subject to	No

	relation to conflicts of interests		conflicts. The outcomes recognise that there may be some limited circumstances in which it is beneficial for clients to be able to instruct the same firm, even where their interests conflict. These are subject to strict conditions. The chapter does not represent a significant departure from the policy in the existing Code, except in relation to conveyancing. The new Code will have one integrated approach to conflicts and not separate provisions for conveyancing. The intended outcomes are set out clearly in the chapter.	stricter requirements in relation to different individuals representing seller and buyer. See also C5 above.	
C8	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to confidentiality	Chapter 4	The purpose of this chapter is to ensure that clients' confidential information is properly protected, and that information that is material to the client's matter is disclosed to the clients. The chapter does not represent a significant departure from the provisions in the existing Code. The intended outcomes are set out clearly in the chapter.	See C5 above.	No
C9	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to the court	Chapter 5	The purpose of this chapter is to set out the particular duties that apply when authorised persons are exercising a right to conduct litigation or acting as an advocate. The subjects covered in the chapter do not differ in substance from those set out in the current Code, however the emphasis is on outcomes rather than process.	See C5 above.	

C10	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to introductions to third parties	Chapter 6	The purpose of this chapter is to remind firms of their obligations to act independently and in their clients' best interests when referring clients to third parties e.g. another lawyer or financial services provider. These requirements are similar to the requirements in the current rule 9.03 and do not impose any new obligations. The intended outcomes are set out clearly in the chapter.	See C5 above.	
C11	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to the management of firms and in-house practices	Chapter 7	The purpose of this chapter is to ensure that firms are properly managed and the work carried out for clients is properly supervised. The outcomes in this chapter expand on the new Principle 8, which requires authorised persons to run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles. This places a greater emphasis on managing risk. The intended outcomes are set out clearly in the chapter.	See C5 above.	
C12	Code to include a chapter setting out the mandatory outcomes to be achieved in	Chapter 8	The purpose of this chapter is to ensure that publicity is not misleading and allows clients and members of the public to identify those they are dealing with and the extent to which they are regulated.	Possible conflict as other approved regulators may not have such strict controls on cold calling. We will take steps to ensure that, operationally, any potential	No

	relation to Publicity		Most of the detailed requirements concerning firms' notepaper has been removed and replaced with a more general requirement to provide appropriate information about the firm and how it is regulated. The intended outcomes are set out clearly in the chapter.	conflicts are managed with the least impact on the regulated community.	
C13	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to fee sharing and referrals	Chapter 9	The purpose of this chapter is to ensure that when firms have arrangements with third parties for the introduction of work that such arrangements do not compromise independence, the client's best interests, or the trust clients place in the firm. Much of the prescriptive detail, which focuses on process, has been removed and replaced with more general outcomes which emphasise the importance of independence, transparency and acting the client's best interests. The scope of the requirement will now apply to referrals between lawyers as well as non-lawyers. The intended outcomes are set out clearly in the chapter.	No risk of conflict has been identified. The SRA is engaging with other approved regulators in order to ensure the workability of the new regulatory frameworks in general. This engagement will allow for the resolution of any unforeseen issues arising in practice.	No
C14	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to firms'	Chapter 10	The purpose of this chapter is to ensure that firms and individuals co-operate fully with the SRA and the Legal Ombudsman. The chapter also includes new requirements to report specific information to the SRA, eg, when the firm is in serious financial difficulty, and other	See C5 above.	No

	and individuals' relationship with their regulator		indicators of when clients interests may be at risk. The intended outcomes are set out clearly in the chapter.		
C15	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to relations with third parties	Chapter 11	The purpose of this chapter is to ensure those we regulate do not take unfair advantage of those they deal with, and act in a manner that promotes the proper operation of the legal system. This includes conduct in relation to undertakings. The subjects covered in the chapter do not differ in substance from those set out in the current Code, however the emphasis is on outcomes rather than process. The intended outcomes are set out clearly in the chapter.	See C5 above.	No
C16	Code to include a chapter setting out the mandatory outcomes to be achieved in relation to separate businesses	Chapter 12	The purpose of this chapter is to ensure that clients are protected when they obtain mainstream legal services from a firm regulated by the SRA, by restricting the services that can be offered through a separate business (i.e. a business that is not authorised by the SRA or another approved regulator). Where services are offered through a separate business, safeguards apply to ensure that clients are not confused in relation to the protections to which they are entitled. The subjects covered in the chapter do not differ in substance from those set out in the current Code, however the emphasis is on outcomes rather than process.	See C5 above.	No

C17	Code to contain provisions in relation to the application of the Code.	Chapter 13	Provisions have been adapted so that they can be applied to ABSs and the remit of the Code to overseas practice is defined. Intended outcome is that firms have clarity on the application of the Code.	Not applicable	No
C18	Code to contain interpretations for the Code	Chapter 14	Definitions have been updated. Intended outcome is that firms understand how key terms in the Code are to be interpreted.	Not applicable	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Accounts Rules [2011]

Overview of rules – keeping of accounts for client money

AR1	**Nature and effect of the existing provisions (if applicable)**	The Solicitors' Accounts Rules 1998 set out the framework governing the way in which solicitors' practices are required to handle money belonging to their clients, and the records they must keep in relation to that money. They also contain requirements relating to an annual independent check by an accountant of the firm's handling of client money. The purpose of the Accounts Rules is to keep client money safe by keeping it separate from the firm's own money. The Rules are designed to provide protection against dishonesty by firms and their employees. The Rules also aim to prevent accounting muddle by requiring firms to keep proper accounting records.
AR2	**Are the provisions to be applied to ABSs? If so, why?**	In the draft SRA Accounts Rules [2011], we have applied the Accounts Rules to ABSs in order to safeguard client money held by an ABS. Paragraph 20 of Schedule 11 to the Legal Services Act 2007 requires the SRA to make rules in relation to the treatment of client money held by an ABS, and the keeping of accounts.
AR3	**Nature and effect of the proposed changes**	Prescriptive rules have been retained in order to meet the overriding objective of the Accounts Rules to protect client money, given the nature of the risks inherent in the handling of money. An outcomes-focused approach has, however, been adopted in certain areas to give firms greater flexibility and encourage firms to develop controls and policies that are appropriate to their firm and their client base. The Rules have also been

		modernised to take account of changes in legal and banking practice. The key changes are: • bringing ABSs within the scope of the Accounts Rules, including the application of the Rules to client money arising from the SRA-regulated activities of an ABS MDP; • restating in rule form the overriding objective of the Accounts Rules, and introducing a specific obligation to comply with the Principles (see schedule AP), and to satisfy the outcomes in relation to the effective financial management of the firm; • giving firms flexibility in relation to the payment of interest to clients; • removing the prescriptive signing provisions in relation to withdrawals from client account; • distinguishing between mandatory rules and non-binding guidance; • increasing the frequency of reconciliations for certain passbook-operated accounts; • modernising the rules in relation to the use of electronic signatures and electronic bank statements.
AR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The interests of consumers are protected and promoted by the existence of rigorous accounts provisions for the holding of client money, and by the application of these provisions to all types of legal practice, including ABSs. The existence of the accounts requirements will protect and promote the public interest by safeguarding client money, and giving consumers confidence that their money is subject to effective regulation. The accounts provisions are underpinned by the Principles relating to acting with integrity and in the best interests of clients. The proposals form part of a transparent, proportionate and consistent regulatory framework for the protection of client money, enabling targeted and accountable enforcement.

Specific proposals - keeping of accounts for client money

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependent upon a S:69 Order?**
AR5	Bringing ABSs within the scope of the Accounts Rules, including the application of the rules to client money arising from the SRA-regulated activities of an ABS MDP.	Introduction and rules 2(2), 4, 12(1), 17, 18, 29, 34; and Part G in relation to practice outside England and Wales.	To set out the obligations of ABSs in relation to the holding of client money, in order to safeguard that money. To provide for the regulation of client money arising from the SRA-regulated activities of an ABS MDP, by requiring it to be held in a ring-fenced client account, separate from money arising from the other activities of the MDP which fall outside the regulatory reach of the SRA. To prohibit an accountancy practice which has an ownership interest in, or is part of the group structure of, an ABS from preparing an accountant's report for the ABS, because of the lack of the necessary independence. Desired outcomes are: • client money relating to SRA regulated activity is protected whether it is held by a traditional law firm or ABS; • firms understand which money is within and outside of the scope of the SRA Accounts Rules;	The Accounts Rules are concerned only with client money relating to SRA-regulated activities. The Rules specifically define, and exclude from their scope, money relating to activities not regulated by the SRA. The ring-fencing of client money for SRA-regulated activities will remove the likelihood of regulatory overlap. However, the SRA has developed a Memorandum of Understanding with	An Order under the LSA will extend the protection given by section 85 Solicitors Act to the client bank accounts of traditional law firms, to the client bank accounts of an ABS.

			• accountant's reports are independent of ownership of an ABS.	other regulators to set out an agreed approach, should a conflict arise in the treatment of money held by an ABS MDP.	
AR6	Restating in rule form the overriding objective of the Accounts Rules, and introducing a specific obligation to comply with the Handbook Principles, and to satisfy the outcomes in relation to the effective financial management of the practice.	Rule 1	To reinforce and give greater prominence to the fundamental principle of keeping client money safe, which underpins the Accounts Rules; and to apply the Handbook Principles, and the outcomes in relation to the effective financial management of the firm, in the context of the handling of client money. Desired outcomes are that: • client money is protected in the event of firm failure; • the risk of misappropriation of client money arising from a firm's financial instability is reduced; • client and public confidence in the way in which firms run their practices is maintained.	No	No
AR7	Giving firms flexibility in relation to the payment of interest to	Rules 22 to 25	The detailed prescriptive interest provisions have been replaced by an OFR approach, requiring the payment of a fair and reasonable amount of interest, when it is fair and reasonable to do so. Firms will be required to have a policy on interest, the terms of which must be drawn to	No	No

	clients.		the attention of clients. The guidance notes have been expanded to assist firms in setting their interest policies. Desired outcomes are that: • clients can make informed decisions concerning the provider of their legal services, including those relating to the holding of their money and the payment of interest; • firms develop policies for the payment of interest that are fair and reasonable; • firms (largely from the Muslim community) have the flexibility not to earn or pay interest for reasons connected with their faith.		
AR8	Removing the prescriptive signing provisions in relation to withdrawals from client account.	Rule 21	An OFR approach replaces the current prescriptive regime setting out who may authorise withdrawals from client account, with a requirement for firms to have appropriate systems and controls in place for signing on client account. The rule, however, does not permit an owner, who is neither a manager nor an employee and not, therefore, involved in the day to day running of the practice, from being a signatory on client account (whether as the sole signatory or a co-signatory). Desired outcomes are that firms take greater responsibility for controls relating to withdrawals from client account and that external owners are prevented from having inappropriate access to the client account.	No	No
AR9	Distinguishing between mandatory rules and non-binding guidance.	Throughout	All the binding provisions contained in the current mandatory notes have been moved to the rules, and the purely explanatory provisions have been retained in non-mandatory guidance notes. These changes retain prescription only where necessary, providing clarity and giving firms greater	No	No

			flexibility. Desired outcome is that firms have clarity concerning the mandatory requirements of the SRA.		
AR10	Increasing the frequency of reconciliations for certain passbook-operated accounts.	Rule 29(12)	The obligation for five weekly reconciliations has been extended to passbook-operated separate designated client accounts of solicitor-trustees, in place of the current 14 weekly requirement. There is no longer any justification for a less frequent checking of this type of account, and the change will result in the rationalisation of the reconciliation provisions. Desired outcome is that regulation is proportionate to identified risks.	No	No
AR11	Modernising the Rules in relation to the use of electronic signatures and electronic bank statements.	Rules 21 and 29	The Rules have been updated to allow firms to use electronic copies of bank statements, in place of paper statements, and to permit electronic authorities for client account withdrawals. Desired outcome is that Rules reflect current banking practices.	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Practice Framework Rules [2011]

Overview of Practice Framework Rules

PF1	**Nature and effect of the existing provisions (if applicable)**	N/A – this is a new set of rules (although many of the provisions are drawn from the framework of practice rules in the Solicitors' Code of Conduct 2007).
PF2	**Are the provisions to be applied to ABS? If so, why?**	Yes. The SRA Practice Framework Rules include matters relating to the right to practise in certain ways, the structure of firms, and eligibility for authorisation. The rules include structural provisions relating to existing SRA-regulated firms, which will continue to be relevant for regulatory purposes. These provisions have been developed and adapted to include the practice framework for ABSs, in order to provide equivalent public protections. They are detailed and technical because many of the provisions need to mirror their statutory source. The SRA Practice Framework Rules are the first place to look to establish what methods of practising are permitted, and what route to authorisation and individual arrangements are possible. Of particular note are: • the fundamental requirements for all legal services bodies to become recognised bodies, and the eligibility criteria for licensable bodies to become licensed are clearly set out (see rules 13 and 14); • the basic requirement continues to be that solicitors and RELs wishing to practise as such, must do so through a regulated structure (see rules 1 and 2); the provisions relating to in-house solicitors (rule 4) are retained as far as possible,

		subject to changes where employers of in-house solicitors and RELs are required to seek a licence for employees providing reserved legal services to the public or a section of the public.
PF3	**Nature and effect of the proposed changes**	The main changes to the current regulatory arrangements (contained in the 2007 Code) are: 1. Changes to provide for the structure of ABS within the framework of SRA regulation. 2. Changes to deal with the fact that sole practitioners will be treated as recognised bodies from 31 March 2012 (assuming a section 69 Order is granted), and to include some guidance. 3. The in-house exemptions in relation to reserved legal work have been amended so as not to run counter to the provisions of section 15(4) of the Legal Services Act 2007. 4. The exception that allows in-house solicitors working for associations has also been drafted to limit the extent of this exception so that it applies to organisations whose members have a specialist interest in common.
PF4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The Practice Framework Rules are the fundamental building blocks of practice for firms and individuals. The proposals allow for increasing access to justice by the introduction of a broader range of practising vehicles through which legal services can be provided within statutory boundaries for ensuring appropriate levels of public protection. Part 1 of the rules sets out the types of business through which solicitors, RELs, RFLs and authorised bodies may practise. It restricts the types of business available in order to reflect statutory provisions and to ensure that clients and the public have the protections provided for by statute. Part 2 permits authorised bodies, solicitors, RELs and RFLs to carry out certain types of work, including immigration work. Part 3 governs the formation and practice requirements which must be satisfied by bodies to be eligible for authorisation by the SRA, and is based on the requirements of sections 9 and

		9A of the Administration of Justice Act 1985 and section 72 of the Legal Services Act 2007. Part 4 sets out certain requirements relating to compliance with these rules and the SRA's regulatory arrangements.

Specific proposals – Practice Framework Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
PF5	Changes to provide for the structure of ABS within the framework of SRA regulation	Most provisions in these rules e.g. 5, 6, 7, 8.6, 11, 14, 15, 16, 17, 18 and 19.	Creating the framework to enable the establishment of a wider legal services market including ABS. Desired outcomes are: • a consistent level of consumer protection across SRA-regulated firms; • a framework for the regulation of legal services that provides for full interaction of firms and individuals within the wider regulated legal services sector e.g. permitting individuals and firms regulated by other regulators to be managers and owners of ABS; • a competitive legal services market with proportionate regulation.	No	No
PF6	Changes have been made to deal with the fact that sole practitioners will be treated as	Throughout the rules, particularly 1, 2, 5, 8.7, 10 and 13. Rule 22.1	These provisions, which bring sole practitioners into regulation as recognised bodies, so that all non-ABS firms are regulated similarly, are largely effected through the transitional provisions in rule 22.1. Desired outcome is that all firms are subject to a	No	**Yes – the SRA has asked for a section 69 Order to treat sole practitioners**

	recognised bodies from 31 March 2012.		common approach to authorisation in order to ensure appropriate consumer protection.		**as a form of recognised body**
PF7	The in-house exemption in relation to reserved legal work has been amended.	Rules 4.14, 4.16, 4.10 and 4.12	To continue to permit in-house solicitors to act for clients other than their employer within the boundaries set by the LSA. In limited circumstances, where there is a nexus between the organisation and the client, an in-house solicitor will be able to provide reserved services (e.g., acting for fellow employees or related companies in the employer's group). Where there is insufficient nexus the client will be regarded as "a section of the public" for the purposes of the LSA, and the body would need to be licensed to provide reserved services. Rule 4 reflects this: • Commercial legal advice services (4.14) – the rule has been drafted to prevent in-house solicitors in these circumstances providing reserved work. • Law centres and other not-for-profit organisations (4.16) – as such bodies have an 18 month grace period the need for amendments will be addressed as part of the work on special bodies. • Pro bono work (4.10) – because of the lack of any nexus between the organisation and the clients, in-house solicitors will only be able to provide pro bono reserved legal	No	**No, but an order by the Lord Chancellor under section 15(9)(a) and/or (b) of the Legal Services Act 2007 would help to clarify the legal boundaries which impact on this area.**

			services, if doing so is clearly not part of the employer's business • Associations (4.12) – because of the lack of nexus between the association and the clients in-house solicitors will not be able to carry out reserved legal activities for association members. Desired outcomes are that: • in-house exceptions reflect the LSA provisions; • the public interest is served through the provision of pro bono legal services in the restricted circumstances possible.		
PF8	The exception that allows in-house solicitors working for associations has also been drafted to limit the extent of this exception so that it applies to organisations whose members have a specialist interest in common.	Rule 4.12	The association exemption will not cover organisations whose members do not share a specialist interest. If such organisations wish to employ solicitors to carry out legal work (including the reserved legal work not permitted: see BPF7 above) for their members they will have to apply for a licence as an ABS. With the advent of this option for non-lawyer bodies, the rules allow those bodies whose membership does not have a specialist interest in common to apply for a licence and to be regulated in the provision of legal services to the public. Desired outcome is that firms that should be authorised as ABSs cannot avoid regulation by use of the in-house exceptions.	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011]

Overview of Authorisation Rules

AR1	**Nature and effect of the existing provisions (if applicable)**	This is a new set of Rules that draws on the Recognised Bodies Regulations and the Practising Regulations (in relation to sole practitioners).
AR2	**Are the provisions to be applied to ABS? If so, why?**	Yes. The Authorisation Rules deal with the authorisation of ABSs and, in time, of recognised bodies (including sole practitioners). They set out the requirements to obtain initial authorisation together with the standards for continuing regulatory compliance for ongoing authorisation by the SRA. The implementation of the Authorisation Rules will be on a phased basis.
AR3	**Nature and effect of the proposed changes**	The SRA Authorisation Rules contain the key requirements for implementing the establishment and risk-based regulation of ABSs, Recognised Bodies (RBs) and sole practitioners (SPs), who will in future be authorised as a form of recognised body. The rules cover all matters relating to the authorisation of a firm to practise and include initial and continuing requirements for application and approval of the body itself, its managers, owners and relevant employees, most notably: 1. Application of the SRA's regulatory provisions to ABS and to recognised bodies The rules set standards for all firms to provide compliance with the regulatory objectives. They require all firms to comply with the SRA's regulatory arrangements and set out some general conditions of authorisation which apply to all firms. 2. The requirement for all firms to have a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA)

		Under the LSA, an ABS must at all times have an individual who is designated as Head of Legal Practice (HOLP), who is responsible for compliance with the regulatory regime. Similar provision is made for a Head of Finance and Administration (HOFA) - responsible for compliance with the Accounts Rules. The HOLP must be a lawyer. There is no professional requirement in respect of a HOFA. The designation of both must be approved by the SRA through a suitability test. One person can perform both roles and neither must be disqualified from holding the relevant role. All firms are required to have individuals fulfilling such roles, referred to in the Authorisation Rules as Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA). 3. The requirement for suitability The rules require key role holders (managers, owners, COLPs and COFAs) to be approved as "suitable" by the SRA. This test incorporates the fit and proper requirements of the SRA in accordance with the requirements of the LSA. 4. Unlimited licensing for authorised bodies All firms authorised will be granted an unlimited licence, ie, licences will not be annually renewed (as is currently the case for RBs and SPs). 5. Information requirements The Authorisation Rules require that firms provide information to the SRA on a periodic basis "in the prescribed form". This enables the SRA to risk assess firms and target its supervisory resources.
AR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The Authorisation Rules underpin the effective regulation of new business models for the protection of clients and the public generally and applies requirements consistently across ABSs and traditional law firms. The introduction of outcomes-focused, risk-based regulation

		depends upon the provisions in these rules to ensure that authorisation is granted (and maintained) only to suitable bodies and individuals. This risk-based approach will place greater emphasis on the quality of firms' governance and the effectiveness of systems and controls that firms put in place to achieve compliance.

Specific proposals – Authorisation Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
AR5	Application of the SRA's regulatory provisions to ABS and to recognised bodies	Most provisions in these rules	To provide for equivalent regulation and client protections regardless of the business model through which legal services are provided. All applications will be considered in light of the regulatory objectives and the Authorisation Rules will ultimately apply ongoing regulatory standards to all firms for example, standards such as the requirements for approvals, compliance officers, provision of information and payment of periodical fees. Transitional provisions will bring all provisions into effect for firms via a staged process. Common standards will provide flexibility for firms and enable them to move from ABS to recognised body status and vice versa. Rule 12 (Waivers) allows for provisions of the rules to be waived in exceptional cases where for example the impact of a particular rule in a	The likelihood is not expected to be high but the rules contain specific provision for dealing with regulatory conflict (rule 11) should it arise, under which the rules of the regulator of the firm will prevail.	**Yes in relation to the treatment of SPs as RBs. If the section 69 order is granted we can then apply the Authorisation Rules to SPs as a form of RB.**

			particular case is not in the public interest. Desired outcomes are: • only firms that are fit and proper are authorised and continue to be authorised; • the public is protected against the risk of unsuitable/disreputable providers of legal services; • the SRA is enabled to risk assess firms and supervise them appropriately through the provision of information from firms and other sources.		
AR6	The requirement to have a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA)	Rule 8.5	The basic requirements for each of the COLP/COFA roles are flexible and outcomes-focused so that the status, experience and competence of the person fulfilling the role can be tailored to the risk represented by particular business models. Desired outcomes are that: • firms implement appropriate systems and controls to manage their regulatory risks (including risks to clients); • the SRA is able to identify those persons who have responsibility for implementing controls and to take appropriate regulatory action in the event of the failure of those controls leading to poor client outcomes/other risks to the public.	No	No
AR7	The requirement for suitability	Rule 8.5 (Compliance officers)	The rules require managers, and owners of a material interest, in all authorised bodies, and all COLPs and COFAs to be subject to assessment	No	No

		and 8.6 (Management and control) and Part 4.	of their suitability. This is done via the Suitability Test under Part 4 of the rules and ensures that firms cannot take on individuals or bodies to those roles unless assessed as appropriate. The test is based on the current tests for admission as a solicitor, which is also the basis for assessing eligibility of non-lawyers of an LDP. The test is based on the SRA's current Character and Suitability guidelines. The test will be applied to owners taking into account the interests of any associated persons (as defined by the LSA). We will also require authorised bodies to disclose ownership details of the firm to assist us to identify (and prevent, in high risk cases) potential owners seeking to exploit ownership of an ABS in ways that would jeopardise the interest of clients. Approval may be withdrawn under rule 17 and, where unforeseen circumstances occur the rules allow for Temporary emergency approvals for compliance officers (rule 18) to ensure continuing compliance is possible. Because the test is based on admission criteria that solicitors have satisfied (and on which they are required to make annual declaration), they will be deemed to be approved. In addition other existing managers and owners of firms, at the point when recognised bodies are transitioned to		

			regulation under the Authorisation Rules, will be deemed approved for those roles in their firm. This will apply to approved non-lawyers and to lawyers authorised by another approved regulator. Desired outcome is that only suitable firms, individuals, and entities are authorised/approved to hold roles in firms and remain to be authorised/approved to hold that role.		
AR8	The move from an annual renewal process to a system for all authorised bodies of unlimited licensing with a requirement to pay an annual fee and to provide an annual information report	Rules 7, 8.3, 9, 10, 21 and 23	Under rule 21 (Effect and validity of authorisation) authorisation will be granted for the lifetime of the firm and allows for businesses to make long term plans. Rules 7 (grant of authorisation) 8.3 (Payment of periodical fees), 9 (Further conditions), Rule 10 (Modification of terms and conditions of an authorisation) and 23 (Suspension or revocation) support the system of such licensing. In line with our transition to risk-based supervision of firms, the Authorisation Rules require information to be submitted by those applying for authorisation of a new firm. This will include a compliance plan and a business plan. These will enable the SRA to identify any key risks posed by the prospective firm and assess whether or not it should be authorised and, if so, whether further licence conditions imposed on the firm. Although authorisations will be granted unlimited as to time the SRA may revoke or suspend an	No	**Yes for RBs and SPs (the draft section 69 order enables the SRA to collect periodic fees and information separately from the authorisation/ renewal process – this means that RBs can be granted unlimited licences.**

			authorisation if necessary. The rules contain requirements to pay periodical fees and for an information gathering process. The SRA's ability to revoke/suspend authorisation and the ongoing requirement for approval of (or withdraw approval from) key role holders i.e. managers and owners obviates the need for review of authorisation as part of an annual renewal process. Desired outcomes are: • reduced administrative requirements for firms and the SRA through the removal of annual renewal; • greater efficiency in the SRA's operations through a single approach to authorisation.		
AR9	Information requirements at the point of authorisation and ongoing	Rules 3, 8.7, 8.8, 8.9, 8.10, 18, 23, 24 and 25	The rules contain a range of information-giving requirements both at the point of applying for authorisation and on an ongoing basis where authorisation is granted. Desired outcomes are that: • the SRA is in a position to risk assess firms and therefore to determine the appropriate form and level of supervision for that firm; • the SRA can respond proportionately to issues identified through supervisory/disciplinary action; • the SRA can co-operate with other regulators in sharing information concerning its regulated community to facilitate the better regulation of legal services generally and of MDPs.	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Practising Regulations [2011]

Overview of Practising Regulations

PR1	**Nature and effect of the existing provisions (if applicable)**	These regulations deal with: - applications for practising certificates by solicitors and for registration by European lawyers and foreign lawyers; - applications for authorisation to practise as sole practitioners, by solicitors and RELs; - applications for renewal of practising certificates and registration; - the issue of practising certificates to solicitors and the registration of European lawyers and foreign lawyers; and - the keeping of the register of solicitors who hold practising certificates, the register of European lawyers and the register of foreign lawyers.
PR2	**Are the provisions to be applied to ABS? If so, why?**	Generally not, although they will apply to individuals working within ABSs. The provisions specifically apply to ABSs in relation to the apportionment of fees – see regulation 4A. These regulations will remain in force, but provisions relating to the authorisation of sole practitioners will be repealed at the point at which sole practitioners will be treated as a form of recognised body and therefore are transitioned to the Authorisation Rules.
PR3	**Nature and effect of the proposed changes**	The main changes are: - adding ABSs into regulation 4A (Fee determinations for acquisitions, mergers and splits); - updating criteria in relation to decision-making in line with the new legal services market; - updating the appeal period to the High Court;

		- adding guidance notes to deal with transitioning to Authorisation Rules.
PR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The practical effect of the current proposals is to ensure that individuals will continue to be regulated in the public interest in relation to existing types of firm and ABSs. Sole practitioners firms will also be regulated in a manner similar to the regulation of ABSs, which will be under the Authorisation Rules, until such time as all SRA firms are regulated under the Authorisation Rules.

Specific proposals – Practising Regulations

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
PR5	Adding ABSs into provisions for apportionment of fees on splits and mergers of firms	Regulation 4A	The purpose and desired outcome is the effective apportionment of regulatory fees between firms, including ABSs.	No	No
PR6	Updating criteria in relation to decision-making in line with the new legal services market	3.1	Changes cover e.g. including disqualification under section 99 of the LSA as a trigger for having the discretion for imposing conditions on practising certificates or the registrations of RELs and RFLs. The desired outcome is that consumers are protected against the risk that unsuitable persons are involved in the management of firms that provide legal services.	No	No
PR7	Updating the appeal period to the High Court	7.6(b)	To change the Rules in line with the Civil Procedure Rules.	No	No

PR8	Adding guidance notes regarding transitioning sole practitioners to the Authorisation Rules	Guidance to Regulation 4 and 4A	Explanatory text has been included regarding the passporting of existing recognised sole practitioners to become recognised bodies coupled with transitioning of all recognised bodies (including sole practitioners) to the Authorisation Rules. Desired outcome is that firms understand the regulatory timetable and when existing rules will be repealed and when new rules will apply to them.	No	**Yes – the SRA has asked for a section 69 Order to treat sole practitioners as a form of recognised body**

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Recognised Bodies Regulations [2011]

Overview of Recognised Bodies Regulations

RB1	**Nature and effect of the existing provisions (if applicable)**	These regulations deal with: • the procedures for, and the circumstances in which, bodies may be recognised by the SRA as suitable to undertake the provision of legal services, the duration of recognition and the circumstances in which recognition will expire or may be revoked; • the procedures for, and the circumstances in which, individuals who are not legally qualified may be approved by the SRA as suitable to be managers of recognised bodies, and the circumstances in which such approval may be withdrawn; • the form and manner of applications relating to the recognition of a body, the approval of an individual, and other applications under rules applying to recognised bodies, their managers and employees, and the fees to accompany such applications; • the circumstances in which a body's recognition may be made subject to a condition; • appeals relating to recognition of a body, conditions on recognition, or approval of an individual; • the names used by recognised bodies; and • the register of recognised bodies.

RB2	**Are the provisions to be applied to ABS? If so, why?**	Generally not, as these regulations will remain in force only until recognised bodies are transitioned to be regulated under the Authorisation Rules. The provisions apply specifically to ABSs only in relation to the apportionment of fees – see regulation 2A.
RB3	**Nature and effect of the proposed changes**	The main changes are: • adding ABSs into regulation 2A (Fee determinations for acquisitions, mergers and splits); • updating criteria in relation to decision-making in line with the new legal services market; • updating the appeal period to the High Court; • adding guidance notes regarding transitioning to Authorisation Rules; • including provisions from the Authorisation Rules to bridge the gap until recognised bodies are regulated under those rules.
RB4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The practical effect of the current proposals is to ensure that recognised bodies are regulated in the public interest in line with the regulation of ABSs under the Authorisation Rules until all SRA firms are regulated under those rules. This aids transparency and proportionality in terms of our regulation of firms, and ensures a smoother transition, with equivalent consumer protections.

Specific proposals – Recognised Bodies Regulations

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
RB5	Adding ABSs into provisions for apportionment of	Regulation 2A	The purpose and desired outcome is the effective apportionment of regulatory fees between firms, including ABSs.	No	No

	fees on splits and mergers of firms				
RB6	Updating criteria in relation to decision-making in line with the new legal services market	3.3	Changes cover e.g. including disqualification under section 99 of the LSA as a trigger for assessing the suitability of non-lawyers to be managers of LDPs. The desired outcome is that consumers are protected against the risk that unsuitable persons are involved in the management of firms that provide legal services.	No	No
RB7	Updating the appeal period to the High Court	7.5(b)	This change is consequent to a change to the Civil Procedure Rules.	No	No
RB8	Adding guidance notes regarding transitioning recognised bodies to the Authorisation Rules	Guidance to Regulation 3 and 8	To provide explanatory text regarding the transitioning of existing recognised bodies to the Authorisation Rules. Desired outcome is that firms understand the regulatory timetable and when existing rules will be repealed and when new rules will apply to them.	No	No
RB9	Inclusion of provisions from the Authorisation Rules	Regulation 5 and 10	To bridge the gap and provide equivalent regulatory provisions as those applying to ABSs until recognised bodies are regulated under the Authorisation Rules e.g. to deal with change in composition of firms and expiry of recognition. Desired outcome is a common standard of consumer protection across all firms.	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Training Regulations [2011]

Overview of rules – SRA Training Regulations

TR1	**Nature and effect of the existing provisions (if applicable)**	The Training Regulations set out the processes through which individuals qualify as solicitors. They govern the qualifications, duties and responsibilities of those providing key elements of the education and training we require – i.e. providers of the training contract and the Professional Skills Course (PSC). They also require solicitors to complete post-qualification training – Continuing Professional Development (CPD).
TR2	**Are the provisions to be applied to ABS? If so, why?**	Yes. Part 2 of the regulations apply to organisations and particular role holders within those organisations. Training contracts are normally provided by law firms ("training establishments"). PSCs can also be provided by law firms. The regulations governing provision of training contracts and the PSC apply equally to all relevant organisations regardless of constitution. Therefore, the regulations only apply to ABSs to the extent that they are necessary to ensure that the current regime of provision of training contracts and the PSC continues to deliver the same standard of training and of quality assurance of those entering the profession. The regulations relevant to organisations address: • the authorisation of training establishments; • the taking of trainees by training establishments; • the commencement, registration and termination of training contracts; • the responsibilities of training establishments, including appointment of a training principal, induction, training and absences from work of trainees; • training establishments' recognition of trainees' previous experience;

		• secondment of trainees and modular training contracts; • monitoring of training contracts and SRA powers in relation to training establishments all of which are necessary to ensure the quality of the training experience, and the quality of new entrants to the profession by the training contract route. Part 3 of the Training Regulations governs the continuing professional development (CPD), education and training of those practising as solicitors or RELS only. It is not applicable to non-solicitors working within ABS structures. Part 3 does not impose any additional burdens; it simply rationalises and incorporates into the regulations all mandatory guidance. Our CPD requirements will be reviewed during 2011, with the possibility that ongoing training will be required of certain post holders within ABS structures.
TR3	**Nature and effect of the proposed changes**	The key changes which are proposed are mainly global rather than specific. Apart from minor amendments to ensure the smooth functioning of the regulatory regime (explained in section ATR5 onwards), all the key changes relate to the structure and presentation of the regulatory requirements. A large number of the SRA's current requirements appear in guidance, in multiple locations, but have a mandatory effect. Our main intention in the revisions to the Training Regulations was to clarify this confusing situation. The changes are: • the Training Regulations 2010 have been split into three separate sections, to allow for the addition of the mandatory requirements currently appearing in guidance. These three sections are *Part 1 – Qualification regulations* (governing the domestic training stages for individuals and student enrolment), *Part 2 – Training Provider regulations*, (governing provision of training contracts and the Professional Skills Course by organisations, containing most of the mandatory guidance currently in Training Trainee Solicitors, but not covering providers of academic courses, the LPC or CPD) and *Part 3 – CPD regulations* (governing the ongoing training requirements for solicitors and RELs);. • the language in all four sets of regulations has been simplified wherever possible; • the regulations have been amended to address the person the regulation is intended to

		speak to, moving from the third person to the second person (e.g. “you” rather than “a trainee”); • all mandatory requirements currently included in guidance have been written into the regulations; • all relevant non-mandatory guidance has been included as guidance within the regulations; • a clear distinction has been made between mandatory requirements and non mandatory guidance; • all existing standalone education and training guidance documents, e.g. Training Trainee Solicitors, will be withdrawn on publication of the new Handbook. Additional information and signposting will appear on our website, but all information relating to compliance with the education and training requirements has been integrated into the regulations within the new Handbook.
TR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The proposed changes should not impact upon the regulatory objectives directly. In terms of the Training Regulations generally, they ensure the appropriate standards of competence and suitability of all solicitors upon admission, which in turn: • protects and promotes the public interest; • supports the constitutional principle of the rule of law; • improves access to justice; • protects and promotes the interests of consumers; • encourages an independent, strong, diverse and effective legal profession; • promotes and maintains adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality. The proposed changes should have positive impacts upon the five principles of good regulation, in that the new Training Regulations will be included in the Handbook and will be: • transparent – clearly promoted as a set of simplified regulations applicable to all intending solicitors and other key roleplayers; • accountable – the limited changes we propose are justifiable in the public interest;

		• proportionate – the Training Regulations help the SRA achieve its obligations under the Solicitors Act 1974 in terms of being satisfied as to the qualifications and suitability of those seeking admission and the training they must do following admission, but do not go beyond the scope of the Act; • consistent – the regulations now read like the other sections of the Handbook; • targeted – the regulations only affect those individuals who are solicitors, who are qualifying to become solicitors, and key roleplayers in the education and training process.

Specific proposals – Training Regulations

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
TR5	Removal of age criteria for eligibility to attempt the Common Professional Examination (CPE)	Part 1 – regulation 6	**This is not applicable to ABSs.** Non graduates can attempt the CPE by virtue of being mature students or by holding a qualification in magisterial law provided they are at least 25 years old. They are also required to satisfy us as to their character and suitability and their English language abilities. We have removed the age limit requirement and the requirement for non graduate CPE students to demonstrate character and suitability and English language abilities. Desired outcome: • removal of unjustifiable age limit; • people under the age of 25 can now apply for 'mature student' status and attempt the CPE.	No	No

TR6	Removal of age requirement from "qualifying employment" definition	Part 1 – regulation 1	**This is not applicable to ABSs.** The term "qualifying employment" is used in the Training Regulations 2009 to describe the experience that Members of ILEX must have in order to be eligible to attempt the Common Professional Examination (CPE) and enter into a training contract. But such experience can only take place after they have attained the age of 18. We have removed this age limit from the definition of "qualifying employment" within the new Training Regulations. Desired outcome is the removal of an unjustifiable age limit. All relevant experience can now be taken into account.	No	No
TR7	Amendment to the point at which Exempting Law Degree Students must apply for student enrolment	Part 1 – regulation 12	**This is not applicable to ABSs**. The Training Regulations currently state that no person may proceed beyond the first year of a course leading to an Exempting Law Degree (ELD)[1] without student enrolment. We have amended the Regulations to state that ELD students must apply for student enrolment before they begin year three of the course. Desired outcome is that ELD students now have student enrolment requirements aligned with QLD and LPC students. ELD providers' administrative burden is reduced.	No	No

[1] The Exempting Law Degree is a course combining the Qualifying Law Degree and the Legal Practice Course.

TR8	Amendment to the validity period of certificates of student enrolment	Part 1 – regulation 14	**This is not applicable to ABSs.** The Training Regulations currently state that the first certificate of student enrolment lasts for two years. We propose amending the regulations to extend the validity period to the remainder of the calendar year in which they apply plus another four years. Desired outcome is that a regulatory burden on students (i.e. requirement to re-enrol after 2 years, then annually) is reduced to a proportionate level.	No	No
TR9	Additional requirement on providers of training contracts to check potential trainees' student enrolment	Part 2 – regulation 4	**This is applicable to ABSs.** We are including an additional requirement on training providers to ensure that the trainee has valid student enrolment before entering a training contract. This is an extension of current requirements. The rationale is that (a) we know that some training establishments enter into contracts with trainees – in good faith – without being satisfied that the individual has the required student enrolment. This can result in training contracts being cancelled altogether if character and suitability issues mean that enrolment is not subsequently granted; and (b) it is an important and proportionate safeguard to require employers to ensure their trainees have student enrolment before entering into a training contract. Desired outcome is that organisations will be satisfied that their trainees have had their character and suitability checked and that there are no issues that could delay or prohibit their	No	No

			eventual admission. This change also provides an added protection for consumers.		
TR 10	Additional regulation to govern termination of training contracts arising from case law		**This is applicable to ABSs.** We have added an additional regulation to provide more clarity about the requirements for termination of a training contract. Our rationale is that recent case law and legal advice has highlighted a need to review the provisions in the Training Regulations 2009 relating to termination of training contracts. The Training Regulations do not currently specify the grounds upon which the SRA can order the termination of the training contract and the template training contract wording is inconsistent with guidance. Desired outcome is that this provides greater clarity on the existing requirements. Trainees who demonstrate an inability to reach published competence standards will be more easily removed from training, and prevented from qualifying - reducing risk to consumers and clients.	no	no
TR 11	Amendment to the Professional Skills Course (PSC) and training contract commencement requirements	Part 1 – regulations 20 and 21	**This is not applicable to ABSs.** Regulation 30 of the Training Regulations 2009 sets out when an individual can start a Professional Skills Course. Regulation 13 states that training contracts can only be registered once the LPC has been successfully completed. We have amended the regulations to allow individuals who have taken all of the LPC assessments but not received their	No	No

			stage 2 results to be able to start a training contract and commence the PSC. Desired outcome is that flexibility in training offered by the restructured LPC can be exploited.		

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Admission Regulations [2011]

Overview of Admission Regulations

AR1	**Nature and effect of the existing provisions (if applicable)**	The SRA Admission Regulations [2011] govern the process for individuals seeking admission to the roll of solicitors in England and Wales and appeals from SRA decisions. The Regulations ensure that all people who apply for admission as solicitors have complied with all relevant training and/or assessment requirements and have recourse to appeal decisions taken by the SRA in relation to qualification as a solicitor. They cover people going through the domestic, 'direct' route to qualification (i.e. a law degree or converted non-law degree followed by a Legal Practice Course and training contract) as well as qualified lawyers from other jurisdictions seeking to re-qualify in England and Wales via transfer.
AR2	**Are the provisions to be applied to ABS? If so, why?**	Not directly – they apply only to individuals seeking admission, not organisations or bodies corporate. However, they might apply to people who work in ABSs.
AR3	**Nature and effect of the proposed changes**	Substantive changes to the Admissions Regulations 2009, which the [2011] regulations replace, have been kept to a minimum. However, some amendments were necessary to align them with the Handbook. The key changes which are proposed are: • the language has been simplified wherever possible;

		• the regulations address the person we speak to, moving from the third person to the second person (e.g. “you” rather than “a person”); • new definitions have been added for clarification.
AR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	In terms of the Admission Regulations generally, they help the SRA to ensure the appropriate standards of competence and suitability of all solicitors upon admission, which in turn: • protects and promotes the public interest; • supports the constitutional principle of the rule of law; • improves access to justice; • protects and promotes the interests of consumers; • encourages an independent, strong, diverse and effective legal profession; • promotes and maintains adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality. The proposed changes should have positive impacts upon the five principles of good regulation, in that the new Admission Regulations will be included in the Handbook and will be: • transparent – clearly promoted as a set of simplified regulations applicable to all intending solicitors; • accountable – the limited changes we propose are justifiable in the public interest; • proportionate – the Admission Regulations help the SRA achieve what we are required to do under the Solicitors Act 1974 in terms of satisfying the SRA as to the qualifications and suitability of those seeking admission, but do not go beyond the scope of the Act; • consistent – the regulations now read like the other sections of the Handbook; • targeted – the regulations only affect intending solicitors.

Specific proposals – Admission Regulations

AR5	**Proposal**	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
AR6	Remove right to appeal for those who have been refused mature student status under regulation 9(1)(iii) of the Solicitors' Training Regulations 2009	Part 2 - Appeals	We have removed the requirement to prove character and suitability in order to attempt the Common Professional Examination from the Training Regulations. There is therefore no need for a right of appeal against decisions to refuse eligibility for mature students on the grounds of character and suitability. Character and suitability requirements for mature students have been aligned with other students in the general qualification process, i.e. this must be done before a Legal Practice Course is commenced. Previously, mature students would have to do this twice within a short space of time, which is not proportionate. Desired outcome is that regulation is proportionate to the identified risks (i.e. persons are not subject to unnecessary assessment).	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Qualified Lawyers Transfer Scheme Regulations [2011] ("the QLTSR")

Overview of the Qualified Lawyers Transfer Scheme Regulations

QLTS1	**Nature and effect of the existing provisions (if applicable)**	The QLTSR [2011] govern the processes by which lawyers who transfer from another jurisdiction, other UK legal professions, and European lawyers, can become admitted as solicitors. These regulations govern the qualification process for lawyers seeking to be admitted as solicitors via transfer from another jurisdiction. They also set out the means by which certain lawyers can seek admission by virtue of European Directives 2005/36/EC and the Establishment Directive.
QLTS2	**Are the provisions to be applied to ABS? If so, why?**	Not directly – they apply only to individuals seeking admission, not organisations or bodies corporate. However, they may impact on individuals working in ABSs.
QLTS3	**Nature and effect of the proposed changes**	Substantive changes to the Qualified Lawyers Transfer Scheme Regulations 2010, which the [2011] regulations replace, were largely unnecessary as they have recently been approved. However, some amendments were necessary to align them with the Handbook and take account of the first months of operation of the 2010 regulations. The key changes which are proposed are: • the language has been simplified wherever possible; • the regulations address the person we speak to, moving from the third person to the second person (e.g. "you" rather than "a person"); • new definitions have been added for clarification;

		• guidance has been included as commentary within the regulations.
QLTS4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	In terms of the QLTSR generally, they ensure the appropriate standards of competence and suitability of all solicitors upon admission, which in turn: • protects and promotes the public interest; • supports the constitutional principle of the rule of law; • improves access to justice; • protects and promotes the interests of consumers; • encourages an independent, strong, diverse and effective legal profession; • promotes and maintains adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality. The proposed changes should have positive impacts upon the five principles of good regulation, in that the new QLTSR will be included in the Handbook and will be: • transparent – clearly promoted as a set of simplified regulations applicable to all intending solicitors transferring from other legal professions; • accountable – the limited changes made are justifiable in the public interest; • proportionate – the QLTSR help the SRA achieve what we are required to do under the Solicitors Act 1974, as well as EU directives, in terms of being satisfied as to the qualifications and suitability of those seeking admission, but do not go beyond the scope of the Act or those directives; • consistent – competence requirements are more closely aligned with those of domestic route entrants. Also, the regulations now read like the other sections of the Handbook; • targeted – the regulations only affect those intending to become solicitors by virtue of their existing recognised legal professional status.

Specific proposals – Qualified Lawyers Transfer Scheme Regulations

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
QLTS5	Overseas lawyers who have completed the LPC should be exempt from the Multiple Choice Test	Regulation 3	Representations were made to the SRA from 'international lawyer' applicants who must complete an England and Wales LPC as part of their qualification process. The 2010 Regulations would require them to pass all QLTS assessments; their view was that this was unfair as they had successfully completed a substantial part of our domestic qualification process. The SRA considered this, and decided to allow such individuals an exemption from the Multiple Choice Test, as this element assesses similar outcomes to those of the LPC. The SRA will require such people to apply to us for such an exemption. Desired outcome is that people who have already demonstrated competence at LPC level will not have to take unnecessary additional assessment.	No	No
QLTS6	Guidance note added to clarify 'deemed notification'	Regulations 6 and 7	The SRA use the date of notification of a decision to 'start the clock' on the time period within which we will accept a request for review of that decision. However it is not possible to know exactly when an applicant, particularly someone from overseas, receives a confirmation letter from the SRA. So we have used 'deemed notification'	No	No

			and explained what is meant by this. Desired outcome is that appeal periods are clearer and less open to argument for candidates.		
QLTS7	re-instatement of commencement and repeal, and transitional arrangement sections	Regulations 9 and 10	The commencement, repeal and transitional arrangement sections are contained in schedules to the existing QLTSR 2010. All schedules were deleted from the draft 2011 Regulations, but transitional arrangements were still required, so we have added them back in as regulations. Desired outcome – correct regulatory transition. Also, representations have been made recently by part-time BVC students who felt that we had treated them less favourably than full-time students. Although they commenced the course at the same time as the full-time cohort, their completion date would came after the deadline for applications under the QLTR 2009 meaning they would not be eligible, whereas the full-timers would be eligible. We have considered this and decided that they should be caught by the transitional arrangements. Desired outcome is that to prevent potential unfavourable treatment of part-time BVC students (as they had a reasonable expectation of potential to transfer under old regulations).	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Higher Rights of Audience Regulations [2011]

Overview of Higher Rights of Audience Regulations

HRA1	**Nature and effect of the existing provisions (if applicable)**	The HRA Regulations govern the qualifications that solicitors and RELs need to hold to exercise rights of audience in the higher courts in England and Wales. These regulations aim to ensure that solicitors and RELs who want to exercise rights of audience in the higher courts of England and Wales are competent to do so. Solicitors and RELs are granted rights of audience in all courts upon qualification/registration but cannot exercise those rights in the higher courts until they have complied with additional requirements. We are required to set the education and training requirements which solicitors/RELs must comply with in order for these rights to be used. The regulations describe the qualifications available, where rights can be transferred, and set out the process for becoming eligible to exercise rights of audience in the higher courts.
HRA2	**Are the provisions to be applied to ABS? If so, why?**	Not directly – they apply only to individuals seeking the HRA qualifications, not organisations or bodies corporate. However, they may apply to individuals working in ABSs.
HRA3	**Nature and effect of the proposed changes**	Substantive changes to the Solicitors' Higher Rights of Audience Regulations 2010, which the [2011] Regulations replace, were unnecessary as they have recently been approved. However, some amendments were necessary to align them with the Handbook.

		The key changes which are proposed are: • the language has been simplified wherever possible; • the regulations address the person we speak to, moving from the third person to the second person (e.g. “you” rather than “a person”); • new definitions have been added for clarification; • guidance has been included as commentary within the regulations.
HRA4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	In terms of the HRA Regulations generally, they ensure the appropriate standards of competence for solicitors and RELs who exercise rights of audience in the higher courts, which in turn: • protects and promotes the public interest; • supports the constitutional principle of the rule of law; • improves access to justice; • protects and promotes the interests of consumers; • promotes competition in the provision of services in the legal sector; • encourages an independent, strong, diverse and effective legal profession; • promotes and maintains adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality. The proposed changes should have positive impacts upon the five principles of good regulation, in that the HRA Regulations will be: • transparent – clearly promoted as a set of simplified regulations applicable to all solicitors and RELs who intend to apply for HRA qualifications; • accountable – the limited changes we propose are justifiable in the public interest; • proportionate – the HRA Regulations help the SRA to achieve its obligations under the

		Courts and Legal Services Act 1990 (as amended by the Access to Justice Act 1999) in terms of satisfying itself as to the qualifications of those seeking to exercise their rights of audience in the higher courts, but do not go beyond the scope of the Act; • consistent – the regulations now read like the other sections of the Handbook; • targeted – the regulations only affect solicitors and RELs seeking higher courts qualifications.

Specific proposals – Higher Rights of Audience Regulations

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
HRA5	***No changes of substance proposed***				

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Indemnity (Enactment) Rules and SRA Indemnity Rules

Overview of Indemnity Rules

SIR1	**Nature and effect of the existing provisions (if applicable)**	The current Solicitors' Indemnity Rules (which form the annex to the Solicitors' Indemnity (Enactment) Rules) provide for the maintenance of the Solicitors' Indemnity Fund (SIF) which provides cover for claims arising in respect of practices that ceased without a successor practice before 1 September 2000, and any claims which might arise after the six year run-off period. The Enactment Rules are used as the mechanism to preserve prior Solicitors' Indemnity Rules that remain in force with respect to the relevant indemnity periods to which they apply.
SIR2	**Are the provisions to be applied to ABS? If so, why?**	Yes. The Legal Services Act 2007 requires a Licensing Authority's licensing rules to have appropriate arrangements as to indemnity cover. The draft rules aim to ensure that clients of an ABS receive the same level of protection as clients of a traditional firm of solicitors; and that the level of protection is proportionate to the risk.
SIR3	**Nature and effect of the proposed changes**	The draft rules are based on the existing (ie, 2007) rules, but are extended to apply to ABSs. ABSs will be entitled to indemnification from the SIF in the same way and on the same terms as other persons and entities.
SIR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The Legal Services Act 2007 requires a Licensing Authority's licensing rules to have appropriate arrangements as to indemnity cover. By ensuring clients of an ABS receive the same level of protection as those of a traditional firm, extension of the current rules to ABS will: • protect and promote the public interest; and • protect and promote the interests of consumers. The SRA's current arrangements for professional indemnity and compensation are the subject of a root and branch review which may result in a change of approach.

Specific proposals – Indemnity Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
SIR5	Extension of the existing Solicitors' Indemnity Rules to accommodate ABS.	Changes made throughout the rules, as necessary. In particular, the SRA's legal jurisdiction in relation to an ABS is delineated in the rules through the concept of the ABS's "regulated activities".	To ensure that clients of an ABS receive the same level of protection as clients of a traditional firm of solicitors and that the level of protection is proportionate to the risk. ABS will be entitled to indemnification from the SIF in the same way and on the same terms as other persons and entities.	Generally there will be no conflict with the arrangements of other regulators. The SRA's legal jurisdiction in relation to an ABS is delineated in the rules through the concept of the ABS's "regulated activities". An ABS which is a multi-disciplinary practice (MDP) may have professionals who are subject to the rules of more than one regulator. Any potential difficulties which may arise in this context are being resolved through discussion with other regulators and the adoption of memoranda of understanding. We are also exploring the scope for closer future alignment of indemnity requirements between regulators.	No

				The SRA's current arrangements for professional indemnity and compensation are the subject of a root and branch review which may result in a change of approach.	
SIR6	Deletion of rule 22	Rule 22 concerns the refund of contributions made to the Solicitors Indemnity Fund in the 2001/02 and 2002/03 indemnity years.	The exercise of returning contributions set out in rule 22 was completed in 2008 since when the rule has been redundant. The opportunity has been taken to delete this rule as it no longer serves any purpose.	No	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft Compensation Fund Rules [2011]

Overview – Compensation Fund Rules

C1	**Nature and effect of the existing provisions (if applicable)**	The Solicitors' Compensation Fund Rules 2009 govern the operation of the Compensation Fund, a discretionary scheme established under the Solicitors Act 1974 (SA) from which a grant may be made to an applicant who has suffered a loss due to the dishonesty of a "defaulting practitioner" (e.g. a solicitor or recognised body), or to an applicant who has suffered hardship due to a failure on the part of a defaulting practitioner to account for monies held.
C2	**Are the provisions to be applied to ABS? If so, why?**	Section 83(5) of the Legal Services Act 2007 (LSA) requires a Licensing Authority's licensing rules to contain "appropriate compensation arrangements". The draft rules extend the current rules to ABS to provide a similar level of client protection for ABS clients as for those of traditional firms. They require a section 69 order to give the SRA broadly the same powers under the LSA as it currently has under the SA, and to enable it to run a single fund for all types of firms. The additional powers have been agreed with the LSB on a temporary basis until 31 December 2012.
C3	**Nature and effect of the proposed changes**	• The existing compensation arrangements are applied to an ABS in respect of its "regulated activity" – i.e. to its reserved legal activity, other legal activity, and non-legal activity subject to a condition on the ABS's licence. • The Law Society/SRA is enabled to maintain a single fund and to make grants from it

		in respect of default by an ABS in connection with its regulated activity. • ABSs are required to make contributions to the Fund. • These arrangements are expressed as being in force until 31 December 2012, reflecting the required section 69 order.
C4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The interim single fund approach, as expressed in the draft rules • provides clarity for consumers (two funds would create confusion as to which fund applied); • avoids complex disputes about which compensation fund should deal with particular losses, especially where a firm may have changed between being an ABS and traditional law firm; and • avoids the disproportionate costs associated with establishing a new fund, which would create a bar to new entrants, including traditional law firms wanting to be ABSs. This approach, albeit an interim one pending the outcome of the review, will protect and promote the interests of consumers and the public, and avoid a potential barrier to competition in the provision of legal services.

Specific proposals – Compensation Fund Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**

C5	The existing compensation arrangements are applied to an ABS in respect of its "regulated activity".	Rule 1(1)	This delineates the SRA's jurisdiction in relation to an ABS which is an MDP, and mitigates the risks of claims not related to SRA regulated activity.	The SRA has defined the application of the Rules as relating to SRA-regulated activity. In that way we have sought to avoid regulatory overlap. An MDP may have professionals who are subject to the compensation rules of another regulator. Any potential difficulties which may arise in this context are being resolved through discussion with other regulators and the adoption of framework Memorandum of Understanding. We are also exploring the scope for closer future alignment of compensation requirements between regulators.	**Yes – in order to apply these Rules to ABSs the SRA requires a section 69 order, which grants equivalent powers to the SRA in relation to compensation arrangements and enable the SRA (on a permissive basis) to have a single fund (the proposal being to use the existing compensation fund until 31 December 2012).**
C6	The Law Society/SRA is enabled to maintain a single fund and to make grants from it in respect of default	Rule 2	• To provide clarity for consumers; • To avoid complex disputes about which compensation fund should deal with particular losses, especially where a firm may have changed between being an ABS	No.	Yes – see C5 above.

	by an ABS in the course of performance of the ABS's regulated activity.		and traditional law firm; and • To avoid the disproportionate costs associated with establishing a new fund, which would create a bar to new entrants, including traditional law firms wanting to be ABSs. Desired outcome is that consumers are protected to a common standard from defaults of traditional law firms and ABSs.		
C7	ABSs are required to make contributions to the Fund.	Rule 2	Desired outcome is that consumers are protected to a common standard from defaults of traditional law firms and ABSs.	See C5 above.	Yes – see C5 above.
C8	The arrangements are expressed as being in force until 31 December 2012	Rules 1(4) and (5); 2(1)(c)-(e); 2(3); 25	This is an interim solution, the duration of which has been agreed with the LSB.	No	Yes – see C5 above.
C9	The fund covers acts or omissions by regulated firms (including licensed bodies and former licensed bodies), managers, employees and owners.	Rules 1(1); 3(2)	In relation to acts or omissions by owners of licensed bodies, who are neither managers nor employees, we believe that clients should be compensated for the acts or omissions of such persons, and we understand this will be addressed in the section 69 order. Desired outcome is that consumers are protected against defaults by persons who own firms; we consider this to be in the public interest.	See C5 above.	Yes – see C5 above.

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Intervention Powers (Statutory Trust) Rules [2011]

Overview of Statutory Trust Rules

STR1	**Nature and effect of the existing provisions (if applicable)**	The current SRA Intervention Powers (Statutory Trust) Rules 2009 ("STR") govern how the SRA (on behalf of the Law Society) can use the money which vests in the Law Society as a statutory trustee when the SRA intervenes into a firm.
STR2	**Are the provisions to be applied to ABS? If so, why?**	The provisions of the current rules are to be applied to ABS to ensure those with a beneficial entitlement to monies held by the SRA on intervention into an ABS can have their claim properly dealt with.
STR3	**Nature and effect of the proposed changes**	The draft rules make no changes of policy. They make necessary amendments to the existing rules to extend their application to ABS.
STR4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The extension to ABS will protect and promote the public interest, and protect the interests of consumers, by setting out a transparent framework within which the SRA has to operate in relation to its treatment of statutory trust monies received on intervention into an ABS. The extension is needed to ensure transparency, accountability, proportionality and consistency in the SRA's discharge of its role as statutory trustee.

Specific proposals - Statutory Trust Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**

STR5	Extend application of existing rules to ABS	Throughout draft STR	Extension of the rules is necessary to ensure clients of an ABS receive the same protection as those of a traditional firm of solicitors.	No. The SRA's intervention powers are based in statute. The rules govern its role as trustee of money received on intervention.	No

Matrix to accompany SRA Handbook for LSB

March 2011

Draft SRA Disciplinary Procedure Rules [2011]

Overview of Disciplinary Procedure Rules

DP1	**Nature and effect of the existing provisions (if applicable)**	The current SRA (Disciplinary Procedure) Rules 2010 primarily govern the exercise of disciplinary powers within the SRA under the Solicitors Act 1974 and the Administration of Justice Act 1985, namely:- • to give a regulated person a 'written rebuke' for misconduct; • to fine a regulated person up to £2,000.00; • to publish a written rebuke or fine made under the rules. These rules were approved by the LSB and came into force on 1 June 2010. The rules, and guidance which sits underneath the rules, provide a clear and transparent framework for the SRA's internal disciplinary procedures. The rules provide criteria for the imposition of fines, rebukes and for publication. The rules also set out the appropriate procedures which apply in disciplinary matters, how decisions will be made internally, and the procedures for appeals and reconsiderations of internal decisions.
DP2	**Are the provisions to be applied to ABS? If so, why?**	The new SRA (Disciplinary Procedure) Rules 2011 will be applied to ABS in the same manner as for traditional law firms to the extent permissible by law, and as appropriate by reference to our assessment of risks.

		The SRA is firstly required by the Legal Services Act to make specific disciplinary provisions in respect of: • imposing financial penalties (S:95) upon ABS law firms / those involved in ABS law firms, including the acts and omissions which could lead to a financial penalty and the criteria and procedure to be applied (schedule 11, paragraph 22); and • ordering disqualification of a person from involvement in an ABS law firm (S:99), including the criteria and procedure to be applied in making such orders (Schedule 11, paragraph 23(1)) and in reviewing such disqualifications (Schedule 11, paragraph 23(2)). In addition, the SRA is of the view that it is appropriate for ABSs to be subject to the same transparent disciplinary provisions as traditional law firms. It is important that all regulated persons are clear as to the disciplinary procedures to be applied to them and that disciplinary processes are consistent and fair. More detailed information as to the benefits of applying the existing disciplinary provisions to regulated persons was supplied to the LSB in support of the earlier rule approval. Prior to approval, the LSB heard representations in respect of the appropriate standard of proof to be applied in disciplinary matters and approved the civil standard.
DP3	**Nature and effect of the proposed changes**	The key changes which are proposed are: • to include the powers to fine ABSs / those involved in an ABS and to provide for appropriate criteria and procedure for doing so; • to include the power to disqualify a person from involvement in an ABS and provide for appropriate criteria and procedure for doing so; • to set criteria for bringing a disqualification to an end and to create an external right of appeal in respect of such decisions; • applying the 'written rebuke' and publication procedures and criteria to ABSs;

		• to vary in one area and apply in others the decision making procedures (including the civil standard of proof) to ABSs; and • to allow for the suspension of financial penalties. We consider it appropriate for the existing rules (approved by the LSB previously) to be applied to ABSs as these are the minimum necessary to ensure a fair and transparent disciplinary process. The SRA already makes use of guidance (published on its website) where possible and appropriate. It should be noted that the suspension and revocation of an entity's license (S: 101 of the LSA) is dealt with in the SRA Authorisation Rules.
DP4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	Appropriate disciplinary sanctions will protect and promote the public interest, will promote and maintain adherence to the professional principles and will protect the interests of consumers. The rules set out the SRA's approach to exercising disciplinary powers to allow for transparency and ensure consistency of disciplinary process. The criteria for exercising the powers specifically provides for a proportionality test and set clear principles for decision making. The provisions provide for internal and external appeals (including the creation of an external appeal in respect of disqualification decisions) to ensure accountability. We believe that these provisions will have a positive impact upon the regulatory objectives and the regulatory principles.

Specific proposals – Disciplinary Procedure Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
DP5	To include the powers to fine ABSs / those involved in an ABS and provide for appropriate criteria and procedure.	Rule 3, appendix 1, rule 8 and Part 2 (procedure).	To set out the SRA's power to fine ABSs / those involved in ABSs. To provide for transparent criteria and a fair procedure for imposing fines. Rule 6 provides for the preparation of a disclosable report setting out the details of the disciplinary matter and an opportunity for the regulated person to make representations in the matter. Desired outcome is that any financial penalty is proportionate to the means of the regulated person and the criteria at appendix 1 have been drafted accordingly.	No risk of conflict has been identified. In any event, the SRA is engaging with other approved regulators in order to ensure the workability of the new regulatory frameworks in general. This engagement will allow for the resolution of any unforeseen issues arising in practice.	No.
DP6	To include the power to disqualify a person from involvement in an ABS and provide for appropriate criteria and procedure.	Rule 3, appendix 3, rule 9 and Part 2 (procedure).	To set out the SRA's power to disqualify persons (individuals and entities) from involvement in an ABS. To provide for transparent criteria for disqualifying persons and for a fair procedure which allows regulated persons to make representations in their matter. Desired outcomes are that: • consumers are protected through the disqualification of individuals whom the SRA believe put consumers at risk; • disqualification procedures are transparent for the regulated community;	No risk of conflict has been identified but see comments at DP5 above.	No.

			• the SRA responds proportionately to disciplinary matters.		
DP7	Applying the 'written rebuke' and publication procedures and criteria to ABSs.	Rule 1 (definitions of 'regulated person', 'SRA Finding' and 'disciplinary decision') and rule 3(1); Rule 3(5) and appendix 2.	The SRA is firmly of the view that, as with traditional law firms now, there should be a disciplinary outcome which sits underneath the powers to fine and rebuke. The SRA will therefore, in appropriate cases, issue ABSs with a written rebuke in accordance with the rules. The SRA already has in place an appropriate set of procedures and criteria and these will be applied to ABS. Desired outcomes are that: • consumers and the general public are made aware of decisions related to regulated persons in order to maintain confidence in the regulation of legal services; • the SRA deters firms from breaching Handbook requirements including the outcomes in the Code by taking proportionate disciplinary action; • disciplinary procedures are transparent for the regulated community.	No risk of conflict has been identified but see comments at DP5 above.	No.
DP8	To vary one decision making procedure and apply the others (including the application of the civil standard of proof) to ABSs.	The variation of rule 7(9) and the application of rules 7-9.	The LSA allows for the SRA for the first time to impose the most severe disciplinary sanctions available (in respect of ABS only) 'in-house'. The SRA is therefore proposing to vary rules in respect of decision making procedure in order to set out a broader range of options for how evidence can best be heard in individual cases.	No risk of conflict has been identified but see comments at DP5 above.	No.

			Otherwise, the SRA is proposing to apply the current decision making procedures (as approved by the LSB previously) to ABS as it is felt that these are appropriate in order to ensure a fair, consistent, transparent and proportionate decision making process. Desired outcomes are that: • disciplinary proceedings are fair and the manner of the hearing is proportionate to the complexity and seriousness of the matter; • disciplinary procedures are transparent for the regulated community.		
DP9	To allow for the suspension of financial penalties.	Rule 8(2)	The SRA will suspend financial penalties in some cases. The intention is that the payment of the penalty can be suspended provided that, for example, a regulated person is not subject to any further disciplinary findings over a fixed period of time. Desired outcomes are that: • the SRA deters firms from breaching Handbook requirements including the outcomes in the Code by taking proportionate disciplinary action and encourages improvement in outcomes for consumers, whilst ensuring that cases which ultimately require sanction are dealt with in an appropriate, proportionate and cost effective manner; • disciplinary procedures are transparent for the regulated community.	No risk of conflict has been identified but see comments at DP5 above.	No.

Matrix to accompany SRA Handbook for LSB

March 2011

Draft SRA Cost of Investigations Regulations [2011]

Overview of Cost of Investigations Regulations

COI1	**Nature and effect of the existing provisions (if applicable)**	The current SRA (Cost of Investigations) Regulations set out how, by virtue of section 44C of the Solicitors Act 1974 and section 14 of the Administration of Justice Act 1985, the SRA recovers costs incurred in investigating misconduct.
COI2	**Are the provisions to be applied to ABS? If so, why?**	By virtue of an Order pursuant to section 69, the SRA proposes to apply the costs recovery provisions to ABSs as well as traditional law firms. The SRA is strongly of the view that it should be able to recover costs incurred in investigating misconduct from the regulated persons responsible, as it does now for traditional law firms. It is in the public interest to ensure that regulators are able to recover costs from investigated persons and are not inhibited from investigating breaches due to financial constraints.
COI3	**Nature and effect of the proposed changes**	The only changes proposed to the Regulations are those required in order to apply the provisions to ABSs. Regulations are needed in order to provide a framework for costs recoveries.
COI4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	It is in the public interest to ensure that regulators are able to recover costs from investigated persons. The regulations set out a transparent, targeted, proportionate and consistent framework for the recovery of such costs.

Specific proposals – Cost of Investigations Regulations

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
COI5	Application of the costs recovery provisions to ABSs.	Various tweaks to the provisions shown. In particular in the definitions of 'regulated person', to whom the provisions are applied.	The desired outcomes are: • that the regulators costs are recovered from persons subject to investigation, deterring malpractice and ensuring regulatory effectiveness; • that the existing costs recovery provisions for law firms will be applied to ABSs.	No risk of conflict has been identified.	**Yes.**

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Property Selling Rules [2011]

Overview of Property Selling Rules

PS1	**Nature and effect of the existing provisions (if applicable)**	The conduct of estate agents, in the course of estate agency work, is regulated by the Estate Agents Act 1979 (EAA). Solicitors can provide estate agency services through their law firms. Section 1(2)(a) of the EAA says that the EAA "does not apply to things done in the course of his profession by a practising solicitor or a person employed by him". This exemption is on the basis that certain standards set out in the EAA are already required of solicitors. Currently, these standards are in rule 18 of the Solicitors' Code of Conduct 2007 and the Solicitors' Accounts Rules 1998.
PS2	**Are the provisions to be applied to ABS? If so, why?**	The new SRA Property Selling Rules [2011] will not apply to ABSs. This is because the current exemption in the EAA is too narrow to include ABS. However, in the future we will be seeking an extension to this exemption.
PS3	**Nature and effect of the proposed changes**	The change proposed is the introduction of the SRA Property Selling Rules [2011] which contain the conduct requirements to satisfy the criteria of the exemption, and which are currently in rule 18 of the Solicitors' Code of Conduct 2007.
PS4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The SRA Property Selling Rules [2011] support the regulatory objectives. Rules which enable law firms to provide estate agency services and benefit from the exemption in the EAA will, in particular, protect and promote the public interest, promote competition, protect and promote the interests of consumers, and promote and maintain adherence to the professional principles. These Rules also comply with the principles of better regulation; for example, they are apply mandatory behavioural requirements in a proportionate way in order that solicitors can continue to have the benefit of the exemption in the EAA.

Specific proposals – Property Selling Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
PS5	Transfer of conduct obligations currently found in rule 18 of the Solicitors' Code of Conduct 2007 to the SRA Property Selling Rules [2011] so that there are requirements relating to standards of property selling, statements of agreement, and transactions in which the solicitor has a personal interest	*Rules 3-5*	These proposals are designed to ensure that the requirements of the EAA are replicated, and that solicitors providing estate agency services through their law firms can continue to rely on the exemption in the EAA. This is in the interests of the public and a competitive market place.	No, but we are working closely with other regulators to ensure that there is understanding of the EAA exemption and the purpose of these Rules.	No

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Financial Services (Scope) Rules 2001

Overview of Financial Services Scope Rules

FSSCO1	**Nature and effect of the existing provisions (if applicable)**	The general prohibition in the Financial Services and Markets Act 2000 (FSMA) states that no one in the UK can carry on regulated activities (i.e. financial services activities) unless they are authorised by the FSA or exempt. The Part XX exemption in FSMA enables law firms which meet certain conditions to be treated as exempt professional firms and to carry on activities known as exempt regulated activities under the supervision of, and regulation by, the SRA. This is because the SRA, through the Law Society of England and Wales, is a Designated Professional Body (DPB), It is a statutory requirement of the Part XX exemption that the DPB makes rules to govern the carrying on of regulated activities. Currently, these rules are known as the Solicitors' Financial Services (Scope) Rules 2001 (the Scope rules). Any changes to these Rules must be approved by the FSA before they come into force (s 332(3) of FSMA).
FSSCO2	**Are the provisions to be applied to ABS? If so, why?**	Yes; the FSA has agreed that the Part XX exemption can and should be interpreted so that ABSs can carry on exempt regulated activities subject to compliance with the Scope rules. The FSA has advised the SRA that this will not require any alteration to FSMA.
FSSCO3	**Nature and effect of the proposed**	The change proposed is the revision of the Scope rules as follows:

	changes	• extension of regulatory reach to ABSs; • minor nomenclature, definition and other changes consistent with rebranding and style of other requirements in the Handbook. The rules will be identified as the SRA Financial Services (Scope) Rules.
FSSCO4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	The SRA Financial Services (Scope) Rules support the regulatory objectives. In particular, the fact that they enable the majority of those bodies regulated by the SRA to provide exempt regulated activities to their clients supports the regulatory objectives of protecting and promoting the interests of consumers and promoting competition in the provision of services in the legal sector. These Rules also support the principles of better regulation; for example, they are a proportionate and targeted application of the requirements of the Part XX exemption which apply to those who wish to have the benefit of this exemption.

Specific proposals –Financial Services scope rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
FSSCO5	*Extension of regulatory reach to ABSs*	Application provisions and Rule 2	The provisions will enable ABSs which are licensed by the SRA to benefit from the Part XX exemption and carry on exempt regulated activities for their clients (insofar as these apply in respect of the licensed activities of the firm). This means that ABSs who do not intend to undertake mainstream financial services will not need to be authorised by the FSA and will be able	No. We have worked closely with the FSA throughout this process.	*No*

			to operate on the same basis as traditional law firms recognised by the SRA. Desired outcome is that a competitive legal services market is maintained by enabling ABSs to conduct exempt financial services.		

Matrix to accompany draft Handbook for LSB

March 2011

Draft SRA Financial Services (Conduct of Business) Rules 2001

Overview of Financial Services (Conduct of Business) Rules

FSCOB1	**Nature and effect of the existing provisions (if applicable)**	Law firms which do not provide mainstream financial services for their clients do not need to be authorised by the FSA. Instead such firms can carry on exempt regulated activities – in other words certain financial services of an incidental nature – provided that they comply with the Solicitors' Financial Services (Scope) Rules. These rules set out the scope of the activities which law firms regulated by the SRA can undertake under the Part XX exemption in the Financial Services and Markets Act 2000. Such activities are described as exempt regulated activities. The Solicitors' Financial Services (Conduct of Business) Rules set out conduct requirements which apply when firms working within the Part XX exemption carry on exempt regulated activities. In some circumstances these Rules also apply to firms which are authorised by the FSA when they carry out non-mainstream regulated activities.
FSCOB2	**Are the provisions to be applied to ABS? If so, why?**	Yes. The FSA has agreed that the Part XX exemption can and should be interpreted so that ABSs can carry on exempt regulated activities. This means that the Conduct of Business Rules need to be amended to extend the SRA's regulatory reach to ABSs.
FSCOB3	**Nature and effect of the proposed changes**	The changes proposed are as follows: • Amendment of existing rules so that they apply to ABSs; • Minor nomenclature and other changes consistent with rebranding and style of

		other requirements in the Handbook. The rules will be identified as the SRA Financial Services (Conduct of Business) Rules.
FSCOB4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	Extending regulatory reach to ABSs means that more firms which are regulated by the SRA will be able to provide exempt regulated activities as part of their professional service to clients; this is of particular relevance to the objectives of protecting and promoting the interests of consumers and promoting competition in the provision of services in the legal sector. These Rules also support the principles of better regulation; for example, they are a proportionate and targeted response to the conduct behaviours which must be demonstrated by those who wish to rely on the Part XX exemption.

Specific proposals - Financial Services (Conduct of Business) Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
FSCOB5	Extension of regulatory reach to ABSs	Application provisions and Rule 2	The provisions will mean that ABSs, which are licensed by the SRA and are able to benefit from the Part XX exemption, will be subject to the same behavioural requirements as traditional law firms. This creates a level playing field and is also of benefit to clients of all types of practice authorised by the SRA. Desired outcome is that a competitive legal services market is maintained by enabling ABSs to conduct exempt financial services.	No. We are working closely with the FSA in respect of this area.	No

Matrix to accompany SRA Handbook for LSB

March 2011

Draft SRA European Cross-Border Practice Rules [2011]

Overview of European Cross-Border Practice Rules

ECB1	**Nature and effect of the existing provisions (if applicable)**	The Council of Bars and Law Societies of Europe (CCBE) – of which the UK is a member - is the representative organisation of European lawyers through its member bars and law societies from 31 full member countries and 11 associate and observer countries. The SRA is required to apply the CCBE Code on cross-border practice to solicitors. At present this is done through rule 16 of the Solicitors' Code of Conduct 2007 which essentially applies the provisions of the CCBE Code to solicitors, in respect of their cross-border practice, to the extent necessary taking into account other provisions of the Code of Conduct.
ECB2	**Are the provisions to be applied to ABS? If so, why?**	Yes. The provisions ensure a system of mutual professional understanding for professional relations between lawyers of different CCBE states. The need for adherence to common principles which facilitate such a system apply equally to law firms which are not owned entirely by lawyers.
ECB3	**Nature and effect of the proposed changes**	For the most part, the draft Cross-Border Practice Rules are the same as the existing provisions within the Solicitors' Code of Conduct 2007. The key change is the application of the rules to ABSs.
ECB4	**How do these proposals impact upon the regulatory objectives and the principles of better regulation?**	Ensuring a system of mutual professional understanding for professional relations between lawyers of different CCBE states has a positive impact upon the professional services which can be provided to consumers and therefore on competition. Facilitating international business also encourages an independent, strong, diverse and effective legal profession. The provisions provide transparency by setting out clearly in which areas lawyers need to take care when conducting professional activities cross-border.

Specific proposals –European Cross-Border Practice Rules

	Proposal	**Relevant provisions**	**Purpose and desired outcome of the specific provisions**	**Could the provisions conflict with those of another regulator? If so, how will such conflicts be addressed?**	**Are these provisions dependant upon a S:69 Order?**
ECB5	Applying European cross-border practice provisions to ABSs	Application is dealt with in rule 2.2, the effect of which can be found within the rules generally.	The desired outcome is that persons regulated by the SRA satisfy the requirements of the CCBE Code when conducting European cross-border practice and contribute to a system of mutual understanding in which a proper standard of service is provided to clients in cross-border work.	No risks have been identified.	No.

Solicitors Regulation Authority

Closed consultations

The architecture of change: the SRA's new Handbook

21 August 2010

- The deadline for submission of responses to this consultation was **20 August 2010**.
- The information that appears below is for reference purpose only.
- Our analysis of responses to this consultation has been incorporated into our final consultation on the SRA's new Handbook.

1 Executive summary

1. The SRA signalled its move to outcomes-focused regulation (OFR) in our strategy paper "Achieving the right outcomes" in January this year and in our April consultation paper "Solicitors Regulation Authority: Outcomes-Focused Regulation – Transforming the SRA's regulation of legal services". This paper represents the first major step in the practical implementation of OFR through the development of the SRA Handbook of regulations. At the same time it introduces the regulatory requirements for alternative business structures (ABSs), which we intend to license from October 2011. The new Handbook will be finalised and published in April 2011 and implemented on 6 October 2011.

2. Our overall objective has been to put public protection at the heart of our outcomes-focused approach, by achieving a common standard of client protection across all types of firm and improving standards. In furtherance of this objective, the foundation stones of our new approach are:

   - a new set of Principles that define the fundamental ethical and professional standards that we expect of all firms and individuals when providing legal services;
   - a new SRA Code of Conduct which illustrates the practical application of the Principles in particular contexts, by explaining what outcomes we expect firms and individuals to achieve;
   - a Handbook that for the first time brings together all of our regulatory requirements, enabling you to understand how the elements of our regulatory regime inter-link. This Handbook is designed to be accessible online.

3. Public protection is at the heart of our approach and these foundation stones lay the groundwork for our overall objectives of achieving a common standard of client protection across all types of firm and improving standards. Our outcomes-focused approach is also designed to bring the following benefits to clients and firms:

   (a) culture – a greater focus within firms and the SRA on quality assurance and professional principles;

   (b) business value and cost effectiveness – our approach will assist firms by giving them flexibility over the manner of compliance – in other words, the right controls to mitigate and manage the risks that they are running. At the same time our Principles and outcomes encourage firms to consider the longer term value that their business will derive from acting in a principled and client focused manner;

   (c) flexibility and innovation – over-detailed regulations can constrain firms in terms of their choice of business model and in their manner of compliance. In designing the new Handbook – and in particular the SRA Code of Conduct – we have therefore removed regulatory requirements that cannot be justified on the basis of the Better Regulation Principles.

4. The policy expressed in our new Handbook is based on the evidence available to us about the:

   - risks that firms and individuals pose to our regulatory objectives;
   - costs and the benefits of policy options to firms and the SRA (see paragraph 11 on our cost-benefit analysis work); and
   - likely impact on equality and diversity, human rights and competition.

5. Alongside our requirements for the conduct of legal services, and provisions for the protection of clients, are new provisions which define how firms and individuals will engage with the SRA. These provisions extend from the point of authorisation to orderly wind-down and, in the worst cases, disciplinary action, and they reflect our desire to change the nature of our relationship with firms. In doing this we are seeking to develop mutual trust through greater understanding of our regulated community, enabling our supervision of firms to be proactive, risk-based and proportionate.

6. The new Handbook is only one element in the implementation of our approach to OFR. Other key elements are

   - an approach to authorisation that is risk and evidence based, only allowing principled, competent firms and individuals to deliver legal services;
   - effective, risk-based supervision of firms based on information received from firms and other sources. The introduction of the new approach to the supervision of firms is intended to encourage firms to be open and honest in their dealings with us and to manage risks and address issues themselves. This will enable us to concentrate on those who can't, or won't, put things right;
   - credible deterrence of serious non-compliance through fair and proportionate enforcement actions.

   These other elements are dealt with in more detail in our April consultation and will underpin the way in which the Handbook will be applied. In a nutshell, we will take a holistic approach to regulation by supporting and encouraging firms to work with us to achieve compliance. We will not, however, hesitate to take action against firms which pose a serious risk to clients and refuse to take corrective action.

7. This is the first step towards our new regulatory regime and will be followed by a further consultation in October, which will:

   - set out the final form of the rules which we are consulting on now, taking into account the responses from this consultation; and
   - consult on other rules and regulatory procedures which it is not possible to finalise at present, such as the Compensation Fund Rules (where a change to our statutory powers is needed). We will also be consulting on the final form of the Code, together with relevant guidance. The final Code will include the outcomes or rules for regulating conflicts of interests and rules on annual reporting and notification.

   Annex J details the contents of the October consultation.

2 Introduction

8. This consultation introduces a major package of regulatory requirements for the provision of legal services. It is the first stage in the SRA's transformation of our approach to regulation through our move to an outcomes-focused and risk-based approach. For this reason, we believe it is vital for members of the profession, consumers of legal services, other stakeholders and those proposing to set up new legal services businesses, to engage with us in the development process of our new Handbook and provide feedback on the contents of this paper.

9. In summary, the paper sets out:

   - an explanation of our new outcomes-focused approach to regulation and how it has influenced the development of the

new Handbook;

- the structure of the new SRA Handbook (which will contain all of our regulatory requirements for both firms and individuals);
- the new Code, Accounts Rules and Specialist Services rules;
- how firms will engage with the SRA from authorisation to disciplinary action;
- how we intend to protect clients through professional indemnity requirements for firms.

3 A new approach to regulation

Strategic objectives – our evidence-based approach

10. In developing the new Handbook of regulatory requirements, we have had four strategic objectives:

    - to promote the regulatory objectives contained in the Legal Services Act (LSA), which include protecting and promoting the public interest and the interests of consumers, and supporting the constitutional principle of the rule of law;
    - to secure standards for the delivery of competent legal services whilst protecting clients' interests;
    - to place restrictions on firms and individuals only to the extent that it is necessary to do so in order to mitigate risks to the regulatory objectives;
    - to develop a flexible regime for all types of legal services providers, enabling them to create the right controls given their business model, structure and client base.

11. In furtherance of these objectives, we have adopted an evidence-based approach to policy making. This approach takes into account the information received from firms through annual returns, visits to firms, disciplinary cases and from other sources, and uses it to identify key risks to the regulatory objectives and the most proportionate regulatory means of mitigating these risks. Thus, the approach is designed to help us understand our policy options in the light of:

    - the public interest and the promotion of the regulatory objectives;
    - the potential costs and benefits of different options for firms and the SRA. We recognise that different firms can be affected in different ways by our policy decision. For this reason we will be interviewing and holding workshops with a range of firms to understand the impact of our proposals. A full cost-benefit analysis of the new Handbook will be published in October;
    - the need to achieve a common standard of consumer protection and harmonisation of the regulatory requirements across all types of firm;
    - equality and diversity implications – see section 8 of this paper;
    - Human Rights Act compliance – a full Human Rights Act audit is being conducted to ensure that our requirements comply with the legislation.

12. We would welcome comments regarding the new Handbook in relation to the above matters.

Alternative business structures

13. The LSA enabled new forms of legal practice to develop:

    - legal disciplinary practices (LDPs), which are firms providing exclusively legal services but involving different kinds of lawyers, and up to 25 per cent non-lawyers; and
    - alternative business structures (ABSs) which will allow external ownership of legal businesses and multi-disciplinary practices (providing legal and other services).

The SRA will apply to the Legal Services Board to be a designated competent licensing authority (LA), in order to be able to license and regulate ABSs. We intend to make our application early in 2011. Our objectives in defining the regulatory regime for ABSs have been to:

- achieve the same degree of consumer protection for clients of firms of solicitors and ABSs;
- facilitate transition between the two statutory regimes (i.e. for recognised bodies and licensed bodies – see below), since we believe that some firms may, during their lifetime, switch status not infrequently.

14. In other words, we are seeking, wherever possible, to achieve "harmonisation" of regulatory requirements for all types of firm. Where differences exist, the justification for them will be based on the proportionality of regulatory burden, and the degree of risk posed by different types of firm to consumers and to the public interest.

15. Harmonisation of licensing requirements is hampered to some extent by the legislative framework. The effect of the LSA is to create two statutory regulatory regimes:

- recognised bodies and recognised sole practitioners continue to be regulated under the Solicitors Act 1974 (SA), the Administration of Justice Act 1985 (AJA) and the Courts and Legal Services Act 1990 (CALS) – in each case as amended by the LSA;
- ABSs will be regulated as "licensed bodies" under Part 5 of the LSA.

16. The practical implications of the different regimes and our approach to addressing them are set out throughout this consultation paper. Examples are as follows:

- under the LSA, approved regulators have unlimited fining powers for licensed bodies, whereas the SRA currently only has the power to fine recognised bodies up to a limit of £2,000;
- under the LSA, approved regulators do not have the power to recover the costs of investigations from licensed bodies (which power the SRA currently has for recognised bodies);
- licensed bodies under the LSA are authorised on the basis that they intend to conduct specified reserved legal activities, whereas this is not the case with recognised bodies.

17. We do not consider it is in the public interest, nor in the interests of firms, to operate under two different regimes because this is likely to create confusion for consumers and providers as to which set of provisions apply in any given situation, particularly where firms move from one regime to another, and would be expensive to operate both for the SRA and firms. We are therefore seeking to harmonise the statutory regimes, where such harmonisation can be justified from a risk perspective and in the public interest. Section 69 LSA provides a mechanism for this, but involves securing the agreement of the LSB and the Lord Chancellor. The SRA is in discussion with the LSB about the possibility of securing one (or more) section 69 order(s). Further information on this harmonisation will be contained in our October consultation paper.

18. Given the above, our approach to implementing ABSs has been as follows:

- the new Principles and SRA Code will apply to all firms – recognised bodies, ABSs and recognised sole practitioners;
- the application of other Handbook rules has been extended to cover ABSs as appropriate and where justified from a risk perspective. This is the case with the Accounts Rules, Indemnity Insurance Rules, Indemnity Rules and the Statutory Trust Rules.
- some rules have different provisions (to some extent) depending on the type of body – for example, the Authorisation Rules and the Disciplinary Procedure Rules;
- some rules cannot (as yet) be applied to ABSs (e.g. Compensation Fund Rules, Cost of Investigation Rules, Property Selling Rules and Financial Services Rules). Relevant sections of this paper discuss these points in more detail.

Multi-disciplinary practices (MDPs)

19. MDPs represent one particular type of ABS, where both legal and other services (e.g. accounting, financial or surveying services) are provided within the same entity.

20. MDPs raise a number of particular challenges:

    - extent of our jurisdiction – and therefore how requirements will apply to MDPs;
    - relationship with other regulators.

21. Our intention is that the SRA should become an LA. On that basis, we will issue a licence to an ABS in respect of one or more reserved legal activities. Once licensed, the ABS places itself within the SRA's jurisdiction.

22. Our view is that, as an LA, the SRA's jurisdiction should be limited to:

    - the reserved legal activities in respect of which the licence has been granted (e.g. conveyancing, litigation etc.);
    - non-reserved legal activities undertaken by the ABS (e.g. legal advice); and
    - non-legal activities (e.g. property management) which are subject to conditions imposed on the ABS's licence.

    The fact that the SRA's jurisdiction will not necessarily apply to all the activities of an ABS takes nothing away from our power to regulate the entity as a whole and to have regard to the manner in which the firm as a whole is being governed. Similarly, our Code applies to all managers of an entity in relation to the delivery of legal services. Therefore, if we believed that a firm was taking advantage of sensitive confidential information for the purposes of cross-selling other services, we would question whether the firm was acting in the best interests of those clients.

23. The SRA has established a working group of regulators to address issues relating to MDPs. That working group will:

    - develop a memorandum of understanding (MoU) between the regulators, detailing how they will work together to regulate firms;
    - look at options for harmonising regulatory requirements, where such harmonisation can be justified by reference to the levels of risk involved.

    Question:

    1. Do you agree with our overall approach to implementing ABSs?

4 Architecture of the new Handbook: bringing principles and outcomes to the heart of our regime

The SRA Handbook

24. The development of the new Handbook is driven by:

    - the SRA's move to OFR; and
    - the need to re-draft sections of the regulatory regime to accommodate ABSs.

25. The SRA's move to OFR will not mean the abolition of all detailed rules in the Handbook. In developing the Handbook we sought to create a high-level structure which combines the flexibility of OFR with the certainty of rules which protect consumers and provide

clarity and transparency for firms. A challenge has been to determine which elements of the Handbook should primarily be expressed as rules, and which should be totally outcome focused.

26. We identified a number of critical success factors for the development of the Handbook:

- define the fundamental Principles that govern activities by firms and individuals;
- give necessary prominence to the revised set of Principles through the Handbook structure;
- define the outcomes that we are expecting firms to achieve in fulfilling their regulatory obligations – these are mainly contained in the Code but the introductions to each section of the Handbook define high level outcomes for firms;
- provide clarity and flexibility to firms, whilst maintaining appropriate consumer protection and enforceability;
- create a regulatory regime that is proportionate for all types of firm, be they a large city firm, a national ABS or a sole practitioner solicitor, and also different modes of practice, e.g. in-house solicitors.

27. The content of the Handbook can be summarised as follows:

- **Principles** – these are the ten Principles which are mandatory and apply to all those we regulate and to all aspects of practice. The introduction to each section of the Handbook highlights those Principles which have particular application to that section. For example, we consider that Principle 2 ("You must act with integrity") is particularly relevant to applications for authorisation. The Principles are discussed in this section of the paper;
- **The SRA Code of Conduct** ("the Code") – this contains the mandatory outcomes-focused requirements which, when achieved, benefit consumers of legal services and the public at large. This is discussed in more detail in section 5 of this paper;
- **Accounts Rules** – this section contains requirements to protect client money. See section 5 of this paper;
- **Authorisation and Practising Requirements** – this section contains the key requirements for setting up in practice, whether as a firm or individual, and for different types of practice such as in-house practice. This section also contains training regulations for individuals. See section 6 of this paper;
- **Client Protection** – this section contains key elements for the financial protection of clients: the Indemnity Insurance Rules, the Indemnity Rules, the Compensation Fund Rules, and the SRA Intervention Powers (Statutory Trust) Rules. See section 7 of this paper;
- **Disciplinary and Costs Recovery Rules** – this section contains provisions relating to the discipline and investigation of firms. See section 6 of this paper;
- **Specialist Services** – this section contains provisions which are only applicable when certain services are being provided to clients: the SRA Property Selling Rules, Solicitors' Financial Services (Scope) Rules 2001, the Solicitors' Financial Services (Conduct of Business) Rules 2001 and the SRA European Cross-border Practice Rules. See section 5 of this paper;
- **Guidance** – this section contains non-mandatory guidance to aid achievement of the outcomes and Principles.

28. Many of the requirements in the Handbook will be familiar to firms. A destination table, in Annex B, enables readers to identify where current requirements will be located in the new Handbook. Currently, many of the sets of rules in the Handbook have their own set of definitions (although some, for example the SRA Cross-border Practice Rules, take their definitions from the Code and we have endeavoured to harmonise the definitions where possible). For the future, we are developing definitions to apply across the Handbook so far as is possible, except where differences are justifiable given the particular context. This Handbook glossary will be available as part of the October consultation.

29. Our intention is to publish the Handbook online but copies of the Code, Accounts Rules, etc. will also be in printed form.

30. We recognise that the introduction of the new Handbook represents a significant change in regulation and there will be a need for:

- transitional arrangements to define the dates upon which firms must comply with the new requirements; and
- grandfathering arrangements – for example where firms are moving from one status (recognised body) to another (ABS).

31. Further guidance on transitional provisions and grandfathering arrangements will be provided in our October consultation.

Question:

2. Do you agree with the new Handbook structure?

Principles

32. There are ten mandatory Principles which apply to all firms and individuals, including in-house lawyers. They also apply in their entirety to overseas practice. This application mirrors the current application of rule 1 in the 2007 Code of Conduct. We believe that in applying the Principles in this way we are encouraging all individuals to take personal responsibility for complying with the Principles and collective responsibility for the actions of their firms. Firms and individuals should always abide by the Principles and use them as their starting point when faced with an ethical dilemma.

Principles

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each client;
5. provide a proper standard of service to your clients;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
8. run your business/carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run your business/carry out your role in the business in a way that promotes equality and diversity and does not discriminate unlawfully in connection with the provision of legal services;
10. protect client money and assets.

33. These Principles:

- embody the key requirements on firms and individuals involved in the provision of legal services. Because the Principles are so fundamental, failure to comply would be considered extremely serious;
- apply to individuals and firms we regulate, whether traditional firms of solicitors or ABSs, in-house or overseas;
- are reproduced throughout the Code where they are particularly relevant;
- are all-pervasive – all other rules, etc. should be read in conjunction with the Principles – each section of the Handbook contains an introduction, reference to the most relevant Principles and some high-level outcomes to be achieved to comply with the Principles;

- help with the interpretation of the outcomes and all other provisions.

Where two or more Principles come into conflict, the Principle which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice. Compliance with the Principles is also subject to any overriding legal obligations.

34. We have added some new Principles because we feel that there are certain issues that need greater emphasis or for which firms should take greater responsibility. These new Principles relate to your relationship with your regulator, the effective management of firms, preventing discrimination and protecting client money and assets.

35. Given the recent increase in the number of collapses of solicitors' firms, which place clients at risk and strains upon the regulatory system, we have proposed Principle 8, which requires firms to run their businesses effectively and in accordance with proper governance and sound financial and risk management principles. Relevant outcomes for this Principle are contained in Chapter 7 of the Code.

36. Principle 9 reflects our long-standing position on promoting equality and diversity and preventing discrimination. This is developed further in Chapters 2 and 7 of the Code.

37. We have given greater prominence to the need to protect client money and assets in the new Principle 10. This underpins the provisions in the Accounts Rules.

38. Guidance for the Handbook is being prepared, including that for the new Code, and will be the subject of consultation in October.

Questions:

3. Do you agree with the new Principles and our approach to applying them across the Handbook?

4. In what areas do you think explanatory guidance would be particularly helpful?

5 Conduct of legal services

(a) SRA Code

Introduction

39. The development of the Code has been driven by the need to have a regulatory system which can be flexibly applied by both traditional law firms and ABSs to achieve the right outcomes for consumers.

Format and approach

40. The new Code is divided into four sections:

- You and your client
- You and your business
- You and your regulator
- You and others.

Outcomes

41. Each section is divided into chapters dealing with particular regulatory issues – e.g. "You and your client" covers client care, conflicts, confidentiality, etc. In each chapter the Principles that are of particular relevance to the subject matter are set out. So, for example, the Principles that are particularly relevant to equality and diversity are Principles 1 (upholding the rule of law), 6 (behaving in a way that maintains the trust the public places in you), 7 (compliance with your legal and regulatory obligations) and 9 (promoting equality and diversity and not discriminating unlawfully).

42. Each chapter then sets out outcomes that describe what firms and individuals are expected to achieve in order to comply with the relevant Principles. The achievement of these outcomes will, we believe, benefit consumers of legal services and the public. All outcomes are mandatory.

Indicative behaviours

43. The outcomes are supported by "indicative behaviours". Positive indicative behaviours specify the kind of behaviour which tends to establish achievement of the outcomes, and therefore compliance with the Principles. Negative indicative behaviours have the opposite effect. Although indicative behaviours are not mandatory, they will have evidential force in helping us to decide whether an outcome has been achieved in compliance with the Principle(s).

44. The indicative behaviours are not mandatory because we recognise that there may be other ways of achieving the outcomes. In all cases, you must be able to demonstrate how you have achieved the outcomes.

45. We would expect that all firms and individuals would review the new Principles and Code to assess the extent to which they may need to make adjustments to comply with them. If you are complying with the spirit of the current Code, you are unlikely to have to make significant changes. However, you should bear in mind the additional Principles and the fact that certain chapters contain new requirements, for example, chapters 7 ("Management of your business") and 10 ("You and your regulator").

46. As with the Principles, the Code applies to all firms and individuals. There may be instances where an outcome is more appropriately applicable to a firm, rather than to an individual, and we would expect firms and individuals to exercise common sense when considering how the Code applies. The Introduction to the Code and each chapter explain how the Code applies to in-house practice and overseas practice. The SRA will take a similarly pragmatic approach applying principles of public interest and justice when supervising and enforcing aspects of the Code in determining whether to hold individuals or firms (or both) responsible for specific problems.

Specific issues in the Code

47. We discuss below a number of specific issues related to the Code. These are

    A conflicts of interest,

    B client care,

    C governance and management of firms,

    D in-house and overseas practice.

A Conflicts

48. The effective regulation of conflicts of interest is critical to client protection and public confidence in the profession. Recent consultations we have held on proposals to relax further the conflicts provisions have persuaded us that we need to take a more holistic approach to this subject than that adopted by the current rule.

49. Over the years our conflicts rule has developed incrementally to deal with specific situations. Our policy was, until 2006, that firms should not act where there is a conflict, or significant risk of a conflict arising. In addition, there were separate provisions relating to conveyancing transactions (seller/buyer, lender/borrower). These did not permit firms to act in any situation of conflict and in fact restricted firms to a greater extent, because there was an inherent risk of conflict in that area of work. There were, however, exceptions which allowed firms to act for seller and buyer where, for example, they were established clients, but only in circumstances where there was no conflict.

50. In 2006 the conflicts rule was amended to permit firms to act for clients where there is a conflict in situations where the clients have a "substantially common interest" or where the clients are competing for the same asset. Various conditions applied to these exceptions to the general prohibition on acting, such as client consent and it being reasonable in all the circumstances to act.

51. The recent changes have all been made on the basis that firms must still be able to comply with their obligations to give independent advice and act in the best interests of each client; if they are not in a position to do so, the firm must not act.

52. In re-drafting the Code, we are taking the opportunity to review fundamentally our approach on conflicts of interest, since we consider this subject to be essential to client protection and it is vital that clear limits are set for firms. Further, the advent of ABSs brings a new dimension to this subject and we invite views on potential areas of risk which we should deal with in the indicative behaviours.

53. The issues under consideration are:

(a) how much flexibility should firms be given in determining when they can act in situations involving or potentially involving a conflict of interests?

(b) how do we deal with the more detailed provisions which currently govern acting for seller and buyer and lender and borrower, etc.?

(c) should the requirements relating to conflicts be expressed as outcomes or rules?

(a) Flexibility

54. With regard to (a), we do not propose to permit firms to act where there is a conflict between a firm's own interests (or those of one of its employees) and a client's interest. This leaves the situation of conflicts of interests between two or more clients. Our starting point is that it is not appropriate to adopt a "drip feed" approach to conflicts of interest, adding exemptions from a main rule; in other words, we prefer to take a more holistic view of this issue and the related risks.

55. We have identified three potential options:

Model 1 – firms do not act where there is a conflict of interests;

Model 2 – firms only act where there is a non-substantive client conflict of interests, and subject to certain conditions;

Model 3 – firms are permitted to act where there is a client conflict of interests subject to certain conditions.

56. We define conflicts of interests as follows:

"Conflict of interests" means any situation where:

- you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict or there is a significant risk that those duties may conflict (a "*client conflict of interests*"); or
- your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter (an "*own interest conflict*").

57. These options are set out in Annex F. Our comments on the models are as follows.

Model 1

58. Our view is that this has no flexibility and is too restrictive.

Model 2

59. Model 2 was developed in recognition of the fact that there may be cases where a conflict exists but that the risk to clients' interests is insignificant and can be managed through appropriate controls. This view is based on our experience of dealing with firms and by the workings of the current exceptions to rule 3 in the current Code. Whilst we do not believe that this model in any way reduces the protection to clients, it does have many advantages, since it focuses on the extent to which a conflict of interests is substantive, and therefore likely to impinge on the advice given to individual clients. It also provides firms with some flexibility, in cases where the conflict is essentially insignificant.

Model 3

60. Whilst this model has some merits, we believe that the safeguards are insufficient to protect clients, particularly in cases involving negotiation or some form of dispute.

(b) Detailed provisions

61. With regard to (b), we believe that it is not necessary to retain separate provisions covering alternative dispute resolution, acting for seller and buyer, etc. as the general principles are the same as for other conflict situations.

62. The current restriction on acting where an individual or a member of the individual's firm, etc. holds public office which gives rise to a conflict (rule 3.05), is now an indicative behaviour in Chapter 11 of the Code ("Relations with third parties") and restricts an individual or firm from abusing public office by taking advantage of that position for the benefit of their client. There is also an indicative behaviour (G) in Chapter 1 which illustrates the fact that declining to act where there is a conflict of interests would tend to suggest that a firm/individual was complying with outcome 1 ("you provide services to your client(s) in a manner which protects their interests in that matter, subject to the proper administration of justice").

63. There is also currently a restriction on an individual or anyone within that person's firm acting in circumstances where a person is likely to be a recipient of a lifetime gift or gift on death. Using the approach set out above, we believe that the individuals concerned would have to assess whether such a situation constituted an "*own interest conflict*".

64. With regard to the current limitations on acting for both lender and borrower, we intend to consult, and would welcome the views of, interested parties on the continued need or otherwise for the very specific requirements that are currently in rule 3 (see rules 3.16 – 3.22). Since these requirements were introduced, changes to the market have occurred which suggest that they might no longer be needed. These are:

- the sale of mortgages is now regulated by the Financial Services Authority and therefore, for example, it is clearly the responsibility of the party selling/recommending the mortgage to the borrower to ascertain the borrower's financial situation; and
- many major lenders, under the auspices of the Council of Mortgage Lenders, have produced standard mortgage instructions, thus reversing the trend at the time the requirements were introduced for lenders to ask solicitors to advise on matters outside the normal scope of the retainer with the lender.

(c) Outcomes or rules

65. In relation to (c), we would welcome comments on the draft outcomes in Annex D and whether respondents consider these are sufficient to create a clear demarcation on when firms and individuals should and should not act.

66. The draft chapter of the Code on conflicts of interests will be consulted on in October, with accompanying guidance.

B Client care issues

(a) Vulnerable clients

67. Greater emphasis has been given in the Code to taking into account any potential vulnerability of a client when providing information to, and advising, that client. The Code has been drafted to provide more flexibility, but this also means that firms need to take greater responsibility for dealing with individual clients in a manner that has regard to their needs. See, for example, in Chapter 1 (Client Care):

- outcome 1: You provide services to your client(s) in a manner which protects their interests in that matter, subject to the proper administration of justice;
- indicative behaviour F: having proper regard to your client's mental capacity or other vulnerability.

(b) Client information

68. With the advent of ABSs, we believe that the risk for client confusion is high, particularly where a regulated firm is providing a range of services, only some of which are legal services (which would be the case with a multi-disciplinary practice). This is because, whilst we will authorise the entity as a whole, our jurisdiction may not extend to all of the firm's activities, where the firm is conducting a combination of legal and other services. We believe that it is vital that clients understand:

- which activities are regulated and by whom (for example an MDP providing legal and financial services might be regulated by the SRA and the Financial Services Authority);
- to whom they can ultimately complain about the services provided by a firm, assuming the firm does not resolve the complaint to their satisfaction (there is a risk that clients of MDPs will be confused or misled about the protections available to them and the regulatory roles of the SRA and/or the Legal Ombudsman and other regulators and ombudsmen);
- the extent to which a firm's professional indemnity insurance covers the services being provided to them (where, for example, there is an element of non-legal work); and
- whether the firm has any financial interest in a third party from whom they receive referrals or to whom they refer the client.

69. As stated above (paragraph 23), a working group of regulators has been established to develop an MoU to protect clients against regulatory gaps. That MoU will aim to establish a consistent approach to complaints-handling and the provision of relevant information generally to clients.

70. We would welcome comments, particularly from consumer groups, on any proposals relating to vulnerable clients or safeguards to protect clients' interests generally.

(c) External influence and the impact on clients

71. We have identified two main risks to the interests of consumers:

- **External influence** – our concern is that a firm's ability to give independent advice is undermined by virtue of external

influence or fee arrangements; in particular, contingency fees.

In addition to conflict restrictions, the Code contains provisions aimed at preventing fee sharing and referral arrangements from influencing the independent provision of services to clients. In addition, firms will be required to ensure that clients are provided with sufficient information concerning external relationships to enable them to make informed decisions as to whether or not to instruct a firm.

We propose that firms should not be prevented from having arrangements with an introducer or funder who is working on a contingency fee basis, whether or not the introducer is connected, for example, with an ABS, provided the arrangements are not contrary to the general law and the regulatory outcomes and compliance with the Principles are achieved.

- **Non-reserved legal services** – our concern is that non-reserved legal services are deliberately provided through a separate business owned by the firm, or an associate of the firm, which is not authorised and regulated by the SRA, and which therefore undermines client protection.

  The SRA currently prohibits (through the separate business rule) firms of solicitors from conducting certain non-reserved legal activities via a separate unregulated business. We permit, however, solicitors to offer certain other services either through their regulated firms or through a separate unregulated business subject to conditions which are designed to protect the public.

  Our intention is to apply the provisions of the current separate business rule to all firms, including ABSs, through specified outcomes. We recognise that this imposes a significant restriction on firms' freedom in developing their business model. However, we believe that this is justified in the interests of consumer protection and the broader public interest. Based on our experience to date, where firms already seek to evade regulatory reach, there is a significant risk that in the absence of a separate business rule firms will seek to deliver all but reserved legal activities through a separate unregulated business. There will be a big incentive to do this because it will reduce costs, and avoid the possibility of regulatory scrutiny. It is unlikely that clients will understand the risks of dealing with an unregulated legal services business or indeed fully appreciate that it is unregulated. Thus, the risks to both clients and the reputation of the legal profession, associated with the delivery of legal services through an unregulated firm, are such that the SRA must seek to prevent such activity.

C Governance and management of firms

72. Principle 8 is intended to underpin the delivery of services through an increasingly wide range of businesses and business models. Chapter 7 details the outcomes that firms must achieve in terms of the systems and controls they need, and also the monitoring of risks that they should undertake. Our approach to authorising and supervising firms will take into account the strengths of firms' systems and controls and the extent to which firms are responsive to risks and address issues that are identified.

D In-house and overseas practice

73. The Code applies to both in-house solicitors and to those conducting overseas practice. We take the view that the outcomes described in each chapter should be achieved by those practising in-house and overseas. However, in some cases, this is not appropriate and in these cases we have disapplied certain outcomes. We would welcome comments on this approach.

74. The framework requirements relating to forms of practice are now in the Authorisation and Practising Requirements section of the Handbook.

Questions:

5. Do you agree with the new Code structure?

6. Do you have any overall comments on the new format (Principles, outcomes, indicative behaviours)?

7. Do you think that the outcomes (together with the indicative behaviours) achieve the right balance in providing sufficient clarity on the SRA's expectations for firms whilst enabling firms to operate flexibly?

8. Do you have any comments on the Models (Annex D) for regulating conflicts? In particular, do you agree with the definitions of "non-substantive" and "substantive client conflict of interests"? Should consent, when using Models 2 and 3, always be "informed consent"?

9. Do you have any comments on the removal of the detailed provisions relating to conveyancing, gifts, etc.?

10. Do you believe that outcomes provide sufficient clarity for regulating conflicts or do you think rules would be more appropriate?

11. Do you agree with our approach to the provision of services through a separate business?

12. Do you agree with our proposals concerning the application of the Code to overseas practice, in-house practice, etc.?

(b) SRA Accounts Rules

75. The SRA Accounts Rules (AR) are based on the current Solicitors' Accounts Rules. The overriding objective of the ARs is to safeguard client money. The ARs are in Annex E and they will apply to firms of all types. A summary of the key changes to the existing rules is set out below.

Overarching objective and the new rule on effective financial management (rule 1)

76. An introduction has been added to identify those Principles of particular relevance to the ARs and the desired outcomes for compliance. The key Principles listed in the introduction include the new Principle requiring the effective running of the business in accordance with proper governance and sound financial and risk management principles. A specific reference to the overriding objective of the ARs, to keep client money safe, has been added to rule 1, as has a reference to the new financial management rule in the Code.

Outcomes-focused regulation

77. It is widely accepted that the SRA's regulation of the accounts of legal services providers is an area which requires a detailed set of rules. However, we have sought to remove prescription and give firms greater flexibility by reviewing the current mandatory notes in order to separate the binding from the purely explanatory elements. Mandatory parts of the notes have been incorporated in the rules. The remaining notes are non-mandatory guidance notes (see rule 2(1)).

78. In addition, two areas were identified where an outcomes-focused approach is appropriate – the persons entitled to authorise a withdrawal from client account (rule 23) and the payment of interest (rules 24 to 27).

- **Signing on client account**

  The current prescriptive regime setting out who may sign on client account will be replaced by a requirement for firms to have appropriate systems and controls in place for withdrawals from client account.

- **Interest**

The detailed interest provisions have been replaced by a requirement for the payment of a fair and reasonable amount of interest, when it is fair and reasonable to do so. Firms will need to have a policy on interest, the terms of which must be drawn to the attention of the client. The guidance notes have been expanded to assist firms in setting their interest policies.

Multi-disciplinary practices

79. The ARs will apply only to the activities for which an MDP is regulated by the SRA (see rule 4). The rules will not apply to any money arising from the activities of an MDP which fall outside the scope of its regulation (rule 13). Our view is that an MDP will have to operate a separate ring-fenced client account for client money arising from its regulated activities, rather than one general client account for the entire business, in order properly to protect client money.

80. The current duty of principals for compliance with the rules is extended under the draft rules to the Compliance Officer for Finance and Administration (CoFA) (see paragraph 107 to 114 below), whether or not the CoFA is a principal in the practice (rule 6).

81. The protection afforded by section 85 of the Solicitors Act 1974 to client funds against a claim by a bank or building society (and to banks and building societies against claims by clients) in respect of a traditional solicitors' practice or legal disciplinary practice (LDP) is not replicated in the LSA for ABSs. The SRA is seeking an order under section 69 (see paragraph 17) of the LSA to give equivalent statutory protection to ABS client funds, failing which rule 14 has been amended to try to give protection as close as possible to that afforded by section 85 (see rule 14(6)).

82. A new rule 14(7) requires an ABS to notify clients if at any time the ABS is owned by a bank at which the client account is held.

Modernisation electronic issues (rules 23 and 32)

83. The rules have been updated to allow firms to obtain and retain electronic copies of bank statements, rather than having to rely on paper statements. The electronic signing of authorities for withdrawals from client account is to be permitted, and the statutory change allowing for the signing and delivery of bills electronically is referred to in guidance note (xa) to rule 19.

Reducing the risk to client money (rule 15)

84. The requirement that a solicitor must not use client account to provide banking facilities has been moved from a note to the body of rule 15, to give greater emphasis and prominence to this provision (see rule 15(5)).

85. The rules have also been amended to put it beyond doubt that a cheque in respect of damages and costs, made payable to the client, may be paid into the client account pursuant to the Law Society's Conditional Fee Agreement, and then becomes client money subject to all the rules (see rule 15(2)(e)).

Reconciliations for certain passbook-operated accounts

86. The obligation for five weekly reconciliations has been extended to passbook-operated separate designated client accounts of solicitor-trustees, in place of the current 14 weekly requirement (see rule 32(7)).

Residual client account balances

87. Rule 22(2A) was amended in July 2008 to enable firms to pay small client account balances of £50 or less to charity, without prior SRA authorisation, when the client cannot be traced. There is no proposal to increase this limit. It is felt that the limit is set at a reasonable level, and that firms need to ensure that all client money is accounted for to the rightful owner in accordance with rule 15

(3) (also introduced in 2008).

Overseas provisions (new Part G)

88. The requirements for the keeping of accounts for overseas practice have been moved from rules 15.15 and 15.27 of the Code to the AR, so that all the accounts provisions are kept together.

Legal Aid

89. Rule 21 has been amended in line with current legal aid provisions.

Question:

13. Do you have any comments on the revisions to the Accounts Rules?

(c) Specialist services

90. European cross-border practice, property selling, and financial services are specific areas of practice which we regulate. By virtue of the fact that these are largely governed by law and other regulations, we have removed the requirements from the existing Code and maintained a rules-based approach. They are now grouped together in the "Specialist Services" section of the Handbook. The Introduction to the Specialist Services section is in Annex F.

European cross-border practice

91. The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of European lawyers. The CCBE Code and the CCBE's Explanatory Memorandum form binding regulations upon solicitors in relation to their European cross-border practice. At present, rule 16 of the Code applies the provisions of the CCBE Code to European cross-border practice. This is necessary to continue to provide a system of mutual professional understanding for professional relations between lawyers of different CCBE states. The new SRA European Cross-border Practice Rules in the "Specialist Section" contains those requirements which are not replicated elsewhere in the new Code.

92. The draft SRA European Cross-border Practice Rules are in Annex F1.

Property selling

93. The conduct of estate agents, in the course of estate agency work, is regulated by the Estate Agents Act 1979 (EAA). Currently, solicitors can provide estate agency services through their law firms. Section 1(2)(a) of the EAA says that the EAA "does not apply to things done in the course of his profession by a practising solicitor or a person employed by him". This exemption is on the basis that certain standards set out in the EAA are already required of solicitors under the rules of professional conduct and the Accounts Rules.

94. At present the exemption is too narrow to include ABSs and we are taking action to see if the exemption can be extended to some/all ABSs. Until this issue has been resolved, the SRA Property Selling Rules will not apply to ABSs, which will have to comply with the EAA if they intend to offer these services in an MDP. The draft SRA Property Selling Rules are in Annex F2.

Financial services

95. The general prohibition in the Financial Services and Markets Act 2000 (FSMA) states that no one in the United Kingdom can carry on financial services unless they are authorised by the FSA or exempt. Part XX of FSMA contains an exemption that enables

solicitors' firms which meet certain conditions to be treated as exempt professional firms and to carry on activities known as exempt regulated activities under the supervision of, and regulation by, the SRA. This is because the SRA, through the Law Society of England and Wales, is a "Designated professional body".

96. It is a statutory requirement of the Part XX exemption that the designated professional body makes "rules" to govern the carrying on of regulated activities. The SRA has made the Solicitors' Financial Services (Scope) Rules 2001 (the Scope Rules) for this purpose. The FSA must approve any changes to the Scope Rules before they come into force (section 332(3) of FSMA). In addition, the SRA has made the Solicitors' Financial Services (Conduct of Business) Rules 2001 (the COB rules) which set out requirements about how to conduct financial services activities.

97. The financial services regime does not currently lend itself to an outcomes-focused approach and for this reason these requirements have been retained as rules. We are currently in discussion with the FSA regarding the application of the Part XX exemption to ABSs and our outcomes-focused approach. Pending the outcome of these discussions, the Scope and COB rules (and therefore the exemption) will not apply to ABSs.

Questions:

14. Do you have any comments on the structure of the Specialist Services section?

15. Do you believe that the financial services and property selling exemptions should be extended to ABSs?

6 Engaging with the SRA

Introduction

98. The SRA's consultation "Outcomes-focused regulation – transforming the SRA's regulation of legal services" explained that, running alongside the development of the new Handbook, we are also developing our risk-based approach to supervising firms and individuals. This risk-based approach will place greater emphasis on the quality of firms' governance and the effectiveness of the systems and controls that firms put in place to achieve compliance with the Principles.

99. The SRA Authorisation Rules contain key requirements for implementing this risk-based approach, most notably:

- the requirement to appoint a Compliance Officer for Legal Practice (CoLP) and Compliance Officer for Finance and Administration (CoFA), although we recognise that in very small firms both roles may be held by the same person, provided that person has the necessary experience, etc;
- the concept of fit and proper;
- our intention to move away from an annual renewal process for all firms, to be replaced by a requirement for all authorised bodies to pay an annual fee and to provide an annual information report;
- information requirements at the point of authorisation;
- our approach to imposing licence conditions.

100. In the event that firms fail to comply with the Principles and the requirements of the Code and other rules, the Disciplinary Procedure Rules define the process by which firms and individuals will be disciplined.

101. For individuals, we are introducing changes to the Practising Regulations.

102. Finally, a new set of rules (the Practice Framework Rules) sets out our requirements for different forms of practice. These rules are based on the current requirements in rules 12, 13, 14, 15 and 20.

103. All of the above are contained in the Authorisation and Practising Requirements section of the Handbook.

Authorisation Rules

Introduction

104. The SRA Authorisation Rules cover all matters relating to the authorisation of a firm to practise and include initial and continuing requirements for application and approval of the body itself, its managers, owners and relevant employees. The draft SRA Authorisation Rules are set out in Annex G1.

105. To facilitate accessibility and ease of use for all interested parties, the rules are drafted as a single set of regulations covering the requirements relating to recognised bodies (currently in the SRA Recognised Bodies Regulations) and new requirements for licensable bodies. The Recognised Bodies Regulations will be repealed.

106. In line with this approach, the regulatory requirements for recognised bodies and licensable bodies have been harmonised as far as possible to achieve equivalent risk-based consumer protections for clients of firms of solicitors and licensed bodies, and to promote competition in the provision of services. Some areas do not lend themselves to harmonisation because of differences in the legislation relating to the different types of entity (see our earlier comments on a section 69 order). One example of this is the fact that the authorisation of ABSs will be activity based. This is derived from the fact that ABSs need to be intending to conduct one or more reserved legal activities in order to be authorised. This is not the case with recognised bodies (see paragraph 56 of the SRA's consultation on "Transforming the SRA's regulation of legal services", which explains that we will be seeking comments in the future on the merits of moving towards activity-based licensing for all firms.). It is less easy to harmonise requirements between authorised bodies and recognised sole practitioners because they are subject to separate statutory schemes.

Key requirements

CoLP, CoFA and lawyer managers

107. Under the LSA, an ABS must at all times have an individual who is designated as Head of Legal Practice (HoLP), and whose designation has been approved by the SRA through a "fit and proper" test. Similar provision is made for a Head of Finance and Administration (HoFA).

108. The HoLP must be a lawyer. There is no professional requirement in respect of a HoFA. One person can perform both roles. Neither must be disqualified from holding the relevant role. The legislation defines each role in terms of their responsibility for compliance with the regulatory regime (HoLP) and compliance with the accounts rules provisions of the licensing rules (HoFA).

109. We believe there are strong arguments in favour of extending the concept of the HoLP and a HoFA to firms of solicitors which would have benefits for both the firms and the SRA in protecting the interests of clients. These are:

- having identified (and approved) persons in these roles within firms would focus the firm on achieving and maintaining compliance by placing responsibility on particular individuals and would provide the SRA with points of contact. Also, there is a strong client protection argument for promoting better financial management in firms of solicitors. A requirement for a HoFA is likely to assist in achieving that outcome. It would be compatible with the regulatory objectives and new Principle 8;
- while the HoLP and HoFA provisions in the LSA are designed to address ABS-specific risks, recent disciplinary cases have shown that certain commercial pressures and external funding arrangements have compromised professional independence and integrity in firms of solicitors, to the detriment of clients;
- the HoLP and HoFA provide a regulator with key points of contact and therefore assist in building the kind of relationship between firms and the regulator upon which OFR will depend – with advantages for both;
- it would be possible to design proportionate requirements that did not overburden small firms and sole practitioners.

110. For all of the above reasons, the SRA Authorisation Rules require all firms to appoint individuals to hold such roles. These roles we have called the Compliance Officer for Legal Practice (CoLP) and Compliance Officer for Finance and Administration (CoFA). The basic requirements for each role are flexible and outcomes-focused so that the status, experience and competence of the person fulfilling the role can be tailored to the risk represented by particular business models.

111. We strongly believe that the roles of the CoLP and the CoFA should be fulfilled by a manager. However we have drafted the rules with an alternative option to permit an employee to hold either or both roles. We would welcome comments on this issue. It would also be helpful to have comments on the possibility of dispensing with the requirement for firms to have a lawyer qualified to supervise (i.e. one of three years' practising experience) if the CoLP is to be a manager.

112. Transitional provisions and passporting arrangements will be put in place for firms practising when the new authorisation regime comes into effect, including those switching from one status to another, but have not yet been developed. We will be consulting on our proposals for these arrangements in October.

113. The SRA Authorisation Rules include the broad LSA requirement that licensed bodies have at least one manager who is an authorised person. This is defined to include any person who is authorised to carry on legal activities by one of the approved regulators, and the rules will therefore permit the SRA to authorise an ABS which does not include a solicitor or REL manager. The requirement in respect of recognised bodies will remain unchanged – they will continue to need at least one solicitor or REL manager.

114. The LSA permits the lawyer manager role to be fulfilled by a body, such as a lawyer-only recognised body or authorised non-SRA firm. The SRA Authorisation Rules, as drafted for consultation, require that the lawyer manager is an individual on the basis that this is more likely to facilitate direct involvement in licensed bodies and therefore better public and consumer protection.

Fit and Proper

115. The draft SRA Authorisation Rules require managers, and owners of a material interest, in all authorised bodies, and all CoLPs and CoFAs, to be subject to assessment of fitness and propriety (F&P test). Criteria for the F&P test and associated forms will be part of the October consultation.

116. The F&P tests will be based on current tests for admission as a solicitor, which are also the basis for assessing eligibility of non-lawyer managers of an LDP. Because the test is based on admission criteria that solicitors have satisfied (and on which they are required to make annual declarations), they will be deemed in the rules to be approved. We will consult on the detail of the F&P test in October. This test will be based on the SRA's current character and suitability criteria for solicitors. It is proposed that registered European lawyers (RELs) and registered foreign lawyers (RFLs) should also be deemed to be approved, subject to amendment of the initial REL/RFL registration process so that they complete a CRB check, as solicitors are required to do on admission.

117. Again there will be transitional provisions to deal with approval of managers/owners of current firms who have not satisfied the current F&P test. This category covers other lawyers of England and Wales who are currently able to rely on written confirmation from their regulator that they are authorised and entitled to practise in an LDP.

118. Those with a "material interest" in an ABS will be those who hold or who propose to acquire a ten per cent share in an authorised body (including associates who cumulatively acquire a ten per cent share). We will also require an authorised body to disclose ownership details of the firm. This should assist us to identify (and prevent, in the highest risk cases) potential owners who might look to exploit ownership of an ABS in ways that would jeopardise the interests of clients. In our October consultation we will provide further guidance on the authorisation process, including the operation of a de minimis limitation on the F&P test..

Removal of annual renewal of licences

119. Licensing for firms of solicitors is currently based on:

- initial application for recognition, accompanied by the relevant forms and a fee;
- annual renewal of recognition, accompanied by the relevant forms and a fee.

120. The legal basis for granting of licences to ABSs is expressed differently. Although the LSA permits the SRA to make provision for a limited licence and a renewal application, the LSB has indicated in a recent consultation that it believes ABS licences should be "unlimited in duration, subject to a requirement to report relevant changes, satisfactory performance of regulatory requirements and an annual broadly cost-effective licence fee". We agree with the LSB and we believe that there are the following advantages in moving to licences that are unlimited in duration for both firms of solicitors and ABSs:

- streamlined processes could carry cost benefits for the SRA, legal services providers, and ultimately clients;
- the regulatory burden on firms might be reduced if the full renewal process could be restricted essentially to an information and fee-gathering one;
- renewal at a time when a firm is under investigation can create enforcement complications;
- it is more risk based to allow a firm to operate unless and until there is a problem;
- we envisage that firms may move from one status (ABS) to another (firm of solicitors) during their lifetime. It makes no sense, therefore, for one status to carry a licence of unlimited duration and the other an annual one.

121. For all of the above reasons we have decided to implement licences of unlimited duration for all firms. This will necessitate a change in the AJA and the SA – see our earlier comments on a section 69 order. The only exception to this is recognised sole practitioners. It is our intention to change the recognition of sole practitioners to make this a category of recognised body as a result of which sole practitioners will be subject to the same regime as other forms of solicitors' practice.

Information requirements

122. In line with our transition to risk-based supervision of firms, the Authorisation Rules require information to be submitted by those applying for authorisation of a new firm. This information will include:

- a compliance plan, detailing the arrangements that will be put in place within the firm in order to achieve compliance with the Handbook requirements. Guidance on the information to be included in the compliance plan will be consulted on in October;
- a business plan, detailing the firm's business model, the proposed legal services to be provided by the firm and financial projections for a period of five years.

123. This information should enable the SRA to identify key risks posed by the prospective new firm, and assess whether or not the new firm should be authorised and licence conditions imposed on the firm.

124. We will be consulting on the detail of the authorisation process in October.

Licence conditions

125. If our analysis of the information which we receive about the proposed structure, governance, systems, etc. leads us to the conclusion that there exists a risk to clients' interests deriving from external influence (e.g. relating to the board composition, referral arrangements or proposed fee sharing), that risk could be further mitigated by conditions on a firm's licence which specify the circumstances in which the firm may not act for particular clients. In the case of ABSs, it might, for example, require that, depending on the precise circumstances, an ABS takes particular steps to mitigate risk.

126. Again, where there is a connection with an introducer of clients who require legal services, we will assess in each case whether it would be proportionate and in the public interest that conditions should be placed on the licence. For example, if a claims

management company owned the ABS and owned a separate medical report agency, we may decide that it would be appropriate to prevent the ABS from instructing the agency on behalf of clients because of a risk that the client may not receive independent advice.

Special bodies

127. The SRA Authorisation Rules do not include provisions for authorising special bodies, such as not for profit organisations, as there will be a transitional period of 18 months from October 2011 before special bodies are required to become licensed. If the Ministry of Justice implement the relevant LSA provisions before special bodies need to be licensed, the Authorisation Rules are likely to contain a provision to the effect that the SRA will not accept applications from such bodies until the transitional period is over.

Employers of in-house solicitors

128. By virtue of the introduction of ABSs, it will be the case that some organisations that currently employ in-house solicitors to provide services to the public will, from October 2011 onwards, need or want to be authorised as ABSs. The need for authorisation of such entities will depend on the precise circumstances. We will issue further information on this matter in our October consultation.

Practising Regulations

129. The Practising Regulations came into effect in July 2009, and deal with individual applications for practising certificates, registrations and recognised sole practitioner authorisations and related matters.

130. It has not been possible at this stage to harmonise the requirements for recognised sole practitioners with the authorisation requirements for recognised and licensed bodies, due to the entirely different statutory framework for these individual applications (see our earlier comments on a section 69 order).

131. For the present, the intention is to harmonise specific aspects of the Practising Regulations with the SRA Authorisation Rules, to reflect our new requirements for authorisation.

132. Annex G2 highlights the proposed amendments to the 2009 Practising Regulations. The main changes are:

- introduction of a requirement for recognised sole practitioners to have a CoLP and a CoFA, although we recognise that both roles may be held by the same person provided that person has the necessary experience, etc. The draft rules provide options:
    - (a) restricting these roles to the sole principal;
    - (b) permitting employees to fulfil the roles, and alternative provisions for each option are included (see regulation 4.3).

  We would welcome views on these options;
- approval of proposed sole practitioners. Having satisfied the character and suitability requirements on admission or initial registration as a solicitor or REL, individuals will be deemed fit and proper, subject to confirmation on application for approval that their circumstances have not changed, but authorisation will continue to be subject to assessment of the individual's business proposal.

Practice Framework Rules

133. The SRA Practice Framework Rules include matters relating to the right to practise in certain ways, structure of firms, and eligibility for authorisation. The rules will include those provisions relating to structure that have been removed in the redrafting of the Code of Conduct but which will continue to be relevant for regulatory purposes, these are rules 12 (Framework of practice), 13 (In-house practice, etc.), 14 (Recognised bodies) and 20 (Rights and obligations of practice). These provisions have been developed and adapted to include the practice framework for ABSs. As with the current Code, they are detailed and technical because many of the provisions need to mirror their statutory source.

134. The SRA Practice Framework Rules are the first place to look to establish what methods of practising are permitted, and what route to authorisation and individual arrangements are possible. It, therefore, appears as section 1 of the Authorisation and Practising Requirements section of the Handbook.

135. Of particular note are:

- the fundamental requirements for all legal services bodies to become recognised bodies, and the eligibility criteria for licensable bodies to become licensed are clearly set out (see rules 13 and 14);
- the basic requirement continues to be that solicitors and RELs wishing to practise as such, must do so through a regulated structure (see rules 1 and 2). It remains permissible for a solicitor to provide non-reserved legal services with a non-lawyer through an unregulated business, provided he or she does not do so as a solicitor, is not practising in any other way and does not hold him or herself out as a solicitor;
- the provisions relating to in-house solicitors (rule 6) are retained as far as possible, subject to changes where employers of in-house providers are required to seek a licence for employees providing legal services to the public or a section of the public.

With the advent of ABSs, the regulatory status of in-house solicitors is under review, since it may be necessary for some forms of practice to convert to ABS (see paragraph 128 above). Given this review, we believe that there is a need to assess whether the exemptions that currently apply to in-house practice, and which are expressed in the SRA Practice Framework Rules (rule 4), should remain or whether we require that they become ABSs. Our primary concern is that where services are being provided to the public, these are brought, so far as possible, within the regulatory regime set up by the LSA. We would welcome views on this issue and will consult on our proposals in the October consultation.

136. The SRA Practice Framework Rules are in Annex G3.

Disciplinary procedure rules

137. The current rules were drafted to govern the exercise of certain disciplinary powers within the SRA under the SA and the AJA, namely:

- to give a person or entity regulated by the SRA a written rebuke;
- to fine a regulated person up to £2,000;
- to publish a written rebuke or fine made under the rules.

138. The rules also deal more generally with the SRA's internal disciplinary procedure, including the grounds for referring a regulated person to the Solicitors Disciplinary Tribunal (SDT).

139. The LSA gives the SRA further disciplinary powers specifically in respect of ABSs and managers and employees within an ABS. The LSA requires the SRA to make rules which govern the exercise of these new powers.

140. The SRA has therefore revised the existing Disciplinary Rules to incorporate the new LSA regime for ABSs and these form part of

the Disciplinary Procedure and Costs Recovery section of the Handbook (see Annex H for the introduction).

141. The draft revised SRA (Disciplinary Procedure) Rules are in Annex H1 and:

- harmonise the disciplinary procedure under the SA/AJA and the LSA where possible. For example, the rules set out a procedure for written rebukes and publication of regulatory decisions for ABSs;
- set out a basic framework for disqualifying an individual from being a manager, employee, HoLP or HoFA of an ABS for misconduct (section 99 and schedule 11(23) of the LSA); and
- set out when the SRA will impose financial penalties upon ABSs and managers and employees of an ABS (section 95 and schedule 11(22) of the LSA).

142. There is also provision within the LSA (section 101 and schedule 11 paragraph 24) for suspending or revoking authorisation as a result of misconduct, but the framework in this respect is set out separately in the draft SRA Authorisation Rules.

143. Guidance will be developed and published, which will sit under the rules, to explain the factors to be taken into account in each decision making process. We will consult on this in October. This will be in line with our overall enforcement strategy, which is to encourage compliance, except where a firm represents a serious or persistent risk.

144. One constraint on harmonising the requirements for all types of firm is that the SRA's disciplinary procedures and powers under the current SA/AJA regime and the LSA regime are very different. For example, in the future and without further harmonisation, if a traditional solicitors firm and an ABS are involved in a scheme which gives rise to serious misconduct concerns then:

- in relation to the traditional solicitors firm, the SRA itself could rebuke or fine the regulated persons up to £2,000; or refer the firm and individuals involved to the SDT in order to suspend or strike off the regulated persons or impose an unlimited fine; and
- in relation to the ABS, the SRA could itself impose an unlimited fine, disqualify the individuals involved from practising within the ABS or suspend or revoke the ABS's authorisation.

145. Parallel systems for dealing with misconduct would be undesirable in terms of the complexity of the system, inefficiency and possible inconsistency. It also raises the potential for regulatory arbitrage. In view of these facts, it is appropriate to try to harmonise the disciplinary regimes for ABSs and firms of solicitors, probably reflective of the new powers we will gain in due course under the LSA, to provide a single process of fining and appeal to an independent tribunal for all types of firm. We would welcome comments on this.

Training requirements for individuals

146. The Solicitors' Training Regulations are currently being reviewed. Changes to the Training Regulations are planned to be consulted on as part of the October consultation paper.

Questions:

16. Do you agree with our proposals to apply the requirements for a CoLP and a CoFA to all firms (including recognised sole practitioners)?

17. Do you agree with our contention that more information should be required from applicants to enable the SRA to make the right judgement concerning authorisation?

18. What in-house services to the public should require authorisation?

19. Do you believe that the disciplinary frameworks should be further harmonised?

20. Do you believe that there should be a single system of findings with appeal to an independent tribunal?

7 Protecting the public

Introduction

147. The Client Protection section of the Handbook will contain:

- the SRA Indemnity Insurance Rules;
- the SRA Indemnity Rules;
- the SRA Compensation Fund Rules; and
- the SRA Intervention Powers (Statutory Trust) Rules.

See the Introduction to this section of the Handbook in Annex I.

148. These rules form an essential part of the public protections available to clients of all firms. The SRA's objective in relation to indemnity is to secure for consumers the same level of protection through an ABS (including an MDP ABS) as they would receive from a traditional firm, and that the level of protection should be proportionate to the risk. The SRA's approach to indemnity requirements is the subject of a fundamental review, which may result in changes to the requirements for all persons covered by the rules. However, our policy on the need to have equivalent protection for consumers of all firms will not change.

SRA Indemnity Insurance Rules (SIIR)

149. The SIIR require individual solicitors and firms carrying on private practice in England and Wales to take out and maintain professional indemnity insurance with "qualifying insurers". The purpose of the cover is to provide clients with a basic level of protection in the event that a firm is negligent or dishonest which results in the claimant suffering a loss. The requirements are broadly similar to current requirements but have been extended to apply to ABSs. The draft SIIR are set out in Annex I1.

SRA Indemnity Rules (SIR)

150. The draft SIR are based on the 2009 SIR. As these rules are made annually, we anticipate that they will be subject to further revision, particularly in the light of the review referred to in paragraph 148 above,

151. The SIR set out the terms and conditions of the cover provided by the Solicitors' Indemnity Fund. Again, the requirements are broadly similar to current requirements but have been extended to apply to ABSs. The draft SIR are set out in Annex I2.

Compensation fund rules

152. We will be consulting on our compensation fund rules for all firms in October.

SRA Intervention Powers (Statutory Trust) Rules (STR)

153. The STR govern how the SRA exercises the function of statutory trustee in relation to client money of which the SRA has taken control having had to close a firm. Again, the requirements are broadly similar to current requirements but have been extended to apply to ABSs. The draft SRA Intervention Powers (Statutory Trust) Rules are set out in Annex I3.

Question:

21. Do you agree with our overall approach to applying indemnity requirements to ABSs?

8 Fairness, equality and diversity

154. Fundamental to our new approach will be the confidence of all involved – consumers, solicitors, and others involved in the provisions of legal services – that our new regulatory approach is capable of being applied fairly. We shall publish our enforcement strategy and decision making criteria, and regularly audit our decision-making, publishing the outcomes. In the paper at Annex K we have set out our initial view of the key equality issues raised by the transition to the new Handbook and the changes in our regulatory policy and requirements which it involves.

155. We will continue with this work and plan to publish the findings of our full equality impact assessment in October. To help us with this work, we will be seeking meetings with equality groups to understand the issues and find solutions.

Question:

22. Do you have any comments on our initial equality impact assessment, and are there any additional equality issues that we should consider as we work further on the Handbook?

9 Timetable and next steps

156. Responses to this consultation paper should be sent to the SRA by 20 August 2010.

OFR Timetable

157. This consultation forms part of a major transformation of the SRA's approach to regulating and supervising firms, set against the opening-up of the legal services market. The overall timetable is set out below:

Date	Action
27 July 2010	Closing date for written responses to "OFR: Transforming the SRA's Regulation of Legal Services"
20 August 2010	Closing date for written responses to this consultation
October 2010	Policy statement and second Handbook (and regulatory processes) consultation published
January 2011	Closing date for written responses on second Handbook (and regulatory processes) consultation
March / April 2011	Publication of final Handbook
June / July 2011	Anticipated designation of SRA as a Licensing Authority for ABSs
6 October 2011	First ABS licensed and implementation of new Handbook
April 2013	Special bodies able to apply to be licensed

Question:

23. Do you have any comments on the timetable?

Annexes - overview

A. Structure of SRA Handbook

B. Destination table

C. SRA Code of Conduct

D. Conflicts of interests models

E. SRA Accounts Rules

F. Introduction to Specialist Services

1. SRA European Cross-Border Practice Rules
2. SRA Property Selling Rules

G. Introduction to Authorisation and Practising Requirements

1. SRA Authorisation Rules
2. SRA Practising Regulations
3. SRA Practice Framework Rules

H. Introduction to Disciplinary and Costs Recovery Rules

1. SRA (Disciplinary Procedure) Rules

I. Introduction to Client Protection

1. SRA Indemnity Insurance Rules
2. SRA Indemnity Rules
3. SRA Intervention Powers (Statutory Trust) Rules

J. 2010 Consultation process

K. Equality and Diversity Initial Impact Assessment

L. List of questions for consultation

Annex A: Structure of SRA Handbook

Section	Content
Principles	10 Principles applying to all sections of the Handbook
The SRA Code of Conduct	Professional conduct requirements
Accounts Rules	The SRA Accounts Rules (including provisions in relation to overseas practice)

Authorisation and Practising Requirements	The SRA Practice Framework Rules The SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies The SRA Practising Regulations The SRA Training Regulations
Client Protection	The SRA Indemnity Insurance Rules The SRA Indemnity Rules The SRA Compensation Fund Rules The SRA Intervention Powers (Statutory Trust) Rules
Disciplinary and Costs Recovery Rules	The SRA (Disciplinary Procedure) Rules The SRA (Cost of Investigations) Regulations 2009
Specialist Services	The SRA Property Selling Rules The Solicitors' Financial Services (Scope) Rules The Solicitors' Financial Services (Conduct of Business) Rules The SRA European Cross-border Practice Rules
Guidance	Non-mandatory guidance

Annex B: Destination table

Introduction

This table summarises where existing provisions in the Solicitors' Code of Conduct can be located in the new SRA Code of Conduct.

Where is it now?

	Location in Solicitors' Code of Conduct	Location in Draft SRA Code of Conduct
Rule 1 – Core duties	1.01 – Justice and the rule of law 1.02 – Integrity 1.03 – Independence 1.04 – Best interests of clients 1.05 – Standard of service 1.06 – Public confidence	These rules are reproduced in the ten "Principles" which are set out in full in the *SRA Handbook* ("the Handbook")and in the Introduction to the *SRA Code of Conduct* ("the Code"). Relevant Principles are also reproduced throughout the Code at the start of each chapter, and throughout the Handbook at the start of relevant sections.
Rule 2 – Client relations	2.01 – Taking on clients 2.02 – Client care 2.03 – Information about the cost 2.04 – Contingency fees	**Chapter 1 – Client care** - all

	2.05 – Complaints handling 2.06 - Commissions 2.07 – Limitation of civil liability by contract	
Rule 3 – Conflict of interests	3.01 – Duty not to act 3.02 – Exceptions to duty not to act 3.03 – Conflict when already acting 3.04 – Accepting gifts from clients 3.05 – Public office or appointment leading to conflict 3.06 – Alternative dispute resolution (ADR) 3.07 – Acting for seller and buyer in conveyancing, property selling and mortgage related services 3.08 – Conveyancing transactions not at arm's length 3.09 – Conveyancing transactions at arm's length 3.10 – Conditions for acting under 3.09 3.11 – Property selling and mortgage related services 3.12 – SEALs and participating firms 3.13 – Conditions for acting under 3.11 3.14 – Special circumstances in property selling and conveyancing 3.15 – Conflict arising when acting for seller and buyer 3.16 – Acting for lender and borrower in conveyancing transactions 3.17 – Standard and individual mortgages 3.18 – Notification of certain circumstances to lender 3.19 – Types of instruction which may be accepted 3.20 – Using the approved certificate of	**Chapter 3 – Conflicts**- all

	title 3.21 – Terms of rule to prevail 3.22 – Anti-avoidance 3.23 – Waivers Annex – Certificate of title	
Rule 4 – Confidentiality and disclosure	4.01 – Duty of confidentiality 4.02 – Duty of disclosure 4.03 – Duty not to put confidentiality at risk by acting 4.04 – Exception to duty not to put confidentiality at risk by acting – with the clients' consent 4.05 – Exception to duty not to put confidentiality at risk by acting – without clients' consent 4.06 - Waivers	**Chapter 4 – Confidentiality and disclosure**–all
Rule 5 – Business management in England and Wales	5.01 – Supervision and management responsibilities 5.02 – Persons who must be "qualified to supervise" 5.03 – Supervision of work for clients and members of the public	**Chapter 1 – Client care** – in part (particularly 5.01(1)(a)(d)(e)(f)(g)(h)(i), 5.03) **Chapter 7 – Management of your business** – in part (5.01(c)(j)(k)(l)) For 5.02 see **Authorisation and Practising Requirements** section of the Handbook
Rule 6 – Equality and diversity	6.01 – Duty not to discriminate 6.02 – Evidence of breach 6.03 – Equality and diversity policy 6.04 – In-house practice 6.05 – Waivers 6.06 – Meaning of terms	**Chapter 2 – Your clients and equality and diversity -** except 6.05 and 6.06
Rule 7 - Publicity	7.01 – Misleading or inaccurate publicity 7.02 – Clarity as to charges 7.03 – Unsolicited approaches in person or by telephone 7.04 – International aspects of publicity	**Chapter 8 – Publicity** - all

	7.05 – Responsibility for publicity 7.06 – Application 7.07 – Letterhead, website and e-mails	
Rule 8 – Fee sharing	8.01 - Fee sharing with lawyers and colleagues 8.02 – Fee sharing with other non-lawyers	**Chapter 9 – Fee sharing and referrals** - all
Rule 9 – Referrals of business	9.01 – General 9.02 – Financial arrangements with introducers 9.03 – Referrals to third parties	**Chapter 6 – Your client and introductions to third parties –** 9.03 only **Chapter 9 – Fee sharing and referrals** - 9.01 and 9.02
Rule 10 – Relations with third parties	10.01 – Not taking unfair advantage 10.02 – Agreeing costs with another party 10.03 – Administering oaths 10.04 – Contacting other party to a matter 10.05 – Undertakings 10.06 – Dealing with more than one prospective buyer in a conveyancing transaction 10.07 – Fees of lawyers of other jurisdictions	**Chapter 11 – Relations with third parties**- all See **European Cross-Border Practice Rules** in **Specialist Services** section of the Handbook – 10.07
Rule 11 – Litigation and advocacy	11.01 – Deceiving or misleading the court 11.02 – Obeying court orders 11.03 – Contempt of court 11.04 – Refusing instructions to act as advocate 11.05 – Appearing as an advocate 11.06 – Appearing as a witness 11.07 – Payments to witnesses 11.08 – Recordings of child witnesses' evidence	**Chapter 5 – Your client and the court**– all

Rule 12 – Framework of practice	12.01 – Solicitors 12.02 – RELs 12.03 – RFLs 12.04 – Recognised bodies 12.05 – Managers and employees authorised by another approved regulator 12.06 – Managers and employees who are not lawyers	See **Authorisation and Practising Requirements**
Rule 13 – In-house practice, etc.	13.01 – Conditions applying at all times 13.02 – Work colleagues 13.03 – Related bodies 13.04 – Pro bono work 13.05 – Associations 13.06 – Insurers 13.07 – Commercial legal advice services 13.08 – Local government 13.09 – Law centres, charities and other non-commercial advice services 13.10 – The Crown, non-departmental public bodies, and the Legal Services Commission 13.11 – Foreign law firms 13.12 – Regulatory bodies	See **Authorisation and Practising Requirements** section of the Handbook
Rule 14 – Recognised bodies	14.01 – Fundamental requirements for all recognised bodies 14.02 – Duties in relation to compliance 14.03 – Formation, office in England and Wales and registered office 14.04 – Recognised bodies which are partnerships 14.05 – Recognised bodies which are LLPs 14.06 – Recognised bodies which are	**Chapter 10 – You and your regulator**- 14.07 only See **Authorisation and Practising Requirements** section of the Handbook

	companies 14.07 – Information and documentation 14.08 – Mental Health Act equivalents	
Rule 15 – Overseas practice	15.01 – Core duties (rule 1) application, and conflicts of rules 15.02 – Client relations (rule 2) 15.03 – Conflict of interests (rule 3) 15.04 – Confidentiality (rule 4) 15.05 – Business management (rule 5) 15.06 – Equality and diversity (rule 6) 15.07 – Publicity (rule 7) 15.08 – Fee sharing (rule 8) 15.09 – Referrals of business (rule 9) 15.10 – Relations with third parties (rule 10) 15.11 – Litigation and advocacy (rule 11) 15.12 – Framework of practice (rule 12) 15.13 – In-house practice overseas (rule 13) 15.14 – Recognised bodies (rule 14) 15.15 – Deposit interest 15.16 – European cross-border practice (rule 16) 15.17 – Insolvency practice (rule 17) 15.18 – Property selling (rule 18) 15.19 – Financial services (rule 19) 15.20 – Rights and obligations of practice (rule 20) 15.21 – Separate businesses (rule 21) 15.22 – Waivers (rule 22) 15.23 – Application of these rules (rule 23) 15.24 – Interpretation (rule 24)	Throughout the Code For 15.15 and 15.27 – see the **SRA Accounts Rules**

	15.25 – Commencement and repeals (rule 25) 15.26 – Professional indemnity 15.27 - Accounts	
Rule 16 – European cross-border practice	16.01 – Definition and application 16.02 – Occupations considered incompatible with legal practice 16.03 – Fee sharing with non-lawyers 16.04 – Co-operation between lawyers of different CCBE states 16.05 – Correspondence between lawyers in different CCBE states 16.06 – Paying referral fees to non-lawyers 16.07 – Disputes between lawyers in different member states	See **European Cross-Border Practice Rules** in **Specialist Services** section of the Handbook
Rule 17 – Insolvency practice	17.01 – [no title]	**Chapter 3 – Conflicts**
Rule 18 – Property selling	18.01 – Standards of property selling services 18.02 – Statement on the cost 18.03 – Conflict of interests 18.04 - Waivers	**Chapter 3 – Conflicts -** aspects of 18.03. See **SRA Property Selling Rules** in **Specialist Services** section of the Handbook
Rule 19 – Financial services	19.01 – Independence	**Chapter 6 – Your client and introductions to third parties** **Chapter 9 – Fee sharing and referrals**
Rule 20 – Rights and obligations of practice	20.01 – Reserved work and immigration work 20.02 – Practising certificates 20.03 – Sole practitioners 20.04 – Participation in legal practice 20.05 – Duty to co-operate with the SRA and the LCS 20.06 – Reporting serious misconduct and serious financial difficulty	**Chapter 10 – You and your regulator**- 20.05, 20.06, 20.07, 20.08, 20.09 and 20.10 only For 20.01, 20.02, 20.03 and 20.04, see **Authorisation and Practising Requirements** section of the Handbook

	20.07 – Obstructing complaints 20.08 – Production of documents, information and explanations 20.09 – Dealing with claims 20.10 – Compliance with conditions	
Rule 21 – Separate businesses	21.01 – General 21.02 – Services which may not be provided through a separate business 21.03 – Services which may be provided in conjunction with a firm or in-house practice 21.04 – Services which may be provided (subject to these rules) either through a firm or in-house practice, or through a separate business 21.05 – Safeguards in relation to a separate business	**Chapter 12 – Separate businesses**- all
Rule 22 - Waivers	22.01 - [no title]	**Chapter 13 – Application and waivers**
Rule 23 – Application of these rules	23.01 – [no title]	**Chapter 13 – Application and waivers**
Rule 24 - Interpretation	24.01 – [no title]	**Chapter 14 - Interpretation**
Rule 25 – Commencement and repeals	25.01 – [no title]	To be inserted – **Chapter 15 - Commencement and repeals**

Annex C: SRA Code of Conduct

This annex is featured in our Freedom in Practice section.

Annex D: Conflicts of interests models

Definition

Conflict of interests means any situation where

you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict or there is a significant risk that those duties may conflict (a "*client conflict of interests*"); or

your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter (an "*own interest conflict*").

1 Models of outcomes-focused requirements

These models can be drafted in the form of outcomes as follows:

Model 1

Outcomes

You must achieve these outcomes:

1. you do not act where there is a *conflict of interests*;

2. all advice given, and action taken, on each client's behalf, is unconstrained by any *conflict of interests*.

Indicative behaviours

Acting in the following ways tends to show that you have achieved these outcomes and therefore complied with the Principles:

A having systems in place to identify all *conflicts of interests;*

B refusing to act/ceasing to act if a *conflict of interests* is identified.

Model 2

In this Chapter:

Non-substantive client conflict of interests means – any situation where there is no *substantive client conflict of interests* in relation to two or more clients.

Substantive client conflict of interests means – any situation where there is a *client conflict of interests* in relation to two or more clients and:

- the matter involves negotiation conducted by you between the clients; or
- they are involved in some form of dispute with each other; or
- they are involved in litigation against each other.

Outcomes

You must achieve these outcomes:

1 in cases where is there a *non-substantive client conflict of interests*, you only act if:

- you have obtained each client's informed consent to act; and
- you can act at all times in the best interests of each client; and
- it is reasonable in all the circumstances to act for the client; and
- you comply with your duties of confidentiality in chapter [4] of the SRA Code;

2 in cases where there is a *non-substantive client conflict of interests* and you cannot meet the conditions in 1 at any time, you do not accept instructions or you cease to act;

3 in cases where there is a *substantive client conflict of interests*, you do not act;

4 no clients are prejudiced because you have acted where there is a *non-substantive conflict of interests*;

5 you do not act where there is an *own interest conflict*.

Indicative behaviours:

Acting in the following ways tends to show that you have achieved these outcomes and therefore complied with the Principles:

A having systems in place to identify all *conflicts of interests*;

B refusing to act/ceasing to act if you identify a *substantive client conflict of interests*;

C in cases involving a *non-substantive client conflict of interests*, explaining the implications of your firm acting for the clients, prior to obtaining their consent.

Model 3

Outcomes

You must achieve these outcomes:

1 where there is a *client conflict of interests* you only act if:

- you have obtained the clients' consent to act;
- you can act in the best interests of each client;
- it is reasonable in all the circumstances to act for the client;
- you comply with your duties of confidentiality in chapter 4 of the SRA Code;

2 no clients are prejudiced because you have acted where there is a *client conflict of interests*;

3 you comply with the law governing conflicts of interests;

4 you do not act where there is an *own interest conflict*.

Indicative behaviours:

Acting in the following ways tends to show that you have achieved these outcomes and therefore complied with the Principles:

A having systems in place to identify all *conflicts of interests;*

B explaining the implications of your firm acting for the clients, prior to obtaining their consent.

Annex E: SRA Accounts Rules

This annex is featured in our Freedom in Practice section.

Annex F: Introduction to Specialist Services

This annex is featured in our Freedom in Practice section and contains the SRA European Cross-Border Practice Rules (F1) and SRA Property Selling Rules (F2).

Annex G: Introduction to Authorisation and Practising Requirements

This annex is featured in our Freedom in Practice section and contains the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies (G1) , SRA Practising Regulations (G2) and SRA Practice Framework Rules (G3) .

Annex H: Introduction to Disciplinary and Costs Recovery Rules

This annex is featured in our Freedom in Practice section and contains the SRA Disciplinary Procedure Rules (H1).

Annex I: Introduction to Client Protection

This annex is featured in our Freedom in Practice section and contains the SRA Indemnity Insurance Rules (I1), SRA Indemnity Rules (I2) and SRA Intervention Powers (Statutory Trust) Rules (I3).

Annex J: Consultation process

May	**October**	
Consultation	**Consultation**	**Final Rules**
Principles	Code (Conflicts, notification and reporting requirements)	Principles
Code	Authorisation and Practising Requirements AR (fit and proper and authorisation process) PFR (in-house solicitors)	SRA Accounts Rules
SRA Accounts Rules	Client Protection (Compensation Fund Rules)	Authorisation and Practising Requirements (PR)
Authorisation and Practising Requirements (SRA AR, PR and PFR)	Disciplinary and Cost Recovery (Cost of Investigation (Recovery) Rules, Annex to DPR on Financial penalties)	Client Protection (STR, SIR)
Client Protection (SIIR, SIR and STR)	Guidance	Disciplinary and Cost Recovery (DPR)
Disciplinary and Cost Recovery (DPR)		Specialist Services (CBR, PSR)
Specialist Services (CBR, PSR)		

Annex K: Equality and Diversity Initial Impact Assessment

This **report** sets out our early findings on where the new Handbook may have the most impact on equality.

Annex L: List of questions for consultation

1. Do you agree with our overall approach to implementing ABSs?
2. Do you agree with the new Handbook structure?
3. Do you agree with the new Principles and our approach to applying them across the Handbook?
4. In what areas do you think explanatory guidance would be particularly helpful?
5. Do you agree with the new Code structure?
6. Do you have any overall comments on the new format (Principles, outcomes, indicative behaviours)?
7. Do you think that the outcomes (together with the indicative behaviours) achieve the right balance in providing sufficient clarity on the SRA's expectations for firms whilst enabling firms to operate flexibly?
8. Do you have any comments on the Models (Annex D) for regulating conflicts? In particular, do you agree with the definitions of "non-substantive" and "substantive client conflict of interests"? Should consent, when using Models 2 and 3, always be "informed consent"?
9. Do you have any comments on the removal of the detailed provisions relating to conveyancing, gifts, etc?

10. Do you believe that outcomes provide sufficient clarity for regulating conflicts or do you think rules would be more appropriate?
11. Do you agree with our approach to the provision of services through a separate business?
12. Do you agree with our proposals concerning the application of the Code to overseas practice, in-house practice, etc?
13. Do you have any comments on the revisions to the Accounts Rules?
14. Do you have any comments on the structure of the Specialist Services section?
15. Do you believe that the financial services and property selling exemptions should be extended to ABSs?
16. Do you agree with our proposals to apply the requirements for a CoLP and a CoFA to all firms (including recognised sole practitioners)?
17. Do you agree with our contention that more information should be required from applicants to enable the SRA to make the right judgement concerning authorisation?
18. What in-house services to the public should require authorisation?
19. Do you believe that the disciplinary frameworks should be further harmonised?
20. Do you believe that there should be a single system of findings with appeal to an independent tribunal?
21. Do you agree with our overall approach to applying indemnity requirements to ABSs?
22. Do you have any comments on our initial equality impact assessment, and are there any additional equality issues that we should consider as we work further on the Handbook?
23. Do you have any comments on the timetable?

Solicitors Regulation Authority

Closed consultations

The Architecture of Change Part 2 – the new SRA Handbook – feedback and further consultation

14 January 2011

The deadline for submission of responses to this consultation was 13 January 2011.

The information below is for reference only.

- The consultation period ended on **13 January 2011**.
- Go to annexes
- Read a summary of this consultation paper
- Downloadable documents

1. Executive summary

1. This consultation is the last opportunity for comments on the SRA's new Handbook which will underpin the regulation of solicitors and law firms from October 2011. It builds on the foundations laid in "The Architecture of Change: the new SRA Handbook" (the May Consultation). The May Consultation initiated the implementation process for outcomes-focused regulation (OFR). This paper takes that process a step further by providing more detail on the regulatory framework for both traditional law firms and alternative business structures (ABSs)—the new kinds of law firms which will come into the legal services market.

2. We are grateful to all those who responded to the May Consultation, whether in writing or orally at our roadshows and other events, including those for equality groups. The responses were impressive in volume and quality. It is clear that respondents have taken the time to go through the proposals in detail and we are pleased at the level of engagement and the steers provided. The comments have provided us with a wide spectrum of views from consumers, special interest groups, traditional law firms of all sizes, and potential owners of ABSs.

3. A list of respondents and details of our engagement activities for the May Consultation are set out at **Annex K**.

4. In this paper we:

- report on the feedback which we received to our May Consultation;
- propose further changes to the new SRA Code of Conduct (the Code) and other sets of rules in the Handbook; and
- consult on further sets of rules.

5. The deadline for responses to this consultation is **13 January 2011**.

Overall messages from respondents

6. We have considered the 83 formal responses and other feedback in great detail. From the large number and wide variety of comments some key themes emerged:

- strong agreement with our proposals to implement a common standard of consumer protection across traditional law firms and ABSs;
- a broad welcome for the Handbook proposals and, in particular, our outcomes-focused Code. This was tempered by expressions of concern that we should be clear in our expectations of our regulated community and by apprehension that enforcement might not in practice be genuinely outcomes-focused and proportionate. Some respondents were, however, firmly opposed to our proposals. A further

version of the Code is at **Annex C** and includes the new Chapter 3 on conflicts of interests;

- support, particularly from those representing consumer groups, for our focus on the consumer and the broader public interest;
- concern as to whether the SRA has the appropriate expertise and systems to implement successfully OFR in the time available, and as to the regulated community's ability to prepare itself for OFR within the ambitious timetable which has been set. The SRA is undertaking an extensive change programme in order to ensure that both our staff and our operations are able to meet the challenges of implementing OFR. This includes a major IT programme and also assessment and training of our staff. We are also making extensive preparations for a communications programme to guide firms and individuals through the transition to the new Handbook and OFR;
- requests for guidance to help firms understand our expectations and to achieve the right outcomes for clients;
- a split of views on whether, as we have proposed, all firms should be required to appoint a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA) to enhance risk management and compliance;
- a desire for more detail on the SRA's new information requirements for firms. Our approach to information requirements is discussed in this paper and we will shortly be issuing prototypes of forms to illustrate the sort of information that we will be requesting;
- a warm welcome for the concept of a glossary. We had intended to include a draft version in this consultation. However, it has become clear that this is not the right time to publish the draft glossary since the rules are in various stages of development. We will be publishing a draft glossary for comment and we intend that this will be in place in the second quarter of 2011;
- support for the destination table, which was felt to be useful information to enable practitioners to make the transition from the existing Code of Conduct to the new Handbook. We intend to provide firms with further information generally to enable them to make the transition. We will publish information on our website during the coming months.

7. Some of the concerns expressed related to our overall approach to supervision and enforcement. We will be giving further information about these in our November 2010 publication.

8. We have considered the possible impacts on equality and diversity throughout our policy development process. We have created an overarching Principle about equality and diversity which demonstrates our commitment to treating people fairly. We have modified this Principle in response to comments made. Handbook provisions have been audited to ensure that they are in step with human rights and equalities legislation. Our equality impact assessment is published at **Annex I**. We are confident that where indirect impacts have been identified these are justified by the public interest. The cost-benefit analysis on our outcomes-focused regulatory approach will be published in November 2010. We are undertaking this work to ensure that the provisions in the Handbook can be justified in terms of competition and in terms of the likely costs compared with the likely benefits.

9. We look forward to receiving your comments and your continued assistance in helping us to develop the new Handbook.

2. Introduction

10. This consultation follows on from our May Consultation[1]. It represents the second phase in the development of our new Handbook, and we are keen to continue the very positive dialogue with our consultees—including consumer groups, practitioners and others—that has been established.

11. We intend that the new Handbook and our outcomes-focused approach to authorisation, supervision and enforcement, will bring about a culture change in the provision of legal services. One of the key catalysts for this change is the opening up of the legal services market to new entrants. For this reason we were delighted that our proposals were met with both widespread approval and a healthy degree of debate. With limited exceptions, OFR has been welcomed. However, we do recognise the need to ensure that our outcomes-focused approach takes into account both our own experience and that of other regulators and professional bodies.

12. We received 83 responses in total (see **Annex K**). Many of these were from representative groups. For this reason, we do not think it is helpful to present a statistical analysis based on simple numbers. However, we have tried to gauge the strength of feeling on particular issues and to respond to key points that were made.

13. In summary, this paper sets out:

- the revised structure of the new SRA Handbook which will contain all our regulatory requirements for both firms and individuals, for in-house[2] and overseas practice, and explains the implementation timeline;
- further consultation on revisions to the:
  - SRA Principles;

- SRA Code of Conduct; and
- requirements contained in the Specialist Services; Authorisation, and Practising Requirements; Discipline and Costs Recovery and Client Protection sections of the Handbook, based on the responses to the May Consultation;

- final version of rules on which we consulted on in May (e.g. the SRA Accounts Rules);

  Please note that where we have made changes to the material on which we consulted in May, additions are shown in blue and deletions shown in red. The amendments which were shown as revisions in the May Consultation have been incorporated into the text and are no longer highlighted;

- fresh consultation on:
  - SRA Financial Services (Scope) Rules;
  - SRA Financial Services (Conduct of Business) Rules;
  - SRA Suitability Test;
  - SRA Training Regulations;
  - SRA Admission Regulations;
  - SRA Qualified Lawyers Transfer Scheme Regulations;
  - SRA Higher Rights of Audience Regulations;
  - SRA Compensation Fund Rules;
  - SRA Cost of Investigations Regulations.

14. We invite further views on our revised proposals. We have set out some questions throughout this paper upon which we should be particularly grateful for your views. You will find a complete list of the questions at **Annex M**.

15. We have tried to make this paper as readable as possible. Where we have used abbreviated terms and acronyms, we have listed these at **Annex L**.

3. A new approach to regulation

Strategic objectives – our evidence-based approach

16. We explained in our May Consultation that we were conducting the following assessments of Handbook requirements:

- **Cost-benefit analysis** – our cost-benefit analysis work is being conducted in phases as our Handbook requirements are developed. We will publish the results of the first phase of our work in November this year. To date, no requirements have been assessed as disproportionately costly. Key cost issues are:
  - new information requirements to support risk-based regulation;
  - new authorisation requirements;
  - the requirement to appoint a COLP and COFA; and
  - the impact of an outcomes-focused regulatory regime without prescriptive rules.

  Key benefits are:

  - risk-based regulation enables the SRA to focus resources on problem firms, which should enhance public confidence in the delivery of legal services and drive down the costs associated with regulating problem firms;
  - OFR benefits are increased flexibility, reduced bureaucracy and better client service.
- **Human rights audit** – all Handbook requirements are being assessed for compliance with human rights legislation. To date, no significant issues have been identified. Having said that, we recognise that much will depend on the manner in which our requirements are implemented; for example, how the regulatory process for firms and individuals works in practice. We will comment on this further in our November 2010 publication.
- **Competition analysis** – again, this is being conducted on a phased basis, the first phase of which covered the Code, Authorisation Rules, Practice Framework Rules and Accounts Rules. No rule has been identified which, on its face, obviously failed the test that any restriction of competition was the minimum reasonably necessary to achieve its objective. This work is ongoing.
- **Equality impact assessment** – see section 8 of this paper. This work is ongoing. Where indirect impacts have been identified, we are assessing the impacts to ensure that these are justified in the interests of public protection.

Key points are:

- in general terms we anticipate that the Handbook will help to bring increased certainty and transparency to the regulatory requirements which apply to firms and individuals (however they practise). This will be beneficial to everyone, including clients; and
- in developing the Handbook we have taken the opportunity to address previously identified equality issues as we have amended and adapted the Handbook (for example the issues around mental health in the Suitability Test, and the interest provisions in the Accounts Rules).

Alternative business structures

17. Our objectives in defining the regulatory regime for ABSs are to:

- achieve the same degree of consumer protection for clients of traditional law firms and ABSs;
- facilitate transition between the two statutory regimes (i.e. for recognised bodies and licensed bodies – see below), since we believe that some firms may, during their lifetime, switch status not infrequently.

18. Question 1 of the May Consultation asked:

> **Do you agree with our overall approach to implementing ABSs?**

Summary of feedback

19. There was broad support from respondents to our approach, and in particular that clients of an ABS should benefit from the same protections as those enjoyed by clients of traditional law firms.

> "The harmonization approach to be taken by the SRA will minimise confusion for consumers and providers alike." – Peninsula Business Services Limited

> "The Legal Ombudsman supports the SRA's proposal to put public protection at the heart of its approach. This is very welcome as it is in line with the Legal Ombudsman's focus as well."

20. Some respondents raised concerns about multi-disciplinary practices (MDPs) and how different regulators will co-operate to protect consumers. Concern was expressed as to whether the SRA is able to regulate non-legal services.

21. Some respondents considered that authorisation to conduct one or more reserved legal activity was inappropriate for non-ABS firms.

22. Some respondents also expressed concern regarding new market entrants' understanding of the SRA's expectations, particularly in the light of our move to OFR.

23. A respondent raised the issue of confidentiality in relation to MDP ABSs and the potential for exploiting confidential client information for cross-selling other services.

Our response

24. We welcome the support given to our overall approach to implementing ABSs and continue to believe that it is both in the public interest generally and specifically in consumers' interests that we achieve a common standard of consumer protection, whilst promoting a competitive market in the provision of legal services.

25. On the issue of non-legal services, we explained in our May Consultation our view of our jurisdiction in relation to ABSs. It is not the intention of the SRA to go beyond this jurisdiction and regulate other services over which we do not have jurisdiction.

26. We do not intend to change the basis of licensing recognised bodies and sole practitioners; these will continue to be authorised on the basis set out in the Solicitors Act and the Administration of Justice Act.

27. There also appear to be some misconceptions about "activity-based" licensing. The SRA is not seeking to limit the activities of the ABSs that it will regulate purely to one or more reserved legal activities. ABSs are licensable by virtue of the fact that they conduct one or more

reserved legal activities, but the licence that we will grant them will not prevent them from conducting other legal activities, unless a specific licence condition is imposed restricting the activities of the ABS. We are not, in the short term, planning to introduce activity-based licensing along the lines of the approach of the Financial Services Authority (FSA) (i.e. by reference to a detailed list of work types); at present we are considering the practicalities of such a proposal for all types of firm, although we recognise that this is a longer-term initiative.

28. We recognise the need for us to engage with new market entrants to assist them in understanding our expectations, whether such a new market entrant is a traditional law firm or an ABS. In addition, our authorisation process will take account of the level of experience of those involved in (for example) a new ABS; should we have concerns on this issue we would consider the use of licence conditions to mitigate any identified risks to the public, or ultimately we could decline authorisation.

29. On the issue of confidentiality, an MDP ABS (by which we mean an ABS which supplies legal and other professional services) will be subject to the same requirements as other firms and, in particular, will not be able to disclose confidential client information to, for example, other companies within the same group. Neither would we consider it appropriate for any firm to exploit sensitive client information for marketing purposes; we believe that this would call into question whether the firm were considering the best interests of its clients. However, we are aware that existing firms do cross-sell other legal services and indeed the very reason for clients to choose an MDP could be that they will be offered a variety of services. Further, we believe it is not in the public interest for the SRA to constrain activities which may undermine the opening-up of the legal services market. For this reason, we do not intend to impose any further restrictions on MDP ABSs than appear in the draft Code.

Proposed changes to the SRA's powers under the Solicitors Act, Administration of Justice Act and the Legal Services Act

30. The Legal Services Act (LSA) sets out the statutory regime for regulating ABSs from which the SRA derives its regulatory powers. The Solicitors Act (SA) and Administration of Justice Act (AJA) set out the SRA's regulatory powers in relation to solicitors and recognised bodies (RBs). We have identified apparent disparities between these powers which, in certain areas, could have the effect of creating differing levels of consumer protection between traditional law firms and ABSs.

31. The Legal Services Board (LSB) has recently published[3] its consultation on a draft statutory instrument known as a "section 69 Order", which is the mechanism by which the SA, AJA and LSA can be changed. In our discussions with the LSB on the section 69 Order, our objective has been to achieve a common standard of consumer protection through necessary harmonisation of our powers. We have also borne in mind:

- the SRA's major review of its approach to client protection, which is due to report in December 2010;
- our need to achieve the maximum level of operational effectiveness through common processes for ABSs and traditional law firms;
- the likelihood that some firms will move from one authorised status to another; and
- regulatory simplicity and fairness – for the SRA (in exercising similar powers) and for firms (working to one set of provisions and one set of processes, rather than two).

32. We are very appreciative of the positive dialogue that we have had with the LSB on the section 69 order. The draft section 69 order addresses the following issues:

- section 85 SA – this provides protection for client money in the event of action by a bank against a solicitor/RB and this protection is to be replicated in the LSA;
- the SRA's ability to collect periodic fees from RBs;
- the power to obtain information from third parties concerning ABSs;
- the ability for the SRA to recover the cost of investigations from ABSs (as it is able to do from traditional law firms); and
- a change to sections 36 and 36A SA to enable the operation of a single compensation fund for traditional law firms and ABSs until December 2012 (allowing for the outcome of the review of client protection[4]).

33. We also intend to consult on a second draft section 69 Order, enabling the SRA to treat recognised sole practitioners (RSPs) as RBs, by removing the need for licensing through the mechanism of an endorsement on the practising certificate, and instead allowing RSPs to be authorised in the same way as RBs.

34. One major area for discussion remains outstanding: the definition of reserved legal services[5]. Entities that provide legal services will only

be able to be regulated as ABSs under the LSA if they undertake one or more reserved activities (litigation and advocacy, probate services, conveyancing). If they provide only unreserved legal activities, such as will-writing, legal advice and mediation services, they will be able to do so, as they can at present, on an unregulated basis and with no client protection in place (other than that provided by the general law).

35. The SRA welcomes the LSB's commitment to examine the appropriateness of the extent of reserved legal activities. We have asked that the definition of reserved legal activities be extended to cover all "solicitor activities" for the following reasons:

(i) to secure consistent consumer protection in what may be a rapidly changing legal services market;

(ii) to avoid consumer confusion over which legal services in this new market are regulated and which are not. We have recently conducted consumer research which demonstrates that there is a high degree of confusion amongst consumers about the provision of legal services and a lack of understanding of which services are regulated and the consequences of receiving services from an unregulated provider; and

(iii) our ultimate concern is the fragmentation of the legal services market into unregulated firms which provide poor standards of service and put client money at risk, and high quality, professionally run and regulated firms providing reserved legal services.

36. As a result of our discussions with the LSB we are consulting on the contents of two new sets of rules—the SRA Compensation Fund Rules and the SRA Cost of Investigations Regulations and further changes to other sets of rules. The impact of the proposed section 69 Orders is highlighted throughout this paper.

Multi-disciplinary practices

37. In the May Consultation we explained that we were continuing with our work on MDP ABSs, based on our understanding of our jurisdiction in relation to ABSs. Our priority is to ensure that MDP ABSs are regulated in the most effective manner, avoiding, so far as is possible, regulatory duplication and gaps. Since the May Consultation we have undertaken a considerable amount of work on MDP ABSs with other regulators and professional bodies. We are making good progress. Our work is focused on:

- understanding how the SRA's jurisdiction in relation to MDP ABSs impacts on our Handbook of regulatory requirements. This is reflected in the application provisions of the different sets of rules in the Handbook;
- assessing the risks associated with MDPs. For example, some respondents were particularly concerned about the possibility of an MDP using confidential and sensitive client information to cross-sell other services. Whilst not MDP specific, the Code restricts inappropriate use of sensitive client information. In the Accounts Rules we have protected money arising from legal activities by requiring that it be ring-fenced from other forms of client money;
- deciding whether it is necessary to have specific rules/modified rules governing MDP ABSs (at the moment we have concluded that this is not necessary, provided that the extent of our jurisdiction is clearly delineated in our rules);
- considering how we will share relevant information with other regulators and professional bodies, where we jointly regulate an entity providing a diverse range of professional services. The framework memorandum of understanding (FMOU), which is being developed with other regulators and professional bodies, will address the need to share information concerning firms and individuals between relevant regulators and professional bodies where it is in the public interest to do so;
- identifying areas of regulatory overlap where more than one regulator/professional body regulates a firm. The FMOU will address how we as regulators can work together to ensure the efficient supervision and investigation of firms and individuals;
- discussing areas for potential harmonisation of regulatory regimes, for example, in relation to client money. The working group of regulators and professional bodies has agreed that we will seek to harmonise regulation to ease the regulatory burden on MDPs; and
- assessing the potential impact of MDP ABSs on the SRA's compensation fund. Again, we have sought to ensure that the Compensation Fund Rules only cover those aspects of an MDP's activities that fall within our jurisdiction.

38. Our working group involving other regulators and professional bodies will continue to tease out and resolve some difficult issues in relation to MDP ABSs, both in the run up to October 2011 and beyond. These discussions will be reflected in the FMOU which we plan to publish in December 2010 and in other communications. The FMOU will provide a framework for cooperation, coordination and exchange of information in order to facilitate effective public protection and working relationships.

4. Architecture of the new Handbook - bringing principles and outcomes to the heart of our regime

39. The SRA Handbook is the first major step in the practical implementation of our outcomes-focused approach. In May we consulted on the Handbook structure and the sets of regulatory requirements that it will contain. The Handbook is designed to bring all of the SRA's regulatory requirements into a single, coherent structure.

40. We are committed to the implementation of a regulatory regime that has at its heart the right outcomes for consumers whilst being proportionate to the risks that we have identified. Outcomes-focused regulation enables us to move away from a "one size fits all" approach, since it introduces greater flexibility and opportunities for innovation, based on clients' requirements. Overall, the responses to our consultation have confirmed our view that we are taking the right approach.

41. Some respondents have quite rightly stated that the SRA itself needs to change in order successfully to implement the new outcomes-focused Handbook. This we accept. We are, therefore, assessing and training our staff to ensure that they are equipped and competent to deliver OFR [6] in a manner that maintains the right standard of client protection through proportionate and evidence-based policy making and regulatory action.

42. Question 2 of the May Consultation asked:

> **Do you agree with the new Handbook structure?**

Summary of feedback

43. The majority of respondents either had no comment or welcomed the drawing-together of all of the SRA's regulatory requirements in one Handbook. Respondents requested that we make the online Handbook as easy to navigate as possible.

> "The structure appears to us to be fit for purpose." - Solicitors in Local Government

44. There was strong support for a single glossary for the Handbook and for greater harmonisation of the rules in terms of their style.

45. Although this was not related to the question, a number of respondents did express concern about OFR and whether it was appropriate as a regulatory model. One respondent expressed concern about the underlying assumptions behind OFR and that the removal of rules could lead to suggestions that certain conduct is justified by the outcome.

Our response

46. We will endeavour to make the online version of the Handbook as user-friendly as possible. In relation to the glossary, this is still in the process of development, which reflects the fact that our rules themselves are at different stages of completion. We will be consulting on the new glossary in the second quarter of 2011 in order to finalise it prior to October 2011.

47. The SRA is committed to OFR since we believe that this is the model which most accurately reflects our focus on client protection and service.

Further consultation

Introduction to the Handbook

48. We have drafted an Introduction to the Handbook on which we now seek your views. The Introduction is intended to set out clearly in summary the purpose and overall design of the Handbook. It is also intended as an aid to navigation and a helpful tool for both consumers and practitioners alike.

49. The Structure of the Handbook and the Introduction to the Handbook are at **Annex A**.

Implementation timeline

50. Since the publication of the May Consultation, we have been considering the implementation timeline for each set of regulatory requirements. The timeline needs to take account of the following:

- the necessity for certain sets of rules to be in force for ABSs at the point when formal applications for ABSs are being made (mid 2011);

- the operational implications for the SRA of authorising and regulating ABSs and approving individuals/organisations to hold certain roles (e.g. COLPs, COFAs, managers and owners);
- legal disciplinary practices (LDPs) have a grace period, and will not need to switch to ABS status until October 2012;
- some firms (LDPs) and individuals and organisations will be "passported" into certain roles;
- the move to abolish the mechanism for endorsing practising certificates for sole practitioners and instead treat them as a form of recognised body;
- "special bodies" will not need to be authorised as such until March 2013.

51. Details of the overall implementation timeline and details of the commencements and repeals of provisions are set out in **Annex J**. Further information is provided in relevant sections of this paper. In summary, our intention is that the transition to the new Handbook will be as follows:

- 10 August 2011 – Authorisation Rules, the Code, the Principles, Practice Framework Rules and Compensation Fund Rules come into force for ABSs from that date to allow formal applications to be made for authorisation as ABSs from October 2011;
- 1 October 2011– new Indemnity Rules and Indemnity Insurance Rules come into force for all existing firms and proposed firms;
- 6 October 2011– the Code, the Principles, Practice Framework Rules and the Accounts Rules come into force for recognised bodies and recognised sole practitioners, along with the Statutory Trust Rules, Financial Services Rules, Property Selling Rules, Disciplinary Rules, Training Regulations etc., Cost of Investigations Regulations, which come into force for all firms;
- 6 October 2011 – LDPs with non-lawyer managers can choose to passport to ABS status from this date;
- 31 March 2012 – recognised sole practitioners passported to become recognised bodies[7]; all recognised bodies (including those with non-lawyer managers which have not chosen to passport by this date and recognised sole practitioners) transitioned to become subject to the Authorisation Rules. Recognised Bodies Regulations and parts of the Practising Regulations are repealed;
- 31 October 2012 – recognised bodies (with non-lawyer managers) passported to become ABSs. First round of annual reporting for all firms;
- 31 October 2012 – grace period ends for existing recognised bodies (including recognised sole practitioners) to have approval for COLP/COFA;
- around January 2013 – amendment of Authorisation Rules and switching on of these and the Code, Practice Framework Rules, the Principles, Compensation Fund Rules, to permit formal applications from special bodies from that date;
- March/April 2013 – first ABS licences can be issued to special bodies, for special bodies, switch on of Accounts Rules, Statutory Trust Rules, Financial Services Rules, Indemnity Rules and Indemnity Insurance Rules, Disciplinary Rules, Cost of Investigations Regulations if applicable.

Questions:

1. Do you have any comments on the Introduction to the Handbook?

2. Do you have any comments on the implementation timetable?

Principles and guidance

52. Questions 3 and 4 of the May Consultation asked:

Do you agree with the new Principles and our approach to applying them across the Handbook?

In what areas do you think explanatory guidance would be particularly helpful?

Summary of feedback

53. The majority of the responses were supportive of the Principles and our approach to applying them to all Handbook requirements. The main concerns related to Principle 9 which stated that you must "run your business/carry out your role in the business in a way that promotes equality and diversity and not discriminate unlawfully in connection with the provision of legal services". Respondents expressed concern that this Principle not only went beyond what is required by legislation, but also represented a raising of the bar from Rule 6 of the current Code and

in fact amounted to an obligation on firms to discriminate positively. Some respondents felt that the Principle was too onerous in requiring those to whom the new Code applies to "promote" equality and diversity, and that a wide-ranging positive obligation to promote equality and diversity (especially when applied to multi-national firms) could pose problems for firms and individuals.

> "Yes, with the exception of Principle 9…….There is legislation in place that makes discriminatory practices illegal. We do not see the purpose in having this included as a Principle in the new Handbook." – Bird & Bird

> "In summary Which? will continue to support the move to principles-based regulation if it can be proven to deliver better consumer outcomes. However, we believe that the jury is still out on its impact. In particular there needs to be recognition that principles should be seen as a way of going beyond existing rules, to allow future proofing, rather than a replacement for rules." – Which?

54. A small number of respondents queried why confidentiality was not included as a Principle. A minority of respondents queried Principle 10 (the obligation to protect client money and assets) as this was seen by those respondents as an additional burden.

55. Other feedback on the Principles primarily concerned the need for guidance and the concern that the application of the Principles (particularly 8 and 9) to all within a firm, as opposed to principals and managers, would result in individuals being disciplined for matters over which they had no control.

56. On the subject of guidance, there was considerable enthusiasm from many respondents for guidance on a wide variety of issues. Many considered that guidance would aid compliance, improve clarity and minimise uncertainty. However, some respondents were of the opposite view and were concerned that non-mandatory guidance would tend to become rule-making by the back door and would be treated as compulsory by the SRA and Solicitors Disciplinary Tribunal (SDT).

> "There is a concern that explanatory guidance if contained in the Code would be referred to by the SDT and effectively become compulsory."

57. One respondent felt that it would be helpful for the SRA to publish details of behaviour that demonstrated achievement and non-achievement of the outcomes in the Code.

> "… once the SRA has started making decisions or taking a view as to whether a particular course of action taken by a firm in relation to any of the outcomes is, or indeed is not, acceptable, then such decisions should be published, in a suitably anonymised form, for the guidance of other members of the profession …" – Tunbridge Wells, Tonbridge & District Law Society Regulatory Committee

Our response

58. As a result of the feedback on Principle 9, we have reviewed the wording of the Principle. We remain of the view that the Principle does not represent a raising of the bar, since it replicates the standard required in Rule 6 of the current Solicitors' Code of Conduct. Neither do we accept that the draft wording for Principle 9 imposes an obligation to discriminate positively. However, in the light of the concerns expressed we have re-drafted the Principle better to reflect our view of the obligations of firms in this area. We have removed reference to what is a general legal obligation concerning unlawful discrimination. Principle 9, as re-drafted states that you must:

> "run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity;"

We have also made a minor change to Principle 8, substituting "or" for "/" to improve clarity.

59. Principle 10 goes to the heart of the duty to act in the best interests of clients, which means protecting and safeguarding their money and assets, over which you have control. The notes to the Principles provide further clarity on this point.

60. Although we had considered a separate Principle on confidentiality, we took the view that:

- confidentiality was already covered by the other Principles, especially Principle 4 (act in the best interests of your client); and
- this issue is fully covered in Chapter 4 (Confidentiality and disclosure).

61. We remain of the view that the Principles should apply both to firms and to all those who work within firms, and this is confirmed in the

application provisions to the Principles. With regard to the issue of regulatory action, our notes to the Principles explain that this will very much depend on all the circumstances of the case.

62. We have reconsidered our approach to issuing guidance. Throughout the Handbook, where we consider it appropriate to do so, we have provided guidance (for example in the notes to the Accounts Rules and in the Authorisation Rules). In relation to the Code, we wish to avoid the risk of guidance being regarded as mandatory. We have, therefore, reviewed, and where appropriate amended and expanded the non-mandatory indicative behaviours, which fulfil a similar function to that of guidance. We have added brief non-mandatory "notes" where we think that users will be helped, e.g., in terms of navigation and cross-referencing. We intend to assist users further by publishing material on our website aimed at easing the transition from the current to the new regulatory regime. This will include frequently asked questions, guidance on particular issues that arise, "decision trees" and a user manual that will assist firms and individuals in making the transition to a more outcomes-focused approach to meeting their regulatory obligations. We also agree with the suggestion that we publish anonymised examples of achievement and non-achievement of the outcomes in the Code.

63. We recognise that the transition to OFR will also present challenges to the SRA and that there are concerns that our staff will take an overly-stringent approach or inconsistent approach to the interpretation, in particular, of the outcomes in the new Code. For this reason, our staff are being trained and assessed in order to ensure that they are equipped and competent to deliver OFR. We will be monitoring our staff against behavioural and technical competencies which are designed to implement a regulatory approach that is proportionate, transparent and consistent.

Further consultation

64. We have applied to solicitors, registered European lawyers and registered foreign lawyers in respect of their activities outside practice:

- Principle 1 (you must uphold the rule of law and the proper administration of justice);
- Principle 2 (you must act with integrity); and
- Principle 6 (you must behave in a way that maintains the trust the public places in you and in the provision of legal services).

We believe that there are circumstances where activity outside practice can, for example, raise questions concerning the integrity of an individual. Whilst we would always seek to act proportionately, it is important that we have the ability to take action to achieve the regulatory objectives.

65. We have endeavoured to answer some of the concerns raised by respondents in the notes to the Principles, but we are mindful of the need to avoid excessive detail, since this detracts from our outcomes-focused approach.

66. A final draft version of the SRA Principles, together with the notes and application and transitional provisions, is attached at **Annex B**.

Questions:

3. Do you have any comments on the revised Principles, application provisions and notes to the Principles?

4. Do you have any comments on our approach to guidance?

5. Conduct of legal services

(a) SRA Code

67. Questions 5, 6 and 7 of the May Consultation asked:

Do you agree with the new Code structure?

Do you have any overall comments on the new format (Principles, outcomes, indicative behaviours)?

Do you think that the outcomes (together with the indicative behaviours) achieve the right balance in providing sufficient clarity on the SRA's expectations for firms whilst enabling firms to operate flexibly?

Summary of feedback

68. The new Code structure was generally welcomed by respondents as it was felt to provide greater clarity on obligations in particular contexts, and to allow easy navigation. The introductions were also said to provide a useful summary of the main aims of each chapter.

"We agree with the new structure and format of the code which strikes a reasonable balance between allowing the profession greater flexibility in how it achieves the pervasive Principles and related outcomes whilst retaining clarity about key mandatory provisions."

69. A common theme in the responses related to the need to develop trust between the SRA and firms in relation to the interpretation of outcomes.

> "The success of the move to outcomes focused regulation will depend very largely on the success of the relationship between the SRA and law firms and, in particular, the enforcement arm." – Herbert Smith

70. Respondents felt that, whilst they understood the link between the Principles, the outcomes and the indicative behaviours (IBs), there was no need to repeat relevant Principles at the start of each chapter.

71. On the issue of the balance between clarity and flexibility, there was a range of views. Some respondents felt that this is an issue that can really only be assessed once the new Code is in force and firms and individuals can see how it works in practice. Some firms commented that the language of the IBs is more in the nature of outcomes.

> "On the face of it they do [achieve the right balance], although only time will tell whether they work in practice. As with most other areas of the move to OFR a degree of flexibility will be required." – Co-operative Legal Services

72. Consumer groups were concerned that insufficient focus was given to the user of legal services. This is because the Code is addressed to providers of legal services rather than generally adopting the approach of the FSA's treating customers fairly outcomes, which are drafted by reference to the experience of customers.

73. On the IBs, the overall response was positive. However, concern was expressed about the role of IBs in determining whether disciplinary action would be taken and the weight given to non-compliance with the IBs in any action.

> "The SPG agree with The Law Society that the concept of 'indicative behaviours' is dangerous. It gives even more opportunity for the use of hindsight and 'disapproval' by the regulator. Solicitors are used to 'guidance' which has worked well in the past and following guidance can be indicative of an intention to work within the rules and provide the best service to the client." – Sole Practitioners Group

> "At a high level, our view is that the Indicative Behaviours provide insufficiently detailed application of the circumstances applicable to many different sorts of businesses and sectors, such as the Corporate firms comprised within the CLLS's membership, to provide sufficient clarity and certainty as to the application of the Principles and Outcomes." – City of London Law Society

> "It is essential that the establishment of OFR is not undermined by the SRA treating non-compliance with the 'indicative behaviours' as suggesting failure to achieve the required outcomes. To give indicative behaviours a semi-mandatory status would indicate that the avowed move away from over-prescriptive regulation has not been realised in practice and that the essence and spirit of a genuinely outcomes and principles based system has been lost." – The Law Society of England and Wales

74. A number of respondents provided detailed drafting suggestions on the outcomes and IBs. We welcome this feedback and level of engagement.

Our response

75. We have added a fifth section to the Code covering application, waivers and interpretation. In addition, we have removed the Principles from the start of each chapter, stripped out any duplication between outcomes and IBs, and removed any mandatory language from the IBs.

76. We have reviewed the IBs for their application to City firms. We would also stress that IBs are not mandatory and that firms have the option to achieve the outcomes in other ways.

77. Consumers' interests and the broader public interest lie at the heart of the new Handbook. For example, whilst the Handbook may be drafted as obligations on law firms of all types, including solicitors and ABSs, it is clear that many of these are obligations that require firms to consider the needs of consumers. For example, obligations are focused on such matters as service delivery and requiring firms to manage themselves in such a way that they do not put their clients at risk through, for example, poor financial management. This is summed up in a new outcome to treat clients fairly. However, it must also be borne in mind that, unlike providers of other consumer services, lawyers have other duties which in some circumstances take precedence, for example, the duty not to mislead the court.

78. One respondent suggested that the SRA implement a "customer charter". We believe that a more effective means of empowering clients is to provide them with information to help them assess the legal services that they require. We will also make greater efforts to raise the profile of the SRA amongst consumers. The approach that we are taking also includes:

- publishing for consumers a set of key outcomes that we expect firms to achieve for their clients;
- developing our website and other sources of information (such as leaflets etc. which can be supplied to advice centres) to improve the range of advice and information we provide to consumers on seeking legal advice and obtaining a proper service;
- direct engagement with consumers and fora about how we can empower consumers and enable them to have a more informed relationship with those who provide legal services;
- undertaking research into consumers' experience of legal services. For example, we have recently undertaken research into consumers' understanding of what regulatory protections are, and are not, in place when they purchase legal services.

79. The Introduction to the Code has been revised to make it clear both that IBs are not mandatory and that firms and individuals have choices in terms of how they meet the outcomes. We encourage practitioners to meet the outcomes in a way that is most appropriate for their clients, be they FTSE 100 companies or particularly vulnerable individuals. We also make it clear that non-compliance with IBs will not, of itself, constitute grounds for disciplinary action.

80. We have reviewed all of the detailed drafting comments and where appropriate have amended the wording of the Code.

81. Our competition analysis of the Code has not identified any issues of substance.

Specific issues

(a) Conflicts of interests

82. Questions 8, 9 and 10 of the May Consultation asked:

Do you have any comments on the Models (Annex F) for regulating conflicts?

Do you have any comments on the removal of the detailed provisions relating to conveyancing, gifts, etc.?

Do you believe that outcomes provide sufficient clarity for regulating conflicts or do you think rules would be more appropriate?

Summary of feedback

83. Of the models offered, respondents tended to favour Model 2. However, there was broad support for the retention of requirements similar to the existing rules. This was because the majority of respondents felt that now was not the time for significant change to the conflict of interest provisions, despite the re-drafting of the Code and that the SRA should, therefore, retain both the emphasis in, and form of, the existing provisions. The Legal Services Consumer Panel favoured an outcomes, rather than a rules-based, regime for regulating conflicts.

"… Model 2 offers the best balance between providing flexibility where the risks to clients' interests are insignificant and disallowing solicitors from acting where this would not be in clients' interests." – Legal Services Consumer Panel

"The current rules have evolved over time and are generally accepted to be clear and easy to follow. The proposed models do not reflect the subtleties that have evolved within the current rule and which ensure that clients are protected. We believe that it is likely to

be to the detriment of clients to sweep away the detail within the rule … We do not believe, in this instance, that an outcomes-focused approach provides sufficient clarity." – The Law Society of England and Wales

"With the introduction of the principles this should guide the 'ethical' approach to conflicts and achieve the same outcome as the detailed rules which are to be removed." – Devon and Somerset Law Society

84. There was support for removing the specific provisions on conveyancing conflicts, whereas some respondents did feel that the provisions relating to financial gifts should be expressed in the form of a specific rule.

"We support the removal of detailed provisos where more general principles and outcomes produce a consistent result. However … acting where a person in [a firm] is likely to be recipient of a lifetime gift or gift on death is a classic example of one where a clear rule – guidance – prohibiting just this event – is required to protect clients and members of the public." – ICAEW

Our response

85. We have had regard to the concerns expressed by respondents about the need for clarity in relation to conflict of interests obligations. However, we have maintained our general approach to identifying the outcomes we require to be achieved. We believe we have done so in a manner which maintains the same level of consumer protection and which also provides clarity for practitioners. The outcomes are supported by IBs. In line with consultation responses, we have removed the specific provisions relating to conveyancing. This is not intended to imply that we have changed our position on acting for buyer and seller. With regard to gifts, we have moved the obligations not to take unfair advantage of your client and to advise your client to take independent legal advice to Chapter 1 (Client care)[8]; such situations must in our view also be subject to the main obligation not to act where your interests conflict with those of your client. See paragraph 96 below.

(b) Separate business rule

86. Question 11 of the May Consultation asked:

Do you agree with our approach to the provision of services through a separate business?

Summary of feedback

87. The majority view was that the separate business rule should remain in force and be applied across the board. However, some firms—both traditional law firms and potential ABSs—felt that the separate business rule, albeit now expressed in outcome form, represented an unduly onerous restriction on providers of legal services and put them at a competitive disadvantage against those seeking to provide non-reserved legal services through an unregulated company with no associated regulated firm.

88. Some respondents provided detailed drafting comments on Chapter 12 of the Code which were gratefully received.

"It is interesting that this approach is being adopted and it is important that the professionals are not pushed out of what is going to most probably become a very competitive arena. It is vital that professional standards are going to be maintained and that the public know this."

"Separate businesses – the current separate business rule does not address the heart of the real issue, i.e. is a matter a reserved or a non-reserved activity. If a matter is non-reserved it is for a reason and businesses should be free to decide how they might deliver such a service." – Co-operative Legal Services

"We can see that there is a concern that non-reserved legal services may be deliberately provided through a separate business owned by a firm, or an associate of a firm, which is not authorised and regulated by the SRA, and which therefore undermines client protection. Furthermore, such an arrangement would potentially, in our view, give such a separate business a competitive advantage as it would be free from regulatory costs. The temptation to arrange activities in this way would be even greater in the case of an ABS, where there is likely to be a greater proportion of non-regulated activity and a desire to remove it from the regulatory regime intended to apply to the ABS by the SRA. We therefore agree with your intention to continue the current SRA prohibition on conducting certain non-reserved legal activities through a separate unregulated business." – The City of London Law Society

Our response

89. We have reviewed the specific drafting comments. We continue to believe, however, that there is a need to restrict regulated firms (and individuals currently providing reserved legal services) from providing non-reserved legal activities through a separate business. Our justification is that given in our May Consultation: that there is a need to prevent regulatory avoidance in the interests of consumer protection. Our view is supported by the consumer research that we have undertaken which found that consumers lack understanding of the various providers of legal services and the differing levels of protection associated with purchasing legal services from them.

90. We do not accept that there is any necessity to retain prescriptive rules, particularly given that our primary concern is the end result—the outcome for consumers.

(c) In-house and overseas practice

91. Question 12 of the May Consultation asked:

> **Do you agree with our proposals concerning the application of the Code to overseas practice, in-house practice, etc.?**

Summary of feedback

92. Of those who responded, the majority highlighted the fact that the overseas application of the Code had been extended beyond that contained in the current Code and felt that this extension was not justified. However, most respondents felt that it was appropriate to apply the Code to overseas practice, with some modifications, and that this was an area for further clarification.

> "We agree to the principle of applying the Code to overseas practice, in-house practice, etc. We agree that some of the outcomes described in each chapter are not appropriate to these forms of practice."

93. With regard to in-house practice, there was a concern amongst respondents that some of the outcomes were not applicable to this form of practice and that the application of the Code to in-house lawyers was unclear.

Our response

94. Having reviewed the feedback to the consultation, we decided to reintroduce the solicitor-controlled (albeit now recast as "lawyer-controlled") restriction on the application of the Code to overseas practice (note, however, that the Principles do apply to all overseas practice). We have also reviewed the outcomes, and specifically highlighted those that are not applicable (or should apply in a modified form) to overseas practice. We are, however, undertaking a more general review of the regulation of overseas practice in the next 12 months.

95. We believe that in-house lawyers should exercise their judgement; where outcomes are clearly not applicable to their particular circumstances then self-evidently they will not apply. As with overseas practice, we have reviewed the Code and included further provisions on the application of the Code to in-house practice.

Further consultation

96. The main changes that we have made to the Code as a result of the May Consultation are as follows:

(a) we have removed the references to the Principles at the start of each chapter and stripped out unnecessary detail and duplication;

(b) Chapter 1 (Client care) – we have re-drafted the outcomes and IBs relating to complaint handling, in line with the requirements of the LSB;

(c) Chapter 3 (Conflicts of interests) – this is a new chapter. Whilst we acknowledge the strong support for the retention of the existing rules to cover conflicts of interests, we believe that the rules needed to be reviewed to ensure consistency and clarity and to emphasise the required outcomes. For this reason we have re-drafted the main rules and the exceptions as outcomes, and clarified the extent of the exceptions;

(d) Chapter 10 (You and your regulator) – we have inserted an outcome covering the need to comply with all reporting obligations in the Handbook, wherever they are located;

(e) guidance – we have included a number of notes in the Code. Further help for firms will be provided in the form of, e.g., frequently asked questions, which will be published on our website.

97. The Code will come into force for ABSs on the date on which the SRA is designated as a licensing authority and, for recognised bodies and sole practitioners, on 6 October 2011. The reason for the earlier implementation for ABSs is that the Code contains definitions relevant to the Authorisation Rules and Practice Framework Rules, both of which need to be in force prior to October 2011 in order to enable intending ABSs to make formal applications for authorisation.

98. Provisions in the existing Code of Conduct, that need to remain in force until the Authorisation Rules become applicable to recognised bodies and sole practitioners, have been retained as revisions to the Recognised Bodies Regulations and revisions to the consultation version of the Practice Framework Rules (see **Annex F3 and F4**).

99. The revised SRA Code of Conduct is at **Annex C**.

Questions:

5. Do you have any comments on the revised Code?

6. Do you have any comments on Chapter 3 (Conflicts of interests)?

(b) SRA Accounts Rules

100. Question 13 of the May Consultation asked:

> **Do you have any comments on the revisions to the Accounts Rules?**

Summary of feedback

101. Most respondents agreed with the retention of rules in this high risk area. There was also support for clarifying which parts of the notes are mandatory and which are purely explanatory, by moving the mandatory elements to the Rules and leaving the remainder as non-binding guidance. A limited number of respondents disagreed with the outcomes-focused approach to the interest provisions and to signing on client account. One respondent queried whether the SRA would publish a guide rate for interest that we feel would be appropriate. A small number of respondents also expressed concern about the removal from the Rules of the *de minimis* figure for interest payments.

> "In the case of the custodianship of client money and clients accounts surely the client is entitled to see that this money is held on the basis of clear rules rather than on the basis of outcomes focused regulation…" – Sole Practitioners Group

> "We do not consider it is helpful to abolish rules relating to interest rates. The abolition will only cause confusion for clients, and create unnecessary work for firms. We do not see what is wrong with the current approach." – Network Rail Infrastructure Limited

> "We … agree with the two areas in which a more outcomes focussed approach is proposed, namely signing on client account and the interest provisions."

102. Some respondents felt that it was unclear which money falls outside the scope of the Accounts Rules, and that it would be operationally difficult to ring-fence client money relating to SRA -regulated activity in an MDP ABS.

103. With regard to COFAs, a small number of respondents objected to requiring recognised bodies to appoint such a person and felt that these responsibilities might conflict with the duty of all principals to ensure compliance with the Accounts Rules.

104. A small number of respondents supported a review of:

- the accountant's report regime and the role of the reporting accountant;
- the application of the overseas accounts provisions.

Our response

105. Whilst we accept that it may be operationally difficult to ring-fence client money for SRA -regulated activity, it is imperative that firms do so in order to protect such client money. In any event, the SRA's jurisdiction precludes the use of a single MDP client account, and other regulators may have different rules relating to the treatment of money held for clients. It is therefore not possible simply to treat all money held for clients in an MDP, where there are multiple regulators or professional bodies with different rules, in the same manner. However, in response to concerns, we have clarified the scope of the rules and what constitutes "out-of-scope" money for the purposes of the Accounts Rules. We have also clarified the treatment of monies received/held for costs where there is an out-of-scope element, and expanded the record keeping requirements to the limited extent necessary to deal with out-of-scope money.

106. We do not propose to revert to detailed rules on interest and signing on client account. These are areas where firms should be able to exercise appropriate judgement without unnecessary prescription, and it is for this reason that we do not currently intend to publish a guide to rates that we would consider "fair and reasonable". There is one exception in relation to signing rights on client account. Although we have retained our more outcomes-focused approach to signing rights, we have prevented an owner who is neither a manager nor an employee of an ABS from being the sole signatory on the client account. We believe that such an owner could not justifiably be given sole signing rights for the client account of an entity in which they were not directly involved as a manager/employee.

107. We do not accept that there is an inconsistency between the obligations of principals and those of the COFA. In practice, COFAs are responsible for implementing the necessary controls in relation to finance and administration, whilst the principals are responsible for the oversight of those controls. This being the case, the duty to ensure compliance with the Accounts Rules rests equally with the principals and the COFA, and we have clarified this in the Rules.

108. The OFR approach taken in respect of interest has meant that we have removed all the prescriptive provisions, including the £20 *de minimis* figure. However, firms will be able to include a *de minimis* figure in their interest policy.

109. In order to ensure that reports on an ABS are independent, we have prevented an accountancy practice that has an ownership interest in, or is part of the group structure of, an ABS from providing an accountant's report for that ABS.

110. Finally, we have aligned the overseas interest provisions with the new domestic requirement to pay a fair and reasonable amount of interest when it is fair and reasonable to do so.

111. Although the provisions have not changed, we are in the process of reviewing the future role of the reporting accountant and the accountant's report regime and anticipate publishing a consultation on this in 2011. We will also be reviewing overseas practice, including the application of accounts provisions to practice overseas.

112. The revised SRA Accounts Rules are published in their final form at **Annex D**.

(c) Specialist Services

113. Questions 14 and 15 of the May Consultation asked:

> **Do you have any comments on the structure of the Specialist Services section?**

> **Do you believe that the financial services and property selling exemptions should be extended to ABSs?**

Summary of feedback

114. Very few respondents commented on question 14, since for many these areas of practice are not relevant. Those who did comment agreed with our overall approach, and in particular the retention of rules.

> "We consider it proportionate that the regulator expects firms to act in accordance with the standards expected by the FSA, CCBE Code and legislation governing estate agency in respect of the relevant specialist services. This approach reflects the SRA's strategic objective only to place restrictions on firms to the extent it is necessary to mitigate risks to the regulatory objectives, an approach we endorse."

115. With regard to question 15, opinion was divided on this issue but the majority considered that the exemptions should be extended to

ABSs. One respondent suggested that ABSs conducting financial services should be directly regulated by the FSA.

116. One respondent expressed concern that the extension of exemptions to ABSs would lead to inappropriate cross-selling.

> "We think that the financial services and property selling exemptions should be extended to ABS. This will help to achieve a level playing field whereby ABS have the same opportunities as non- ABS." – The Law Society of England and Wales

Our response

117. We are pleased that respondents supported our rules-based approach to Specialist Services.

118. We accept that there is a need to prevent firms from inappropriate cross-selling, however, we consider that it is in the public interest that these exemptions should be extended to ABSs since they promote competition. Should we have concerns about a particular firm, we would consider whether the firm were acting in the best interests of its clients in relation to its marketing activities and we may consider imposing a licence condition.

European cross-border practice

Summary of feedback

119. There was very little feedback on the SRA European Cross-border Practice Rules. There was a request for guidance.

Our response

120. At this point we are not minded to provide further guidance in the Handbook. However, we will make helpful information available on our website.

121. The final draft SRA European Cross-border Practice Rules are at **Annex E1**.

Property selling

Summary of feedback

122. Comments on the SRA Property Selling Rules were also very limited and related to clarity of definitions.

Our response

123. We believe that the definitions are sufficiently clear and these will form part of the glossary which is being developed.

124. The final draft SRA Property Selling Rules are at **Annex E2**.

Further consultation

Financial services

125. The general prohibition in the Financial Services and Markets Act 2000 (FSMA) states that no one in the UK can carry on financial services in the UK unless they are authorised by the Financial Services Authority or exempt. The Part XX exemption in FSMA enables solicitors' firms which meet certain conditions to be treated as exempt professional firms and to carry on activities known as exempt regulated activities under the supervision of, and regulation by, the SRA. This is because the SRA, through the Law Society of England and Wales, is a "designated professional body" (DPB).

126. It is a statutory requirement of the Part XX exemption that the DPB makes "rules" to govern the carrying on of regulated activities. The SRA has made the Solicitors' Financial Services (Scope) Rules 2001 (the Scope Rules) for this purpose and these set out the scope of the exempt regulated activities which law firms can carry on under the Part XX exemption together with various prohibitions, restrictions and conditions. Under section 332(3) of FSMA, the FSA must approve any changes to the Scope Rules before they come into force. In addition, the SRA has made the Solicitors' Financial Services (Conduct of Business) Rules 2001 (the COB Rules). The COB Rules set out requirements about how solicitors' firms should conduct financial services activities.

127. The SRA has been discussing two issues with the FSA and has reached agreement as follows. Section 327 of FSMA states that in order to benefit from the exemption, a person must either be a member of a profession or "controlled or managed by one or more such members". The SRA asked whether the FSA considered that if an ABS is authorised by the SRA to conduct one or more reserved legal activities, and is subject to the SRA Handbook, that entity will be able to satisfy the requirement that it is a member of the profession. The FSA agreed with this interpretation. The FSA also consider that an ABS would in any event be able to rely on the second limb of the definition if that entity is managed at a senior level by one or more members of the legal profession. This means that the FSA takes the view that ABSs can rely on the Part XX exemption and are able to carry on exempt regulated activities, provided that they meet all the requirements of section 327 and comply with the Scope Rules and the COB Rules. The Rules have, therefore, been amended to extend their application to ABSs.

128. There are approximately 80 law firms which are regulated by the SRA and also authorised by the FSA to undertake mainstream financial services. These firms do not work within the Part XX exemption and must comply with requirements set out in the FSA Handbook. They are classified as "authorised professional firms" and they are entitled to rely on some concessions that other authorised entities are not.

129. However, the definition in the FSA's Handbook is slightly, but significantly, different from that given in statute. This means that ABSs which are authorised and regulated by the SRA would not be able to be treated as an authorised professional firm in the same way as traditional law firms. The FSA has agreed to consult on an amendment to the definition in the FSA Handbook so that ABSs can be treated as authorised professional firms.

130. We have redrafted the Scope Rules and the COB Rules to extend their application to ABSs. For the most part, the Rules have not been changed so that, for example, the basic conditions, prohibited and restricted activities, remain the same. The key changes are as follows:

- nomenclature changes in line with other rules in the Handbook;
- extension of application to ABSs;
- defined terms for consistency with definitions in other parts of the Handbook in readiness for the glossary;
- addition of notes to the Scope Rules so that the style is consistent with other rules in the Handbook; and
- updating of references in the notes to the COB Rules to reflect the numbering etc. of the Code.

131. The Scope Rules and the COB Rules are at **Annexes E3** and **E4** .

Question:

7. Do you have any comments on the application of the financial services rules to ABSs?

6. Engaging with the SRA – authorisation and discipline of firms and individuals, and training requirements

Authorisation Rules

132. Question 16 of the May Consultation asked:

Do you agree with our proposals to apply the requirements for a COLP and a COFA to all firms (including recognised sole practitioners)?

Summary of feedback

133. With regard to the title given for these roles, a small number of respondents felt that we should adopt the titles in the LSA of Head of Legal Practice and Head of Finance and Administration.

134. Responses to the issue of whether these roles should apply to all firms (not just ABSs) varied with many large City practices against these proposals. Some firms, many local law societies and other organisations were in favour. A small number of other respondents said their response depended on the SRA taking a proportionate approach towards smaller firms. One concern that a number of respondents raised was that the roles of COLP and COFA would detract from the corporate and individual responsibility for conduct.

"Whilst FOIL understands the SRA's view that the creation of these two new roles within all firms will ensure greater focus on regulatory issues, it believes that more detailed guidance is needed on the nature of the roles and the "fit and proper" criteria to be applied in assessing applicants, to clarify the exact nature of the roles and confirm where the responsibilities for ensuring regulatory compliance sit within a firm ….The extent of the responsibilities on the COLP and the COFA should also be clarified: what will "take all reasonable steps to ensure compliance" mean in practice?; what will "report to the SRA *any* failure" mean in practice?" – The Forum of Insurance Lawyers

"Depends on the responsibilities, although seems sensible to have a named contact." – Dickinson Dees LLP

"We agree in principle, although smaller firms might require these positions to be filled by one and the same person." – Russell Jones & Walker

"We feel that firms should be able to opt for 'cabinet responsibility' among partners/members as currently provided by Rule 5 as an alternative. We would agree that each firm should have a point of contact for the SRA for defined reasons, as now, but to facilitate communication and not for disciplinary reasons."

"We appreciate the logic of having a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA)…However, we are not convinced that these positions need to be extended to other types of firms such as recognised bodies which are comprised of solicitors and lawyers and are regulated as employees etc. of a recognised body and also individually as solicitors and lawyers of their local law society/bar." – Bird & Bird LLP

"We do not believe that the requirements regarding COLPs and COFAs should be applied to non- ABS. It is clear that Parliament intended that the requirements for HOLPs and HOFAs should be applied to ABS, as Parliament recognised that ABS may present additional risks." – The Law Society of England and Wales

135. There were also concerns that the removal of approval by the SRA of a COLP or COFA, in the case of sole practitioners and other small firms, could effectively result in the firm being unable to continue.

136. When we consulted in May we stated that we preferred that COLPs and COFAs should be managers, but that we welcomed comments on whether they could also be employees. Few respondents dealt with this issue, but of those who did, most stated that firms should have the flexibility to appoint either managers or employees to both roles.

Our response

137. We are retaining the titles of COLP and COFA. We believe it is not appropriate to use HOLP and HOFA since the LSA only applies to ABSs and, in any event, we believe the change of title does not alter the responsibilities.

138. We are strongly of the view that having COLPs and COFAs who are specifically responsible for implementing appropriate controls is in the interests of all firms and also the public. The responsibilities of COLPs and COFAs take nothing away from the responsibility of other individuals to operate within those controls and for the governing body to oversee those controls, whether that is the principals of a traditional law firm or the directors of an ABS. We note that it is already common amongst firms to allocate responsibility for compliance and finance to particular individuals, and these proposals are very much in line with that approach. Whilst we accept that the LSA (*per force*) applies only to ABSs, our experience of disciplinary cases and interventions shows a clear need for specified individuals within firms to be responsible for implementing appropriate systems and controls. Further we do not accept that there is clear evidence that the risks for ABSs will be significantly different from those for traditional law firms.

139. Our primary concern is the implementation of effective controls by the firm as a whole. If failings within a firm are identified, we will investigate the circumstances that gave rise to those failings, for example, if it appears that the COLP/COFA was not given appropriate authority or resources, or was not listened to, then we will take appropriate action against the firm either instead of, or in addition to, any action against the COLP or the COFA.

140. In all its decision making, including the removal of approval of a COLP/COFA, the SRA intends to be proportionate and transparent. However, if we believe that it is not in the public interest that an individual continues to hold a particular role, then we will take appropriate action,

whilst enabling the firm to make other arrangements, if possible.

141. We have amended the Authorisation Rules to make it clear that COLPs and COFAs can be employees but, whether a manager or an employee, the COLP/COFA should have sufficient authority to fulfil the role effectively. Reporting lines will play an important part in our assessment of a COLP's/COFA's actual authority.

142. Our competition analysis has highlighted the wide discretion granted to the SRA in relation to certain rules. We recognise that it is of vital importance that the SRA acts proportionately and in a manner that takes into account the potential impact on competition of its decisions.

143. Question 17 of the May Consultation asked:

> **Do you agree with our contention that more information should be required from applicants to enable the SRA to make the right judgement concerning authorisation?**

Summary of feedback

144. We received some comments from respondents on our proposals to collect additional data from firms and individuals. Views expressed included:

- acceptance of the SRA's need to gather information in order for it to adopt a more risk-based and evidence-based approach to authorisation of firms and individuals;
- concern as to whether the data collected would actually assist the SRA's decision making and whether the SRA could cope with the amount of data supplied;
- concern about the additional burden placed on individuals and firms in supplying the information required; and
- concern as to whether the SRA can protect the commercial confidentiality of certain information.

> "We further consider that if each firm was to produce business plans and financial projections (whether looking forward one, two, three of five years), the likelihood of them being actively reviewed and considered by SRA staff is slight, given the volume of information involved. Whilst we can see that, for firms where there are doubts as to their viability, it may be appropriate to ask for a business plan or financial projection as part of the SRA's monitoring activities, we believe it is disproportionate to require every firm to provide this information as a matter of course." – Simmons & Simmons

> "The SRA will need to ensure that it obtains sufficient and a proportionate amount of information to meet its objectives in authorising firms. However, financial projections for a five year period appear to be a long time. The significance of those plans in a fast moving legal services market place may be challenged." – ILEX Professional Standards

Our response

145. Details of our further proposals in relation to information gathering from firms are set out in paragraphs 155 to 171 below and in **Annex F10**. We believe that data collection from firms will have an essential role to play in our risk-based approach, and that it is not possible for the SRA to identify risks and, therefore, target effectively our resources in the absence of such information. Indeed this has been one of the major criticisms of the SRA in the past.

146. We recognise the additional burden on firms and this aspect has been one of the areas of focus for our cost-benefit analysis. This work is ongoing and will inform the more detailed development work as we refine our data requirements.

147. On the issue of commercial confidentiality, an outcomes-focused approach is very much based on mutual trust and we will, of course, take all appropriate steps to preserve commercial confidences[9]. As a regulator the SRA must, and does, see confidential information relating to firms. Whilst we understand firms' concerns, we believe that our track-record demonstrates our rigorous approach to maintaining the confidentiality of any information received by the SRA.

Further consultation

148. The changes to the Authorisation Rules include:

- notes to explain technical issues;
- amendments to reflect the treatment of sole practitioners as recognised bodies and consequential changes;
- an obligation on prospective firms and managers to agree to be subject to the SRA Disciplinary Procedure Rules; this enables the SRA to use equivalent disciplinary powers (in particular written rebukes and publication of decisions) and to permit internal appeals for all types of body; and
- transitional and passporting provisions to deal with unlimited licences and the timetable for implementation.

149. As stated above, we have amended the Authorisation Rules to make it clear that COLPs and COFAs can be employees.

150. The draft Authorisation Rules require managers in all authorised bodies, owners and COLPs and COFAs to be subject to assessment of fitness and propriety.

151. This test has been renamed the SRA Suitability Test. It is based on the current "character and suitability" test for admission as a solicitor, which is also the basis for assessing eligibility of non-lawyer managers of an LDP. Because the test is based on admission criteria that solicitors have satisfied (and on which they are required to make annual declarations), the SRA will deem solicitors to be approved as suitable to be managers and owners of authorised bodies for the purposes of the Authorisation Rules. RELs and RFLs will not be deemed suitable, since they will not undergo the Suitability Test in order to practise in England and Wales. Should a REL or RFL apply for approval as a role-holder (e.g. manager, owner, COLP or COFA), they will be subject, at that point, to the Suitability Test.

152. There are also transitional provisions to deal with approval of managers/owners of current firms who have not satisfied the current "character and suitability" test. This category covers other lawyers of England and Wales who are currently able to rely on written confirmation from their regulator that they are authorised and entitled to practise in an LDP.

153. All those with a "material interest" in an ABS, including those who propose to acquire a ten per cent share in an ABS (and associates who cumulatively acquire a ten per cent share), will be subject to the test to assess their fitness and propriety to hold such an interest; again, this will be assessed by applying the Suitability Test. Also, we will require an ABS to disclose the ultimate beneficial owners of the firm. This should assist us to identify (and prevent, in the highest risk cases) potential owners who might look to exploit ownership of an ABS in ways that would jeopardise the interests of clients. Further guidance on the authorisation process (including the information to be collected at authorisation) will be included in our November publication concerning the April consultation ("Outcomes-focused regulation – transforming the SRA's regulation of legal services").

154. Further information on the Suitability Test is provided at paragraphs 238 to 246 of this paper. The SRA Suitability Test is at **Annex F9**.

Information requirements

155. As part of its move to risk-based and outcomes-focused regulation, the SRA is reviewing and revising its approach to how, what and when firms report to us, and notify us of event-driven changes to their businesses. Reporting obligations are contained in the Authorisation Rules (Rule 8) and the Accounts Rules (covering the accountant's report). Reporting requirements are supplemented by the event-driven notification requirements in the Code (Chapter 10).

156. Historically, the focus of our work in this area has been in authorising new firms, renewing licences, and maintaining the accountant's reporting regime, designed primarily to protect client money.

157. Information currently collected is limited and essentially quantitative, and constrains our ability to act as a risk-based and outcomes-focused regulator. For this reason, we are reviewing and revising our approach, to identify which information we require in order to be able to assess and monitor the risks firms pose, to protect the public and maintain the trust that the public places in the provision of legal services. Our information requirements, therefore, flow from our risk framework and are aimed at:

- enabling the SRA to have sufficient information against which to make an assessment of the risks firms pose;
- identifying cases where firms are unable to demonstrate that they are meeting the outcomes and rules within the Handbook; and
- gathering information that is required by the LSB to assist the LSB with its oversight of our work.

158. The areas of risk against which we will be assessing firms, and how we will assess those risks, will be discussed in more detail in our November response to our April consultation, where we will provide more detail on our risk framework. In broad terms these areas of risk are:

- instability or financial failure;

- fraud and dishonesty;
- competency, fitness and propriety (by reference to the Suitability Test);
- market risks;
- operational risks; and
- external risks.

159. Within these broad risk groups, we have identified firm-based risks in relation to meeting the Handbook requirements. We have then identified effective indicators for the given risks, and the data that is required to assess the level of risk presented by firms.

Types of data to be collected

160. We may require firms to:

- respond to questions requiring a "Yes/No" answer;
- select from a series of pre-defined options;
- supply numerical data;
- provide free-form responses;
- submit documentation; and

self-assess or self-certify processes, systems or controls.

161. The SRA is alert to the concerns of firms that this will increase the regulatory burden upon them. Indeed, firms will need to report across a wider range of areas. However, with a view to ensuring that our approach is proportionate, we are considering using self-certification of achievement of given outcomes. We are looking at models of reporting used by other professional regulators and in some other jurisdictions.

162. So as to determine what data should be required of firms, we have developed a set of tests:

- **justified**: can we justify gathering this data?
- **evidence-based**: is there evidence to support the value of gathering this data?
- **targeted**: does the data address the specific risks being assessed?
- **proportionate**: is the data request proportionate to the risk being addressed?
- **cost-benefit**: do the benefits from collecting the data equal or outweigh the costs?
- **reliable:** is the data sufficiently reliable for the SRA to make a judgement on the risk being addressed?
- **timely**: is the timing of the data collection suitable to address the risk?
- **confidential**: are there sufficient controls in place to ensure the confidentiality of this data?
- **additional and not alternative**: what will be the impact of not gathering this data, and is there a more effective and efficient alternative to gathering it?
- **clear**: can we better articulate this data request to improve clarity and understanding among stakeholders?

Other information sources

163. We will not only be assessing the risk exposure of firms from their own data, but also reviewing indicators from a range of other sources, including:

- third parties – e.g. whistleblowers, complainants, other regulators, the Legal Ombudsman;
- media reports; and
- SRA knowledge of specific firms and sectors.

164. We are also required to provide information to the LSB in relation to firms' performance on equality and diversity, and first tier complaints handling – i.e. handling of initial complaints to a firm. We will, therefore, be asking firms to report this data to us.

165. The changes in reporting requirements will be introduced initially in:

- October 2011 for ABSs only; and in
- October 2012 for all other firms.

166. This is because of the phased implementation of the new regime, which means that the Authorisation Rules will not apply to traditional law firms until March 2012. We currently envisage the timetable for the reporting requirements to follow the existing timetable for annual renewals.

167. Each year we will publish a "Risk Outlook" which will set out the key current and emerging risks in the legal services market. This may in turn result in changes to the annual information requested from firms. Firms will then be given a reasonable time to prepare for the submission of data to the SRA.

168. In certain situations, we may require additional information from certain firms, for example, as a result of sectoral issues or the economic climate. However, this is unlikely to be a common occurrence.

169. We will try to minimise the cost to firms of supplying this information, in particular by enabling it to be supplied online. We are aware that some firms may face initial challenges in moving to online reporting and we are considering options in order to provide as smooth a transition as possible to the new process.

Next steps

170. Further information will be provided in our November response to the April consultation. As part of this response we aim to publish prototype forms on our "Freedom in Practice" microsite. We intend to hold a separate consultation exercise on information requirements in early 2011.

171. Further details of our proposed approach to reporting and notification requirements are at **Annex F10**.

Special bodies

172. The Authorisation Rules do not currently include provisions for authorising "special bodies", such as not-for-profit organisations, as there will be a transitional period of 18 months from October 2011 before special bodies are required to become licensed. If the Ministry of Justice implements the relevant LSA provisions before special bodies need to be licensed, the Authorisation Rules are likely to contain a provision to the effect that we will not accept applications from such bodies until the transitional period is over.

Questions:

8. Do you have any comments on the revised Authorisation Rules?

9. Do you have any comments on the proposed approach to reporting and notification?

SRA Practising Regulations

173. In the May Consultation we consulted on some changes to the Practising Regulations in order to impose requirements on sole practitioners relating to COLPs and COFAs. As sole practitioners will become regulated under the Authorisation Rules (along with other recognised bodies) in March 2012, these changes will not be necessary, provided that the section 69 Order is granted (see paragraph 33).

174. Since the May Consultation, additions to the Practising Regulations have been made concerning calculation of fees on splits and mergers of firms. The amendments are now in force.

Further consultation

175. The revised Regulations contain transitional provisions which reflect the future treatment of sole practitioners. For example, having satisfied the "character and suitability" requirements on admission or initial registration as a solicitor or REL, all managers will be deemed approved, but subject to confirmation on application for approval that their circumstances have not changed.

176. We have also amended the appeal period to the High Court from 28 to 21 days, in line with a recent change to the Civil Procedure Rules.

177. A revised version of the SRA Practising Regulations is at **Annex F2**.

Question:

10. Do you have any comments on the changes to the SRA Practising Regulations?

SRA Practice Framework Rules

178. Question 18 of the May Consultation asked:

> **What in-house services to the public should require authorisation?**

179. There was a limited response to the question and some of those who did respond did not appear to be aware of the legal background to this issue. Generally speaking there was no clear consensus on the way forward for in-house practice, although the need for authorisation when advising members of the public was broadly acknowledged.

180. Four respondents wanted the same services to require authorisation regardless of whether the providers are in-house. One respondent highlighted the need to strike the right balance, particularly with organisations that provide pro bono work as part of their corporate social responsibility programmes.

> "All services that would fall to be authorised if they were otherwise provided by a recognised firm/sole practitioner." – Hacking Ashton LLP

> "Reserved legal services only." – Network Rail Infrastructure Ltd

> "All legal services." – Russell Jones & Walker

> "If those working in-house are required to gain authorisation for certain specified areas of practice then the same rule should apply across the board." – Co-operative Legal Services

Our response

181. Our work on the regulation of in-house practice is ongoing, primarily because further analysis needs to be undertaken on "special bodies", which will be led by the LSB. For this reason, we expect to be consulting further on special bodies in the autumn/winter 2011 with the intention of authorising the first special bodies in March 2013.

Further consultation

182. We have decided to amend our in-house exemption in relation to reserved legal work. Where there is a nexus between the organisation and the "client", an in-house solicitor will be able to provide reserved services (e.g., acting for fellow employees or related companies in the employer's group). Where there is insufficient nexus the "client" will be regarded as "a section of the public" for the purposes of the LSA, and the body would need to be licensed to provide reserved services. Rule 4 has been amended to reflect this, as follows:

Commercial legal advice services (4.15) – the Rule has been redrafted to exclude reserved work. We do not anticipate the need for transitional provisions as organisations will have notice of this change and the work by its nature tends to involve short-term matters;

Law centres and other not-for-profit organisations (4.17) – such bodies have been given an 18-month grace period by the LSB, so the need for amendments will be addressed as part of the work on special bodies (see paragraph 172 above).

Pro bono work (4.10) – the SRA will be unable to continue to permit solicitors to provide pro bono reserved legal services to the public through an organisation which is not authorised, because of the lack of any nexus between the organisation and the clients. As this change in approach will impact on good work carried out by many in-house solicitors, we are endeavouring to resolve this issue in co-operation with the LSB. This will not in any event affect ABSs and traditional firms doing pro bono reserved work. We expect that this issue can be resolved, but if it cannot, we propose to use transitional provisions to permit ongoing work to be completed. The draft of Rule 4 includes in square brackets the drafting which will be necessary if we are unable to resolve the pro bono reserved work issue.

Other changes

183. The exception that allows in-house solicitors working for associations (4.12) has been re-drawn to modify the extent of the exception so that it applies to organisations whose members have a specialist interest in common. The association exemption will, therefore, no longer cover organisations whose members do not share a specialist interest. If such organisations wish to employ solicitors to carry out legal work for their members, they will have to apply for a licence. We have taken this step because we believe that the current exemption is being exploited, which is not in the public interest.

184. Other changes to the Practice Framework Rules have been made to deal with the fact that sole practitioners will be treated as recognised bodies from 31 March 2012, and to include some guidance.

185. During the consultation period, we identified that there is a regulatory gap: firms with a very small non-lawyer involvement of a specified type will not be licensable as ABSs. Such firms will, through a revision to Rule 13.1(b), be regulated as recognised bodies.

186. We have decided to retain the requirement in Rule 12 for all types of firm to have a lawyer who is "qualified to supervise". Two respondents pointed out that the requirement should be retained as it tackles a different issue (supervision of legal work) from the risk management areas which the new roles of COLP and COFA are intended to cover. In addition, if the requirement were lifted, new firms could set up with newly qualified lawyers which would be a significant policy change.

187. The SRA Practice Framework Rules are at **Annex F3**.

Question:

11. Do you have any comments on the proposed changes to the SRA Practice Framework Rules?

SRA Recognised Bodies Regulations

188. These Regulations did not form part of the May Consultation as, at that point, they were to be repealed in October 2011. However, as the Authorisation Rules will not apply to recognised bodies until March 2012, the Recognised Bodies Regulations will need to remain in force until then. We have made essential changes to the Regulations to include those parts of Rule 14 of the current Code (bearing in mind that the current Code will be repealed in October 2011 and the relevant provisions will form part of the Authorisation Rules). Therefore, the changes to these Regulations provide a stop-gap for recognised bodies, so that the Rule 14 provisions will continue to apply to them under these Regulations until March 2012.

189. We have also amended the appeal period to the High Court from 28 to 21 days, in line with a recent change in the Civil Procedure Rules.

190. The SRA Recognised Bodies Regulations are at **Annex F4**.

Question:

12. Do you have any comments on the proposed changes to the SRA Recognised Bodies Regulations?

SRA Disciplinary Procedure Rules

191. There are significant differences between the SRA's disciplinary powers under the current SA regime and those under the LSA regime. The SRA is seeking to manage the risks associated with different statutory regimes and to provide a framework for a transparent, proportionate and consistent set of disciplinary procedures, in accordance with the principles of better regulation.

Summary of feedback

192. Approximately a third of overall respondents commented on the proposals in the May Consultation on the Disciplinary Procedure Rules.

193. Questions 19 and 20 of the May Consultation asked:

Do you believe that the disciplinary frameworks should be further harmonised?

Should there be a single system of findings with appeal to an independent tribunal?

194. In relation to question 19, the overwhelming majority of respondents were in favour of:

- a harmonised set of powers for the SRA; and
- common disciplinary procedures for traditional law firms and ABSs.

"It is important that there is equality and fairness in the disciplinary approach applied to ABSs and traditional law firms. To the extent that harmonisation can be achieved, then this is a good thing provided the end result is equal and fair for all."

"In principle yes, but we await further details." – Birmingham Law Society

"Harmonisation is especially welcome in areas, such as the sanctioning toolkit, where the same approach is needed to deliver equal protection for consumers." – Legal Services Consumer Panel

"We think that the Solicitors Disciplinary Tribunal should deal with disciplinary issues arising from an SRA -regulated ABS unless and until a new legal disciplinary tribunal covering the whole area of regulated legal services is established." – The Law Society of England and Wales

195. In most cases this appeared to be motivated by a desire for fairness in the manner in which traditional firms and ABSs are regulated. There were, however, a small minority of respondents who felt that the different entities should be treated differently for disciplinary purposes.

196. With regard to question 20, there was an unfortunate error (for which we apologise) which meant that a different question 20 was answered by those who submitted an automated web response. The web version of question 20 asked:

Do you believe that the amount which the SRA can fine firms of solicitors (recognised bodies) should be increased commensurate with our powers to fine ABSs?

197. Whilst there was some support for the SRA having equal fining powers in respect of all types of firm, respondents were not necessarily supportive of the SRA having unlimited fining powers.

"We agree that it would beneficial to have a single system of findings with an appeal to an independent tribunal. It is important for there to be a uniform approach for providers of legal services, be it firms or ABSs."

198. Other points of note were that:

- it was commonly stated that any financial penalty should be appropriate to the financial means of the person or organisation subject to the fine;
- few respondents commented on the detail of the proposals;
- some concerns were raised about the SRA's existing disciplinary procedures and the wording of the current Disciplinary Procedure Rules; and
- two respondents who did consider the draft SRA Disciplinary Procedure Rules expressed reservations about:
- the appropriateness of applying the existing decision-making processes to the exercise of new powers; and
- the ability of the SRA to exercise new powers "in-house"; and
- the appropriateness of applying the existing decision-making processes to the exercise of new powers.

Our response

199. We were pleased to note the feedback which was broadly supportive of our approach.

200. Our general view is that all firms should be subject to the same procedures and sanctions, since we consider this to be the fairest approach and in the public interest. This is particularly important because we anticipate that firms will move from one status to another, and there is no justification in principle for having a different procedure or standard depending on the type of practice. Having two separate regimes could lead to a complex set of procedures; inefficiency; possible inconsistency, and the potential for regulatory arbitrage. A key objective, therefore, is that all individuals and firms are subject to fair and proportionate disciplinary procedures and sanctions.

201. The tenor of the responses confirms our view that it is appropriate for the SRA to have equivalent fining powers for all types of firm. Additionally, the SRA, as a regulator, needs to be able to fine to a level that creates a credible deterrent to misconduct. We do appreciate, however, that not all respondents may have addressed this issue and we invite further comments.

202. On the issue of decision making, we are reviewing our existing processes in the light of comments made and in preparation for ABSs.

203. Details of further proposals and a commentary on revisions to the Disciplinary Procedure Rules are set out below.

Further consultation

204. We have made a number of revisions to the drafting of the Disciplinary Procedure Rules in light of comments received, including the addition of criteria for disqualification from involvement in an ABS.

Specific issues

(a) Financial penalty criteria

205. Section 95(1) of the LSA provides that financial penalties may be imposed in respect of ABSs by a licensing authority in "accordance with its licensing rules". It provides that penalties may be imposed on:

- a licensed body;
- a manager of a licensed body; and/or
- an employee of a licensed body.

206. In terms of when a financial penalty is appropriate, the existing disciplinary rules under the SA regime set out an appropriate test at Rule 3 (1), and we consider that the SRA should adopt the same test for ABSs. However, by October 2011 the SRA is likely to have powers to levy significantly larger financial penalties under the LSA regime, and will be regulating increasingly diverse business models. The Rules, therefore, set out a new set of financial penalty criteria at Appendix 2 to the Rules.

207. The Rules include new concepts for the SRA, e.g., discounting for early admissions and restitution and suspension of a penalty.

208. Rules 8(2) and (3) provide for suspension of a financial penalty, depending on the behaviour of the regulated person.

209. Suspension of penalties could be a useful method of encouraging future compliance and self-reporting, and facilitating the early resolution of regulatory matters.

(b) Standard of proof

210. The proposed rules apply the civil (balance of probabilities) standard of proof.

(c) Disqualification from working in an ABS

211. The LSA gives the SRA power to disqualify for misconduct an individual or an entity from being a manager, employee, Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) within an ABS.

212. The Rules impose two conditions for disqualification:

- that the SRA is satisfied that it is undesirable for the person to engage in such activities; and
- that the SRA is satisfied that disqualification is a proportionate outcome in the public interest.

213. The Rules also make provision for the review of a disqualification, and Appendix 3 to the Rules sets out specific criteria in respect of disqualification decisions.

214. We will be dealing with increasingly complex and serious matters "in-house" and have, therefore, made some revisions to Part 3 of the Rules which deals with decision making. We would be particularly interested to receive feedback on our approach. One option would be to include rules similar to those likely to be applied by the First Tier Tribunal of the General Regulatory Chamber in dealing with statutory appeals in matters relating to ABSs. We therefore invite comments on that approach and the content and suitability of those rules[10], particularly in relation to case management and enforcement of directions.

215. The LSA does not give a right of appeal against a decision to disqualify or to refuse to bring a disqualification to an end, but there is discretion to create a right of appeal within the Rules themselves. The Rules provide an external right of appeal to the General Regulatory Chamber. The benefit of creating this external right of appeal is that it is consistent with other decision-making processes under the Rules, and is consistent with our intention to be a fair and transparent regulator.

216. The SRA Disciplinary Procedure Rules are at **Annex G1**.

Question:

13. Do you have any comments on the revised SRA Disciplinary Procedure Rules?

SRA Cost of Investigations Regulations

217. The LSA amended section 44C of the SA and section 14 of the AJA to provide that the SRA could make regulations prescribing charges to be paid by those subject to a disciplinary investigation. As a result, the SRA Cost of Investigations Regulations 2009 came into force on 31 March 2009. In summary the Regulations provide that:

- the SRA may recover charges incurred during an investigation from a regulated person who has been found to have committed misconduct or a breach of our rules (or who has admitted misconduct by agreement with the SRA);
- the SRA may also recover costs from a non-solicitor who has been subject to an order made by the SRA under section 43 of the SA;
- decisions about the amount of the charges are made by adjudicators or persons with delegated authority.

218. The LSA also gives the SRA power to make decisions about the regulation of ABSs, without the need to refer to the SDT. This includes the power to levy unlimited fines and disqualify persons from being involved in ABSs. However, the LSA does not provide for the recovery by the SRA (or any other licensing authority) of any costs from ABSs or from individuals involved in an ABS.

219. The SRA's ability to charge for the costs of our investigations is an important tool. We believe that the costs of investigations should be borne, so far as practicable, by those found to have committed acts of misconduct. The current regime for recovery of costs is that charges should only be imposed where a finding has been made, and based upon bands of costs related to the number of hours spent. We believe that the SRA should have an equivalent power in respect of ABSs. We have, therefore, sought a section 69 Order (see paragraph 32) to achieve this effect. This would allow us to apply the existing Regulations, with some minor amendments, to ABSs.

220. The proposed SRA Cost of Investigations Regulations are at **Annex G2**.

Question:

14. Do you have any comments on the SRA Cost of Investigations Regulations?

Training requirements for individuals - a new structure for education and training

Format and structure of the new regulations

221. Professional competence is one of the cornerstones of the solicitors' profession. We ensure competence through the education and training requirements leading to the qualification of solicitor. We also ensure that competence is maintained and further developed to meet the needs of consumers.

222. The following regulations currently control qualification as a solicitor, admission to the Roll, transfers from other jurisdictions and the

exercise of higher rights of audience:

- Training Regulations 2009;
- Admission Regulations 2009;
- Qualified Lawyers Transfer Scheme Regulations 2010; and
- Higher Rights of Audience Regulations 2010.

223. Many detailed requirements flow from these regulations, which are currently published as "guidance". This approach may be confusing for those seeking to comply with the regulations as well as for those applying them.

224. To improve their clarity, and to be consistent with the other regulations in the Handbook, these regulations have been redrafted. Substantive changes to the regulations have been kept to a minimum. A few minor changes have been made to address certain issues and these are set out below.

225. We thank those who have already provided valuable feedback on our current regulations, and we welcome any further feedback, whether it is:

(a) specific – for example on:

- requirements for the standard of English language skills of new entrants;
- whether the LPC should continue to be a lifetime qualification; or

(b) general, such as the perceived value of management training requirements.

226. In the meantime, we have:

- simplified the language;
- included in the regulations all mandatory requirements; and
- included non-mandatory guidance within the regulations.

227. The main change is that the Training Regulations have been re-cast into three parts:

- **Qualification Regulations** (governing the domestic training stages for individuals and student enrolment);
- **Training Provider Regulations** (governing provision of training contracts and the Professional Skills Course by organisations, containing most of the mandatory guidance currently in "Training Trainee Solicitors");
- **CPD Regulations** (governing the ongoing training requirements for solicitors and RELs).

228. The Training Provider Regulations do not cover providers of academic courses, the Legal Practice Course (LPC) or CPD, as they are regulated through separate regulations and policy, which are outside the scope of the Handbook.

Changes of substance

(a) Removal of age criteria for eligibility to attempt the Common Professional Examination (CPE)

229. Non-graduates can attempt the CPE by virtue of being "mature students" or by holding a qualification in magisterial law, provided they are at least 25 years old. They are also required to satisfy us as to their character and suitability and their English language abilities. For reasons of consistency, we have removed the age limit requirement and the requirement for non-graduate CPE students to demonstrate character and suitability and English language abilities.

(b) Removal of age requirement from "qualifying employment" definition

230. We use the term "qualifying employment" in the Training Regulations 2009 to describe the experience that members of ILEX must have in order to be eligible to attempt the CPE and enter into a training contract. However, we say that any such experience can only be gained after the age of 18. We propose removing this age limit from the definition of "qualifying employment" within the new Training Regulations.

(c) Amendment to the point at which Exempting Law Degree students must apply for student enrolment

231. The Training Regulations currently state that no person may proceed beyond the first year of a course leading to an Exempting Law Degree (ELD)[11] without student enrolment. We propose amending the Regulations to state that ELD students must apply for student enrolment before they begin the third year of the course.

(d) Amendment to the validity period of certificates of student enrolment

232. The Training Regulations currently state that the first certificate of student enrolment lasts for two years. We propose amending the Regulations to extend the validity of the certificate to the remainder of the calendar year in which a student applies, plus another four years.

(e) Additional requirement on providers of training contracts to check potential trainees' student enrolment

233. We have included an additional requirement on training providers to ensure that the trainee has a valid student enrolment before entering a training contract. This is an extension to what we currently expect firms to do.

(f) Additional regulation to govern termination of training contracts arising from case law

234. We have added a regulation to provide more clarity about the requirements for termination of a training contract, in line with recent cases.

(g) Amendment to the Professional Skills Course (PSC) and training contract commencement requirements

235. We have amended the Regulations to allow individuals who have taken all of the LPC assessments but not received their Stage 2 results to be able to start a training contract and commence the PSC.

(h) Addition of exemptions from LPC subjects

236. One of the intentions behind the "new" LPC, which was implemented in 2009/10, was to allow students to apply for exemption from attendance on the course—but not assessment of LPC subjects. Exemptions would be based on accreditation of prior certificated learning. We have added to the Training Regulations the criteria and process for considering and awarding such exemptions. We have recently consulted on this approach. In addition, we now propose a five-year limit on the age of qualifications, in line with the five-year time limit on completing the LPC.

237. The SRA Training Regulations are at **Annex F5**; the SRA Admission Regulations are at **Annex F7** and the SRA Higher Rights of Audience Regulations are at **Annex F8**.

Question:

15. Do you have any comments on the changes which we have made to the regulations concerning training, admission and rights of audience?

SRA Suitability Test

238. The current Training, Qualified Lawyers Transfer Scheme and Admission Regulations all require individuals applying for admission to satisfy us as to their character and suitability to be solicitors. The obligation on, and authority for, us to make this requirement comes from the SA.

239. Neither the SA nor the Regulations define the term "character and suitability". This is currently done in separate guidelines—policy which has been developed over a number of years, and which was last subject to formal consultation in early 2007. Character and suitability is currently considered at specific points, but the requirement to be of suitable character applies throughout the qualification process and beyond.

240. The Authorisation Rules require applicants for the roles of manager, owner, interest holder or COLP and COFA within authorised bodies to be "fit and proper". The LSA requires us to include procedures for satisfying ourselves as to fitness and propriety. In our May Consultation we suggested that this test would form part of the Authorisation Rules.

241. We intend to have one test for both purposes because we believe it is in the public interest for the same standard to apply across the board. It is for the applicant to discharge the burden of satisfying the test which we have named the SRA Suitability Test.

242. We have taken the following factors into account when developing the Suitability Test:

- the relationship between a solicitor and his or her client is a fiduciary one, i.e. based on confidence and trust, and frequently relating to money and/or property;
- trust in a solicitor's undertaking lies at the heart of many transactions; and
- those holding key roles within firms that provide legal services must act with propriety to maintain public trust and confidence in the legal system and ensure access to justice.

243. The Suitability Test is intended to:

- be transparent and robust;
- explain to whom the test applies and why;
- mitigate the risk that pre-admission/approval behaviour represents to the public by preventing unsuitable individuals from qualifying or being approved;
- clearly state our expectations as to honesty;
- be a discrete test at the student enrolment and admission stages, with an ongoing requirement to maintain the standard throughout the period of student enrolment and post-admission; and
- be applied at the point of application for approval, and throughout their authorisation, as key role-holders (including owners) under the Authorisation Rules.

244. The Suitability Test is in the Authorisation and Practising Requirements section of the Handbook and appears at **Annex F9**.

Policy changes

245. The Suitability Test has been strengthened and clarified compared with the existing character and suitability guidelines:

- the test is aligned with the principles established in case law concerning the assessment of suitability of individuals for eventual admission. In particular, recent case law established that there is a rebuttable presumption of dishonesty where issues have not been disclosed that call into question an individual's suitability eventually to be admitted as a solicitor;
- mental health issues or addiction to alcohol or drugs will not of themselves be grounds for failing the Test. However, issues of this nature will be taken into account when considering an individual's overall suitability and the public interest.

246. This strengthening is necessary to:

- ensure that there are clear criteria for applicants, SRA decision-makers, and adjudicators to assess new entrants and role-holders;
- ensure that a proper process and criteria are in place to protect the public and provide fairness to applicants; and
- maintain confidence in the legal system and those permitted to provide regulated legal services.

247. It should be noted that the SRA Principles form the backdrop to consideration of suitability.

Question:

16. Is the SRA Suitability Test a robust, clear, transparent and fair assessment for members of the profession and authorisation as role holders in ABSs and RBs?

7. Protecting the public

248. In the May Consultation, we published draft:

- Solicitors Indemnity Insurance Rules (SIIR);
- Solicitors Indemnity Rules (SIR); and
- SRA Intervention Powers (Statutory Trust) Rules.

249. Question 21 of the May Consultation asked:

Do you agree with our overall approach to applying indemnity requirements to ABSs?

"Yes, [we do agree] although there is more work to be done in making the overall position in relation to all indemnity and compensation arrangements satisfactory from the consumer perspective." - SIFA Ltd

"Client protection is key but it may not be appropriate to replicate current arrangements across all types of ABSs." – ICEAW

"We agree with the SRA's overall approach as it involves applying the same indemnity requirements to ABS and non-ABS. This helps to ensure appropriate levels of redress and protection of clients against negligence and fraud, whilst at the same time…maintaining a level playing field across the legal market." – The Law Society of England and Wales

250. Feedback on the individual sets of rules is set out below.

Indemnity Insurance Rules

Summary of feedback

251. Approximately one third of respondents commented on the general approach to applying the same requirements for all types of firm, with the remainder largely making no comment. The Association of British Insurers raised a number of general concerns about the scope of the SRA's jurisdiction over ABSs and the need for clarity about the extent of insurers' liability in relation to the non-legal activities of ABSs. It called for "fundamental reform" of the Qualifying Insurers' Agreement and the Minimum Terms and Conditions.

Our response

252. The Rules that we published made it clear that the Handbook applies to the "regulated activity" of an ABS. This is defined as meaning:

- any reserved legal activity;
- any legal activity; and
- any other activity in respect of which a licensed body is regulated pursuant to Part 5 of the LSA.

253. We will conduct further discussions with qualifying insurers on how this definition will apply to, e.g., an MDP ABS in practice.

254. On the point concerning the need for reform, the SRA is conducting a major review of our client protection measures. For this reason, revisions to the SIIR have not been published in this paper, but will be published following the completion of the review.

Indemnity Rules

Summary of feedback

255. Responses on the SIR specifically were very limited and identified a small number of minor typographical errors, and possible cross-referencing issues and definition updates. These have been corrected where appropriate in the new draft. No changes of policy have been made as a result of responses received to the consultation.

Other developments

256. The draft SIR have been revised to incorporate purely consequential changes to reflect the intention to remove the sole practitioner endorsement mechanism.

257. A final version of the SRA Indemnity Rules is at **Annex H1**.

Intervention Powers (Statutory Trust) Rules

Summary of feedback

258. There were no responses on these Rules.

259. A final version of the SRA Intervention Powers (Statutory Trust) Rules is at **Annex H2**.

Further Consultation

Compensation Fund Rules

260. In the May Consultation we stated that we would be consulting on our Compensation Fund Rules in October. In the meantime, we have been holding extensive discussions with stakeholders, including the LSB, concerning our approach on this issue. The SRA's approach is, of course, subject to the outcome of the client protection review, upon which we intend to consult in December 2010. To that extent, the solution described below is interim.

261. Pending the outcome of the client protection review, we have focused on:

(i) ensuring that the SRA has client protection powers, in relation to compensation arrangements for ABSs under the LSA, that are as extensive as those under the SA;

(ii) adopting an interim solution for compensation arrangements that provides a similar level of client protection for ABS clients as for those of traditional law firms.

262. Regarding (i), we have suggested that the LSA be amended to ensue that the SRA has the same powers under the LSA as it currently has under the SA. We consider this to be essential for the effective operation of a compensation fund for ABSs.

Options

263. We have had to consider whether, pending the outcome of the review, we should seek to apply the existing compensation fund for broader purposes, or establish a separate compensation fund for ABSs. We intend to adopt the former approach on the basis that:

- it provides clarity for consumers—two funds would create confusion as to which fund applied;
- it avoids complex disputes about which compensation fund should deal with particular losses, especially where a firm may have changed status from an ABS to a traditional law firm (or vice versa);
- it makes sense administratively;
- the overall risk profile for ABSs is not obviously different from that of RBs; our intention, in any event, is to seek to mitigate risks through licence conditions. We are currently in the process of undertaking some financial modelling to assess the impact on the existing compensation fund; and
- establishing a new fund would create a bar to new entrants, including traditional law firms wanting to be ABSs, since the levy required would be disproportionately high.

264. An alternative is to establish a separate fund for ABSs. Arguments for creating a separate fund are that:

- solicitors have contributed to the current fund for many years and the existing fund should therefore not bear claims arising from default by ABSs. However, given the profile of claimants, it may equally be the case in the future that ABSs are contributing disproportionately to a fund that largely pays out for defaults of small RBs. Moreover, the existing fund admits on average 100 new practices every month of varying business types and risk profiles, most of which have not paid into the existing fund;
- the impact of ABSs—particularly MDPs—is uncertain. Whilst we acknowledge the uncertainty surrounding ABSs, we are taking steps to mitigate the risks posed by ABSs in the following ways:
  - confirming the jurisdiction of the SRA in relation to MDP ABSs and reflecting that view in our rules, including the SRA Compensation Fund Rules, to mitigate the risks of claims not related to SRA -regulated activity;
  - developing a risk framework that takes account of the potential risks associated with all types of firm, and enables us to risk-assess individual firms/types of firm and respond appropriately through licence conditions/tighter supervision;
  - ensuring that our supervisory tools are fit for purpose.

265. The LSB is currently consulting on possible changes to legislation by a section 69 Order (see paragraph 32). This would provide that:

- the SRA will be granted the same powers under the LSA as it currently has under the SA;

- the SRA will be empowered, on a permissive basis, to operate a single compensation fund for all types of firm; our intention is to use the existing compensation fund;
- the SRA will be empowered to use monies in the existing compensation fund for the future broader set of firms (i.e. ABSs as well as traditional law firms).

The above powers will be granted to the SRA until 31 December 2012, in recognition of the fact that this is an interim solution, pending the outcome of the review.

266. The main changes proposed to the current Solicitors' Compensation Fund Rules are as follows:

- the existing compensation arrangements are applied to an ABS in respect of its "regulated activity", i.e., to its reserved legal activity, legal activity, and non-legal activity subject to a condition on the ABS's licence. This limits the scope of grants which can be made from the fund in respect of an ABS;
- the SRA is enabled to maintain a single fund and to make grants from it in respect of default by an ABS in connection with the ABS's regulated activity;
- ABSs are required to make contributions to the fund;
- these arrangements are expressed as being in force until 31 December 2012; and
- the fund covers acts or omissions by regulated firms (including licensed bodies and former licensed bodies), managers, employees and owners. In relation to acts or omissions by owners of licensed bodies, who are neither managers nor employees, we believe that clients should be compensated for the acts or omissions of such persons and will be seeking an amendment to the draft section 69 Order on which the LSB are consulting to address this issue.

267. The SRA Compensation Fund Rules are at **Annex H3**.

Questions:

17. Do you agree with our proposal to apply the existing compensation fund to ABSs?

18. Do you agree with our proposal to adopt the same compensation fund rules for ABSs by extending the application of the existing rules?

19. Do you agree with our proposal for the compensation fund to cover acts or omissions of owners of licensed bodies who are neither managers nor employees?

8. Equality and diversity

268. Question 22 of the May Consultation asked:

> **Do you have any comments on our Initial Equality Impact Assessment, and are there any additional equality issues that we should consider as we work further on the Handbook?**

Summary of feedback

269. There was very limited feedback in response to this question. Of those who made substantive comments, these related more to the Code and Principle 9, rather than our Impact Assessment. Two respondents felt that smaller firms would be most affected by the change in approach; this would have an indirect impact on ethnic minorities, which tend to be over-represented in small firms. One respondent felt that the SRA should give greater consideration to the needs of persons with a disability.

270. One respondent stated that they were interested to learn more about steps the SRA might take to remove/mitigate any adverse impact on minority groups.

> "…the ability to demonstrate compliance with the required outcomes without having to comply with rigid rules requiring specific paperwork is an improvement in equality terms." – Leicestershire Law Society

"As usual, ethnic minorities and solicitors with lower income will bear the brunt." – Legal Team Ltd

Our response

271. See our comments at paragraph 58 concerning Principle 9.

272. We continue to analyse the possible equality issues. We have also made it clear in the Code that the controls which firms should put in place should be appropriate to the nature, scale and complexity of their firm; that is, we are not expecting all firms to have complex systems and controls, but rather to tailor them to their business and their clients. This should go some way to mitigating the impact on smaller firms.

Further consultation

273. Our overall equality impact assessment, covering the key equality issues raised by the transition to the new Handbook (and the changes in our regulatory policy and requirements which it involves) is at **Annex I**.

Question:

20. Do you have comments on our equality impact assessment, and are there any additional equality issues that we should consider as we work further on the Handbook?

9. Timetable and next steps

274. Question 23 of the May Consultation asked:

Do you have any comments on the timetable?

Summary of feedback

275. There was a limited response to this question. Of those who did respond, comments included that the timetable:

- is tight but achievable/aggressive (this was the majority view);
- provides insufficient time for proper consideration by respondents and also for the SRA to introduce the new Handbook, operations and the necessary culture change (a view held by a small number of respondents);
- must allow firms at least six months for implementation; and
- should be shortened to introduce ABSs before October 2011 (one respondent).

"It appears to be wholly achievable within an appropriate and realistic timeframe."

"We do not believe that the interests of the public and the profession should be put at risk as a result of an unquestioning commitment to the timescale set out." - City of Westminster and Holborn Law Society

Our response

276. We are confident that the timetable, although challenging, is achievable and we will make every endeavour to assist firms (both existing firms and new) and others to be ready to meet our requirements within the timeframe. We will assist firms and individuals in the following ways:

- further roadshows/seminars to explain the Handbook and receive feedback;
- publication on our website of the implementation timetable by reference to the type of firm;
- publication of a transition manual to help firms make the transition to outcomes-focused regulation; and
- provision of further updates.

277. It remains our intention to provide firms with six months from the date on which Handbook provisions are made to implement the new requirements.

Reminder of the timeline

278. As explained in the Introduction, responses to this consultation should be sent to the SRA by **13 January 2011**.

279. This consultation forms part of a major transformation of the SRA's approach to regulating and supervising firms, in the context of the opening up of the legal services market. The overall timetable is set out below:

Date	Action
November 2010	Report on and response to April 2010 Consultation ("Outcomes-focused regulation – transforming the SRA's regulation of legal services")
13 January 2011	Closing date for written responses to this consultation
April 2011	Publication of final Handbook
August 2011	Anticipated designation of SRA as a Licensing Authority for ABSs
6 October 2011	First ABSs licensed and implementation of new Handbook
April 2013	Special bodies able to apply to be licensed

Annexes

- Annex A. Structure of the Handbook and Introduction
- Annex B. SRA Principles
- Annex C. SRA Code of Conduct
- Annex D. SRA Accounts Rules
- Annex E. Specialist Services (Introduction)
  - E1. SRA European Cross-border Rules
  - E2. SRA Property Selling Rules
  - E3. SRA Financial Services (Scope) Rules
  - E4. SRA Financial Services (Conduct of Business) Rules
- Annex F. Authorisation and Practising Requirements (Introduction)
  - F1. SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies
  - F2. SRA Practising Regulations
  - F3. SRA Practice Framework Rules
  - F4. SRA Recognised Bodies Regulations
  - F5. SRA Training Regulations
    - Training Regulations Part 1 – Qualification regulations
    - Training Regulations Part 2 – Training provider regulations
    - Training Regulations Part 3 – SRA CPD regulations
  - F6. SRA Admission Regulations
  - F7. SRA Qualified Lawyers Transfer Scheme Regulations

- F8. SRA Higher Rights of Audience Regulations
- F9. SRA Suitability Test
- F10. Approach to reporting and notification requirements

- Annex G. Discipline and Costs Recovery (Introduction)
  - G1. SRA Disciplinary Procedure Rules
  - G2. SRA Cost of Investigations Regulations
- Annex H. Client Protection (Introduction)
  - H1. SRA Indemnity Rules
  - H2. SRA Intervention Powers (Statutory Trust) Rules
  - H3. SRA Compensation Fund Rules
- Annex I. Equality Impact Assessment
- Annex J. Implementation timeline and commencement and repeals schedule
- Annex K. Details of respondents to May 2010 consultation on the Handbook, and of roadshows and other stakeholder engagement
- Annex L. Abbreviations used in this consultation paper
- Annex M. List of questions for consultation

Annex F10 – Approach to reporting and notification requirements

Section 6 of this paper sets out the background to our reporting and notification requirements.

The examples below illustrate our current thinking on the new information requirements.

Example 1

Financial stability is an area of concern for the SRA, and we may wish to ask for information that would enable us to assess the risks which firms pose. One of the potential questions could be:

Have you breached any bank facility limits or covenants associated with your financing in the last reporting period?

If yes, please give details and the steps taken to address the issue (re-finance, re-negotiate etc.)

Do you forecast that you will remain within your current banking facilities and comply with covenants for the next 12 months from the date of this report?

Yes	
No	

If no, what are your plans to mitigate these financial risks?

This kind of information would enable us to:

- assess elements of risk around financial stability; and
- assess and give credit for controls or mitigation plans that may be in place.

We hope that by asking questions about forecasting and mitigation planning we will prompt firms to improve their own monitoring in this area,

encouraging strong financial management.

Example 2

As part of our implementation of OFR, we may ask questions in respect of client care and complaints handling:

Client care

Please assess and rate the extent to which you have achieved the outcomes in the Code for client care:

Achievement of the outcomes

In structuring this type of question we would use drop-down menus allowing a firm to rate their own levels of compliance, in accordance with the outcomes and indicative behaviours in the Code.

Complaints handling

Please assess and rate your controls for dealing with complaints handling with reference to the following:

Policy in place	Procedures to implement policy	Implementation regularly assessed and reviewed	Plan to implement improvements

Is the client told, in writing, at the outset of how and to whom to complain, and of their right to complain to the Legal Ombudsman at the conclusion of the complaint process?

Yes	
No	

If you wish to clarify or make comments on these arrangements, please do so here.

Complaints data

Please provide a breakdown of any complaints dealt with in the last period by:

We are considering introducing self-assessment or self-certification as a way of assessing risk, as illustrated by these examples.

Self-assessment or self-certification is a regulatory tool that is used by other regulators in the UK, but in the legal services context is most notably used by regulators in New South Wales and Queensland in Australia. As a regulatory tool it has a number of benefits. It allows the regulator to make assessments of systems and controls in firms without needing to see large amounts of policy documentation or process manuals, and avoids the need to carry out inspections of all firms to assess the quality of controls.

If completed openly and with a realistic assessment of the quality of the policy or procedure, self-assessment can bring real benefits to firms in terms of improved performance. Research in New South Wales has shown that following the completion of the self-assessment process, firms have seen a reduction in complaints of almost one third, with corresponding improvements in outcomes for clients.

The use of self-assessment also demonstrates the kind of relationship we are expecting to have with the regulated community. Self-assessment relies on a mutual trust if the benefits it can bring are to be realised.

As part of this self-assessment approach, we are also considering benchmarking the answers given by firms. By answering the questions honestly a firm will be able to establish its relative performance against that of similar firms, which could prove a valuable aid to improving performance.

In developing an approach to both risk-assessment and corresponding information requirements, we will be identifying:

- core data – we will request this from all firms, to allow the minimum level of risk assessment;
- other data – we will only request this from higher risk firms, where the additional information will assist us to monitor those risks and target our resources.

Annex I – Equality Impact Assessment

Introduction

1. The second draft of the Handbook is now published for further consultation and contains some revised and some new draft rules and a revised draft SRA Code of Conduct. The consultation paper explains the changes and identifies the new areas in more detail.

2. The SRA's approach is to consider equality impact in all policy development work and discuss policy options with external stakeholders as work progresses to ensure that equality issues are addressed as they arise. For example, equality groups were represented in the Financial Assurance Reference Group which assisted the SRA with the draft SRA Accounts Rules.

3. An initial equality impact assessment of the Handbook was published (as annex K) with the first consultation paper published in May 2010. That report set out some of our early thoughts for each of the Handbook sections.

4. We have now looked in further detail at the potential equality impact of each section of the Handbook and this report provides a summary of that work. The summary is based on 10 equality impact assessments which are being published separately and which will be referred to as

they are summarised in this report.

5. A full equality impact assessment report will be published to accompany the final version of the Handbook that will be submitted for approval by the SRA Board and the Legal Services Board.

6. Since publishing the first draft of the Handbook for consultation, the new Equality Act 2010 has come into force. This Act replaces the previous equality legislation and seeks to apply a more consistent approach to equality for all 'protected characteristics'. This term describes the various equality strands that are now covered, namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

7. The Equality Act 2010 also introduces a new public sector equality duty which (from its implementation in April 2011) will cover all of the protected characteristics, other than marriage and civil partnership. The SRA has already adopted a single equality approach, extending its existing legal equality duties (in relation to disability, gender and race) to the other equality areas. As we take our equality impact assessment work forward we will be taking into account the new public sector equality duty requirements and guidance.

Stakeholders

8. Our main stakeholders are:

- Consumers of legal services and the wider public
- All individuals and bodies regulated by the SRA and all individuals and bodies which may wish to seek recognition/authorisation from the SRA
- The Law Society, the Legal Services Board and other approved regulators, the Solicitors Disciplinary Tribunal, the Legal Ombudsman, the Ministry of Justice and organisations providing legal training.

Promoting equality and diversity through the Handbook

9. In our initial impact assessment of the Handbook, we covered the two particular features of the Handbook which are expressly designed to promote equality and diversity: the inclusion of an overarching Principle relating to equality and diversity (the new Principle 9) and the inclusion in the Code section of the Handbook of specific equality and diversity outcomes which firms must achieve (which effectively replace rule 6 from the current Code of Conduct).

10. During the first consultation, we received comments on the proposed wording of Principle 9. There was some concern that the principle required firms to go beyond the current requirements of Rule 6 (the equality and diversity section of the Code of Conduct) which is not the case. We decided to revise the wording to make the position clearer for firms and in its revised format we remain of the view that it has real potential to encourage the regulated community to embed equality and diversity and as such should have a positive impact on equality across all equality groups. We will be thinking through further guidance for firms on how this could work in practice.

11. In our initial equality impact assessment of the Handbook, we reviewed those provisions of the new Code which are intended to replace the current Rule 6 which sets out the requirements in relation to equality and diversity. The new Code reflects the changes introduced by the Equality Act referred to above in its reference to equality across the protected characteristics. Since we published the first draft of the Code, we have not received any submissions or evidence to suggest that there was a need to revise the relevant provisions further.

12. We remain of the view that the new Code provides a real opportunity to encourage equality of opportunity and respect for diversity across the profession.

Alternative business structures

13. One of the reasons why we have had to revise the whole range of rules and regulations that apply to those we regulate is because we will be applying to the Legal Services Board (LSB) to become structures a licensing authority for alternative business structures.

14. As this change is likely to have wider implications for the profession, we decided to carry out a separate equality impact assessment, which will cover these wider implications as well as the specific issues arising from the approach taken across the Handbook to harmonise the rules for alternative business structures with those for traditional firms.

15. The consultation paper reports the outcome of our first consultation on the Handbook in relation to our proposed approach to alternative

business structures and provides an update in relation to the LSB's recently published draft section 69 Order. Section 69 of the Legal Services Act allows the LSB to make changes to the current regulatory legislation and is the mechanism being used to harmonise the regulatory regime for traditional firms and the new alternative business structures, so far as possible, to achieve a common standard of consumer protection.

16. Our dialogue with the LSB on these matters is ongoing and we will consider the equality impact of the changes as this area develops and report further in the new year.

17. We have published our early findings on the equality impact of alternative business structures entering the legal service market. It is clear that small firms and groups representing Black and Minority Ethnic (BME) solicitors remain concerned about the impact of alternative business structures on their ability to practise. We will address these concerns and look further at the available evidence as we develop our work on this equality impact assessment. However we consider that alternative business structures will have a positive impact, both in terms of employment opportunities for members of the profession and because of the increased access to legal services available to consumers.

Evidence considered for the equality impact assessments

Data relating to the current regime

18. As we have carried out our equality impact assessment work on the different areas covered by the Handbook we have looked at each set of rules rules and the draft Code and considered how they are going to change, and whether on the face of them they are likely to have an impact on equality.

19. For each of the individual equality impact assessment reports that are being published at the same time as the second Handbook consultation paper, we have also considered, where possible, evidence about how the current rules are being applied. This has been useful, but can only offer provisional indications about the potential impact of the new Handbook which is intended for use within our new outcomes-focused regime from October 2011 - we will be publishing further information about our new approach in November 2010.

20. Where disproportionality has been found it is often difficult to differentiate whether this is being caused by the rules themselves, the way that they have been applied or some other unrelated factor. As we move toward outcomes-focused regulation and the Handbook goes live in October 2011, we will be closely monitoring regulatory outcomes across all of the protected characteristics to identify if and how any current disproportionality might change.

Stakeholder engagement

21. In addition to the evidence that we have reviewed from the current rules, we have conducted an extensive programme of engagement with our stakeholders in addition to the first consultation paper. Further information about the activities that we have undertaken are included at annex K and in the individual equality impact assessments that have been published alongside the second Handbook consultation paper.

22. The SRA has taken note of Lord Ouseley's criticism of its engagement activity in his review of the regulatory outcomes for BME solicitors - (PDF 542K, August 2008) published in 2008. In his 2009 review report - (PDF 48K, June 2009), Lord Ouseley noted the considerable improvements, in particular through the roadshows we ran in 2009.

23. We have developed our engagement work further as we have been preparing the move to outcome-focused regulation and drafting the Handbook. The relationships we have forged and developed with consumers and the profession have helped us enormously in taking this work forward and will be crucial to the success of our new approach.

24. We recognise that there is a long way to go and there may be sectors of the profession that will be more difficult to convince about the potential benefits of our new approach than others. However, we intend to build on our engagement work and will be developing an engagement strategy to help us maintain the momentum and establish more permanent engagement mechanisms going forward.

Costs benefit analysis

25. We have commissioned a cost benefit analysis to better understand the potential burden of the new requirements for all firms. This work is being conducted on a phased basis and is ongoing. The report on the first phase will be published separately in November.

Summary of our equality impact assessment of the Handbook

26. We have reviewed the various sections of the Handbook under the three headings: conduct of legal services; engaging with the SRA –

authorisation and discipline; and protecting the public. For each of the main headings we will summarise our conclusions from the equality impact assessments that we have published.

Conduct of Legal Services

27. Under this section we have considered the equality impact of the Code, the Accounts Rules and Specialist Services

The Code

28. The consultation paper sets out the outcome of the first consultation and explains the changes incorporated into the second draft of the Code.

29. In our equality impact assessment of the new Code, the main concern, arising from the consultation and from engagement with the profession was that the outcomes-focused approach of the new Code could be perceived as being more onerous for small firms. It was felt that the prescriptive, rule based approach provided certainty and without this, smaller firms would feel more exposed and less clear about what they should be doing to comply with the rules and regulations.

30. We know from data about the profession, that there are disproportionately more BME and female small firms (firms with 1 or 2 partners) which means that an impact on this sector would indirectly impact disproportionately on BME and female firms. Firms are classified according the equality grouping of the majority of the partners. In 2009, BME firms were over represented in 1 and 2 partner firms, making up 12% of the overall firm population but 16% of 1 partner firms and 14% of 2 partner firms. Female firms were over represented in 1 partner firms, making up 24% of the overall firm population but 29% of 1 partner firms.

31. We have revised the second draft of the Code by clarifying the outcomes and indicative behaviours where we could. The outcomes-focused approach is intended to allow firms the flexibility to deliver the expected outcomes in a way that best suits them. In addition to the Code, we will be publishing frequently asked questions on the SRA website and providing communications, advice and education to the profession about the Handbook.

32. We anticipate that these revisions will help all firms to understand what is expected of them and will minimise the potential adverse impact on small firms. The impact will also be minimised by the flexibility that is built in to our proposed approach to supervision and enforcement.

33. Overall, we have decided that rather than spend further time looking back at each of the rules under the current Code of Conduct, it would be more productive to look forward to the implementation of the new Code and monitor the outcomes for regulated firms and individuals – both in terms of their experience of supervision and in terms of the cases that will have to be referred on for enforcement. As we monitor each area of the new Code, we will refer back to the outcomes for the profession from the current Code of Conduct to assess the equality impact for all of the protected characteristics.

34. We considered overall that the second draft of the Code has the potential to impact positively on equality. However, given the concerns expressed by small firms, we will be closely monitoring how the new Code will impact on this sector as the new approach is implemented from October 2011.

SRA Accounts Rules

35. As indicated in our initial equality assessment of the Handbook, the draft SRA Accounts Rules are based largely on the current rules and remain fairly detailed and prescriptive as this was felt to be necessary to provide a high level of protection for clients.

36. A summary of the further changes made following the first consultation is set out in the second consultation paper. There were no specific concerns about equality arising from the SRA Accounts Rules either from the consultation responses or the SRA's Financial Assurance Reference Group, which is a stakeholder group assisting the SRA in developing these rules.

37. Unless any further issues are raised with us during the second consultation period, we will be in a position to conclude overall that the rules will have a positive impact on equality as a result of the improved clarity and the flexibility given in some areas, in particular the interest arrangements which improve equality for some religious groups.

38. Further details can be seen in our published equality impact assessment of the draft SRA Accounts Rules. In that report we have also considered the evidence that we have identified in relation to enforcement of the existing accounts rules. There is evidence of disproportionate outcomes for BME solicitors, men and solicitors over 41 in relation to the incidence of forensic inspections into alleged breaches of the existing

accounts rules and in relation to the action taken as a result of the late filing of accountant's reports. This will be addressed further as we consider our forensic investigation function further and as we develop our approach to enforcement under the new outcomes-focused regime.

Specialist Services

39. As explained in the consultation paper, these specialist services include European cross border practices, property selling and financial services. There are particular statutory rules applicable to solicitors in these areas and they do not lend themselves to an outcomes-focused approach, we have therefore moved these rules from the Code, and placed them in a separate section of the Handbook.

40. We have looked in more detail at these areas since our initial impact assessment of the first draft of the Handbook and have not identified any further equality issues. We have published our equality impact assessment of this area.

41. Whilst we will continue to monitor the regulatory outcomes of action taken in relation to these rules, we are satisfied that there is no adverse impact on equality of the rules themselves.

Engaging with the SRA – Authorisation and Discipline of firms and individuals

42. To cover this section of the handbook, we have conducted five separate equality impact assessments, all of which are published separately:

- Authorisation and practising requirements
- SRA Disciplinary Procedure Rules
- SRA Cost of Investigations Regulations
- Training requirements (which covers four sets of rules) and
- the new Suitability Test.

Authorisation and practising requirements

43. The authorisation and practising requirements section of the Handbook applies to individuals, recognised firms and recognised sole practitioners as well as to alternative business structures that will be allowed to apply for authorisation to practise from October 2011.

Authorisation

44. The two main changes proposed for the authorisation of new firms are:

- the requirement to appoint compliance officers for legal practice and for finance and administration
- the requirement to provide much more information about the firm at the point of authorisation and on an annual basis.

45. We were aware at the outset that sole practitioners and small firms were concerned that these new requirements may be burdensome and these concerns were raised in the first consultation. A summary of the comment received about our new proposals for authorisation is set out in the second consultation paper together with our response.

46. We will consider the findings of the initial cost benefit analysis when published in November. If these concerns about small firms are borne out, this would indicate a potential indirect adverse impact for BME firms and female firms in particular (the disproportionality figures for 2009 are set out above in the section on the new Code).

47. We believe that the impact of these changes will be marginal as firms are already required to have arrangements in place for the effective management and supervision of their business. The changes reflect the need recognised under the Legal Services Act for firms to have specific individuals responsible for compliance and reporting.

48. We will be looking further at this as we develop our approach to authorisation, taking into account the further response that we receive from the second handbook consultation.

Practice Framework

49. The Practice Framework Rules set out matters relating to framework and rights of practice, structure of firms and eligibility for authorisation. The Practice Framework Rules are the first place to look to establish what methods of practising are permitted, and what route

to authorisation and individual arrangements are possible.

50. These rules deal with the position of in-house solicitors. With the advent of alternative business structures, the regulatory status of in-house solicitors was under review to assess whether the exemptions that currently apply to in-house practice should remain. The primary concern is that where services are being provided to the public, the bodies through which they are provided are brought, so far as possible, within the regulatory regime set up by the Legal Services Act.

51. The October consultation provides more detail of the changes that are now being proposed following responses to the first consultation and further discussions with the Legal Services Board.

52. We will look at the statistical data that we can gather to identify the equality breakdown of SRA regulated lawyers in this group, so far as we can, to see whether there is a potential for disproportionate impact.

SRA Practising Regulations 2009 and the SRA Recognised Bodies Regulations 2009

53. The SRA Practising Regulations deal with applications for practising certificates by solicitors and for registration by European lawyers and foreign lawyers; applications for authorisation to practise as a sole practitioner; practising certificates and registration. These rules are fairly technical and relate largely to the process by which regulated individuals apply to renew their practising certificates or registration each year (as well as the process for sole practitioners to be recognised).

54. The Recognised Bodies Regulations set out the process for recognition of firms and will apply until March 2012, the authorisation rules in the new Handbook will apply to all firms, including sole practitioners so that all traditional solicitors firms are dealt with in the same way ie as 'recognised bodies'. The Recognised Bodies Regulations will, therefore, be repealed in March 2012.

55. We have not identified any equality issues arising from these two sets of rules.

SRA Disciplinary Procedure Rules

56. The SRA has statutory powers to take disciplinary action against regulated individuals or entities when a finding has been made that they have breached the rules. These powers are set out in the SRA (Disciplinary Procedure) Rules (the 2010 rules) which set out the SRA's powers to fine, rebuke, warn and give advice to solicitors when a finding has been made against them. The draft new rules for 2011 in the Handbook are very similar to the 2010 rules - the main change being the need to address the powers applicable to alternative business structures. We have tried, where possible, to harmonise, the disciplinary powers applicable across all regulated bodies and individuals from October 2011.

57. We have published a detailed report of our equality impact assessment work in this area so far, looking in particular at: the disciplinary powers; the process of decision making under the rules; the decision to impose a financial penalty and the supporting criteria; decisions to disqualify; referral to the Solicitors Disciplinary Tribunal (SDT); and the publication of disciplinary decisions.

58. We concluded that the draft rules have the potential to impact positively on equality by setting our more clearly in one place the disciplinary powers and rules with supporting transparent and published criteria.

59. The response to the first consultation did not give rise to any particular concern about equality but the financial penalty criteria and a number of other matters are included in the second draft of the rules as part of the second Handbook consultation. There is more detail about this in the second consultation paper. We will review the outcome of the second consultation, particularly in relation to the new areas, and report further in the new year.

60. Despite our provisional conclusions about the rules, we recognise that there are underlying equality issues in relation to disciplinary outcomes for the profession – in particular the disproportionate over representation of BME solicitors.

61. We have undertaken a range of activities, captured in our Equality and Diversity Strategy and action plan, to understand the reasons for these disproportionate outcomes including some further research by Pearn Kandola which has now been published.

62. Key findings from the Pearn Kandola report were that the intelligence and referrals to the SRA were disproportionate in the first instance and that whilst in some areas this disproportionality was compounded by the work of the SRA, in others it was reduced or was neutral.

63. We will be closely monitoring disciplinary outcomes under the new regime from October 2011 and in the meantime we are working on the following areas:

- Undertaking a comprehensive programme of equality impact assessment for all our decision making criteria
- Delivering the detailed action plan identified within the Pearn Kandola report which have been incorporated into the SRA's business delivery plans for 2011
- Following up on our commitment to consider the equality impact of our publications policy, including the potential adverse impact on good race relations which may be caused by the disproportionate presence of BME solicitors in the data published about findings made against the profession.

The Cost of Investigations Rules

64. The Cost of Investigations Regulations empower the SRA to recover charges (relating to the cost of the investigation) from regulated individuals and firms who have been found to have committed, or have admitted, misconduct or a breach of the SRA's rules. The draft rules for inclusion in the Handbook have been extended to cover alternative business structures.

65. From our initial assessment of these rules, we did not identify any adverse equality impact; however, we have decided to review the whole area of costs recovery in 2011 and will carry out a full equality impact assessment at that time.

Authorising individuals to practise

66. The regulations that apply to the authorisation of individuals to practice will be part of the SRA's new Handbook and are being published for the first time in October 2010 for consultation. This part of the Handbook will cover the following sets of rules:

- The Training Regulations
- The Admission Regulations
- Qualified Lawyer Transfer Scheme Regulations
- Higher Rights of Audience Regulations.

67. Further detail about our initial conclusions about the equality impact of this section of the Handbook can be found in our published equality impact assessment report. A brief summary of the four areas is set out in the following paragraphs.

68. We have identified positive impacts for equality arising from the revised training regulations relating mainly to the removal of a number of unjustifiable age limits and generally trying to introduce as much flexibility as we can into the regulations to improve access to the profession for students from all equality groups.

69. We have not identified any impact arising from the changes made to the admission regulations.

70. The draft new Qualified Lawyer Transfer Scheme Regulations and the draft new Higher Rights of Audience Regulations have changed little. Both sets of regulations were introduced recently and full equality impact assessments were completed and published - for QLTSR, and HRA Regulations.

The new Suitability Test

71. The new Authorisation Rules will require applicants for the roles of manager, owner, and interest holder in alternative business structures and applicants for the compliance officer roles referred to above to be "fit and proper".

72. The obligation and authority for this stems from the Legal Services Act 2007. This act demands that we include procedures for satisfying ourselves as to fitness and propriety, but it is silent on what "fitness and propriety" mean in detail.

73. The current Training, Qualified Lawyers Transfer Scheme and Admission Regulations all require individuals applying for admission to satisfy the SRA as to their "character and suitability" to be solicitors. The obligation on, and authority for, the SRA to do this comes from the Solicitors Act 1974.

74. This obligation and authority for this stems from the Solicitors Act, but the act does not define the phrase "character and suitability". The SRA currently relies on the "Character and Suitability Guidelines" which have been developed over a number of years, and were last subject to formal consultation in early 2007.

75. We are proposing a single test for both purposes, which will be referred to as the "Suitability Test" and have determined that it is in the

public interest that the test for solicitors and for the non-solicitor managers, owners or compliance officers roles is stringent.

76. We have published a detailed report of our initial equality impact assessment and concluded that there are equality issues, in particular for ethnicity, gender and disability that arise in relation to the Suitability Test. We have taken steps to mitigate these potential impacts and promote equality in drafting the new criteria but we will be carrying out a full equality impact assessment to address the issues in more detail.

77. In summary the equality issues in relation to gender and ethnicity arise from the data that we have on outcomes from the application of the current criteria for character and suitability. Although the figures are too small for us to be able to draw firm conclusions, there are trends to suggest there may be some disproportionate outcomes for BME applicants and differences between the genders. We need to consider the data further and if necessary, review the draft Suitability Test to identify whether there is anything we can do to mitigate any disproportionality.

78. The concern in relation to disability equality arose from the way that the current character and suitability guidelines deal with mental health as one of the criteria for consideration. We have taken this into account in drafting the criteria for the new Suitability Test, removing the reference to a person's mental health condition as potentially indicating a risk.

79. However, we recognise that there may be cases where we are concerned about a person's conduct, and their physical or mental health may be relevant for us in evaluating that conduct. Accordingly, any relevant issues of this nature will continue to be considered as either mitigating or aggravating factors. In this consultation we are asking whether we have got the right approach and we will work further with disability groups on this.

Protecting the public

80. This section of the Handbook will contain the rules covering indemnity and indemnity insurance, the compensation fund and statutory trusts. We have published a short equality impact assessment of these rules, although the SRA is currently reviewing the whole area of indemnity insurance and client protection. We are considering the equality impact as part of this review and will be publishing an initial equality impact assessment with the consultation paper setting out our proposals, which is due to be released in December 2010.

81. The current draft rules proposed for inclusion in the Handbook are likely to need further revision as a result of the review. The changes at this stage are related almost exclusively to the need to extend their scope to incorporate alternative business structures.

82. The consultation paper sets out some of the concerns that have been expressed about the proposed changes to the Compensation Fund Rules. The concern arises from the impact on consumers of extending the compensation fund to alternative business structures. It is not clear how these changes might affect equality at this stage and we will examine the equality issues as we consider this area further.

Human rights impact

83. There are parts of the Handbook where we anticipated that particular human rights would be engaged. We commissioned a human rights audit for the new rules in the Handbook and have taken into account the findings of that audit as we have developed the rules.

84. We are satisfied that the provisions of the Handbook rules do not adversely impact on human rights.

Conclusions

85. Introducing equality and diversity into the overarching principles applicable to the Handbook, and our attempts to embed equality and diversity more broadly through the Code, we hope will have a positive impact on equality across all of the protected characteristics.

86. We have moved away from a set of prescriptive rules in relation to the new draft Code. The approach we are taking in relation to the Code is essential to our outcomes-focused approach. We believe that the potentially positive impact on equality will be realised as firms are able to develop systems and procedures that are proportionate and suitable to their size, areas of work and client base.

87. For the other sets of rules and regulations on the Handbook, we anticipate that the changes being introduced will bring increased certainty and transparency for the regulated community and consumers.

88. A common concern about the impact of the changes on smaller firms runs through the equality impact work we have carried out in relation to the Code, the new authorisation rules, the impact of alternative business structures entering the market place and this is likely to also be a concern in the review we are undertaking in relation to professional indemnity insurance.

89. We intend to assist all those we regulate with readily accessible and easy to understand information about the introduction of the new

Handbook and outcomes-focused regulation. We believe that this will be of particular assistance to smaller firms which might otherwise lack the resources to readily assimilate the new information. We believe that this, and our other package of education and information initiatives, will help address any disproportionate impact on smaller firms and, therefore, any resulting disproportionate equalities impact.

90. We will also be considering this further when we have the final outcome of the cost benefit analysis we are undertaking – this work has considered the potential different perspectives which firms may have according to their size.

91. As the impact of the new Handbook will not be felt until its rules are applied we will be closely monitoring the regulatory outcomes for the profession after October 2011. The impact will depend as much as what the Handbook says as the way in which we regulate. We will be saying more about the equality issues arising from our work in developing our new outcome focused approach in November 2010.

92. Our new approach to regulation will also be supported by the work we are doing to transform the SRA itself. This includes the introduction of new IT systems and more web based communication with the profession. As this develops we will take account of the need to remain accessible to those we are engaging with. It will also include the work we are doing to promote a new organisational culture and equip our staff to work in the new regime.

93. In the new year, we will be publishing our equality framework for 2011-12 and this will include an action plan to tackle some of the systemic issues identified by the Pearn Kandola report and to address the work we still need to do to embed equality into the transformation process.

94. In the meantime, we have updated and added to the action plan published with our initial equality impact assessment report published with the May consultation paper.

Action plan

Have a clear analysis of the statistical data that we need to assess equality impact across all equality groups	The diversity census returns have been added but we have not been able to produce equality breakdowns for groups other than age, ethnicity and gender	The diversity census returns have been added but we have not been able to produce equality breakdowns for groups other than age, ethnicity and gender
	Prepare up to date statistics across all areas required	We have gathered some of the required statistics but not all will be available
	Analyse the statistical data for disproportionate impact	We have reviewed all available data for disproportionate impact
Gather additional data to assist with the equality impact assessment	Desk based research	Done and ongoing
	Dialog with other regulators	Considered in some areas
	Consider the outcome of the cost benefit analysis	The CBA is an ongoing process and a report will be published in November
Engagement with stakeholders to develop our understanding of the potential impacts	Workshops with the profession in relation to the Code	Done and ongoing for many of the areas being considered
	Roadshows with the profession	Done and ongoing
	Focus groups with the profession and consumers	Done and ongoing for many of the areas being considered
	Dialogue with key stakeholder organisations	Done and ongoing for many of the areas being considered
Make informed decisions on the introduction/implementation of the new policy/procedure	Draw conclusions on the impact across all equality groups	Done and ongoing
	Consider alternative options and changes to mitigate any adverse impact found	Done and ongoing

	Consider justification of any potential indirect impact	Currently being considered as we prepare the full equality impact assessment of the Handbook
Keep stakeholders updated about the findings of our equality impact assessment work	Publish an updated equality impact assessment report with the second Handbook consultation	Done
Continue to review relevant areas during the second consultation	Through further engagement as described above	
Ensure that the final Handbook is accompanied by a full equality impact assessment	Publish a full equality impact assessment for the Handbook	

Annex K – Details of respondents to May 2010 consultation on the Handbook, and of SRA roadshows and other stakeholder engagement

Respondents

Abbey Protection Group Ltd

Addleshaw Goddard LLP

Allen & Overy

Ambrose

APIL

ASAUK

Association of British Insurers

Baker Tilley LLP

Bar Standards Board

Barclays Wealth

Berwin Leighton Paisner LLP

Bird & Bird

Birmingham Law Society

Brighton Housing Trust

Bristol Risk Managers Group

Cafcass

City of London Law Society

City of Westminster & Holborn LS

Clifford Chance

Co-operative Legal Services

Devon & Somerset Law Society

DLA Piper

Dickinson Dees LLP

Foot Anstey Solicitors

Forum of Insurance Lawyers

Freshfields Bruckhaus Deringer LLP

Hacking Ashton LLP

Heenan Blaikie

Herbert Smith LLP

Holman Fenwick Willan LLP

Horwich Farrelly Solicitors

ICAEW

ICAEW — Solicitors Special Interest Group Special Reports and Accountants Panel Legal Services Working Party

ILCA

ILEX Professional Standards

ILEX

Irwin Mitchell LLP

Jomati Consultants LLP

Kent Law Society

Law Society of England and Wales

Lawyers with Disabilities Division

Legal Complaints Service

Legal Ombudsman

Legal Services consumer Panel

Legal Risk LLP

Legal Team Ltd

Leicestershire Law Society

Linklaters

Lovetts plc

Mayer Brown

Network Rail Infrastructure Ltd

Norton Rose LLP

Olswang LLP

Osborne Clarke

Paul Giles Tax

Peninsula Business Services

Practice Standards Unit, SRA

RBS

Russell Jones & Walker

S Abraham Solicitors/SPG

St James Place plc

SlFA

Simmons & Simmons

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Solicitors in Local Government

Solicitors Own Software Ltd

Sole Practitioners Group

Top 100 London firms

Tunbridge Wells, Tonbridge & District Law Society

Which?

Plus 13 respondents who asked for their name to be kept confidential.

SRA Freedom in practice roadshows

25 May 2010	London
27 May 2010	Bristol
8 June 2010	Leeds
9 June 2010	Manchester
15 June 2010	Birmingham
16 June 2010	Liverpool
16 June 2010	Cambridge
22 June 2010	Exeter
24 June 2010	Newcastle
28 June 2010	Cardiff
29 July 2010	London (BME)

OFR-related speaking engagements/meetings attended since June 2010

8 June	Managing Partners Annual Compliance for Law Firms Conference
17 June	IBC Legal's Annual Professional Negligence and Liability Conference
29 June	Consumer Focus
6 July	Junior Lawyers Forum
16 Aug	ABS Reference Group
20 Aug	Bristol Risk Managers Group
8 Sept	Birmingham Risk Mangers Group
14 Sept	GC100 group meeting
14 Sept	Manchester Risk Managers Group
16 Sept	Professional Discipline and Regulatory Reform meeting
17 Sept	Financial Assurance Reference Group meeting
22 Sept	ILCA Annual luncheon
29 Sept	Legal Services Act conference
1 Oct	Legal Practice Management webinars
4 Oct	SRA Disability Advisory Group
7 Oct	LMS Junior Lawyers Forum
8 Oct	Legal Wales Conference
11 Oct	Sole Practitioners Group meeting
12 Oct	Regulation & Monitoring of Solicitors Conference
12 Oct	Connect2Law Annual Conference
14 Oct	Lexcel Quality Forum
20 Oct	Property Section Annual Conference

Annex L – Abbreviations used in this consultation paper

ABS	alternative business structure
Accounts Rules	SRA Accounts Rules
Admission Regulations	SRA Admission Regulations
AJA	Administration of Justice Act 1985
Authorisation Rules	SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies
COB Rules	SRA Financial Services (Conduct or Business) Rules

Code	SRA Code of Conduct
COFA	compliance officer for finance and administration
COLP	compliance officer for legal practice
Compensation Fund Rules	SRA Compensation Fund Rules
Cost of Investigations Regulations	SRA Cost of Investigations Regulations
CPD	Continuing Professional Development
CPE	Common Professional Examination
CRB	Criminal Records Bureau
Cross-border Rules	SRA European Cross-border Practice Rules
Disciplinary Procedure Rules	SRA Disciplinary Procedure Rules
DPB	designated professional body
ELD	Exempting Law Degree
FMOU	Framework memorandum of understanding
FSMA	Financial Services and Markets Act 2000
FSA	Financial Services Authority
Higher Rights of Audience Regulations	SRA Higher Rights of Audience Regulations
HoFA	head of finance and administration
HoLP	head of legal practice
IB	indicative behaviour
LDP	legal disciplinary practice
LPC	Legal Practice Course

LSA	Legal Services Act 2007
LSB	Legal Services Board
MDP	multi-disciplinary practice
MDP ABS	alternative business structure which provides multi-disciplinary services
OFR	outcomes-focused regulation
Practice Framework Rules	SRA Practice Framework Regulations
Practising Regulations	SRA Practising Regulations
Principles	SRA Principles
PSC	Professional Skills Course
QLD	Qualifying Law Degree
Qualified Lawyers Transfer Scheme Regulations	SRA Qualified Lawyers Transfer Scheme Regulations
RB	recognised body
Recognised Bodies Regulations	SRA Recognised Bodies Regulations
REL	registered European lawyer
RFL	registered foreign lawyer
RSP	recognised sole practitioner
SA	Solicitors Act 1974
Scope Rules	SRA Financial Services (Scope) Rules
SDT	Solicitors Disciplinary Tribunal
SIIR	Solicitors' Indemnity Insurance Rules
SIR	SRA Indemnity Rules

SRA	Solicitors Regulation Authority
Statutory Trust Rules	SRA Intervention Powers (Statutory Trust) Rules
Suitability Test	SRA Suitability Test
Training Regulations	SRA Training Regulations

Annex M – List of questions for consultation

1. Do you have any comments on the Introduction to the Handbook?

2. Do you have any comments on the implementation timetable?

3. Do you have any comments on the revised Principles, application provisions and notes to the Principles?

4. Do you have any comments on our approach to guidance?

5. Do you have any comments on the revised Code?

6. Do you have any comments on Chapter 3 (Conflicts of interests)?

7. Do you have any comments on the application of the financial services rules to ABSs?

8 Do you have any comments on the revised Authorisation Rules?

9. Do you have any comments on the proposed approach to reporting and notification?

10. Do you have any comments on the changes to the SRA Practising Regulations?

11. Do you have any comments on the proposed changes to the SRA Practice Framework Rules?

12. Do you have any comments on the proposed changes to the SRA Recognised Bodies Regulations?

13. Do you have any comments on the revised SRA Disciplinary Procedure Rules?

14. Do you have any comments on the SRA Cost of Investigations Regulations?

15. Do you have any comments on the changes which we have made to the regulations concerning training, admission and rights of audience?

16. Is the SRA Suitability Test a robust, clear, transparent and fair assessment for members of the profession and authorisation as role-holders in ABSs and RBs?

17. Do you agree with our proposal to apply the existing compensation fund to ABSs?

18. Do you agree with our proposal to adopt the same compensation fund rules for ABSs, by extending the application of the existing rules?

19. Do you agree with our proposal for the compensation fund to cover acts or omissions of owners of licensed bodies who are neither managers nor employees?

20. Do you have any comments on our equality impact assessment and are there any additional equality issues that we should consider as we work further on the Handbook?

Notes

1. N.B. This paper does not address the responses to our April Consultation "Outcomes-focused regulation – transforming the SRA's regulation of legal services". We will publish our report on that document in November 2010.

2. See in particular paragraphs 95, and 182-183 for in-house practice.

3. See www.legalservicesboard.org.uk/what_we_do/consultations/2010/pdf/section_70_consultation_document.pdf (PDF)

4. This is discussed in greater detail in paragraphs 260-267 of this paper.

See Professor Stephen Mayson's report "Reserved Legal Activities – History and Rationale"

5. See also paragraph 63

6. This is dependent on a section 69 Order; see paragraph 33.

7. The obligation not to take unfair advantage of your client is now expressed as a duty to treat your client fairly.

8. The outcome of certain cases that have come before the Solicitors Disciplinary Tribunal is a matter of public record.

9. See www.tribunals.gov.uk/tribunals/documents/rules/grcrulesconsolidated.pdf

10. The Exempting Law Degree is a course combining the Qualifying Law Degree and the Legal Practice Course.

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SRA Handbook: Policy Statement on our October 2010 Consultation

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SRA Handbook

4. SRA Recognised Bodies Regulations
5. SRA Training Regulations
6. SRA Admission Regulations
7. SRA Qualified Lawyers Transfer Scheme Regulations
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G. Discipline and Costs Recovery (Introduction)
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2. SRA Cost of Investigations Regulations

H. Client Protection (Introduction)
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3. SRA Compensation Fund Rules

Other documents referred to in this Policy Statement

I. Equality impact assessment

J. Cost-benefit analysis

K. Implementation timeline

L. List of respondents to October 2010 consultation on the Handbook

M. Abbreviations used in this Policy Statement

1 Executive summary

1. This Policy Statement annexes the full contents of the new SRA Handbook[1], which have now been made as rules. The Handbook is the foundation stone of our new outcomes-focused approach to regulation. This regime is for all types of law firm, including Alternative Business Structures (ABSs), meeting our objective of achieving a common standard of protection for clients, regardless of the type of firm.

2. This Policy Statement also summarises the responses that we received to the SRA's October Consultation Paper "The Architecture of Change Part 2 – the new SRA Handbook – feedback and further consultation"[2] ("the October Consultation") and sets out our responses to the matters raised.

3. We are grateful for the time and effort given by respondents to replying in detail to our October Consultation and we welcome both the support of, and challenge to, our proposals.

4. We have considered 102 formal responses and other feedback in great detail. From the large number and wide variety of comments some key themes emerged:

   - echoing the May Consultation[3] responses, strong agreement with our proposals to implement a common standard of consumer protection across traditional law firms and ABSs;
   - strong support for guidance to help firms understand our expectations and to achieve the right outcomes for clients. Whilst we understand the concerns of practitioners – whether in private practice, in-house or in a new ABS – our view is that support is best provided outside the formal structure of the Code, to avoid the risk that guidance becomes entrenched and regarded as mandatory. For technical rules we have retained guidance; for the Code we favour a more flexible and responsive approach through frequently asked questions, decision trees, etc that will be published on our website. In particular, in April we will be publishing a guide to "OFR at a glance" to support firms and individuals in preparing for OFR, by illustrating the approach that they can take to addressing issues such as conflicts of interests. We will also be conducting further roadshows and webinars;
   - support for our revisions to the SRA Code. Our overall approach to conflicts of interests was welcomed, although some respondents were concerned about how the provisions applied to conveyancing. We have made revisions to the Code to clarify our position on conveyancing;
   - a range of views on the requirement on all firms to appoint a Compliance Officer for Legal Practice (COLP) and the Compliance Officer for Finance

[1] with the exception of the SRA Indemnity Insurance Rules these will be revised following closure of the SRA's consultation ("Future client financial protection arrangements"), and the Solicitors Keeping of the Roll Regulations which are being revised following closure of the SRA's consultation ("Sole practice: modernising authorisation").
[2] www.sra.org.uk/sra/consultations/OFR-handbook-October.page
[3] "The architecture of change: the SRA's new Handbook"

and Administration (COFA) to enhance risk management and compliance. Feedback focused on the breadth of the rule in terms of ensuring compliance and reportable matters. We have addressed these concerns through revisions to our rules;

- mixed views concerning our information requirements. Respondents continue to be concerned about the amount of information to be requested from them and the proportionality of the SRA's approach. Further information on this issue will be provided in spring/summer of this year;
- support for revisions to the Training Regulations, pending the major review of education and training that we will conduct from April of this year to the end of 2012;
- broad support for the new Suitability Test as a robust and transparent means of assessing those seeking to enter the profession and of approving role holders;
- a range of views on the issue of a single compensation fund for all types of firm; some respondents were in favour of our proposals, whilst others expressed concern regarding the risk profile of ABSs, and favoured a separate fund for ABSs. Our views on this issue have not changed and we are implementing a single fund for reasons of consumer clarity, competition and efficient use of resources;
- concern as to whether the SRA had the appropriate expertise and systems to implement successfully outcomes-focused regulation (OFR) in the time available. We have invested considerable resources in ensuring that SRA staff and systems will be able to meet the challenges of implementing OFR. This includes:
  - ensuring that all our staff have been assessed to identify gaps in skills and developing their abilities to regulate in the intelligent, proportionate and risk-based way that is necessary for OFR;
  - restructuring the SRA to reflect key regulatory functions – Authorisation, Supervision and Enforcement;
  - a major investment in a new IT platform, enabling online applications for authorisation, etc.

5. We have continued to consider the possible impacts on equality and diversity throughout our policy development process. No human rights issues have been identified and our equality impact assessment is published at Annex I. We are confident that where indirect impacts have been identified these are justified by the public interest. Neither have we identified any significant competition law issues. We will monitor impacts as we implement the Handbook and OFR generally.

6. Our work on cost-benefit analysis (CBA) has also progressed. Given that we are moving to a new regulatory regime, where the impact on individual firms will vary depending on their current levels of compliance and the approach they choose to take to OFR, the assessment of future cost is difficult. Any assessment of costs and benefits is, therefore, necessarily provisional. During 2011 the SRA will be undertaking a "baselining" exercise to assess current regulatory costs for firms. This information will be used to inform our CBA

work going forward, by tracking additional costs and benefits against baseline figures. Our cost-benefit analysis is attached at Annex J.

7. While finalising the Handbook, we have identified a client protection issue related to the conduct of financial services by Authorised Professional Firms. This issue is being addressed through a dialogue with the Financial Services Authority and is discussed at paragraphs 85-93 below.

Secondary legislation pursuant to the implementation of the Legal Services Act and the designation of licensing authorities

8. Secondary legislation to amend the SRA's powers and make consequential amendments to other legislation containing references to solicitors and recognised bodies is proceeding to schedule (see paragraphs 26 to 28 below).

9. We look forward to working with you as we move into the implementation of the new Handbook.

2 Introduction

10. This Policy Statement follows on from our October Consultation. It represents the final phase in the development of our new Handbook. We are keen to continue the constructive dialogue with you as we implement the Handbook.

11. We said in our October Consultation that we intended that our new Handbook and outcomes-focused approach to regulation would bring about a culture change in the provision of legal services. The beginning of this change has been detectable in the consultation responses and in our dialogue with firms, in-house solicitors and other stakeholders. We particularly appreciate the concern shown for clients' and the public interest, and the open-mindedness to new structures and opportunities, which might better serve clients' needs.

12. We received 102 responses (see Annex L). Many of these were from representative groups and, for this reason, we have maintained our previous approach of not presenting a statistical analysis based on simple numbers. We have, of course, in determining our policy response, had regard to the overall strength of feeling of respondents, including representative bodies. We are particularly grateful for the depth of analysis of responses, including the identification of drafting errors.

13. In summary, this paper sets out:

- the final structure of the SRA Handbook (see the Introduction to the SRA Handbook at Annex A), which contains all our regulatory requirements for firms and individuals, and for in-house and overseas practice;
- the implementation timeline (Annex K), which has not changed from that annexed to our October Consultation;
- final versions of all elements of the Handbook[4].

14. We have tried to make this paper as readable as possible. Where we have used abbreviated terms and acronyms, we have listed these at Annex M.

[4] with the exception of the SRA Indemnity Insurance Rules and the Solicitors Keeping of the Roll Regulations – see footnote 1.

3 A new approach to regulation

Strategic objectives – our evidence-based approach

15. We explained in our October Consultation that we were conducting the following assessments of Handbook requirements:

- cost-benefit analysis**;**
- human rights audit;
- competition law analysis; and
- equality impact assessment.

16. No significant issues have been identified during our assurance process. We will continue to monitor the impact of the Handbook by reference to the above and to take action to mitigate any adverse impact which may be identified, unless it is justified in the public interest.

Putting outcomes for clients at the centre of our approach

17. In both our May and our October Consultations we have focused on achieving the right outcomes for clients, both in terms of the services that they receive and client protection.

18. The finalised Handbook demonstrates that clients' interests are central to our regulatory approach. Examples are:

- SRA Principles – the need to protect clients, act in their best interests, treat them fairly and with respect for their diversity, is self-evident in our Principles;
- SRA Code – clients' interests are a key element of every chapter, regardless of whether the chapter is about conflicts of interests, practice management or the relationship with the SRA. Even where chapters are about, for example, reporting matters to the SRA, one of the primary reasons for these requirements is the protection of clients' interests. Our outcomes-focused approach also requires firms to take account of – and adapt their approach to – the specific needs of their client base, depending on whether clients are particularly vulnerable or more commercially sophisticated;
- SRA Authorisation Rules – the purpose of these rules is to safeguard the legal services market (and therefore clients) against those who might seek to exploit the trust that clients place in their legal advisers, or deliver sub-standard services to their clients. Our approach to authorisation will be rigorous and where necessary we will impose licence conditions to protect clients;

- SRA Accounts Rules – these are specifically aimed at protecting client money. The operational flexibility that we have introduced, for example in relation to the payment of interest, is tempered by the maintenance of clear rules regarding the handling of client money.

Consumer research

19. To support our development and implementation of the Handbook, and our approach to supervision and enforcement, we are conducting research into consumer attitudes to the purchase of legal services[5]. We will also be publishing a consumer strategy, outlining our work on this important area going forward.

Encouraging a strong, diverse and independent legal profession and access to justice

20. Two priorities for the development of the Handbook have been the need to maintain and promote the provision of independent legal advice by a strong and diverse profession, whatever body in which they choose to practise, and whether in private practice or in-house, and the need to encourage access to justice. Examples of the safeguards that we have put in place to achieve these aims can be found in the Principles and throughout the Handbook, including:

- Principle 9 emphasises the need to run firms and carry out your role within the firm in a way that encourages equality of opportunity and respect for diversity;

- our requirements on arrangements with third parties in the Code are aimed at ensuring that the firm is not influenced in the legal services that it provides by virtue of links with third parties;

- the provisions on advertising in Chapter 8 (Publicity) of the Code prevent approaches to advertising that would be misleading and undermine confidence in the legal profession;

- we have included a new Outcome in Chapter 10 (You and your regulator) of the Code to protect whistleblowers;

- our Authorisation Rules impose an obligation on us to determine applications for authorisation in a way which is compatible with the LSA regulatory objective of improving access to justice.

Opening up legal services – opportunities and risks

21. Parliament's clear intention was that the legal services market should be opened up to permit ABSs and we believe that there are many potential

[5] The results of the first stage of this work were published in February 2011 to "Consumer attitudes towards the purchase of legal services. An overview of SRA research findings."

benefits for clients from this reform. These include potential cost reductions for clients and the opportunity to buy bundled services from a "one-stop shop", whether that is a multi-national professional services firm or an accountant and solicitor setting up to offer inheritance tax planning, will-writing and probate services. In devising the Handbook, we have borne in mind the need to be true to Parliament's intention and not undermine it by creating disproportionate restrictions.

22. Over the course of our consultations, concerns have been raised related to the risks of this opening up of the legal profession. We recognise these risks and have taken care in our Handbook to build in the necessary protections to mitigate these risks. These are set out below and throughout this Policy Statement.

23. Our approach to managing and mitigating risks is clearly set out in the Handbook. We would, in particular, emphasise the role of the SRA Authorisation Rules in providing robust requirements for authorisation, together with our ability to impose licence conditions, and the function of the new Suitability Test to be applied to entrants to the profession, firm owners and role-holders.

24. On the specific issue of multi-disciplinary practices (MDPs), we continue our positive engagement with other regulators and professional bodies through the MDP Working Group. We are progressing our Framework Memorandum of Understanding (FMoU), which is the first tangible outcome for the Group, and is intended to be a living document. Its effectiveness will be monitored by the Working Group as part of their scrutiny of the effectiveness of the regulation of MDPs.

Overseas practice

25. Some respondents to the October Consultation raised queries regarding the application of the Handbook to overseas practice[6]. As we explained in our October Consultation, we are planning to conduct a major policy review on overseas practice in the near future. In the light of that, we have not made any further changes to our requirements, as we felt it inappropriate to try to address particular concerns on a piecemeal basis, which would pre-empt the outcome of that review.

Secondary legislation pursuant to the implementation of the Legal Services Act and the designation of licensing authorities

Proposed changes to the SRA's powers under the Solicitors Act, Administration of Justice Act and the Legal Services Act

26. In our October Consultation, we reported that the SRA was seeking amendments to our powers in the following areas, through the mechanism of an Order under section 69 of the Legal Services Act 2007 (LSA):

[6] These queries were also raised in response to our May Consultation.

(a) section 85 Solicitors Act 1974 (SA) – the provides protection for client money in the event of action by a bank against a solicitor/recognised body (RB); we requested this provision be replicated in the LSA;

(b) the SRA's ability to collect periodic fees from RBs;

(c) the SRA's power to obtain information from third parties concerning ABSs;

(d) the ability for the SRA to recover the costs of investigations from ABSs (as it is able to do from traditional law firms);

(e) a change to sections 36 and 36A SA to enable the operation of a single compensation fund for traditional law firms and ABSs until 31 December 2012 (allowing for the outcome of our Financial Protection review – "Future client financial protection arrangements"); and

(f) removal of the mechanism for endorsing practising certificates of sole practitioners (enabling us to treat sole practitioners as recognised bodies).

27. The Legal Services Board (LSB) conducted a consultation on an Order covering items (a) to (e) above. This Order is now being reviewed by the Ministry of Justice, and we remain confident that the SRA will be granted these powers in time for implementation of the Handbook, although the mechanism may differ from a section 69 LSA Order. Subsequently, we consulted on item (f) and we expect that the LSB will shortly be conducting a consultation on this proposal.

Amendments to legislation consequent on the implementation of Part 5 LSA and the designation of licensing authorities

28. We are currently discussing with the LSB and Ministry of Justice amendments to other legislation that contains references to solicitors and recognised bodies, and whether such provisions should be extended to apply to licensed bodies (ABSs). Again, we anticipate that these Orders will be made in time for implementation of the Handbook.

Question 1 of the October Consultation asked:

- **Do you have any comments on the Introduction to the Handbook?**

Summary of feedback

29. There was broad support for the Introduction to the Handbook. In particular, firms welcomed the desire of the SRA to have a more constructive and trusting relationship with the profession.

30. Representatives of in-house lawyers commented that in-house practice should be expressly mentioned in the Introduction.

31. Respondents appreciated the fact that the SRA views buyers of legal services as clients, rather than mere customers, recognising the professional status of the providers and the fiduciary relationship on which that is based.

32. Some respondents expressed concern that the SRA Code does not set out detailed rules, and fear that, as a result of misunderstanding our requirements, they would become subject to disciplinary action. We see this as not so much to do with the content of the Introduction, and more to do with the SRA's approach to supervision and enforcement.

> "We like the idea that you will be exercising "regulatory powers in a proportionate manner, focusing on risks and outcomes to clients".
>
> We are also glad that the SRA wants a more constructive and trusting relationship with the profession……." Surrey Law Society

Our response

33. We accept that greater emphasis could be given to in-house practice and have amended the Introduction accordingly.

34. Ultimately, the concerns of respondents about the implementation of OFR can only be assuaged through the experience of the operation of the SRA's approach to supervision and enforcement in practice. Our firm intention is to develop a relationship of trust with our regulated community, supported where necessary by enforcement action to create a credible deterrent to protect clients and the broader public interest. In addition, we will monitor closely the implementation of the Handbook, both in terms of the actions of firms and individuals and the response of the SRA to those actions.

The new Handbook

35. A final version of the Introduction to the SRA Handbook is attached at Annex A.

4 The Architecture of the new Handbook – bringing principles and outcomes to the heart of our regime

36. In our May 2010 Consultation Paper, we set out our ambition to create a Handbook that, for the first time, would bring together all our regulatory requirements in one cohesive structure, with Principles and Outcomes at its heart. In creating the Handbook, we wanted to enable you to understand our priorities, and how the elements of our regulatory regime inter-link in furtherance of those priorities.

37. The Handbook structure has now been finalised and we are confident that we have achieved our ambition. The online version of the Handbook will be available from April this year.

Glossary

38. In our October Consultation we reported that there had been a welcome for our proposed Glossary for the Handbook. The Glossary is central to the bringing together of the elements of the Handbook and will be an overarching set of definitions which will apply to all elements of the Handbook. Our objectives in creating the single Glossary were to:

- rationalise the terminology used throughout the Handbook; and
- bring greater harmonisation and consistency to the sets of rules.

39. The Glossary is being implemented in two stages. At both stages when accessing the online version of any set of rules in the Handbook, readers will be able to "hover" over a defined term (indicated in italics) and see the definition. The stages for implementing the Glossary are as follows:

Stage 1 (now complete) – a full set of definitions has been compiled and all sets of rules have been checked to ensure that they reflect that set of definitions. In Stage 1 each set of rules retains its own definitions, amended to reflect the development of the Glossary.

Stage 2 – all definitions will be removed from each set of rules and will be located in the Glossary. The Glossary terms will be applied to all rules in the Handbook, except in limited circumstances where it has not been possible for a term to be defined in the same way across the entire Handbook. Any such variations will be reflected in the Glossary. This will also necessitate minor changes to numbering and cross-referencing.

40. As part of the implementation of Stage 1 it has been necessary to make minor changes to sets of rules in the Handbook. Rules annexed to this Policy Statement reflect those changes.

Question 2 of the October Consultation asked:

- **Do you have any comments on the implementation timetable?**

Summary of feedback

41. Some respondents felt that the shortness of the implementation timetable would present a challenge, particularly for small firms, in order to ensure that staff were appropriately prepared for the new Code, etc. Others felt that the timetable was achievable and reasonable.

42. Respondents particularly welcomed the grace period for legal disciplinary practices (LDPs) to switch to ABSs, and the fact that the SRA will deem some individuals to be approved to hold certain roles.

43. There was significant support for training materials, webinars, etc. and for the online version of the Handbook to be available as soon as possible.

Our response

44. We are confident that the timetable is achievable both for the SRA and its regulated community, particularly as the Principles and Outcomes in the Code in substance reflect the current obligations of the regulated community.

45. The online version of the Handbook will be published in early April and through the spring/summer of this year we will be running a series of webinars and roadshows to assist firms to become more familiar with the Handbook and our new approach. We will also be publishing further material on our website to help firms make the transition to OFR.

Question 3 of the October Consultation asked:

- **Do you have any comments on the revised Principles, application provisions and notes to the Principles?**

Summary of feedback

46. The main feedback was on Principle 9 (equality and diversity). There were mixed views on the revised wording. Some supported the revised wording, particularly the removal of any suggestion of a duty to discriminate positively, and felt that Principle now has the right emphasis. Others, however, were concerned that the revised wording represented a dilution of the duty.

47. Some respondents objected to the use of “proper” throughout the Principles and suggested that this should be replaced with “professional”, e.g., standard of conduct. One respondent also commented that Principle 5 should refer to a proper standard of “work”, rather than “service” to be consistent with the Legal Services Act “professional principles”.

48. One respondent expressed concern about the application of the Principles to in-house lawyers. However, this was not a generally held view.

"ILEX recognises that the core principles will offer legal entities more flexibility to deliver to clients real quality service provision in a way which best suits the firm, which is free from burdensome and over-prescriptive rules." Institute of Legal Executives

Our response

49. We believe that Principle 9 as re-drafted correctly expresses our expectations of firms, individuals and in-house solicitors, which go beyond mere statutory obligations, without imposing a duty to discriminate positively.

50. We do not accept that the word "proper" should be replaced by "professional". "Proper" is more in keeping with our plain English approach and encompasses the concept of professionalism. We also believe that our Principles fully reflect the spirit of the "professional principles" set out in the LSA.

The new Handbook

51. A final version of the SRA Principles is attached at Annex B.

Question 4 of the October Consultation asked:

- **Do you have any comments on our approach to guidance?**

Summary of feedback

52. Many respondents requested more supporting guidance, although there were some who are happy with our approach. Guidance provided to rules other than the Code was generally felt to be helpful.

53. The main concerns centred on guidance to the new Code, given that much of the guidance in the current Solicitors' Code of Conduct 2007 has not been replicated in the new Code. Other respondents felt that the Indicative Behaviours (IBs) were helpful and provided clarity on the SRA's expectations, whilst giving firms flexibility.

"The SRA's approach to guidance is absolutely right in our opinion." TLT LLP

"In FOIL's view the best way to achieve a balance is through a flexible approach accompanied by guidance, to allow for a tailored approach, and at the same time provide reassurance that acting in a particular way will deliver on Outcomes and deliver consistency." The Forum of Insurance Lawyers

Our response

54. We do not believe that we should produce lengthy and detailed guidance as part of the Handbook. However, we recognise that in some cases, e.g., the SRA Accounts Rules and the SRA Authorisation Rules, there is a need for a

proper level of guidance and this was reflected in the version of those rules annexed to the October Consultation.

55. With regard to the Code, we have moved away from a rules-based approach, and there is a significant risk that (as has been the case previously) guidance might proliferate and become entrenched, therefore becoming "regulation by the back door". We also believe that guidance could be wrongly interpreted as providing a "safe harbour" (i.e. immunity from regulatory action) or as setting "best practice". It is not the role of the SRA to set "best practice", and any guidance provided would not create a "safe harbour".

56. In paragraph 45 of this paper, we explain what further steps we are taking to support firms moving from the current Code of Conduct to OFR.

5 Conduct of legal services

Question 5 of the October Consultation asked:

- **Do you have any comments on the revised Code?**

Summary of feedback

57. Some respondents felt that the application to in-house practice needed to be clarified further. This was because in-house practice takes a variety of forms and some considered that this is not reflected in the draft Code. One respondent suggested wording that broke down the Outcomes to each area covered by in-house practice as set out in the Practice Framework Rules. However, other responses from in-house lawyers took different views on which Outcomes applied to their area of work.

58. Some respondents commented on the format of the Code, including the numbering and the status of introductions to each chapter.

59. A number of respondents felt that the provisions on outsourcing (Chapter 7 – Management of your business) took an undifferentiated approach and did not reflect the fact that some outsourcing (e.g., cleaning) was of less significance from a regulatory view point than other forms (e.g., document management). There were also concerns about the requirement for firms to have a term in their outsourcing contracts allowing access by the SRA to an outsourced service supplier's premises.

60. On Chapter 9 (Fee sharing and referrals), the Legal Services Board felt that all financial arrangements for the referral of work should be in writing.

"The Panel is pleased the need for solicitors to treat customers fairly is explicitly included within the revised code as a core outcome." Legal Services Consumer Panel

"We….remain concerned that the flexibility for firms in managing their businesses which the SRA seeks to create with OFR may prove impossible to achieve unless the relationship managers and other personnel tasked with regulating compliance adopt a flexible approach to the indicative behaviours and indeed to the compliance with mandatory outcomes. We welcome the SRA's willingness to engage with City firms to understand their businesses better." Anon

"ILEX welcomes the discarding of unnecessary complexity and duplication from the revised Code. This streamlining is important to ensure that the Code is easy to read and understand by both lawyers and consumers." Institute of Legal Executives

"The Overview of the Code states that "You must strive to uphold the spirit of the Code". Without further guidance, we believe that this is too ambiguous and it is unclear how the profession would execute this. In addition, there is some ambiguity as the use of "you" throughout the Code, and whether it is

referring to the entity or the regulated individual. Specifically, it is difficult to know which parts of the Code's definition of "you" apply, and where and when they do so." The Law Society of England and Wales

"We would encourage the SRA to think again about outsourcing – a business technique which can be very important in the efficiency of a firm." Herbert Smith

Our response

61. We recognise the concerns that respondents have regarding the transition to OFR. We will be publishing further information to assist firms in making that transition and we will also be monitoring, and seeking feedback on, our supervision of firms based on the new Handbook.

62. In developing the Code, we strove to introduce flexibility. This was in part in response to feedback on the current Solicitors' Code of Conduct 2007, which was regarded by many as too prescriptive. Introducing flexibility and removing prescription quite rightly puts the onus on firms and individuals to take responsibility for achieving the right outcomes for clients and the public interest. Based on the feedback that we have received, we believe that we have struck the right balance between flexibility and clarity of our expectations.

63. We have reviewed the application of Outcomes to different forms of in-house practice. We now specify which Outcomes apply to all in-house practice; in all other cases, the Outcomes will apply unless the context clearly indicates that they are not relevant.

64. On the issue of "you", Chapter 13 (Application and waivers provisions) makes it clear that the whole Code applies to both firms and individuals (with appropriate exceptions in the individual chapters for in-house and overseas practice). The only chapters in which we differentiate between firms and individuals are in Chapter 4 (Confidentiality and disclosure), where we make it clear that the duty of disclosure applies to the individual adviser, and in Chapter 12 (Separate businesses), where we set out how separate business requirements apply to each.

65. Regarding the format of the Code, we have renumbered the Outcomes and Indicative Behaviours to reflect the chapter in which they appear. The introductions to each chapter are clearly not mandatory and are simply intended to provide a context for the matters covered in the chapter; we believe it is unnecessary to say that they are not mandatory.

66. On outsourcing, this is a growing business approach for law firms and we must ensure that we have sufficient powers over firms so that we can regulate firms effectively, including assessment of risks associated with outsourcing. We are clear that at all times the obligation for achievement of the Outcomes and compliance with other Handbook requirements remains on the regulated firms and individuals; this obligation cannot be delegated to the outsourced service provider. However, we have limited the requirement on firms to secure rights of inspection for the SRA in all outsourcing contracts to those

covering legal activities or any operational functions critical to the delivery of legal activities. We have also included additional obligations that, in such circumstances, firms and individuals must ensure that the outsourcing:

- does not alter their obligations towards clients; and
- does not cause the firm/individuals to breach the conditions with which they must comply in order to be and remain authorised.

67. In Chapter 9 (Fee sharing and referrals), we have included a new Outcome to require that financial arrangements for the referral of work are in writing.

68. Having taken account of other comments, we have made various further amendments to the Code including the following:

69. In Chapter 1 (Client care) we have:

- removed the word “appropriate” from Outcome 10 so that it is clear that all clients have to be told about their right to complain to the Legal Services Ombudsman;
- added an Indicative Behaviour (IB) to address the need for firms to let clients know what their options are for pursuing a matter once instructions are terminated;
- in IB 7 we have added the words “cease to act”;
- added a new Outcome to require clients to be informed about the Compensation Fund.

70. In Chapter 2 (Equality and diversity) we have amended the Outcomes so that they focus on describing the outputs of an equality and diversity policy.

71 In Chapter 3 (Conflicts of interests) we have made various amendments including placing greater emphasis in the introduction on significant risk of a conflict. See also paragraphs 73-77 below.

72. In Chapter 4 (Confidentiality and disclosure) we have changed Outcome 4(b) so that where a client consents to an information barrier, the information barrier and the safeguards can be agreed rather than it being necessary to adopt the standard required by common law.

Question 6 of the October Consultation asked:

- **Do you have any comments on Chapter 3 (Conflicts of interest)?**

Summary of feedback

73. The two main concerns expressed by respondents were:

- that by removing the detailed rules (in particular relating to conveyancing) there would be lack of clarity and less protection of firms against lenders; and

- that firms would not understand in what circumstances they might act for buyers and sellers.

Our response

74. Our position regarding acting for buyers and sellers has not changed – in other words the circumstances in which either there is no conflict of interests nor a significant risk of a conflict of interests as between a buyer and seller must be extremely limited. We believe that it is not necessary to have a specific outcome when the scenario is so clearly covered by the general Outcome.

75. The position under OFR is that we now expect firms to exercise their own judgement as to whether it proper to act in a particular situation, rather than the Handbook specifying the circumstances where it is appropriate to do so. We have reviewed the Outcomes in the light of responses. We have included two additional Outcomes regarding assessing conflicts of interests, and we have added further IBs which provide helpful examples including conveyancing situations. There may, of course, be some conveyancing situations where there are no conflicts of interests, although, for example, as between a seller and buyer we expect that these will be rare. Our intention was not to prohibit acting in such cases, but rather to put the onus on firms to make the assessment as to whether a conflict exists.

76. Our guide to "OFR at a glance" will provide further examples of conflicts of interest scenarios, including conveyancing (acting for buyer and seller, acting for buyer and lender), to help firms exercise judgement in potential conflicts situations. We also expect to provide some frequently asked questions and other material.

77. We will be publishing a supervision and enforcement strategy on conveyancing, at the same time as the publication of the new Handbook, to provide fuller information on our approach to supervision in this area, how we will proportionately respond to issues identified and, where necessary, take enforcement action against firms.

Revisions to the Accounts section of the Handbook

78. The SRA Accounts Rules were published in our October 2010 Consultation. As we had previously consulted on these Rules, we were not seeking comments on the revised Rules; however we did receive limited feedback. None of the feedback on the Rules themselves has caused us to make further amendments to the Rules.

79. However, one representative body expressed concern regarding the risks of ABSs, including the risk to client money. As part of our ongoing work to mitigate risks, we amended the Accounts Rules to prohibit external owners who are neither managers nor employees from signing on client account. We have also included additional guidance to underline the fact that, whilst it is for

the firm itself to determine appropriate signatories on client account, there is a need for some element of proximity to client matters when determining appropriate client account signatories.

80. The new rule 14(6), which contains provisions equivalent to the protections afforded by section 85 of the Solicitors Act to money held in a solicitor's client account, will be repealed once the statutory protection has been extended to money held in client accounts of ABSs.

81. Minor clarifications have also been made to the SRA Accounts Rules, together with minor changes to implement the Glossary.

Specialist Services

Question 7 of the October Consultation asked:

- **Do you have any comments on the application of the financial services rules to alternative business structures (ABSs)?**

Summary of feedback

82. Relatively few respondents commented on these proposals. Of those who did, there was broad approval for the changes to the financial services rules to extend their application to ABSs.

"It would seem fair that these rules should apply equally to ABSs." QBE

Our response

83. We do not propose to make any further changes to the financial services rules following the consultation.

84. Minor changes to the financial services rules have been made in order to implement the Glossary.

Additional comments on financial services

85. Post-October 2011, if there are no changes to the Financial Services Authority's (FSA) regime, firms will be able to conduct financial services in one of three ways:

(a) under the exemption contained in Part XX of the Financial Services and Markets Act (FSMA) – in this case firms would be authorised by the SRA, subject to the SRA's Handbook, and not authorised by the FSA;

(b) as an authorised professional firm (APF) authorised by the SRA to provide legal services and by the FSA in respect of financial services activities, and subject to carve-outs from the FSA's regime under the FSA's rules;

(c) as a firm authorised by both the FSA and SRA that does not fall within the definition of an APF.

86. Recognised bodies will be able to conduct financial services in ways (a) and (b); whereas, by virtue of their structure, ABSs will be able to do so in any of ways (a), (b) and (c).

87. The carve-outs from the FSA's regime for APFs cover such matters as: compensation arrangements (APFs do not contribute to the Financial Services Compensation Scheme); client money (APFs are exempt from the FSA's Client Assets Rules) and professional indemnity insurance.

Application of the SRA and FSA regimes to ABSs

88. Having analysed the application of both our regulatory regime and that of the FSA, we have identified a significant client protection issue. The current disapplication of some of the FSA's rules for APFs pre-dates the establishment of the SRA and was negotiated by the Law Society in 2000 on the basis that the now SRA's own regime covers these issues and that it was, therefore, not necessary to duplicate the requirements. This is because the statutory basis for the SRA's rules for traditional law firms does not prescribe the SRA's jurisdiction and therefore, for example, the Compensation Fund Rules could extend to the losses associated with the conduct of financial services.

89. However, this will not be the case for ABSs regulated by the SRA. The reason for this is that our regulatory jurisdiction in relation to ABSs under the LSA extends to reserved legal activities, other legal activities and any activities which are subject to conditions imposed on the licence of the ABS. In the case of APFs, the SRA will neither be authorising nor regulating the mainstream (financial services) regulated activities of an FSA-authorised ABS and so, for example, the Accounts Rules, Indemnity Rules and SRA Compensation Fund Rules will not apply to these activities.

90. This clearly exposes clients of such firms to the risk that, as an example, they will be protected by neither the SRA's Compensation Fund nor the Financial Services Compensation Scheme in relation to such mainstream (financial services) regulated activities.

91. We have brought this matter to the attention of the Financial Services Authority and are in urgent dialogue with them as to how clients can be properly protected in relation to those activities authorised by the FSA.

92. APFs that are intending to switch status and apply for authorisation as an ABS, will need to ensure that:

- at the point at which they switch to ABS status, they make clients aware of the lack of protection from the SRA's Compensation Fund and professional indemnity insurance provisions; and

- they review their operations to take account of the application of our rules for ABSs. For example, they will need to segregate client money derived from their financial services activities from client money (as defined in the SRA Accounts Rules).

93. We will be writing to all APF firms shortly to explain this matter, and our expectations in terms of the action they may need to take.

Application of the SRA and FSA regimes to traditional law firms

94. We also believe that the time is right to review the APF regime as a whole from the perspective of what might be a sensible approach to regulatory coverage, particularly bearing in mind the development of the financial services market over the last decade and the impending changes to the legal services market. We do not believe that it is appropriate for an important sub-set of the SRA's rules to continue to apply to APF recognised bodies and sole practitioners, when the activity is clearly authorised by the FSA. It means, for example, that the SRA's Compensation Fund is exposed to activity that the SRA does not authorise.

95. We are also in discussion with the FSA regarding this matter. Depending on the outcome of these discussions, we expect to undertake a further consultation in the near future.

Revisions to other rules in the Specialist Services section of the Handbook

96. Minor revisions have been made to the SRA European Cross-border Practice Rules and the SRA Property Selling Rules, as part of our work on the Glossary in order to ensure consistency of definitions.

The new Handbook

97. Final versions of the following rules are attached at Annexes C, D and E1-4:

- SRA Code of Conduct – Annex C;
- SRA Accounts Rules – Annex D;
- SRA European Cross-border Practice Rules – Annex E1;
- SRA Property Selling Rules – Annex E2;
- SRA Financial Services (Scope) Rules – Annex E3;
- SRA Financial Services (Conduct of Business) Rules – Annex E4.

6 Engaging with the SRA – authorisation and discipline of firms and individuals, and training requirements

Question 8 of the October Consultation asked:

- **Do you have any comments on the Authorisation Rules?**

Summary of feedback

98. Whilst some respondents commented on the necessary complexity of the Authorisation Rules, it was also acknowledged by some respondents that the rules appear workable.

99. Some respondents continued to express the view that ABSs were inherently more risky than traditional firms, for example because of the fact that they can conduct other regulated activities and can be owned by third parties.

100. Some respondents queried the role of the SRA in relation to authorisation and the extent to which we should assess a firm's sustainability.

101. One respondent commented on the time in which a decision for authorisation must be made by the SRA, and felt that six months was too long a period.

102. One respondent commented that the Authorisation Rules did not provide for emergency recognition on the death of a sole practitioner.

103. The main area of focus for respondents was the role of the Compliance Officer for Legal Practice (COLP). There were a number of issues raised, including:

- the breadth of the role's responsibilities (e.g., to take reasonable steps to ensure compliance with any statutory obligations);
- the requirement to report to the SRA any failure to comply with our regulatory requirements or any statutory requirements, with no provision for materiality;
- whether COLPs (if they are compliance officers, rather than managing partners) will have sufficient authority and access to decision-makers to undertake this role effectively; and
- whether the role will automatically be assumed by managing partners (as part of a wide range of responsibilities) rather than by compliance officers, who would actively focus on this work on a day to day basis.

"I strongly agree with the SRA's view that having COLPs and COFAs who are specifically responsible for implementing appropriate controls is in the interests of all firms and also the public." Clive Wooliscroft

"We welcome the change to the Authorisation Rules that would allow an employee to be either a COLP or a COFA. A number of law firms employ Risk specialists who are not partners, members or directors or qualify as "non lawyer managers"." TLT LLP

"Broadly, we have concerns regarding the wide-ranging responsibilities placed upon compliance officers and particularly those placed on the COLP. A COLP is responsible for ensuring compliance with the terms of conditions of a licence, which are broadly drafted and include compliance with regulatory requirements and any other enactments. The COLP must also notify the SRA of any failure in compliance. It is impractical for one person to have such a wide ranging responsibility and such an extensive remit with conflict with other statutory roles. The notification requirements have no element of "materiality" and we believe that they will be burdensome to both compliance officers and the SRA." The Law Society of England and Wales

"Whilst we have no objection to the SRA carrying out their own form of risk assessment on the sustainability of a practice we are concerned that the information you receive may be out of date and indeed what you will actually do with it. We don't believe that it is for the regulator to take a view on whether a firm is competent to trade or not as that is something that the clients will decide for themselves." Parabis Law

Our response

104. We acknowledge the complexity of the Authorisation Rules. However, this is a necessary reflection of the need to be absolutely clear about such matters as the grounds on which applications for authorisation will be declined, the circumstances in which authorisation will be revoked and the obligations on applicant firms and individuals.

105. We have previously expressed the view that there is no substantive evidence to support the view that ABSs are inherently more risky than traditional law firms. Notwithstanding this point, we do believe that innovation and competitive pressures in the provision of legal services market make it important for the Authorisation Rules to support a flexible anticipation of risks associated with different business models arising in both ABSs and traditional law firms, and this is one of the reasons for the complexity of the Rules.

106. The SRA must properly scrutinise all applications for authorisation in order to satisfy ourselves that in authorising any new firm we are not putting clients at risk or jeopardising the broader public interest. It is for the applicants to demonstrate through their application that they are fit and proper and able to fulfil their financial, operational, conduct and ethical requirements, not for the SRA to disprove it.

107. Whilst we acknowledge that a six month decision making period for authorisation might appear too long, it is important to bear in mind that some applications will be highly complex. We will be setting a service standard for more straightforward applications.

108. We have remedied the issue of emergency recognition following the death of a sole practitioner.

109. On the issue of COLPs, as we have previously explained, we are strongly of the view that all firms should be subject to the same requirement to appoint a COLP, and there is no justification to have different obligations on the basis of the type of firm (i.e., traditional law firm/ABS). We leave it to each firm to designate an appropriate person to fulfil this role. In some cases, this may indeed be, for example, the managing partner, or the person who currently has the role of head of compliance. This is a matter for the firm to decide.

110. With regard to the concerns raised as to whether a head of compliance would have the necessary authority within a partnership structure, to meet the obligations of the COLP, our Authorisation Rules state:

> "Rule 8.5(a): An authorised body must have suitable arrangements in place to ensure that its compliance officers [the COLP and COFA] are able to discharge their duties in accordance with these rules."

111. Therefore, any firm failing to put suitable arrangements in place to enable, for example, the COLP to fulfil their obligations would be required to explain why this was the case and remedy the situation.

112. With regard to the specific comments concerning the breadth of the COLP role, we acknowledge the concerns and have made the following changes to the Authorisation Rules:

- we have amended the obligation to ensure compliance with all statutory requirements (see rule 8.5);

- we have introduced a materiality provision into the reporting requirements, together with an obligation on the COLP to take all reasonable steps to record any failures of compliance and to make such records available to the SRA on request.

Question 9 of the October Consultation asked:

- **Do you have any comments on the proposed approach to reporting and notification?**

Summary of feedback

113. There were mixed views on the issue of reporting and notification. A number of respondents commented on the need to have more detail concerning the actual information which will be required so they can start designing processes to gather data. Respondents were also concerned about the cost of compiling such information. The general view was that the SRA must ensure that the categories of data and the amount of detail required from firms are proportionate to its needs as a regulator.

114. With regard to self-certification, there were mixed views. Some recognised the value of self-certification, whereas others questioned its value.

> "…..we agree that requiring the completion of an annual return including self certification requirements will focus firms' minds on best practice. However, if these returns are going to be introduced in October 2012, presumably firms will have to start preparing in March 2012 so that they can complete

satisfactory returns. We hope that the SRA will provide details of the data that will be required well in advance, by the end of this calendar year, to give them time to prepare." Maurice Turnor Gardner LLP

"We do not agree at all with asking us to self-certify. This seems very wrong in principle – one should not be asked to incriminate oneself and, in any event, this is very much asking us to do your job for you." Surrey Law Society

Our response

115. We welcome the comments of respondents and are using the feedback to inform the development of our information requirements. We are planning to issue further guidance on our information requirements in spring/summer of this year.

116. In terms of the development of information requirements, our process involves assessing all potential information requirements against agreed criteria, including the need for them to be proportionate to our needs.

117. Our cost-benefit analysis work is ongoing in this area.

118. We remain of view that self-certification has a role to play when submitting information. This is because we believe that it is beneficial to firms themselves to assess the quality of their own systems, as well as to the SRA. We do not accept that self-certification amounts to self-incrimination; we expect firms to have an open relationship with the SRA which includes appropriate disclosure of weaknesses in controls, and how these are being addressed. The SRA will respond proportionately to issues identified by the firm.

Question 10 of the October Consultation asked:

- **Do you have any comments on the changes to the SRA Practising Regulations?**

Summary of feedback

119. One respondent commented that the seven day limit for a temporary emergency application was too short, when those who needed to make an application might be unaware of the fact.

120. Another respondent asked for clarification of the SRA's approach to deeming individuals to be approved.

121. One respondent commented that where a person is refused for the role of compliance officer because of a lack of seniority/responsibility, this should not lead to regulation 3 of the Practising Regulations being triggered, which gives the SRA discretion on renewal of a practising certificate/registration.

122. One respondent queried whether a solicitor should be obliged to exhaust the SRA's internal appeal procedure before going to the High Court.

Our response

123. We accept that a seven day period for temporary emergency applications is quite short. However, these are emergency situations and it is in both clients' and the public interest that individuals seek the approval as quickly as possible.

124. Over the coming months we will provide further information concerning the process of deeming of individuals to be approved.

125. Where we have declined approval for an individual to hold a particular role, we believe that this should trigger Regulation 3 (the SRA's discretion concerning renewal of a practising certificate/registration). However, the precise circumstances and grounds for refusal will be taken into account in deciding the appropriate response under Regulation 3.

126. The following further minor amendments have been made to the Practising Regulations arising from checks of cross-referencing and definitions:

- we have added to the transitional provisions to ensure consistency of approach with regard to the change in regulation of sole practitioners;
- we have added to the list of Regulation 3 events to include revocation or suspension of authorisation;
- we have amended the High Court appeal period further, in line with external appeal provisions in other parts of the Handbook which are based on the Civil Procedure Rules;
- we have added guidance notes to clarify what will be shown on the register.

127. We consider it legitimate for solicitors to be obliged to exhaust the internal appeals mechanism before appealing to the High Court, where this is permissible under the law. We do not intend to change our provision.

Question 11 of the October Consultation asked:

- **Do you have any comments on the proposed changes to the SRA Practice Framework Rules?**

Summary of feedback

128. Again, we received limited feedback on the changes to the Practice Framework Rules.

129. One respondent commented that there should be a transitional provision for in-house services which change status to ABSs, in order to allow work underway at the time of the grant of the licence to be completed.

130. One respondent commented that most employees lack the necessary authority to ensure that their firm acts in accordance with the SRA's regulatory requirements (Rule 19.1).

Our response

131. We are not proposing to provide transitional provisions regarding in-house work. It is not in the gift of the SRA to override the commencement of legislation within our rules.

132. On the issue of Rule 19.1, our point is that the body, its employees and managers must collectively act in accordance with our Handbook. We do, of course, recognise the differing roles and levels of authority exercised by different individuals within a firm, and this will be taken into account in our supervisory and enforcement activities. Our experience suggests that differentiating between levels of responsibility and employment status has in the past led to a lack of ownership of responsibility for achieving the right outcomes.

133. The following substantive amendments have been made to the Practice Framework Rules as a result of our discussions with the LSB:

- we have provided further guidance on the circumstances in which in-house solicitors may act for work colleagues on matters arising from their employment;

- the in-house pro bono exemption has been re-drafted to cover the position of in-house solicitors who do pro bono reserved legal work, where doing so is not part of their employer's business. We have unfortunately had to remove our proposed transitional provision since our further analysis is that this would be contrary to the LSA. We believe that there should be an order made under section 15(9) of the LSA to clarify what does or does not constitute a "section of the public" and the circumstances in which the provision of relevant services to the public or a section of the public does, or does not, form part of the employer's business;

- the in-house associations exemption has been amended to prohibit the conduct of reserved legal activities. Where associations do intend to undertake reserved legal activities, they should consider the need for authorisation;

- we have removed the right of in-house solicitors in legal expenses insurers to act for the insured.

134. The following further minor amendments have been made to the Practice Framework Rules arising from checks of cross-referencing and definitions:

- the overseas application of the Rules has been reviewed and clarified to make it clear that these rules do not apply when they conflict with local law;

- compliance duties in the Rules have been limited to highlight the individual duties of managers and employees to remove any duplication with the Authorisation Rules;

- Rule 14 has been amended to make it clear that a European lawyer registered with the Bar can be a lawyer manager of a licensed body for LSA purposes.

Question 12 of the October Consultation asked:

- **Do you have any comments on the proposed changes to the SRA Recognised Bodies Regulations?**

Summary of feedback

135. We received very limited comments on the changes to the Recognised Bodies Regulations.

> "….greater care needs to be taken to ensure that Director & Shareholder obligations and professional obligations need to be clearly understood and, where appropriate, prioritised." MASS

Our response

136. We have not made any changes to the Recognised Bodies Regulations in the light of responses to our consultation.

137. The following further minor amendments have been made to the Recognised Bodies Regulations arising from checks of cross-referencing and definitions:

- we have amended the High Court appeal period further, in line with external appeal provisions in other parts of the Handbook which are based on the Civil Procedure Rules;

- we have amended wording in the Regulations to ensure consistency with other Handbook rules;

- following further analysis of the location of existing structural provisions in the Code of Conduct, we have inserted additional matters which are required pending the transition of recognised bodies to the Authorisation Rules;

- we have made other minor amendments to cross-references and definitions in order to implement the Glossary.

Question 13 of the October Consultation asked:

- **Do you have any comments on the revised SRA Disciplinary Procedures Rules?**

Summary of feedback

138. As had been seen in the May Consultation responses, there was a keen desire to achieve one fair and consistent set of disciplinary provisions for traditional law firms and ABSs. Some respondents stressed the potential for inconsistency, inefficiency and unfairness in having two separate disciplinary regimes. A minority of respondents felt that the two regimes should be subject to differing disciplinary regimes.

139. Some respondents called for the Solicitors Disciplinary Tribunal (SDT) to be appointed as the SRA's decision maker in respect of the more serious ABS disciplinary matters until one decision making body can be established.

140. Some respondents commented on the issue of raising the SRA's fining powers for recognised bodies, the majority being in favour of the SRA having the same fining powers as for ABSs.

141. Only four respondents commented on the standard of proof and there were mixed views on this issue.

142. There was broad support for the new financial penalty criteria, the possibility of suspending and discounting penalties and the creation of an external right of appeal in respect of disqualification decisions (disqualifying persons from being involved in an ABS).

143. Some respondents raised concern with the proposed new powers for adjudicators to give case management directions. In particular, some respondents were concerned about the apparent breadth of the disclosure requirements and that preventing an individual from taking further part in proceedings for lack of cooperation was too draconian a measure.

144. Some respondents suggested that the disqualification criteria should be expanded so as to stress the qualities necessary to undertake roles such as HOLP (Head of Legal Practice in an ABS) or HOFA (Head of Finance and Administration in an ABS).

Our response

145. The general tenor of the responses has been encouraging. We have not made any changes which impact on the substantive policy behind the disciplinary and costs provisions. On the issue of the SDT, as we explained in our May and October Consultations, managers and employees of ABSs, including solicitors and other authorised persons, will be subject to our internal enforcement powers and processes, including the imposition of financial penalties and disqualification. The SDT will remain the relevant body for the purpose of striking off or suspension, regardless of the body within which individuals work. With regard to appeals, we consider it a fundamental regulatory principle that we should be able to recover our costs in relation to unsuccessful appeals against decisions of the SRA. As things currently stand,

this would not be the case with appeals to the General Regulatory Council. Therefore, whilst we believe there are strong arguments for a single appellate body for all legal services firms, regardless of their licensing authority, our application to be a licensing authority has been made on the basis that the SDT should be the appellate body for all SRA authorised firms.

146. We have made some minor changes, including:

- tidying up a number of technical and drafting issues, including changes to account for the move to a single Glossary, and revisions which more clearly define the procedure for dealing with applications to bring a disqualification from involvement in an ABS to an end;

- making some small changes to the disqualification criteria to address the concerns that the suitability of role-holders such as HOLP and HOFA are not adequately covered; and

- making some revisions to the case management provisions to address the concerns raised about the apparent breadth of the SRA's disclosure powers.

147. We will provide new guidance on when an oral hearing will be appropriate.

Question 14 of the October Consultation asked:

- **Do you have any comments on the SRA Cost of Investigations Regulations?**

Summary of feedback

148. There was firm support for the continuance of the 'polluter pays' principle in the costs provisions and the application of these provisions to ABSs.

149. Respondents did not identify any equality and diversity issues requiring consideration, although one respondent did raise concern as to whether the costs provisions could have a disproportionate impact upon small firms.

Our response

150. We welcome the feedback and support for our approach. No further changes have been made to the Rules, other than minor and technical changes, e.g., to implement the Glossary.

Question 15 of the October Consultation asked:

- **Do you have any comments on the changes which we have made to the regulations concerning training, admission and rights of audience?**

SRA Training Regulations

Summary of feedback

151. There was a broad welcome for the revisions to the Training Regulations. The majority of responses related to clarity of guidance and interpretation of particular provisions.

152. There was support for higher requirements for the standard of English language skills for new entrants, to recognise the vital importance of communication skills to the practice of law.

153. One respondent commented that it was not clear whether the terms "body" or "firm" included central government departments.

154. One respondent stated that we should clarify the nature of the training provider's obligation to check student enrolment.

> "Overall, we support the approach…..which is proposed for the new Handbook in relation to the recasting of the Regulations for training, admission and rights of audience….
>
> The effective practice of law requires sophisticated language skills to understand, apply and communicate what can be complex concepts. Therefore, our view is that it is reasonable to expect new entrants to the profession, whatever their background, to have a high level of English language skills." City of London Law Society
>
> "We believe that the issue of CPD is one which needs addressing although it is probably not practical to do it as part of this exercise. CPD should be relevant to the practice of individuals and a mechanism needs to be put in place where it is taken far more seriously than many in the profession currently do." The Co-operative Legal Services

Our response

155. We have included some additional guidance in order to clarify particular points raised by respondents. For example, we have amended references to "body" and "firm" to include "organisation", and clarified that training establishments should satisfy themselves of a prospective trainee's student enrolment by having sight of the SRA's certifying letter.

156. Outside the drafting changes to the Regulations, we have also prioritised a review of CPD.

157. We welcome the views that related to more fundamental policy, such as the "shelf-life" of the LPC, time periods for the Training Contract, and stricter requirements for English language skills. In order to address these suggested changes, significant research and development work would be needed to build an evidence base on which to make informed policy decisions, and which we could not do in the time available to develop the Handbook.

158. These views will, however, be vital in informing our forthcoming fundamental review of training, and we look forward to engaging in further, more detailed discussions with our stakeholders during 2011/2012.

159. We have made the following additional changes:

- revision of the Introduction sections to align them with the Code of Conduct;
- removal of the regulations covering exemptions from LPC attendance based on accreditation of prior certificated learning (which will operate under separate arrangements outside the Training Regulations);
- minor clarifications and revisions to the definitions.

SRA Admission Regulations

Summary of feedback

160. There was limited feedback on the Admission Regulations. One respondent commented that the Regulations were confusing and, in particular, were unclear as to the grounds on which an individual could appeal against a decision on student enrolment.

Our response

161. The Admission Regulations are not intended to list the grounds for possible appeal. The regulations *allow* appeals and provide the mechanisms for appeal against our decisions. We have made no substantive changes to these regulations.

SRA Higher Rights of Audience Regulations

Summary of feedback

162. There was limited feedback on the Higher Rights of Audience Regulations.

> "The SRA needs to ensure that the training regulations in respect of Higher Rights ensure the proper and effective training of candidates, appropriate and adequate exercise of Higher Rights post-qualification and relevant continuing professional development thereafter. Such regulations are aimed at ensuring that Solicitors attaining Higher Rights are fit to exercise them without undermining the current regime of representation before the courts by advocates." Tunbridge Wells, Tonbridge & District Law Society

Our response

163. We do not propose to make any substantive changes to these regulations following the consultation. Minor revisions have been made to implement the Glossary.

Question 16 of the October Consultation asked:

- **Is the SRA Suitability Test a robust clear transparent and fair assessment for members of the profession and the authorisation as role-holders in ABSs and recognised bodies (RBs)?**

Summary of feedback

164. There was general support for the Suitability Test as drafted, although a minority took issue with the substance of the Test. Respondents tended to focus on particular aspects of the Test which concerned them. Examples of these are:

- some respondents questioned the value of disclosing penalty notices for minor driving offences and asked whether this would include parking tickets;

- one respondent expressed the views that the fact that a person had previously been a director of a company which has been the subject of an insolvency procedure, should not lead to a refusal of an application, unless there are exceptional circumstances, and that if a person is the subject of an insolvency procedure, this is not necessarily any reflection of their fitness and suitability, and a default assumption of refusal was unwarranted;

- some respondents stated that they did not believe that County Court Judgements should always been seen as a bar to entry into, or remaining in, the profession;

- some respondents were concerned about the statement that mental health issues or addictions would be taken into account when assessing suitability, and whether this implied that the mere fact of such conditions would be considered a bar to entry;

- the procedure for appeals against decisions made when applying the Test was unclear.

165. Further issues raised were:

- some respondents expressed the need to see the SRA's decision-making criteria, which would be used when applying the Test;

- one respondent queried the nature of the "evidence" on which the SRA would rely to justify a decision;

- one respondent queried whether the SRA had any plans to exempt FSA approved persons from the Test, or to fast-track their applications as suitable role-holders;

- one respondent also commented that the draft Test did not set out all the information that will be required when applying for authorisation.

"As for the suitability test and the assessment of the character of applicants both at the outset and post admission, the test appears comprehensive and relevant. We are heartened that it is to be applied "across the board" with particular reference to role holders." Tunbridge Wells, Tonbridge & District Law Society

"The test is clear and reasonably transparent. We are however concerned that the test focuses too much on negative traits, i.e. matters which will or may debar entry to the profession. Whilst it is appropriate to include these issues, the lack of positive requirements in the test makes it difficult for those who have been affected by "may debar entry" events to ascertain their suitability. It is particularly important that students considering a law degree or conversion course should understand their chances of being admitted to the profession before embarking on an expensive university course." City of Westminster and Holborn Law Society

"While, as noted, we recognise that the SRA does need to consider regulatory history when assessing suitability, the Law Society is concerned about the proportionality of the section on regulatory history. We believe that the presumption of refusal because a person has previously breached regulatory requirements may be disproportionate, if breaches are minor and have not occurred consistently…." The Law Society of England and Wales

"We broadly support the proposals in the Consultation Paper, subject to one point.

We are concerned by the reference in paragraph 239 to mental health issues or addiction to alcohol or drugs not of themselves being ground for failing the Test but that issues of this nature will be taken into account when considering an individual's overall suitability and the public interest …… it is not necessary under general law to disclose a disability and as the proposal is currently written, it could be interpreted as indicating that the mere fact of mental health or addiction problems could affect the person's suitability." City of London Law Society

Our response

166. We welcome the support for the new Suitability Test.

167. In terms of the specific issues raised:

- with regard to the disclosure of penalty notices for minor driving offences, these do not need to be disclosed where they have not resulted in a criminal conviction and we have amended the guidance to clarify this point;

- regarding personal insolvency or having been a director of an insolvent company, this would not necessarily lead to automatic refusal, since this is discretionary. However, the onus is on the applicant to demonstrate that he/she does not pose a risk to clients' interests and such issues must be disclosed;

- regarding County Court Judgements (CCJs), we have deliberately set a high barrier (i.e., the presumption will be of refusal, other than in exceptional circumstances). This is because we consider that those who are in critical roles should be prudent in the management of their own finances, and a CCJ would suggest otherwise;

- mental health issues or addictions will not, of themselves, be a ground for failing the Suitability Test, unless the condition has resulted in, for example, serious conduct issues, a criminal conviction, or other matters identified in the Suitability Test. Our equality impact assessment covers this issue in more detail;

- details of the appeals procedures are contained in the individual sets of rules under which the Test is applied; for example, the Authorisation Rules set out appeal procedures relating to approval of COLPs and COFAs.

168. We are currently developing our decision making criteria for the Test and these will be published in the summer of this year.

169. On the issue of evidence, there is a very wide range of information and documentation that would be considered "evidence" and we do not intend to publish an exhaustive list, as this may have the effect of fettering the discretion of our adjudicators. However, if, once the Test has been implemented, we establish a need for applicants to be given additional support and information, we will meet this need.

170. Except in the circumstances already highlighted where persons will be deemed approved, we currently have no plans to deem approval of individuals, for example because they are FSA approved persons.

171. Information required to support an application for approval of entry to the profession and as role-holders will be included in the new online processes that we are currently developing. These should be available for review in the summer.

Revisions to other rules in the Authorisation and Practising Requirements section of the Handbook

172. All of the rules contained in the Authorisation and Practising Requirements section of the Handbook have been amended to implement the Glossary. These amendments are of a technical nature and do not amend the substance of the sets of rules.

The new Handbook

173. Final versions of the following rules are attached at Annexes F1 – 9, and G 1 – 2:

- SRA Practice Framework Rules – Annex F1;
- SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies – Annex F2
- SRA Practising Regulations – Annex F3;
- SRA Recognised Bodies Regulations – Annex F4;
- SRA Training Regulations – Annex F5:
    - Training Regulations Part 1 – Qualification Regulations
    - Training Regulations Part 2 – Training Provider Regulations
    - Training Regulations Part 3 – SRA CPD Regulations;
- SRA Admission Regulations – Annex F6;
- SRA Qualified Lawyers Transfer Scheme Regulations – Annex F7;
- SRA Higher Rights of Audience Regulations – Annex F8;
- SRA Suitability Test – Annex F9;
- SRA Disciplinary Procedures Rules – Annex G1;
- SRA Cost of Investigations Regulations – Annex G2.

7 Protecting the public

Questions 17 and 18 of the October Consultation asked:

- **Do you agree with our proposal to apply the existing compensation fund to ABSs?**

- **Do you agree with our proposal to adopt the same compensation fund rules for ABSs, by extending the application of the existing rules?**

174. As the feedback between these to questions was inter-linked, we have dealt with the feedback and our response together.

Summary of feedback

175. Respondents had mixed views on these issues. The majority of responses were in favour of having one compensation fund and a common set of rules (in actual fact, one compensation fund requires a single set of rules). The reasons given for having one compensation fund were as follows:

- to avoid consumer confusion as to which compensation fund applied;

- to avoid creation of a barrier to entry for ABSs, which would be a consequence of setting up and funding a second compensation fund;

- creation of a second compensation fund would involve expense and resources, particularly when the arrangements might be subject to change on the termination of the statutory amendment enabling the SRA to operate a single fund (31 December 2012).

176. Those arguing against using the existing compensation fund for ABSs gave the following reasons:

- it is wrong in principle to have a single compensation fund for all types of firm;
- the overall risk profiles for ABSs is higher than for RBs;
- there is uncertainty around the application of the compensation arrangements to ABSs, particularly in the case of MDPs;
- RBs and sole practitioners should not subsidise losses in respect of ABSs.

177. With regard to a common set of rules, the responses to this issue flowed to some extent from the response to question 17, although there was a general consensus that the Compensation Fund Rules for all types of firm should be the same.

Question 17:

"Yes, essential." Russell Jones and Walker

"We agree with the overall approach of applying the same indemnity requirements to ABS and non ABS. Whilst we understand the reasoning behind the suggestion that the existing Compensation Fund be applied for broader purposes – as opposed to establishing a separate compensation fund for ABSs – we have concerns if this is to amount to any form of cross-subsidy. We agree that the existing fund should not bear any claims arising from default by ABSs.

If there is to be one fund then the contributions made by recognised bodies and by ABSs should be proportionate to their respective risk exposure assessments." City law firm

"We agree that there should be one compensation fund but the SRA should proceed with caution on this issue. We accept that a single compensation fund will provide clarity for consumers and 2 funds would create confusion as to which fund applied……However, we disagree with the statement that the overall risk profile of ABSs is not obviously different from that of RBs. Our view is that the impact of ABSs – particularly MDPs – is uncertain. We note that the SRA is developing a risk framework…..but we consider that there should be monitoring of genuinely new legal service provider ABS for at least their first 3 years of operation." Cardiff Law Society

"We accept that the overall risk profile for most varieties of ABS may not over time be radically different from traditional law firms, assuming the fitness to own provisions are effective. There is considerable risk to the fund from large scale failure and SRA have no experience of regulating large scale and unfamiliar forms of ABS which will be able to operate without any fetter on their size or scale." The Law Society of England and Wales

"…the Panel supports ABS firms being subject to the same indemnity insurance requirements, as well as acts or omissions by ABS owners being included within scope of the compensation fund." Legal Services Consumer Panel

Question 18:

"We would prefer to see ABSs being subject to new, distinct and non-discriminatory rules." Taylor Wessing LLP

"No particular comment apart from it should be a level playing field – whether that is achieved through expansion or new rules for ABSs is less important." QBE

Our response

178. We remain of the view that a single compensation fund is the most appropriate basis for compensation arrangements for all our regulated community. Our reasons are set out in our October Consultation and are as follows:

- having two compensation funds would create consumer confusion. One of our primary concerns is that consumers are fully aware of their rights and protections and having two funds applying to firms which in many ways could be indistinguishable from each other could create uncertainty and reduce confidence in legal services providers;
- establishing an ABS fund would create a barrier to entry, both for new ABSs and for those seeking to switch status from RB to ABS;
- we do not accept that the overall risk profile for ABSs is different from that of RBs, although we do accept that individual risk factors may vary between firm types, as is currently the case. This would be the case, e.g., as between a city law firm and a national conveyancing firm;
- new firms joining the compensation fund already benefit from the reserves in the compensation fund. New ABSs would be in no different a position;
- operating a single fund is the most efficient use of resources.

179. It follows that we have maintained our approach of having one set of Compensation Fund Rules for all types of firm.

180. Having said this, a key priority for the Compensation Fund Rules is that they are drafted in such a manner as to protect the compensation fund from losses arising from activities that are not regulated by the SRA. To be absolutely clear on this issue, we have amended the Compensation Fund Rules in the following manner:

- we have changed the way the rules define those activities of an ABS in respect of which the SRA may make a grant following default. In the case of a defaulting licensed body, the rules now refer to the act or default arising “in the course of performance of”, rather than "in connection with", a regulated activity;
- Rule 9(4), which deals with the assessment and attribution of loss involved in "mixed" regulated and non-SRA regulated activities, has been re-worded to make it clearer.

Question 19 of the October Consultation asked:

- **Do you agree with our proposal for the compensation fund to cover acts or omissions of owners of licensed bodies who are neither managers nor employees?**

Summary of feedback

181. The general view from respondents was that the compensation fund should cover such acts or omissions by owners who are neither employees nor managers, in order to ensure consumer protection.

182. Some respondents expressed concern that this protection would extend beyond those activities for which the firm was regulated by the SRA. In addition, respondents suggested that the contributions made by ABSs needed to take into account this additional risk.

"We agree. We are not sure why a distinction should be drawn; the issue is whether the entity is regulated and the act or omission complained of relates to the regulated activity undertaken by that licensed body. It shouldn't be for the consumer to understand the distinction, if there were one." Bristol Risk Managers

Our response

183. Whilst we believe that such losses are unlikely to arise, because of the steps that we have taken (for example in the new Accounts Rules to prevent external owners from signing on client account), we are clear that there is a need to protect clients against the acts of non-employee/manager owners. We have extended the Compensation Fund Rules to cover acts or omissions of owners of licensed bodies who are neither managers nor employees in relation to the activities for which the firm is regulated by the SRA (in accordance with our jurisdiction).

184. We will feed the responses to the October Consultation on compensation fund contributions into the next phase of our Financial Protection Review.

185. We have, in addition, made revisions to the Compensation Fund Rules to reflect the detail of the section 69 Order, on which the LSB recently consulted. The definitions of "owner" and "interest holder" (which relate principally to ABSs) have been changed to reflect the new draft Order and minor changes have also been made to implement the Glossary.

Revisions to other rules in the Client Protection section of the Handbook

186. Minor changes have been made to the SRA Indemnity Insurance Rules, the SRA Intervention Powers (Statutory Trust) Rules, and the SRA Indemnity Rules to implement the Glossary. We have also deleted an obsolete provision (Rule 22 of the SRA Indemnity Rules relating to the refund of contributions made to the Solicitors Indemnity Fund in the 2001/02 and 2002/03 indemnity years) from the SRA Indemnity Rules. Final versions of the SRA Indemnity Insurance Rules will be made by the SRA in April.

The new Handbook

187. Final versions of the following rules are attached at Annexes H1 – 3:

- SRA Indemnity Rules – Annex H1;
- SRA Intervention Powers (Statutory Trust) Rules – Annex H2;
- SRA Compensation Fund Rules – Annex H3.

8 Equality and diversity

Question 20 of the October Consultation asked:

- **Do you have any comments on our equality impact assessment and are there any additional equality issues that we should consider as we work further on the Handbook?**

Summary of feedback

188. There was a general welcome given to the SRA's work to assess the equality impact of the new Handbook.

189. Particular concerns were expressed in relation to the challenges that some of the changes in the Handbook would present for small firms, and the potential consequential impact on BME and female firms, which were over-represented in this sector. Equally, however, respondents saw the need for the SRA to balance this potential adverse impact on firms with the need to protect consumers and act in the public interest generally.

190. A few respondents highlighted the need for the SRA to produce evidence of the impact on equality and diversity, based on a statistical analysis.

191. One respondent commented that the lack of guidance in the Code would have a major impact on small firms. Another commented that the Outcomes in the Code concerning the need to have an equality and diversity (E&D) policy and train staff would also be burdensome for small firms.

Our response

192. We welcome the feedback on our equality impact assessments. We see this work as ongoing and will be actively monitoring E&D impacts once the Handbook requirements come into force.

193. We accept that some of our proposals may present challenges for small firms; a fact that we have already acknowledged in some of our impact assessments. However, having reviewed the potential impact in the context of each set of rules in the Handbook as we conducted our equality impact assessment work, we are satisfied that we have acted proportionately, and that the proposals are in the public interest and are intended to protect consumers. We are confident that, in developing the new Handbook, we have struck the right balance and that there is no disproportionality, but will be taking steps to mitigate any potential impact for the profession and small firms, in particular by providing information and support to assist firms in managing the transition to the new Handbook and OFR.

194. With regard to the comment about statistics, we have relied on statistical data where we can in our equality impact assessment work. For example, there is such data published in the Suitability Test equality impact assessment and the annual statistical reports of regulatory outcomes broken down by equality groups that are referred to in many of the other equality impact assessments. Where we have not had access to statistical data, for example where the proposals being made are new and no data has yet been collected, such as

for the Authorisation Rules, we have relied on other sources of data, such as the responses we received from consultation and engagement, our cost-benefit analysis research and reports, such as the Pearn Kandola report on disproportionality. We will continue to monitor the impact of our regulatory work and, as a result of improved processes and IT capabilities, we hope to be able to improve our data collection and monitoring. This will provide a stronger base on which to assess E&D implications of our work in the future.

195. Although the specific issues relevant for each part of the Handbook are set out in the individual equality impact assessment reports that we will be publishing on our website, a summary of the key equality issues raised by the transition to the new Handbook is at Annex I. Separate equality impact assessments are being carried out in relation to our new approach for authorisation, supervision and risk assessment.

9 Timetable and next steps

196. We remain on course to deliver outcomes-focused, risk-based regulation for sole practitioners, traditional law firms, in-house practices and ABSs in accordance with our timeline (Annex K) which we published with our October Consultation. We look forward to continuing working with you as we implement our new Handbook. Please keep an eye on our website for news of our progress, and for sources of help.

Annex L – Details of respondents to October 2010 consultation on the Handbook, and of other stakeholder engagement

Addleshaw Goddard LLP
Allen and Overy LLP
APIL
Ashurst LLP
Bar Standards Board
Berwin Leighton Paisner LLP
Bird & Bird LLP
Bond Pearce LLP
Bristol Risk Managers Group
Burges Salmon LLP
Cambridgeshire & District Law Society
Cardiff Law Society
City of Westminster & Holborn Law Society
Clifford Poole & Co
Clive Wooliscroft
CLLS
CML
DAS Legal Expenses Insurance Company Ltd
Devon and Somerset Law Society
Dickinson Dees LLP
DLA Piper LLP
Duncan Finlyson
E J C Album Solicitors
Eversheds (May/October responses)
FOIL
Foot Anstey Solicitors
Freshfields Bruckhaus Deringer LLP
GC100
Geldards LLP
Glaisyers Solicitors LLP
Government Legal Service
Greenland Houchen Pomeroy Solicitors
Gurney-Champion & Co
Herbert Smith LLP
Hogan Lovells
Holman Fenwick Willan LLP
ICAEW
ILEX
ILFM
Irwin Mitchell LLP
J Fintan O'Brien
John Weston & Co
Just Costs Limited
Lawrence Graham LLP
Lecturer on SARs
Legal Risk LLP
Legal Services Consumer Panel
Leicestershire Law Society
Leland Swaby Clarke & Norris
Linklaters LLP

Liverpool Law Society
LWD
Manchester Law Society
MASS
Mather Rutter
Maurice Turnor Gardner LLP
Mayer Brown
Michael Reason & Partners LLP
National Accident Helpline
National Trust
Network Rail Infrastructure Ltd
Non-practising lawyer
Norton Rose LLP
Olswang LLP
Parabis Law
Peninsula Business Services Ltd
Peter Carroll
Philip Brown & Co
Pinfold & Co
Pinsent Masons LLP
Price Waterhouse Cooper
QBE Insurance
Russell Jones and Walker
Saunders & Company
SIFA
Simmons and Simmons LLP
SJ Berwin LLP
Solent Conveyancers
Solicitors Disciplinary Tribunal
Solicitors in Local Government
Speechleys
Stephenson Harwood
Surrey Law Society
Taylor Wessing LLP
Terry Cooper
The Co-operative Legal Services
The Insolvency Service
The Law Society
TLT Solicitors
Tunbridge Wells, Tonbridge & District Law Society
University of Westminster
Wilson Browne
Yorkshire Law Society
Young, Coles & Langdon
Webinar 13/12/10 - about 150 delegates

Plus 7 additional respondents who asked for their name to be kept confidential

Conclusions on the equality impact of the SRA Handbook

Introduction

1. This report summarises the broad equality impact of the SRA Handbook as a whole. It captures and provides an overview of the key equality impacts and is based on a summary of the following individual equality impact assessments that have been completed in respect of different parts of the SRA Handbook:
   - SRA Principles and Code of Conduct 2011
   - SRA Accounts Rules 2011
   - The rules in the Authorisation and Practising Requirements section of the SRA Handbook, namely the Solicitors (Keeping of the Roll) Regulations 2011, the SRA Practice Framework Rules 2011, the SRA Practising Regulations 2011, the SRA Recognised Bodies Regulations 2011, and the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011
   - The rules relating to the authorisation for individuals to practise, namely the SRA Training Regulations 2011, the SRA Admission Regulations 2011, Qualified Lawyer Transfer Scheme Regulations 2011 and the Higher Rights of Audience Regulations 2011
   - SRA Suitability Test 2011
   - The rules in the Client Protection section of the SRA Handbook, namely the SRA Indemnity Rules 2011, the SRA Compensation Fund Rules 2011, and the SRA Intervention Powers (Statutory Trust) Rules 2011. The SRA Indemnity Insurance Rules 2011 will be submitted separately after any further amendments that may be approved in the light of the SRA's review of arrangements for financial protection.
   - SRA (Disciplinary Procedure) Rules 2011
   - SRA Cost of Investigations Regulations 2011
   - The rules in the Specialist Services section of the SRA Handbook, namely the SRA Property Selling Rules 2011, the SRA European Cross-border Practice Rules 2011, the SRA Financial Services (Scope) Rules 2011, and the SRA Financial Services (Conduct of Business) Rules 2011

2. This report and the individual equality impact assessment reports referred to above, will accompany the final version of the SRA Handbook which is due to be approved by the SRA Board on 15 March 2011, and will then require approval from the Legal Services Board. The report also contains an action plan setting out further equality work that we are doing in relation to the SRA Handbook and the monitoring arrangements we will be putting in place once it comes into effect.

3. We published two previous reports setting out our developing conclusions on the overall equality impact of the SRA Handbook. An initial equality impact assessment of the Handbook was published (as annex K) with the first consultation paper published in May 2010. That report set out some of our early thoughts for each of the Handbook sections. A further report was published (as annex I) with the second consultation paper published in October 2010. This summarised the findings of the individual equality impact assessments of the Handbook that were ongoing at the time.

Alternative business structures

4. The SRA is applying to the Legal Services Board (LSB) to become a licensing authority for ABSs and we have carried out a separate equality impact assessment, which will cover the wider implications of this change in the legal market place as well as the specific issues arising from the approach taken across the Handbook to harmonise the rules for ABSs with those for traditional firms.

5. We published our provisional views on the equality impact of alternative business structures entering the legal service market with our first consultation on the SRA Handbook in May 2010. An initial equality impact assessment was published with the second consultation on the SRA Handbook setting our early findings and we will be

publishing a full equality assessment report to accompany our application to the Legal Services Board in April 2011. We see this equality impact assessment as work in progress and will be continuing to monitor the impact of ABS as they enter the legal market place.

The SRA's equality duties

6. Since starting our work on the SRA Handbook, the Equality Act 2010 has come into force. This Act replaces the previous equality legislation and seeks to apply a more consistent approach to equality for all 'protected characteristics'. This term describes the various equality strands that are now covered, namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

7. The Equality Act 2010 also introduces a new public sector equality duty which will cover all of the protected characteristics, other than marriage and civil partnership when it is in force from 6 April 2011. This will require the SRA, in the exercise of our functions, to have due regard to the need to:
   - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
   - advance equality of opportunity between people who share a protected characteristic and those who do not; and
   - foster good relations between people who share a protected characteristic and those who do not.

8. The SRA has already adopted a single equality approach, extending its existing legal equality duties (in relation to disability, gender and race) to the other equality areas. As we take our equality impact assessment work forward we will be taking into account the new public sector equality duty requirements and guidance.

9. We have followed the structure of the SRA Handbook in drawing our overall conclusions of its impact on equality and human rights, starting first with the Principles and the Code.

The Principles and the SRA Code of Conduct 2011

10. In our equality impact assessment of the Principles and the Code, we looked at two particular features of the Handbook which are expressly designed to promote equality and diversity: the inclusion of an overarching Principle relating to equality and diversity (the new Principle 9) and the inclusion in the Code of the specific equality and diversity outcomes which firms must achieve (which effectively replace rule 6 from the current Code of Conduct).

11. Principle 9 requires the regulated community to 'run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity'. As with all the Principles, this applies across all the rules and regulatory requirements in the Handbook and will have particular relevance in guiding firms to deliver the outcomes set out in the new Code. This has real potential to encourage the regulated community to embed equality and diversity and as such should have a positive impact on equality across all equality groups - both for the profession and for clients using legal services.

12. The standards expected of the profession through rule 6 of the 2007 Code are captured in the outcomes set out in chapter 2 of the 2011 Code headed 'Equality and Diversity'. The outcomes read as follows:
   - you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings;
   - you provide services to clients in a way that respects diversity;
   - you make reasonable adjustments to ensure that disabled clients, employees or managers are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled clients employees or managers;

- your approach to recruitment and employment encourages equality of opportunity and respect for diversity;
- complaints of discrimination are dealt with promptly, fairly, openly, and effectively.

13. It has been difficult to promote change across the profession through enforcement of rule 6 but our new outcomes–focused approach to regulation will give us scope to develop new ways of improving equality and diversity. Rather than relying on case by case enforcement of rules when we know it is very difficult to prove discrimination, we can be more creative in working with the profession through supervision to promote good practice, although we will still take legal and enforcement action where appropriate. We recognise that this is one of the ways that we can meet our regulatory duty to promote a diverse profession and improve access to legal services.

14. The main concerns that we identified in relation to our equality impact assessment of the Code arise from our new outcomes-focused approach to the Code and the continuing over representation of some equality groups in the SRA's regulatory activities.

Moving from prescriptive rules to outcomes in the SRA Code

15. We recognise that many small firms feel that our move to outcomes-focused regulation, embodied by the SRA Code 2011, will have an adverse impact on them. These firms feel that reliance on the detailed rules gives them certainty about being compliant with the standards expected of them. Without prescriptive rules some firms felt they would be vulnerable and were concerned that it would be onerous and costly for them to create their own structures and procedures to ensure compliance. These concerns were expressed by practitioners during our consultation and engagement with the profession, as well as by some of the smaller firms that participated in our costs benefit analysis.

16. Although some firms will indeed need to introduce new structures and procedures, we are not convinced that these changes will be as costly or onerous as some firms believe and in many cases the changes required will involve a one-off cost but be of lasting benefit to the firm. However, if the fears are realised for small firms, we recognise that this may indirectly affect BME and female firms which are disproportionately represented among firms of 1 and 2 partners.

17. In both 2009 and 2010, BME firms made up 12% of the overall firm population but 16% of 1 partner firms and 14% of 2 partner firms. Female firms were over represented in 1 partner firms, making up 24% of the overall firm population in 2009 and 26% in 2010, but 29% of 1 partner firms in both years. Female firms are under represented in 2 partner firms for both years. Firms are classified according the equality grouping of the majority of practising certificate holders.

18. Although all firms are likely to feel the impact of our new regulatory regime in some way, it is our view that in the long term, our new approach will have a positive impact on equality within the profession as it will give firms flexibility to meet the outcomes in a way that best suits them. This flexibility is likely to have a positive impact on consumers of legal services, as firms will be able to run their business in a way which bests suits their client base.

19. However, we accept that the concerns expressed by small firms are genuinely felt and we are looking further at the likely impact on firms through our ongoing costs benefit analysis work. In an attempt to mitigate any potential adverse impact caused by the changes, we have planned a range of measures to support firms in adapting to the new regime and some of these will be tailored to specifically address small firms. These measures are set out in detail in the equality impact assessment of the SRA Code of Conduct 2011 and reflected in the action plan accompanying this report. We will also be publishing a Transition Manual in April 2011 to help firms and individuals adapt to outcomes-focused regulation.

20. We also considered whether we should provide detailed guidance for firms in meeting the outcomes set out in each chapter of the Code in addition to the 'indicative behaviours' which already provide some context and guidance. We consulted specifically on this proposal and the responses are set out in our Policy Statement following the October consultation. There was strong support for guidance to help firms understand our expectations and to achieve the right outcomes for clients. Whilst we understand the concerns, our view is that support is best provided outside the formal structure of the Code, where it can become entrenched and regarded as mandatory. For technical rules, such as the SRA Authorisation Rules, we have retained guidance; for the Code we favour a more flexible and responsive approach by publishing frequently asked questions and other material on our website.

21. In the event that there is a disproportionate impact for BME and female firms as described above, we have considered whether this can be justified and whether it is proportionate for us to have redrafted the Handbook in the way that we have. We are of the view that we have taken a proportionate approach by considering each body of rules and regulations separately. Some parts of the Handbook still contain prescriptive rules, such as the Accounts Rules, for reasons of certainty in an area where the risks to clients are high. However, for the Code, we determined that removing the prescriptive rules and focusing on outcomes will enable solicitors more freedom to comply in a way that best suits them and their clients, and we see this as a positive advantage for the profession.

Over representation for some equality groups in regulatory activities

22. As well as considering the way the rules and outcomes in the Handbook are drafted, we need to understand and monitor the way that the Handbook is applied and enforced. To help us identify if there were any lessons that could be learned as we developed the new Code, we considered the data we hold about the regulatory action we had taken in relation to enforcement of the Code of Conduct 2007.

23. Our monitoring reports for 2008 and 2009 indicate that BME solicitors, male solicitors and solicitors in the age category of 41 to 50 were disproportionately represented in the number of new conduct cases opened by the SRA. This disproportionality was not evenly reflected across the different rules of the Code of Conduct 2007 which were alleged to have been breached.

24. Having identified the disproportionality for BME solicitors as a priority, we commissioned further research from Pearn Kandola, to investigate the data and consider the SRA's actions in dealing with these matters. The issues remain quite complex but their findings and recommendations have enabled us to target our work on key areas of concern, to better understand why the disproportionality is continuing and this will remain a priority for us going forward. Further details can be seen from the Pearn Kandola research report.

25. Although we have not been able to identify any single factor that we can address through the new Code to reduce the potential for disproportionate outcomes for BME or other equality groups, we do have a much better understanding of where the key areas of concern are and we will use this to prioritise the monitoring work we are proposing for our regulatory work under the new Code after the SRA Handbook is implemented.

26. Full details of the evidence taken into account in our assessment of the equality impact of the SRA Principles and Code of Conduct 2011 can be found in the full report.

Accounts Rules

27. The SRA Accounts Rules 2011 have not changed dramatically from the rules they will replace and remain prescriptive to ensure that we maintain a high level of protection for clients in relation to the handling of client money.

28. We did not identify any potential adverse impact on equality arising from the Accounts rules, but we identified one area where we were able to promote equality. This was our revised approach to firms accounting to clients for interest on money held on their behalf which gives flexibility to solicitors (largely from the Muslim community) who do not wish to earn interest for reasons connected with their faith.

29. As with the Code, we identified disproportionate outcomes in relation to the enforcement of the current Solicitors' Accounts Rules for BME solicitors, men and solicitors over 41 years of age. We are continuing to address this disproportionality through the recommendations made by Pearn Kandola referred to above and by continuing our monitoring of these outcomes.

30. Full details of the evidence taken into account in our assessment of the equality impact of the SRA Accounts Rules 2011 can be found in the full report.

Authorisation and practising requirements

31. The authorisation and practising requirements section of the Handbook applies to individuals, recognised firms and recognised sole practitioners as well as to alternative business structures that will be allowed to apply for authorisation to practise from October 2011.

32. In relation to this section of the SRA Handbook, we conducted three equality impact assessments, all of which are published separately:
    - Authorisation and practising requirements
    - Authorisation for individuals to practise
    - SRA Suitability Test 2011.

Authorisation of new firms

33. The two main changes proposed by the authorisation requirements for new firms are the requirement to appoint compliance officers for legal practice and for finance and administration and the requirement to provide more information about the firm at the point of authorisation and on an annual basis.

34. Concerns were raised through the consultation and engagement we have had as the Handbook has been developed about the impact these two requirements could have on firms, in particular on small firms. The equality breakdown of 1 and 2 partner firms set out above, means that this would have an indirect impact on BME firms and female firms.

35. However, many of the small firms interviewed as part of our costs benefit analysis work felt that the requirement to have the compliance officers would make little difference to them from a cost perspective, as they already had someone within the firm who was effectively fulfilling a similar type of role. Some larger firms were concerned with the expense involved in setting up auditing systems to enable the compliance officer to attest to their firm's compliance.

36. We concluded on the evidence that there is unlikely to be any significant adverse equality impact on BME and female firms as a result of the requirement to have the compliance officer roles and no other concerns in relation to equality impact were identified on this aspect of the new rules.

37. In relation to the new information requirements, the conclusions from our costs benefit analysis work to date indicates that although there may some additional costs to implement the new requirements, the ongoing requirements to provide annual information were not likely to be particularly onerous or costly.

38. We looked at the data that we hold in relation to compliance with the current information requirements, ie the requirement for firms to submit an annual accountant's report. For 2008 and 2009 there was over-representation among those who had failed to submit their accountant's report for certain groups of solicitors as compared to the overall solicitors' population, namely for BME solicitors, male

solicitors and solicitors from the 41 and over age categories. We will need to look further at this to identify why these groups were having more difficulty in complying with this requirement but in any event, we anticipate this disproportionality will persist when the new information requirements are introduced. To determine whether this disproportionality could be justified, we considered whether our proposals were a proportionate means of achieving a legitimate aim.

39. The aim of these requirements is to enable the SRA to analyse and assess risk accurately at the point of entry to the profession and on an ongoing basis. The information will inform our approach to supervising the firm so we are better able to protect clients' interests. Whilst the Authorisation Rules contain the requirement for the firm to provide the SRA with 'information', the nature and scope of that information is not going to be set out in the rules themselves but will be determined by the SRA based on our understanding of risk and other relevant factors.

40. We are still developing the precise nature of the information that will be required but we will ensure that we only require information that will genuinely assist us in assessing the risks posed by the firm. We will keep this under review as our proposals develop, to ensure that the information requirements are proportionate. We will also be seeking ways to minimise any potential adverse impact for firms by ensuring that the provision of information is made as easy as possible and that much of it can be done online to minimise the cost.

41. Full details of the evidence taken into account in our assessment of the equality impact of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 can be found in the full report.

Practice Framework

42. The Practice Framework Rules set out matters relating to framework and rights of practice, structure of firms and eligibility for authorisation. They are the first place to look to establish what methods of practising are permitted, and what route to authorisation and individual arrangements are possible.

43. We have not identified any adverse impact on equality as a result of these rules although there will be opportunities for solicitors providing legal services to the public through bodies which are not currently regulated, such as in-house legal departments and law centres and other not-for-profit bodies. Although they will be able to continue as before, predominantly providing legal services for the organisations for whom they work, they could expand to provide services to the public in more circumstances than currently permitted if the employer organisation obtains a licence as an alternative business structure.

44. There may be a positive impact for equality as a result of this and an opportunity for promoting a diverse profession as a disproportionate number of women work in this sector. This point is developed further in the equality impact assessment report that we have published in relation to alternative business structures.

45. Full details of the evidence taken into account in our assessment of the equality impact of the SRA Practice Framework Rules 2011 can be found in the full report.

SRA Practising Regulations 2009, the SRA Recognised Bodies Regulations 2009 and the Solicitors (Keeping of the Roll) regulations 2011

46. The SRA Practising Regulations deal with applications for practising certificates by solicitors and for registration by European lawyers and foreign lawyers; applications for authorisation to practise as a sole practitioner; practising certificates and registration; and the roll. These rules are fairly technical and relate largely to the process by which regulated individuals apply to renew their practising certificates or registration each year (as well as the process for sole practitioners to be recognised).

47. The Recognised Bodies Regulations set out the process for recognition of firms and will apply until March 2012 and thereafter will be repealed. From March 2012, the

authorisation rules in the new Handbook will apply to all firms, including sole practitioners so that all traditional solicitors firms are dealt with in the same way ie as 'recognised bodies'.

48. The Solicitors (Keeping of the Roll) Regulations cover only content and public access to the Roll, as well as forms, fees and processes. The changes are technical changes, and mainly reflect a change to the SRA Practising Regulations to remove reference to information to be kept on the Roll concerning sole practitioners and to bring appeal periods in line with the Civil Procedure Rules. We have not identified any equality impact arising from these rules.

49. We have not identified any equality issues arising from these three sets of rules.

50. Full details of the evidence taken into account in our assessment of the equality impact of these rules can be found in the full report.

Authorising individuals to practise

51. The authorisation of individuals to practise is covered in the following sets of rules:
    - The Training Regulations
    - The Admission Regulations
    - Qualified Lawyer Transfer Scheme Regulations
    - Higher Rights of Audience Regulations.

52. Our intention was to align these regulations with the rest of the Handbook yet try to maintain continuity of process until the results of a more fundamental review of training were known. In our equality impact assessment report we examined a range of changes to the Training Regulations. These included the removal of a number of unjustifiable age limits and generally trying to introduce more flexibility into the regulations to improve access to the profession. We felt these changes would have a positive impact on equality for a range of people including mature students, and students pursuing a non traditional route to qualification.

53. We have not identified any equality impact arising from the changes made to the Admission Regulations. The draft new Qualified Lawyer Transfer Scheme Regulations and the draft new Higher Rights of Audience Regulations have changed little. Both sets of regulations were introduced recently and full equality impact assessments were completed and published - for the QLTSR, and the HRA Regulations.

54. The SRA, the Bar Standards Board and the Institute of Legal Executives Professional Standards started working together in the winter of 2010 to undertake a fundamental review of the legal education and training requirements of individuals and entities delivering legal services. This is a collaborative project to examine the requirements of legal education and training in the delivery of the regulatory objectives set out in the Legal Services Act 2007, principally to create "an independent, strong, diverse and effective legal profession". The review will be assessing the equality impact of the proposals that may be put forward as a result and we expect results to be delivered at the end of 2012.

55. Full details of the evidence taken into account in our assessment of the equality impact of the rules in this section can be found in the full report.

The SRA Suitability Test 2011

56. The new Authorisation Rules will require applicants for the roles of manager, owner, and interest holder in alternative business structures and applicants for the compliance officer roles referred to above to be "fit and proper" in accordance with the Legal Services Act 2007.

57. The current Training, Qualified Lawyers Transfer Scheme and Admission Regulations all require individuals applying for admission to satisfy the SRA as to their "character

and suitability" to be solicitors in accordance with the Solicitors Act 1974. We have published guidelines for our decision making in relation to character and suitability.

58. The new SRA Suitability Test 2011 will be used for both purposes and in developing the new test we took into account the evidence we gathered about the equality issues arising from the character and suitability guidelines.

59. We did identify some disproportionality in the outcomes of decisions made under the character and suitability guidelines in relation to applicants for student enrolment and admission to the roll, in particular, for men and women and for BME applicants. Although the numbers were small and did not allow us to draw any firm conclusions, we will in any event, review the outcome of applications under the Suitability Test, when it has been in use for a full calendar year. At that time, if there are similar patterns in the data, we will consider whether it would be appropriate to audit a sample of cases where the applicant has been barred to ensure that the criteria are being applied fairly and consistently across all cases.

60. We believe that decisions made under the Suitability Test, which is much clearer, will be much more predictable, consistent and objective than under the character and suitability guidelines and we would hope that this will have a positive impact on equality by reducing the risk of introducing any bias through subjective decision making.

61. We have removed reference to mental health and addiction to drugs or alcohol that we previously referred to in the character and suitability guidelines. Decisions made as to whether a candidate is suitable will not be based on these factors unless the condition has resulted in, for example, serious conduct issues, a criminal conviction or other matters identifiable in the Suitability Test

62. We have also sought to promote equality in accordance with the second part of our equality duty by making it clear, save for exceptional cases, that applicants will be refused enrolment/admission/or approval if they have been convicted of a racially aggravated offence or an offence which was motivated by any of the 'protected characteristics' defined within the Equality Act 2010.

63. Full details of the evidence taken into account in our assessment of the equality impact of the SRA Suitability Test 2011 can be found in the full report.

Client Protection

64. This section of the Handbook will contain the rules covering indemnity and indemnity insurance, the compensation fund and statutory trusts.

65. The final version of the SRA Indemnity Insurance Rules 2011 still needs revision following the outcome of our review of financial protection arrangements. The consultation closed on 28 February 2011 and proposals will be going to the SRA Board in April 2011, together with the revised SRA Indemnity Insurance Rules 2011 and a separate equality impact assessment.

66. We have not identified any significant equality impact arising from the other rules contained in this section of the SRA Handbook at this stage. However, the SRA Compensation Fund Rules 2011 are likely to change following a fundamental review of the compensation fund arrangements which is planned for 2011/12. This review has been prompted by concerns that have been raised about extending the current compensation fund to alternative business structures (as we are planning to do). Approval for these arrangements from the Legal Services Board will expire at the end of 2012, pending consideration of the review findings which will be accompanied by a separate equality impact assessment.

67. Full details of the evidence taken into account in our assessment of the equality impact of the rules in this section can be found in the full report.

Discipline and Costs recovery

68. This section of the SRA Handbook contains both the disciplinary rules and the rules relating to the recovery of the costs of investigations.

Discipline

69. The SRA (Disciplinary Procedure) Rules 2011 codify the SRA's statutory powers and a number of other internal disciplinary processes and include a number of areas where we have already identified the need to carry out separate equality impact assessments, namely:
    - the Solicitors Disciplinary Tribunal (SDT) referral code;
    - the publications policy/criteria;
    - the reconsiderations policy/criteria;
    - the power to make disciplinary decisions;
    - the use of regulatory settlement agreements; and
    - the criteria for calculating financial penalties.

70. The only new matter introduced by the rules is the criteria for calculating financial penalties which were first published for consultation in October 2010 and which related to a power only available to the SRA since June 2010. Therefore, we have no statistical data which we can use to help us assess the potential equality impact of the rules. We have adopted the approach that any financial penalty should be appropriate to the financial means of the paying party. This approach was advocated as appropriate by a number of respondents to the first Handbook consultation in May 2010 and should address concerns over a possible adverse impact for some of the equality groups which may be more likely to have reduced financial means/earnings than others.

71. We have not identified any potential adverse impact for equality arising from the rules themselves, which have been carefully drafted to ensure they are fair and objective and will protect the human rights of those who are dealt with under them.

72. However, there are underlying equality issues in relation to disciplinary outcomes for the profession – in particular the disproportionate over representation of BME solicitors. We have commissioned research to better understand this disproportionality, as referred to above, and our work to implement the recommendations from the report will be a central element of our equality work for 2011/12, as will the equality impact assessments listed above.

73. We will be closely monitoring disciplinary outcomes under the new rules from October 2011.

74. Full details of the evidence taken into account in our assessment of the equality impact of the SRA (Disciplinary Procedure) Rules 2011 can be found in the full report.

Costs recovery

75. The SRA Cost of Investigations Regulations 2011 empower the SRA to recover its investigation costs from regulated individuals and firms who have been found to have committed, or have admitted, misconduct or a breach of the SRA's rules.

76. We did not identify any adverse equality impact from these rules. However, we have decided to review the whole area of costs recovery in 2011 and will carry out a full equality impact assessment at that time.

77. Full details of the evidence taken into account in our assessment of the equality impact of the SRA Cost of Investigations Regulations 2011 can be found in the full report.

Specialist Services

78. The specialist services section of the Handbook will contain the following four sets of rules:
    - SRA Property Selling Rules 2011
    - SRA European Cross-border Practice Rules 2011
    - SRA Financial Services (Scope) Rules 2011
    - SRA Financial Services (Conduct of Business) Rules 2011.

79. The SRA European Cross-border Practice Rules 2011 are necessary to continue to provide a system of professional mutual understanding for professional relations between lawyers of different CCBE states and as such, are likely to assist the promotion of good race relations between people from different CCBE states.

80. At this stage we have not identified any potential for adverse impact for equality in relation to these rules but we will monitor this once the Handbook has been implemented.

81. Full details of the evidence taken into account in our assessment of the equality impact of the rules in this section can be found in the full report.

Human rights impact

82. All parts of the SRA Handbook have been audited for their human rights impact and we have taken into account the findings of that audit as we have developed the rules. Details of the potential human rights issues for each of part of the Handbook are set out in more detail in the full equality impact assessments.

83. We are satisfied that the provisions of the SRA Handbook do not adversely impact on human rights and appropriate safeguards are in place where there is potential for the decisions made under the rules to interfere with particular rights.

Conclusions

84. For all areas where we identified potential adverse impact, we have considered whether our proposed approach has been justified. We are satisfied that our approach to the Handbook and the requirements in the rules it contains are justified and proportionate.

85. One of the main concerns expressed about the SRA Handbook is the belief that there may be an adverse impact for smaller firms arising in particular from the Code and the Authorisation Rules. Although we are not fully convinced that this adverse impact will materialise, it would indirectly affect BME firms and female firms which are disproportionately represented in 1 and 2 partner firms. We accept that the concerns are genuinely held and as such we have identified a range of measures that we have taken and are proposing to take to reduce this potential impact.

86. We intend to assist all those we regulate with readily accessible and easy to understand information about the introduction of the new Handbook and outcomes-focused regulation. We believe that this will be of particular assistance to smaller firms which might otherwise lack the resources to readily assimilate the new information. We believe that this, and our other package of education and information initiatives, will help address any potential disproportionate impact on smaller firms and, therefore, any resulting disproportionate equalities impact.

87. As we considered each part of the Handbook in detail, we did not identify any aspect of the rules which would adversely impact on relations between different equality groups. However, we recognise that this may change if there are perceptions of unfairness in the way we implement our new approach and we will keep this part of our equality duty under review.

88. The impact of the Handbook on the profession and clients will depend as much on the way in which we regulate as it will on the provisions it contains. As such, we will be closely monitoring the regulatory outcomes for the profession after October 2011.

We are very much aware of the ongoing disproportionality that exists across many of our regulatory activities, both in relation to the matters referred to us and in the outcomes of some of the decisions that we make. We are continuing to address this disproportionality across all equality groups although we have identified the disproportionality for BME solicitors as a priority area. We are tackling this through the recommendations made in the Pearn Kandola report and through our ongoing work to equality impact assess all of our decision making criteria. We are proposing to publish our Equality Framework for consultation in March 2011 and this will identify how we are going to meet our equality duties and what we have identified as our equality priorities for 2011/12.

89. We are continuing to embed equality into our Risk Centre and the new design of our three main functions: authorisation, supervision and enforcement. The latest progress report on this work is the Policy Statement published in November 2010. We will be publishing further information about our equality impact assessment of this work in due course.

90. Our new approach to regulation will also be supported by the work we are doing to transform the SRA itself. This includes the introduction of new IT systems and more web based communication with the profession. As this develops we will take account of the need to remain accessible to those we are engaging with. It will also include the work we are doing to promote a new organisational culture and equip our staff to work in the new regime.

91. We have updated and added to the action plan published with our initial equality impact assessment in October 2010.

Action plan

Outcome	Actions from October 2010	Update
Have a clear analysis of the statistical data that we need to assess equality impact across all equality groups	Update the SRA data base with the diversity census returns	The diversity census returns have been added to the SRA data base but we have not been able to produce equality breakdowns for groups other than age, ethnicity and gender
	Prepare up to date statistics across all areas required	We have gathered those statistics which we felt would assist with our equality impact assessment of the Handbook
	Analyse the statistical data for disproportionate impact	We have reviewed the data for disproportionate impact
Gather additional data to assist with the equality impact assessment	Desk based research	Done and ongoing
	Dialogue with other regulators	Considered in some areas
	Consider the outcome of the cost benefit analysis	The costs benefit analysis is an ongoing process, we have taken into account the indicative report published with the Policy Statement

		published in November and the subsequent analysis which has been undertaken
Engagement with stakeholders to develop our understanding of the potential impacts	Workshops with the profession in relation to the Code	Done and ongoing for many of the areas being considered
	Roadshows with the profession	Done and ongoing - new Roadshows planned for May and June 2011 in addition to a series of webinars held for the profession through 2011
	Focus groups with the profession and consumers	Done and ongoing for many of the areas being considered
	Dialogue with key stakeholder organisations	Done and ongoing for many of the areas being considered
Make informed decisions on the introduction/implementation of the new policy/procedure	Draw conclusions on the impact across all equality groups	Done for each part of the Handbook and summarised for the Handbook as a whole
	Consider alternative options and changes to mitigate any adverse impact found	Done for each part of the Handbook and summarised for the Handbook as a whole
	Consider justification of any potential indirect impact	Done and explained in the individual equality impact assessments completed for each part of the Handbook
Keep stakeholders updated about the findings of our equality impact assessment work	Publish an updated equality impact assessment report with the second Handbook consultation	Individual equality impact assessment reports have all been updated since the October 2010 consultation and published for each part of the Handbook and together with an updated summary for the Handbook as a whole
Continue to review relevant areas during the second consultation	Through further engagement as described above	Done and any additional issues addressed in the updated equality impact assessment reports and the

		summary report
Ensure that the final Handbook is accompanied by a full equality impact assessment	Publish a full equality impact assessment for the Handbook	Full equality impact assessments will be published in April 2011 for all parts of the Handbook and an updated summary for the Handbook as a whole
Outcome	**New actions from March 2011**	**Update**
The profession, in particular small firms are well prepared for the forthcoming changes	Publish guidance in the form of FAQs and other materials on web site	Du to be published before October 2011 and ongoing as required
	Publish a Transition Manual to help firms and individuals adapt to the forthcoming changes	Due to be published in April 2011
	Prepare and train the SRA contact centre and the Ethics helpline staff to ensure they are able to provide information and advice to forms about the changes	Ongoing
Monitoring impact of the Handbook	Annual publication of equality data for a range of regulatory outcomes	Data to be reviewed and published annually
Promoting equality and diversity	Consider a thematic supervision of the profession in achieving the chapter 2 outcomes on equality and diversity	We are unable to confirm a timeframe for this at this stage but we are committed in principle to this taking place

Draft Framework Memorandum of Understanding

Licensed Bodies as Multi-Disciplinary Practices Constituted as Alternative Business Structures

Introduction

The Legal Services Act 2007 (LSA 2007) provides a licensing framework that permits licensed bodies (LBs) to provide reserved legal services alongside non-reserved and non-legal services. This facilitates the creation of alternative business structures (ABS) which can provide a potentially wide range of services. This may lead to the establishment of firms (including individuals within them) that are subject to the oversight of one or more regulators or professional bodies. This Memorandum of Understanding seeks to clarify so far as is practicable the roles of the regulators and professional bodies. One of the purposes of this memorandum of understanding is to contribute to the requirements of Section 54 LSA 2007 (set out in full in Annex 2) to "make such provision as is reasonably practicable and, in all the circumstances, appropriate —

(a) to prevent external regulatory conflicts;

(b) to provide for the resolution of any external regulatory conflicts which arise; and

(c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body".

This Memorandum of Understanding also takes into account the Guidance (relevant extracts of which are set out in Annex 3) issued by the Legal Services Board requiring a single framework Memorandum of Understanding to be implemented by all relevant bodies and provide a mechanism to resolve overlaps in ways which:

- provide the best form of consumer protection and redress;
- minimise confusion for market participants; and
- reduce/remove conflict in the future.

This memorandum of understanding recognises that regulators and professional bodies have duties to exercise various functions (sometimes deriving from statute) autonomously and in the public interest or with the public interest in mind. Co-operation and appropriate information sharing should provide clarity for consumers and regulated businesses and should also reduce regulatory cost by minimising duplication of effort by all concerned.

The parties to this Memorandum of Understanding ("the Regulators") are:

- Approved Regulators as defined in the LSA 2007 (and which, for the avoidance of doubt, means entities which exercise the regulatory functions of bodies specified as approved regulators in the LSA 2007);

- Licensing Authorities as defined in the LSA 2007; and

- other regulators or professional bodies which do not come within 4.1 or 4.2 but which oversee the conduct of their members or of other persons within their jurisdiction and who, for the purposes of this memorandum of understanding, are involved in LBs.

This Memorandum of Understanding records non-binding arrangements between the Regulators, which are bodies that regulate, inspect, or oversee the carrying on of various activities by individuals and LBs. This memorandum also records a mutual understanding of the public interest in proper co-operation and co-ordination, particularly in the light of the obligation on approved regulators and licensing authorities to act in a way which is compatible with the Regulatory Objectives set out in section 1 of the LSA 2007 (see Annex 1). It provides a framework for co-operation, co-ordination and exchange of information in order to facilitate effective public protection and working relationships. It does not create legal rights or liabilities, but is a statement of intent, comprising principles to which the signatories will adhere so far as they practicably and lawfully can.

Approved Regulators are required to act compatibly with the Regulatory Objectives set out in Section 1 of the LSA 2007. Approved Regulators acknowledge that other regulators have their own statutory or non-statutory objectives.

Principles

The Regulatory Objectives in the LSA 2007 establish the key guiding principles of this Memorandum of Understanding. Further agreed principles are set out below to assist in a fuller understanding of how the Regulators will communicate and cooperate to facilitate the proper exercise of their functions, avoid duplication, avoid conflict between differing regulatory arrangements, and seek to ensure that consumers and others do not suffer detriment as a result of failure to co-operate or co-ordinate.

Sharing of information

Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a signatory to this memorandum of understanding as provided in Annex 4.

Co-ordinated oversight: minimising duplication so far as is reasonably practicable

The Regulators will co-operate where appropriate in co-ordinating oversight and investigation (and related matters such as consequential action) so that:

- action is effective in protecting the public;
- investigations are not prejudiced; and
- regulatory cost is proportionate.

Investigations will usually be undertaken or led by the regulator of the entity rather than any particular individual within it.

When one of the Regulators identifies that an investigation of an LB or a person within it is desirable, it will endeavour to identify whether any other of the Regulators has a proper interest in the issues or persons to be investigated and, if so, discuss the proposed investigation with a view to agreeing whether one of the Regulators or both should pursue an investigation.

It is desirable to minimise the risk of duplicative and potentially inconsistent acts and decisions on the same facts by the Regulators and tribunals or committees before which they bring cases. The risks include:

- the same or similar issues of fact are subject to dispute in more than one forum;
- witnesses and respondents are engaged in parallel or sequential proceedings on the same facts;
- cost is unnecessarily imposed on respondents and the Regulators; and
- decisions are inconsistent.

While acknowledging that there are legal and practical difficulties (such as differences between the rules of independent tribunals), the following working principles are agreed as outcomes which the Regulators would wish to achieve (acknowledging also the differing structures of Regulators' investigation and disciplinary processes):

- the evidence obtained by one of the Regulators should be admissible in action by others:
- the Regulators' rules should permit the admission of such evidence;
- the Regulators should make submissions at an appropriate time to any independent tribunal or committee to the effect that its rules should permit the admission of such evidence; and

- the Regulators should make submissions and applications in individual cases, so far as is appropriate and lawful, to support the principle that such evidence be admitted.

The formal findings of other Regulators or of any court or tribunal in matters conducted by another of the Regulators should be admissible in the proceedings of, or conducted by, recipient Regulators as evidence of the facts found.

Any of the Regulators who provide evidence or findings to another of the Regulators will co-operate so far as is reasonably practicable in making that evidence formally available for the purposes of proceedings by or involving the recipient Regulator, such as by the provision of live witnesses and/or written evidence.

Regulators will notify other Regulators of findings against the latter's members or those they regulate.

Protecting the financial interests of consumers

It is agreed that:

- client money held by an LB should be held separately from other money it holds, and client money held in relation to the provision of legal services should be held in accordance with the requirements of the Licensing Authority governing the LB; and

- the overarching principle is that clients' money must be protected at all times.

The Regulators will work together to reduce differences in respect of the treatment of clients' money by those they regulate. Standards and definitions should be as similar as possible and guidance should be agreed so far as possible to assist LBs to deal with complex situations.

The Regulators will work together to assist consumers to understand what activities of an LB are, and are not, subject to regulatory protections and in particular indemnity insurance and compensation arrangements.

Where there is loss to clients or others that may be covered by indemnity insurance or other compensation arrangements (such as a compensation fund or scheme), the Regulators will so far as reasonably practicable endeavour:

- to signpost consumers to the appropriate insurance or compensation scheme systematically and in response to individual queries;

- to minimise complexity and delay for consumers and others involved in any claim or application for compensation;

- to promptly resolve any uncertainty as to liability, jurisdiction or coverage of insurance or compensation schemes and provide clear guidance to the consumer as to how to pursue recovery, and (if such uncertainty cannot be promptly and conclusively resolved), to seek to ensure that consumers' claims or applications are dealt with by one insurer or compensation scheme, on the basis that ultimate responsibility for such claims or applications is subsequently resolved between the insurer or compensation scheme and such other applicable insurer or compensation scheme; and

- to work towards insurance and compensation schemes that formalise the approach described above, perhaps by powers vested in the Regulator to direct particular insurers or schemes initially to deal with claims or applications on the basis that responsibility will be resolved subsequently.

Resolution of regulatory conflicts

The Regulators will work together to seek to establish appropriate arrangements to prevent and where necessary to resolve regulatory conflicts. This may include:

- further memoranda of understanding dealing with particular subjects in more detail;

- the establishment or continuation of working groups to reduce inconsistency or uncertainty in regulatory obligations where appropriate;

- informal resolution mechanisms for procedural issues such as prompt resolution of disagreement about how investigations should be sequenced or co-ordinated; and

- formal resolution mechanisms for issues that create risk to consumers such as those that might otherwise cause delay in the processing or payment of compensation.

Transparency

The Regulators will work together to agree common standards as to:

- information to be provided to consumers about the status of the person acting for them, who regulates them and how to complain;

- signposting of consumers to the correct complaints or redress scheme;

- transparency in the publication of regulatory decisions; and

- clarity and transparency for regulated businesses in understanding how they are regulated.

General

The Regulators will provide each other with points of contact to ensure prompt co-operation and communication on practical and other issues arising.

This Memorandum of Understanding may be reviewed at any time at the request of one of the Regulators but will in any event be reviewed within 3 years of its date.

This memorandum is a public document and may be published by any Regulator.

The date of this Memorandum of Understanding is …….

Signatories:

A. Approved Regulators:

	Signed on behalf of the Regulator:
Solicitors Regulation Authority	…….. Name: Position:
Bar Standards Board, part of the Bar Council	…….. Name: Position:
Council for Licensed Conveyancers	…….. Name: Position:

ILEX Professional Standards Limited, part of the Institute of Legal Executives group	…….. Name: Position:
The Patent Regulation Board (established by The Chartered Institute of Patent Attorneys) and the Trade Mark Regulation Board (established by The Institute of Trade Mark Attorneys) (together The Intellectual Property Regulation Board) each signing pursuant to Clause 5 of the Delegation Agreement dated [2nd] December 2009	…….. Name: Position:

B. External regulatory/professional bodies:

	Signed on behalf of the Regulator:
Financial Services Authority	…….. Name: Position:
The Law Society of Scotland	…….. Name: Position:
Royal Institution of Chartered Surveyors	…….. Name: Position:
National Federation of Property Professionals	…….. Name:

	Position:
Institute of Chartered Accountants of Scotland	…….. Name: Position:
Institute of Chartered Accountants of England and Wales	…….. Name: Position:
Ministry of Justice acting as Claims Management Regulator	…….. Name: Position: