



The Law Society

**THE LAW SOCIETY  
BRIEFING ON  
THE SRA 'LOOKING TO THE FUTURE'  
HANDBOOK REFORM  
PHASE TWO**

**Briefing paper for Law Society members**

**August 2018**



## Foreword

On 14 June the SRA announced a series of decisions following its consultation *Looking to the future: phase two of our Handbook reform* which took place last year. It marks the end of the major programme of Handbook reforms carried out over two consultations, and paves the way to far-reaching changes to the way solicitors and their firms currently practise.

Despite strong opposition from the Law Society and its members, supported by a substantial body of evidence, the SRA decided to proceed with its two controversial proposals to allow:

- solicitors to deliver non-reserved services to the public from unregulated entities, except for claims management, financial services and immigration work;
- individual self-employed solicitors to provide reserved and non-reserved services without sole practice authorisation.

On 8 August the SRA submitted the proposed changes to the Handbook to the LSB for approval. Subject to the LSB's approval, the SRA anticipates implementing the changes in April 2019.

The Law Society continues to oppose these changes and we have lodged a formal objection to the Legal Services Board (LSB), asking them to reject these elements of the SRA rule change application. We are concerned that the changes will increase uncertainty for the profession, erode vital client protections, lower standards, confuse clients and diminish the solicitor brand. In our view the SRA has not provided sufficient evidence to justify such radical changes.

Other changes to the Handbook announced include:

- Introduction of two separate principles '*act with honesty*' and '*act with integrity*'
- Widening the practising address requirements beyond England and Wales to anywhere in the UK
- Dispensing with the requirement to re-approve partners of firms, and other Legal Services Act regulated professionals
- Tightening the 'qualified to supervise' rule
- Streamlining character and suitability requirements
- A revised policy on multi-disciplinary practices
- Setting out new training requirements
- Changes to specialist rules
- New approach to enforcement strategy
- New transparency rules<sup>1</sup>.

The SRA took account of consultation responses in some areas and amended their original proposals as follows:

- The 'qualified to supervised' rule will be tightened and replaced with a requirement for SRA-authorized firms to have at least one manager or employee who has practised for three years.
- Self-employed solicitors will be required to have three years' experience prior to delivering work, but ONLY for reserved services. They will also be required to

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<sup>1</sup> <https://www.sra.org.uk/sra/how-we-work/reports/better-information.page>

maintain adequate and appropriate professional indemnity insurance for reserved and non-reserved work.

- The early decision on character and suitability will be retained for aspiring solicitors.

This briefing is designed to provide Law Society members with information about the changes and help them to consider the implications for their practices.

In addition, we are planning to offer a range of resources for members to assist with compliance with the new Handbook. Further updates and our education and training offer will be made available in due course, on our [website](#).

## Summary

This announcement marks the end of a wider programme of Handbook reform and includes the rules to implement the SRA policy decisions from the first phase consultation which ran from June to September 2016. During the first phase the SRA proposed:

- Removal of practice restrictions on solicitors delivering non-reserved services
- A new reduced set of principles
- A new shorter Code of Conduct for Solicitors
- A new shorter Code of Conduct for Firms.

The outcome of phase two sets rules on:

- Authorising firms
- Authorising individuals
- Suitability test for admission to the Roll
- Transitional arrangements for the Solicitors Qualifying Exam
- Specialist rules on overseas practice, property selling, financial services and appeals
- Enforcement strategy
- Transparency rules.

The changes pursue a less prescriptive approach to regulation with the Handbook size reduced by about two thirds. The SRA argues that the intention behind the changes is to simplify the regulations, make them more targeted and future-proofed, and at the same time offer solicitors more flexibility and freedom in the way they choose to practise.

This 'flexibility' means a significant shift from the status quo where the 'solicitor' title guarantees a consistent level of client protection. Under the new rules clients will be expected to know and understand the difference between solicitors working in SRA-regulated firms, freelance solicitors and solicitors in an unregulated business.

To assist clients in making choices and determining what type of regulatory protections they will have, the SRA is introducing new transparency rules. We have developed a separate briefing [Looking to the future: Better information, more choice](#) to provide members with detailed information about those changes.

We believe the changes will increase client confusion. The legal services market is inherently complex and most clients are infrequent purchasers of legal services. That is why

it is unrealistic to expect them to understand these fine distinctions. Rather than having choice, clients are likely to be put at risk.

**Subject to the LSB's approval the new Handbook rules are expected to be implemented together, no earlier than April 2019. This is with the exception of the Transparency Rules, which are expected to come in force earlier in December 2018.**

## Overview of key SRA decisions

The changes resulted in a much shorter version of the Handbook. The SRA streamlined the content by merging some of the authorisation rules with relevant parts of the practice framework rules and removed duplication.

### A new set of principles

The current 10 mandatory principles (2011 Code) are reduced to 7. They comprise the following obligations to act:

1. in a way that upholds the constitutional principles of the rule of law and the proper administration of justice
2. in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons
3. with independence
4. with honesty
5. with integrity
6. in a way that encourages equality, diversity and inclusion
7. in the best interest of each client.

The SRA has split the principle 'act with honesty and with integrity' into two separate principles to make it clear that these two requirements are not interchangeable or that both have to be proven. The 'lost' principles include 'provide a proper standard of service to your clients', 'comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner', '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', and 'protect client money and assets'. The SRA view is that these obligations remain (within the code) and will be directly enforceable through the new codes, hence the decision to remove them.

### The Code of Conduct

The SRA proposes to replace the current Code of Conduct with two shorter, less detailed Codes – a Code for Solicitors and a Code for Firms. The change paves way to two tiers of solicitors, with those working in regulated entities having to bear a greater regulatory burden than those in unregulated entities – irrespective of the risk to the client. The new Codes will not have the outcomes or indicative behaviours provided for in the present Code, with much of the detail expected to be moved to new guidance. The SRA plans to publish the guidance prior to implementation.

The high-level codes with less prescriptive rules may lead to compliance challenges, particularly in relation to 'grey' areas, open to interpretation. It should be said that the continued absence of guidance at this stage of the process does not assist members in understanding and preparing for the significant changes.

## **Authorising firms**

The main changes to the way the SRA authorises firms relate to four areas:

- Widening the practising address requirements so a firms' practising address can be based anywhere in the UK, not just in England and Wales.
- Allowing companies to have corporate bodies as directors.
- Replacing the current 'qualified to supervise' rule with the requirement that any authorised firm (including sole practitioners) must have at least one manager or employee with three years' practising experience.
- New authorisation rule that requires firms to intend to deliver legal services.

### Practising address requirements

The practising address for law firms and sole practitioners will be widened beyond England and Wales, to the UK. The new rule is thought to offer more flexibility and facilitate online legal services, while also being aligned with the Ministry of Justice proposals to remove the statutory requirement for Alternative Business Structures<sup>2</sup>. The change is likely to benefit solicitors and firms from Scotland and Northern Ireland that will no longer need to register in England and Wales.

### Managing authorised bodies

The SRA proposes to remove the current Practice Framework Rules (PFR) 14.2 and 16.1(f) requirements for managers of SRA-authorized firms to be individuals. This will enable companies to have corporate bodies as directors<sup>3</sup>. The current PFR 15(3) restrictions placed on authorised limited companies will be maintained.

Managers who do not exercise any significant control over the firm and are not involved in the delivery of legal services in England and Wales, will be exempt from the separate approval rule. The exemption will not apply to approvals under the money laundering regulations.

### The 'Qualified to Supervise' rule

The SRA took on board concerns in relation to the proposal to remove the "qualified to supervise" rule, which would have allowed solicitors to open a firm immediately after qualifying. It decided to tighten the current rule up rather than abolish it. As a result the current 'qualified to supervise' rule will be changed to a requirement placed on any authorised firm (including sole practitioners) to have at least one manager or employee with three years practising experience.

### Corporate Manager Owners

The SRA proposes a new authorisation rule that requires firms they authorise to intend to deliver legal services. The change is likely to impact on Corporate Manager Owners. It means that in the future firms with Corporate Manager Owners would most likely need to be authorised as Alternative Business Structures.

## **Authorising individuals**

This section contains significant changes which include:

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<sup>2</sup> Legal Services: removing barriers to competition Consultation on proposals to make amendments to the Legal Services Act 2007 (July 2016)

<sup>3</sup> This is with the exemption for limited companies subject to section 87 of the Small Business, Enterprise and Employment Act 2015.

- Allowing self-employed solicitors based in the UK to provide reserved legal activities without needing to be authorised as a recognised sole practice;
- Streamlining character and suitability requirements;
- Dispensing with the requirement to re-approve partners of firms, and other professionals regulated under the Legal Services Act 2007 (LSA);
- Preventing immigration, claims management and financial services work outside a regulated firm.

#### Self-employed solicitors

Sole solicitors and Registered European Lawyers (RELs) will be able to provide reserved services without the need to be authorised as a recognised sole practice or to work through a regulated firm. This is subject to specific conditions such as being self-employed and engaged directly by a client, not having any employees and not practising through a service company. Self-employed (freelance) solicitors must have three years' practising experience prior to delivering work but **only for reserved activities**. This means they will be able to deliver non-reserved work without any requirement for practising experience. Self-employed will not be able to hold client money except for payments on account of costs and disbursements for which the solicitor or REL is responsible. In response to concerns, the SRA decided to require freelance solicitors to maintain 'adequate and appropriate' professional indemnity insurance (PII) cover for both reserved and non-reserved work, though they will not need to comply with the SRA's minimum terms and conditions (MTCs), which are also now under review. Freelance solicitors' clients will have access to the Compensation Fund.

The SRA believes this change will give solicitors more flexibility and allow them to operate on the same model as barristers, attached to chambers and sharing back-office functions, but working on a freelance basis. However, the benefits in terms of flexibility must be set against the reductions of regulatory protections for clients, with the removal of the 'qualified to supervise' rule for non-reserved work and the MTCs insurance requirements.

#### Assessing character and suitability

Assessment of character and suitability at the point at which an individual applies for admission as a solicitor has been revised. The SRA decided to introduce a set of indicative behaviours, which will apply equally to all, considering the individual's circumstances and the nature of their role. The onus will remain on the individual to provide evidence to support their application for assessment of their character and suitability.

The current re-approval requirement for managers, owners and compliance officers who have already been authorised by another LSA legal services regulator will be removed. The proposals may not be considered significant as solicitors, RELs and Registered Foreign Lawyers are currently deemed approved already. However, other types of lawyers such as barristers and Chartered Legal Executives will only have to go through the approval process once.

All non-lawyers will remain subject to the same SRA rules. However, the SRA plans to work with sector-specific regulators to streamline the approval process.

The SRA has been persuaded to retain early character and suitability requirements for aspiring solicitors. This is so potential students can understand at an early stage the potential consequences of issues for their admission.

#### Immigration, claims management and financial services

The SRA decided to restrict solicitors from providing immigration services outside firms authorised under the LSA or by the Office of the Immigration Services Commissioner, and claims management services outside LSA or Claims Management Regulator authorised firms. Similarly solicitors providing regulated financial services to the public in non-LSA regulated firms will not be able to do so under the scope of the SRA regulation. These restrictions will reduce the scope of the controversial SRA decision to allow solicitors to provide services to the public from unregulated firms, published under phase one of the Handbook review.

### Training Regulations

The SRA set out details on the Solicitors Qualifying Exam (SQE) transitional arrangements. The SQE is set to be introduced by 2020 at the earliest. All those starting the qualification process from then onwards must take the SQE. Those who have already started to work towards qualification through the existing routes will have 11 years after the SQE is introduced to qualify under the currently existing regime.

Apprentices will not qualify for the exemption and will have to pass all stages of the SQE whenever they started their apprenticeship.

The transition period for Qualified Lawyers Transfer Scheme candidates will be extended by an extra 12 months, after the introduction of the SQE.

## **Specialist rules**

### Overseas Practice

The new Overseas Rules are slightly modified and take account of the changes made in the new SRA Principles and Account Rules. The new principles are reduced to 7 and include the requirement to act:

1. in a way that upholds the rule of the law and the proper administration of justice in England and Wales
2. in a way that upholds public interest and confidence in the solicitors' profession of England and Wales and in legal services provided by *authorised persons*
3. with independence
4. with honesty
5. with integrity
6. in a way that encourages equality, diversity and inclusion having regard to the legal, regulatory and cultural context in which you are practising overseas in (sic)
7. in the best interests of each client

The revised rules incorporate a simplified version of the European Cross-border Practice Rules, and a requirement to comply with the Council of Bars and Law Societies of Europe (CCBE) Code of Conduct, for those practising in European jurisdictions and cross-border. The rules clarify that the scope of the SRA jurisdiction applies to managers involved in the day to day or strategic management of the overseas practice.

### Property Selling

The SRA decided to remove the Property Selling Rules on the assumption that solicitors rarely offer estate agency services. The SRA argues that the legislation is either mirrored in the Estate Agents Act (1979) or has not been enacted. The SRA will issue guidance on sole agency and sole selling rights.

### Financial Services

The rules have been simplified and reduced in length. As mentioned earlier the revised rules will not allow solicitors to provide regulated financial services to the public outside a non-LSA regulated firm under the SRA regulatory remit. Any such work will need to be regulated by the Financial Conduct Authority.

### Notice, Application, Review and Appeal Rules

The Application Notice Review and Appeals Rules are codified in one place, with a standard appeal period of 28 days.

### **Enforcement Strategy**

The SRA has not yet published the revised enforcement strategy, but plans to do so jointly with the guidance later this year. The SRA's intention is that the revised strategy does not to create new powers or sanctions, but instead provides an explanation on how regulatory enforcement tools will be applied. The SRA considers the revised strategy alongside the new guidance will act as a guide to the 'expected behaviours' that underpin the SRA standards and deliver a 'principle-based, flexible approach to enforcement'. The new approach aims to give more clarity and assurance about how seriously the SRA views different behaviours. It is intended to help the regulated community decide on whether something is serious and therefore must be reported.

### **Next steps**

**The SRA has submitted an application for a rule change approval to the Legal Services Board (LSB). Subject to the LSB's approval, the SRA anticipates implementing the changes in April 2019.**

Even if the LSB rejects some of the proposals, the Handbook reform will go ahead in some form or another, affecting the whole profession. In preparation for the Handbook changes we are planning to offer a range of resources for members to help with compliance including:

- information and guidance
- publications
- training
- events
- specialist support

Further updates will be available on our website in a due course. For more information, please email policy advisor Marzena Lipman, [email@marzena.lipman@lawsociety.org.uk](mailto:email@marzena.lipman@lawsociety.org.uk) or [regulation@lawsociety.org.uk](mailto:regulation@lawsociety.org.uk)