SRA BOARD
9 September 2015

CLASSIFICATION – PUBLIC

Improving regulation: targeted and proportionate measures

Purpose

1. This paper reports the outcome of our recent consultation on improving regulation. This consultation set out a diverse range of proposals aimed at reducing unnecessary burdens and costs on regulated firms and ensuring proportionate and targeted regulation. It opened on 16 April 2015 and closed on 11 June 2015.

2. The SRA's May 2014 policy statement set out our rationale and a framework for a reform programme designed to:

   - remove unnecessary regulatory barriers and restrictions and enable increased competition, innovation and growth to better serve consumers of legal services;
   - reduce unnecessary burdens and cost on regulated firms; and
   - ensure regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses.

3. The consultation's proposed changes flow from our own internal process reviews, ongoing stakeholder engagement, responses to our 2014 discussion paper on small firms and Phase 3 of the Red Tape Initiative.

4. A summary of the consultation outcome and recommendations are set out in the three following sections:

   - **Section 1: Authorisation changes** covers a range of proposals relating to the authorisation of firms and individuals (pages 4-10);
   - **Section 2: Third party managed accounts as an alternative to client accounts** explores the use of alternatives to solicitor managed client accounts (pages 11-15);
   - **Section 3: Other measures proposed in the consultation** (pages 16-24).

Consultation summary

5. A total of 102 responses to the consultation were received. Of these, 26 were from firms or solicitors in private practice and 8 were from representative bodies, including the Law Society and the Junior Lawyers Division. There were 13 responses from other legal professionals. A number of respondents (18) categorised themselves as responding in another capacity, this number included some legal professionals. Respondents also included the Institute of Chartered Accountants of England and Wales (ICAEW), the Legal Services Consumer Panel (LSCP) and the Legal Ombudsman.

Recommendations

6. The Board is asked to:

   a) note the summary of the outcome of our consultation "Improving regulation: proportionate and targeted measures" set out in this paper, together with the impact statement (Annex 1);

   b) agree the proposal for deemed approval of compliance officers in sole practices and small firms (paragraphs 8-23);

   c) approve the proposal to remove the requirements for separate declarations from and notifications to prospective role holders, in addition to the applicant firm (paragraphs 24-29);

   d) amend the provisions in the Authorisation Rules which suggest that firms are required to carry out reserved legal activities in order to obtain/maintain authorisation (paragraphs 30-34);

   e) approve the proposals to:
   a. remove the requirement for the SRA to approve individual managers within ABS corporate owners; and
   b. remove the requirement that firms must notify the SRA of a manager deemed to be authorised as a manager or owner of an ABS at least 7 days in advance (paragraphs 35-42);

   f) defer the decision on whether to make changes to the Rules to permit the use of third party managed accounts, and to incorporate this work into the wider review of the Rules due to report to a future meeting of the Board (paragraphs 43-69);

   g) agree the proposal to allow us to refuse or impose conditions on renewal of a practising certificate where applicants have been involved in partnerships that have entered administration but have not yet been subject to insolvency or bankruptcy (paragraphs 70-74);

   h) note the amended guidance in relation to recording non-material breaches (set out at Annex 2) (paragraphs 75-81);

   i) note that we will be amending some SRA literature that does not form part of the Handbook in relation to outsourcing and cloud computing (paragraphs 82-86).

   j) agree that a new outcome should be added to the code of conduct to require firms to have in place appropriate arrangements for monitoring, reporting and publishing diversity data, and that the Indicative Behaviours should be amended to clarify that firms' written equality and diversity

policies need not be contained in one separate document (paragraphs 87-90);

k) agree to amend the rules to allow qualification as a solicitor through an apprenticeship route (paragraphs 91-97);

l) note the plan to carry out further investigative work on the issues raised by respondents in respect of referral fees for criminal and publicly funded work (paragraphs 98-103);

m) make the SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules 2015, to come into force on 1 November 2015 subject to the approval of the Legal Services Board (paragraph 104 and Annex 2).

If you have any questions about this paper please contact: Crispin Passmore, Executive Director, Policy, crispin.passmore@sra.org.uk or 0121 329 6687.

NOTE: This item will remain confidential for discussion of policy in the confidential session. If the policy is approved the papers will then be tabled in the public session.

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Section 1: Authorisation changes

Background

7. Since May 2014 the SRA has been in regular engagement with firms and representative bodies, and in particular with small firms, and has also initiated an ongoing internal review of operational processes. This led to the identification of a small number of overly burdensome authorisation requirements in the existing rules where simplification could be achieved without increasing risk to consumers.

Simplifying compliance officer approval for small firms

8. At present we require an application to be made for approval of a firm's compliance officers - their Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) - both at the time of the firm's initial application for authorisation, and in the event of any change to the individuals occupying these roles. We consulted on a proposal to introduce a process for deeming approval of compliance officers in small firms (those with 1 to 4 managers) where that person is a sole practitioner or lawyer manager, provided they had not previously had approval to be a compliance officer withdrawn by the SRA. The firm would be required to notify the SRA in advance of the person becoming the compliance officer.

9. The proposed change would remove the burden on firms of making a separate application and remove the burden on the SRA of assessing the application form. We considered a separate application unnecessary in these circumstances as sufficient checks around character and suitability will have already been undertaken when the individual was authorised as a lawyer and/or as a manager.

10. The proposal was limited to small firms. The proposal stems from specific work in relation to the SRA's commitment to reducing regulatory burdens on small firms. In sole practices and smaller firms it is highly likely that a sole practitioner or lawyer manager will have sufficient power, seniority, oversight of the operation of the whole business and responsibility for management decisions requisite to undertaking the compliance roles. Therefore, we consider that assessing the candidate to ensure appropriate understanding of and influence over the organisation is unnecessary. This is less likely to be the case in larger firms.

11. The proposal was made in relation to a recognised sole practice or a recognised body and not to ABS. However, we asked for views on whether it was right to limit deemed approval to certain types of firms. We also asked for views on whether there were any criteria or characteristics in a prospective COLP/COFA that should require us to assess their application despite their meeting the deeming criteria.

Consultation Responses

12. This proposal received support in principle when first highlighted in our November 2014 discussion paper regarding improvements to the way we regulate small firms. The more detailed amendments put forward in this consultation also received support from a significant majority of respondents (25 of the 29 respondents that commented on this proposal).

13. Very few respondents opposed the proposal. A small number of respondents highlighted the importance and sometimes onerous nature of compliance roles and the need for the SRA to retain safeguards to ensure that the holders are suitable. Specific concerns raised included:
    - the risk of appointment of relatively inexperienced applicants, and
    - whether individuals have the necessary time, experience and resource to fulfil the role.

14. The Law Society supported the proposal and recognised the SRA's efforts to support small firms where there has been "disproportionate regulation previously". It suggested that we could go further and extend the deeming of compliance officers to all non-ABS firms.

15. Most respondents who agreed with the SRA's proposal to introduce deemed approval of COLP/COFAs also expressed the view that approval should not be limited to certain types of firms. A small minority of respondents, including the Law Society, suggested that deemed approval should not be extended to ABS. The reasons given were not related to specific risks but because of the relatively recent emergence of the ABS model.

16. Few respondents suggested criteria or characteristics in a prospective COLP/COFA that should require us to assess their application nonetheless. The majority of respondents who answered the question considered that firms themselves could ensure individuals appointed are appropriately qualified. A number of respondents advocated that this could be evidenced by declaration. Some respondents suggested that the SRA's suitability checks on sole practitioners and solicitor managers already offered sufficient safeguards. Two respondents did highlight specific criteria that could lead to an application assessment; these were insolvency, dishonesty or disciplinary sanctions.

SRA Response

17. We note the high level of support for this proposal and recommend proceeding with the proposal to realise the benefits set out in the consultation paper. The majority of respondents were in favour of extending the measure to all small firms, regardless of type. We have carefully considered the small number of responses that warned against extending to ABS. However, we consider that there is a strong case for providing consistency. While the compliance picture may (or may not) be different depending on the structure of the firm, we do not think there is any difference in terms of the fundamental qualities we, as a regulator, require in terms of our fitness tests for compliance officers. It is also

important to note the compliance roles themselves have not changed, and firms will still need to satisfy themselves that the person they appoint is able to fulfil that role, bearing in mind the specific risk profile of their organisation. We therefore propose the measure should apply to all small firms, including ABS.

18. We do not recommend extending the deeming of compliance officers to all non-ABS firms irrespective of size, as proposed by the Law Society. The rationale for limiting the proposal to small firms is set out at paragraph 10**.** We consider this rationale remains correct. In this context we recommend some further criteria around size in light of our decision to extend to deeming measure to ABS.

19. We consulted on criteria that specifically limited the criteria to firms with no more than 4 managers, or sole practitioners. However, some firms, particularly some ABS may be authorised with a small number of managers, but may in fact be very large practices with complex structures. In these cases, it cannot necessarily be assumed that a lawyer manager will have sufficient seniority and responsibility in relation to the business in order for the test to be met, and this will have to be assessed on an individual basis. We therefore intend to include a £600k limit on firm annual turnover, to exclude outliers who may otherwise be deemed, but which may be very large practices with complex structures.

20. We have listened to respondents emphasising the significant and onerous nature of compliance roles. Therefore, we recommend an exception to the deemed approval criteria where the compliance officer performs the role for more than one firm. This will allow us to assess capacity where there is an enhanced risk of them being over-stretched and/or not having sufficient oversight of the whole of the legal services business.

21. We further recommend an additional safeguard of excluding from the deeming provision any individual that has in the past been subject to a disciplinary decision or findings by a regulator or regulatory tribunal or is currently subject to an investigation of which they are aware. This does not necessarily mean that they will not be authorised. However, we consider it appropriate to assess the character and suitability of the small number of such individuals on a case by case basis. This is especially so as the issues may have arisen subsequent to the individual being admitted as a lawyer and approved as a manager. This draws on the suggestion that disciplinary, dishonesty and other risks should be assessed (although it should be noted that this will only capture dishonesty and insolvency issues in so far as they have led to an investigation or sanction).

22. We will no longer undertake a separate check for spent convictions for those lawyer managers benefiting from the new deeming process. We do not consider that this represents a significantly elevated risk if the spent conviction has not prevented admission to the profession or resulted in regulatory activity as set out in the previous paragraph. Further, we are not aware of any instances when checking for spent convictions has unearthed issues that have impacted on the result of the assessment of a lawyer-manager applying as a compliance officer that were not already known about from previous checks.

23. It should be noted that we will require notification in advance in a prescribed form. If the form is not validly completed or the criteria are not met on the face of the form then the deeming will not be operative as the rule will not have been complied with. Approval may also be subsequently withdrawn if we have or obtain information that suggests that the criteria may not be met.

Recommendation: the Board is asked to agree the proposal for deemed approval of compliance officers in sole practices and small firms.

Simplifying candidate declaration and notification processes

Background

24. Our current arrangements require all candidates for approval as a manager, owner or compliance officer to declare (in the application put forward by the firm in which they propose to take on that role) that the information supplied about them is correct and complete. This places an additional level of administrative burden on both firms (who are required to collate and provide this information), and on the SRA, which needs to process multiple declarations for the same entity. The rules also require that the SRA has to notify each separate candidate, as well as the firm, of our decision to approve or refuse approval.

25. We consulted on a minor change to remove the requirement for candidates to sign a declaration separate to the applicant firm. We also proposed to remove the requirement to separately notify each individual manager named in that application. Instead, the notification will be to the applicant or authorised body. We may however continue to send a notification to a candidate direct, for example where they have requested that we do so, or where we intend to place conditions on a candidate's approval, or to refuse an application.

Consultation Responses

26. Almost all respondents agreed with the proposal. A small number disagreed, with concerns being expressed about the accuracy of information if not signed or verified by the candidate. Two respondents, The Law Society and Monmouthshire Law Society, suggested that the changes should be limited to traditional law firms only as the risks in ABS may not be known due to their relative newness.

SRA response

27. We welcome the positive response to this proposal and recommend proceeding with these modest deregulatory measures. We have considered the concerns raised about impacts on accuracy of information but the existing measure is not proportionate to ensure the accuracy of information provided (and we are not aware that there is a problem in this respect). Furthermore, it is the firm that is responsible for the application and for providing a full and accurate declaration.

28. It should be noted that the Legal Services Act states the designation of individuals as compliance officers only has effect while the individual consents to the designation. We consider that consent is managed by the firm and the individual at local level, and is evidenced by the individual taking up the appointment, and does not require an individual declaration and notification to the SRA.

29. In relation to ABS, as with our response in relation to the previous proposal, while the compliance picture may (or may not) be different depending on the structure of the firm, we do not think that there is any difference in terms of the fundamental qualities we, as a regulator, should be applying in terms of the information required, and process followed, to satisfy our approval requirements.

Recommendation: the Board is asked to approve the proposal to remove the requirements for separate declarations from and notifications to prospective role holders, in addition to the applicant firm.

Revise the rules relating to reserved legal activity

Background

30. The SRA Handbook sets out the circumstances where the SRA may revoke or suspend a firm's authorisation. One of these circumstances (set out at Rule 22.1) is that the SRA is satisfied that the body has no intention of carrying on the legal services for which it has been authorised.

31. We take the view that the purpose of authorisation is to confer an entitlement on bodies to carry out certain (in particular, reserved) legal activities. Therefore, in our view it is entirely reasonable for them to retain their authorisation if they are considered suitable to deliver reserved legal activities even if they choose not to do so at any particular point in time. We therefore proposed to remove the above provision which suggests a requirement for firms to carry out reserved legal activities in order to maintain their authorisation.

32. We also proposed to make further changes to the SRA Authorisation Rules to make it clear that the SRA may grant an application in relation to one or more reserved legal activities, but remove the current requirement for a body to include a statement setting out which reserved legal activities it seeks authorisation for, which once again suggests a requirement that the firm will be carrying out reserved legal activities in order to obtain authorisation.

Consultation responses

33. Most respondents agreed with the proposal. One respondent suggested "it is up to firms to choose which categories of work that they carry out and when they carry them out". Firms that undertake niche work that rarely includes reserved legal activities were perceived to be the likely main beneficiaries of this approach.

SRA response

34. We note the majority of respondents supported the proposal. We propose proceeding with it. We consider the change will likely have positive impacts on access to justice and competition by allowing new and existing firms the flexibility to develop services to meet their needs and the needs of consumers. We will carry out a review of the wider authorisation rules as part of our on-going review of the handbook, but we see no reason why we should not introduce this change now.

Recommendation: the Board is asked to agree to amend the provisions in the Authorisation Rules which suggest that firms are required to carry out reserved legal activities in order to obtain/maintain authorisation.

ABS authorisation - operational changes and improvements

Background

35. Our current procedures require us to separately assess and approve each individual manager in an ABS corporate owner. We proposed removing this requirement. Our experience of authorising ABS indicates that the requirement adds complexity, delay and cost to the authorisation process for firms and for the SRA but is not necessary to address an identified issue. This is particularly so as individuals within corporate owners are often remote from the legal services business seeking authorisation itself, so have limited influence and present limited risk to the delivery of legal services. The corporate body as a whole must be approved by the SRA. Concerns about individual managers that may affect the suitability of the body to own a legal business can be considered as part of this approval.

36. We also proposed to remove our requirement that we are informed 7 days in advance where our existing rules allow the deeming of an authorised manager or owner of an ABS. We consider it unnecessary to prescribe this timeframe, although we would still require advance notification. Further, we sought views from respondents on further areas where simplification and streamlining of ABS authorisation may be warranted.

Consultation responses

37. In response to a question asking whether there were any specific concerns about our proposals to simplify the authorisation process for ABS, the majority of respondents did not raise any specific concerns. Some highlighted that the SRA's underlying processes remain robust and that our changes would simply improve the process. Concerns raised reflect a minority concern (expressed across the full range of consultation questions) that no current requirements for ABS should be relaxed, as it is too early to anticipate problems with new business models.

38. In response to questions about agreement with the two specific changes set out above, responses to the removal of the approval requirement were mixed. The Manchester Law Society, ICAEW and others welcomed the proposal, arguing that they were consistent with the SRA's wider reform agenda.

39. Of those respondents that were opposed to the proposal, a number, including LawNet and Newcastle upon Tyne Law Society suggested that it would result in individuals being “hidden” behind corporate structures, and that individual responsibility would therefore be lost. One respondent suggested it would lead to a “disintegration of professional standards”. The Law Society raised concerns about the perceived lack of detail in the proposals, suggesting that the SRA may be attempting to "remove unnecessary obstacles without fully appreciating the repercussions for businesses and clients". Respondents did not raise any concerns regarding the proposal to remove the 7 day notification requirement.

40. Responding to our request for ideas about further areas where simplification and streamlining of ABS authorisation may be warranted - a small number of respondents, with recent experience of our authorisation process, referred to some duplication in the information that they were required to provide as part of their application and the need for us to provide a more “bespoke” service.

SRA response

41. We recommend proceeding with these proposals. We have carefully considered respondents' concerns about the proposal. As stated above, individual managers will not be “hidden” as the corporate body will be required to provide details of its governance as part of the approval process, and will not (unless also an approved manager of the authorised body itself) be participating directly in the provision of legal services. Therefore we are satisfied that this will not adversely affect professional standards, and that there was no information provided that changes our original assessment that the requirement adds burdens on firms and the SRA while providing no identified benefit.

42. There was no opposition to the removal of the seven day notification requirement for deeming managers. We recommend proceeding with this proposal also. We thank those who responded with suggestions for further improvement, which will help inform future reviews of our requirements and operational processes.

Recommendation: the Board is asked to approve the proposals to:

a. remove the requirement for the SRA to approve individual managers within ABS corporate owners; and

b. remove the requirement that firms must notify the SRA of a manager deemed to be authorised as a manager or owner of an ABS at least 7 days in advance.

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Section 2: Third party managed accounts as an alternative to client account

Background

43. Section 32 of the Solicitors Act 1974 and the Rules provide a framework and a set of principles designed to keep clients' money safe, primarily via the operation by solicitors and firms of client accounts with proper accounting systems and controls.

44. In the light of emerging business models providing legal services and the desire to use alternative methods to manage client monies, we have begun to explore alternatives that may offer appropriate consumer protection. We are currently considering an approach that would allow authorised entities and their clients to use third party managed account facilities, where these facilities have the necessary protections in place to ensure that clients' money is kept safe.

45. Third party managed accounts refer generally to those accounts where a third party holds monies on behalf of transacting parties - often referred to as escrow - similar in nature to that of BARCO, a wholly owned company of the Bar Council that receives, manages and administers client monies on behalf of barristers as they are not permitted to hold or receive such monies. A number of SRA regulated entities and entities seeking authorisation have made requests of the SRA to allow them to use BARCO to manage client money.

46. Protecting consumers of legal services is a regulatory objective under the Legal Services Act 2007 and a key consideration for us as we develop our regulatory reform programme. A consistent risk to consumers, and one that is reflected in the number of disciplinary cases related to the misuse of money or assets, is the misuse of funds from client accounts.

47. Further, client accounts can be expensive for firms to run, and for us to regulate (e.g. accounting, investigations, and where necessary, compensation).The use of third party managed accounts may offer a lower cost alternative that continues to provide appropriate protection. Consumers, meanwhile, do not necessarily require their money to be held by lawyers, where funds can be disbursed directly from bank to bank.

48. The Board will note that we engaged in the preparation of a briefing paper on “Alternatives to Handling Client Money”, coordinated by the Legal Services Board, arising from a cross-regulator working group initiated at a post-Ministerial summit meeting in October 2014. This paper, published on 20 July 2015, sets out the benefits and risks to consumers, practitioners and regulators of using alternatives to client account for handling client money - including reduction in regulatory burdens.

49. In the consultation, we proposed to allow authorised entities to use third party managed accounts (TPMA), as an alternative to the use of client accounts.

Consultation responses

50. We received 44 responses focusing on the question of third party managed accounts, including those from the Law Society, the Bar Council, the Legal Services Consumer Panel and a number of individual solicitors, SRA authorised firms and other legal professionals.

Third party managed accounts

51. An overall majority of respondents were supportive of the proposal to introduce TPMAs as an alternative to the use of client accounts. The Law Centres' Network "agree with the proposal to offer the alternative of a third party managed account; [as] this enables flexibility and some security to clients, with control over the account holding their money".

52. A number of respondents qualified their response, highlighting the need for appropriate consumer protection measures (which we address in paragraphs 60-69 below).

53. Some respondents were however, opposed in principle to the proposal. The key concerns of those respondents focused on two main issues.

54. The first was concern about the suitability of third party managed accounts to handle specific types of transaction involving client money, with particular focus on conveyancing and the need for efficient and timely access to enable immediate completion of clients' transactions. One solicitor noted that “third party managed accounts may be appropriate for certain types of firms and in certain circumstances [but] for any firm undertaking any volume of conveyancing utilising a third party account would almost inevitably lead to delay and complication”. The Law Society also commented that “the fee structure charged by the existing [third party fund] holders (typically 1%) is fine for small funds but would be extortionately expensive for the average conveyancing matter.”

55. We appreciate that TPMAs may not be considered suitable by some firms, in light of the nature of their work and the financial transactions they carry out. We would expect that any regulated entities who wish to use a TPMA will be likely to do so to hold monies paid on account for costs and in lower value transactions: in particular we consider it unlikely that firms would seek to move conveyancing transactions away from a client account due to the need for speed of access and transfer of funds, which form an important part of their service to clients. The question of fees is a commercial matter for firms to consider, which will once again be informed by the particular client and transaction type. However, in the future TPMA models may be developed that are more appropriate for a wider variety of transactions.

56. The second concern related to the effect of the proposals on firms' ability to continue to use client accounts. A number of respondents felt that a TPMA should only be seen as an alternative to client accounts, rather than as a replacement for the existing arrangements. The Law Society noted that the present arrangements [the use of client account] presented "no risk to the public as these are covered by insurance/the SRA compensation scheme" and furthermore, they highlighted the potential for a TPMA to be no less risky or expensive than using client account.

57. We note the City of London Law Society comment that "while we have no objection in principle to the use of third party accounts as an alternative to client accounts, our members are firmly in favour of client accounts as the primary means of managing client monies". Some of the respondents commented on their own interest in taking up the facility of using a TPMA, rather than client account, and cited an expected cost saving. We would take this opportunity to clarify that our proposal would only operate as an alternative to using a client account, giving solicitors and firms the option of using this instead of or alongside a traditional client account.

58. Further, notwithstanding the protections available (insurance/the compensation fund), these do not provide a guarantee that all clients will be fully compensated for their loss, and as these provide after the event redress they do not address the source of the risk - the misuse or misappropriation of client funds - or the harm to the trust and confidence in the profession which arises as a result. We have considered these concerns carefully. However, we agree with the response from the Legal Services Consumer Panel (LSCP), which re-stated "the need to remove the inherent risk carried by firms holding client money... which can lead to serious ramifications for the consumer".

59. Respondents also felt that any change to the use of client accounts should only occur with full consultation with the profession and as part of the wider principles-based review of the Accounts Rules.

Safeguards

60. We recognise that any alternatives to client accounts, including third party managed accounts, will carry certain risks although perhaps different in nature to those posed by client accounts. In the consultation we asked respondents whether, in order to guard against these risks, we should prescribe a set of minimum standards to apply to all TPMAs (set out in the consultation documentation at Annex 1), or approve individual providers of TPMA on a case by case basis in order to assure appropriate protections were in place.

61. There was general support for the former, with the Bar Council noting that "TPMAs are already subject to regulation by the Financial Conduct Authority (FCA) and there is no justification for double regulation - it would prove bureaucratic, inefficient and would have the potential to cause confusion as to how TPMA accounts were regulated." One law firm felt it was "far better to set out

strict parameters and guidelines as to what may or may not be appropriate in a TPMA".

62. However, there were a number of respondents who felt that the SRA should approve TPMAs on a case-by-case basis, including the Legal Ombudsman, due largely to their concern that this "will be new territory for both consumers and firms, so the value of visible, regulatory supervision [will be] high". These respondents highlighted the need to ensure TPMAs were adequately assessed as providing an appropriate level of consumer protection.

63. In addition to those set out in the consultation, respondents sought to highlight a number of additional safeguards that might be considered as part of the criteria for utilising a TPMA. These included: the need for suitable ownership arrangements to avoid conflicts, that clients should be provided with information appropriate to allow them to make an informed decision on proceeding with a TPMA, adequate insurance provisions and appropriate cyber/IT security arrangements for the TPMA provider.

64. In response to the consultation the Financial Conduct Authority (FCA) proposed that we discuss further their arrangements for regulating payment service providers that might be used as TPMAs, and appropriate regulatory safeguards for consumers.

Conclusions

65. We have carefully considered the comments provided by respondents and propose to proceed with the development of rules to permit the use of TPMAs but to incorporate this work into our wider review of the Rules. We agree that we should seek to avoid unnecessary dual regulation of providers, and in principle we consider that we should prescribe, in rules and guidance, the features of permitted TPMAs in order to ensure an appropriate level of consumer protection to avoid risk to client funds.

66. Therefore we propose to engage further with respondents in developing our approach to identifying the appropriate level of safeguards for consumers and to incorporate this work into our wider review of our client account requirements, which is currently underway and will lead to a further consultation on revised Accounts Rules in Spring 2016.

67. In the meantime, we will use the briefing paper on "Alternatives to Handling Client Money" (published by the LSB with our input) to inform our work on TPMAs as we continue to consider feedback received in this consultation and engage with stakeholders. We will also engage further with the FCA to explore how various types of TPMA are regulated in order to clarify our position and to inform our approach to any appropriate rule changes and guidance, as suggested.

68. We would highlight that the Rules (which are targeted toward the handling of "client money" narrowly defined as that held or received by the solicitor) do not

expressly prevent the use of TPMAs. Although in saying so we would emphasise that now, as in any future regime, regulated entities are in any event governed by the Principles which include the requirement to run their business effectively and in accordance with proper governance and sound financial and risk management principles (Principle 8) and to protect client money (in its broadest sense) and assets (Principle 10).

69. Therefore, in circumstances in which either an existing regulated entity or an applicant for authorisation indicates to us that they wish to use the services of a TPMA, we propose to exercise our power to impose conditions on a case by case basis in order to ensure that such use is restricted to accounts and/or transactions which offer the appropriate levels of protection. We do not wish to deny practitioners the flexibility offered by this alternative arrangement and will therefore consider any request to use such an arrangement on a case by case basis.

Recommendation: the Board is asked to defer the decision on whether to make changes to the Rules to permit the use of third party managed accounts, and to incorporate this work into the wider review of the Rules due to report to a future meeting of the Board.

Section 3: Other measures proposed in the consultation

70. The consultation included further proposals and questions on a range of other narrow proposals, which had been identified by both stakeholder engagement and by internal SRA work.

Changes to insolvency rules

Background

71. Regulation 3 of the SRA Practising Regulations 2011 allows the SRA to refuse or impose conditions on an application for renewal of a practising certificate following certain events. These events include the bankruptcy, insolvency or administration of individual applicants, or any entities in which they have been partners (members), managers or directors.

72. This regulation does not cover the situation where the applicant is a member of a partnership that has entered into administration but where there has not yet been an individual voluntary arrangement (IVA), partnership voluntary arrangement (PVA) or declared bankruptcy. We require the regulations to cover such an event, as administration can often precede any of these individual insolvency arrangements. Regulation 3.1(k)(iv) already covers the situation where the applicant is a member of an LLP or director of a company that has gone into administration, and the amendment is needed to close this gap for partnerships.

Consultation responses

73. Respondents were unanimously in favour of this proposal, with a large number of respondents noting that it was “logical” and “sensible”.

SRA response

74. We welcome the positive response from respondents to this proposal and recommend proceeding with the proposal.

Recommendation: the Board is asked to agree the proposal to allow us to refuse or impose conditions on renewal of a practising certificate where applicants have been involved in partnerships that have entered administration but have not yet been subject to insolvency or bankruptcy.

Guidance on recording of non-material breaches

Background

75. Rule 8.5 of the SRA Authorisation Rules requires compliance officers to record any failure of the relevant firm to comply with their regulatory objectives, and to make these records available to the SRA on request. In late 2014 The City of London Law Society asked the SRA to reconsider the requirement to record non material breaches, suggesting that the requirement to record was disproportionate, where breaches will be monitored and assessed in the course of normal business.

76. We set out our view that we considered this requirement to be proportionate. This was because there is a legitimate requirement on firms to be able to detect patterns of non-material breaches which (taken together) amount to material non-compliance. We emphasised that the current requirement does not require a record to be made in any particular form, nor does it require the compliance officer to make a separate record of each non-material breach of which a copy already exists in the firm's papers. There is flexibility within the rules for firms to choose how they comply with this requirement.

77. However, given that the issue had been raised, we consulted on two questions:

- whether additional guidance (drafted and issued with the consultation) would provide further clarity around the flexibility of the current requirement); and
- whether or not we should give consideration to removing this requirement for non-ABS firms (legislation requires that it remains for ABS firms)[1].

Consultation responses

78. A large number of respondents agreed that additional guidance would help provide further clarity. However, some respondents, including the City of London Law Society, felt that the current guidance was clear and unambiguous, and that no changes were required.

79. The majority of respondents opposed removing the requirement to record non-material breaches. Some argued that this formed an essential part of a firm's risk management. Others, including KPMG, suggested that firms should not be treated differently based on corporate structure and that "compliance and maintaining a compliance culture should be a priority issue for all firms". A number of respondents felt that should the requirement be removed, further guidance would be needed on what constitutes a material and a non-material breach.

[1] We have previously removed the requirement for non-ABS firms to report these figures on an annual basis.

SRA response

80. We recommend that the current requirement to record non-material breaches should be maintained. Most respondents agreed with our assessment that this requirement was proportionate, especially given that we do not prescribe how they must be recorded.

81. Given that the majority of respondents felt that the proposed further guidance would be helpful, we will proceed with this proposal.

Recommendation: the Board is asked to note the amended guidance in relation to recording non-material breaches set out at Annex 2.

Cloud computing and law firms

Background

82. The SRA Handbook states that where firms outsource operational functions they must "... ensure that such outsourcing is subject to contractual arrangements that enable the SRA, or its agent, to obtain information from, inspect the records (including electronic records) of, or enter the premises of, the third party, in relation to the outsourced activities or functions". Some firms had raised concerns that the "requirement to enter the premises" presented a barrier for solicitors wishing to use cloud computing as it was impractical for there to be a contractual requirement to enter the premises of the cloud computing provider.

83. However, in interpreting the requirement, it is important to note that (as the connecting word is "or" enter the premises, and not "and") providing that a firm has an agreement to obtain or inspect the information, there would be no specific requirement to be able to enter any premises. We asked whether the current rule as drafted was presenting difficulties for firms and if so whether clarification was needed.

84. We consulted on two options as follows:

- **Option 1** - to provide further clarity through guidance, or
- **Option 2** - to make changes to the Outcome (7.10) to make clear that:
    - contractual arrangements need to allow for the SRA (or its agent) to be able to monitor compliance; and
    - this may include entry to premises as appropriate, and that the arrangements must require the third party to provide to the SRA or its agent, copies of records or information.

Consultation responses

85. A majority of respondents thought the current rule was clear and did not prevent firms from utilising all technology options available to them. Birmingham Law Society went further and declared the proposed change "totally unnecessary". Others considered that clarification may be beneficial. Where this was the case there was a preference for this to be by way of guidance rather than changing the outcome. The City of London Law Society highlighted that a separate piece of SRA literature that does not form part of the Handbook was the cause of confusion.

SRA Response

86. Having considered the existing outcome and guidance within the Handbook in light of the consultation responses we are satisfied that the position is clear and does not need amending. However, we have reviewed the other SRA literature referenced by the City of London Law Society and will remove the text as we agree that this has the potential to cause confusion.

Recommendation: the Board is asked to note that we will be amending some SRA literature that does not form part of the Handbook in relation to outsourcing and cloud computing.

Recording and reporting of diversity data

Background

87. We proposed the inclusion of a new Outcome 2.6 to the SRA Code of Conduct 2011 to reflect the requirement for firms to have in place appropriate arrangements for monitoring, reporting and publishing workforce diversity data. We also suggested the provision of links to sites providing information on collecting, reporting and publishing diversity data (including compliance with data protection legislation). We also proposed consequential amendments to the Indicative Behaviours to clarify that firms' written equality and diversity policies need not be contained in one separate document.

88. We already require firms to submit data regarding the diversity make up of their workforce on an annual basis. This is consistent with LSB guidance. To date, we have advised firms on how to do this through providing information and ad-hoc advice. However, although we have placed this requirement on firms, it is set out in guidance, and is not currently reflected in Chapter 2 of the SRA's Code of Conduct. This proposal intends to provide greater transparency and clarity about the status of this requirement, as well as assisting firms in meeting the obligation.

Consultation responses

89. A small number of respondents, including The Association of Women Solicitors, felt that further clarification of the current requirements for the recording and

reporting of diversity data would be beneficial. Most respondents answered a different question to that asked, raising concerns about the underlying policy for the collection and reporting of diversity data. The Law Society stated that its members are concerned about how the information is protected and how it will be used. One respondent questioned the value of the requirement as there is a persistently high number of non-responders.

SRA response

90. We recommend proceeding with this proposal. We noted in the consultation that there should be no impact on firms as they are already required to collect and report this data and we proposed no change to this policy. This is a small amendment to the rules to reflect existing requirements, which we consider will provide greater transparency and clarity for those that we regulate.

Recommendation: the Board is asked to agree that a new outcome should be added to the code of conduct to require firms to have in place appropriate arrangements for monitoring, reporting and publishing diversity data, and that the Indicative Behaviours should be amended to clarify that firms' written equality and diversity policies need not be contained in one separate document.

Enable qualification as a solicitor through an apprenticeship route

Background

91. Our regulations currently restrict the route to admission as a solicitor to the following pathways:

- through the completion of specified academic and vocational stages of training;
- through exemption from all or part of the academic or vocational stages (through the process of equivalent means); or
- for lawyers from other jurisdictions, through compliance with Qualified Lawyer Transfer Scheme (QLTS) Regulations.

92. In Training for Tomorrow (published in 2013) we signalled our support for the development of a new apprenticeship route to qualification. Since then we have worked in partnership with an employers group established by the Department of Business Innovation and Skills and Skills for Justice to develop an Apprenticeship Standard and Framework leading to qualification as a solicitor in both England and Wales.

93. The SRA's role has been to ensure that these pathways have appropriate mechanisms to require individuals seeking to qualify via these routes to demonstrate that they have met the standards set out in the Competence Statement published on 1 April 2015 for safe practice as a solicitor. The first apprenticeship assessments will not be available before 2018. The proposed

amendment to the Training Regulations is to allow qualification as a solicitor through the apprenticeship routes, and proposes that qualification through these pathways will include a requirement to pass an assessment conducted or approved by the SRA.

Consultation responses

94. Around a third of respondents addressed this question. Those who agreed with the proposal were supportive of opening up routes to qualification and therefore opening up the profession. One respondent commented that "anything that encourages genuine diversity and opens up the profession is to be welcomed". The Law Society which supported the proposal were also keen to emphasise that apprentices should still meet "the same high standards as other currently existing routes".

95. The City of London Law Society Training Committee expressed reservations about an apprenticeship route that could dilute the profession's skills and expertise, or lead to the creation of a "two tier profession". Manchester Law Society commented that there may be a "risk that introducing a specific pathway of apprenticeship could create a hierarchy which could potentially be discriminatory".

96. The Junior Lawyers Division suggested that this question went beyond the scope of this consultation which was primarily focussed on regulatory simplification, and that a wider and more detailed discussion was necessary. Some of those who were not in favour of an apprenticeship route stated that entry to the profession should be limited to those holding a degree and/or post graduate qualification.

SRA response

97. The SRA has previously committed to developing this pathway to admission as a solicitor and we are satisfied that the schemes developed ensure that those that qualify through this route will meet the same high standards required of those qualifying through alternative routes. We therefore recommend proceeding with the proposed rule change.

Recommendation: the Board is asked to agree to amend the rules to allow qualification as a solicitor through an apprenticeship route.

Fee sharing and referrals

98. Chapter 9 of the Code of Conduct deals with the protection of consumer interests and upholding of the professional principles in relation to arrangements with third parties. This includes fee sharing arrangements or referral arrangements with introducers. Outcome 9.6 prohibits payments to introducers in respect of customers who are the subject of criminal proceedings, or who have the benefit of public funding. Third party introducers

(who trade on an offer to connect consumers with legal services that meet their needs) are therefore prohibited from doing so in these circumstances.

99. We asked an open question in the consultation about whether outcome 9.6 of our code of conduct should be retained or removed. As part of our regulatory reform agenda we are exploring the barriers consumers face in accessing legal services and this had been identified as one example of a possible barrier. We noted that we were interested in generating an open discussion on this issue, and did not propose to make any changes to the Code of Conduct at this stage. We made clear that our focus, as a regulator, is to consider the extent to which we should restrict business practices given our regulatory objectives of improving access to justice and protecting and promoting the interests of consumers of legal services.

Respondent views

100. We received more than 80 responses to this question, far more than to any other question in the consultation document. The majority of respondents were individual barristers or chambers, although a handful of solicitors and representative bodies also expressed a view.

101. Respondents were overwhelmingly in favour of retaining the current ban on referral fees. These respondents were sceptical of the ethics of permitting referral fees in these areas of work. Comments from respondents followed a number of general themes as follows:

- referral fees represent a form of bribery;
- permitting them would encourage corruption;
- referral fees may introduce a level of unfairness that can be to no-one's benefit;
- they have no place in publicly funded work;
- that the public policy aspect cited at the time that these fees were carved out remains equally valid, and
- that those charged with criminal offences are not "customers" in the conventional sense of the word, as they do not voluntarily participate in the legal proceedings that concern them.

102. However, some respondents reported that many providers in practice were making and receiving payments for cases in these areas in ways that circumvent the existing ban. Specific examples about how this is done were provided.

SRA response

103. As we noted in the consultation, we were not proposing to make any changes to the existing rules at this time. However, we are interested in exploring the range of issues raised by respondents, and in gathering further evidence on

how referrals in this area operate in practice. We are likely to return to the Board again on this issue at a later date with further detail.

Recommendation: the Board is asked to note the plan to carry out further investigative work on the issues raised by respondents in respect of referral fees for criminal and publicly funded work.

Draft Amendment Order

104. Attached at annex 2 to this paper is a draft amendment order which introduces the changes to the SRA Handbook Glossary 2012, SRA Code of Conduct 2011, SRA Practising Regulations 2011, SRA Training Regulations 2014 – Qualification and Provider Regulations and the SRA Authorisation Rules, as set out in sections 1 and 3 of this paper.

Recommendation: the Board is asked to make the SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules 2015, to come into force on 1 November 2015 subject to the approval of the Legal Services Board.

Supporting information

Links to the Strategic Plan and / or Business Plan

105. The proposals are linked to Strategic Objective One - our objective to reform our regulation to enable growth and innovation in the market and to strike the right balance between reducing regulatory burdens and ensuring consumer protection. However, it should be noted that the proposals in the consultation are fairly narrow in effect - they reflect a range of issues, gathered together in one consultation document.

How the issues support the principles of better regulation

106. Although modest in nature, the proposed changes are in line with the principles of better regulation. They remove some current requirements, and the changes seek to reduce the regulatory burden on firms.

What engagement approach has been used to inform the work and what further communication and engagement is needed

107. We engaged with stakeholders prior to the consultation and have carefully considered consultation responses. As part of the consultation on the changes to authorisation, we also wrote to every firm who had been authorised by the SRA over a recent six month period, to seek their views on improvements that we could make to the current requirements. A sub-set of respondents to this correspondence have been working with the Authorisation Team as they review and revise the current Authorisation forms - acting as an external reference group.

What equality and diversity considerations relate to this issue

108. We have not identified any obvious, or significant, negative impacts to these proposals. The inclusion of the Apprenticeship Route to qualification, which reflects the SRA's commitment to increase flexibility within the system of legal education and training, may encourage diversity and social mobility over time – however that is inevitably speculative at this stage.

Consumer impact

109. In terms of consumer impact, we consider that, cumulatively, these proposed changes have indirect benefits for consumers, because they help (albeit in relatively minor ways) to liberalise and deregulate the legal market in ways that support growth and innovation, thereby increasing choice for consumers.

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9 September 2015

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Author
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Date 24 August 2015

Annexes

Annex 1 Impact statement

Annex 2 Draft rules

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Improving regulation: Proportionate and targeted measures - impact statement

Overview

1. This impact statement comprises an assessment of the changes included in the recent consultation. As part of that consultation, we invited respondents to comment on the likely impact of the changes and, in particular, to provide or direct us to any information, data or evidence that would assist us in finalising our impact assessment. We also asked respondents whether they agreed with our initial assessment of impacts for each proposal.

2. Our initial assessment of the impact of the changes, which are fairly narrow in effect, was that they will be likely to have a generally positive effect across the board. The benefits will be felt most by smaller firms and those who are applying to the SRA to be licensed. The changes will streamline parts of that process, and assist in reducing the time taken for applications. We had not identified any significant adverse impacts to our proposals, but sought views from stakeholders on impacts, including those on equality and diversity and consumers.

3. In revisiting the impact assessment, we have taken account of the views of stakeholders. Several respondents suggested that the proposal relating to alternatives to client accounts (third party managed accounts) warranted further consultation and discussion. We will consult further on this issue as part of a planned wider consultation on the SRA Accounts Rules, which is due to be published in Autumn 2015.

Regulatory Objectives

4. At consultation stage, we noted that we had not identified any obvious or significant negative impacts to our proposals and that remains the case. They are, mainly, minor amendments to rules to remove unnecessary internal processes, clarifying current rules and guidance, or updating the rules (in the case of the inclusion of the Apprenticeship Route to qualification reflecting existing direction of travel). It is not possible to quantify the impact of the changes but we do not consider that there will be any negative effect on the regulatory objectives.

5. We consider that the changes have a modest positive impact on two of the regulatory objectives, protecting and promoting the consumer interest, and encouraging an independent, strong, diverse and effective legal profession. In terms of the former, we consider that cumulatively the proposed changes have indirect benefit for consumers because they help (albeit in relatively minor ways) to liberalise and deregulate the legal market in ways that support growth and innovation, thereby increasing choice for consumers.

6. Amendments to facilitate the apprenticeship route to qualification, which reflects the SRA's commitment to increase flexibility within the system of legal education and training, is likely to make some contribution to encouraging diversity and social mobility over time, however that is inevitably speculative at this stage.

Authorisation changes

7. **Simplifying compliance officer approval for small firms** In our initial impact assessment we suggested that the changes would be of benefit to a significant proportion of small firms and some medium firms. As a relatively straightforward simplification measure, the purpose is to reduce the overall administrative burden on these firms. We were interested in gathering stakeholder views on whether to extend this change to all firms, including ABS. In particular, we wanted to understand whether there were any circumstances in which the SRA should continue to assess applications.

8. We consider the measure should apply to all small firms, regardless of their type. This includes ABS. This will ensure consistency, avoid introducing complexity and a dual level of regulation. Whether a firm is an ABS or not should make no difference. We are not looking at structure, but at the fundamental qualities we need to assess in order to operate compliance officer fitness tests.

9. For the reasons explained in the Board paper, we are confident that the compliance officer approval process overall remains robust and the change removes unnecessary burdens without presenting any significant increase in risk.

10. **Simplify candidate declaration and notification processes** By simplifying the application process and reducing the application approval time, these changes will benefit all firms applying for authorisation.

11. We have removed the need for candidates to sign a separate declaration to the applicant firm and separate notification for each individual manager named in the application. While the requirement to send the candidate and firm a notification remains (including any conditions or reasons for refusing a candidate), the notification will be to the applicant or authorised body, unless an individual chooses to receive notification directly.

12. **Revise the rules relating to reserved legal activity** We put forward changes to the SRA Authorisation Rules allowing firms to apply for authorisation to offer reserved legal activities, without the fear that these authorisations will be removed if they do not offer reserved legal activities at any particular point. We proposed removing the requirement for firms to carry out reserved legal activities.

13. Additionally, we are suggesting further changes in this area. In future, the SRA may grant an application in relation to one or more reserved legal activities, while removing the current requirement for a body to set out which reserved activities it is seeking to be authorised to provide.

14. The current structure of the Rules means that firms are effectively compelled to provide regulated legal activities. Failing to do so could lead to loss of entitlement. We feel that the decision to deliver these activities should be at the discretion of the organisation itself. Potentially, we could be unable to license activities in cases where entities are seeking to be licensed. Our revision of the rules would allow organisations to be authorised by us based on suitability to deliver legal services, but removing the requirement for specifying the reserved legal activities for which it is seeking authorisation. This may encourage some existing providers of legal services who carry out non-reserved activities only and do not have to be regulated to enter regulation for this firs time. Consumers of these providers would benefit from the guaranteed protections that come with regulation (although we do not know what impact this may have on price).

15. **ABS Authorisation - operational changes and improvements** We identified two immediate changes beneficial to the ABS authorisation process and consulted on them. These were aimed at reducing unnecessary restrictions and regulatory burdens when authorising firms. The changes were removing both the manager approval requirement in ABS corporate owners and the requirement for a seven-day notification for an authorised manager or owner of an ABS.

16. Having considered the broader question about the advisability of relaxing the current rules on ABS, we do not believe that our proposals would raise the current risk to consumers nor the robustness of the current arrangements. The majority of responses were positive and saw them as a way of improving the process to their benefit.

17. **Changes to insolvency rules** This is a simple rule change, required to address an existing gap in regulatory protection in a narrow set of circumstances. This may have a negative impact on a small number of practitioners who may otherwise have benefited from the gap.

18. The current regulations allow the SRA to refuse or impose conditions on an application for renewal of a practicing certificate following certain events. This allows the SRA to promote and maintain compliance with the professional standards, while protecting consumers of legal services. Events include bankruptcy, insolvency or administration. They do not cover a situation where the applicant is a member of a partnership that has entered administration, but no individual voluntary agreement (IVA), partnership voluntary agreement (PVA) or declared bankruptcy has taken place. As administration can precede these type of events, it is necessary for the regulations to be able to respond to this eventuality. It is necessary to close the gap for partnerships so they match the current situation for applicants who are part of an LLP or director of a company that has gone into administration.

19. **Alternatives to client accounts** The availability of third party managed accounts (TPMAs) is seen as a way of mitigating consumer risk related to the misuse of money or assets, particularly relating to client accounts. It is up to individual firms whether they wish to provide this service.

20. If approached by either an existing regulated entity or an authorisation applicant wishing to use a TPMA, we will use the existing Principles to ensure they administer the funds correctly. We will exercise our power to impose conditions on a case by case basis ensuring the appropriate use of the accounts and right levels of protection. We do not wish to deter practitioners from using TPMAs as an alternative arrangement and will judge each application on its merits.

21. **Guidance on recording of non-material breaches** This change will provide additional guidance on a matter where a degree of stakeholder confusion is apparent.

22. The current rules require compliance officers to record any failure of the relevant firm to comply with their regulatory objectives. These records also need to be made available to the SRA on request. The City of London Law Society asked in 2014 that this rule be reconsidered, suggesting the requirement to record was disproportionate.

23. Given firm's responsibility to monitor compliance we do not consider this requirement is disproportionate. There is currently flexibility within the rules for firms to choose how they comply with the requirement. However, the issue does raise questions on whether there is a need for additional guidance to clarify the position and whether the SRA should consider removing this requirement for non-ABS firms.

24. In keeping the requirement to record, it is clear that additional guidance would provide clarity on the need to record non-material breaches but that is not prescribed how this should be done..

25. **Clarification on the outsourcing of legal and operational functions** Amending SRA literature to clarify that the SRA does not require a provider's contract with a cloud computing provider to allow the SRA enter their premises provided that appropriate data is accessible to us if required will benefit providers who may have thought otherwise and will have no detrimental impact on consumers.

26. **Recording and reporting of diversity data** This clarifies a current requirement for firms who are already required to monitor, report and publish workforce diversity data. There should be no impact on firms.

27. In addition to including a new Outcome requiring firms to have appropriate control and data gathering arrangements in place, an amendment to the Indicative Behaviours of this Outcome was proposed to reflect this change. It was also proposed consolidating all written equality and diversity policy into a single document.

28. As this is a minor amendment, we have proceeded with the necessary change to the wording to improve the drafting. The purpose and effect of the amendment to the rules remains the same with no impact on firms.

29. **The Apprenticeship Route to qualification** Including an Apprenticeship Route to qualification reflects our commitment to increasing flexibility within legal education and training. The changes to the rule and the glossary will have no effect on the firms.

30. The Regulations currently restrict a solicitor's route for admission to a number of predetermined pathways. This covers academic and vocational training, exemptions or compliance with regulations. As part of Training for Tomorrow, we supported new apprenticeship routes to qualification and since then developed new pathways to develop this. These will be available from September 2015 (Wales) to September 2016 (England).

31. In committing to the development of the apprenticeship pathway to admission, we are satisfied that those who qualify through this route will meet the required standards common across the profession. This is likely to have a positive impact on aspirant solicitors of any kind who will find this alternative route more accessible than the traditional route. It will provide an alternative option to firms wishing to recruit legal personnel.

32. **Fee sharing and referrals** We are not proposing to make any changes to the Code of Conduct at this stage. The intention was to initiate an open discussion on this issue. Consideration was given to how much we should restrict business practices given our twin objectives of improving access to justice and protecting and promoting the interests of consumers using legal services.

33. The Code of Conduct covers consumer protection and professional principles as they relate to third parties. This includes fee sharing or referral arrangements with introducers. Payments to introducers are prohibited in respect to customers who are subject to criminal proceedings. Third party introducers, who connect consumers with legal services, are prohibited form doing so in these circumstances.

34. Highlighted as a potential barrier to consumer choice, we decided to have an open discussion on this issue, specifically on whether the Outcome should be retained or removed.

35. While we were interested in opening up discussion in this area, we do not propose to make any changes to the Rules at this point. We are interested in exploring the issues raised and gathering further information and evidence on how referrals operate in practice.

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SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules 2015

Rules made by the Solicitors Regulation Authority Board on [9 September 2015]

under Part I, Part II, sections 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985 and section 89 of, and Schedule 14 to, the Courts and Legal Services Act 1990 and section 83 of, and schedule 11 to, the Legal Services Act 2007,

approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 on [date].

Rule 1

The instruments referred to in column 1 of the table set out in Schedule 1 shall be amended in accordance with the corresponding entry in column 2.

Rule 2
These amendment rules shall come into force on 1 November 2015.

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Schedule 1 to the SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules 2015

(1) Instrument	(2) Provision
SRA Handbook Glossary 2012	1. After the definition of "appointed representative", insert: "**Apprenticeship Standard for a Solicitor (England)** means the standard approved by the Department for Business, Innovation and Skills in November 2014 and as varied from time to time." 2. After the definition of "legal services body" insert: "**Level 7 Higher Apprenticeship in Legal Practice (Wales)** means the standard approved by the Welsh Government in March 2015 and as varied from time to time."
SRA Code of Conduct 2011	1. After outcome 2.5, insert: "**O(2.6)** you have appropriate arrangements in place to ensure that you monitor, report and, where appropriate, publish workforce diversity data. Note: For more information on collecting, reporting and publishing diversity data, including compliance with data protection legislation, please see guidance." 2. In indicative behaviour **IB(2.1)**, after the words "having a written equality and diversity policy" insert "(which may be contained within one or more documents, including one or more other policy documents, as appropriate)".
SRA Practising Regulations 2011	Replace regulation 3.1(k)(iii) with: "(iii) has at any time during the last 36 months of trading of a recognised body, a licensed body or an authorised non-SRA firm which has been the subject of a winding up order, an administration order or administrative receivership, or has entered into a voluntary arrangement under the Insolvency Act 1986, or has been voluntarily wound up in circumstances of insolvency, been a manager of that recognised body, licensed body or authorised non-SRA firm;"

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SRA Training Regulations 2014 - Qualification and Provider Regulations	1. Replace regulation 2.1(a) with: "(a) *you* have completed: (i) the *academic stage* and *vocational stage*; or (ii) an apprenticeship;" 2. Delete 2.1(b). 3. In 2.2 replace "2.1(a) or (b)" with "2.1(a)(i)". 4. After regulation 2.4, insert: "**2.5** *You* will have completed an apprenticeship for the purposes of 2.1(a)(ii) if *you* have met the requirements set out in the assessment plan for the *Apprenticeship Standard for a Solicitor (England)* or set out in the Apprenticeship Framework specified in the *Level 7 Higher Apprenticeship in Legal Practice (Wales)*, including successfully passing an assessment which is either conducted by the SRA or approved by the SRA as suitable for the purpose." 5. In regulation 5.1 after "Subject to regulation 2.2," insert, "and unless you fall within 2.1(a)(ii)".
SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011	1.Delete rule 4.2. 2. Replace rule 4.3 with "The SRA may grant the application in relation to one or more reserved legal activity." 3. Replace rule 8.6(a)(ii) with: "(ii) any *manager* of a *body corporate* which is a *manager* of the *authorised body*;" 4. In the guidance notes to rule 8, after guidance note (vii) insert: "(vii)(A) The obligations to record non-material breaches under Rule 8.5(c)(i)(C) and Rule 8.5(e)(i)(B) do not require a record to be kept in any particular form nor do they require the COLP or COFA to make a separate record of each non-material breach of which a record already exists in the firm's papers. How such breaches are recorded and monitored is a matter for firms to decide as part of their compliance plan bearing in mind

	that it is necessary for a firm to be able to detect patterns of non-material breaches which when taken together amount to material non-compliance which the firm is required to report. (Licensed bodies also need to bear in mind the obligations upon the COLP and COFA to report non-material failures as part of the annual information report)." 5. In rule 13.2(c) delete the words "at least seven days". 6. In rule 13.2(d) after the words "the *SRA* has not" insert "previously". 7. After rule 13.2 insert: "**13.3** The *SRA* will deem a *person* to be approved as suitable to be a *compliance officer* of an *authorised body* under this Part if: (a) that *person* is an individual who is a *sole practitioner* or a *lawyer* who is a *manager* of the *authorised body*; (b) the *authorised body* has an annual turnover of no more than £600,000*;* (c) the *SRA* is notified of the appointment of the *person* as a *compliance officer* on the *prescribed* form, correctly completed, in advance of the appointment commencing; (d) that person is not subject to a regulatory investigation or finding, including a *discipline investigation* of which they have received notice*,* a *disciplinary decision* or *a SRA finding*, or an application to or a finding of the *Tribunal*, or any equivalent investigation or finding of another regulatory body; (e) notwithstanding the generality of sub paragraph (d), the *SRA* has not previously refused or withdrawn its approval of that *person* to be a *compliance officer* under rule 17; and (f) the *person* is not a *compliance officer* of any other *authorised body*." 8. Delete rule 14.3. 9. In rule 14.4 delete the words ", and separately to the candidate,". 10. In rule 14.8 after "including a deemed approval

	under Rule 13.2" insert "or 13.3". 11. In rule 17.1 after "including a deemed approval under Rule 13.2" insert "or Rule 13.3". 12. In rule 18.1 after the words "approved by the *SRA*" insert "(including a deemed approval under Rule 13.3)". 13. Delete rule 22.1(a)(iii).