SRA Standards and Regulations: Minor amendments

Consultation Response

June 2023

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Executive Summary

This document outlines our response to our SRA Standards and Regulations: Minor Amendments consultation.

In 2019 we introduced significant reforms to the SRA Handbook through the new SRA Standards and Regulations. Since their implementation we have identified areas of the new rules which are causing some practical difficulties either for firms or operationally for the SRA.

From December 2022 to March 2023, we consulted on proposed minor amendments to the SRA Standards and Regulations to address the issues.

Having carefully considered each consultation response and further information provided by stakeholders, we will take forward proposals in relation to the following amendments:

- **Amendment 1 - Firms taking money for costs in advance of work being done**; Rule2.1(d) of the SRA Accounts Rules which is part of the definition of client money, is clearer that in order to transfer funds from client account into the firm's business account, the bill, or other written notification of costs, must be for costs that have already been incurred.
- **Amendment 2 - Reimbursements for money spent on behalf of the client**; rules 4.3 and 4.4 of the SRA Accounts Rules now clarify the circumstances where there is no requirement to deliver a bill or written notification of costs before moving money from the client account.
- **Amendment 4 - Pro-bono work provided outside of a firm or organisation**; Regulation 2.2 of the SRA Roll, Registers and Publication Regulations removes the requirement to notify us where a solicitor is providing pro bono services outside of their firm or organisation.
- **Amendment 5 - Administering oaths or statutory declarations outside of employment**; Regulation 10.2 of the SRA Authorisation of Individuals Regulations will now allow solicitors administering oaths or statutory declarations outside their normal practice to not be regarded as a freelance solicitor provided that:

I. These are the only reserved legal services that they provide whilst practising in this way.
II. They do not charge a fee for these services other than the statutory fee.
III. They do not provide these services by way of business.

- **Amendment 6 - Cessation of owner approval**; SRA Authorisation of Firms Rules set out our requirements for approving a person's designation as owner of an authorised body. Rule 13.7(c) of those rules has been amended to clarify that approval ceases for owners when they cease to be an interest holder, or a partner, as appropriate.

- **Amendment 7 - Deeming approval of solicitors with a practising certificate to be managers or owners of authorised bodies**; Rule 13.2 of the SRA Authorisation of Firms Rules sets out the circumstances in which we will deem approval as managers or owners which means that they are not required to go through the usual fit and proper test. The amended rule limits the deeming provision, so far as it relates to solicitors, to those solicitors with a practising certificate as originally intended.

  Amendment 8 - Solicitors carrying on reserved legal activities in a non-commercial body; Paragraph 5.6 of the SRA Code of Conduct for Solicitors, RELs and RFLs has been amended so that where solicitors are providing reserved legal services in a non-commercial body, our requirement for that body to have indemnity insurance is limited to where services are being provided to the public.

- **Amendment 9 - SRA Glossary definition of solicitor**; In the SRA Glossary's definition of 'solicitor', we have removed the reference to the SRA Indemnity Insurance Rules and the Minimum Terms and Conditions of Insurance (MTC) as this is no longer relevant.

We will not proceed with our proposed amendment to rule 10 of the SRA Accounts Rules, which relates to managing a client's own account (amendment 3). We will instead align our rules more closely with the current guidance.

Background

In 2019 we introduced significant reforms to the SRA Handbook through the new SRA Standards and Regulations.

These included:

- the creation of less prescriptive rules
- separate codes of conduct for firms and individuals
- the adoption of simplified Accounts Rules
- a new enforcement strategy

Since their implementation we have identified areas of the new rules which are causing some practical difficulties either for firms or operationally for the SRA. We identified these areas through engagement with and feedback from external stakeholders and through our one year evaluation of the Standards and Regulations.

In some instances we have found that the original policy intention is not being met by the rules. In others, the wording in our rules needs further clarification to achieve the intended outcome. In a number of cases we have already clarified our position, for example, through guidance and waivers for specific rules granted to individual firms.

From December 2022 to March 2023, we consulted on proposed minor amendments to the SRA Standards and Regulations to address the issues.

We invited views on both the rationale for change, and the proposed wording for the amendments. We also invited any views on any possible unforeseen consequences of implementing these amendments. This document summarises the feedback we received from the consultation and includes our response. The accompanying analysis of responses at Annex 2 should be read alongside this document.

Responses to the consultation

We received a total of 25 responses, 4 responses were from individual solicitors, 3 identified as ‘other’ (other legal professional, non-legally qualified person working in legal setting), and 18 were from organisations, including: the Legal Services Consumer Panel (LSCP), The Law Society, local law societies, Law Care, and accountants and auditors.

We also held a roundtable focusing specifically on rule 10 of the SRA Accounts Rules with solicitors appointed as attorneys and deputies, reporting accountants, compliance advisers and the Office of the Public Guardian.

We are grateful to all of those who responded to the consultation, and we have carefully considered all responses and feedback before reaching our final positions.

Our response

In this section we outline each consultation proposal. We set out a high-level summary of the responses we received, our next steps and our rationale.

1. SRA Accounts Rules

Amendment 1: Firms taking money for costs in advance of work being done

What we consulted on

Law firms have told us that our rules are unclear as to whether firms are able to take client money for anticipated fees or disbursements from their client account into their business account.

The current wording of the rules is not clear whether or not we define money that as including money received from a client for costs or disbursements not yet incurred. We were concerned that these monies should properly be considered client money as they attract additional protections that would not apply if they were not considered client money and sat in a firm's business account.

We consulted on proposed changes to rule 2.1(d), which is part of the definition of client money, so that it would be clearer that (subject to rule 2.3(c) discussed below) in order to transfer funds from client account into the firm's business account, the bill, or other written notification of costs, must be for costs that have already been incurred.

What respondents said

Most respondents were supportive of the proposal and agreed that the amendment provides clarity. The Legal Services Consumer Panel agreed that the amendment upholds protection of client money. Accounts professionals also welcomed the amendment in reducing ambiguity, as well as providing additional protections to clients.

The Law Society, a local law society and a property solicitor raised concerns that the amendment would prevent firms invoicing for work that has not yet been completed in circumstances that are currently permitted, for example when firms invoice clients in advance of work being completed and transfer this money into their business account. Concerns were raised that this might deter firms from offering fixed fees where legal work may take a considerable time to complete. The Law Society and a local law society were also concerned that we risk creating two-tier regulation by treating firms that have a client account

differently to freelancers and to firms that do not have a client account but are nonetheless able to receive fees and monies for disbursements.

What we will do next

There was clear support for the amendment overall but we acknowledge the concerns raised by The Law Society and others regarding circumstances when it is appropriate for firms to invoice clients in advance of work being completed. Our proposed amendments do not impact on rules 2.3(c) of the SRA Accounts Rules and therefore do not prevent firms agreeing alternative arrangements with clients about where client money will be held and how that money will be used. This might include agreeing for fees or monies for disbursements to be paid in advance regardless of whether the work is completed and that the money will be held in the firm's business account. Our guidance makes it clear that this is permissible as long as firms are complying with our requirements, including acting in the best interests of their client and providing clients with appropriate information.

We do not agree that our requirements risk creating two-tier regulation. Our rules provide that a client account is not needed if the only client money received is advance payments for fees and unpaid disbursements and for which the regulated firm or solicitor is liable. This money can therefore be paid into a business account. However, this money is limited to fees and disbursements for which the firm is liable e.g. experts fees and excludes transactional client funds e.g. stamp duty. Furthermore, our guidance makes clear that the client must be properly advised and given sufficient information about where their money will be held. The above position applies to freelancers.

We have made a minor additional amendment to the final wording of rule 2.1(d) following feedback on its clarity. The final wording can be seen at Annex 1.

We will proceed with the implementation of this rule subject to the approval of the Legal Services Board (LSB).

Amendment 2: Reimbursements for money spent on behalf of the client

What we consulted on

We proposed to change rule 5.1 (a) and (b) of the SRA Accounts Rules to clarify the circumstances where there is no requirement to deliver a bill or written notification of costs before moving money from the client account. This can be in full or partial reimbursement of money spent by the firm on behalf of the client.

This was in response to some firms seeking clarity on this, for example, where a firm had used its own money to pay for search fees. It was felt that rule 5.1 (a) and (b) of the SRA Accounts Rules did not provide the confirmation that firms were looking for to allow them to make a reimbursement.

What respondents said

There was strong support for the amendment with some firms highlighting the efficiencies that can be realised by improving the ease of operation and reducing the need to create an invoice in some circumstances.

However, the Legal Services Consumer Panel raised concerns that in a prolonged matter, a written notification of costs is important to ensure clients are kept informed of how their money is being used.

An accountancy firm felt the proposal would create confusion and undo good practices and behaviours that lead to greater cost transparency. They also felt that the wording of the rule did not include the requirement for clients to understand how their money will be used.

The Law Society and others supported the proposal but provided specific feedback on the wording in the proposed rule.

What we will do next

We have carefully considered the feedback we received regarding keeping clients informed about how their money is being used. Both our Standards and Regulations and guidance make it clear that firms must ensure clients receive the best possible information about how their money will be used or is being used during the course of a matter.

Paragraph 8.7 of the SRA Code for Solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) requires that clients are given sufficient information about costs, at the time of engagement and as their matter progresses, including about costs incurred. Firms must also comply with rule 5.1(b) of the SRA Accounts Rules which sets out that client money can only be withdrawn from client account following the receipt of instructions from the client, or the third party for whom the money is held.

We therefore think that our current requirements are sufficient to ensure that firms keep clients informed about how their money is being used, particularly in protracted matters.

We also carefully considered the comments on the drafting. We do not agree that rule 4.4 should be widened to include or refer to 'incurred' instead of 'spent'. The fact that a law firm has incurred a cost does not mean that it has spent its own money in response to paying for a disbursement. By allowing for a reimbursement only where money has been spent provides clients with the protection they need and removes the burden on a law firm to have to issue a bill or other written notification for money spent.

We will proceed with the implementation of this rule, subject to the approval of the LSB.

Amendment 3: Operating a client's own account

What we consulted on

Rule 10 of the SRA Accounts Rules sets out requirements where solicitors have access to a client's own personal bank account. This recognises that the risk to that client's money being misused is greater. Those clients are also more likely to be vulnerable and may be unable to identify and/or report misuse.

Firms operating a client's own account reported difficulty in implementing some of the requirements in Rule 10. For example, we heard from many firms that it is often not possible to meet the requirement to obtain bank statements to an account belonging to a client every five weeks nor to carry out reconciliations every five weeks. In response, we issued guidance around alternative steps that may be taken to assure that the client's money is not at risk – putting the focus on a firm's internal controls rather than compliance with the detailed requirements in our rules.

In our consultation, we proposed to amend rule 10.1(a) and (b) to make them workable. In doing so we proposed some provisions more onerous than set out in our guidance. The proposed revisions would require firms to:

- Undertake reconciliation every 16 weeks.
- Maintain a central register of clients' own accounts under control of the firm.
- Keep records of transactions carried out by the firm on behalf of the client and record bills and other notification of costs relating to the client's matter.

What respondents said

We received significant feedback through both the formal consultation and a roundtable meeting that the requirements we consulted on would be overly burdensome for some and in some cases, impossible to comply with.

Examples of difficulties included being able to access statements at the frequency required on a managed client's own account and understanding what reconciliation looks like where others outside of a law firm had access to a client's accounts.

We also heard feedback from respondents, including the Legal Services Consumer Panel, that they did not think the requirements went far enough in protecting consumers, many of whom are likely to be vulnerable. Other respondents raised concerns about the impact of our proposals in relation to deputyships and the role already played in this area by the Office of the Public Guardian.

What we will do next

We are appreciative of the breadth of feedback that highlights the difficulty in implementing the proposed requirements where a firm is managing a client's own account.

Reflecting on the feedback, we will not proceed with our proposed amendments. Instead, we will implement the requirements currently set out in our guidance which are:

We expect firms to keep a:

i. central register of the client own accounts that you operate,
ii. separate record of the transactions carried out by you or on your behalf in respect of the client's own account, and
iii. record of your bills and other notification of costs relating to that client's matter.

These requirements have been working in practice without widespread reports of consumer detriment where a solicitor operates a client's own account.

We recognise the concerns raised about the risk to this vulnerable group of consumers. We will therefore conduct a more in-depth review of this area as part of our three-year evaluation of our Standards and Regulations. We will also continue working with the Office of the Public Guardian.

We will proceed to implement our revised rule, which is set out at Annex 1, subject to the approval of the LSB.

2. Easing restrictions on Freelancer activities

Amendment 4: Pro-bono work provided outside of a firm or organisation

What we consulted on

Pro bono work is legal advice or representation provided free of charge by legal professionals. Under our current rules, if solicitors wish to provide pro bono services outside a firm or organisation, they are acting as a freelancer. They must notify us of their intention to practise in this way.

We proposed to remove the notification requirement for solicitors providing pro bono services outside of their firm or organisation in order to encourage more solicitors to provide this valuable public service. These services can help to increase access to justice for those who are unable to afford to pay for legal services.

However, where such services are reserved legal activities, which Parliament has determined warrant greater legislative protection, the solicitor must still meet our requirement of having practised for a minimum of three years since admission or registration. And they must also have adequate and appropriate insurance.

What respondents said

Most respondents were positive about the proposal. A local law society felt that it would benefit solicitors who undertake pro bono work at local legal advice centres and improve access to justice. An individual solicitor practising in-house also welcomed the amendment as they thought that the previous requirements may potentially limit access to justice.

The Law Society objected to our proposal as they felt that the notification requirement is not onerous and offers protection to the public and the individual solicitor, enabling us to keep abreast of the activities of those we regulate.

The Legal Services Consumer Panel was positive about the proposal but felt that the drafting could be clearer, particularly on the requirements of the solicitor providing pro bono services to have been practising for a minimum of three years, as well as having appropriate insurance, even if they are exempt from the notification process.

Another solicitor welcomed the amendment but was concerned that clients may become confused that a solicitor is acting on behalf of the firm.

What we will do next

Given the support we have received for this proposal and the feedback we have received that our notification requirement is a barrier to some solicitors offering pro bono services, we will proceed with this amendment, subject to approval from the LSB. We believe this amendment will offer a positive incentive for some solicitors to offer pro bono services, with the potential to widen access to justice.

We have carefully considered the concerns raised, but we have not identified any risks arising from the removal of this notification requirement. We require that solicitors practising in this way must comply with both the SRA Code of Conduct for Solicitors, RELs and RFLs, and the SRA Transparency Rules, including the obligations relating to client identification, complaints handling, client information and publicity, and making sure that clients understand the regulatory protections available to them.

We have reflected on the points raised by the Legal Services Consumer Panel about the drafting of the amendment. We will make amendments to our guidance to ensure the position is clear.

Amendment 5: Administering oaths or statutory declarations outside of employment

What we consulted on

The administration of oaths is a reserved legal activity. Under the Standards and Regulations a solicitor who is not a recognised sole practice, and wishes to carry out this activity outside of their employment, much register as a freelancer to do so. To do so they must meet a number of conditions set out in regulation 10.2(b) of the Authorisation of Individuals Regulations.

Based on the findings of our evaluation activities, we believe the requirement to register as a freelancer is deterring some solicitors from administering oaths or statutory declarations outside of their employment. We think this is a low-risk activity which provides a useful service. And we do not consider it necessary for the solicitor to register with us as a freelancer before this activity can be undertaken.

We therefore consulted on a proposed amendment of our regulations so that solicitors administering oaths or statutory declarations outside their normal practice will not be regarded as a freelance solicitor provided that:

- These are the only reserved legal services that they provide whilst practising in this way.
- They do not charge a fee for these services other than the statutory fee.
- They do not provide these services by way of business.

What respondents said

Respondents welcomed the change as this has previously been a barrier to some solicitors wishing to carry out this service. The Legal Services Consumer Panel was positive about the proposal, subject to clarification in the drafting to explicitly state whether appropriate insurance would be required to offer this service outside of a regulated firm, and also to require that solicitors inform consumers accordingly.

The Law Society was also broadly supportive. They highlighted that solicitors need to be alert to the fact that they may be prohibited from undertaking this type of work by their contract of employment without the express consent of their employers and should be advised to check this first. Furthermore, if these activities are conducted outside of their employment, they will not be covered by their employer's professional indemnity insurance.

One law firm felt that regulation should not be reduced, because of the potential risks where the client is dishonest, leading to a potential enabling of those wanting to pursue criminal activities to do so more easily.

What we will do next

We note the positive feedback relating to this amendment as well as the constructive feedback to help improve the clarity and understanding of our requirements in this area.

We note the specific suggestions to the drafting of the rule – we think these points can be addressed through amendments to our existing guidance.

We accept that a small number of clients are dishonest. However, that risk is not impacted by our proposed amendment. We expect those we regulate to have regard to our requirements. Paragraph 8.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs (Code for Individuals) requires solicitors to take steps to identify who they are working for and to take a proportionate approach, depending on the circumstances, including knowledge of the client and the type of work involved. We continue to monitor any emerging risks through our enforcement activity insights.

We will proceed with the implementation of this rule, subject to the approval of the LSB. We will also make some amendments to our existing guidance.

3. SRA Authorisation of Firms Rules (AFRs)

Amendment 6: Cessation of owner approval

What we consulted on

Under the AFRs, we may approve a person's designation as owner of an authorised body. This is if we are satisfied that the individual is fit and proper to undertake the role.

We define an owner for the purposes of the AFRs as any person who holds a material interest in an authorised body. And in the case of a partnership, any partner regardless of whether they hold a material interest in the partnership.

We define 'material interest' in line with the Legal Services Act 2007 as 10% or more of shares and/or voting rights. However, daily fluctuations can take the shareholder above or below that line and this has led to difficulties for those affected by this

We proposed to amend rule 13.7(c) of the AFRs so that approval only ceases for owners when they cease to be an interest holder, or a partner, as appropriate.

What respondents said

Most respondents did not respond to this question. Those who did supported the proposed amendment, including The Law Society.

What we will do next

We will proceed with the amendments to this rule subject to the approval of the LSB.

Amendment 7: Deeming approval of solicitors with a practising certificate to be managers or owners of authorised bodies

What we consulted on

Under rule 13.1 of the AFRs we are able to deem approval of solicitors (and certain other authorised persons) to be managers or owners of authorised bodies. This means that where solicitors hold a current practising certificate, they are not required to go through the usual test as outlined in our SRA Assessment of Character and Suitability Rules.

However, the wording of the current deeming provision is not limited to solicitors with a practising certificate, as intended, and as was the case previously. This was an oversight that we sought to rectify.

What respondents said

We received just two responses to this proposal. The Legal Services Consumer Panel agreed that the amendment provides clarity and sought assurances that this process includes safeguards to ensure that a solicitor is not deemed when "subject to regulatory or disciplinary investigation, or adverse finding or decision of the SRA, the Tribunal or another regulatory body".

One non-legally qualified individual working in legal services queried whether this rule would limit employee-owned legal services businesses.

What we will do next

We have considered the feedback received from the Legal Services Consumer Panel. Under rules 13.2 and 13.3 of the Authorisation of Firms Rules, a solicitor cannot be deemed to be fit and proper, and therefore deemed to be approved as a manager or owner, if they are subject to a regulatory or disciplinary investigation, or adverse finding or decision of the SRA, the Tribunal or another regulatory body.

In response to the query as to whether the rule would limit employee-owned legal services businesses, we can confirm that the deeming process only applies to those who hold a practising certificate or are authorised by another regulatory body. Any non-authorised manager or owner would be subject to the usual fit and proper test.

We will proceed with the amendments to this rule, subject to the approval of the LSB.

4. SRA Code of Conduct for Solicitors, RELs and RFLs (Code for Individuals)

Amendment 8: Solicitors carrying on reserved legal activities in a non-commercial body

What we consulted on

Paragraph 5.6 of the Code for Individuals requires solicitors carrying on reserved legal activities in a non-commercial body to ensure that the body has indemnity insurance.

Our original policy intention had been to limit the requirement to circumstances where services are being provided to the public. (And not, for example, where a body is offering services to associated parts of the business, such as NHS Trusts). We have issued individual waivers of this requirement on a case-by-case basis.

We proposed amending the Code for Individuals to reflect our original policy intention.

What respondents said

All those who responded supported the proposal and provided no substantive feedback.

What we will do next

We will proceed with the amendments to this rule, subject to the approval of the LSB.

5. SRA Glossary

Amendment 9: SRA Glossary definition of solicitor

What we consulted on

We proposed tidying up the definition of 'solicitor' in our Glossary by removing the reference to the SRA Indemnity Insurance Rules and the Minimum Terms and Conditions of Insurance (MTC) as this is no longer relevant.

What respondents said

We received no feedback on this amendment.

What we will do next

We will proceed with the change to the Glossary, subject to the approval of the LSB.

Other Feedback

In addition to the substantive consultation feedback, a small number of respondents provided additional feedback that did not relate to the proposed amendments.

We welcome this feedback and will consider this further as part of our three-year evaluation of the Standards and Regulations.

Equality Impact Assessment

We have considered whether there are any equality diversity and inclusion (EDI) considerations or impacts arising from our proposals. We have not identified any. This is because the majority of the proposed amendments are technical in nature and are fulfilling our original policy intention. This means that in many cases, individuals and firms will not need to introduce any changes as a result of our proposals since we have already set out our position through our published guidance or other communications.

We will continue to consider EDI perspectives through our ongoing monitoring and evaluation activity to make sure we are continuing to consider, and respond to, any emerging EDI impacts.

Next Steps

We will now apply to the Legal Services Board (LSB) for approval of the amendments. We will also amend our guidance where necessary to make sure that our requirements are clear.

Subject to receiving approval from the LSB, we will implement the new rules from 1 November 2023.