

Looking to the Future Phase One – Final Impact Assessment

Introduction

- 1 We published our initial regulatory impact assessment¹ in June 2016. In it we set out our assessment of the potential impacts on consumers, solicitors and firms resulting from the changes we proposed to the SRA Principles 2011 and the SRA Code of Conduct 2011 to allow solicitors greater freedom to practise in non-SRA regulated firms². We assessed the proposals with the regulatory objectives³, better regulation principles and our wider equality duty in mind (please see Annex 1).
- 2 Alongside the initial impact assessment we published an independent assessment by a leading regulatory economist of the economic rationale and possible impacts of our proposals⁴.
- 3 Views gathered through wide stakeholder engagement helped us develop the proposals we consulted on. This included sharing for comment working drafts of proposals and papers with our virtual reference groups, including the equality and small firm groups and one specifically established for these reforms. We also spoke to consumer representative groups and ran focus groups with them, and with consumers.
- 4 In our consultation we asked respondents to identify any specific risks or impacts to help inform our final position. We received over 300 responses to the consultation and we engaged with many thousands of different stakeholders throughout the consultation period. Very few respondents commented specifically on our initial impact assessment. However, many did offer views that help us gauge their views on the potential impacts.
- 5 In response to our proposals the Law Society opposed our proposals, particularly around giving solicitors greater freedom to practise in non-SRA regulated firms. The Society questioned our analysis of potential benefits and highlighted its view of the risks. The Society also published its own in-house economic response to our proposals including a critique of our independent economic assessment.
- 6 We have considered all these views and responses in reaching our final decisions – as set out in our response document⁵.

¹ <https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page> (supporting consultation documents)

² <https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page>

³ The Legal Services Act 2007 provides a common framework, and set of objectives, for all of the legal services regulators and for our oversight regulator, the Legal Services Board. In deciding how we regulate we need to have regard to these objectives

⁴ Dr Christopher Decker, Regulatory Economics: <https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page> (supporting consultation documents)

⁵ <http://www.sra.org.uk/sra/consultations/code-conduct-consultation.page#download>

- 7 We have also considered the evidence and analysis presented in the Competition and Markets Authority (CMA) final report of its year-long study of the legal services market⁶. This was published in December 2016. This CMA explicitly recommended that we implement our proposal to provide greater freedom about where solicitors can practice.
- 8 This document sets out our assessment of the impacts of changes that we have decided to make following consultation. We have assessed potential benefits and risks. Where we have identified risks we have set out mitigations.
- 9 In summary, we have decided to:
 - a. Implement a revised set of Principles and Codes of Conduct – clearly setting out the standards and behaviours that we expect from those that we regulate while providing greater flexibility about how best to comply than is provided under our current prescriptive Handbook.
 - b. Allow solicitors to deliver non-reserved legal services to the public from outside firms that we regulate – removing the current unnecessary restrictions to provide greater opportunities for solicitors to offer their ethical expertise and increase choice for consumers and businesses.
- 10 We group this assessment by these two broad areas as we did with our initial impact assessment.
- 11 In our initial impact assessment we indicated that we would be developing a framework to evaluate the impact of our changes going forward. We commissioned the Centre for Strategy and Evaluation Services (CSES's) to produce an evaluation framework that could inform our on-going assessment of the impacts of our Looking to the Future reforms, as well as other reform initiatives. An important part of developing the framework was to research the views of a number of stakeholder groups including solicitors, regulatory and representative bodies and legal services consumers.
- 12 We publish the CSES framework alongside this impact assessment⁷. This document should be read alongside this framework. We have had regard to the evaluation framework in developing this impact assessment in terms of the impacts that we have identified and the stakeholder groups that could be affected. We set out at Annex 2 some baseline data about regulated legal services providers.
- 13 Looking to the Future phase two will review the rest of our Handbook based on the same drafting principles as we have applied in phase one. This includes the changes to our rules that will allow us to implement the policy decisions made in phase one - our authorisation and practising requirements. This should further simplify our Handbook and make our standards easier to navigate and comply with. We will consult

⁶ <https://www.gov.uk/cma-cases/legal-services-market-study>

⁷ <http://www.sra.org.uk/sra/consultations/code-conduct-consultation.page#download>

on phase two in autumn 2017. All changes to our Handbook will be implemented together, no earlier than autumn 2018.

- 14 We will update our impact assessment once we have consulted and decided on phase two to take account of any new issues that emerge.

New policy positions

Table 1 below summarises our policy positions following consultation

New position	What this aims to achieve	In response to consultation
<p>Codes and Principles</p> <ul style="list-style-type: none"> - Clarifies the application of Principles vs. Code(s) of Conduct - Removal of unnecessary prescription - Separate codes for individual solicitors wherever they practice and regulated businesses - Removed Indicative Behaviours from the Code(s) to clarify their status - Clearer language including to address misunderstandings in interpreting the current Code - Removal of duplication and inconsistency across Codes and other parts of the Handbook - No longer includes interpretation of case law and legislation - Reduced from 30 page single Code to two Codes with a combined 13 pages 	<ul style="list-style-type: none"> - Better understanding for firms and individuals of the standards that apply to them - A more proportionate and targeted regulatory approach - Reduction in overall compliance costs - Flexibility for solicitors and firms about how they meet the standards - On the whole firms that are compliant with the current Principles and Codes will continue to be so 	<ul style="list-style-type: none"> - Revised introduction to clarify the relationship between Principles and Codes - Changes to the wording of specific Principles eg Principle 2 - Substantive changes to specific standards in response to feedback eg extending the probity and advocacy obligations of the individual Code to firms - Consult on new enforcement strategy alongside the phase two consultation - Develop support tools to help compliance in discussion with those we regulate
<p>Remove restrictions over where solicitors can deliver non-reserved legal services</p>		
<ul style="list-style-type: none"> - Qualified and regulated solicitors can provide non-reserved services outside of firms that we regulate - No specific professional indemnity insurance requirements on individual solicitors - Clients will not have access to Compensation Fund - General restriction on 	<ul style="list-style-type: none"> - Greater opportunities for solicitors - More choice for consumers and businesses - Potential to increase access to legal services and grow market - Potential for increased competition to deliver quality and affordable services - Remove opacity 	<ul style="list-style-type: none"> - Extensive work to help consumers understand the choices available to them and the protections available - Support tools for solicitors in non-LSA regulated practices and their employers to help compliance with our Principles and Codes - Working with the Legal Ombudsman to develop

New position	What this aims to achieve	In response to consultation
solicitors outside of SRA regulated firms holding client money in own name. As now, exception for Special Bodies	and inconsistency in the way solicitors currently operate in the non-LSA regulated sector eg non-practising solicitors, exceptions provided by our rules and waivers - Improve standards in the non-LSA regulated sector - More one stop shops for consumers	effective signposting for clients and to work through operational impacts of the changes

Summary of potential impacts of our decisions

- 15 Table 2 summarises the key impacts that could occur as a result of our reforms. This incorporates the views provided to us on consultation, as well as our own analysis and that set out in the independent economist's report that we commissioned. We have not weighed the potential impacts in this table. We have then set out some more detail on impacts in the remainder of this impact assessment.

Table 2 - Summary of potential impacts of the reforms

	Market	Firms	Solicitors	Consumers
<p>Principles/ Code of Conduct</p> <ul style="list-style-type: none"> Revised principles Shorter more focussed code More clearly defined boundary between individual and entity regulation Solicitors practising in non-LSA regulated firms to avoid conflict as an individual. However firm will be able to act for a client whose interest's conflict with those of the solicitor's client. 	<p>↑ potential for innovation that may be market expanding</p>	<p>↑ easier to navigate ↑ lower compliance costs ↑ increased flexibility of less prescriptive rules ↑ improved understanding ↑ reduction in frequency of updates to the Handbook ↑ less need to apply for waivers ↑ reduce duplication inc. of legislation and other regulatory regimes ↓ transitional ('familiarisation') cost ↓ burden on small firms that may prefer prescription ↓ potential uncertainty about what constitutes compliance</p>	<p>↑ easier to navigate ↑ lower compliance costs ↑ increased flexibility of less prescriptive rules ↑ improved understanding ↑ reduction in frequency of updates to the Handbook ↑ reduce duplication inc. of legislation and other regulatory regimes ↓ potential uncertainty about what constitutes compliance ↓ transitional ('familiarisation') cost</p>	<p>↑ better understanding of the standards they should expect from solicitors ↑ clarity on the benefits of using regulated solicitor (bound by principles/standards) ↑ enhanced consumer confidence</p>
<p>Lifting the restrictions on where to practise</p> <ul style="list-style-type: none"> Clients of solicitors outside of SRA regulated firms will not be able to 	<p>↑ diversification eg non-LSA regulated firms employ solicitors ↑ potential new entrants - eg legal technology firms ↑ greater competition</p>	<p>↑ option of less regulatory burden and associated cost for non-reserved services ↑ innovation in delivery models and services</p>	<p>↑ on a more equal footing with other professions ↑ increased employment opportunities ↑ strengthened solicitor brand with increased</p>	<p>↑ improved choice/access to regulated solicitors ↑ greater choice in range of models and services ↑ reduction in unmet legal need</p>

<p>make a claim on the Compensation Fund in any circumstances.</p> <ul style="list-style-type: none"> • Individuals outside of SRA regulated firms unable to hold client money in their own name (with exception of local authorities/charities) • mandating display of information 	<p>including between the regulated and unregulated providers</p> <p>↑ greater innovation in delivery models and services</p> <p>↑ increased diversity of solicitors</p> <p>↑ market better placed to respond to different groups of customers including those with protected characteristics</p> <p>↑ implications for reduced regulatory cost</p> <p>↑ potential market growth</p>	<p>↑ increased diversity of profession</p> <p>↓ small firms more limited opportunities to split their activities into separate businesses</p> <p>↓ potential impact on fees if firms leave entity regulation</p> <p>↓ competitive pressures from lower cost new entrants</p> <p>↑ implications for attracting and retaining staff</p>	<p>accessibility inc. in one stop shops</p> <p>↑ solicitors serving public inside of non-LSA regulated legal services market to have a PC and use the title they qualified to use</p> <p>↑ more opportunities for in-house solicitors</p> <p>↑ implications for entry into the profession</p> <p>↑ better matching of solicitors/consumers who share same characteristics</p> <p>↓ potential impact on fees if firms leave entity regulation</p> <p>↓ employers may not understand the regulatory requirements of solicitors</p> <p>↓ lack of legal professional privilege for advice provided outside of LSA- authorised firms</p>	<p>↑ potential reduction in cost to consumers</p> <p>↑ better information about regulatory status of firm/individual</p> <p>↑ higher quality advice from solicitors in non-LSA regulated sector relative to a firm without solicitors</p> <p>↓ impacts of not having benefit of automatic firm wide conflict of interest protection</p> <p>↓ potential for consumers not to understand the different protections re: privilege, PII and Compensation Fund</p> <p>↓ limited legal professional privilege in non-LSA regulated firms</p> <p>↓ potential loss of access to regulated firms if there is a concentration of firms failing to compete with new entrants</p> <p>↓ lower standard of advice from solicitors in non-LSA regulated firms</p> <p>↓ reduced public confidence if consumers</p>
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				suffer as a result of misunderstanding protections ↓ certain individuals unable to benefit from potential changes
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- 16 We consider that on balance our proposals will increase consumer choice and allow solicitors to take their expertise and distinctive brand into the non-SRA regulated market. We are confident that consumers will benefit through increased opportunities for innovation, greater competition, increased standards and protections in the non-SRA regulated sector. We also consider that our changes will reduce the burden of unnecessary bureaucracy on those we regulate.
- 17 We recognise that there are risks and we have identified, and put in place, measures/initiatives to guard against these impacts emerging. Table 3 summarises some of the key risks that have been identified in the course of our analysis, stakeholder engagement and research.

Table 3 - Potential risk of reforms and mitigating action

Risk	Mitigating measure / initiative
Consumer confusion over regulatory protections which may result in reduced public confidence/trust in the solicitor profession	<ul style="list-style-type: none"> • Clear signposting and a requirement in the Code for solicitors to be clear about the consumer protections attached to the services they provide • Developing our consumer information strategy to make sure consumers have access to good quality, authoritative information, to benefit fully from the increased choices we are making available to them. This will include consumer testing
Difficulty in understanding what compliance looks like amongst the profession	<ul style="list-style-type: none"> • Developing support tools in discussion with those we regulate for example covering conflicts, confidentiality and guidance for solicitors in unregulated firms • Stakeholder testing
Impact on fees if firms leave entity regulation without being offset by increase in individual practising certificates and our regulatory costs do not decrease proportionally	<ul style="list-style-type: none"> • We will monitor the impacts of our reforms and make sure that the burden of fees does not fall disproportionately on regulated firms if there are significant changes in the market. Any changes will be subject to consultation
Clients of solicitors in businesses that we do not regulate have difficulties accessing the Legal Ombudsman	<ul style="list-style-type: none"> • LeO has confirmed that complaints against solicitors within unregulated businesses are covered by its jurisdiction • We are working with LeO on signposting arrangements and approach to enforcement
SRA misuses additional latitude from less prescriptive requirements and continues to pursue “technical breaches”	<ul style="list-style-type: none"> • New published enforcement strategy and revised decision making guidance

Measuring the impacts of our reforms

- 18 We recognise that it will be some time before the impacts of our reforms become apparent. We plan to evaluate the impact of our reforms referencing the evaluation framework established by CSES i.e. a post implementation review. This will consider consumer, economic, market, equality and diversity impacts. Annex 2 sets out some high level metrics about the current legal market against which we will seek to understand the impact of our reforms.
- 19 We intend to publish a post-implementation assessment update after three years. We are considering what data we will collect internally and what external sources we will need to employ. The exact nature of the assessment will be partly informed by initial intelligence about how the market is developing in response to our reforms.

Proposal: Simplification of Principles/Codes

Decisions on review of Principles and Codes
<ul style="list-style-type: none"> • Revised Principles • Shorter more focussed Codes • Separate Codes for individual solicitors and regulated entities • Solicitors will be held to the same standards wherever and however they practice

- 20 In our initial impact assessment and consultation document we set out that many that we regulate consider that the current Handbook is too long, duplicates other legislative and regulatory obligations, is too prescriptive and needs changing too often to keep up with changes to the market and/or is often out of date. We noted that firms think too much time is spent trying to keep up and comply with the technical detail. This is seen by the sector as one of the highest costs of regulation. We also noted that the current Code of Conduct blurs the boundary between individual and business responsibilities.
- 21 We will proceed with our simplification of the Principles/Codes which are designed to address these issues. We have made changes as a result of the feedback that we have received. We have clarified that the Codes relate to SRA regulated activity only. We have also clarified the relative status of the Principles and Code. More detail can be found in our response document that this impact assessment accompanies.
- 22 Our changes will better distinguish the Principles (acting as universal values including outside of practice) and Codes (practice specific). The Principles apply both within and outside practice, whereas the Codes only apply when practising or where a firm is engaging in SRA regulated activity.

Consultation responses

- 23 There was a high level of support for our proposals to simplify the Handbook and the drafting principles we have applied. Many respondents endorsed our objective of clearer, shorter Codes and expressed that - subject to a better understanding of our approach to enforcement - this was a welcome step forward. Some of the views we received are highlighted in Table 4.

Table 4 - responses to proposals to revised Principles and Codes

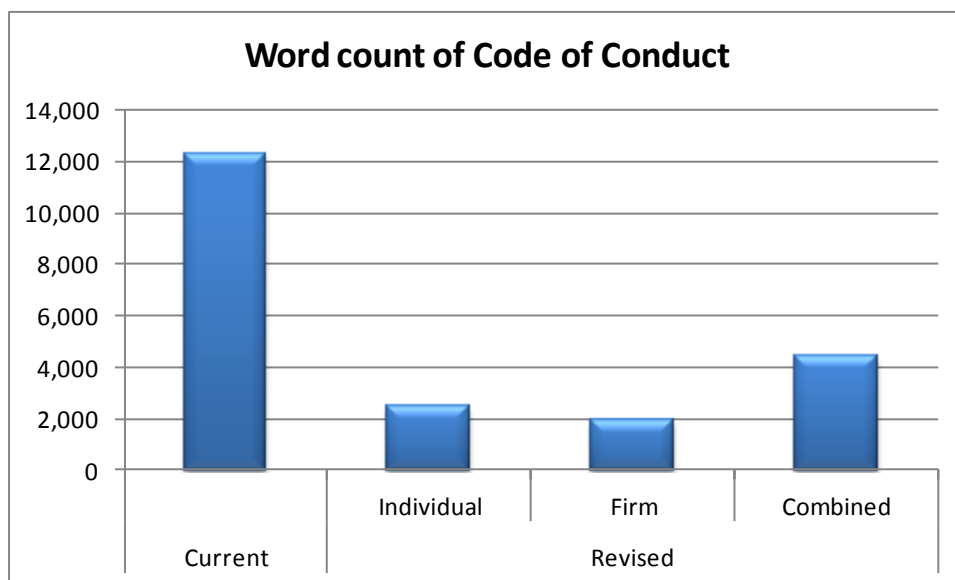
Supportive	Not supportive
the proposed new Codes provides more freedom for solicitors, and flexibility in how to comply	concern that some of the current Principles had been lost or made to seem less important by their removal as Principles, and being placed into the Code as Standards.
the Codes distinguishes the responsibilities of an individual solicitor	2011 Principles embedded and well understood. Change could cause confusion.
the new Codes are easier to follow	unable to offer full endorsement of the Code in the absence of detailed guidance and support and/or sight of the revised Enforcement strategy which would underpin the Codes
the Code will put the onus on solicitors to take responsibility for their own actions and be aware of their obligations, rather than leaving it to the firm, or assuming all responsibility is with the firm	
the proposed Code achieves the aim of being clearer and easier to understand for the public and the profession, and will enable the SRA to more clearly articulate breaches and regulatory risks when seeking to enforce the Code	
placing in-house solicitors on an equal footing with other solicitors is to be welcomed.	

Impact of changing the Principles and Codes

- 24 We think that our new Codes will allow both individuals and firms to introduce flexibility and innovation where that is what is right for them. Firms and individuals who do not want to make changes to their current arrangements will not have, or need, to do so.
- 25 We have significantly shortened the Principles and Codes and helped to improve their readability. Word count and reading speed are increasingly being used as proxies for reduced compliance costs in public sector consultations. As figure 1 shows, the combined firm and individual codes have a word count that is around one-third that of the current code. If we assume that the same reading speed applies to the current and

future codes the estimated time saved in reading the codes back-to-back is between half an hour (reading speed 275 words per minute) to nearly two hours (75 words per minute).

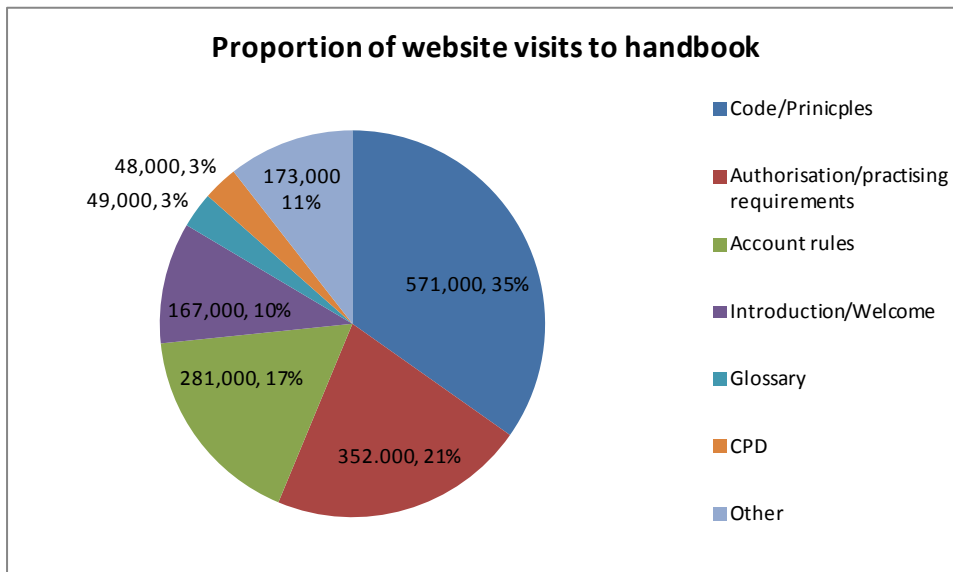
Figure 1 - Code of Conduct word count



- 26 If we assume that there is a single individual in each of the 10,500 firms that we regulate that reads the code this equates to between 5,000-20,000 hours saved across the profession. If we were to monetise this at a notional wage rate of £30/hr this would amount to between £150k-£500k savings.
- 27 We have analysed visits to the Handbook section of our website to gauge frequency of use. Between October 2014 and September 2015 there were over 700,000 sessions⁸ on the Handbook page with over 400,000 users. On average users made 1.6 visits to the Handbook page.
- 28 The Code accounted for over a third of the visits to the Handbook section of our website (figure 2 refers). There were over 60,000 users of these pages. This would suggest that our estimate of £0.5m savings could be conservative.

⁸ a session is a visit to a website by a unique Internet Protocol (IP) address

Figure 2 - Proportion of visitors to Handbook page



- 29 Figure 3 shows that between September 2011 and November 2016 there have been 17 releases of the Handbook. On average this represents an update every 110 days equating to over three updates each year.
- 30 Over this period figure 4 shows that there have been 10 updates to the Code of Conduct and 4 updates of the Principles. On average around 2 of the Code's 15 chapters were updated each time. If we assume that each time there is a new Code it requires an additional full read of up to two chapters, total reading time is estimated to be between one to four hours. On the basis of the assumptions outlined in paragraphs 25 and 26 even if only around 5,000 solicitors on average read each update this would equate to a cost of around £0.2m-£0.6m in time spent.
- 31 On the basis of the revised Codes/Principles a similar frequency of update would equate to a cost of £0.06m-£0.2m. This represents at least a two-thirds reduction. However, we expect the simplification to also reduce the frequency of required updates.

Figure 3 - Handbook releases and rule changes

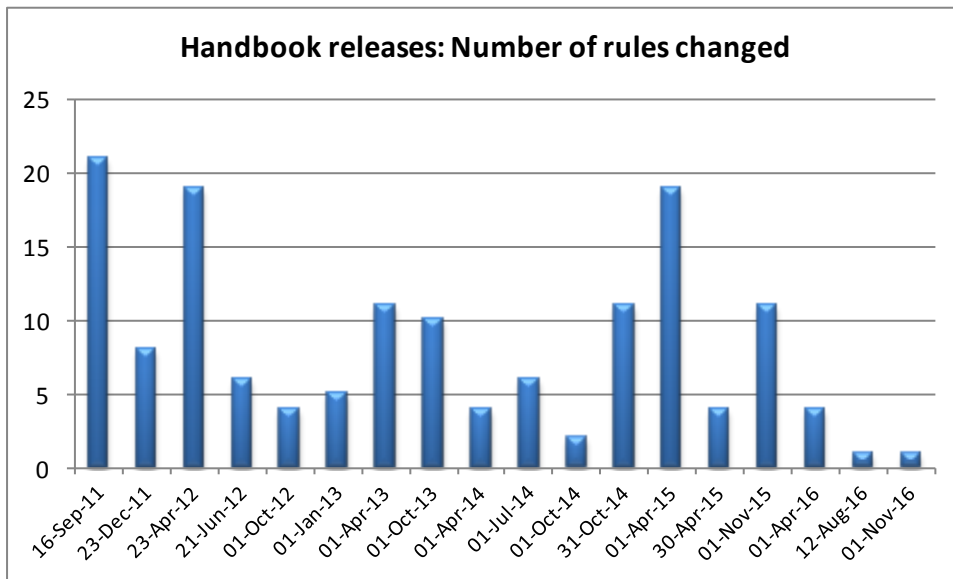
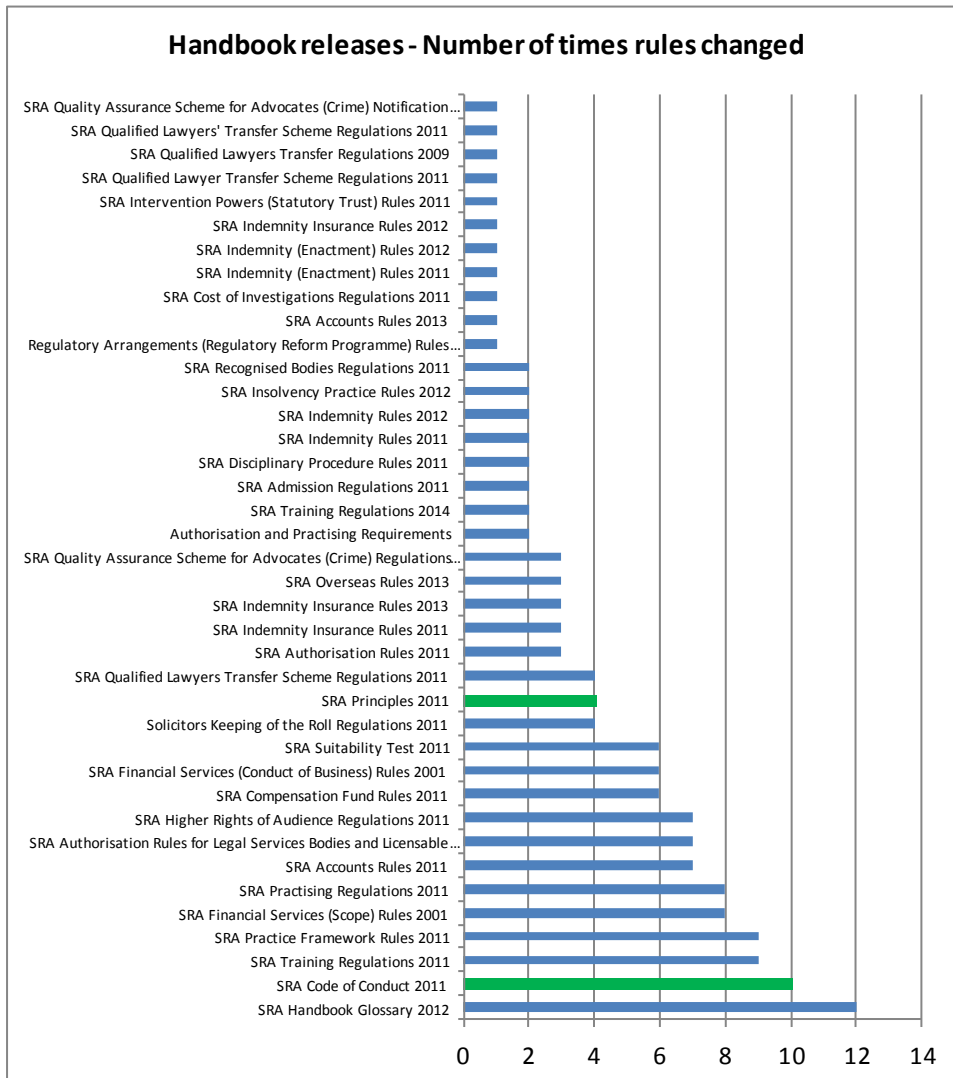


Figure 4 - Number of times rules have been changed



Support tools and enforcement

- 32 As we explain in the response document, we acknowledge that the introduction of less prescriptive standards may prove a challenge for some firms who are used to the current level of detailed rules and may (initially) lack the confidence to interpret the new Code for themselves. This is why we are providing guidance and support alongside the new Codes, as part of a package for the new handbook. But, as we have said before, it is the drafting of the Code that has changed. The underlying standards remain the same.
- 33 To this end we have analysed information from a wide range of sources to identify those issues and topics where stakeholders feel further guidance is required to help increase understanding and compliance with our proposals. Sources include:

- analysis of management information issues that are reported to us
 - ethics Helpline and web chat analytics
 - SRA website analytics
 - feedback from stakeholders during our programme of stakeholder engagement
 - feedback from our Virtual Reference Group
 - responses to the Phase one consultation.
- 34 We have also identified trends from our profession wide survey launched in October 2016. The survey was designed to help us further understand the areas where further support may be beneficial and the best way for us to provide this support. Over 1,000 individuals completed the survey.
- 35 This work has identified common areas where some individuals and firms have indicated that they would like further clarity about. This includes areas where existing requirements are not well understood. Examples of these areas are listed at paragraph 103 of our response document.
- 36 Our engagement has also indicated the types of support that people find most helpful. We know that people find topic based guidance, checklists and a Question of Ethics FAQs most helpful. We will use this information to develop our guidance so that the material we produce is relevant and useful to those using it. This is as well as reviewing all existing guidance in advance of implementation. We will be working closely with the profession, representative bodies and our Virtual Reference Group to help us to develop and deliver these resources.
- 37 The extent to which firms/individuals need to read this guidance will impact on the overall time saved owing to simplification. This will be genuine guidance, not enforceable, and not a replication of the current rules. The feedback we have had on other toolkit measures has been positive and gives us confidence that that the combination of the revised Principles, Codes and guidance will make our Principles and Codes clearer and easier to use. For example, 90 percent of people that used our Continuing Competence toolkit found it useful in adopting our new approach (Spring 2016 survey).
- 38 The new enforcement strategy that we will be consulting on later this year will further help stakeholders in understand the new regulatory approach, build confidence and help compliance.

EDI

- 39 In our initial impact assessment we identified that a move away from prescriptive rules could result in a disproportionate or particularly high burden on small firms⁹ (and therefore for some Black and Asian and minority ethnic (BAME) and older solicitors because they are disproportionately represented in small firms and sole practices).
- 40 On the whole, individuals who are compliant with our current Principles and Codes and who do not want to change arrangements will not have or need to do so.
- 41 We will provide support for firms in the transitional period through, for example, publication of our toolkits.
- 42 We will also evaluate the impacts of our reforms using the evaluation framework our consultants have developed. This framework explicitly includes the EDI impacts of the proposals.

⁹ smaller firms may face disproportionate costs in having to assess how to comply - over half of sole practitioners think fees/compliance costs represent poor value for money; but firms with over 50 employees saw fees/compliance costs as reasonable or high but not excessive.

Proposal: Solicitors able to deliver non-reserved legal services outside of businesses that we regulate

Decisions on where solicitors can practise
<ul style="list-style-type: none"> • Solicitors able to practise in non-LSA regulated firms • No specific professional indemnity insurance required for solicitors in non-LSA regulated businesses • Clients of solicitors outside of SRA regulated firms will not be able to make a claim on the Compensation Fund in any circumstances. • Solicitors outside of LSA regulated firms cannot hold client money (with certain exceptions)

Background to reform

- 43 In our 2015 policy statement Approach to Regulation and its Reform¹⁰ we committed to reviewing regulatory restrictions within our rules that go beyond the requirements set out by Parliament through legislation.
- 44 Restrictions on solicitors being able to deliver non-reserved legal services to the public outside of firms that we, or another legal services regulator, authorise go beyond the legislative restrictions at Section 15 of the Legal Services Act. The Legal Services Board undertook a review of legal regulators' restrictions on in-house lawyers delivering non-reserved services to the public in 2015/16. They concluded that existing restrictions are not evidence based.
- 45 This means that nearly anybody but solicitors can deliver non-reserved services outside of LSA regulated firms. In contrast our Practice Framework Rules restrict solicitors from doing so. This is despite all solicitors being qualified and bound by the standards within our Principles and Codes of Conduct.
- 46 Our new position reflects the statutory position. It brings us closer in line with other legal services regulators, such as the Institute of Chartered Accountants in England and Wales (ICAEW), Council for Licensed Conveyancers (CLC) and the Chartered Institute of Legal Executives (CILEX), which do not have similar restrictions to those currently included in the SRA Practice Framework Rules 2011.
- 47 The context to our reforms is that the market is not working as well as it should for individual consumers, with many not accessing professional legal services when they may benefit from doing so.
- 48 Demand for legal services can currently be met through a number of routes. These include:
- No legal service involvement

¹⁰ <https://www.sra.org.uk/sra/policy/regulation-reform.page>

- consumer resolves the problem themselves or with help from another body eg the council or a charity
 - consumer instructs another professional eg an accountant
- Non-LSA regulated legal service provider excluding practising solicitors
 - Regulated law firm containing practising solicitors
- 49 Unmet demand occurs where the consumer cannot access the service it considers is the most appropriate to its needs. Research commissioned by the SRA indicates that just under half (49 percent) of the adult population in England and Wales had a 'legal need' over the past three years¹¹, although fewer than one in ten people experiencing legal problems instructed a solicitor or barrister¹². This variance might be because these customers found an alternative that was right for them. However, there are strong indicators that many do nothing or chose a sub-optimal optional with perceived affordability and accessibility being a causal factor.
- 50 For example, a 2015 survey¹³ found that 10 percent of adults considered paying for legal advice, before changing their minds. Among the reasons given for changing their mind were: lack of affordability; it seemed complicated; and, having received some initial free advice, they decided not to pay for further advice.
- 51 The current landscape is complex and confusing. Consumers already receive unreserved services from the non-LSA regulated legal services market. Solicitors are often involved in the delivery of those services in some form or another even under our current rules. This may be a practising solicitor employed in a Special Body or one of the myriad of exceptions to our restriction that have built up haphazardly over time in response to emerging models. Or it may be as result of a waiver or other specific innovation initiative. We are increasingly receiving and granting requests from organisations and solicitors who find our restriction getting in the way of them delivering services in a way that works for them, their clients and prospective clients despite presenting very little risk.
- 52 Alternatively, many solicitors give up their practising certificate to work outside of a regulated firm (using the title "non-practising solicitor"). Our new position will allow solicitors in those bodies to deliver non-reserved services to the public in a consistent clear way. They will be able to use the title that they are qualified to use, will comply with the standards in our Code of Conduct, will be overseen by the SRA and their clients will have access to LeO. Our proposals could lead to different types of models of delivery and could increase the number of solicitors working in the non-LSA regulated legal services market.

¹¹ BDRC Continental (2012). The most common areas where legal need arise are consumer problems (29 percent); debt and money problems (27 percent); conveyancing (26 percent); will writing (23 percent) and probate (19 percent).

¹² YouGov (2015).

¹³ YouGov (2015).

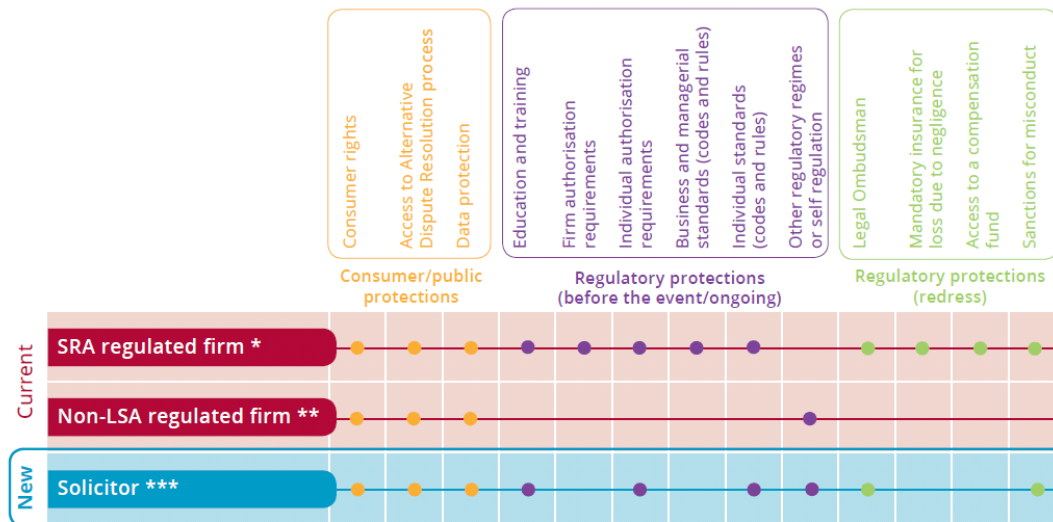
New position

- 53 Our new position will allow consumers to choose and use legal services flexibly from:
- a. An SRA regulated body, with the full range of LSA protections that this will bring including minimum PII requirements, access to the Compensation Fund and Legal Professional Privilege (LPP).
 - b. A solicitor in a non-LSA regulated firm subject to professional standards of training, competence and ethical practice and bringing access to LeO.
 - c. A non-LSA regulated firm that brings with it the standard range of consumer protections for services and, in some cases, voluntary or self regulatory redress schemes.
- 54 The potential benefits of our decisions are detailed in Table 2 but broadly are:
- greater opportunities for solicitors and firms including for innovation
 - greater customer choice by allowing regulated solicitors to practise in non-SRA regulated firms
 - greater competition between regulated and unregulated providers
 - greater access to qualified lawyers and grow the market
 - raising of standards and protections in the unregulated sector
- 55 Figure 5 shows the consumer protection landscape that exists on the back of our decisions.

Figure 5 - The consumer protection landscape

A changing landscape for solicitors providing legal services

This table sets out the impact on public protection of our proposals to free up solicitors to provide some legal services from a business that is not regulated by the SRA or another approved regulator. We describe these firms as “non-LSA regulated” because they are not authorised to deliver reserved legal activities under the Legal Services Act (LSA).



* The full range of legal advice provided by a solicitor (or other authorised person) working in a firm authorised by the SRA or another approved regulator. This advice includes reserved legal activities - the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.

** Legal advice that is not reserved provided by a legal advisor working in a non-LSA regulated firm.

*** Legal advice that is not reserved provided by a solicitor working in a non-LSA regulated firm.

56 We accept that in some respects the level of consumer protection will be different depending on which choice is taken. Measures to ensure that consumers have the correct information and support to help understand the choices that they make underpin our proposals. We will consult on our regulatory data and consumer information strategy in the autumn.

57 The decision that neither our minimum PII requirements for SRA regulated firms nor the SRA Compensation Fund would attach to individual solicitors working in non-SRA regulated legal services providers should we allow them to do so was supported on consultation.

58 SRA regulated firms will be able to distinguish themselves by the unrivalled and guaranteed protections that they provide including around minimum PII and the Compensation Fund.

59 As now, non-regulated firms will decide what PII and compensation requirements they will have in place. This is likely to be driven by what they consider is necessary to attract and maintain clients and to protect themselves from financial risk.

60 Given the high cost of our minimum PII requirements and Compensation Fund, it is likely that unregulated firms will not have comparable arrangements. This could lead to relatively lower costs which could translate to lower fees for accessing advice from a solicitor relative to the SRA regulated firm market. We are currently reviewing the balance between cost and consumer protection within our PII and Compensation Fund arrangements. This is an area that the CMA recommended that we review.

Consultation responses

- 61 Some respondents strongly favoured the proposal, and saw the benefits of allowing the most qualified professionals to operate more flexibly. A small number of respondents to our consultation indicated that they would be likely or very likely to take immediate advantage of any greater flexibility introduced, or to do so in the future. Far greater numbers were neutral or indicated that they would factor in the increased flexibility in their future planning.
- 62 A number of respondents also said that, whilst they did not currently support the proposal, were we to proceed, they would be likely to take advantage of the opportunity.
- 63 Charities and consumer groups generally supported the proposal. They considered that consumers would benefit from lower priced services and that there could be increased access to justice for vulnerable customers.
- 64 CMA published its Legal Services Market Study¹⁴ final report on 15 December 2016. The Competition and Markets Authority (CMA) has identified¹⁵ that the stimulation of competition is particularly important in addressing concerns about affordability and unmet demand. For this reason, the CMA explicitly recommended that we implement this proposal. They concluded that the benefits of removing the restriction on where solicitors practise would be likely to outweigh the consumer protection concerns once mitigated by improved consumer information and transparency. Many respondents highlighted the importance of these mitigations.
- 65 There was significant opposition to our proposal, with the Law Society leading a comprehensive campaign against it.
- 66 Concerns around consumer protection included:
- a. Our minimum PII requirements, access to the Compensation Fund and LPP are at the core of what consumers understand of being a solicitor meaning consumers may choose a solicitor believing these protections will be in place and find that they are not.

¹⁴ [Legal Services Market Study - Final Report \(CMA\) December 2016](#)

¹⁵ [Legal Services Market Study - Interim Report \(CMA\) July 2016](#)

- b. Notwithstanding this, as the Law Society noted in its Economic Response to our Handbook review, consumers do not have a strong understanding of regulatory protections but rely on the benefit of the full range of protections.
 - c. Many consumers are unable to make rational and informed decisions about the right legal services solution for them given trade-offs between consumer protection and price. This is irrespective of the information that would be available to them.
 - d. The quality and standards of solicitors is likely to be lower in unregulated providers despite being qualified, bound by the individual Code including requirements to maintain competence. The main reason put forward is that this is because solicitors will face commercial pressure to cut corners and ignore ethical considerations.
 - e. The result of the above could be erosion of trust in solicitors and the wider legal services market which could have an adverse impact on demand and access to justice.
- 67 There was also some concern that the new provision would provide an unfair advantage to non-LSA regulated firms that will have the draw of offering advice by solicitors, without all the same regulatory costs and restrictions of an SRA regulated firm.
- 68 We set out our views in relation to these points in detail in our response document, which this impact assessment supports.

Consumer impacts

- 69 Consumers and consumer bodies that engaged in our consultation, including through focus groups, were broadly supportive of our proposal. They often linked accessibility with affordability and felt that our proposals could mean solicitor services becoming more affordable and accessible.
- 70 SMEs reported that they need quick, affordable solutions to their problems. This group welcomed opportunities to trade-off some protections for a cheaper, quicker legal service package.
- 71 The CMA has recommended the removal of regulatory restrictions on solicitors providing services to the public outside of SRA regulated firms. The report states: “This is likely to *have a positive impact on consumers by generating greater competitive pressure on price, and creating new routes and choice for consumers to access advice from qualified solicitors.*”¹⁶

¹⁶ Paragraph 5.107 of CMA final report

- 72 The CMA found that consumers rely on regulated titles such as solicitor as an indicator of quality. The restrictions placed on firms outside our regulation from employing solicitors to deliver non-reserved legal activities may, therefore, reduce the ability of these firms to compete.
- 73 The CMA also reported finding little evidence that consumers currently using non-regulated providers are at particular risk of receiving an unacceptable poor quality or unethical service. Further, we consider standards and ethics will likely increase by allowing qualified and regulated solicitors more freedom to operate within these unregulated firms.
- 74 In some non-LSA regulated organisations there will inevitably be tension between a solicitor's professional obligations and the interests of their employer at times. This tension already exists within regulated firms driven for example by the need to make profit or please an important client, as well as when working in house or within a special body. Recent research highlights the pressure that many junior solicitors feel they put under within regulated firms .
- 75 The ability to deal with this tension is essential to being an ethical professional. We will produce resources to support solicitors in recognising ethical dilemmas and understanding and meeting the standards that apply to them in this context. We will also produce corresponding guidance for their employers. This will be available in advance of implementation to support solicitors and firms through the introduction of the new arrangements.
- 76 Consumers that need, can afford and value the full range of consumer protections provided by SRA regulated firms will still have that option. The importance of different protections is likely to vary depending on the particular circumstances. For example, LPP - that we consider unlikely to attract to solicitors in unregulated businesses in normal circumstances – will be valuable in some circumstances but not for typical retail services.
- 77 Research by both the LeO and the Legal Services Board states that consumers are currently unaware of the full regulatory protection protections and redress that is in place across legal services providers. It is apparent from this research that consumers instead view the title solicitor as a mark of expertise and reliability. This means that the risk of consumers expecting protections that are not actually available can be overstated.
- 78 However, as well as highlighting the potential benefits to consumers (both in terms of improved access to legal advice at a lower cost and improved protections for those reliant on the unregulated sector), the CMA considered the potential risks to

consumers of using providers which offer less regulatory protection on an uninformed basis¹⁷.

- 79 Wider than this, the CMA report found that there is a significant lack of transparent information in this market and this is making it hard for consumers to compare providers, undermining competition and reducing the incentives for providers to compete on price, quality and innovation. This lack of information contributes to consumers not seeking legal advice when they have a legal need.
- 80 The CMA recommended a number of improvements to the information available to customers to help them understand the legal services sector. This includes:
- transparency of price, service and redress
 - the ability to compare providers including quality of service
 - better availability of data
 - developing a consumer education hub.
- 81 We accept that the benefits of our reforms can only be maximised if we take steps to help consumer understand the options available to them, including the different protections in place. It is clearly not the case that consumers already have access to good information and that providing more will have little benefit.
- 82 Building on our October discussion paper¹⁸ we will publish a consultation on our regulatory information strategy in autumn. The strategy will set out how we make sure that the good quality, authoritative information that consumers need is available and accessible at the points at which they need it.
- 83 We have held a number of focus groups and have worked with the Legal Services Consumer Panel to develop our consumer information strategy to date. We will continue to undertake consumer testing methods throughout to understand the information that they need to make good decisions and how this can be effectively presented.

Market impacts

- 84 It is not possible to accurately forecast how the market might take advantage of the opportunities that our reforms provide.
- 85 The precise impacts on solicitors and firms will depend on whether firms take advantage of the separation allowed under the new arrangements and the mix of

¹⁷ The CMA highlight that the only consumers that would have less protection are those that would have gone to a regulated provider. For those consumers that would have gone to an unauthorised provider in any event, they would benefit from additional protection. As a result of the changes, they would have access to LeO and the solicitor would be required to follow the standards set out in the Code of Conduct for Solicitors.

¹⁸ [Regulatory data and consumer choice in legal services](#)

reserved and non-reserved activity a firm carries out. As our independent report on the market impacts of the reforms indicated, this will include:

'the extent to which solicitors, including in-house solicitors, choose to compete directly with other providers in different areas of law; and related to the above point, the extent to which consumers consider the services provided by solicitors operating in non-LSA regulated legal services providers to be substitutable for those provided by solicitors in regulated firms, or by individuals who are not solicitors who provide similar services'¹⁹

- 86 In our initial impact assessment we provided examples of how our proposed reforms could impact on the development of the legal services market. We indicated that the following scenarios were the most likely to emerge.

Scenario A - Existing legal businesses offering non-reserved legal advice employ solicitors to undertake/supervise work previously done by less qualified staff.

Scenario B - Existing business currently employing in-house solicitors start to provide non-reserved legal services to the public.

Scenario C - Existing businesses delivering other services diversify into legal services and employ solicitors.

Scenario D - New firms set up to provide non-reserved legal advice and employ solicitors to undertake and/or supervise work.

- 87 In Table 5 we summarise the potential impacts that could result from these developments. In all cases the changes will increase customer choice in terms of the type of provider that they can go to, the prices that these could charge and the consumer protections that would be available.

Table 5 - market impacts of changes in where solicitors can practise

	Scenario			
	A	B	C	D
Increase in choice	Y	Y	Y	Y
Increase in number of individual PCs	Y	N	Y	Y
Change in where solicitors practise	Y	X	Y	Y

¹⁹ <https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page> (supporting consultation documents)

Increase in number of firms in non-LSA regulated legal services market	X	X	X	X
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- 88 We did not receive information through our consultation engagement that leads us to conclude that these are no longer the most likely developments. Most respondents providing examples of how they may take advantage of the opportunity fit into these categories. Further detail is set out in our response document.
- 89 Examples of cases where providers have already approached us to discuss options for delivering services that will be allowed once this change is implemented are set out below:
- *Case study 1: a subscription-based service offering advice on areas of law including travel, employment and wills. Solicitors can provide telephone and limited email advice (made possible by a waiver). The email advice is provided based on a written summary of the facts provided by the client, but solicitors are not permitted to view original documents. The entity may wish to extend its service to receive and review original documents, bring more work in-house and offer a greater choice to their customers.*
 - *Case study 2: a legal services provider delivering non-reserved legal services by paralegals to small businesses. Solicitors deliver services by becoming non-practising, meaning they cannot use their title and are not bound by our requirements and code, or by using their expertise to support non-qualified advisers to provide advice. The firm may wish to have greater freedom to provide services directly to its customers using its in-house solicitors – regulated and using the title that they qualified for.*
 - *Case study 3: a qualified solicitor provides non reserved employment advice services in-house. The solicitor may like to extend the business to employ a number of solicitors on a contractual basis in order to provide additional non-reserved services online. To do so we would have to authorise a new entity, adding additional cost to what was intended to be a fixed-fee model, for little additional regulatory benefit.*
- 90 We have not received information that significant numbers of regulated firms will be looking to not undertake reserved legal activities to step out of entity regulation. Considerations around competitiveness are likely to be a key driver of any decisions to move outside regulation.
- 91 We do not aim to provide a commercial advantage to any type of firm. We seek to provide an environment where fair competition is enabled. We think regulated firms employing solicitors will continue to provide a strong "brand" that firms will want to maintain. The difference will remain the ability to provide the full range of legal services (including reserved activities), the availability of LPP, and a range of consumer protections that are unrivalled by any other profession, either in the UK or internationally. Our consumer information strategy will support firms in making this distinction.

Implication for practising certificate fees (firm and individuals)

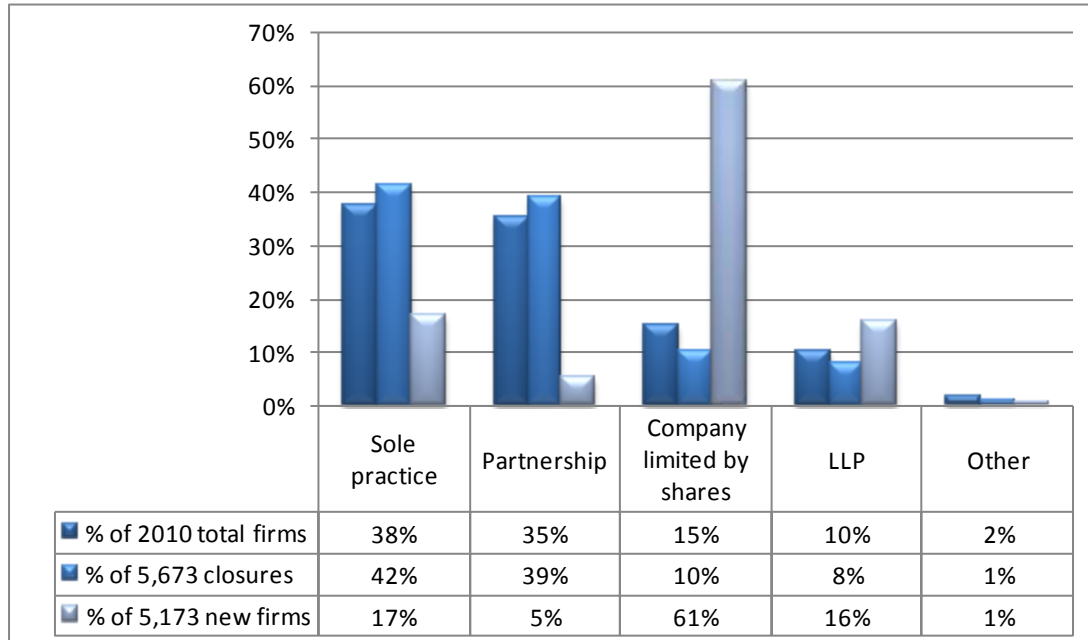
- 92 The extent to which firms adapt to a changing environment and take up the opportunities our reforms allow could have implications, in due course, for the fees that we charge. In our initial impact assessment we referred to our assessment of the separate business rule reforms. In this we indicated that there could be a negative impact on small firms if a relatively small number of large firms moved non-reserved activity out of SRA regulation, assuming that our regulatory costs did not reduce proportionally.
- 93 Few respondents to our consultation suggested that they would seek to take advantage of these opportunities immediately, including moving non-reserved activity outside of entity regulation.
- 94 We plan to introduce our Looking to the Future proposals no earlier than autumn 2018. This will include changes to the Principles, Codes and the rest of the rules in the Handbook. It will be several years, therefore, before the impacts of our reforms become apparent in terms of the number of solicitors paying the individual practising certificate fee and any change in the turnover that is used to calculate firm-based practising fees.
- 95 We cannot be certain how fee income, all things equal, will be affected in the longer term as a result of our reforms. It may be that a reduction in turnover based fee income could be off-set to some degree by an increase in individual based fee income. However, should the position require any change in the levels of the fee charged we will consider the balance between the firm and individual element at this point. We will monitor the impacts of our reforms and make sure that the burden of fees does not fall disproportionately on regulated firms if there are significant changes in the market. We would consult on any such proposed changes.

EDI

- 96 Our decisions open up possibilities for all those firms we regulate. In addition it presents more opportunities for individual solicitors, and aspirant solicitors, on where they can practise.
- 97 We identified in our initial impact assessment that small firms (similarly impacting disproportionately on some BAME and older solicitors) could suffer detriment because they are less able to take advantage of the market developments. However, small firms tell us that they rely on local brand reputation, as well as word of mouth, and this is likely to continue. Added to this, our previous work with small firms indicates they carry out relatively high levels of reserved legal activity for their clients, which only they (and other LSA regulated businesses) can provide.

- 98 These smaller firms could therefore be less likely to be affected by the competition enabled through allowing solicitors to provide non-reserved legal services outside of SRA regulated firms.
- 99 It is difficult to predict what will happen with any certainty. In the last two years there has been a decline in the number of small firms (numbers of sole practitioners have fallen by 7 per cent and partnerships fallen by 17 percent. These account for 45 percent of firms now some 6 percent lower than in September 2014.
- 100 In 2010 there were around 11,000 firms of which sole practitioners accounted for around 38 per cent. This has since reduced to around a quarter. Figure 6 shows that of the firm closures since 2010 sole practitioners accounted for around 42 percent ie a closure rate higher rate than suggested by their market share. Of those firms closing nearly three quarters had turnover less than £0.5m.
- 101 Of the new firms to emerge since 2010 sole practitioners have accounted for only 17 per cent. Of these new firms a nearly three quarters had turnover less than £0.5m

Figure 6 - Firm closures and new entrants by firm type



- 102 We will continue to monitor the implications of our reforms. In particular we will consider a thematic review of these impacts three years after implementation which will be informed by CSES's evaluation framework. This framework explicitly covers EDI impacts.

Annex 1 - Consistency of our decisions with our regulatory objectives and better regulation principles

LSA objectives	Handbook changes	Solicitors allowed to practise in non-LSA regulated firms
protect and promote the public interest;	<ul style="list-style-type: none"> provides clear universal standards for solicitors reduces costs and increasing flexibility about how they are delivered which is likely increase choice and access to legal services 	<ul style="list-style-type: none"> removes unnecessary regulatory barriers and restrictions Increases choice, competition, innovation and growth, which in turn should better serve consumers of legal services and the wider legal system and the UK economy
support the constitutional principle of the rule of law;	Nothing in our decisions conflicts with this regulatory objective.	
improve access to justice;	<ul style="list-style-type: none"> nothing in the Handbook changes conflicts with this regulatory objective may reduce costs and facilitate innovation which in turn may lead to improved access 	<ul style="list-style-type: none"> provides more choice for consumers allows firms greater flexibility in how they develop services to meet the needs of consumers and potential consumers drives competition and innovation the above should result in services, including new services, that better meet the needs of consumers - improving access to justice and market growth likely to increase one stop shops for consumers, improving access
protect and promote the interests of consumers;	<ul style="list-style-type: none"> solicitors will be held to the same standards wherever and however they practice simplified Codes and Toolkits for individual solicitors and firms will sharpen the focus on solicitors' ethical duties 	<ul style="list-style-type: none"> consumer choice will be increased changes will allow cost-effective delivery of legal services to the consumers who need it increased standards and protections in the unregulated sector

	and their responsibilities to their clients	<ul style="list-style-type: none"> likely to increase one stop shops for consumers
promote competition in the provision of services;	<ul style="list-style-type: none"> nothing in the Handbook changes conflicts with this regulatory objective. 	<ul style="list-style-type: none"> changes will allow solicitors to provide services in a cost-effective way in a greater diversity of contexts, fostering greater competition in the provision of legal services and meeting currently unmet legal needs.
encourage an independent, strong, diverse and effective legal profession; and	Provides greater opportunities for solicitors. The changes will make the solicitors' profession more effective in providing legal services.	
increase public understanding of the citizens' legal rights and duties.	Nothing in our decisions conflicts with this regulatory objective.	
promoting and maintaining adherence to the professional principles.	<ul style="list-style-type: none"> New Principles and simplified Codes, and a Code for individual solicitors, will help focus on core ethical duties such as integrity and independence 	<ul style="list-style-type: none"> Code for individual solicitors will maintain ethical standards for solicitors practising in non-LSA regulated firms
Better regulation principles	Handbook changes	Solicitors allowed to practise in non-LSA regulated firms
transparent	<ul style="list-style-type: none"> solicitors will be held to the same standards wherever and however they practise changes provide increased clarity and simplification 	<ul style="list-style-type: none"> solicitors will be held to the same standards wherever and however they practise, even in non-LSA regulated firms replaces complex exceptions to current restrictions, waivers and solicitors working as non-practising solicitors with a consistent and transparent approach
accountable	<ul style="list-style-type: none"> simpler and easier to understand standards will make individuals and 	<ul style="list-style-type: none"> changes ensure that those that we regulate are fully accountable for compliance with our

	firms more accountable	regulatory requirements, including solicitors practising in non-LSA regulated firms
proportionate	<ul style="list-style-type: none"> The clarified and simplified Principles and Codes are proportionate to the risks to the public and to the Legal Services Act Regulatory Objectives 	<ul style="list-style-type: none"> The changes remove an unnecessary and disproportionate restriction on where solicitors can practise
consistent	<ul style="list-style-type: none"> solicitors will be held to the same standards wherever and however they practise removes duplication and inconsistency with legislation and other regulation 	<ul style="list-style-type: none"> solicitors will be held to the same standards wherever and however they practise, even in non-LSA regulated firms replaces complex exceptions to current restrictions, waivers and solicitors working as non-practising solicitors with a consistent and transparent approach
targeted at cases where action is needed	<ul style="list-style-type: none"> the simplified and clarified duties under the new Principles and Codes are targeted to the actual risks in legal services provision, removing unnecessary prescription 	<ul style="list-style-type: none"> removes an unnecessary restriction the simplified and clarified duties under the new Principles and Codes are targeted to the actual risks in legal services provision, including where those services are provided by a solicitor through a non-LSA regulated firm

Annex 2 - The legal services market

Overview

- 103 The legal services market covers a broad range of services. Some legal activities are restricted to regulated providers but many others can be delivered by any business, without attracting legal services regulation. The people and businesses providing these services offer a genuine alternative to using a solicitor or other regulated lawyer.
- 104 Providers of legal services can be broadly defined as operating within one of three categories:
- Authorised and regulated by an approved regulator under the Legal Services Act 2007 (LSA) to provide legal activities.
 - That conduct specific legal activities that attract other forms of legal regulation such as immigration, insolvency and claims management.
 - That provide legal services outside of any form of legal services regulation (the non-LSA regulated market).
- 105 Many consumers already access the non-LSA regulated market or services that include a mixture of SRA regulated work and work that is regulated elsewhere. They may also receive unbundled services – where the solicitor only helps with specific parts of the case. This means there is already a complex set of consumer protections arrangements across the legal service market.
- 106 In 2014, the overall UK legal services market was estimated to be worth £40.1bn by turnover.²⁰ This figure includes both the regulated and non-LSA regulated legal services markets. Figures from the Office for National Statistics (ONS) indicate that the ‘turnover of legal activities’ in 2014 was £30.1bn. This only includes the turnover generated by solicitors, barristers, and patent and copyright agents. We consider it a good estimate of the turnover generated by the “regulated by an approved regulator” market²¹.
- 107 The legal services marketplace is becoming more competitive. Consumers are more ready to consider new providers such as financial services or supermarkets and other brands for legal advice. Traditional providers are facing competition from volume providers such as in conveyancing as well as the unbundling of legal services and self-lawyering (or DIY law). This is where individuals take on some or all of the legal work themselves – for example in probate and estate administration where year-on-year the number of individuals dealing with estates themselves is increasing.

²⁰ [The changing legal services market, SRA, 2016](#)

²¹ [TOPSI: Turnover of Legal Activities, Office for National Statistics, 2015.](#)

108 We have published a report²² that describes the current legal services market landscape in much more detail.

Regulated

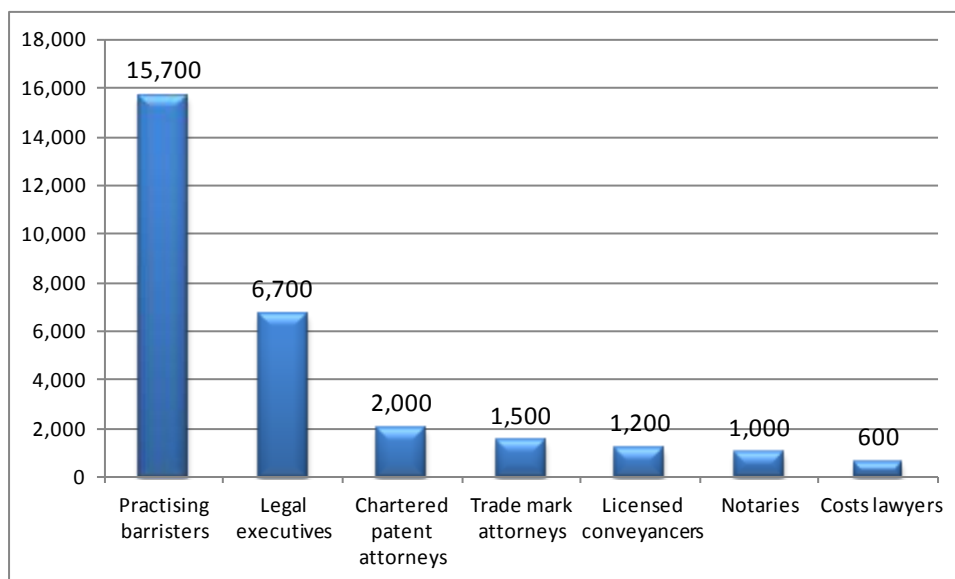
109 We regulate:

- around 10,500 firms of which around one quarter are sole practitioners
- around 130,000 individuals with practising certificates of which around one in five works as in-house solicitors.

Other regulated

110 Figure 7 shows the make-up of the 30,000 other individuals who provide regulated legal services authorised by another legal services regulator.

Figure 7 breakdown of the regulated legal services market (excluding solicitors)



Diversity of the regulated solicitor profession

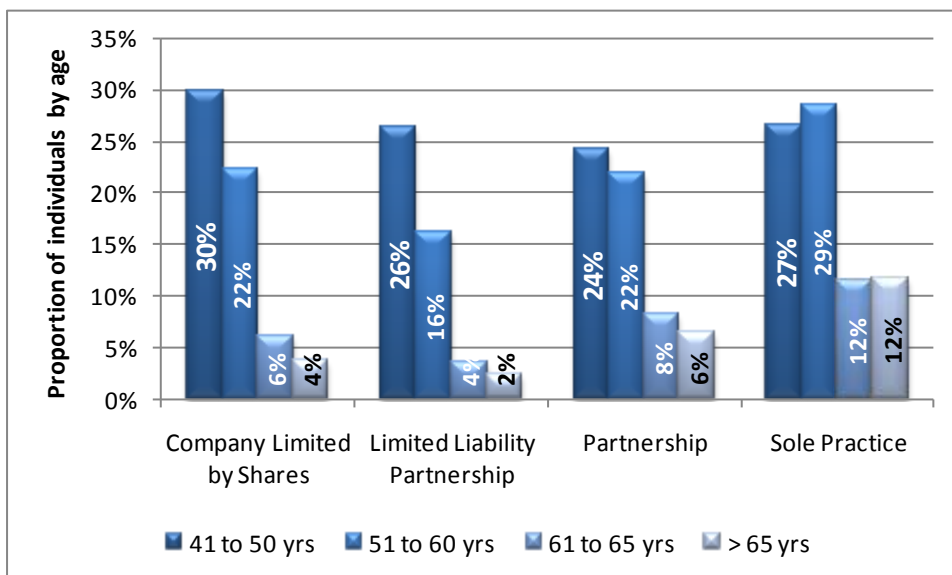
Age

111 We collect data that enables us to understand the diversity of the individuals in the profession. Figure 8 shows that sole practices have a more aged population than other firm-types. For example:

²² [The changing legal services market, SRA, 2016](#)

- Over half of individuals in sole practices are over 51 years old (next highest firm-type is partnerships at 37 percent).
- Nearly a quarter of individuals in sole practices are over 61 years old (next highest firm-type is partnerships at 14 percent).
- Over one tenth of individuals in sole practices are over 65 years old (next highest firm-type is partnerships at 6 percent). Whilst around 4 percent of individuals in regulated firms are in sole practices, 13 percent of solicitors over 65 are in sole practices.

Figure 8 Age diversity of the regulated solicitor profession by firm-type



Ethnicity

112 Table 6 shows that of those individuals whose ethnic origin is known sole practices have a significantly higher proportion of BME individuals. 35 percent of individuals in sole practices whose ethnicity is known are BME compared to only 10 percent in Limited Liability Partnerships.

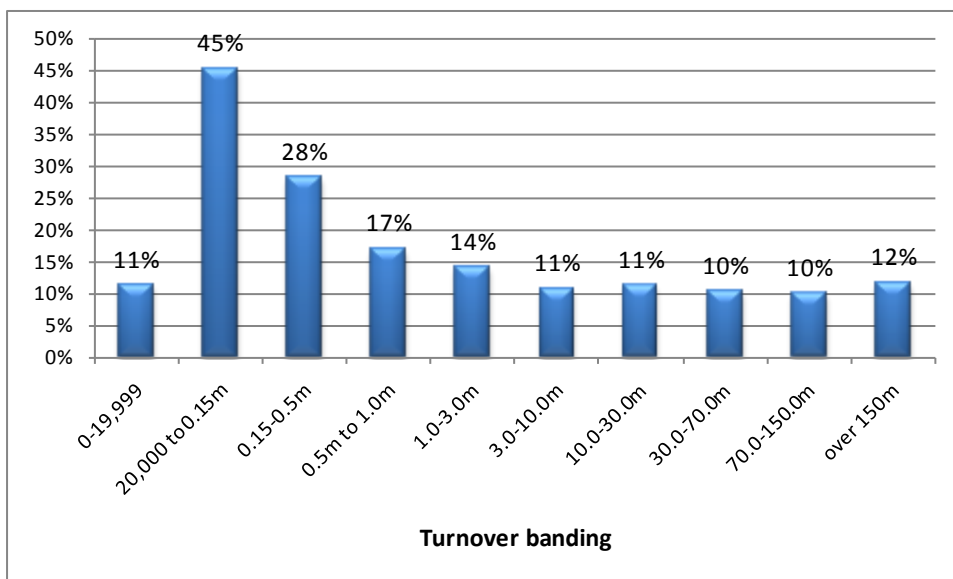
Table 6 - Ethnicity of regulated solicitors

	Number of firms	Number of individuals				Total
		BME	White	Total known	Unknown	
Company Limited by Shares	4,193	4,149 (19%)	17,430 (81%)	21,579	2,564 (11%)	24,143

Limited Liability Partnership	1,553	5,138 (10%)	43,808 (90%)	48,946	11,877 (20%)	60,823
Partnership	1,975	2,536 (16%)	12,858 (84%)	15,394	2,985 (16%)	18,379
Sole Practice ²³	2,624	1,360 (35%)	2,515 (65%)	3,875	467 (11%)	4,342

113 Figure 9 shows this same information by turnover banding. The data shows that the smaller the firm the higher the proportion of solicitors that are from BME origins. Of the individuals working in firms with a turnover between £20k-£150k nearly half of those whose ethnicity has been declared are BME.

Figure 9 - Proportion of BAME solicitors at different firm turnover bandings



The non-LSA regulated legal services market

114 The LSB map of the legal services industry, based on data from 2010, estimated the number of individuals conducting legal activities in the non-LSA regulated legal

²³ A solicitor's sole practice is a firm that has only one principal. There are a variety of business models eg an individual practising with little or no other support or a sole practitioner may supervise a large number of fee-earners (some of whom may be solicitors) and other staff.

services market to be in excess of 130,000. This suggests that there are at least as many non-regulated individuals delivering legal services as there are solicitors.

Annex 3 – Financial protections

PII

- 115 The overall cost of solicitors' PII is high. It is estimated that 4.8 percent of total turnover in the legal services market goes on purchasing PII, although this rises to 7 percent for sole practitioners²⁴. Research consistently tells us that firms view the cost of insurance as the highest cost of regulation²⁵. Our indemnity requirements – the Minimum Terms and Conditions (MTCs) – contain many provisions favouring the insured that are not seen in traditional insurance arrangements²⁶ or, increasingly, in other PII arrangements²⁷. This has an impact on both the competitiveness of existing SRA regulated firms as well as acting as a potential barrier to entry into the market.
- 116 We considered options around a requirement for firms to take all reasonable steps to obtain appropriate PII. Whilst this would reduce the cost relative to those firms operating under MTCs we felt that this requirement in its own right was unnecessary. In this context whilst CMA found that benefit of additional protections (eg PII and the Compensation Fund) can be important, they are often limited to certain situations. CMA also found that many unauthorised providers “already elect to have PII without a regulatory requirement to do so”.
- 117 For the solicitor this could mean that they have relatively lower regulatory costs. For the consumer it could lead to lower fees were these lower regulatory costs to be passed on.

Compensation Fund

- 118 All firms that hold client money and all solicitors with a Practising Certificate contribute to the Compensation Fund. Currently around 70 percent of firms have declared that they hold client money and therefore pay a £548 contribution to the fund. This raises about £4m for the Compensation Fund. A flat fee of £32 is payable by every individual, irrespective of whether they hold client money, who applies for:
- a PC to commence on or after 1 November 2016
 - registration as a REL or RFL to commence on or after 1 November 2016.

²⁴ <http://www.lawsociety.org.uk/support-services/risk-compliance/pii/surveys/>

²⁵ http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/PDF/20160523_Cost_Of_Regulation_Overview_Report_FINAL.pdf

²⁶ For example, an insurer cannot refuse cover even where there has been reckless misrepresentation by a firm.

²⁷ For example, our run-off arrangements look increasingly onerous compared to other professions and within the legal profession. Several other schemes, eg accountants, CLC, financial advisors include aggregation terms which limit the amount firms can claim in total in a single year or over the run-off period.

The exception to this is employees of Crown Prosecution Service for whom there is a statutory exemption from paying this contribution. It would require an additional 220 individuals to pay the £32 contribution to make a £1 difference to the firm fee.

- 119 We believe that our original proposal that consumers should not have access to the SRA Compensation Fund will be likely to provide the greatest increased access and choice, while balancing the need for consumer protections. We think that to set-up a Compensation Fund for solicitors working in firms outside our regulation would involve disproportionate burden. The risk of a claim on the Compensation Fund arising from reserved activities is significantly higher than for areas of legal work that are not reserved.²⁸

²⁸ The potential claims are inherently limited by the pattern of claims on our Compensation Fund, the majority is rooted in conveyancing and probate transactions. Under the categorisation currently used, two conveyancing related reasons²⁸ represented 35 per cent of claims in 2013-14 and 19 per cent in 2014-15. A further category (Stamp Duty Land Tax mitigation schemes) represented an additional 10 per cent of claims in 2013-14 and 15 per cent of claims in 2014-15. A probate related claim category²⁸ provided 12 per cent of claims in 2013-14 and 17 per cent in 2014-15. This does not necessarily cover all claims related to these areas as some are contained within the 'general failure to pay' category