

## **Moving toward a fairer fee policy**

Second consultation

A second discussion paper from the Solicitors Regulation Authority  
on the preferred model for sharing costs of regulation

Legal Services Act: New forms of practice and regulation  
Consultation paper 21

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# 1. Executive summary

The way in which the cost of regulation is currently allocated among the profession through the practising certificate fee leads to anomalies and unfairness in the context of modern legal practice. The introduction of legal disciplinary practices (LDPs) increased the anomalies. However, in providing for firm-based regulation, the Legal Services Act 2007 provides the way in which a fairer system, involving both individual and firm based fees, can be created. There is also a need for greater transparency, which will be important when alternative business structures (ABSs) are permitted from 2011.

It is essential to change the present system for two main reasons:

- The present system is grossly unfair for solicitors employed in local government or commerce and industry, who are charged the same practising certificate fee as solicitors in private practice, despite the fact that most of the SRA effort relates to private practice.
- The present system means that the amount the firm pays depends solely on how many solicitors, registered European lawyers (REs) and registered foreign lawyers (RFLs) a firm has. Firms pay nothing for other fee earners. This fails to reflect the likely call on regulatory resources.

The need for change was explained in *Moving toward a fairer fee policy* (Legal Services Act: consultation paper 19) published in June 2009.<sup>1</sup> In that paper, we set out eight broad principles that should apply to the new fee policy. These received broad support. The fee policy should

- be fair to fee payers,
- be efficient and economical to administer,
- ensure a predictable income to meet the cost of regulation,
- be stable—charges should not vary considerably year on year,
- be as simple as possible—to enable the regulated profession to predict their likely fees,
- be based on data that can be verified,
- ensure that, where possible, the costs of processes that are not of general application should be borne by those making such applications, as far as possible, on a cost recovery basis,
- take some account of ability to pay, in particular in relation to small and new businesses—fees should not be a deterrent to new entrants.

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<sup>1</sup> See [www.sra.org.uk/sra/consultations/moving-toward-fairer-fee-policy-june-2009.page](http://www.sra.org.uk/sra/consultations/moving-toward-fairer-fee-policy-june-2009.page)

Following the first consultation, the SRA has considered the feedback and arrived at a (preliminary) conclusion that Model 2 (turnover) offers the fairest structure, without presenting an excessive level of complexity. A banding system will be applied, which should result in the new fees broadly reflecting the contributions made now by firms of different sizes. In other words, we do not intend to shift the current burden from very large firms to smaller firms or vice versa.

Between 60 per cent and 80 per cent of regulatory activity is focused on firms rather than individuals. We have proposed a reduction (between 50 per cent and 80 per cent) in the budget to be funded by the individual practising certificate fee; the proposed reduction would mean that those who work in the public sector or in industry no longer pay towards regulatory activities that are relevant only to firms. This will result in an increased fee burden for firms. We received mixed views on whether this shift should be phased—for example, by starting in 2010 with a 50 per cent reduction in the budget funded by the individual fee.

As part of the exercise to introduce the new funding structure, we also intend to simplify the types of exceptions and discounts that are allowed now. The reduction in the individual fee should ensure that ability to pay is maintained without requiring discounts, and the current system adds complexity and costs.

Our first consultation also covered reform of the Compensation Fund contributions—proposing a firm contribution as well as an individual contribution. The paper sought views on whether the new approach should be reflective of risk. However, as many respondents considered that the fund is a key client protection mechanism, contributing to public confidence in the profession, we have concluded that the cost burden should be allocated so that everyone contributes at least a small amount to the fund.

This paper also sets out examples of how the fee structure may work for different sizes of firm. However the examples are based on a number of assumptions, and care should be taken to understand those assumptions. The final arrangements may be different.

It is envisaged that there may be a number of changes to the renewal process to enable the new fee structure to be introduced. There are two options:

- a two-stage process, in which all firms submit their turnover information in July, before the renewal process, and that information is then used to calculate the fees;
- a one-stage process, determining fees based on the previous year's turnover, as notified in the previous renewal process.

## 2. Context

### Introduction

1. This paper follows from consultation paper 19, in which the SRA and the Law Society (TLS) consulted on the principles that should apply to a new 2010 fee structure in order to raise the money required each year to fund the cost of regulation by the SRA, Law Society costs that are properly borne by regulatory fees, and other levies.
2. It is important to note that both consultation papers form part of a wider engagement strategy arranged to ensure that the SRA can achieve greater fairness to all in meeting the costs of regulation from 2010.
3. This second consultation period will last for seven weeks. This shorter period is required to ensure that we can reach conclusions and implement the changes in 2010. We believe this can be justified, as this is the second consultation and we are conducting additional stakeholder engagement activity. Informal engagement has been taking place since June 2009, and a number of stakeholder events have been arranged to run alongside the two formal consultations.
4. The current consultation paper does not seek to re-address the matters covered in the previous consultation paper. It is nevertheless necessary to go into more detail on certain issues in the light of feedback received and to identify new options or proposals introduced since the earlier consultation. We will also be using examples in this paper to help show the impacts on the different sectors and types of law firms, and continue to look for feedback and comments on the proposed new fee structure.
5. This consultation paper comprises four parts:
  - information on the background, showing how we developed the proposals in this paper for both the regulatory fees and Compensation Fund contributions;
  - examples showing the impact of the proposals on firms;
  - options as to how the renewal process will be able to handle the new funding approach;
  - consideration of “special cases”, such as how new firms, etc, can be dealt with.

### Background

6. The way in which the cost of regulation is currently allocated among the profession through the practising certificate fee leads to anomalies and unfairness in the context of modern legal practice. The introduction of LDPs increased the anomalies. However, in providing for firm-based regulation, the Legal Services Act 2007 provides the way in which a fairer system, including both individual and firm-based fees, can be created. There is also a need for

greater transparency, which will be important when ABSs are permitted from 2011.

7. These factors led to a review of how the cost of regulation should be allocated. We proposed that, in future, less would be collected from individual solicitors through the practising certificate fee, and more would be collected from firms in private practice (i.e. recognised bodies and recognised sole practitioners). It is recognised that practising certificate fees are often paid by the firm or organisation employing the solicitor.
8. At the moment, approximately 90 per cent of the income required to support the relevant activities of the Law Society, the SRA and the LCS is collected through practising certificate fees paid by or on behalf of individual solicitors (approximately £100 million), as opposed to costs recovered through fees for individual applications.
9. Even without the significant developments in statutory powers, the current fee structure is far from logical in the context of modern legal practice. The amount that an organisation will pay in fees to the SRA is currently based simply on the number of solicitors, RELs and RFLs seeking to obtain or renew their practising certificates. This is a simple approach, but it unfairly disadvantages some individuals and firms, as outlined below.
10. The practising certificate fee does not apply to non-solicitor fee earners, although they earn income for a firm through legal fees, and contribute to the overall regulatory risk posed by the firm. This means that two firms providing similar legal services could pay hugely different amounts in fees—simply because, for example, one firm operates with a minimum number of solicitors supervising a large number of fee-earning staff without practising certificates (e.g. paralegals, trainees), while the other operates with a much higher ratio of qualified solicitor staff, holding practising certificates. It is unfair that firms employing a lower proportion of qualified solicitors pay less towards the cost of regulation.
11. It is estimated that 60–80 per cent of SRA effort is spent on the regulation of firms rather than individuals. A new funding approach is required, with the objective that any new fee policy should be fair and coherent for all fee payers and be able to be administered as efficiently as possible. A series of options for a new fee structure—based on turnover, number of regulated individuals, and fee earners as variables—were discussed.
12. When the first consultation closed, each model was carefully considered, in terms of pros and cons for individuals and firms, and against the following set of principles (which received broad support from respondents), to ensure that the new fee policy
  - is fair to fee payers,
  - is efficient and economic to administer,
  - ensures a predictable income to meet the cost of regulation,
  - is stable—charges should not vary considerably year on year,

- is as simple as possible—to enable the regulated community to predict their likely fees,
  - is based on data that can be verified,
  - ensures that, where possible, the costs of particular processes that are not of general application should be borne by those making such applications on, as far as possible, a cost-recovery basis,
  - takes some account of ability to pay, in particular in relation to small and new businesses—fees should not be deterrent to new entrants.
13. In developing the new policy, we have taken into consideration the regulatory objectives of the Legal Services Act 2007:
- (a) protecting and promoting the public interest;
  - (b) supporting the constitutional principle of the rule of law;
  - (c) improving access to justice;
  - (d) protecting and promoting the interests of consumers;
  - (e) promoting competition in the provision of services within subsection (2);
  - (f) encouraging an independent, strong, diverse and effective legal profession;
  - (g) increasing public understanding of the citizen's legal rights and duties;
  - (h) promoting and maintaining adherence to the professional principles.

How regulatory cost is allocated does not impact on all of these objectives but could impact on (c) improving access to justice, (e) promoting competition, and (f) encouraging an independent, strong, diverse and effective legal profession.

We believe that the principles set out in paragraph 12 above, particularly those relating to ability to pay and fairness, address these objectives.

14. The LSA 2007 also requires all regulators to have regard to the principles of good regulation and to take into account best practice. The principles we have adopted will also help to shape a new fee structure that is more transparent, accountable, proportionate, consistent and targeted, than at present.
15. Although all of these principles and objectives are important, they have had different levels of influence on the decision-making process leading to the proposals in this paper. The principles of proportionality in terms of fairness and ability to pay have been given the highest weighting in order to minimise adverse impacts on the profession once the new system is introduced, and simplicity has been given weight to reduce costs and increase efficiency.
16. The previous consultation paper concentrated not on whether to change the current approach, which is essential, but on what is the best approach to establish a fairer fee charging structure. After having conducted further analysis

and impact modelling, and in light of the views received from the earlier consultation, the SRA found a general consensus that the fairest, simplest and most transparent fee structure for 2010 would be to use banded turnover as the basis to calculate the firm component of the regulatory fees.

17. The following is a high-level summary of the feedback received to that consultation paper, which should give some context to the current consultation paper. For a full analysis of the responses received and opinions expressed please see the feedback report available on the SRA's website.<sup>2</sup>
18. In brief, we found broad agreement on
  - the principles and objectives driving the new fee policy;
  - the turnover model for the firm component of the regulatory fee as the preferred option of most respondents;
  - the Compensation Fund continuing to be a means of providing the public with confidence in the profession, and being based on individual and entity component contributions;
  - the need for further assessment of the impact on the profession in order to reveal any significant positive or negative effects.

The main concerns were

- how the specific principles and objectives of the new funding system will be interpreted in the future;
- the need to provide the profession with more-detailed information on the proposed fee structure (including worked examples);
- the need to further develop the Compensation Fund model to be fairer for the profession.

### **3. Fee structure charging proposals**

19. This section covers the proposed fee structures for both regulatory fees and Compensation Fund contributions. Note that, for the purposes of this document, the regulatory funding requirement includes the costs of the non-regulatory activity delivered by the Law Society and permitted under section 51 of the Legal Services Act. These costs could in principle be funded using a separate approach to allocation. However, the Law Society's provisional view is to adopt the same allocation model as the SRA in the interests of simplicity.

#### **Proposal 1 – Firm fee to be based on banded turnover**

20. In the light of feedback and in reviewing the options in the light of the principles, we propose that firms' regulatory fees should be based on banded turnover.

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<sup>2</sup> See [www.sra.org.uk/sra/consultations/moving-toward-fairer-fee-policy-june-2009.page](http://www.sra.org.uk/sra/consultations/moving-toward-fairer-fee-policy-june-2009.page)

Turnover is a sensible variable as it is a figure that the profession already captures as part of their annual accounts processes, and is often used when renewing their indemnity insurance. For most firms, this should minimise additional cost or effort. It also takes into account how much business a firm does, and allows for a good fit in terms of the ability to pay. This is a particular benefit for firms with a relatively low level of earnings per practising certificate holder.

## Proposal 2 – Cost allocated as 40 per cent to individuals and 60 per cent to firms

21. For each aspect of the funding requirement (i.e. regulation and Compensation Fund), we propose both an individual and a firm component. In the longer term, the exact split is likely to be 60–80 per cent for firms, compared to 40–20 per cent for individuals. The SRA is part way through its move to regulate more through firms, and so our initial proposal would be that the individual component should be about 40 per cent and the firm component (that applies to all recognised bodies and recognised sole practitioners) about 60 per cent. This may well change in the following years to reflect our increasing focus on firms. This, in effect, results in a degree of phasing. It is not, however, possible or sensible to fix on the precise percentage until we have a full set of data that will enable us to assess the actual impact on affordability. Within this paper, a split of 40 per cent for the individual component and 60 per cent for the firm component is used as a likely starting position and in order to provide an indication of the potential impact on different firm sizes.
22. There will continue to be a practising certificate fee for each regulated individual—whether in the public sector, industry or in private practice—albeit one that is substantially lower than today’s. Those working in-house (i.e. public sector, commerce and industry) or in not-for-profit organisations will not pay an additional firm-based regulatory fee.
23. For private practices, there will be a separate firm fee. As a result of the reduction in the practising certificate fee for those who do not pay a firm fee, a larger percentage of the total regulatory funding requirement will need to be met by firms in private practice. Every drop of 10 per cent in the practising certificate fee for individuals will lead to an approximate 2.5 per cent shift in the fee burden onto private practice, and away from individual solicitors practising in commerce and industry, local government, etc. So the proposal that the individual fee will meet 40 per cent of the costs implies that private practise firms will bear an additional 15 per cent of the costs, to offset the 60 per cent reduction for solicitors in the employed sector.

<b>Funding split</b>	<b>Contributions (indicative only)</b>
% Individual	40% Flat fee
% Firm	60% Based on banded turnover
Firm fee burden increase	+15% Average across all firms
Typical decrease for an individual working in-house	-60% (excluding those who currently receive discounts)

24. Views from the profession on the possibility of phasing, as anticipated, showed a majority of respondents from private practice favouring phasing, with the opposite view strongly held by in-house respondents, who feel they have been waiting for these reforms to make their contribution fairer for some time. The SRA's current view is that the split in 2010 should be 40/60, provided that the banding structure can take into account ability to pay. We invite views on this.

### Proposal 3 – Flat practising certificate fee with minimal discounts

25. Having recognised simplicity as an important factor in the new policy, we propose a flat fee across the profession for the individual component. This fee will vary each year, as it will be dependent on the annual funding requirement for the respective year, the percentage to be provided through the individual fee and on the anticipated number of practising certificate holders.
26. Some respondents suggested that there should be a lower fee charged to in-house solicitors as opposed to those in private practice. We have no evidence to suggest that regulatory activities surrounding individuals across different environments are substantially different. In other words, we believe the regulation of an individual working in-house is broadly similar to the regulation of an individual solicitor in a private practice firm, as the firms are bearing the brunt of the risk and cost associated with private practice.

### How the turnover model will work

27. The preferred model of basing firm fees on turnover (gross fees) is simple and cost effective for firms to produce and for us to audit. It enables firms to structure themselves however they wish (i.e. avoids incentives for particular business models) and is the most effective at taking into account the ability to pay.
28. As suggested in the earlier consultation paper, a banded approach to calculating turnover will be used in order to make it fairer on firms of different sizes. Using the same set percentage for firms with the smallest and largest turnovers would not be fair. There has to be some tapering. There is no current intent to change the proportion of fees paid between different firm size bandings (based on number of partners/managers).
29. We propose a banded approach, based on the income tax model. While it is marginally harder to calculate than a stamp duty model, it is much fairer, as it removes bizarre anomalies which would otherwise arise between firms with slightly different turnovers. The income tax model also minimises the incentive for firms to manipulate fees. Both models allow volume discounts which are fairer to higher turnover firms.
30. We are developing a banding scale which includes a range of turnover brackets; the scales will reflect entities that generate very low to very high gross fees. This allows us to ensure that each group (identified broadly by size) is shouldering broadly their current share of the fee burden. When developing the banding for our model, we will try to ensure that the overall fee burden per "partner" banding stays relatively similar to previous years. The "partner" bandings we are using are as follows:

<b>Banding</b>	<b>No. of partners/equivalents</b>
Band A	1 (sole practitioner)
Band B	2–4
Band C	5–10
Band D	11–25
Band E	26–80
Band F	81+

### Advantages of the turnover model

31. The turnover model treats firms equally regardless of whether they use non-regulated or regulated fee earners (both may contribute equally to the overall gross fees).
32. It takes into account how much business a firm does (broadly through its total level of gross fees), allowing for fairness and addressing the ability-to-pay principle. Other approaches that would reflect the ability to pay, such as profit, were discounted on the basis of the complexity and variability of how firms calculate, structure or allocate their costs, which could result in inconsistencies and therefore unfairness.
33. Having recognised that apportioning fees on the basis of actual risk is not viable at this time, a proxy such as turnover provides an indirect universal measure that can be applied to all firms to assess the volume of work and the value generated. In the future, the SRA will seek to adopt a more risk-based approach once it has the requisite data.
34. Turnover is also a sensible variable because the figure is one that the profession already captures, not least when renewing their indemnity insurance or preparing their annual accounts; therefore, little to no additional cost or effort should be required from the profession. Finally, it is worth noting that other regulatory bodies such as the FSA and OFCOM currently use this variable.
35. Turnover (as defined in terms of gross fees) is relatively simple to interpret and is less subjective than other models (e.g. profit). It places more emphasis on the firm's ability to pay than do models based on fee earners. The implication is that a firm's practice structure in terms of headcount does not affect the level of their fees. This means that firms are free to arrange their business structures in whatever way they choose, without being concerned about fee implications.

36. The higher the level of turnover, the more a firm will pay in absolute fees. However, the percentage as a proportion of turnover reduces. This avoids a premium disincentive to grow a practice. We will therefore set the bandings this year to minimise any significant change in the average paid between firms of differing sizes (by partner bandings).

## Risks of the turnover model

37. Firm fee models depend on the quality of data submitted by the profession. The onus is on the firm to submit the correct value. By seeking to match the figure to the information provided to indemnity insurers or in annual accounts, we are increasing our ability to validate the figures which is important in giving confidence to the profession.
38. The value of turnover may be prone to external environmental or economic fluctuations that affect the respective firm's current annual turnover. Therefore, if entity fees are based on previous year's turnover, then the level paid may not be reflective of the current level of income generated or could cause potentially significant changes to the amount paid each year.
39. There are challenges in applying the model to special cases such as new firms, splitting firms and merging firms. These are discussed in a later section.
40. Firms that have a high turnover but low margins could be unfavourably impacted by the turnover model. This has potential implications with regard to access to justice and therefore further impact assessment is being carried out, with particular regard to legal aid firms.
41. The other challenge relates to the need to have a full picture of all firms' turnover before being able to calculate invoices. This has an impact on the renewal process. There are two potential renewal process options which we are considering in order to handle the new model:
- **One-stage invoice process:** This uses the turnover data submitted with the previous year's renewal forms. In other words the turnover figure submitted in October 2009 will be used to calculate the fee to be submitted in October 2010.
  - **Two-stage invoice process:** the most recent turnover data is submitted about three months before the submission of the renewal forms. The total turnover figure allows us to calculate fees under the banding system so that renewal forms can be pre-populated with the correct firm fee. This could lead to additional cost and effort for the SRA, however it should improve transparency and accuracy as it provides a detailed breakdown of more recent turnover across the profession.

42. These options and the renewal process are discussed further in Section 5.

**Reasons behind discarding the other models from the first consultation paper**

<b>Models</b>	<b>Model explained</b>	<b>Reasons for being discarded</b>
Model 1	Entity fees are based on paying a flat fee per full-time equivalent (FTE) fee earner.	<ul style="list-style-type: none"> <li>• Definition of “fee earner” is open to interpretation, and therefore manipulation</li> <li>• Is not linked to tangible value generated by a firm</li> <li>• The simplest option is a flat fee. However, a disproportionate amount of costs are passed onto larger firms.</li> </ul>
Model 3	Firms are banded according to annual turnover generated from fees, then a sliding scale of fees per fee earner applied to bands (decreasing as firm turnover increases)	<ul style="list-style-type: none"> <li>• Too complex to calculate</li> <li>• Similar disadvantages to above due to fee earner aspect</li> </ul>

For more information on the different models proposed in the first consultation, please see consultation paper 19.

**Definition of turnover**

43. The following definition was included in consultation paper 19 and is consistent with the Solicitors’ Indemnity Insurance rules:

The firm’s total gross fee from the last complete accounting period, arising from work undertaken from offices in England and Wales.

- Gross fees: includes “all professional fees of the firm for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the firm (including notarial fees)”\*.
- Specifically excluded: interest, reimbursement of disbursements, VAT, remuneration from a non-private practice source, dividends, rents, and investment profit.

\* Where a solicitor notary operates a notarial practice in conjunction with a solicitor’s practice

44. This is broadly based on what is submitted to a firm’s indemnity insurer for the period, and so limits additional work for the profession in providing this

information. The exception to this may be for firms with international turnover who have global insurance policies. They will need to split this out when submitting their turnover information to the SRA for England and Wales as per the definition above. It should still be consistent with their annual accounts for England and Wales.

45. There were some responses to consultation paper 19 objecting to inclusion of notarial fees in the turnover figures submitted to the SRA. We have considered this and believe that it is appropriate that we retain the current definition of gross fees (i.e. what we are collecting this year). This states that notarial fees should be included if a solicitor notary operates in conjunction with the solicitor's practice. The rationale for this decision is as follows:
- The insurance that the SRA requires firms to have covers such notarial work.
  - As part of firm-based regulation, we do regulate some aspects of notarial practice provided as part of a solicitor's firm— in that solicitor notaries, even when providing notarial services, are subject to our regulatory requirements.
  - The co-branding of solicitor and notary services within firms leads to a positive reflection on the notarial activity.
  - The SRA would become engaged if any regulatory or disciplinary intervention were required.

## Discussion points

### Question 1

Do you broadly agree with our conclusion that banded turnover is the best model for the firm based fee? If not, please give your reasons.

### Question 2

Do you agree that the split between the individual and firm allocation should be 40/60? If not, please give your reasons.

### Question 3

Do you have any further comments on the proposals in the section dealing with the regulatory fee (Section 3: Fee structure charging proposals)?

## Future approach to Compensation Fund contributions

46. The Compensation Fund is currently collected at the same time as the practising certificate renewal exercise and is based on an individual, with different contributions based on a combination of
- how long the individual has been in the profession (i.e. number of practising certificates held),
  - whether client money is held.

47. Compensation Fund contributions are currently used to pay claims, the cost of administrating claims, and to cover the costs of a number of regulatory activities which, inter alia, protect the fund. We believe that the funding of these regulatory activities through the Compensation Fund contribution is not sufficiently transparent, and we propose to move such costs out of the fund. In future, they will be funded through the regulatory fees. Accordingly, the compensation-funding requirement will be much smaller, while the regulatory-funding requirement will increase. The overall total size of the funding requirement between the Regulatory and Compensation Fund would not be affected.
48. The nature of the Compensation Fund is that it protects the public against loss incurred through a “failure to account” by a member of the profession or regulated firm. It benefits all individuals and firms in that it maintains public confidence in the profession. Accordingly, it is appropriate that all solicitors contribute to the fund. Most respondents agreed that the cost of maintaining and operating this fund should fall on the profession as a whole rather than only on the smaller firms who are statistically most likely have claims made against them.
49. The current approach to allocating the cost of the Compensation Fund has some of the same anomalies as the current practising certificate fee model. Moving to a firm-based contribution should solve some of those anomalies. The collection of the Compensation Fund contribution is also one of the most complex aspects of the current renewal process. The complexity leads to a significant number of queries and mistakes in renewal forms and, accordingly, increases the costs borne by the profession as a whole.
50. Feedback from our first consultation indicates support for the general principles that all individual members of the profession should contribute and that the contribution should be affordable. There was also broad support for collecting contributions from firms as well as individuals.
51. We must also be aware that
- the cost of claims may be higher in the next few years (typically, there are more interventions and grants from the Compensation Fund post recession);
  - decisions still need to be made as to whether a single Compensation Fund will include ABS firms regulated by the SRA or whether they will be covered by a separate fund.
52. Three options for the allocation of the cost of the Compensation Fund remain under consideration.

### **Option 1 – Individual: Flat | Entity: Flat**

- The simplest and, arguably, the fairest option: it is only feasible if the indirect costs of the Compensation Fund are separated, otherwise the ability to pay for smaller firms will likely be compromised. This is the preferred approach, if it can be sufficiently affordable for smaller firms.

- The individual component simply reflects a relatively small contribution from all solicitors to the fund. This reflects the fact that the fund maintains public confidence in the profession as a whole.
- From the firm perspective, firms that do not hold client money would not pay a contribution. All firms that hold client money would pay the same contribution, irrespective of their size. This can be justified on the grounds that smaller firms, which evidentially are more likely to be subject to interventions, would not be subsidised by larger firms.
- However, this option would be difficult if the level of funding for the Compensation Fund is such that it makes it prohibitively expensive for small firms. The following table includes scenarios for the costs to firms and individuals, depending on the total value of the direct costs and cost to maintain the fund. For simplicity, assume that there are 10,000 firms holding client money, and 100,000 solicitors. Also assume that 50 per cent of the funding will be from individuals, and 50 per cent will be from firms. This split seems to be well balanced in terms of fairness versus the ability to pay, particularly for sole practitioners.
- If the simplicity of this model is attractive, it would be possible to take into account ability to pay by applying a lower fixed fee to smaller firms.

Compensation-funding requirement	Cost per individual	Cost per firm that holds client money
£2m.	£10	£100
£6m.	£30	£300
£12m.	£60	£600

### Option 2 – Individual: Flat | Entity: Turnover-based

- This model is also relatively simple, as it follows the same approach as that used for the regulatory fees model. There are a couple of different options for how the firm contribution could operate in practice.
- Option 2a: Keep Compensation Fund separate and have its own bandings and percentages for firm-based component, and calculate separately.
- Option 2b: Simply use one set of bandings for regulatory fees and Compensation Fund contributions.
- The problem with both of these approaches is possible perceived unfairness to firms with a higher number of partners given the fact that they rarely give rise to a claim. However, it prioritises the ability to pay of sole practitioners and small firms.

### **Option 3 – Individual: Flat | Entity: based on number of partners (or equivalent)**

- This most reflects the current situation, but reflects the reality that the current additional contribution for those handling client money is, in effect, an entity fee based on the number of partners etc. rather than turnover.
- In moving to an individual flat fee, much of the complexity and additional cost in the current model can be removed. Similar to Option 2, the result will be perceived unfairness to firms with a higher number of partners given the typical infrequency of corresponding interventions. However, it again prioritises the ability to pay of sole practitioners and small firms.

## Discussion points

### **Question 4**

Do you agree with the SRA proposal that the Compensation Fund should only be used and funded to pay

- the direct costs of claims,
- the costs of handling those claims, *and*
- any necessary reserves?

### **Question 5**

Which option for funding the Compensation Fund do you prefer, and why? If you think there is another option, please give details.

- Option 1: Individual: Flat | Entity: Flat Fee
- Option 2: Individual: Flat | Entity: Turnover-based (options 2a and 2b)
- Option 3: Individual: Flat | Entity: based on number of partners/members/directors

## **4. Impact on the profession**

53. In order to understand the impact of the change to fee structures, we have built a model to reflect the different types of firms. This helps to show the impact of a change at both a macro level across groups of firms of different sizes as well as at a specific 'hypothetical' firm level. To really understand the impact at a micro/firm level, we have provided some worked examples to show how it may affect any specific firm. To this end, we have developed a model which uses anonymous data from two of the principal insurance providers to the profession. We have based our analysis on this year's funding requirement, in order to compare like with like as much as is practicable. All firms are different, and the examples do show that the impact of these charges is equally variable. The examples also show the anomalies created by the current system.

## Assumptions and caveats

54. Our data set includes approximately 39 per cent of all law firms and 45 per cent of all practising certificate holders (excluding those in public sector / industry). The extent to which this sample information is representative of the rest of the profession is unknown, but it is the best we have until this current renewal process is completed, when we will have a full set of data.
55. We have used this year's budget and fees in order to conduct a like-for-like comparison of the impact of the new approach. For the regulatory funding requirement, this is £1,180 per practising certificate holder. We have assumed that approximately two-thirds of the Compensation Fund requirement relates to indirect costs; the remainder are direct costs. We have made some provision for the discounted fees in our comparison between the models. Actual fees will depend on the annual funding requirement for both regulation and the Compensation Fund.
56. For the purposes of the worked examples,
- we have based our regulatory firm-fee calculations on the income-tax-like banded turnover;
  - we are assuming a flat contribution per firm holding client money and flat fee contribution per individual for the Compensation Fund;
  - we are also assuming that the indirect costs of the Compensation Fund are passed into the regulatory funding requirement (this equates to approximately two-thirds of the value of the Compensation Fund funding requirement).
57. We have used this sample data to set our indicative turnover bandings and percentages in order to ensure that we achieve the total funding requirement and that the distribution of costs stays approximately the same between firms of different sizes (based on number of partners). Again, please note that the details are likely to change when the full set of turnover information is available.
58. For the purposes of the model, we have assumed that, for the regulatory fee, the individual component would be 40 per cent of what it was this year. For the Compensation Fund, we have assumed a split between individuals' and firms' contribution of 50 per cent each. This may change, depending on responses to this consultation and the actual data we receive on turnover.

### **Indicative costs and bandings**

- Individual fee (practising certificate fee) = £472 (40% of AFR)
- Therefore, individual fee and Compensation Fund indirect costs = £526 (resulting in reduced amount to be collected through Compensation Fund contribution)

### **Firm fee is based on the following bandings and percentages:**

Indicative bandings are shown in the table below.

## How to read the table

- **Step 1:** Use the turnover figure of a firm to find out which band it falls within.
- **Step 2:** Take the corresponding 'Minimum in band' figure and add the incremental turnover above the minimum band threshold multiplied by the corresponding banding percentage

## Example

Firm fee for firm with turnover of 100k fee will be calculated as follows:

- Firm falls into *Turnover banding* of "£20,000 and over"; therefore, they will pay the £220 figure from the *Minimum in band* column.
- They will additionally pay 0.67% (corresponding banding percentage) of their turnover above £20,000; this works out as follows:

$$= (£100,000 - £20,000) \times 0.67\%$$

$$= £80,000 \times 0.67\%$$

$$= £536$$

- Therefore, the total they will pay for the firm fee is £220 + £536 = £756

Turnover banding	Minimum in band	Pay % of turnover
£0 and under £20,000		1.10%
<b>£20,000 and over</b>	<b>£220</b>	<b>0.67%</b>
£150,000 and over	£1,091	0.63%
£500,000 and over	£3,296	0.59%
£1 million and over	£6,246	0.54%
£5 million and over	£27,846	0.49%
£10 million and over	£52,346	0.39%
£100 million and over	£403,346	0.13%

**Corresponding Compensation Fund contribution (including direct costs, cost of claims handling and reserves) for the example where a firm holds client money:**

Individual fee	£25
Firm fee	£322

## Impact across the profession

59. The table below shows that, for all except the largest firms, there would be approximately the same level of contribution by firms in particular partner bandings using the new model as there is using the current model.

	Decrease	< 15% Increase (including decrease)	Increase >15%	Current Model %	New Model %
Sole Practitioners	46%	63%	37%	6.7%	7.0%
Partner Band B (2 -4)	41%	62%	38%	20.1%	20.2%
Partner Band C (5-10)	37%	62%	38%	19.1%	19.1%
Partner Band D (11-25)	23%	60%	40%	26.2%	26.3%
Partner Band E (26-80)	25%	61%	39%	17.7%	18.4%
Partner Band F (81+)	50%	83%	17%	10.2%	8.9%

60. However, the table above is based on our sample data, which is not fully representative of the whole profession (e.g. we know that it contains fewer of the largest firms, and that is why they appear to be different from the rest of the partner bandings). What it can convey is the logic of how the bandings are set in order not to shift the fee burden between firms of different sizes, and that there will be winners and losers within every band.
61. As this model is currently configured, within every banding there is a significant proportion of firms that will actually experience a decrease in their fees; and at least 60 per cent of firms in every banding will experience either a reduction in their fees or an increase that is lower than the 15 per cent fee burden shift as a result of the reduction in contributions by individuals working in-house. (See Section 3 for further explanation.)
62. The reason there is variability within each banding (in terms of the proportion receiving either an increase or a decrease in fees) is the variability of turnover between firms in the different partner-banding categories. For example, for sole practitioners within our sample data, the range in turnover is between £10,000 and £2.3 million per year. Historically, they have paid exactly the same as each other for regulation (with the exception of those earning less than £20,000).

## Impact on hypothetical firms: Worked examples

Partners: 1 PC Holders: 1 Fee Earners: 1 Revenue (k): £19.0 Client Money: No Old Fee: £727 New Fee: £735	Partners: 1 PC Holders: 1 Fee Earners: 1 Revenue (k): £100.0 Client Money: Yes Old Fee: £1,633 New Fee: £1,629	Partners: 1 PC Holders: 1 Fee Earners: 1 Revenue (k): £130.0 Client Money: Yes Old Fee: £1,633 New Fee: £1,830	Partners: 1 PC Holders: 1 Fee Earners: 1 Revenue (k): £250.0 Client Money: Yes Old Fee: £1,633 New Fee: £2,594	Partners: 1 PC Holders: 1 Fee Earners: 1 Revenue (k): £1,715.0 Client Money: Yes Old Fee: £1,633 New Fee: £10,980
Partners: 1 PC Holders: 1 Fee Earners: 3 Revenue (k): £129.0 Client Money: Yes Old Fee: £1,633 New Fee: £1,824	Partners: 1 PC Holders: 3 Fee Earners: 3 Revenue (k): £170.0 Client Money: Yes Old Fee: £4,192 New Fee: £3,192	Partners: 3 PC Holders: 3 Fee Earners: 3 Revenue (k): £222.0 Client Money: Yes Old Fee: £4,825 New Fee: £3,520	Partners: 3 PC Holders: 3 Fee Earners: 3 Revenue (k): £888.0 Client Money: Yes Old Fee: £4,825 New Fee: £7,561	Partners: 3 PC Holders: 18 Fee Earners: 142 Revenue (k): £27,900.0 Client Money: Yes Old Fee: £23,455 New Fee: £132,396
Partners: 6 PC Holders: 6 Fee Earners: 6 Revenue (k): £1,350.0 Client Money: Yes Old Fee: £9,500 New Fee: £11,764	Partners: 6 PC Holders: 14 Fee Earners: 14 Revenue (k): £1,470.0 Client Money: Yes Old Fee: £19,436 New Fee: £16,820	Partners: 6 PC Holders: 17 Fee Earners: 17 Revenue (k): £3,550.0 Client Money: Yes Old Fee: £23,162 New Fee: £29,705	Partners: 12 PC Holders: 25 Fee Earners: 25 Revenue (k): £2,580.0 Client Money: Yes Old Fee: £34,996 New Fee: £28,875	Partners: 11 PC Holders: 32 Fee Earners: 32 Revenue (k): £12,400.0 Client Money: Yes Old Fee: £43,373 New Fee: £79,660
Partners: 20 PC Holders: 42 Fee Earners: 42 Revenue (k): £5,700.0 Client Money: Yes Old Fee: £58,640 New Fee: £54,740	Partners: 20 PC Holders: 44 Fee Earners: 44 Revenue (k): £10,300.0 Client Money: Yes Old Fee: £61,124 New Fee: £78,081	Partners: 57 PC Holders: 175 Fee Earners: 175 Revenue (k): £26,900.0 Client Money: Yes Old Fee: £235,529 New Fee: £215,000	Partners: 90 PC Holders: 341 Fee Earners: 341 Revenue (k): £22,300.0 Client Money: Yes Old Fee: £452,139 New Fee: £288,522	Partners: 136 PC Holders: 599 Fee Earners: 599 Revenue (k): £114,000.0 Client Money: Yes Old Fee: £787,125 New Fee: £751,905

## Winners and losers

### 63. General outcomes

- All solicitors working in-house will benefit from a reduced practising certificate fee.
- Firms that have a proportionally high level of turnover per practising certificate holder will pay more in future.
- Firms that have a comparatively low level of turnover per practising certificate holder will pay proportionally less.
- Firms that were previously just above the low income category will pay significantly less proportionally than before.
- Larger firms that hold client money will benefit from the proposed approach to the funding of the Compensation Fund.

### 64. Based on this configuration of assumptions:

- £100,000 per practising certificate holder is the point at which a sole practitioner's fee does not change. £130,000 per practising certificate holder is the point at which the fee rises less than the overall 15 per cent fee burden shift to private practice. For larger firms, these levels would increase, as they benefit from the revised approach to the Compensation Fund.
- Ten per cent of firms have an average earning greater than £275,000 per practising certificate holder.

- One per cent of firms have an average earning greater than £620,000 per practising certificate holder.
- A significant proportion of the additional funding requirement caused by in-house solicitors paying less will be paid by those with significantly-above-average revenue per practising certificate holder.

## Discussion points

### Question 6

The impact analysis is based on comparing the proposed model with this year's funding structure and funding requirement, and is based on sample data. Therefore, the information we have provided is only indicative of the way in which the model will work. We have not presented the actual figures—as the funding requirement for next year is still to be determined. Please bear this mind as you answer the following questions.

#### Question 6.1

Do you have any comments with regard to the suggested turnover bandings and rates?

#### Question 6.2

What do you think about the approach to keeping the proportion paid by firms of different pattern bandings as close as possible to the current model?

### Question 7

If the 40/60 split between the individual and firm-based fee is adopted, there will be a fee burden shift of 15 per cent from solicitors in the employed sector onto private practice. However, what will have more impact on individual firms is the change to basing firm fees on turnover. For example those with a significantly higher-than-average turnover per practising certificate holder will pay significantly more than before; more than 60 per cent of firms will experience either a decrease or an increase of less than 15 per cent.

#### Question 7.1

Do our worked examples reinforce and reflect the above?

#### Question 7.2

Does the information we have provided (i.e. worked examples) help you in assessing how your firm might be affected? Is there any other information you would find helpful?

## 5. Renewal process

65. The new fee structure will affect the renewal process. The key change is that we will need to use turnover information to calculate the firm fees. Without a full set of turnover information across the profession, the ability to set fair fee structure bandings is limited. We have captured the turnover figure for all firms as part of this year's renewal process, which should give a good indication of appropriate bandings for next year. The challenge lies with the currency of

information. There are two options for how to approach the fee calculation for next year, each of which has advantages and disadvantages.

## One-stage process

66. We use the turnover figures submitted during this year's renewal cycle, calculate bandings and, then, bill each firm in the 2010 renewal process based on that figure.

**Advantages:** Early clarity for firms of their exact firm fees (e.g. March 2010); minimises changes to processes and is therefore low risk; minimises costs for SRA and therefore for the profession as a whole.

**Disadvantages:** A firm's turnover may change from one year to another. A change across the profession as a result of a recession would, in itself, not necessarily have any significant impact, as it would affect all firms (albeit some sectors may be affected more than others). However, if a firm's turnover is below the average shift across the profession for the year, they would be negatively impacted, and vice versa.

## Two-stage process

67. The alternative is to run a separate process approximately 2–3 months before the renewal cycle, and capture a more recent turnover figure from every firm. We then calculate bandings, and then bill each firm in the 2010 renewal process based on that figure, which could not be changed.

68. In this case, the need to capture the full set of turnover information in a timely way will be absolutely critical to being able to generate the bandings; therefore, an incentive will be required to ensure compliance. We would need to make an additional charge to firms that submit their turnover information late in order to encourage compliance. These administrative penalties will need to be high enough to ensure that the rest of the profession are not negatively impacted by the lack of compliance by a few. Should we adopt a two-stage process, the options that we have considered for penalties include the following:

- Option 1: fixed fee of £250 per partner/director
- Option 2: fixed fee of £250 per practising certificate holder within a firm
- Option 3: an additional 10 per cent levy on the fees due

**Advantages:** Fee is based on most recent accounting period rather than one that is potentially more than a year out of date; therefore, it better handles relative changes in turnover between different types of firms, and is fairer overall.

**Disadvantages:** Additional process (and corresponding cost) required in order to capture turnover information in advance of renewal process; additional effort for the profession in submitting their information. Although an indicative calculator can be provided earlier in the year by the SRA, the actual amount that firms will need to pay will not be known until the beginning of the renewal process, as the bandings can only be completed once all of the firms have

submitted their turnover information. The need to be able to charge additional sums to firms that provide the information late will also require additional effort on behalf of the SRA and would cause significant costs for firms that do not comply.

## Verification

69. The SRA will reserve the right to audit in order to check that the information provided during the renewal process is accurate and that the fees charged are therefore accurate. This would also apply to information provided as part of a two-stage process that feeds into the renewal process. We will need to consider what sanctions should apply if firms deliberately underreport turnover.

## Technology and renewal process changes

70. We are unsure at this time what we will be able to achieve with regard to online renewals process and electronic payments, for the 2010 renewal cycle. We are aiming to deliver these efficiencies as soon as it is practicable and cost effective to do so without incurring significant additional costs which would ultimately be borne by the profession.
71. If we determine that the two-stage process is the preferred option, then we are aiming to have some form of electronic process to expedite the process of capturing firm's turnover information (probably in June/July). This could be an online form or simply an email from a recognised party. With a two-stage process, as the actual firm fee will not be known until the renewal process starts in September, we are also aiming to have a calculator made available online from the end of March which would enable firms to estimate their firm's contribution at the next renewal cycle; this would be based on the proposed 2011 budget and bandings set against the previous year's turnover.

## Special circumstances – hardship

72. If a one-stage process is adopted; fees will be calculated based on a firm's previous year's turnover. This will not generally be varied to take account of later turnover information. However in special cases where significant hardship can be shown affecting a firm's ability to pay then the SRA could, at their complete discretion, revise the fees accordingly. This may only be available for smaller firms. The criteria could also take into account access to justice issues such as whether and to what extent the firm is involved in legal aid work.

## Discussion points

### **Question 8**

Please comment on the renewal process you prefer—one-stage or two-stage—and why.

### **Question 8.1**

What might be the impact (both positive and negative) on your firm if it is one-stage process?

### Question 8.2

What might be the impact (both positive and negative) on your firm if it is two-stage process?

### Question 8.3

Can you think of how else a one-stage process or a two-stage process might affect the profession?

### Question 9

Do you think that we should charge additional fees to encourage firms to provide the required information on time? What model do you think is more appropriate for the calculation of such additional fees?

## 6. Special cases

73. This section deals with the special cases which may arise and do not fit within the normal fee structure. We are aware that the proposals made in this section still require further work, particularly on developing clearer definitions—for example, on what a new firm is, and, also, when a merger or a split has arisen. It is, therefore, important that we receive your feedback. We will ensure that, once the new fee structure is up and running, the proposals for special cases are clear and well defined.

### Registered European lawyers (REs) and Registered Foreign Lawyers (RFLs)

74. **REs** – Under the reformed structure, we will maintain the existing processes for REs and will continue to treat them as in the same manner as solicitors, both for the renewal of registration and for individual contributions to the Compensation Fund.

**RFLs** – RFLs will be treated the same as solicitors and REs in respect to the individual component of their regulatory fee. As is the case today, RFLs who are entirely based outside of England and Wales will pay a flat fee per year.

### UK firms with branch offices outside of England and Wales

75. Subject to the preferred model, we propose that only gross fees from offices in England and Wales will be needed for the regulatory-fee calculation. We have concluded that the option of including foreign turnover would be unfair and complex. There are some regulatory activities and costs attached to overseeing branch offices outside England and Wales; however, in the vast majority of cases, the cost is small.
76. In line with the principle that the cost of processes that are specific to individuals or parties are not borne by others, we believe that a small flat fee in the region of £120 per branch office is justified for 2010. We are not sure whether this does fully reflect the resources required to regulate overseas branch offices, but we will review the situation for further years.

## Foreign firms with branches in England and Wales

77. In our experience, foreign firms with branches inside England and Wales mainly consist of Scottish firms and firms from other European States (e.g. Germany). We would propose that, in line with retaining simplicity and promoting fairness, we adopt an approach of charging the same small fixed fee as for overseas branch offices of UK firms to cover the cost of administering the records. However, we do not currently make any charge for this and, so, would be open to feedback on alternative approaches.

## New firms / changing structure

### **New firms / sole practitioners in their first practising year**

78. We have to consider how to charge brand new firms. Any charge should not be a barrier to entry, and should be simple. One proposal is to charge a small fixed fee—in effect, to cover the cost of handling the application, such as £180 for a firm and £90 for a sole practitioner, as is currently the case. The same fee would be payable at any time of the year. New firms would pay a turnover-based fee at first renewal. One disadvantage of such an approach is that it might encourage firms to set up just after the 1 November to get the maximum benefit. Also, other firms may feel that the new firms are not contributing enough. Having said that, we do not now and do not intend in future to repay fees if a firm closes part way through a year. In effect, the renewal fee at the beginning of one year pays for the previous year's regulation.
79. The alternative is to charge based on estimated turnover, but that will be more complicated and costly, and there is some concern that the costs involved might outweigh any benefit.
80. We are also considering not requiring a new firm to pay the firm part of the Compensation Fund contribution until the first renewal—again, to minimise cost acting as a barrier to entry and to encourage new firms to use resources to set up compliant systems.

### **New firms / sole practitioners at first renewal**

81. In respect of the firm fee, we propose that new firms with turnover data of less than nine months will provide an estimated turnover value similar to that which is provided to indemnity insurers (but only with England and Wales turnover). If turnover data is available for a part year (i.e. more than nine months), this should be scaled up pro rata. This process ensures fairness, as the amount of expected regulation is in line with their estimated turnover value. It also allows alignment between data submitted to indemnity insurers and the SRA (where there is no foreign income); therefore, it encourages transparency.

## Merging firms

82. We would like your feedback on our proposal for setting fees for firms that have merged. A merger will occur in two main circumstances: one situation will be where the merging firms create a new firm (a new recognised body), and cease to practice through the former recognised bodies. The second, and probably more normal, situation is where one of the recognised bodies continues to practice as the merged firm, with the other firm ceasing to practice. We propose

that, when a firm has been created through a merger, fees at the next renewal could be based on any of the following options:

- Option 1: the combined annual turnover for the last accounting period for the different firms prior to the merger
- Option 2: the actual turnover generated since the merger, which will be scaled up to reflect the yearly gross fees of the merged firm
- Option 3: the turnover for the last accounting period for the dominant firm of the newly merged entity
- Option 4: newly merged firms will pay a flat fee for the first year of operation

We have considered and discarded option 3 and 4, on the basis that they are neither fair nor reflective of cost of regulatory activity. We would appreciate your views on the remaining options and are open to any alternatives you suggest.

### **Firm splits**

83. We would like your feedback on our proposal for collecting fees for firms that have split part way through the practising year. We define a firm split as one recognised legal body (an entity) that has divided to operate independently as two or more separate recognised bodies. The options are as follows:

- Option 1: Charge the splitting entities their corresponding shares based on the combined turnover for their last accounting period. The onus is on the firms to define the split percentage.
- Option 2: Charge the splitting entities on their actual turnover generated since the split, which will be scaled up to reflect the yearly gross fees of the new, independent firm.
- Option 3: Charge only the firm that retains the majority of the business post split for the entire turnover. The firm would retain the responsibility for accounting for this as part of their splitting process.
- Option 4: Charge a flat “application” fee for the new entities, therefore treating them as new firms.
- Option 5: Charge the splitting entities each based on the combined turnover for their last accounting period.

Again, we have considered and discarded options 4 and 5, as they would not be in line with the principle underlying our new policy. We are interested in your views on the remaining options and are open to any alternatives you suggest.

### **Existing firms changing status**

84. Firms may choose to change their incorporation structure by for example moving from Partnerships to LLPs, or LLPs to companies. For the purposes of

fee calculation they will be treated as the same entity with the same turnover. A flat rate fee for their application will still apply.

## Discounts

85. Currently, a number of discounts apply both to the individual practising certificate fee and to the Compensation Fund contribution. Given the significant reduction in individual fees, we propose to reduce the number of available discounts significantly. The reduction in complexity will reduce any effort and costs associated with administering the discounts. The only discount we intend to maintain is for maternity leave, in order to ensure that there is no direct or indirect discrimination resulting from the new fee structure. Previous discounts for low earners / long-term sick are no longer relevant, as the reduced PC fee is lower than what they would have paid with the current model after their discounts. The turnover model, in particular, supports fairness for low income solicitors, in that those who were just above the threshold of £20,000 would previously have incurred much higher fees, whereas there will be a more gradual increase with the turnover model.
86. We will also be considering the approach relating to Crown Prosecution Service solicitors who currently receive a discount on their practising certificate fees.

## Appeals process

87. As of today, we do not envisage that there will need to be an appeals process. The same set of fee rules should apply to all firms. If there is a significant increase in fees for any particular firm, we will aim to provide advance notice that this is likely to be the case. However, we do not think that it is appropriate to have specific transitional arrangements for given firms.

## Pro-rating

88. We intend to continue to charge those solicitors returning to practice a pro-rated individual fee based on the quarter in which they return. This process remains the same as today's, and will ensure that the profession are not overcharged. We also propose not to charge a Compensation Fund contribution for members who fall into this category. This would help new and returning individuals with their first year's costs, and lessen their overall financial burden.

## Application fees

89. Article 13.2 of the European Framework Services Directive (2006/123/EC) requires a regulator's application fees to be reasonable, proportionate and not greater than the cost of the application procedure. We are satisfied that our application fees are reasonable and proportionate; in the interests of transparency, we propose to publish the proportion of our fees that relate to the cost of dealing with the application and the proportion that relate to the cost of professional regulation.

## Discussion points

### Question 10

Do you agree with the rationale of charging UK firms with branches outside of England and Wales a small flat fee in relation to each branch to cover the cost of regulation, or do you think this cost should be borne by the whole profession through regulatory fees?

Please comment on any exceptions and/or anomalies that the described options might bring.

### Question 11

Please give us your views on whether you support our proposal to charge new firms / sole practitioners in their first practising year:

- A flat not-pro-rated application fee of £180 for new firms, and £90 for sole practitioners
- No further contribution to the Compensation Fund

### Question 12

Please give us your views on whether you support our approach to new firms / sole practitioners at first renewal:

- New firms with turnover data for less than three months will provide an estimated turnover value similar to that which is provided to indemnity insurers (but only with England and Wales turnover).
- If turnover data is available for a part year (i.e. more than three months), this should be scaled up pro rata.

### Question 13

Please give us your views on how the SRA should approach setting fees for firms that have merged, and comment further on the following options proposed by us on what these fees should be based on.

- Option 1: the combined annual turnover for the last accounting period for the different firms prior to the merger
- Option 2: the actual turnover generated since the merger which will be scaled up to reflect the yearly gross fees of the merged firm

### Question 14

Please give us your views on how the SRA should approach collecting fees from firms that have split part way through the practising year, and comment further on the following options we have proposed.

- Option 1: Charge the splitting entities their corresponding stakes based on the combined turnover for their last accounting period. The onus is on the profession to establish the split percentage.

- Option 2: Charge the splitting entities on their actual turnover generated since the split, which will be scaled up to reflect the yearly gross fees of the new independent firm.
- Option 3: charge only the firm that retains the majority of the business post split for the entire turnover.

### **Question 15**

In line with the principles of fairness, do you agree that the SRA should adopt the same approach of charging a small flat fee for each overseas office for foreign firms with branches in England and Wales? Are there any other options that you might regard as reasonable?

### **Question 16**

Are there any other comments you would like to make?

## **7. Equality and diversity**

90. The SRA is committed to promoting equality and diversity within the solicitors' profession, and to providing leadership in ensuring that this is a central component to all regulatory policy and activity.
91. One of our strategic objectives is to ensure that those joining the profession come from a wide range of backgrounds and experience. We also have a legal obligation to show that our policies and regulations are fair and that they are not directly or unjustifiably indirectly discriminatory.
92. If individuals from particular backgrounds are disadvantaged by a policy, we need to be able to demonstrate that the policy is a proportionate means to achieve a legitimate aim.
93. The SRA will need to demonstrate fairness and non-discrimination by undertaking equality impact assessments (EIA) of proposed changes. EIAs allow us to identify and consider the impact of our policies on particular groups, and manage risk more effectively.
94. An initial equality impact assessment of the proposed changes on the new fee structure has been conducted in order to gain an understanding of how these changes may affect particular groups. This has been, and will continue to be, achieved through engagement activities with the stakeholders to ensure that
  - implications of the proposed changes on different groups are considered,
  - any adverse impact is minimised, and not discriminatory for particular groups,
  - ways in which the proposed changes can promote equality are further examined.

## 8. How to respond

To find out how to respond to this consultation, please visit our website.

- Go to [www.sra.org.uk/consultations](http://www.sra.org.uk/consultations).
- Select **Moving toward a fairer fee policy: Second consultation**
- Click **How to respond**.

### Submission deadline

The deadline for responses is 22 January 2010.