

Consultation - Annexes 4 - 9

Looking to the future - flexibility and public protection

June 2016

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Annex 4

Rationale document for proposed Codes of Conduct

Drafting approach - common themes

Streamlining

- We have *removed prescriptive drafting* to produce more high level and purposive standards to be met by those to whom the Codes apply. This has led to a more streamlined set of provisions and examples are set out below. Alongside these high level standards, we will provide a range of case studies which will help individuals and firms understand more easily how the standards will apply to them in different scenarios. We plan to develop the areas of confidentiality and conflict of interests based upon this approach.
- We have also *removed duplication* by deleting provisions in the Code which already exist elsewhere in the Handbook; are already requirements imposed by legislation; or which are no longer required under proposed reforms.
- We have *removed duplication* where an Outcome is already covered by a Principle, either by removing the existing Outcomes or revising the Principles.
- Where there is significant overlap between the two Codes, we have reflected that in the proposed drafting - by *cross-referencing requirements* contained in the Code for Individuals in the Code for Firms - rather than duplicating sections across both Codes.
- By adopting a structure *delineating individual and firm regulation* with a separate set of provisions targeting managers in unauthorised firms, we have also removed most of the current Chapter 7 (Management of your business) provisions. We have used some of that content to create revised provisions set out in the Code for Firms, albeit in a more streamlined format.
- Reporting obligations are now significantly streamlined, as we have moved these from a range of regulatory arrangements (e.g. SRA Accounts Rules 2011, SRA Practice Framework Rules 2011 and SRA Authorisation Rules 2011) into one place: the Code for Firms. However, we have also included some duplication of responsibilities across the two Codes (e.g. reporting and supervision obligations are imposed on both solicitors and firms or their COLPs). This is because we consider that it is a core professional obligation, where a solicitor needs to take individual responsibility for ensuring something happens just as a firm or its COLP needs to. This is quite different from the unnecessary duplicating of processes across both Codes.
- We will *incorporate relevant content into guidance and case studies*. This is content currently covered by Indicative Behaviours and by

overly prescriptive Outcomes. As a result, there will no longer be 'Indicative Behaviours' but, where we consider it necessary, some of their content will form the basis of standards in their own right - examples are provided below.

Identifying gaps

- Where we have identified regulatory gaps, sometimes owing to recent relevant legislative developments, we have sought to draft new provisions.

Streamlining (removing prescriptive drafting)

Example 1: co-operation and accountability

Another chapter in the current Code of Conduct that we have substantially revised is Chapter 10 (You and your regulator) which covers co-operation with regulators and ombudsmen. Including introductory text, Outcomes 10.1 to 10.13 and Indicative Behaviours 10.1 to 10.14, the current chapter is almost three pages long.

In the *SRA Code of Conduct for solicitors, RELs and RFLs [2017]*, we have replaced Outcomes (10.1-10.13) plus information from the accompanying 14 Indicative Behaviours with a streamlined set of eight new provisions, which are included in the "**Cooperation and accountability**" section:

- 7.3** You cooperate with the **SRA**, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 7.4** You respond promptly to the **SRA** and:
- (a) provide full and accurate explanations, information and documents in response to any request or requirement;
 - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 7.5** You do not attempt to prevent anyone from providing information to the **SRA**.
- 7.6** You notify the **SRA** promptly if you become aware:
- (a) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your practice; and
 - (b) that information provided to the **SRA**, by you or on your behalf, about you or your practice is or may be false, misleading, incomplete or inaccurate.
- 7.7** You ensure that a prompt report is made to the **SRA** or another

approved regulator, as appropriate, of any serious breach of their *regulatory arrangements* by any *person* regulated by them (including you) of which you are aware. If requested to do so by the *SRA* you investigate whether there have been any serious breaches that should be reported to the *SRA*.

- 7.8** You act promptly to take any remedial action requested by the *SRA*.
- 7.9** You inform *clients* of any act or omission which could give rise to a claim by them against you. If requested to do so by the *SRA* you investigate whether anyone may have a claim against you.
- 7.10** Any obligation under this section to notify, or provide information to, the *SRA* will be satisfied if you provide information to your firm's *COLP* or *COFA*, as and where appropriate, on the understanding that they will do so.

In the *SRA Code of Conduct for Firms [2017]*, we have included nine redrafted provisions in the "**Cooperation and information requirements**" section to replace not only provisions from Chapter 10 of the current *SRA Code of Conduct 2011* but also to cover information requirements set out across various sets of rules and regulations in the *SRA Handbook*. For example, Rule 8.7 in the *SRA Authorisation Rules 2011*; and Rule 18 of the *SRA Practice Framework Rules 2011*:

8.7 Information requirements

- (a) An authorised body must properly complete and provide to the *SRA* an information report on an annual basis or such other period as specified by the *SRA* in the prescribed form and by the prescribed date.
- (b) An authorised body must provide any necessary permissions for information to be given to the *SRA* so as to enable it to:
- (i) use and prepare a report on the documents produced under (a) above; and
 - (ii) seek verification from clients, employees, managers or any other body including banks, building societies or other financial institutions.
- (c) An authorised body must notify the *SRA* as soon as it becomes aware of any changes to relevant information about itself, its employees, managers, or interest holders including any non-compliance with these rules and the conditions on the body's authorisation.
- (d) If an authorised body becomes aware or has information that reasonably suggests that it has or may have provided the *SRA* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a materially significant way, it must notify the *SRA* immediately.

Rule 18: Information and documentation

18.1 An authorised body must supply any information and documentation relating to its composition and structure or to any of its managers, employees, members or shareowners or the sole practitioner, as and when requested to do so by the SRA.

18.2 Notwithstanding any requirement to obtain approval of a manager, owner, COLP or COFA under Part 4 of the SRA Authorisation Rules, an authorised body must notify the SRA within seven days of any change to its:

- (a) name;
- (b) registered office and/or any of its practising addresses;
- (c) managers;
- (d) interest holders , if it is a recognised body, and in the case of a recognised body which is a company, this includes members and shareowners;
- (e) owners , if it is a licensed body, and in the case of a licensed body which is a company, this includes members and shareowners;
- (f) COLP;
- (g) COFA; or
- (h) overseas practices, including any contact details and practising/registered addresses of its overseas practices.

18.3 An authorised body must notify the SRA within seven days if it is an unlimited company and it is re-registered as limited under the Companies Acts.

18.4 If a relevant insolvency event occurs in relation to an authorised body its managers, or in the case of an authorised body which is an overseas company, its directors, must notify the SRA within seven days.

These are the nine redrafted provisions in the "**Cooperation and information requirements**" section of the SRA *Code of Conduct for Firms [2017]* which we have included:

- 3.1** You keep up to date with and follow the law and regulation governing the way you work.
- 3.2** You cooperate with the **SRA**, other regulators, ombudsmen and those bodies overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 3.3** You respond promptly to the **SRA** and:
 - (a) provide full and accurate explanations, information and documentation in response to any requests or requirements;

	(b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA .
3.4	You act promptly to take any remedial action requested by the SRA .
3.5	You inform clients promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the SRA you investigate whether anyone may have a claim against you.
3.6	You notify the SRA promptly: <ul style="list-style-type: none"> (a) of any indicators of serious financial difficulty relating to you; (b) if a relevant insolvency event occurs in relation to you; (c) of any change to information recorded in the register.
3.7	You provide to the SRA an information report on an annual basis or such other period as specified by the SRA in the prescribed form and by the prescribed date.
3.8	You notify the SRA promptly if you become aware: <ul style="list-style-type: none"> (a) of any material changes to information previously provided to the SRA by you or on your behalf about you or your managers, owners or compliance officers; (b) that information provided to the SRA, by you or on your behalf, about you or your managers, owners or compliance officers is or may be false, misleading, incomplete or inaccurate.
3.9	You promptly report to the SRA or another approved regulator , as appropriate, any serious breach of their regulatory arrangements by any person regulated by them (including you) of which you are aware. If requested to do so by the SRA you investigate whether there have been any serious breaches that should be reported to the SRA .

Despite streamlining the drafting in the revised provisions which encapsulates a host of existing provisions across the Handbook, we have broadened the scope to cover other regulators and those bodies with a role overseeing or supervising the delivery of, or investigating concerns in relation to legal services - the current Code limits cooperation to (primarily) the SRA and the Legal Ombudsman.

Streamlining (removing duplication)

We have removed requirements placed on individuals or firms, which already exist in legislation or which are provisions often simply requiring compliance with the law in

general. Equally, where the SRA Principles cover an existing Outcome in the current Code, we have either removed that Outcome or have sought to revise the Principle to prevent unnecessary duplication.

Example 1: existence of provision elsewhere in legislation

In the SRA Code of Conduct [2011] there are the following provisions relating to introductions to third parties and referrals:

Chapter 6: Your client and introductions to third parties

O(6.4) you are not paid a prohibited referral fee.

Chapter 9: Fee sharing and referrals

O(9.8) you do not pay a prohibited referral fee

Neither of these Outcomes will feature in the new Codes, as the requirements merely reflect the legislative position as set out in the Legal Aid, Sentencing and Punishment of Offenders Act (2012) and, more recently, in the Criminal Justice and Courts Act (2015) which solicitors already have to comply with as a matter of law.

Example 2: requirements to comply with the law

Examples can be found in current Chapters 1, 2 and 7 of the SRA Code of Conduct 2011:

O(1.3) when deciding whether to act, or terminate your instructions, you comply with

the law and the Code;

O(7.5) you comply with legislation applicable to your business, including anti-money

laundering and data protection legislation;

O(7.7) you comply with the statutory requirements for the direction and supervision

of *reserved legal activities* and *immigration work*;

We do not consider that it is necessary to duplicate these requirements in various sections of the proposed SRA Code of Conduct for solicitors, RELs and RFLs [2017] or the SRA Code of Conduct for Firms [2017].

Example 3: existence of Principle covering Outcomes

Acting in the client's best interests

A number of chapters in the current SRA Code of Conduct 2011 include a provision relating to a client's interest:

O(1.2) you provide services to your *clients* in a manner which protects their interests

in their matter, subject to the proper administration of justice;

O(1.6) you only enter into fee agreements with your *clients* that are legal, and which

you consider are suitable for the *client's* needs and take account of the

client's best interests;

O(6.1) whenever you recommend that a *client* uses a particular *person* or business,

your recommendation is in the best interests of the *client* and does not

compromise your independence;

O(9.2) your *clients'* interests are protected regardless of the interests of an

introducer or *fee sharer* or your interest in receiving *referrals*;

We propose that the *SRA Principles [2017]* will include a duty to:

- act in the best interests of each *client* (proposed Principle 6)

We do not therefore consider it necessary to duplicate this requirement in proposed provisions in the SRA Code of Conduct for solicitors, RELs and RFLs [2017] or the SRA Code of Conduct for Firms [2017].

Streamlining (cross-referencing where there is overlap between proposed Codes)

To avoid unnecessary duplication across the Codes, we will cross-reference requirements that will feature in both. Accordingly, we propose that the following drafting is set out in the SRA Code of Conduct for Firms [2017]:

Applicable standards in the SRA Code of Conduct for Solicitors, RELs

and RFLs 2017

- 7.1** The following sections of the SRA Code of Conduct for Solicitors, RELs and RFLs 2017 apply to you in their entirety as though references to "you" were references to you as a *firm*:
- (a) Referrals, introductions and separate businesses (5.1 to 5.5);
 - (b) Standards which apply when providing services to the public or a section of the public, namely Client identification (8.1); Complaints handling (8.2 to 8.5); and Client information and publicity (8.6 to 8.9).

Streamlining (removing need for Indicative Behaviours)

As set out above, we will incorporate relevant content from the existing SRA Code of Conduct 2011 into guidance and case studies, where it is no longer required to be part of the high level standards. This is mainly content currently covered by Indicative Behaviours and by overly prescriptive Outcomes. As a result, there will no longer be 'Indicative Behaviours' but, where we consider it necessary, some of their content will form the basis of standards in their own right. The following are examples:

- IB(1.4) - explaining any arrangements, such as fee sharing or referral arrangements, which are relevant to the client's instructions - has been made into new 5.1(b) in the Individual Code and new 7.1(a) in the Code for Firms;
- IB(9.4) - being satisfied that any client referred by an introducer has not been acquired as a result of marketing or other activities which, if done by a person regulated by the SRA, would be contrary to the Principles or any requirements of the Code - has become new 5.1(e) in the Individual Code and new 7.1(a) in the Code for Firms; and
- IB(1.22(f)) - having a written complaints procedure which does not involve any charges to clients for handling their complaints - is now reflected in new 8.5 in the Individual Code and new 7.1(b) in the Code for Firms.

Identifying gaps: where we require new provisions

We have drafted new standards which we consider ought to be included in the proposed Codes where we have identified gaps - often, these arise from recent legislative developments, current market trends or following a comparison of our provisions with those of other regulators and identifying where alignment might be needed.

For example, in the SRA Code of Conduct for solicitors, RELs and RFLs [2017], we have included new standards in relation to dispute resolution and proceedings before courts, tribunals and inquiries to try to align our provisions

relating to advocacy with those of other legal services regulators:

2.4 You only make assertions or put forward statements, representations or submissions to the *court* or others which are properly arguable.

2.6 You do not waste the *court's* time.

We have included a new standard relating to continuing competence in both the SRA Code of Conduct for solicitors, RELs and RFLs [2017] and the SRA Code of Conduct for Firms [2017]:

3.3 You maintain your competence to carry out your role and keep your professional knowledge and skills up to date.

4.3 You ensure that your *managers* and *employees* are competent to carry out their role, and keep their professional knowledge and skills up to date.

We have also included a standard in the SRA Code of Conduct for solicitors, RELs and RFLs [2017] relating to solicitors in supervisory positions to make clear that they are accountable for the work carried out by those they supervise:

3.5 Where you supervise or manage others providing legal services:

(a) you remain accountable for the work carried out through them;

When reviewing existing Outcomes, it became clear that there was no provision requiring solicitors or authorised firms (or their managers and employees) to stay up to date with legal developments and the regulatory framework linked to their area of work which reflects the principles of ongoing competence. Accordingly, we added a new standard to the "Cooperation and accountability" section of the SRA Code of Conduct for solicitors, RELs and RFLs [2017] and a new standard to the "Cooperation and information requirements" section of the SRA Code of Conduct for Firms [2017]:

7.1 You keep up to date with and follow the law and regulation governing the way you work.

3.1 You keep up to date with and follow the law and regulation governing the way you work.

Given the reported increase in identity theft, fraud and cybercrime affecting businesses, we consider it is now important to include a standard setting out a new requirement in relation to confirming client identification (new 8.1 in the SRA Code of Conduct for solicitors, RELs and RFLs [2017] and addressed by 7.1(b) in the SRA Code of Conduct for Firms [2017]):

8.1 You take appropriate steps to identify who you are acting for in relation to any matter.

For the same reasons, we have also included a new standard about obtaining

instructions when acting for a client:

3.1 You only act for *clients* on instructions from the *client*, or from someone authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your *client's* wishes, you do not act unless you have satisfied yourself that they do.

The same proposed standard is replicated in the SRA Code of Conduct for Firms [2017] as new 4.1.

We also propose amending one of the complaints handling provisions to reflect the current position in terms of the ADR signposting requirements set out in UK regulations, which transpose the EU Directive on consumer alternative dispute resolution. When considering the new position, we also needed to recognise that at this stage, the Legal Ombudsman's application to become certified as an ADR approved body is currently on hold, meaning that our drafting cannot relate specifically to the Legal Ombudsman and needs to apply more widely, so that it remains current and does not require constant updating:

8.4 You ensure that *clients* are informed, in writing:

(b) if a *complaint* has been brought and your *complaints* procedure has been exhausted:

- (i) that you cannot settle the *complaint*;
- (ii) of the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the *complaint*; and
- (iii) whether you agree to use the scheme operated by that body.

Drafting approach - use of language

We have tried to simplify the language used in the proposed Codes, to make them more accessible and understandable to their users. Throughout the Codes, we have used language which could be termed as subjective and even vague or unquantifiable. Examples of this type of wording in the Individual Code include:

- "reasonable" in new 1.3 (in terms of within a 'reasonable' amount of time);
- "where appropriate" in new 6.2(b)(ii) (in terms of putting in place effective safeguards);
- "in a timely manner" in new 3.2 (in terms of delivering service 'within a timely manner');
- "promptly" in new 7.4, 7.6, 7.8 and 7.9 - thus removing any specific time limit in each context; and

- "fair(ly)/unfair(ly)" in new 1.1, 1.2 and 8.5.

We have, however, chosen words of this nature as we want to move away from prescriptive and rigid drafting and introduce more flexibility to require those to whom the Codes apply to use their own judgement when applying the Code to their practice and conduct. We have confidence adopting this approach, as courts and tribunals interpret such terms based on the individual facts and circumstances of each case. In turn, as we will expect those we regulate to exercise their judgement in applying the standards within the Codes, under our revised enforcement strategy, we will look at each case in turn and will adopt a proportionate approach. We will reach decisions as to the appropriate course of action having assessed the risk each case presents to our regulatory purpose: the need to provide appropriate protection to consumers, and to support the rule of law and administration of justice.

We will also look at the context of the alleged wrongdoing and the seriousness of the issues in hand in their own sets of circumstances. This may mean that we take into account private conduct in some cases, when considering whether there has been a breach of our Principles. We will also consider the relative seniority of the alleged wrongdoer, and the degree of alleged harm caused (and to whom) when considering regulatory sanctions. Where there has been a serious breach (as opposed to a technical breach) of these standards, and we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, then our response can be robust and may lead to our taking of regulatory action against an individual solicitor or against a firm itself as an entity, or against its managers or compliance officers, who all share responsibility for ensuring that the standards and requirements are met. A breach may be serious either in isolation or because it comprises a persistent failure to comply or highlights a pattern of behaviour. In practice, this means that any issues of interpretation will turn on the facts.

We hope that the range of case studies we propose to provide will help all those to whom the Codes apply to understand how the standards might apply to them in different scenarios. This is because we recognise that in practice, no one case can necessarily be treated in the same way. By adopting the approach that we have in terms of purposive standards, we will need the proposed case studies to guide people through the various situations in which they find themselves, in practice.

Annex 5

Initial Regulatory Impact Assessment – Looking to the Future

Introduction

1. We are changing how we regulate to protect the public in a fast changing market. The changes we are proposing as the first phase of our review are set out in detail in our consultation paper¹. We have started by reviewing the *SRA Principles 2011 and the SRA Code of Conduct 2011*. The new Principles and Codes would be supported by a new approach to helping firms comply with our requirements. In this first phase we have also started to review the *SRA Practice Framework Rules 2011 and the SRA Authorisation Rules 2011*, specifically which restrictions we can remove to allow solicitors and firms flexibility about where and how they practise.
2. Taken together our proposals are intended to:
 - make our rules shorter, clearer and easier to use, reducing unnecessary costs of regulation;
 - ensure that regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses; and
 - remove unnecessary barriers and restrictions and enable increased competition, innovation and growth, and the choices available to access legal services from a solicitor
3. The Legal Services Act 2007 provides a common framework and set of objectives for all the legal services regulators and for the Legal Services Board (LSB), our oversight regulator. We must always have these in mind when we set the rules used to govern the conduct of the people and firms we regulate. These objectives are to:
 - protect and promote the public interest;
 - support the constitutional principle of the rule of law;
 - improve access to justice;
 - protect and promote the interests of consumers;
 - promote competition in the provision of services;
 - encourage an independent, strong, diverse and effective legal profession; and
 - increase public understanding of the citizens' legal rights and duties.

¹ Looking to the Future – Flexibility and public protection a phased review of the SRA Handbook and our regulatory approach - Principles, Code of Conduct, and Practice Framework Rules June 2016

4. We have assessed these changes against our regulatory objectives, the better regulation principles and our wider equality duty. Where we have identified possible adverse impacts arising from our proposals we explain the steps we will take to mitigate these. We are also publishing an independent assessment of the potential in-principle economic benefits and risks of the proposed changes. It considers positive and negative impacts on competition and innovation and on different stakeholders (consumers, solicitors and providers) that could arise from our proposals which in turn could drive broader economic effects.²
5. For the purpose of this assessment we have grouped the proposed changes to the Handbook into two broad areas:
 - a. The implementation of a set of drafting principles to restructure and clarify the SRA Principles and Code of Conduct 2011 and alongside this the development of new compliance support for individuals and firms we regulate;
 - b. The proposed policy changes about where solicitors can practise Stakeholder engagement
6. We recognise that our proposals will have different impacts across our stakeholders from small firms through to vulnerable people. Engaging them is critical to this work. It helps us explain our proposals, but more importantly it helps us understand potential impacts and what we need to do to make them work better.
7. As set out in detail in our consultation paper, over the last year we have engaged widely in developing these reforms. For example, we have spoken at a large number of conferences, talked to many firms and representative groups, spoken with the Consumer Panel and LSB. We have also shared working drafts and position papers with our virtual reference groups, including the equality and small firms groups and one specifically established for these reforms. We have created accessible online material to explain why we believe change is necessary and what our model of regulation might look in the future.
8. Our 'A Question of Trust' campaign that delivered around 5,500 'engagements' on professional standards underpins this work. As does the substantial research on consumer behaviour in choosing what to do and where to go when faced with a legal problem³⁴.
9. Activity will be ongoing. Over the next few months, there will be many opportunities for stakeholders to share their thoughts with us. We will be hosting webinars, roundtable discussions, workshops and using blogs and other social media activity to allow our stakeholders to comment and ask questions about our proposals. Further details are provided in the consultation document and the Looking to the Future pages of our website.

² *Assessment of the economic rationale for, and possible impacts of, proposed changes to the Solicitors Regulation Authority Handbook*. Chris Decker April 2016

³ For example [Consumer Legal Services 2016](#), YouGov, February 2016

⁴ For example [Tracker Survey 2015](#), Legal Services Consumer Panel, November 2015

Developing our final impact assessment

10. Our stakeholder engagement and responses to our consultation will inform our final proposals. We also intend to commission and draw on further research including:
 - a. the development of a framework against which we can measure and evaluate the impact of our eventual changes going forward;
 - b. further evidence and recommendations arising from the ongoing Competition and Markets Authority study of the legal services market; and
 - c. any further relevant published research for example the Legal Service Board's report about the alternative legal services market.
11. We will consider the benefit of further Equality, Diversity and Inclusion (EDI) impact assessment work once we have seen the responses to our proposals and the draft initial impact assessment.

The legal services market

12. In 2014, the overall UK legal services market was estimated to be worth £40.1 billion by turnover.⁵ This figure includes both the regulated and alternative legal services markets. 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.⁶ 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 increasing⁷.
13. Many consumers already access alternative legal services 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.
14. We have published a report⁸ that describes the current legal services market landscape in much more detail.

The consumer protection landscape

15. Currently consumers using legal services are covered by a range of protections and consumer rights that vary according to the type of person and/or provider that they use. Surveys suggest that consumers do not always understand the range of consumer protections that apply, instead relying on 'signalling' provided by branding and the reputation of the legal adviser as an indicator of the likelihood of a good service.

⁵ [The changing legal services market, SRA, 2016](#)

⁶ Legal Services 2016, You Gov, February 2016

⁷ [The Future of Legal Services](#), Law Society, January 2016

⁸ [The changing legal services market, SRA, 2016](#)

16. Consumer protections, outside of sector specific regulation, exist covering proper delivery of these services and are improving. Consumers that purchase any service in England and Wales are covered by the Consumer Rights Act 2015⁹, which provides a framework of rights to keep consumers well-protected in most commercial environments. To illustrate, consumers using legal services provided by any business, whether a regulated law firm or an operator working in the alternative legal services sector, have the right to request that those services are redone at no extra cost, or via a price reduction. The Equality Act 2010¹⁰ has a similar reach in protecting consumers when they are using services in England and Wales, including legal services, and makes sure that people have the right to be treated fairly and to not be discriminated against. Consumer organisations including local Trading Standards offices and Citizens Advice support consumers to understand and use these rights, as well as make complaints.
17. Any firm that offers professional advice has a commercial incentive to take out insurance against negligence claims. In addition, some providers that work in the alternative legal services market may belong to membership organisations that set down specific consumer protection measures. Although voluntary, these are often a prerequisite in order for a business to become a member of the organisation. Examples of this include requiring members to have certain levels of indemnity insurance, or to meet a certain standard of work or level of customer service.
18. The Legal Services Board in 2012 estimated that around 86% of consumers will use a firm of solicitors to write a will and the remaining 14% of consumers will use non solicitor firms comprising mainly independent trust corporations, banks/ building societies, accountancy firms and financial advisers. Of the latter group only about 7% of consumer will use services of a firm that is not regulated by either a regulator, voluntary code or through membership of a professional body¹¹. This limits the likelihood that these firms will not have indemnity insurance or consumers being unable to access a complaints process.
19. Currently, if a consumer uses a legal service provided by a solicitor working in a firm authorised by the SRA, or another approved regulator they will be covered by a broader range of protections as required by the regulator's regulatory arrangements¹². These will include financial protection arrangements, such as mandatory professional insurance requirements and access to financial redress where a solicitor has been dishonest or failed to keep their client's money safe.
20. In the case of some legal advice the provider of legal services may fall under another regulatory regime, either through their professional title or the service they provide. Claims management companies are currently regulated by the Ministry of Justice (MoJ), but the Government have proposed that the

⁹ This Act replaced the Supply of Goods and Services Act 1982, the Sale of Goods Act 1979 and the Unfair Terms in Consumer Contracts Regulations 1999 for contracts entered into on or after 1 October 2015.

¹⁰ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

¹¹ Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities - impact assessment and market picture, LSB, April 2012

¹² See section 21 of the Legal Services Act 2007

Financial Conduct Authority (FCA) to take over responsibility for this sector following a review¹³. The Office of the Immigration Services Commissioner (OISC) regulates entities providing immigration and asylum advice.

Access to legal services

21. Despite the significant size of the legal services market many individual people and small businesses are unable to access legal services from a solicitor at a cost they can afford. Fewer than one in ten people experiencing legal problems instruct a solicitor or barrister.¹⁴ The picture is very much the same for small businesses, the majority of whom have little contact with solicitors or law firms. Over half of small businesses that experience a problem try to resolve it on their own. Accountants are consulted more often than lawyers when small businesses need advice.¹⁵ This demonstrates substantial legal need not currently being met by regulated lawyers, including solicitors.

Overview of Impacts

22. Our core purpose is to protect those consumers that need protecting and to support the rule of law and the proper administration of justice. For justice to be administered properly we must encourage a legal market that is strong, diverse and accessible to those who need help. An innovative and competitive legal market can make legal services more accessible. Our approach to regulation, including the requirements we place on the solicitors and firms we regulate, must be proportionate and targeted.
23. We are consulting on redrafting the *SRA Principles and Code of Conduct 2011*¹⁶ in a targeted and less prescriptive way - removing duplication for example with statutory requirements. We are implementing a range of ways to help firms to more easily understand how to comply, including case studies and toolkits. We expect this to lower regulatory burden and the cost of regulation.
24. Our proposed changes clarify what we expect from the individuals and firms we regulate. It will be much clearer how personal regulation applies to a solicitor, wherever they work, including those that currently work in-house. Taken together with the proposed changes to our *SRA Practice Framework Rules*¹⁷ this makes it more likely that consumers will have a wider choice of and have better access to solicitors. In turn this should boost growth in a sector that is already growing over two and a half times faster than the economy as a whole¹⁸. The Law Society estimates¹⁹ that each £1 of extra

¹³ <https://www.gov.uk/government/publications/claims-management-regulation-review-final-report>

¹⁴ How People Resolve 'Legal' Problems, Professor Pascoe Pleasence & Dr. Nigel J. Balmer, Legal Services Board 2014

¹⁵ [The legal needs of small businesses](#), Kingston University for the Legal Services Board, 2015

¹⁶ <http://www.sra.org.uk/solicitors/handbook/intro/content.page>

¹⁷ <http://www.sra.org.uk/solicitors/handbook/practising/content.page>

¹⁸ [Economic Value of the Legal Services Sector](#) March 2016, Law Society, March 2016

¹⁹ [Economic Value of the Legal Services Sector](#) March 2016, Law Society, March 2016

turnover in the legal sector stimulates £1.39 in the rest of the economy and 100 extra jobs in legal services supports a further 67 in the wider economy.

25. The Legal Services Act does not require non-reserved legal activities to be regulated. By allowing solicitors to work in the alternative legal services market, with the individual protections that apply to all solicitors, we will add to the protections available to consumers. Clients who want or need the additional protections that are guaranteed with SRA regulated firms can still access those and will be able to continue to do so in the future. Solicitors working in the alternative legal services market will need to deal with their clients in accordance with the core professional principles and standards set out in our Code. This includes managing conflicts of interest, acting in the best interest of clients and upholding the rule of law.
26. Through widening choice and access to justice we are promoting the public interest. Examples of how our reforms may impact on the development of the legal services market are provided in Table 1. The impact on consumer protections is illustrated in Table 2. We have also made changes that we think maintain trust in the profession and the integrity in court proceedings and administration of justice.
27. We have considered the risk of consumer detriment that arises under the market scenarios our proposals permit. Compared to now, consumers would only be disadvantaged in a particular set of circumstances. These are where they could no longer access a solicitor for their advice from a regulated firm; that they then encounter a problem with the legal advice provided and that there was not an appropriate redress mechanism. While we cannot eliminate this risk completely, our assessment is that this is unlikely and should be considered against the overall benefits of the changes.
28. An individual consumer could also be disadvantaged if they unknowingly accessed legal advice believing it was from a fully regulated provider and it was not. The consumer protection landscape in the legal services market is already poorly understood by consumers and they may assume all services are regulated²⁰. Our plans to improve the information that is available to help consumer choose legal services wisely is set out in our consumer support strategy.²¹
29. Our overall assessment is that these proposals are positive because they have the potential to help increase the supply and variety of legal services to benefit consumers. This is supported by the independent economic assessment of the impact of our proposals. In general terms this assessment indicates that consumers can be expected to benefit from the proposed changes to the extent that they:
 - widen the variety and number of providers and delivery mechanisms available for consumers to access legal services;
 - allow consumers increased access to solicitors who have met a high standard of educational attainment and professionalism;

²⁰ [Legal Services Consumer Panel Work Programme 2015-16](#)

²¹ Include link to consumer support strategy

- allow some consumers to trade-off certain protections for other benefits; and
 - result in more intense competition and innovation which might ordinarily be expected to deliver lower prices, alternative pricing arrangements, higher quality and new products/services.
30. Overall this may draw more consumers into the market and address concerns about unmet need. On the other hand, the report suggests that there is a risk of some adverse consumer impacts to the extent that any changes:
- fail to address, or conversely increase, confusion around the different protections attached to services;
 - result in the professionalism of solicitors being eroded or seen to be eroded through practise in the alternative legal services market.

EDI Impacts

31. There are series of equality and diversity impacts identified in the report. We think overall that our proposals will have a positive impact on the diversity of the profession. This is because they would remove restrictions that are limiting now the range of types of organisations that solicitors can work without relinquishing their professional title. On the whole, we expect our proposals to contribute to a more competitive market better placed to innovate and respond to the needs of different groups of consumers - including vulnerable consumers.
32. We have considered a number of specific EDI risks – alongside considering possible mitigations to these risks. These are that:
- a. the changes to how the Codes in particular a move away from prescriptive rules result in a disproportionate or particularly high burden on small firms (and therefore for some Black and Asian and minority ethnic (BAME) and older solicitors because of they are disproportionately represented in small firms and sole practices) (see paragraphs 60-62);
 - b. small firms (similarly impacting disproportionately on some BAME and older solicitors) will suffer detriment because they are less able to take advantage of the market developments (see paragraphs 75-80);
 - c. that certain group of consumers in particular vulnerable consumers/those with protected characteristics are disadvantaged (or unable to benefit from) the potential changes in the legal service market (see paragraphs 107-121).
33. Our aim is to remove restrictions that reduce flexibility enabling the market to innovate and grow. We have linked where possible key potential market impacts to the independent economic assessment. But we cannot predict the market impacts with certainty. Where we have identified a potential negative equality impact from ways in which the market might change – either on firms or particular types of consumers - our focus will be on how best to mitigate these.

Revised Principles and Code of Conduct

34. We know²² that many that we regulate consider the current Handbook can be confusing and difficult to navigate. It is not always clear to whom particular obligations and expectations apply. This creates uncertainty adding to the cost of regulation. Firms also think²³ too much time is spent keeping up to date and complying with regulation. This, alongside Professional Indemnity Insurance (PII) and compliance with information requirements, are seen by the sector as the highest costs of regulation.
35. The redrafted codes have removed duplication, are shorter, more narrowly focused and clearer in defining the boundary between individual and entity regulation. They are intended to provide a clearer expression of the behaviours and standards expected from solicitors and the businesses that we regulate and for these to be easily understood and owned by the profession. The approach we have adopted is set out in the *Rationale Document (Annex 5 of the consultation)*.
36. Instead of the current indicative behaviours or expansive outcomes describing more general requirements, compliance with the new rules will be supported with guidance, toolkits and case studies. Please see Section 2 of the consultation document for further information. In addition, alongside the proposals we are undertaking a programme of work to allow users to access the handbook in a modern and digital way.
37. On the whole we have sought to deliver a simpler articulation of our current requirements as opposed to a new series of obligations on those we regulate. But in drafting the new draft Codes we have identified a small number of areas where we consider that protections were lacking or that requirements were not as clear as they should be. Where this was the case, we have added new requirements (for example, obligations to "know your client" and only to act on instructions). We have also adapted the Code for Individuals to ensure that it would apply equally to those working within and outside of a SRA authorised firm.
38. We have also clarified relationships between principles and standards, which has previously been identified as an area of confusion.

Impact on Firms

39. The redrafting of our requirements should make it clearer and easier to understand what it means to be regulated in this sector for everyone. The changes proposed also have the potential to reduce some of the more significant costs of compliance including:
 - lowering the cost of training;
 - compliance with information requirements which are currently spread across different parts of the handbook;
 - maintaining an ongoing understanding of changing regulations; and

²² Feedback from external users of the Handbook November 2015

²³ [The regulated communities' views on the cost of regulation](#), LSB, March 2015

- record keeping and processes of dealing with rule breaches.
40. All of these areas have been identified as areas of high incremental cost.²⁴ Cost savings will also arise from solicitors and firms no longer complying with redundant or duplicated requirements and from the streamlining of responsibilities. By adopting a structure which distinguishes between individual and firm regulation, we have also significantly reduced the overall requirements on firms and individuals. Therefore, we expect the cost of regulation to fall over the long term.
 41. We are not significantly changing the standards expected of solicitors and firms. Firms that are currently complying with the existing Handbook will not suddenly find themselves needing to change what they do because they are in breach of the new Handbook.
 42. The new approach also sees another improvement from our current Code by providing clarity about the requirements for in-house solicitors. They will now be put on an equal footing with other solicitors and bound by the same Code, rather than as a separate, often complex, addition to each section.
 43. In addition, the redrafting of the Codes should enable solicitors and regulated firms to take advantage of the greater flexibility afforded them in choosing how to comply with principles or standards to experiment and innovate. This could potentially reduce compliance costs allowing more competitive pricing.
 44. Our approach to guidance and toolkits will allow compliance support material to emerge more rapidly in response to market developments.
 45. We recognise that the actual reduction in uncertainty and therefore the cost of regulation will depend on the effectiveness of the measures, including online resources and toolkits we introduce, to help solicitors and firms comply with the re-drafted handbook. We have already built toolkits to support our Training for Tomorrow reform programme and to support the recent changes we have made to the Consumer Credit rule. Feedback from a survey we carried out showed that 90 per cent of those respondents that have adopted the new approach to continuing competence already had found the toolkit useful²⁵.
 46. Having the Handbook available in an online digital format will also provide a number of key benefits to solicitors and firms:

Searchable - It is easier to find material that is required, particularly when the Handbook is shorter and simpler to navigate;

Accessible - It makes the Handbook available both for Solicitors, those with an interest in the legal services industry and for consumers who wish to understand their rights and the responsibilities that solicitors must operate under. The online version can also be adaptable to meet the needs of the visually impaired.

Cost – The online version will be free to use thereby reducing costs;

²⁴ [The regulated communities views on the cost of regulation](#), LSB. March 2015

²⁵ SRA survey, February 2016.

Current - Unlike a printed edition, the online Handbook is dynamic and therefore always up-to-date with the latest changes or reforms.

47. There may be some transitional costs associated with solicitors and providers having to adjust to changes that may be implemented. This might include the cost of external training in order to embed the approach. There may be some relatively minor costs associated with changing compliance systems to be geared up to the new Handbook. We do not expect these to be significant but will engage with firms and individuals from the compliance sector to understand these in more detail ahead of our final decisions.
48. We are committed to make sure that people engage with and understand our Handbook proposals²⁶. We have worked with the profession to review and clarify guidance on the individual and firm obligations. In addition to toolkits and guidance, we will also be developing a comprehensive communications strategy for stakeholders and a range of digital content. We will also have roundtable discussions with specific stakeholders and run a number of workshops to share our thinking. This demonstrates how our new approach is intended to clarify our requirements.

Impact on Consumers/Public Interest

49. Proposed improvements to the accessibility and usability of the on-line Handbook will make it easier for consumers as well as the wider public to find out and understand how we expect solicitors to act, and the standards and service they should expect.
50. Our supporting materials will highlight the potential benefit of using a solicitor who must uphold a set of principles and standards when providing certain services or hold particular roles that carry a risk of harm. They provide a framework for ethical and competent practice in line with a prevailing obligation to act in the public interest, and to maintain public confidence/rule of law.
51. We have also clarified a number of standards that are designed to maintain trust in the profession - including by consumers - and the integrity in court proceedings and administration of justice. Specifically, we have clarified our requirements on due diligence in establishing a client's identity and only acting on valid instructions. We have included as a principle a solicitor's conduct needs to uphold public confidence in the profession and those delivering legal services.
52. Public confidence and trust in solicitors including those that under our proposals could work in businesses in the alternative legal services market is significantly impacted by how we supervise and enforce these standards. We are currently undertaking a comprehensive review of our enforcement strategy and the decision-making framework that we use in both supervision and enforcement matters. In addition to a comprehensive internal review and streamlining of this framework, we are using feedback (gathered from thousands of stakeholders as part of the recent Question of Trust consultation) to help inform and shape our initial thinking and proposed approach.

²⁶ Reference the consumer support strategy

53. With freedom and flexibility comes responsibility - it is core to the concept of being a professional. It is what other lawyers rely upon (e.g. through undertakings) and it is also what the public expects (as our Question of Trust work makes clear). We trust solicitors and firms to use this flexibility to deliver an increasingly wide range of legal services that meet consumer demand, and meet the regulatory standards we set for them.
54. If things do go wrong, we will take a proportionate response. But where we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, then that response can be robust. Within our enforcement strategy, we will look at the context of the wrongdoing, and how serious we believe the issue to be, given full consideration of the circumstances. Although the new Codes cover all aspects of a solicitor's conduct (or an entity's management), we will consider each report on a pragmatic case by case basis - taking full account of all the evidence. This may mean that we take into account private conduct in some cases. We will also consider the relative seniority of the wrongdoer, and the degree of harm caused (and to whom) when considering regulatory sanctions. Patterns of behaviour will also be relevant.
55. We believe that the new Codes, taken together with a clear and defined enforcement strategy will help both the SRA and solicitors to understand and meet our standards.
56. We do not think that our changes will negatively impact on our ability to take enforcement action where it is needed. We are not getting rid of core fundamental requirements of solicitors and firms. The revised drafting will make it clearer what we are enforcing against.

Impact on EDI issues

Principle 5

57. We are consulting on a revised set of Principles that we think better reflects the fundamental tenets that we expect those regulated by us to uphold. Reflecting the importance that we continue to attach to equality issues we propose to retain as the new Principle 5 that solicitors must act in a way that encourages equality, diversity and inclusion.
58. We will continue to require solicitors and authorised firms to act in a way that encourages and promotes equality and respect for diversity. They will continue to monitor report and, where appropriate, publish workforce diversity data.
59. The Code standards and the Principles are equally enforceable and are not interdependent. However, the Code refers more specifically to expected practise standards, which is context specific, rather than overarching values and behaviours.

Other EDI impacts

60. We have particularly considered whether there could be any negative impact on small firms bearing in mind that BAME solicitors are disproportionately

represented in small firms and sole practices.²⁷ Personal choice is not the only factor; some BAME solicitors have reported facing barriers to accessing more financially lucrative areas of the profession such as corporate law in larger firms²⁸.

61. Smaller firms may face disproportionate costs in having to assess how to comply with their regulatory requirements particularly where they are less prescriptive.²⁹ Over half of sole practitioners³⁰ think fees and compliance costs are poor value for money. This contrasts with the majority of firms with over 50 employees who see fees and costs as either reasonable or high, but not excessive.
62. We have shared our proposals and specifically engaged on possible impacts with our small firms and equality virtual reference groups. Feedback from small firms and sole practitioners so far has been that the development of separate individual and firm Codes is welcomed together with tools that support firms to be compliant. Specifically to mitigate this risk, as we implement the changes we will work very closely with small firms and medium sized 'high street' practices to developing a tool kit of specific guidance and case studies to help them understand how to comply.
63. We have not identified any other specific EDI issues arising from the changes we are proposing to the Principles and Code of Conduct, but we will continue to monitor this area as part of our review framework.

Removing restrictions where solicitors can practice

64. Currently our rules prevent businesses in the alternative legal services market from employing solicitors. These rules go beyond the requirements in the Legal Services Act³¹. This is not the case for some other legal professionals who can currently work in a range of types of businesses including alternative legal services firms. We think this means we are restricting options for the public and businesses to access legal services provided by solicitors that offer public protection, value and are responsive to consumer need. We think our regulation needs to change to reflect current market realities and ensure market access for pro-competitive innovations.
65. We think that consumers should be able to choose from a range of provider options. Our proposals will not prevent consumers' current choice between regulated and alternative businesses. Instead they introduce new options to go to a solicitor in the alternative legal services market, with the additional

²⁷ <http://www.sra.org.uk/sra/equality-diversity/diversity-monitoring/diversity-monitoring-2013.page>

²⁸ Evidence on a number of key areas where there is a lack of diversity in law firms is set out in <https://www.sra.org.uk/risk/outlook/risk-outlook-2015-2016..>

²⁹ Performance-Based Regulation: Prospects and Limitations in Health, Safety and Environmental Protection. C.Coglianese, J.Nash and T.Olmstead (December 2002). The authors note that principles/outcomes based approaches can impose excessive costs on smaller firms because they have to search out ways of complying, and that some firms may simply prefer to be told exactly what to do.

³⁰ <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf>

³¹ <http://www.legislation.gov.uk/ukpga/2007/29/section/21>

individual protections that apply to all solicitors. Potentially, consumers may choose to trade off the further enhanced protections they would get if they paid for a solicitor working in an SRA regulated firms against not accessing the service of a solicitor at all.

TABLE 1: Examples of market developments our proposal permits

Scenario	Examples	Likelihood
A. Existing legal businesses offering non reserved legal advice employ solicitors to undertake/supervise work previously done by less qualified staff	Will writing firms employ solicitors	We think this scenario is probable. The significant body of consumer research across legal service market clearly shows that the public and small businesses are looking for more affordable options to access services of a solicitor in particular for complex and contentious issues. By employing a solicitor, the business gains an element of quality control and brand enhancement. The consumer research also suggests that consumers rely on reputation, branding and other signals of quality when navigating the market rather than the specific differences in consumer protections that exist.
B. Existing business currently employing in-house solicitors start to provide non reserved legal services to the public	Local Authority deploys existing solicitors and/or employs additional solicitors to provide legal advice to public without need to be licensed by the SRA	We think this scenario is probable. A survey of local authority legal teams indicates significant appetite from local authorities to offer legal service through being authorised as an ABS ³² . Lifting restrictions will enable any business employing solicitors in-house ³³ , including a local authority to carry out non reserved services to the public alongside their core business with proportionate and targeted regulation. We have already granted waivers to our current rules to permit this. We have granted 81 limited waivers, with the majority granted to local government bodies and advice services. Around 45 of these organisations also have waivers to permit them to hold client money, again with many of these being law centres and charities. ³⁴
C. Existing businesses delivering other services diversify into legal services and employ solicitors	High street brands such as banks, supermarkets and insurance companies enter the market	We think this scenario is probable. Consumer research suggest the public are more ready to consider new providers such as financial services or supermarket and other brands for legal advice.
D. New firms set up to provide non	New innovative	We think this scenario is probable. These firms will potentially have a lower cost of regulation, will be

³² ". <http://www.legalfutures.co.uk/latest-news/local-government-lawyers-get-advice-from-qc-in-dispute-with-sra>

³³ 27,300 practicing solicitors that currently work in house (18% of all solicitors and this number is growing)

³⁴ Internal data (up to June 2015), Solicitors Regulation Authority, 2015

reserved legal advice and employ solicitors to undertake and/or supervise work	start-ups including niche providers	well placed to compete on price in the alternative market and to deliver new and niche services. This option could appeal to solicitors wanting to try new things but without needing to relinquish title. ³⁵
E. Increasing numbers of existing firms regulated by SRA separate non reserved services into a discrete business to compete with firms in alternative legal services market whilst still using qualified staff	Our Separate Business Rule (SBR) changes implemented in rules implemented in 2015 ³⁶ already permit this.	We think this scenario is probable. There is currently limited evidence that large number of firms are planning to split their non-reserved services into separate businesses. However, when we consulted on the SBR changes that firms told us that they would delay consideration of restructuring until changes allowing solicitors to work in these businesses had been made. ³⁷
F. Existing firms decide to deliver only non reserved legal services and move out of SRA entity regulation whilst still employing solicitors	A large City firm moves out of SRA regulation A small high street firm that offers a large proportion of non reserved services stops offering reserved services	Currently, It is difficult to assess the appetite of firms to completely move out of SRA regulation. This will in practice be driven by consumer demand and business choices. Whilst larger firms may have greater opportunity due to the volume of non-reserved work to restructure their business in this way their client base may be attracted to entity regulation. Smaller firms may be less likely to restructure in this way but will face less direct competition for reserved services from those that do so.

³⁵ [The Future of Legal Services](#), Law Society, January 2016

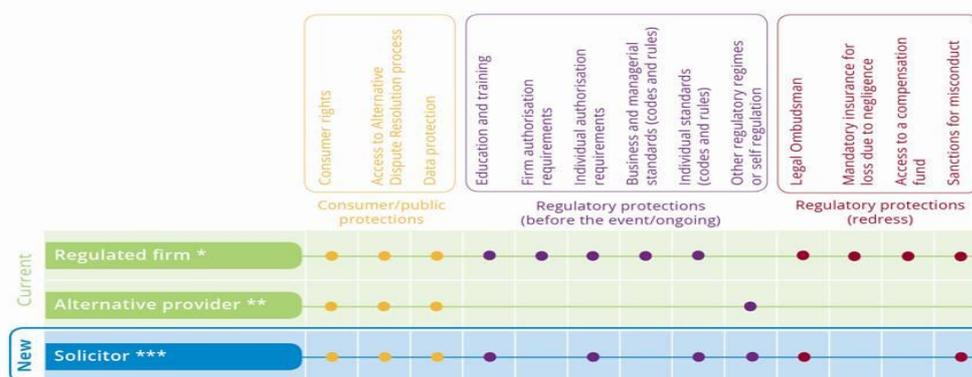
³⁶ <http://www.sra.org.uk/solicitors/handbook/code/part5/rule12/content.page>

³⁷ Response from City of London Law Society response to the Separate Business Rule (SBR) proposals: <https://www.sra.org.uk/sra/consultations/separate-business-rule.page>

TABLE 2: Impact on Consumer Protections Landscape

A changing landscape for solicitors providing legal services

This table sets out the impact on public protection from our proposals to free up solicitors to provide some legal services working in a business that is not regulated by the SRA or another approved regulator.



* 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 an alternative legal services provider (ie one that has not been authorised by the SRA or any other approved regulator or another legal services regulator).
 *** Legal advice that is *not reserved* provided by a Solicitor working in an alternative legal services provider.

Impact on the legal services market

66. The Government has recently re-emphasised the contribution that open and competitive markets can have on productivity. Markets stimulate innovation, help to increase productivity, and ultimately support consumers via economic growth³⁸. Our proposals allow for further competition and choice for the public and businesses to access legal services, boosting growth in a sector that is already growing over two and a half times faster than the economy as a whole³⁹. Growth in legal services contributes to the wider economy, boosting investment and jobs. The Law Society estimates⁴⁰ that each £1 of extra turnover in the legal sector stimulates £1.39 in the rest of the economy and 100 extra jobs in legal services supports a further 67 in the wider economy.
67. Recent research suggests that cost is now considered to be the most important factor when seeking a legal services provider⁴¹. Price and value for money are also increasing considerations for corporate consumers. A recent report has observed a shift by in-house counsel seeking to move corporate work away from mid-market law firms to cheaper options including alternative providers. The report suggests the commoditisation of legal services and technological developments are important factors in this trend.⁴²

³⁸ A better deal: boosting competition to bring down bills for families and firms, HM Treasury, November 2015

³⁹ p.3 [Economic Value of the Legal Services Sector](#), Law Society March 2016

⁴⁰ [Economic Value of the Legal Services Sector](#), Law Society March 2016

⁴¹ Legal Services 2016, You Gov, February 2016

⁴² [Mid-market firms losing corporate work "by stealth", report says](#). Report by TGO Consulting reported in Legal Futures 16 May 2016

68. Our independent economic analysis suggests that those providing alternative legal services are seen as having a cost advantage, as they do not have to make payments to support the regulatory framework including financial protection arrangements such as compulsory insurance, the Compensation Fund. Our proposals provide options for solicitors to deliver non reserved legal services delivery with less regulatory burden although solicitors with additional skills and training may attract a cost premium when offering services through an alternative legal services provider.
69. Table 1 above provides examples of how our proposed reforms may impact on the development of the legal services market. Our initial view is that scenarios A to D are the most likely to emerge in any numbers. This aligns with our key aim, which is to allow bodies that previously would not have done so, to employ solicitors to provide services to the public. These changes would, in our view, represent a positive development within the alternative legal services market. They would prove beneficial not only to a wide range of consumers (by increasing scope of access) but also to the solicitor profession (by providing increased employment opportunities).
70. Scenario E can already happen under the current arrangements: non-reserved services can be provided by a separate business, or a solicitor can present themselves as a 'non-practising solicitor'. With the changes we propose, solicitors would hold themselves out transparently as practising solicitors, and they would be subject to all the requirements of the SRA Code for Solicitors⁴³ thereby providing proportionate consumer protections.
71. The extent to which scenario F happens will, in practice, be driven by the value that private and commercial clients place on the consumer protections accompanying entity regulation as well as business choices. We consider this scenario further in the analysis of consumer detriment in paragraphs 88-91 below.
72. We have designed our regulations to provide a flexible framework for everyone who delivers reserved legal services. Through our review, we aim to develop a framework that is flexible enough to allow the Legal Services Board (LSB) to consider ending transitional arrangements that currently apply to special bodies to bring them within SRA entity regulation.

Market impacts - small firms

73. The largest 200 firms we regulate are predominately corporate law firms representing over 50 per cent of the solicitor market by turnover. The majority of firms we regulate are much smaller primarily serving personal customers and smaller businesses rather than corporate clients. These firms have faced significant pressures on revenues and profits over several years. Within this category, nearly 50 percent of our firms are very small with four or fewer partners.
74. It is difficult to estimate the amount of reserved and non-reserved work solicitors undertake. However, by considering annual renewal information, where solicitors attribute percentage of turnover to specific legal work categories, we can gain insights by using these categories as a proxy. For example, "personal injury" is treated as reserved whereas "social welfare" is

⁴³ Code for Solicitors RELs and RFLs [2017]

treated as non-reserved. However, we recognise that this can only be an estimate. Aspects of legal work undertaken for a specific client on a “social welfare” matter could conceivably involve the provision of reserved legal activity, such as litigation.

75. Our data shows:⁴⁴
- a. nearly 70 per cent of small firms’ turnover is generated from work that includes a reserved activity. In addition, the largest segment of non reserved work type is from immigration advice which would still be undertaken in a regulated firm;
 - b. in contrast for the very largest firm this split is almost reversed – with 64 per cent of turnover from non-reserved work coming mainly from commercial corporate legal services;
 - c. medium and large firms have a similar profile to our smallest firms, but with less of their non-reserved work as a percentage of turnover derived from immigration advice
76. Smaller firms are likely to face particular challenges in adapting to a changing market. How they can respond to the competitive threat of solicitors providing services in the alternative market is more limited as they mainly provide reserved legal services. Larger firms are more likely to be able to bear the fixed costs of restructuring their businesses if they choose to set up a separate business for non-reserved services. Economies of scale are also important in enabling volume-driven legal businesses to offer much lower cost services, in a viable way. Small firms may also face competition for non reserved services from new entrants with lower regulatory costs.
77. Mitigating this risk, local firms situated on the high street are more able to adapt to providing the transparent, consumer-friendly and cost effective service, using up-to-date technology that consumers demand. Firms that build upon their 'traditional' role within the community may be able to develop this profile perhaps linking up with other professional service providers such as accountants and benefit from it.⁴⁵ Their size may mean they are more likely to be adaptable and can change their overall business approach more easily. This contrasts with larger firms, who will require change programmes in order to shift culture and behaviours that have become entrenched in their organisation.⁴⁶
78. Firms that remain regulated by the SRA will also continue to benefit from exemptions from authorisation by another regulator in areas of work such as immigration, financial services⁴⁷ and the provision of regulated claims management services. This benefits small firms that are able to provide these services without incurring further regulatory costs.

⁴⁴ Based on data we collected from firms (annual renewals forms) for 2014-15.

⁴⁵ [The Future of Small Law Firms: Jeopardy or Opportunity](#) by Robert Farquharson, LexisNexis, 2009

⁴⁶ p.13 [Developing legal talent: Stepping into the future law firm](#), Deloitte, February 2016

⁴⁷ Where the firm can satisfy the requirements set out in Part 20 of the Financial Services and Markets Act 2000

79. We do not think that small firms will suffer detriment because they are less able to take advantages of the new business structures the proposals allow, or that they are intrinsically less capable of adapting in a changing market place. These are structural features of the market and we do not think it proportionate to maintain restrictions across the market as a whole.
80. Given the increasing numbers of solicitors nearing retirement age, one rational response might be for some small firms to close or sell their businesses. Over a third of solicitors aged from 41-60 work in sole practices. In small firms of between 1-4 partners, over a quarter of all solicitors who work there are also in the 41-60 age bands. Nearly 65 per cent of individuals in sole practices and firms with 1-4 partners are men⁴⁸.
81. The *Future of Legal Services* report highlighted an increasing number of solicitors nearing retirement age but could not actually afford to stop working. This was because they faced considerable costs if they wished to close their firm, particularly related to professional indemnity run-off cover. We are considering this issue as part of a fundamental review of the Minimum Terms and Conditions of Solicitors mandatory professional indemnity insurance arrangements.

Impact on Consumers

82. Our proposals are intended to allow greater competition and choice in areas of law with growth potential because there is unmet legal need. We know for example that a significant proportion of the population do not have a will⁴⁹. In the case of small firms, the most common problems relate to trading, employment and taxation. Other businesses were the main source of problems. The vast majority of firms in this sector currently have little contact with a legal adviser. Less than one in ten small firms either employed in-house lawyers or had a retainer with an external provider. Over half of firms experiencing a problem tried to resolve it themselves, more often seeking advice from an accountant than a lawyer. This indicates there is substantial legal need not currently being addressed from existing suppliers of legal services.
83. We are introducing greater flexibility for businesses to employ solicitors potentially providing these types of services at lower cost, whilst maintaining an appropriate level of consumer protection. Solicitors who may in the future work in the alternative legal services market will still need to meet the same ethical standards and demonstrate the same behaviours as solicitors working in SRA-authorized businesses.
84. We anticipate that our proposals could result in better and cheaper access to qualified solicitors. They bring the SRA 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.

⁴⁸ (unpublished) Diversity Monitoring of our regulatory outcomes: Annual Report of 2014 data, SRA, May 2015

⁴⁹ <http://www.lawsociety.org.uk/news/press-releases/millions-of-britons-have-no-will/>

85. A consumer's right to select a fully regulated business for a legal service will not change, nor their option to choose legal advice from a business in the alternative legal services market. The impact of our proposals on consumer protections is explained in more detail below in paragraphs 90-91 below.
86. By removing restrictions where solicitors practice, our proposals aim to introduce the right conditions for more innovation and better position solicitors to take up new commercial opportunities that are more directly in line with consumer needs. A report published by the Law Society highlight a possible future where more solicitors exploit the developments in the consumer market by relinquishing official use of the solicitor title and setting themselves up as non-lawyer and/or unregulated providers.⁵⁰ A scenario where fewer solicitors are providing affordable services to people in need will not be in the consumer interest, in the interests of the rule of law or the proper administration of justice.

What is the potential detriment to consumers?

87. We have already amended the Separate Business Rule (SBR) to make it easier for firms to offer non-reserved work outside the scope of our regulation. Building on the analysis undertaken for the *Separate Business Rule (SBR) reforms*⁵¹, detriment could arise from our current proposals if the market changes such that consumers no longer have a choice to access the services of a solicitor for non reserved areas of law in a regulated firm. A detriment would still only exist if they received a defective service⁵² that could not be remedied by the range of consumer protections that would still be available to them.
88. Whilst we cannot eliminate this risk completely our assessment is that this is unlikely and should be considered against the overall benefits of the proposals to enable a more effective and diverse legal services market.

Loss of access to regulated firms

89. Loss of access to regulated firms could happen if the market developed in the way described in Scenario F. There may be some firms that we regulate now that decide to move some or all of their legal services out of SRA entity regulation. For commercial legal services we expect the extent to which firms move their services completely outside of our firm regulation will be driven by the requirements of relatively sophisticated corporate and business consumers. There are a number of factors that will tend to limit the amount of work that firms will transfer into a separate business. These include:
- a. the desire not to lose the marketing value of a regulated brand;
 - b. informed clients may wish to remain with a regulated provider –for example for reasons of legal privilege;
 - c. the financial benefits to firms of moving cases out of SRA regulation may be limited;

⁵⁰ [The Future of Legal Services](#), Law Society of England and Wales, 2016

⁵¹ [Separate Business Rule impact assessment, November 2014, SRA](#)

⁵² 'Defective service' in this context includes negligence, dishonesty, breach of confidentiality

- d. restrictions in other jurisdictions on sharing profits with unregulated entities may prevent large international firms from taking advantage of the changes.
90. We also consider there would be greater harm if private clients were left without the choice to go to a provider offering all the usual consumer protections. Smaller firms are more likely to undertake private client work, including one-to-one services on personal and commercial matters. As set out in paragraph 74 above over three quarters of small and medium-sized firms' income is currently derived from reserved activities covering residential conveyancing, probate and criminal litigation. These firms are also significant providers of immigration services which under our proposals will continue to be only provided by solicitors working in regulated firms⁵³.
91. It seems reasonable to propose that very significant numbers of existing small firms will continue to deliver both reserved and non reserved services through a regulated firm. Their strength lies in their location, their cost base and the profile of the services they provide.
92. We cannot eliminate the risk of loss of access to a regulated firm, but our assessment is that this is unlikely. Particularly for individuals and small business consumers. Any risk needs to be offset against the overall potential benefits of the changes, especially those enabling businesses in the legal market to continue
93. to better meet consumer expectations with more credible and affordable choices of legal services.

Responding to a legal service problem caused by a solicitor working in an alternative legal services provider

94. Our data suggests that the overwhelming majority of conduct issues and complaints about solicitors are about reserved areas of law, in particular litigation work and conveyancing.⁵⁴ This is unsurprising as these areas of law are often contentious and can involve significant amounts of client money. It is also acknowledged that consumer satisfaction can be expected to be lower in contested areas of law.⁵⁵
95. Based on the number of possible misconduct reports we receive, solicitors carrying out of a reserved legal activity are over seven times more likely to be reported. This compares unfavourably to solicitors conducting non-reserved legal activity. Proportionately and relative to turnover, there are significantly more reports about reserved work compared with non-reserved work.⁵⁶

⁵³ either an approved legal services regulator or by the Office of the Immigration Services Commissioner (OISC)

⁵⁴ Again for the purposes of this section, any work that is unlikely to include the provision of a reserved legal activity, is called "non-reserved". For example "personal injury" is treated as reserved where as "social welfare" is treated as non-reserved

⁵⁵ [Tracker survey 2015 Briefing note: how consumers use legal services](#), Legal Services Consumer Panel, 2015

⁵⁶ Of 12,445 regulatory reports received in the 12 month period 1 September 2013 to 31 August 2014, 59% were related to a work type that was a reserved legal activity compared to 8% that related to a work type that was a non-reserved legal activity. The remaining reports

96. This suggests that removing restrictions to allow solicitors to provide non-reserved legal activities in the alternative market would not in itself result in an increase in consumer harm. The current evidence suggests a low level of conduct issues associated with these areas of law.
97. Stakeholders have identified a potential risk arising of a lower standard of advice offered by a solicitor working in firm we do not regulate. This is because of the lack of mandatory requirements for business level systems and controls to ensure quality. It has also been suggested that some solicitors, particularly those in more junior roles and/or not in a position of influence, may come under pressure to act unprofessionally. In the event that this occurred, then this in turn has the potential to weaken the solicitor brand, public confidence and trust in solicitors
98. Our initial view is that there will be strong incentives on solicitors working in the alternative sector to comply with outcomes in the individual code that sets out requirements making them personally accountable. As identified earlier in paragraphs 52 – 56, we recognise that we will need to adapt our supervisory and enforcement strategy to monitor these risks and enforce against these individual responsibilities.

Consumer Protections

99. The Legal Services Act does not require non-reserved legal activities to be regulated. By allowing solicitors to work in the alternative legal services market, with the individual protections that apply to all solicitors, we are adding to the protections available to consumers. Clients who want or need the additional protections that are guaranteed with SRA regulated firms can still access those and will be able to continue to do so in the future. Solicitors working in the alternative legal services sector will need to deal with their clients in accordance with the core professional principles and standards set out in our Code, including managing conflicts of interest, acting in the best interest of clients and upholding the rule of law.
100. Individual solicitors will be subject to the same expectations and standards and to the same enforcement and disciplinary processes and other sanctions, irrespective of where they choose to work.
101. In our consultation paper we explain that whether Legal Professional Privilege would apply where a solicitor working at an alternative legal services business provides legal advice to a client is a matter of substantive law. We have no power to affect the ambit of this substantive law. Where a solicitor working in an alternative legal services firm prepares advice for that firm and provides that advice to a client of the firm, no legal professional privilege will arise. It remains for the individual solicitor to explain to their clients what level of protections they can expect.
102. If practising as a solicitor (within or outside of the alternative legal services market), an individual will need to hold a current practising certificate (PC). This helps resolve the potentially confusing situation for consumers where solicitors who are providing non-reserved services to the public, describe

could not be allocated to a relevant law type of were unknown. This analysis related to 2013-14 where firm reported 54% turnover as including a reserved activity and 46% as non reserved.

themselves as 'non practising solicitors'. They will be a 'practising solicitor', and will hold themselves out, and market themselves transparently as one.

Consumer information

103. An individual consumer would be disadvantaged if they unknowingly accessed legal advice thinking it was from a fully regulated provider and it was not. Our proposals reinforce the need for clients to have better information about the choices available to them and the different types of consumer protections that apply across the legal services market. We know that legal services are for many consumers a relatively rare event, driven by sudden needs, and that the legal market can be a fairly confusing place. Individuals do not have immediate benchmarks against which to judge the standard of service including the quality of legal advice provided.⁵⁷ They rely on reputation, branding and other signals of quality when navigating the market, rather than the specific differences in consumer protections that exist.
104. Our [market analysis](#) and consumer research findings point to the availability of accessible and credible information about lawyers and legal services. This is a cornerstone for consumer empowerment and to supports their ability to play an active role in driving competition in the market. We want to help people to make informed decisions when buying legal services. We know that consumers look to regulators for authoritative and reliable information.
105. We will improve the accessibility of SRA regulatory data for consumers and other stakeholders. We have already started with the launch of '*Law Firm Search*' on our website, and new processes for data re-users to access and make use of that data. This new facility responds to the Legal Services Consumer Panel's recent calls for action to the legal regulators, but also embraces the Government's Public Data Principles by making information on the firms we regulate freely available to all re-publishers, for example comparison websites. This is a first step that makes our basic data freely available but we are looking at how best to open up access to more regulatory information. This will include seeking views from stakeholders about and the collection and supply of a broader range of regulatory information including for example relating to first tier complaints, conduct and service performance and how this can feed into a new SRA open data model.
106. As well as this work to make our regulatory data available we will:
 - continue requiring solicitors to inform their clients about regulatory protections that apply to their work, and their rights to access the Legal Ombudsman's services. Solicitors have a specific requirement to ensure clients understand whether and how the services they provide are regulated and about the protections available to them. This requirement is also mirrored for firms;
 - improve the level of information available to help consumers navigate the legal service market including new development of consumer guides/decision tools to provide jargon-free information about consumer rights, and help them make informed choices. Part of this will be to consider how best to build on the current signals we know consumer use to navigate the market including reputation, branding and other signals of quality;

⁵⁷ [Quality in legal services](#), Legal Services Consumer Panel, 2011

- roll out a programme of consumer engagement during our 2016 consultation process including with members of the public and SMEs, roundtable events with consumer bodies and advice agencies.

How might impacts vary across different types of consumers?

107. Establishing the right conditions to encourage an innovative and competitive market should benefit all consumers, including vulnerable people. We are removing entry barriers that could prevent new providers from offering innovative services that have the potential to improve market conditions, including for vulnerable consumers.⁵⁸ Providers of legal services and members of the judiciary agree that unbundling allows some clients access to expert legal advice that wouldn't be available to them otherwise.⁵⁹ We want to encourage innovation. For vulnerable consumer this might mean the growing numbers of litigants in person in court⁶⁰ being able to access small packages of legal advice such as pre-court services. This would benefit both consumers and the rule of law. We are also removing regulations that have inhibited the delivery of pro bono advice. A significant amount of legal advice is already available to vulnerable consumers by special bodies such as law centres and Citizen's Advice, which are currently outside of SRA regulation. Our proposals would allow solicitors to be employed in any charity to provide advice relating to non reserved legal activity.
108. We have considered whether our proposals raise any specific risks to vulnerable people. Our report on providing legal services to this group explains⁶¹ the factors that lead to a person suffering vulnerability in the legal service market. While dynamic and multi-faceted, there are particular areas of law which are likely to involve consumers at particularly high risk of experiencing disadvantage:
- i. criminal cases, where a consumer using legal representation services may face a possible loss of liberty, or may be held in custody;
 - ii. immigration and asylum work, where a consumer may be facing persecution or even loss of life in another jurisdiction;
 - iii. mental health law services, where a consumer may be experiencing poor mental health that has led to a need for legal decisions to be taken on their behalf;
 - iv. work funded by legal aid contracts, where a consumer is likely to have limited financial means and be dealing with a range of related issues, and

⁵⁸ See also independent economic assessment p 48 – changes in principle could allow solicitors to offer a differentiated service working in an alternative legal provider by capitalising on their specific qualifications, skill and expertise to compete against existing providers.

⁵⁹ [Qualitative Research Exploring Experiences and Perception of Unbundled Legal Services](#), Legal Services Board, 2015

⁶⁰ [Litigants in person putting pressure on courts system – LCJ](#), Law Society Gazette, 2014

⁶¹ <https://www.sra.org.uk/documents/solicitors/freedom-in-practice/vulnerable-people.pdf>

- v. private and public family law work, where life-changing decisions about relationships and custody of children may hang in the balance.
109. In the consumer impact assessment of the changes we have made to allow solicitors to set up separate businesses providing non reserved legal services we concluded that factors affecting the supply of these services mean that consumers are well protected. Where a separate businesses would be allowed to provide legal services for example pre-proceedings advice to a private client in a family law case then the benefits of access to justice outweighed any potential loss in consumer protections. There are also very specific legislative requirements to protect vulnerable consumers including the Equality Act and the Mental Health Act that all businesses must comply with not just regulated firms.
110. The changes that we are proposing now add to these protections. This is because vulnerable consumers would have the choice to access a solicitor working in an alternative provider. Specifically, protections are enhanced because:
- a. The responsibilities that we had identified as being particularly important when applied to standards of service for people who are vulnerable⁶² remain in the proposed Codes and follow a solicitor whatever type of business they are working in. Solicitors must act with integrity, take into account their client's needs and circumstances and not take unfair advantage of their clients;
 - b. The Solicitors' statement of Competence also sets out some very specific detail on what a proper standard of service for people who are vulnerable means including responding to and addressing individual characteristics effectively and sensitively;

Personal characteristics

111. Whatever the category of law, individuals may be vulnerable due to other factors. We have listed the personal characteristics and situations that are risk factors that could make someone more vulnerable in our report.⁶³ These might include age, disability, low literacy skills, cultural issues or lack of access to the internet.
112. On the whole, we expect our proposals to contribute to a market better placed to innovate and respond to the needs of different groups of consumers - including consumers with protected characteristics. There are examples of this in the current market - for example, 'Just For Kids Law' currently delivers legal services and advocacy exclusively for younger people. 80 per cent of young people with legal problems are also in at least one vulnerable group (such as being in care, being unemployed or a victim of abuse)⁶⁴.
113. As explained below, we may also see improvements in the diversity of the legal workforce and solicitors working alongside new people in potentially

⁶² Page 7. <https://www.sra.org.uk/documents/solicitors/freedom-in-practice/vulnerable-people.pdf>

⁶³ [Providing services to people who are vulnerable](#)

⁶⁴ '[Make our rights reality](#)', Just Rights, 2014

more consumer-friendly community environments. This in turn may help to reduce the distrust and suspicion that some groups, particularly BME clients, have of solicitors by increasing the opportunities for them to be matched with affordable legal solutions provided by solicitors that share some of their characteristics. A total of 14 per cent of people in England and Wales identify themselves as belonging to BAME groups⁶⁵ and people from black and ethnic minority communities experience civil justice problems more frequently than white individuals (40.9 per cent compared to 36.6 per cent) – however they also show the lowest levels of trust in legal professionals in the UK, with only 28 per cent of black individuals saying they trust them.

114. We have considered whether there are potential equality impacts for older people in a changing legal services market. Nearly half the UK's 7.1 million adults that do not use the internet are aged 75 and over. They are potentially one group that is at higher risk of being left behind for example if they cannot benefit from technology-based innovation in the market such as online legal solutions and self-lawyering (or DIY law). There is a risk of legal services becoming more difficult to access if this is combined with a decline in access to face-to-face advice from a conveniently located firm.
115. While responding to the legal needs of older people, it is important not to categorise them as a single vulnerable group. Where they reside, their level of education and their income can have an important impact on their ability to deal with legal issues. There is no evidence that older people are particularly adverse to new technologies if these are appropriately designed and introduced.
116. The changes taking place on the high street, where services are being removed, are taking places across many areas of public life. Both government and financial services are areas where face-to-face services are being withdrawn and replaced with online and often remotely delivered options. Citizens of all ages are being forced to respond to the changed delivery of often vital services.
117. Our proposals remove restrictions that are a barrier to innovation. One area of potential innovation might be the introduction new delivery mechanisms as we have seen in other professional services.⁶⁶ Solicitors could offer potentially differentiated services by utilising their specific qualifications and skills and expertise but operating in innovative and different businesses. One example might be through retail outlets or other less intimidating or more convenient avenues.⁶⁷
118. In practice, this should mean that consumers that rely on, or prefer, non-digital methods would also benefit, and where there is still a strong demand for face-to-face advice solicitors will have more freedom to grow their business to meet that demand.

⁶⁵ [Ethnicity and national identity in England and Wales](#), Office for National Statistics, 2012,

⁶⁶ In addition to the long standing presence of opticians providing services, Barclays Bank recently opened eight of their 'Essentials' style branches with Asda superstores. They will open later in the evenings and at weekends offering a full range of banking services

⁶⁷ See also independent economic assessment p63, p48.

119. Similarly, people living in rural communities may access services from their local community, and they may be potentially vulnerable if those services disappear or are not of the right quality. We have considered the potential risk of loss of access to a regulated firm in paragraphs 89-92 above. Our proposals remove restrictions, potentially opening up new opportunities for consumers to access non reserved legal services. This in turn may improve the geographic correlation between legal need and the availability of legal services provided by a solicitor.
120. Our consumer information programme will need to recognise that the potential for consumer confusion is more acute for some types of consumers. This may be because even if informed about the difference in protections between regulated and alternative providers, because of their vulnerability the consumer may not fully understand the consequences or risks attached to each. BAME consumers in particular are found to know the least about their rights and are less likely to speak to a consumer organisation such as Citizens Advice or Which if they encounter a problem⁶⁸. Research also shows that people with learning difficulties can struggle to understand the language and approach used by legal professionals, which can increase their vulnerability throughout the legal services process⁶⁹
121. Our stakeholder engagement on the changes specifically includes with representatives of vulnerable consumers. We recognise how important these groups are to help us develop our consumer information in an accessible way and to establish wide network of channels to distribute this information.

Impact on EDI Issues

Impact on the diversity of the profession

122. Removing the restrictions where solicitors can practise could contribute to reducing barriers to progression by expanding the range and diversity of organisations that they work in. A wider potential employment market, including alternative legal services businesses, could open up new career paths in some areas of law. Alternative legal services providers range from large professional services firms giving advice on employment matter, accountancy firms giving advice on taxation or business structuring to small single employee firms and niche providers such as will writing services⁷⁰
123. We have explained earlier in this report how we think existing small firms we regulate might be impacted by the changes in particular how they are able to adapt to a changing market. This group is central to our work as it represents 48 per cent of all firms we regulate and has a particularly high number of BAME solicitors working within it.

⁶⁸ [BIS consumer protection survey](#)

⁶⁹ ['What happens when people with learning disabilities need advice about the law?'](#), University of Bristol for the Legal Services Board, July 2013

⁷⁰ See also independent economic assessment p48 – the proposed changes will expand the choice options for solicitors in terms of the businesses through which they can deliver non reserved activities. This could lead to an even more diverse legal market and one consistent with suggestions there will be more opportunities for solicitors in the future.

124. Importantly, a recently published Law Society report⁷¹ distinguishes between competition taking place between existing solicitor firms and that involving solicitor jobs. The changes taking place in the next few years could mean that the number of traditional firms may be reduced, possibly significantly. However, if new providers enter the legal services market and expand demand and access to advice, this may result in more jobs being offered to qualified lawyers across a range of different corporate structures. The opportunities might include:
125. Expansion of existing contract management and development of legal bidding sites to the benefit of consumers and allowing solicitors to develop careers in different ways;
126. Greater opportunities for solicitors to embrace different, more technological channels of provision may find their career options are expanded in new types of legal customer-focused roles⁷²
127. Barriers to progression are likely to be reduced if the legal services market grows, with greater employment opportunities in a wider range of businesses created. More job opportunities for solicitors could have the effect of putting pressure on firms to ensure they are fair in the way they recruit and develop their staff.

Small firms – PC fee impact

128. In our assessment of the impact of the SBR reforms we said 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. This would be because of the high proportion of non reserved legal services that they carry out. This would result in a reduction of the proportion of practising certificate fee income recovered from these firms, leading to an increase in the proportion recovered from other firms. There could also be a similar impact on fees if there was a consequential reduction in those working in authorised firms carrying out reserved legal activities.
129. It is unclear at the moment the extent to which firms will move their non reserved work out of SRA regulation; there are other market and regulatory factors that may restrict the movement of both clients and the non-reserved work. Many firms may choose not to set up separate businesses. The effect of any changes are likely to take place over several years.
130. Our proposed changes allowing solicitors to work in the alternative legal services market could mitigate any ultimate impact. This is because solicitors would no longer need to give up their practising certificates to work in alternative legal service providers or separate businesses and would continue to pay a practising certificate fee.
131. We are also carrying out a review of our fees policy to implement changes to fees in a phased manner and aligned to regulatory reforms. This will include looking at the appropriate balance in the practising certificate fee structure between the individual and entity components.

⁷¹ [The Future of Legal Services](#), January 2016, the Law Society

⁷² ['We're not even at the fear stage'](#). Richard Susskind on a very different future for the legal profession by Dominic Carman, Legal Week, 17 November 2015

Annex 6

Economist's report



Assessment of the economic rationale for, and possible impacts of, proposed changes to the Solicitors Regulation Authority Handbook

FINAL REPORT

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15 April 2016

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Summary

This paper provides an assessment of the potential economic benefits and risks associated with the proposed changes to the Solicitors Regulation Authority (SRA) Handbook. It also considers some of the possible impacts on competition, innovation and the cost of legal services of the proposed changes, and how different parties may be affected by these impacts.

The key findings of this paper, in summary, are:

- i. Any assessment of the risk and benefits of regulatory changes must be made within the relevant market context. In this case, this requires consideration of any specific rationales for regulation of legal services, the substantial changes that are currently occurring in the legal services market in England and Wales (in terms of business models and delivery mechanisms), as well as the need to balance consumer protection regulation and competition in the context of these market changes. The assessment in this report is made with regard to these framing issues.
- ii. The SRA is proposing a suite of changes to its Handbook and related regulatory arrangements, some of which can be categorised as refinements of its existing outcomes-focussed regulatory strategy, and some of which are more fundamental changes to existing legal services regulation. Of particular importance in the latter respect is the proposal to allow solicitors to provide certain legal services to the public, or sections of the public, through entities that are not subject to legal services regulation.
- iii. In assessing this latter proposal it is necessary to understand the distinction between legal services involving ‘reserved activities’ and those that involve ‘non reserved activities’. Reserved activities must always be delivered by regulated entities, although non reserved activities need not be. Solicitors are currently only able to provide legal services – including non reserved activities – to the public if the business they operate through is regulated by the SRA. By contrast non-solicitors may deliver non reserved activities to the public through entities that are not regulated by the SRA. The SRA proposes to align the treatment of solicitors and non-solicitors in this respect and allow solicitors to deliver non reserved activities to the public through non-SRA regulated entities (the SRA terms these ‘alternative legal services providers’).
- iv. Having regard to the contextual frame described above, our assessment of the economic rationale – in terms of potential in-principle benefits and risks – of the various proposed changes to the SRA Handbook are set out in table 1 below.
- v. In considering some of the possible impacts of the proposed changes on competition and innovation, and on different types of stakeholder (consumers, solicitors, providers), the important matter, from an economic perspective, is how the changes will impact on *behaviour*, which in turn has wider economic effects. Consistent with the general approach adopted in assessment exercises of this type, the possible impacts are examined relative to the current market and

regulatory/policy context. That is, impacts are assessed relative to a counterfactual where the Handbook exists in its current form, the SRA applies an Outcomes Focussed Regulatory (OFR) approach, and where there are both regulated providers (such as traditional solicitor practices and alternative business structures) and providers of legal advice who are not subject to legal services regulation. Table 2 summarises our assessment of the possible impacts of the various proposed changes on key economic variables.

- vi. The potential economic impacts identified can be mapped across to different types of affected parties. Our assessment of the possible impacts on consumers, solicitors, regulated providers and non-solicitor firms who provide non reserved activities is summarised in table 3.
- vii. These tables indicate, in general terms, that consumers can be expected to benefit from the proposed changes to the extent that they: widen the number of providers and delivery mechanisms available to consumers; allow consumers increased access to the high standards of professionalism and education that is provided by solicitors; improve consumer understanding of the legal services market; and allow some consumers to trade-off certain protections for other benefits. Moreover, to the extent to which the changes result in more intense competition and innovation, this might ordinarily be expected to benefit consumers in the form of lower prices, alternative pricing arrangements, higher quality and the introduction of new products and services. All of this might draw more consumers into the market and address concerns about unmet demand.
- viii. On the other hand, and again in general terms, some consumers may be adversely impacted by the changes to the extent that they fail to address, or increase, confusion around the different protections attaching to services provided by solicitors through regulated providers and alternative legal services providers, or if the professionalism of solicitors is eroded, or seen to be eroded, through practice in alternative legal services providers. As discussed in this paper, consideration will need to be given as to whether such risks can be mitigated by appropriate measures in implementation of the proposed changes.
- ix. Finally, as emphasised throughout this report, regulatory arrangements often involve a level of compromise between specialist consumer protections and competition. Accordingly, even where a potential risk cannot be comprehensively mitigated in implementation, such risk or outcome must be weighed against the extent and magnitude of any potential benefits for consumers that may be associated with the changes in terms of greater competition and innovation.

Table 1: Assessment of the economic rationale of the proposed changes

Proposal	Potential benefits	Potential risks
Restructure and simplify the Handbook	<ul style="list-style-type: none"> • Simplification, through fewer, and clearer, principles and standards, may enable regulation to keep in step with some of the wider market changes, in particular the increasing diversity of business structures. • Delineating the regulation of individuals from entities should assist the implementation of other proposed changes, particularly the change to allow solicitors to practice in alternative legal services providers. 	<ul style="list-style-type: none"> • May create material gaps in coverage leading to discord with policy objectives, and detrimental impacts on consumers. The extent to which this risk will arise will depend greatly on the content of the principles and codes of conduct and whether they are sufficient to cover all circumstances that may arise in practice, as well as whether the general principles are complemented by appropriate regulatory guidance. • If the simplification results in unintended changes to the established meaning or understanding of words and concepts, this might impact on the achievement of regulatory objectives.
Reducing Handbook size and removing redundant or duplicative requirements	<ul style="list-style-type: none"> • May improve understanding of solicitors, regulated providers and consumers of regulatory obligations and protections, and the basis on which enforcement actions and decisions are taken. This can enhance consumer confidence in the market and be market-expanding. • Allowing economy-wide legislation to provide consumer protections where these are sufficient for legal-services consumers will avoid regulatory duplication and should reduce regulatory costs. 	<ul style="list-style-type: none"> • May create material gaps in regulatory coverage. Mitigation of this will lie in the specifics of how this change is implemented.

Refining the outcomes-focused regulatory approach and removal of non-binding guidance	<ul style="list-style-type: none"> • May create greater clarity for solicitors and regulated providers as to the status of different requirements. • Removing non-binding guidance from the Handbook should allow the new extrinsic guidance (e.g. online toolkits/case studies) to keep in step with changes in the market, and any specific problems that emerge. • May foster a mindset focussed on complying with regulatory objectives, and allow for new and innovative ways of compliance to develop across the diverse areas regulated. • 	<ul style="list-style-type: none"> • May increase uncertainty among regulatees as to what actions constitute regulatory compliance. • Any such uncertainty could increase costs, and potentially foster growth in the third-party compliance industry. • However, solicitors and regulated legal service entities might be expected to be more equipped than other professions when it comes to dealing with generality in legal provisions or regulations.
Proposal	Potential benefits	Potential risks
Development of a series of public and business facing guides	<ul style="list-style-type: none"> • May empower consumers, by making it clearer which type of provider is most suited to their needs and requirements, and differences between providers in terms of service levels and protections. • More active and engaged consumers can expand the legal services market, and address some of the problems associated with unmet demand. 	<ul style="list-style-type: none"> • To be effective, careful thought will need to be given to the various target audiences of such guides, the information to be included and the accessibility of such information.
Allowing solicitors to deliver non reserved activities through alternative legal services providers	<ul style="list-style-type: none"> • May increase competition by allowing solicitors to capitalise on their specific qualifications, skills and expertise in alternative legal services providers. • May facilitate innovation and new methods of service delivery, which can be market-expanding and potentially address some of the issues associated with unmet demand for legal services. • Will expand the choice options for solicitors which could lead to an even more diverse legal market. • More opportunities for in-house providers to advise the public, or certain segments of the public, including vulnerable consumers (subject to their employment contracts). 	<ul style="list-style-type: none"> • Certain consumer protections will not be available where services are provided by solicitors through alternative legal services providers. (e.g. access to SRA Compensation Fund, regulated professional indemnity requirements and client money-holding rules). • Consumers may not have the benefit of legal professional privilege in relation to advice provided through an alternative legal services provider (unless novel contractual arrangements are developed). • Consumers may fail to understand relevant distinctions, and to appreciate differences in consumer protections when using different providers. • Certain entity-level business stability and viability protections

	<ul style="list-style-type: none">• Will 'level the playing field' for solicitors and non-solicitors who provide non reserved services.	<p>will not be available to consumers that use solicitors through alternative legal services providers.</p> <ul style="list-style-type: none">• Consumers will not have the benefit of mandatory firm-wide conflict of interest protection (although firms may have voluntary policies which provide equivalent protections).
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Table 2: Potential economic impacts of the proposed changes

Indicator/variable	Potential impact
Entry, expansion and exit	<ul style="list-style-type: none"> • If large numbers of solicitors do, over time, choose to deliver non reserved activities through alternative legal services providers, and consumers see these services as substitutes for those provided by solicitors operating through regulated firms, or by firms who deliver non reserved activities through non-solicitors, a material impact on entry, expansion, and therefore competition, can be anticipated. • Could encourage entry by new types of providers, such as legal technology firms. • There is also the possibility that the changes might result in some market exit. For example, if solicitors who deliver non reserved activities through alternative legal services providers directly challenge, and attract a significant volume of business away from smaller regulated providers, or from firms who deliver similar services through non-solicitors. • Impact on entry and exit could be reduced if consumers place a high value on the protections only available through regulated providers, or if the new arrangements would severely compromise legal professional privilege and such privilege has high value to consumers (generally, or in relation to certain legal services e.g. tax advice)
Costs and prices	<ul style="list-style-type: none"> • The potential impacts on costs, and therefore prices, are likely to vary according to the effectiveness of measures introduced alongside each proposal (e.g. whether the online resources and toolkits are more effective in allowing solicitors to understand what they need to do to comply with regulatory principles and objectives). • It will also depend on the intensity of competition, and therefore the extent of any pass-through of cost changes into consumer prices. • The cost impact of the refinement of the outcomes-focussed approach will depend significantly on the extent to which such change reduces regulatory uncertainty. • Public and business facing guides should reduce consumer search costs and allow consumers to exert greater service and pricing pressure on legal service providers. • It is difficult to identify a direct cost impact of the proposals to allow solicitors to deliver non reserved activities to the public through alternative legal services providers. However, the proposed change might result in reduced prices to the extent to which it intensifies competition in non reserved activities, or leads to entry by new providers with lower costs. • On the other hand, consumers who suffer loss as a result of fraud by, or the inadequate insurance of, a solicitor in an alternative legal services provider, will not have access to the SRA Compensation Fund in relation to this loss (which is a cost to those consumers who would have been eligible to fund protection).

Quality	<ul style="list-style-type: none"> Public and business facing guides could reduce the information asymmetry that some consumers of legal services face, and increase the countervailing power they can exercise in dealing with legal providers. Other things equal, more empowered and knowledgeable consumers should be able to demand higher quality services from legal providers.
Indicator/variable	Potential impact
Quality (continued)	<ul style="list-style-type: none"> Allowing solicitors to deliver non reserved activities through alternative legal services providers could potentially lead to higher quality provision of non reserved activities (relative to them being provided by a firm who does not employ solicitors). However this depends on whether these services are considered by consumers to be a substitute for these same services provided by non-solicitors. Some concern has been expressed that solicitors acting in alternative legal services providers may face fewer quality constraints than in regulated providers, or face pressure to provide poorer quality service. Whether or not this proves correct, the proposed Solicitors Code of Conduct should, if effectively drafted and enforced, condition the minimum standards expected of solicitors wherever they practise. Solicitors working through alternative legal services providers will not be subject to entity-level supervision of quality. The significance of this will depend on the extent to which the SRA adapts its supervision toward the individual level. There may be quality impacts for consumers if legal professional privilege is not available in relation to services provided by alternative legal services providers. Similarly, there may be quality impacts of consumers not having the benefit of automatic firm-wide conflict of interest protection.
Innovation	<ul style="list-style-type: none"> The refinement of the outcomes-focussed approach to regulation might foster innovation in compliance and create conditions for technological innovation by allowing those subject to regulation the freedom to experiment with alternative processes and technologies, which might lower production costs or improve quality. However, such changes could also potentially chill innovation if they create greater uncertainty. Allowing solicitors to deliver non reserved activities through alternative legal services providers may provide opportunities for innovative service bundling for consumers, and other innovations in service delivery commensurate with the potentially great variety of non-law firms' business models. This could include the development of new methods of accessing legal services (e.g.: legal exchanges).
Demand for legal services	<ul style="list-style-type: none"> Public and business facing guides could improve consumer understanding of their rights and obligations, instil a higher degree of confidence in the legal service market, and reduce search costs. This could encourage more consumers to purchase legal services. Allowing solicitors to deliver non reserved activities through alternative legal services providers could, in principle, lead to a greater number and diversity of providers of regulated legal services. Some of these providers might introduce new delivery mechanisms – for example, through retail outlets or via the Internet – which could tap into unmet demand for a service of

	<p>regulated quality provided through less intimidating or more convenient avenues.</p> <ul style="list-style-type: none"> • Some current providers might exit, particularly smaller providers, which could potentially have impacts on demand and access to justice if the exit of such providers is concentrated in specific geographical locations or particular customer segments.
Indicator/variable	Potential impact
Wider economic impacts	<ul style="list-style-type: none"> • To the extent to which the proposed changes remove unnecessary restrictions on trade, this may result in the development of alternative delivery mechanisms and service provisions which might reduce the time and cost associated with acquiring legal services and lower transactions costs. • Conversely if the proposed changes increase confusion and uncertainty this could reduce confidence in the legal services market and could increase transaction costs.

Table 3: Possible impacts on various affected parties

Affected party	Potential positive impacts	Potential adverse impacts
Consumers	<ul style="list-style-type: none"> • Consumers could benefit from the proposed changes to the extent that they: improve consumer understanding of the legal services market; widen the number of providers and delivery mechanisms available; increase access to the high standards of professionalism and education that is provided by solicitors; and allow some consumers to trade-off some protections for additional benefits. • If the changes result in more intense competition and innovation this could benefit consumers in the form of lower prices, alternative pricing arrangements, higher quality and the introduction of new products and services. This could also draw more consumers into the market and address concerns about unmet demand. 	<ul style="list-style-type: none"> • Consumers who suffer loss as a result of fraud by, or the inadequate insurance of, a solicitor in an alternative legal services provider, will not have access to the SRA Compensation Fund in relation to this loss. They will have access to avenues of redress available to all consumers. • Consumers may not have the benefit of legal professional privilege in relation to advice provided through an alternative legal services provider (unless novel contractual arrangements are developed). • Consumers may be confused by the different protections attaching to services provided by solicitors through regulated and alternative legal services providers, and may find it difficult to make informed decisions. • A concern raised in some quarters is that consumers may, for reasons associated with the loss of entity-level supervision, receive lower quality services from solicitors in alternative legal services providers. • Consumers will not automatically have the benefit of firm-wide protection in relation to conflicts of interests with other clients of the provider.
Solicitors	<ul style="list-style-type: none"> • The specific impacts on solicitors are likely to differ according to the structure through which they deliver legal services, and how responsive they are to the changes (i.e.: whether they see them as an opportunity). • Changes to the structure and content of the Handbook could result in benefits for solicitors by clarifying their regulatory obligations, reducing their compliance burden (by removing duplicative or 	<ul style="list-style-type: none"> • There is potential for misunderstanding of the new compliance arrangements, although solicitors should be better equipped than most to understand, and deal with, regulatory changes. • The replacement of detailed indicative behaviours may create additional work for practitioners in determining how best to exercise their permitted discretion to best meet regulatory outcomes in their particular circumstances, increasing the costs and time associated with compliance.

	redundant requirements) and allowing them greater freedom and agency in determining how to comply with various principles and standards.	
Affected party	Potential positive impacts	Potential adverse impacts
Solicitors (continued)	<ul style="list-style-type: none"> • Refinements of the outcomes-focussed approach should reduce the frequency with which changes to the Handbook are made, and therefore the need for solicitors to constantly keep abreast of such changes. • Removing restrictions on the ability of solicitors to deliver non reserved activities to the public outside regulated providers could benefit solicitors by increasing the scope for them to leverage their specialist skills, knowledge and expertise into new areas, and through alternative providers and delivery mechanisms. This is likely to particularly benefit solicitors who are responsive to consumer needs and preferences. • The 'solicitor' brand could be strengthened by increasing the visibility and accessibility of solicitors, and improving understanding of the specialist skills and knowledge they can offer. In addition, if solicitors come to be perceived as less 'elite', this may widen access and attract more consumers to use their services. 	<ul style="list-style-type: none"> • There is a concern in some quarters that solicitors working in alternative legal services providers might face pressure from such providers to 'cut corners' or compromise their professional principles in the interest of commercial expediency. While it is not possible to predict whether such a conflict may arise, the solicitor themselves should, as the regulated party, have strong disincentives to compromise the professional principles to which they will remain subject under their Code of Conduct. • The 'solicitor' brand could be diminished as solicitors come to be associated with different type of providers and with varying levels of consumer protections. This will depend on consumer expectations of what is included in the provision of solicitor services, and the value they attribute to different aspects of this.
Regulated providers	<ul style="list-style-type: none"> • Proposals to simplify and remove duplicative and redundant requirements should benefit regulated providers by reducing complexity, and potentially the regulatory burden on regulated providers. • Allowing individual solicitors to deliver non reserved activities to the public by practising in an alternative legal services provider may have impacts in terms of attracting and retaining staff, and some solicitors may 	<ul style="list-style-type: none"> • The potential impacts on regulated providers will differ according to their size, location and the relative proportion of reserved and non reserved activities they undertake. • The potential impact on smaller traditional regulated providers is more difficult to assess. Some changes have the potential to reduce the burden and costs associated with complying with regulation. However, the ability to deal with the competitive threat of solicitors working in alternative legal services providers

	<p>decide to deliver solely non reserved activities through an alternative legal services provider.</p> <ul style="list-style-type: none"> • Could have impacts in terms of the ability to compete with alternative legal services providers, particularly those with strong consumer brand recognition. 	<p>may be more limited for smaller providers as, for various reasons (such as their location) they may have to continue to deliver both reserved and non reserved activities.</p>
Affected party	Potential positive impacts	Potential adverse impacts
Regulated providers (continued)	<ul style="list-style-type: none"> • Larger providers, and those which target business customers, are likely to be best placed to adapt to changes in the legal services market. Some of the more innovative providers may see this as an opportunity to introduce new compliance and delivery methods. • Some currently regulated providers may choose to focus only on non reserved activities in the future, and therefore avoid the costs and obligations of entity regulation. 	<ul style="list-style-type: none"> • If re-writing the Handbook changes the meaning of words and concepts, this can have cost and training implications for regulated providers.
Firms who provide non reserved activities through non- solicitors	<ul style="list-style-type: none"> • Most of the proposed changes – in so far as they relate to regulatory requirements and obligations – will not impact on firms who deliver ‘legal services’ through non-solicitor advisors. • However, alternative legal services providers, who use solicitors to deliver non reserved activities under the changes, may benefit from offering a differentiated service to firms who provide the same services through non-solicitors. • Such providers will also have the potential to ‘opt-in’ to regulation. The incentive to do so might arise for cutting-edge or innovative providers who want to reassure consumers that they are subject to various controls and processes, and that service users will be afforded traditional protections, including the benefit of legal professional privilege. 	<ul style="list-style-type: none"> • Firms who deliver non reserved activities through non-solicitor advisors will, under the changes, potentially face more intense competition for some of these services from alternative legal services providers. • The extent of this impact will depend on how substitutable the two types of services are. Such increased competition itself is not an economic risk, but could be so if the provision of certain services by non-solicitors discontinued in the market in circumstances where consumers did not, or could not afford to, then obtain those services from solicitors.

1. Introduction

1.1 Purpose of the research

The legal services market in England and Wales is experiencing a period of change. New business models and delivery mechanisms are being developed, and the number of providers of non reserved activities who are not subject to legal services regulation is growing. Consumers are also changing how they select and buy legal services, and the funding of key aspects of legal services (such as legal aid) is subject to review. Technological change is also having a major impact on the sector. Notwithstanding these changes, questions continue to be asked about the affordability of legal services, levels of consumer satisfaction, and whether there might be rules in place that reduce competition and innovation to the detriment of consumers.

Regulation can be either a facilitator or inhibitor in times of change. Well-designed, proportionate and targeted regulations can foster high levels of competition, innovation and consumer satisfaction, and allow for the achievement of other policy objectives. Conversely, regulations that are poorly designed, overly restrictive, insufficiently targeted, disproportionate or inadequately enforced, can be inimical to competition, innovation and consumer satisfaction and can frustrate the achievement of other policy goals.

Accordingly, a central challenge for all regulators and policy makers is to develop a set of regulations, and regulatory institutions, that are 'fit for purpose' given the market context – i.e.: regulation that is well targeted to policy goals, cost-effective, proportionate and that complements wider changes in the market.⁷³ The question is therefore not simply one of 'more or less' regulation, but rather about developing the best set of regulations to match the market context in which they are being applied. This requires regulators, and those subject to regulation, to remain vigilant in identifying regulations that will facilitate or frustrate developments which might improve competition, innovation and consumer outcomes, including, in this case, access to high quality legal services.

Against this background, this paper considers a series of proposed changes to the Solicitors Regulation Authority (SRA) Handbook. In particular, the focus of this paper is on assessing the economic rationale for, and possible impacts of, these proposed changes. In this respect, it is intended to assist the SRA to determine whether the proposed changes are supported by robust economic rationales, and are likely to complement, rather than frustrate, wider positive changes that are occurring in the legal services market.

⁷³ This accords with the general principles of Better Regulation such as the EU's SMART requirement – that regulatory objectives should be 'Specific, Measurable, Achievable, Relevant and Time-bound'.

Specifically, this paper seeks to address two general questions:

- Firstly, what are the, in-principle, potential economic benefits and risks associated with each of the proposed changes? (i.e. how compelling is the economic rationale for each)
- Second, what are some of the possible economic impacts, including on competition, innovation and the cost of legal services of the proposed changes? How might different affected parties be impacted by the proposed changes?

1.2 Approach

In responding to the questions, the analysis in this paper draws on a wide range of materials including: policy-documents; regulatory consultations; reports; academic papers and other documents. The material also draws on discussions with the SRA and other key stakeholders such as the Legal Services Consumer Panel, the Law Society, the Law Society in-house division, the City of London Law Society and specific regulated and non authorised providers. The purpose of these discussions was to hear first-hand the factors that are motivating the changes to the Handbook, and to explore possible impacts of the changes.

Consistent with the general approach adopted in assessment exercises of this type, the analysis examines the rationale for, and possible impacts of, the proposed *incremental* changes to the SRA Handbook. Put differently, the focus is on analysing the proposed changes relative to the current market and regulatory policy context. This is relevant insofar as it means that the impacts are assessed relative to a counterfactual where the Handbook exists in its current form, and where the SRA applies an Outcomes Focussed Regulatory (OFR) approach. Impacts are also assessed relative to a market context where there are regulated providers (such as traditional solicitor practices and alternative business structures) as well as a large number of non authorised providers of legal advice.

In the time available, the two key research questions have been addressed at a general level, drawing on general economic principles and insights to identify the likely type and nature of effects that might follow from the proposed changes. As such, the research does not seek to quantify, or provide detailed empirical evidence to support, the conclusions made.

1.3 Structure of the paper

This paper comprises six additional sections. Section 2 sets out the changes being proposed to the SRA Handbook. Section 3 situates these changes in the wider market and policy context, and discusses some of the main characteristics of the demand for, and supply of, legal services in England and Wales, as well as some of the most important changes that are impacting on this market. Section 4 sets out some general considerations that are important to frame the analysis in this paper. It

briefly considers foundational questions such as: Why do we regulate legal services? What is the appropriate balance between consumer protection laws and competition? What are the merits of alternative regulatory approaches to achieving a set of objectives? Section 5 assesses the rationale for the proposed changes, identifying some of the, in-principle, potential benefits and risks associated with the changes. Section 6 builds on this analysis, to consider and map out some of possible impacts of the proposed changes on competition and innovation, and on different affected parties (consumers, solicitors, providers). Section 7 builds on the analyses in these earlier sections to address a set of key questions identified by the SRA, including:

- i. What might be the effects of the proposed changes in terms of competition, costs for the consumer, choice and market growth?
- ii. Are there likely to be any negative or unintended consequences associated with the proposed changes?
- iii. Which legal services are likely to be most affected by the increased presence of solicitors being allowed the flexibility to provide legal services in a wider range of firms?
- iv. How might the proposed changes improve access to legal services for the public and business users?
- v. In what circumstances might a consumer decide to choose a 'qualified' professional in an alternative legal services provider?
- vi. What are the best ways to support consumer confidence to make effective purchasing decisions as the SRA opens up the range of options for choosing and buying legal services?
- vii. What might be the impact of these proposals on vulnerable legal consumers?
- viii. Will the proposed changes likely reduce the cost of delivering legal advice, and if so, are these cost reductions likely to be passed on to consumers?
- ix. What are the possible impacts on regulatory compliance costs (transitional and ongoing) of simplifying the handbook and changing our approach to guidance for firms? Will they differ between different types and sizes of firm?
- x. How might allowing solicitors to work across an expanded legal services market improve the diversity of the profession? Is it possible to identify groups that will benefit and also those to whom the proposed changes will

have a less apparent or non-existent effect on their careers and advancement?

xi. Is there likely to be a geographic dimension to the impact of the changes?

2. What changes are being proposed?

This section sets out our understanding of the changes being proposed by the SRA and the wider policy agenda in which these proposals are being made.

2.1 The SRA's new approach to regulation

Justifying why a regulation is needed, rather than why it should be removed

Considerable change to the regulation of solicitors and entities has occurred since the creation of the SRA a decade ago. The major changes include: a shift from a prescriptive, rules-based, approach to regulation to a more principles-based, outcomes-focussed, regulatory approach; the introduction of licensing for Alternative Business Structures (i.e.: structures which allow for non-lawyer ownership, management and control of authorised legal entities); and allowing the formation of multi-disciplinary practices, where a single firm can deliver both legal services and other services.

While these changes have been important, particularly in terms of the development of a more diverse set of legal providers, the SRA has acknowledged that there remain areas where regulation could be improved to better promote competition and improve access to justice. Specifically, the SRA has noted that the current regulatory arrangements are, on balance, too interventionist, and that some interventions cannot be adequately justified.⁷⁴

Accordingly, a key element of the SRA's new approach to regulation is to shift away from an approach where justification is required only for removing regulations, towards one where all existing and proposed regulations are well-justified.

Clarifying who and what is regulated by the SRA

The current approach to regulation of solicitors comprises two parts. One part involves the regulation of entities, and includes placing restrictions on permitted business structures through which legal services can be provided by solicitors. A second part involves the regulation of individual solicitors, and, among other things, places restrictions on where they are able to practise as a solicitor.

⁷⁴ Solicitors Regulation Authority (2015a).

An overarching aim of the SRA's changed approach is to separate out, and make clear, what requirements are placed on individuals who act as solicitors and what requirements are placed on entities that are authorised by the SRA. Specifically, the SRA is proposing to remove some of the regulatory restrictions that are placed on individual solicitors in terms of which businesses they can operate through. This will allow solicitors to provide non reserved activities through different types of business structures, including businesses that are not regulated by the SRA or any other approved legal regulator (the SRA terms these 'alternative legal services providers').

The aim of the SRA's changes is to bring about a situation where:

- Solicitors are able to work on their own, or in a range of business structures, including businesses not regulated by the SRA. However, irrespective of the type of business through which they operate, all solicitors will be personally bound by a set of core regulatory obligations and professional principles.
- Entities providing legal services are able to structure themselves in any way that best meets their client and business needs provided that this accords with statute. An important statutory limitation in this respect is that certain specific types of legal services ('reserved activities'⁷⁵) can only be provided to the public through an entity regulated by the SRA (or other approved legal regulator.)

An important factor motivating the proposed changes to the Handbook (described below) is to improve the clarity about who is regulated and what is expected of them. Specifically, under the proposed changes to the Handbook:

- *Individuals* are regulated against the title solicitor.
- *Firms* that provide legal services that involve reserved activities are subject to entity regulation by the SRA.
- *Managers and compliance officers* within SRA-regulated firms are subject to certain responsibilities.

In relation to these new arrangements, the SRA is proposing two 'Codes of Conduct': a SRA Code of Conduct for solicitors, Registered European Lawyers and Registered Foreign Lawyers; and a SRA Code of Conduct for Firms (solicitors, managers and compliance officers within firms). As described below, the SRA is also proposing a number of other consequential changes to the Handbook to effect this, and other aspects of, its new model.

2.2 A proposed new 'model' of regulation

In a November 2015 Position Paper the SRA set out its current thinking on a new model for regulation. There are five key elements of the proposed model:

⁷⁵ A detailed discussion of the types of legal work comprising reserved and non reserved activities is contained in section 3.

- First, all solicitors are subject to core regulatory principles and obligations at all times.
- Second, if delivering reserved legal activities to the public or a section of the public, solicitors must do so through an authorised entity (a 'regulated provider'), such as a law firm or an Alternative Business Structure.
- Third, individual solicitors may deliver non reserved activities to the public or a section of the public by practising in an entity that is not regulated by the SRA (an 'alternative legal services provider'). If they do, regulatory protections such as access to the Legal Services Ombudsman and complaints handling obligations will continue to apply. However, it is proposed that regulatory protections such as access to the SRA Compensation Fund, regulated professional indemnity insurance requirements and client money-holding rules will not be available in relation to these services.
- Fourth, an entity (i.e. an organisation) may be authorised by the SRA to deliver reserved activities, but although then entitled to do so, it will not need to deliver reserved activities to retain its authorisation.
- Fifth, any entity authorised by the SRA which delivers reserved or non reserved activities must have appropriate indemnity insurance; may hold client money subject to proper systems being in place; and will have obligations and protections under the SRA compensation arrangements.

The SRA's vision is a market where business and individual consumers can choose between a diverse range of providers of non reserved activities, including: solicitors working in regulated entities; solicitors working in alternative legal services providers; or firms who do not employ solicitors to deliver non reserved activities.

The current changes are part of a wider programme of review by the SRA of its regulatory approach. It proposes to undertake its review of regulation in two phases. The first phase focuses on how solicitors and firms can practise, and the behaviours, conduct and standards expected of them. The second phase, which is in the early stages of development, will focus on the remaining areas of the Handbook.

As part of this first phase, the SRA has also reviewed its outcomes-focussed regulatory strategy, and considered how elements of the implementation of the strategy might be improved. Based on this review, and in order to implement its proposed new model of regulation, various changes have been proposed to the current version of the Handbook⁷⁶ and to the SRA's regulatory approach more generally.

2.3 The SRA's proposed changes

The SRA's proposed changes can be categorised as involving the following:

⁷⁶ Version 15 of the SRA Handbook published on 1 November 2015.

- *Simplifying and restructuring the Handbook:* The aim of the restructure is to create a clearer separation between regulations that apply to solicitors as individuals, and regulations that apply to authorised entities. In terms of simplification of the Handbook, it is proposed that the number of principles and outcomes that solicitors and firms must follow as part of their respective Codes of Conduct be reduced.
- *Reduction in Handbook size and removal of redundant requirements:* It is expected that the size of the Handbook will be substantially reduced to around 50 pages from its current size of around 400 pages. Some of this reduction in size will come from the removal of requirements that are covered by other laws and regulations or which have been superseded by market or technological developments. The aim is to make the rules sharper and better focussed.
- *Refinement of outcomes-focussed regulatory strategy, including replacing non-binding Indicative Behaviours and guidance:* An overarching aim is to establish a minimum set of standards which account for the diversity of the profession, and the various forms of business structure, and are relevant and applicable to all regulated individuals and providers. Indicative Behaviours, which are currently contained in the Handbook, are to be replaced with on-line resources such as case studies and toolkits. The proposal is to have a clear separation between binding rules and non-binding guidance.
- *Development of public and business facing guides:* These are intended to help consumers understand what protections they have in dealing with solicitors and the different types of providers, to clarify standards of service and conduct they can expect of a solicitor, and to develop tools to help choose the right legal services for their needs.
- *Removal of restrictions on solicitors delivering non reserved activities outside regulated providers:* This will allow individual solicitors to deliver non reserved activities to the public, or a section of the public, through an entity that is not subject to legal services regulation (an 'alternative legal services provider').

3. The wider market and policy context in which the changes are being proposed

Before going on to consider whether the changes being proposed to the SRA Handbook have a well supported economic rationale, and the possible impacts of such changes, it is useful to situate the proposed changes in the wider market and policy context. This is because, as discussed earlier, regulation can only be appropriately assessed by reference to the context in which it is being introduced.

This section begins by setting out some of the main characteristics of the current structure of the demand for, and supply of, legal services in England and Wales. It then briefly describes some of the most important changes that are impacting on this market.

3.1 Current market context

Market size

The UK has the largest legal services market in Europe. In 2012 it was estimated that the legal sector was worth over £20 billion, and contributed around 1.5% to UK GDP, including £4 billion of export value.⁷⁷ Moreover, since that time, the market has grown and in 2014 it was estimated that the total turnover of legal activities (including activities of barristers, solicitors and patent and copyright agents) was £30.05 billion.⁷⁸

Table 1 below shows the estimated turnover associated with the activities of solicitors over the period 2010 to 2015 based on ONS data.⁷⁹ Of particular note is that the turnover of solicitors is growing, and indeed, has grown by 16% over this five-year period.

Table 1: Turnover of activities of solicitors, 2010 -14

	Activities of solicitors £ billion
2010	13.98
2011	15.15
2012	15.81
2013	16.88

⁷⁷ See Wright (2014).

⁷⁸ Office of National Statistics (2015)

⁷⁹ Office of National Statistics (2015)

2014	16.28
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Source: Office of National Statistics (2015)

It is difficult to assess the overall size of the ‘unauthorised’ legal services market (see definition below). Some estimates suggest that the turnover of the unauthorised market could be in the vicinity of 20% to 30% of the total market.⁸⁰ Assuming that the turnover associated with regulated activities of £30.05 billion is reasonably accurate, this implies that the turnover of the unauthorised market would be in the vicinity of £6 billion to £9 billion in 2014. This compares to turnover of solicitors of £16.2 billion in that year.

Types of provider of legal services

Existing providers of ‘legal services’ can be classified into three categories:

- a. Those who are authorised and regulated by an approved regulator under the Legal Services Act 2007 (LSA) to provide legal activities.
- b. Those that conduct certain legal activities – such as claims management and immigration activities – that are subject to other forms of legal regulation.
- c. Those who are not subject to any form of legal services regulation. These suppliers are sometimes referred to as ‘unauthorised’ or ‘unregulated’, but they are of course subject to various regulations (such as consumer protection legislation, data protection etc) which apply to all businesses in the economy.

Authorised legal providers are regulated by the SRA or one of the other seven approved legal regulators. The entities regulated by the SRA are diverse and range from small high street practices to large global law firms. A relatively new type of regulated entity, is known as an Alternative Business Structure (ABS) provider. Around 600 ABSs have been licensed,⁸¹ of which the SRA regulates around 439. These include traditional law firms who have non-lawyers on their boards, accountancy firms, insurance companies, local authorities and charities.

Some providers who deliver specific legal activities – such as immigration activities and claims management activities – are not regulated by one of the eight approved legal regulators. Rather these providers are regulated by specific bodies, such as the Office of the Immigration Commissioner (OISC) or the Claims Management Regulator (CMR).

Table 2 below shows the number of providers regulated by the different Approved Regulators and by the Chartered Accountants for England and Wales (for probate activities). As can be seen from this table, the SRA currently regulates over 92% of all regulated legal providers.

⁸⁰ See Cross (2014).

⁸¹ Competition and Markets Authority (2016).

Table 2: Number of businesses regulated by different legal regulators

	Number of regulated businesses
Solicitors Regulation Authority	10,300
Council for Licensed Conveyancers	364
Intellectual Property Regulation Board	336
Bar Standards Board	39
CILEX	2
Institute of Chartered Accountants for England and Wales	150
Total regulated businesses	11,191

Source: Solicitors Regulation Authority (2016)

Some firms who provide non reserved activities to the public are not regulated by any of the eight approved legal regulators, or by other bodies such as the OISC or the CMR.⁸² Accordingly, they are not bound by specific rules which apply to regulated legal providers, or to individuals who provide advice through those businesses. In short, such providers are not subject to any specific regulations over and above that which apply to all businesses, and their advisors are not required to have any particular qualifications.

A final type of ‘provider’ of legal services is solicitors who provide advice to a single client, such as in-house solicitors or solicitors who work for special bodies. The SRA estimates that around 18-20% of all solicitors (approximately 27,300) are in-house.⁸³ In-house solicitors are currently restricted in their ability to provide advice to parties other than their employer (although this restriction can be waived – see discussion below).

Regulated and ‘unregulated’ individuals

⁸² Although the term ‘unregulated’ is used to refer to these businesses, such providers are not truly unregulated. They are still required to comply with legislation such as consumer law, data protection and Anti Money Laundering legislation.

⁸³ SRA (2016).

The number of regulated individuals who provide legal services is shown in table 3. This shows that solicitors are by far the greatest number of regulated individuals who provide legal services with some 133,000 practicing solicitors, representing over 82% of the total number of *regulated* individuals.

Table 3 below also provides an estimate of the number of individuals who provide legal advice in non reserved activities and are not regulated by one of the approved legal regulators or the OISC/CMR. Strikingly, the estimated number of such individuals in 2011 was in the vicinity of 130,000 individuals, which is broadly similar to the number of regulated solicitors (133,000).⁸⁴

Table 3: Number of regulated and ‘unregulated’ individuals

	Number	% of total regulated and unauthorised individuals
Solicitors	133387	45.7%
Barristers	15716	5.4%
Legal Executives	6673	2.3%
Licensed Conveyancers	1200	0.4%
Costs lawyers	619	0.2%
Notaries*	1000	0.3%
Chartered Patent Attorneys*	2000	0.7%
Trade Mark Attorneys*	<u>1500</u>	<u>0.5%</u>
<i>Total regulated individuals</i>	<i>162095</i>	<i>55.5%</i>
Unregulated individuals*	130000	44.5%

* estimate only. Source: Solicitors Regulation Authority (2016) and Legal Services Board (2011).

Types of activities

⁸⁴ Legal Services Board (2011).

For the purposes of analysis in this paper it is important to distinguish between two types of legal activities: reserved and non reserved activities. Only individuals and firms authorised by the SRA, or one of the other approved legal regulators, can deliver reserved activities to the public, or a section of the public.⁸⁵ Table 4 below details the six reserved activities under the LSA 2007.

Table 4 also details a non-exhaustive list of commonly provided non reserved activities. The examples of non reserved activities are intended to be illustrative only and, in practice, by definition, any activity which is not a ‘reserved activity’ is a non reserved activity. The central point is that non reserved activities can be provided by persons who are not regulated by an approved regulator, and through an unauthorised business (see discussion above). A common example of a non reserved activity which can be provided through an unauthorised business is will-writing, which can be provided by any individual and through any form of business structure.

Table 4: Reserved and non reserved activities

Reserved activities	Examples of non reserved activities
<p>Exercising rights of audience (the right to appear before a court)</p> <p>Conducting litigation</p> <p>Probate services</p> <p>Reserved instrument activities (conveyancing)</p> <p>Acting as a notary</p> <p>Administering oaths</p>	<p>General legal advice</p> <p>Housing advice</p> <p>Employment advice</p> <p>Advice on planning disputes</p> <p>Advice on funeral planning, including home ownership, probate matters</p> <p>Mediation services</p> <p>Will writing</p> <p>Advice provided by those with sector specialisation (such as paralegals)</p> <p>Document review and other unbundled service providers</p> <p>Online apps and information portal</p> <p>Advice provided by law centres, Citizens advice bureau and university legal services on a range of legal issues (such as housing, commercial, family, employment etc.)</p>

⁸⁵ However, not all of the approved regulators can provide authorisation for all of the reserved activities. Only the SRA, BSB and CILEX can authorise individuals to undertake all of the reserved activities apart from acting as a notary.

An important contextual point relevant to the changes being proposed is that, under the current regulatory framework, solicitors are only able to provide services – including non reserved activities – to the public, or a section of the public, if the business they operate through is authorised by one of the approved regulators. Accordingly, solicitors are not permitted to deliver non reserved activities to the public through unauthorised providers, even though non-solicitors may do so.

The consumers of legal services

The buyers of legal services are a heterogeneous group ranging from sophisticated, and repeat buyers of legal services (such as large companies and businesses) to consumers who only purchase legal services infrequently and have no prior experience of obtaining legal advice. This includes consumers who might be classified as ‘vulnerable’, which in this context, might mean that they are significantly impaired in their ability to choose or assess the value of legal services being offered because of their particular circumstances (see discussion in section 7 below).⁸⁶ It follows that it is not possible to clearly characterise those who demand legal services, and studies have indicated that the demand for legal services tends to be impacted by factors such as income, age and education.

A general categorisation of the types of consumers of legal services might include: government purchasers, large businesses, small and medium sized enterprises (SMEs), charities, private individuals using their own funds, and individuals who are being funded by legal aid. An appreciation of the types of consumers of legal services is critical for the assessment of the market, and the need for different types of regulation. This is because, as in other market contexts, those consumers with more resources and experience of purchasing legal services are likely to be better able to negotiate services matched to their needs, and better understand any protections available to them in relation to the provision of the services, than consumers who have limited resources and only very infrequently purchase legal services.

3.2 Changes to the market

The above discussion has sketched out some of the key characteristics of the market. This section briefly describes some of the most important changes occurring in the legal services market in England and Wales that are expected to impact on the supply and demand for legal services in the future.

Increasing diversity in the range of regulated suppliers of legal services

The past decade has seen change in the types of legal advice providers, their business structures, and delivery mechanisms. The SRA has identified a number of important developments in the legal services market in recent years, many of which

⁸⁶ See Legal Services Consumer Panel (2014a) for a discussion of consumer vulnerability in relation to legal services.

are tied to the development of ABSs.⁸⁷ Although the number of providers registering as ABSs was initially relatively small, it has grown significantly in the past few years. The population of ABSs now encompasses a range of types of organisations, from small family-owned firms to very large corporate groups and major retail brands. The diversity in the types of organisations that are registered as ABSs is an indication of the fact that a range of different business strategies and models are being applied.

Some large legal brands are choosing to become ABSs, such as Irwin Mitchell that acquired multiple ABS licences for several businesses within its group. Well-known retail brands have also entered the legal services market as ABSs. Among them are the AA Law Ltd, BT Law Ltd, and the Cooperative Legal Services. Moreover, three of the Big 4 accounting firms have been authorised as ABSs, as has a local authority from Buckinghamshire. Each of these entrants are pursuing diverse business models and seeking to leverage their experience and expertise into the legal services market.

Another change is in terms of financing and operations of some authorised legal providers. In 2015, Gateley Plc was floated and shares became publicly traded on the AIM of the London Stock Exchange. Other law firms have obtained private equity financing in order to boost their capital reserves, and to grow their businesses. A particular group of entrants who is claimed to be altering the dynamics of the market are legal technology companies.⁸⁸ Some of these companies use technology to offer high-volume, low margin, document review services.⁸⁹

Growth in unauthorised providers and unauthorised individuals

While increased diversity can be observed in the types of regulated legal providers, there is also reported change in the unauthorised market. It is difficult to provide an estimate of the number of such unauthorised providers, however, the SRA has stated that there has been an 'exponential' rise in the delivery of non reserved legal activities to the public by providers who are not regulated by any of the legal services regulators.⁹⁰ They include large professional services firms giving advice on employment matters, accounting firms providing advice on taxation or business structuring, small, single employee firms providing advice on different areas of compliance such as Health and Safety, and niche providers such as will-writing services. There are also technology companies providing non reserved activities using a combination of online automated services and paralegals (some of which also have arrangements to call on solicitors working in regulated entities on specific issues).

⁸⁷ See Solicitors Regulation Authority (2016).

⁸⁸ See the discussion of legal process outsourcers and document assembly systems in Susskind and Susskind (2015).

⁸⁹ See the Law Society (2016).

⁹⁰ Solicitors Regulation Authority (2015a).

It is generally accepted that some solicitors are already facing direct competition from unauthorised providers and unauthorised individuals. A report by the Legal Services Consumer Panel (LSCP) predicted that, in the future, lawyers will be less involved in many of the tasks they have traditionally undertaken and that, in consumer and retail markets, consumers will seek out alternatives to lawyers, and will resort to self-lawyering, online services, and unauthorised providers.⁹¹ A recent survey of law firm leaders found that 83 per cent of those surveyed felt that competition from non-traditional service providers was a permanent change in the legal market.⁹² The Law Society also observes that more solicitors, under the current regulations, might choose to relinquish official use of the solicitor title and establish themselves as a non-lawyer or unauthorised provider.⁹³

Although it is not possible to obtain a precise estimate, it is suggested that regulated firms currently derive 53% of total turnover from non reserved activities. This has grown from around 46% of total turnover using 2014/15 data, suggesting that it is the non reserved activities that are experiencing growth. However, the growth in revenues associated with non reserved activities may not be evenly distributed among regulated and unauthorised providers of services. For example, the Law Society has observed that because employment advice is not a reserved activity, firms providing such services face competition from non-solicitor entrants and from accountants, banks and business consultants.⁹⁴

For some non reserved activities, such as advice on family, employment, personal injury, and intellectual property matters, some small and medium sized regulated solicitor firms are also facing competition from the Bar. This is particularly the case as it is no longer necessary for lay clients to instruct a solicitor before obtaining the services of a barrister.⁹⁵ In relation to family law, for example, barristers can offer the same services to consumers as family solicitors.

Changes in the types of organisations in which solicitors provide advice

Alongside the changes in the diversity of regulated providers, and the growth of unauthorised providers, another supply-side change that can be observed is where solicitors are choosing to practice law. Perhaps the most notable change here is the growth in the number of solicitors who are providing advice to a single client – i.e. in-house lawyers. Under current regulations, in-house solicitors cannot provide advice directly to the public (e.g. end consumers). Rather, in-house lawyers principally commission and manage external legal advisers, and work on behalf of their client on transactional legal work and other matters.

⁹¹ Legal Services Consumer Panel (2014b).

⁹² Altman Weil (2015).

⁹³ The Law Society (2016).

⁹⁴ The Law Society (2016).

⁹⁵ The Law Society (2016).

It is estimated that around one in five solicitors operate in-house.⁹⁶ The number of solicitors providing advice on this basis is said to have doubled in the period between 2000 and 2012. It is estimated that around 60% of solicitors who work in-house do so in the private sector, with many working in the financial services sector. Around 37% of in-house solicitors work in the public sector or for government, particularly for local government or for the Crown Prosecution Service. The remaining 3% work in the voluntary and charity sector, including advice centres.⁹⁷

The expectation is that the proportion of work undertaken by in-house solicitors will continue to grow. A recent survey of global corporate consumers found that just over half of them surveyed had increased the amount of legal work undertaken in-house.⁹⁸ The Law Society is of the view that in-house solicitors are no longer seen as a separate isolated team, but are 'transforming' how advice is provided to business.⁹⁹ They observe a growing number of specialists are leaving private practice to go in-house, and the expectation is that more solicitors from City firms and larger commercial firms will go in-house in the future.

Changes in how services are delivered: unbundling and outsourcing

The way in which legal services are provided to consumers is also expected to change in the future. There are three areas in particular where the supply and delivery of legal services is expected to change: unbundling of legal services; increased outsourcing; and the use of paralegals.

In general terms, unbundling refers to a situation where consumers and legal providers agree to share the tasks associated with a legal activity between them. Typically a consumer might choose to purchase legal advice at key stages, and combine this with work they do themselves. The main areas of law where unbundling occurs include employment, probate and immigration matters. It is estimated that around one-fifth of all transactions now involve unbundled legal services,¹⁰⁰ and the expectation is that there will continue to be a movement towards the 'unbundled' provision of some legal services.¹⁰¹ The Law Society expects that an increasing number of in-house lawyers will opt for unbundled legal services in the future, whereby they run their own cases but purchase expert assistance at key stages of a matter.¹⁰²

The growth of unbundling, in part, appears to reflect changes in consumer

⁹⁶ SRA (2016). The Law Society (2016) suggests it is around one-quarter.

⁹⁷ The Law Society (2016).

⁹⁸ Allen & Overy (2014)

⁹⁹ The Law Society (2016).

¹⁰⁰ Legal Services Consumer Panel (2014c).

¹⁰¹ See Solicitors Regulation Authority (2016) and The Law Society (2016).

¹⁰² The Law Society (2016).

preferences and, in particular, a desire among some consumers to have greater control over their legal matter, while also offering a more affordable means of accessing legal advice.¹⁰³ In this respect, unbundling expands access to legal services – allowing consumers to obtain advice in circumstances where they may have not been prepared to obtain a full legal service. A 2014 survey by the Legal Services Consumer Panel also found that consumers generally had a positive experience of unbundling, with respondents noting only a small difference in service satisfaction between unbundled and full service legal services.¹⁰⁴

Another supply-side development is the further expansion of the outsourcing of legal activities. Generally this involves the outsourcing of high volume, repetitive and low risk tasks – which might typically be work undertaken by junior staff in traditional law firms – to third parties. Research in 2012 estimated the size of the global outsourcing market at £2.4 billion.¹⁰⁵ However, it is suggested that the scope of activities that can be outsourced is growing even further as the market matures and expands. The growth of outsourcing appears to be driven, in part, by a desire to reduce costs.

Another area where changes are being observed in terms of how legal services are delivered is in terms of staffing of law firms, including the use of paralegals and contract lawyers. The use of paralegals as an alternative to fully qualified solicitors continues to grow and some estimates suggest that paralegals now make up around 44% of all fee earners in solicitors firms.¹⁰⁶ There is also an increasing use of contract lawyers, who are employed by law firms or other organisations for a specific period of time or task. One survey suggests that up to 70% of UK corporate consumers of legal services had used contract lawyers in the past couple of years.¹⁰⁷

A further change in how legal services are being delivered is the growth in online legal advice services. This type of delivery mechanism is prominent in areas such as will-writing and divorce advice, but some expect that it will be expanded into other areas of law. Some business surveys suggest that the market penetration of online legal services will rise from 28% to 37% in the next five years.¹⁰⁸ In part, this reflects the fact that consumers are increasingly interested in the lower cost and increased convenience of services provided online.¹⁰⁹

Finally, some consumers are using increased access to information online to ‘self-

¹⁰³ Solicitors Regulation Authority (2016).

¹⁰⁴ Legal Services Consumer Panel (2014c).

¹⁰⁵ Lacity and Willcocks (2012)

¹⁰⁶ See Law Careers (2015).

¹⁰⁷ Allen & Overy (2014).

¹⁰⁸ Allen & Overy (2014).

¹⁰⁹ The IRN Research (2015) survey of 500 adults in December 2014 found that 40% would be attracted by the convenience and low cost of online legal services.

supply' and seek to address and resolve legal problems themselves (sometimes referred to colloquially as 'DIY law'). One recent survey found that there was a 30% increase in family court cases whether neither side had legal representation.¹¹⁰ The Legal Services Consumer Panel has suggested that, in the future, consumers will seek to rely on more self-lawyering and online services, as well as services provided by accountants and banks.¹¹¹ While access to technology has increased the amount of self-lawyering, the Law Society has recently indicated that a full decamping of general public consumers to self-lawyering is unlikely.¹¹² This is because, in their view, very few savvy clients will have the time or the expertise to be comfortable being their own lawyer. However, there are contrasting views on the impacts that technological change will have on the legal profession, with some commentators suggesting that in the future traditional lawyers will in large part be replaced by advanced systems, lay people with online self-help tools, or cheaper labour assisted by technology.¹¹³

Changes to charging arrangements

Changes are also being observed in how providers are charging for legal services. In particular, the traditional model based on hourly charging is being replaced by the increasing use of fixed fees for services. Estimates suggest that around 46% of all legal transactions in 2014 were based on a fixed fee arrangement. Fixed fee charging arrangements are particularly prevalent in the area of consumer law, including will writing, conveyancing, power of attorney, immigration and family law services. In contrast, charging arrangements based on hourly rates, are most common in the areas of probate and employment law.¹¹⁴

Affordability and unmet demand for legal services

Notwithstanding the broadening in types of suppliers, and changes to delivery methods, of recent years, there is still a widely held view that there exists substantial unmet demand for legal services. The Competition and Markets Authority (CMA), for example, has noted perceptions of unmet demand in the sector, which they define as where consumers have a legal need but do not seek to purchase legal services.¹¹⁵

Research commissioned by the SRA indicates that just under half (49%) of the adult population in England and Wales had a 'legal need' over the past three years,¹¹⁶ and

¹¹⁰ House of Commons (2016).

¹¹¹ Legal Services Consumer Panel (2014b).

¹¹² The Law Society (2016).

¹¹³ See Susskind and Susskind (2015) and Susskind (2008).

¹¹⁴ See Legal Services Consumer Panel (2014c).

¹¹⁵ See Competition and Markets Authority (2016).

¹¹⁶ See BDRG Continental (2012). The most common areas where legal need arise are consumer problems (29%); debt and money problems (27%); conveyancing (26%); will writing (23%) and probate (19%).

yet it is estimated that fewer than one in ten people experiencing legal problems instructed a solicitor or barrister.¹¹⁷ A 2015 survey found that 10 percent of adults considered paying for legal advice, before changing their minds.¹¹⁸ 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.

Although there are various reasons why an individual may not chose to access legal services, the perception that professional legal services are unaffordable seems to be a critical contributing factor.¹¹⁹ As discussed below, one survey found that 63% of those surveyed did not believe that professional legal advice was affordable for 'ordinary people'.¹²⁰ Another survey found that 21% of adults arranged their own divorce because they could not afford a solicitor.¹²¹ The Law Society has recognised that there is a large group of potential clients that cannot afford to pay for legal services.¹²² Moreover, they expect this situation to get worse over the next five years.

Research also suggests that small business may have unmet demand for legal services, and that the majority of business have limited contact with legal providers. A study commissioned by the Legal Services Board found that around half of small business that had experienced a legal problem attempted to resolve it on their own, and that they often sought the advice of other professionals such as accountants rather than lawyers.¹²³ The same study found that only 13% of small business regarded lawyers as cost effective.

Consumer satisfaction and levels of engagement

Allied to the previous point, some concerns have been expressed about the service standards of regulated and unauthorised providers.¹²⁴ The SRA has referred to research which shows that the perceptions of service quality differ between service providers and consumers, and that lawyer perceptions of the quality of service are often higher than that of consumers.¹²⁵ Among the main areas where complaints are received are in relation to poor communication and a lack of clarity around pricing.

¹¹⁷ Solicitors Regulation Authority (2016).

¹¹⁸ YouGov (2015).

¹¹⁹ The Competition and Markets Authority (2016) refers to concerns around the affordability of legal services. YouGov (2015) survey noted that the cost of services as mentioned by more adults (75 per cent) than anything else as being a factor when choosing a legal adviser.

¹²⁰ Hodge, Jones and Allen (2015).

¹²¹ YouGov, (2013).

¹²² The Law Society (2016).

¹²³ See Blackburn, Kitching and Sari (2015).

¹²⁴ See for example, Competition and Markets Authority (2016).

¹²⁵ See Solicitors Regulation Authority (2016).

Of relevance to the proposals being considered by the SRA is the finding that complaints about non reserved legal activities are one-seventh of the number of complaints about reserved activities.¹²⁶

There are also concerns that consumers of legal services remain insufficiently engaged in the market, and are not active in seeking out alternative providers. In large part this may reflect the difficulties consumers face in terms of differentiating among providers, and in particular in assessing differences in the quality of providers. A 2015 survey found that 60% of consumers agreed/strongly agreed that they are unable to differentiate one high street law firm or solicitor from another.¹²⁷ The Law Society recently observed that there '*remains a great deal of uncertainty amongst consumers about different types of lawyer and legal businesses. It is currently very difficult, even for knowledgeable consumers, to work out which provider is the most appropriate for their particular issue; and on the Internet, most firms look the same*'.¹²⁸ However, other research suggests that for more severe problems consumers are able to channel towards advice and formal processes, including independent help and law firms.¹²⁹

According to work undertaken by the SRA, the main method by which most people identify a solicitor is via referral, and locality appears to be a particularly important factor in determining which provider to choose. Research suggests that other active methods for increasing consumer engagement – such as the use of comparison websites – are used relatively infrequently.¹³⁰

Given the nature of some legal services – for example, a consumer can only choose among specific providers in legal aid matters – the role of the consumer in actively choosing a service provider can be more limited than it might be in other markets. However, some commentators are suggesting that consumers are becoming more active, and that this is being facilitated by technological changes that allow them to search and compare different provider options. Moreover, it has been suggested that consumers have increasingly been demanding changes to charging arrangements (such as fixed fee arrangements as described above) and lower fees.

Innovation and technological change

Innovation and technological changes are having significant impacts on both the supply of, and demand for, legal services. On the supply side, research conducted by the SRA/LSB on innovation suggests that some legal services firms are innovating in

¹²⁶ Analysis by the SRA notes that of the 12,445 regulatory reports received between September 2013 and August 2014, 59% related to work that was a reserved activity and 8% related to a non reserved activity.

¹²⁷ YouGov (2015).

¹²⁸ The Law Society (2016).

¹²⁹ See Pleasence and Balmer (2014).

¹³⁰ Legal Services Consumer Panel (2014c).

ways that extend their service range, improve quality and attract new clients.¹³¹ The same study found that solicitors are more innovative than other regulated legal services organisations in terms of both managerial and organisational changes. However, they are less innovative than unauthorised providers.¹³² A noteworthy finding is that ABSs are particularly innovative. ABSs are 13-15% more likely to introduce new legal services than other law firms. As the SRA has observed, this is not especially surprising as new investments in ABSs typically included investments in technology and changes in how services are delivered.¹³³

Technological change is widely considered to be having a significant impact on how legal activities are conducted, and how services are delivered to consumers. Many legal businesses are introducing technologies to improve their processes and to grow their businesses, and it is expected that some legal providers will continue to invest in information technology. The Law Society has noted that among the ways in which changes in technology are impacting on legal services include: increasing use of software programmes to read contracts and other legal documents; improvements in the efficiency with which providers deliver procedural and commodity work; and new assistance to consumers with decision-making and purchasing behaviours.¹³⁴ Technology-based providers, such as Axiom and Rocket Lawyer, have entered the market to provide tech-enabled legal services to consumers. Axiom supplies contract services; regulatory and compliance services; corporate transactions and insourcing. Rocket Lawyer provides advice on family and personal matters, as well as business, property and employment advice. More generally, legal 'exchanges' are emerging that can allow for online auctions of legal tasks.

As in other economic sectors, the long-term impact of technological change is difficult to assess. Some commentators see a limit to the extent of automation of routine work, noting that the main changes will be seen in service delivery methods.¹³⁵ Others foresee potentially significant disruptive effects if the developments in Artificial Intelligence, such as IBM's cognitive computer ROSS, are further refined and become widespread in application.¹³⁶

Technological change is also having major impacts on consumer behaviour. As already noted there has been a steady rise in the growth of online legal services. Like in other market and social contexts, some consumers are increasingly using the

¹³¹ Roper, Love, Rieger and Bourke (2015).

¹³² Roper, Love, Rieger and Bourke (2015).

¹³³ Solicitors Regulation Authority (2014a).

¹³⁴ The Law Society (2016).

¹³⁵ See the Law Society (2016) who predict that: *"The push towards automation of routine work will be levelling off by 2020, and instead we might expect to see technology fuelling innovative models of delivery or service solutions."*

¹³⁶ Generally, see Susskind and Susskind (2015), and Susskind (2008) for a discussion of these trends.

Internet to research different options for legal advice, and to research information on specific legal problems. The Law Society has noted that changes in how some consumers communicate, and interact, with legal providers via screen technologies is consistent with wider changes in expectations of many consumers about how legal services should be provided.¹³⁷ This is expected to benefit legal providers who are able to accommodate these changes in expectations, such as large consumer and household brands that are already familiar with interacting with consumers online.

3.3 Regulatory and policy context

As noted in Section 1, regulation can be either a facilitator or inhibitor in times of change, and a central challenge for regulators and policy makers is to design a set of regulations which facilitate positive market changes, while ensuring that other public policy objectives are fulfilled (such as consumer protection, access to justice etc.).

Changes to other laws which impact on legal service regulation

There have been a number of changes to the laws and regulations which apply to all businesses and service providers in the economy, and which impact on the need for specific regulations in relation to legal services. Among the most important of these are developments in consumer and competition laws, which are generally applicable. For example, the Consumer Rights Act 2015 imposes certain requirements in relation to all service contracts with consumers in relation to service quality, timing and price. Changes to money laundering and data protection laws have also made these laws more generally applicable to businesses and service providers across a range of economic sectors, including legal services.

Developments in legal regulation and the need for further regulatory reform

As discussed in section 2, there has been number of changes to the regulation of solicitors since the introduction of the Legal Services Act 2007. Among the most significant of these: the shift toward an outcomes focussed approach to regulation (“OFR”) and the gradual removal of detailed prescription; the introduction of licensing for ABSs; and the introduction of multi-disciplinary partnerships. However, as noted above, the SRA is of the view that further regulatory reform is required, particularly as the majority of regulatory arrangements currently in place pre-date the introduction of the LSA.

At a more general level, there have been calls – including by legal services regulators – for more significant and radical change to the institutional framework for the regulation of the legal services sector.¹³⁸ In responses to the 2013 Ministry of Justice (MoJ) Legal Services Review, there was an apparent consensus among the

¹³⁷ The Law Society (2016).

¹³⁸ See in this context the paper published by the Legal Services Board (2015) that draws together cross-regulator views on, among other things, options for the shape of the regulatory architecture.

different legal regulatory bodies that reforms had not worked out as anticipated. The Legal Services Board was critical of the new arrangements, particularly what it considered to be a general resistance to the market liberalisation initiatives that have been introduced, which were seen as adding costs, rather than removing burdens.¹³⁹

The two largest approved regulatory bodies – the SRA and the Bar Standards Board (BSB) – were also critical of the regulatory framework in their submissions to the review.¹⁴⁰ The SRA submitted that the '*regulatory settlement provided by the LSA [Legal Services Act 2007] remains imperfect*', however, in its view, and despite significant flaws, the new regulatory system functioned better than the arrangements prior to 2007.¹⁴¹ The Law Society also identified a number of problems with the new regulatory arrangements.¹⁴²

The CMA Market Study

In part because of the concerns described above, the Competition and Markets Authority (CMA) recently launched a Market Study into the supply of legal services in England and Wales under the Enterprise Act 2002. The CMA has observed that responses to the 2013 MoJ review have advocated markedly different views on the reform of the current regulatory framework; some parties advocating a return to the pre-2007 framework, others arguing that the 2007 reforms had not gone far enough and that further changes were needed.

In its Statement of Scope, the CMA has set out three themes that it is seeking to explore. The first focuses on information, and in particular, whether consumers can 'access, assess and act' on information in ways which allow them to make informed decisions. The second theme focuses on regulation, and specifically whether the existing regulations and/or redress mechanisms are adequately dealing with consumer protection issues that arise because of information failures. The third theme involves examining whether regulations and the regulatory framework may be disproportionate, and in excess of what is necessary, and may, in fact, be contributing to a weakening of competition or distortion in the supply of legal services.

Government reviews

Alongside the CMA Market Study into the supply of legal services, there have been reports that there will be a review by the MoJ of the LSA 2007 and the wider regulatory framework. In addition, the government has said that the Treasury will consult, in spring 2016, on removing barriers to entry for ABSs in legal services, and on whether to make the approved legal regulators independent from their representative bodies.

¹³⁹ See Legal Services Board (2013).

¹⁴⁰ See Bar Standards Board (2013).

¹⁴¹ See Solicitors Regulation Authority (2013).

¹⁴² See The Law Society (2013).

4. General considerations to frame the analysis

This section sets out some general considerations that are important to frame the assessment of the specific changes that are being proposed. It briefly considers foundational issues such as: Why do we regulate legal services? What is the balance between consumer protection laws and competition? How do we regulate legal services and what are the merits of alternative regulatory approaches to achieving a set of objectives?

4.1 Why regulate legal services?

A central issue that confronts all regulators in practice is why the particular activity they oversee is subject to regulation.¹⁴³ In some areas of economic regulation, such as for the monopolistic parts of the utility industries, the rationale for regulation is widely understood and generally related to the demand and cost characteristics of that activity. However, in other areas of economic activity, particularly where there are a number of suppliers, the argument for specialist economic regulation is generally more idiosyncratic, and tends to be associated with specific concerns about the concentration of supply structures (including barriers to entry) or issues associated with a significant information and power asymmetry between suppliers and consumers which have market-wide effects.

Understanding the rationale for economic regulation in these (non-utility) contexts is particularly important given the existence of generally applicable consumer protection laws and competition laws, which are directed at protecting consumers, and ensuring that competition in different markets is effective and works well for consumers. In the context of legal services, the economic arguments for some form of specialist regulation, over and above standard competition/consumer law, are generally made with reference to certain characteristics of the demand side and the supply side of the market, as well as wider considerations about the role of legal services in reducing transactions costs.¹⁴⁴

Characteristics of the demand side of legal services

On the demand side, the most common economic rationale for some form of oversight of legal services relates to issues regarding 'quality of service' (in a broad sense), and, in particular, to issues associated with information asymmetries between suppliers and consumers, which can affect the ability of consumers to assess quality.¹⁴⁵

¹⁴³ This section ignores questions of how legal services should be regulated - such as professional self-regulation; co-regulation, statutorily independent or public regulation.

¹⁴⁴ For a more detailed discussion of some of these economic rationales see Decker and Yarrow (2010).

¹⁴⁵ See Competition and Markets Authority (2016).

However, three remarks can be made about this rationale for regulation of legal services. First, information asymmetry between providers and consumers is not unique to legal services; it occurs in many types of professional services, and in relation to many other services and products.¹⁴⁶ In many of these other settings, a *market* (as opposed to regulatory) response to the potential problem of information asymmetry emerges through the development/mechanism of reputation (and, in many cases, self-regulation through professional associations or standards). In this respect, suppliers in a particular industry or sector can have a *collective* interest in ensuring that the sector has a reputation for quality as this can increase demand for the services and expand the size of the market.¹⁴⁷ In short, specialist regulation is not the only mechanism for incentivising quality where there is an information asymmetry between suppliers and consumers.

Second, an asymmetry in the quantity and quality of information available to sellers and consumers can result in the 'over-provision' of particular services in some circumstances,¹⁴⁸ but to the 'under-provision' of services in others.¹⁴⁹ That is, it should not always be assumed that an information asymmetry always results in the over provision of services. In the case of legal services, for example, it might be argued that the information asymmetry is in part responsible for the levels of unmet demand as consumers avoid the market for fears of being exploited, or of not understanding the service.

Third, regulation to address information asymmetry sometimes focuses on providing greater amounts of information to consumers to enable them to make more considered and informed choices. However, as research in behavioural economics has shown, there may be diminishing returns (from a consumer's point of view) in information provision, particularly in more complex or technical areas. Rather than empowering consumers, too much, or poorly targeted, information can increase consumer confusion rather than reducing information asymmetry.

Characteristics of the supply side of legal services

¹⁴⁶ Other examples of services (so-called credence goods) where there is a significant information asymmetry include the services provided by: optometrists, computer engineers, car mechanics and taxi-drivers. See Dulleck and Kerschbamer (2006) on the economics of credence goods.

¹⁴⁷ Organizations sometimes seek to maintain high quality service provision across an industry or sector by a process known as 'delegated exclusion'. This refers to situations in which particular suppliers can be excluded from the market by virtue of the existence of authorisations or licensing arrangements which allow for the "striking off" of suppliers who do not perform at an appropriate standard. See Tirole (1996).

¹⁴⁸ For example, where consumers are unable to determine whether a service has been provided unnecessarily.

¹⁴⁹ For example because consumers recognise the risks associated with being unable to distinguish between the quality of different service providers, and avoid these risks through avoidance of the market (i.e. consumers are deterred from obtaining relevant legal services).

On the supply side, the arguments for the specialist regulation of legal services, and the legal profession in particular, principally derive from the way in which legal professionals have historically organised themselves, and the various rules, restrictions, customs and practices that have been adopted, which can potentially affect the supply of legal services. Here too some brief remarks are merited.

One of the traditional roles of self-regulating professional associations is typically to introduce various rules, norms and standards relating to: entry into the profession; acceptable conduct for those within the profession; and acceptable business structures. From an economic point of view, the key question is what impact these rules and restrictions can have on economic welfare. Some rules and restrictions can be beneficial to economic welfare, by increasing the collective level of quality, and removing unethical or poorly skilled practitioners. This can increase consumer confidence and expand the market. However, some rules and restrictions can have adverse effects on economic welfare. For example, unnecessary restrictions on entry or organisational form can limit competition and innovation.

The key empirical question is: which rules/restrictions/practices increase quality in the supply of legal services and therefore consumer confidence, and are potentially market expansionary, and which rules/restrictions/practices are unnecessary or disproportionate and increase costs, raise prices, limit consumer choice and innovation? In this context, there may be a role for a specialist regulatory framework, and regulatory body, to scrutinise and examine specific rules and restrictions and consider how these affect the supply of legal services, and therefore economic welfare.

The link between well-functioning legal systems and economic performance

A wider economic rationale for some form of specialist regulation of legal services derives from the role of legal services in an economy and society, and particularly in terms of reducing transactions costs and facilitating trade and exchange. A substantial body of economic analysis and evidence suggests that well-functioning institutions (of which formal legal systems are a key component) contribute to, and facilitate, economic development and performance and social development.¹⁵⁰ A 'well-functioning' legal system is conceived as one that is stable and provides certainty to market participants at reasonable cost, allowing them to transact in confidence, while being sufficiently adaptable to new and evolving circumstances. In short, it could be argued that because the core activity of the legal services sector tends to expand market activity throughout the economy, it is closely linked to economic performance and growth and social development.¹⁵¹ This is a feature that

¹⁵⁰ Prominent examples include the work of: North (1981); North (1990); North and Thomas (1973); Acemoglu, Johnson and Robinson (2005); Acemoglu and Robinson (2012); Beck (2012).

¹⁵¹ This rationale arguably underlies many of the 'Rule of Law' projects undertaken by bodies such as the World Bank in emerging and developing economies.

distinguishes legal services from a number of other professional service activities with which they are often compared in economic and policy assessments, and which may justify some degree of specialist oversight.

In sum, there is a need, in assessing the SRA's proposed changes, to consider how they relate to the various rationales for legal services regulation. If the proposed changes open up supply options, and allow for greater diversity in business models and practices, this could have implications for the on-going relevance of the specialist regulation of legal services where this is premised on the supply side characteristics as described above. Similarly, if new delivery methods and innovative ways of addressing consumer needs are developed as a result of the changes, this can have implications for the relevance of such aspects of legal services regulation as are premised on the risks of information asymmetry. The central point is that, as in other areas of economic regulation, changes in a market – including those induced by regulatory change – can sometimes call into question the continuing rationale for regulation, or its existing architecture.

4.2 Balancing competition and consumer protection regulation

Economists would generally argue that robust competition is the best form of protection for consumers, and that in most markets only minimal consumer protection regulations are warranted (relating to fraud or deception, faulty services, non-performance of contractual commitments, or enhanced market transparency).¹⁵² This is because, in effectively competitive markets, suppliers have a natural incentive to foster a reputation for being reliable and good quality,¹⁵³ and can have incentives to overcome information asymmetries where they exist.¹⁵⁴

However, it is also recognised that in some competitive market contexts, competition alone may not adequately protect consumers and ensure that they make effective choices. These market contexts might be categorized as those where there is a lack of incentive to maintain a good reputation and those where there are pronounced information asymmetries between suppliers and consumers. As discussed above, one of the main arguments made for some form of specialist regulation of legal services – over and above that provided by generic consumer protection and competition laws – is the need to protect consumers in a context of asymmetric

¹⁵² See, for example, Armstrong (2008); Armstrong (2011); Muris (2002).

¹⁵³ As Muris (2002) puts it: *“The consumers’ ability to shift expenditures imposes a rigorous discipline on each seller to satisfy consumer preferences. It often motivates sellers to provide truthful, useful information about their products and drives them to fulfill promises concerning price, quality, and other terms of sale. Consumers can punish a seller’s deceit or its reneging on promises made by voting with their feet – and their pocketbooks.”*

¹⁵⁴ For example, in order to build market share firms may seek to reduce the search and switching costs of consumers by reducing some of the costs of switching (i.e.: carrying the burden of any one-off costs of switching) or providing targeted information which allows consumers to better understand the offer available.

information. This argument is generally made with reference to the fact that the services tend to be of high importance and there are limited mechanisms for consumers to compare the quality of service offerings.

In most areas, regulations directed at protecting consumers, and initiatives directed at promoting competition, are mutually reinforcing. For example, consumer regulations which require information to be presented in specific ways so it is understandable to consumers can reduce information asymmetries and enhance the ability of consumers to compare offerings and make informed decisions, thus increasing competitive pressures on suppliers. Similarly, initiatives directed at promoting competition can foster markets where suppliers compete on their merits, and have incentives to supply consumers with products and services that best satisfy their preferences.

However, there can also be areas of tension between consumer protection regulations and initiatives directed at promoting competition. This is because additional consumer protection regulations, over and above that provided in generic consumer law, can impact on supplier (supply side) and consumer (demand side) behaviour, and therefore on competition and innovation, and ultimately, on consumers.

Impacts on the supply side

Specialist consumer protection regulation, over and above general consumer law, can impact directly and indirectly on the behaviour and incentives of suppliers in a market, and therefore on competition. Most obviously, additional consumer protection regulations can impose direct costs on suppliers, which are ordinarily reflected in prices paid by consumers.¹⁵⁵ These costs manifest in various ways but might include costs associated with requirements to: provide minimum levels of quality,¹⁵⁶ or to participate in specialist consumer dispute resolution schemes (such as an Ombudsman scheme). To the extent to which these requirements are placed on all suppliers, both traditional and alternative (non-traditional), this can reduce incentives for entry into a market and may place a disproportionate burden on smaller businesses (given their limited staff and resources and lower customer base over which to spread costs).

Specialist consumer protection regulation can also impact directly on the supply side of the market by restricting the ability of suppliers to advertise and market their

¹⁵⁵ However, this does not mean such costs are borne equally by all consumers. This was recognized in an early UK legal case touching on consumer protection where it was observed that: “*the price to the public of the protection afforded to a minority of consumers might well be an increase in the cost of goods and services to consumers generally.*” See *Tesco Supermarkets Ltd v Natrass* (1971).

¹⁵⁶ One way of conceptualizing regulations imposing minimum quality standards is that they are effectively a prohibition on the ability of customer's to purchase lower-cost, but lower quality, goods and services.

products, or, where there are licensing conditions for entry into a market, by discouraging innovation in supply methods.¹⁵⁷ Policies that constrain entry are frequently premised on the need to protect current consumers, but undue restrictions on entry may impact on the development of competition and therefore the protection of future consumers.¹⁵⁸

Impacts on demand side

While specialist consumer protection regulation, over and above general consumer law, can in some circumstances help address an information asymmetry between consumers and suppliers by assisting consumers to make better and more informed choices, there is a potential 'moral hazard' associated with this approach.¹⁵⁹ In short over-protected consumers may not invest effort to ensure that they acquire the skills to make effective decisions in the market.¹⁶⁰

Other aspects of specialist consumer protection regulation can impact on consumer choice and soften competition, including restrictions on the ability of suppliers to contact consumers, and restrictions on comparative advertising. While each may have valid justification along some dimension of potential consumer harm and disamenity, they can also have negative effects along another dimension by, for example, reducing the information available to consumers,¹⁶¹ increasing consumer search costs,¹⁶² crowding out market solutions to particular problems,¹⁶³ and preventing price discrimination by firms where this may be pro-competitive.

¹⁵⁷ As Armstrong (2008) observes: "*Although its aims may be honorable, there is a long history of consumer protection being used as an excuse for industry protection, which is a form protection that consumers do not want*".

¹⁵⁸ Vickers (2003) and Armstrong (2008) both refer to an example of a consumer policy which requires that all airlines offer a full meal service on flights. Such a policy inadvertently bundles the flight and the full meal, limiting the choice of consumers who would prefer not to pay for a full meal. At the same time it can discourage entry by budget airlines who seek to offer an alternative service, and reflect that in the price.

¹⁵⁹ See Armstrong (2008).

¹⁶⁰ Armstrong (2011).

¹⁶¹ Examples are restrictions on the ability of firms to contact consumers (such as cold calling), which can result in a smaller proportion of consumers being informed about offers in a market thus softening competition in the market. Similarly, restrictions on comparative advertising can limit the ability of suppliers to point out the superior attributes of their products and services relative to rivals.

¹⁶² For example, the benefit of restricting commission payments to intermediaries depends on how the reduction in average prices from taking away such payments compares to any increase in consumer search costs associated with the removal of brokers.

¹⁶³ For example, firms may have incentives to introduce measures that address the cognitive limitations, or relative inattention, of consumers. An oft-cited illustration is that firms may have incentives to overcome the consumer confusion about product offerings (sometimes referred to colloquially as 'confusopoly') by offering a simple product and pricing proposition.

In a number of sectors – such as the utility sectors – specialist consumer protection regulations have been introduced with the specific aim of protecting certain groups of consumers (such as vulnerable consumers). While these policies are often motivated by fairness or social welfare considerations, there is also an important economic dimension to such policies: if a significant proportion of consumers are, for various reasons, inactive in a market, then active consumers need to work harder to ensure that competition is effective.¹⁶⁴ Nevertheless, the extent to which informed and uninformed consumers¹⁶⁵ protect, or even harm, one another is a growing area of research in economics. In brief, this work finds that the effects of consumer protection policies can vary across economic settings, and that in some contexts consumer protection regulations designed to protect uninformed consumers can actually harm informed consumers.¹⁶⁶ In particular, such policies may have the unintended consequence of undermining the rewards that certain consumers obtain from being active in the market and expending the time and effort to gather and process information about alternative offers.¹⁶⁷ Such policies can also potentially have adverse impacts on all consumers.¹⁶⁸

The key point is that the appropriate balance between specialist consumer protection regulation and initiatives directed at promoting competition can be a fine one. Achieving such a balance is seen of particular importance in economic contexts undergoing significant economic change, and where established and traditional supply methods are being disrupted by new entry and supply arrangements. For example, the emergence of ‘sharing economy’ platforms in some parts of the economy (such as Uber, Airbnb etc) has led to recognition of a need to tailor regulation so as to not be disproportionate and discourage innovation and entry. Similarly, the emergence of so-called ‘non-traditional business models’ in electricity have prompted some regulators to consider whether new approaches to regulation, particularly consumer protection, are required. For example, it has been argued that

¹⁶⁴ As Armstrong (2014) puts it: “*An old intuition in economics suggests that savvy consumers help to protect other consumers, and that consumer policies which protect vulnerable consumers are only needed when there are insufficient numbers of savvy types present in the market.*”

¹⁶⁵ Sometimes also referred to as sophisticated or naïve consumers, or active and inactive consumers.

¹⁶⁶ See Armstrong (2008) and references therein.

¹⁶⁷ As Armstrong (2008) puts it in relation to policies which restrict choice in the market on this basis: “*Such policies are usually highly re-distributive between consumer groups, and often have the flavour of putting fences alongside cliff-top paths: they protect careless or vulnerable walkers from falling off, but they reduce the utility of everyone else.*”

¹⁶⁸ An oft cited example was the introduction by the British energy regulator (Ofgem) of non-discrimination clauses in suppliers licences, which limited the ability of companies to offer discounts in different parts of the country. This policy was premised, in part, on concerns about vulnerable consumers being less active and having lower levels of switching. Assessments of this policy have suggested that all consumers, including vulnerable consumers, faced higher prices after the policy was introduced. See Waddams-Price and Zhu (2013) and Competition and Markets Authority (2015b).

regulatory arrangements should recognise that some consumers are willing to accept a greater risk of disruption, or higher prices, by actively participating in community energy schemes – i.e. consumers are willing to trade off some traditional protections where they perceive other benefits from doing so. In short, regulators and policymakers across a range of markets experiencing change are recognising a need to tailor regulation to ensure an adequate degree of consumer protection, while also not impeding innovation and the development of different supply methods.

4.3 Choice of regulatory strategy: outcomes v prescriptive rules

The preceding discussions in this section have focussed on why we regulate legal services, and why there may be a need for a specialist consumer protection over and above general consumer protection law. A separate relevant framing consideration is how best to regulate such services to achieve a particular set of policy objectives.

Regulators can deploy different regulatory strategies to achieve policy objectives. One general strategy, often referred to as a rules-based regulatory approach, typically involves the development of detailed *ex ante* rules that are highly particularistic and prescriptive and give suppliers advance notice as to what actions they can and cannot engage in. Such an approach typically provides limited flexibility in any specific factual context. Another regulatory strategy, often referred to as a principles-based (or outcomes-focussed) regulatory approach, typically involves the regulator specifying outcomes or principles, cast at a high level, which allows regulatees some discretion as to how best comply with these principles/outcomes. In this regard, regulatees are required to exercise judgement to predict what actions will achieve the regulatory objective.

The current approach adopted by the SRA is outcomes-focused (outcomes-focussed regulation, or OFR). However, as discussed above, and based on its experience since its initial adoption of the approach, the SRA considers certain elements of the approach need to be further refined and developed. In particular, the SRA is concerned that, as currently implemented, there remains too much detailed regulatory prescription, and that the distinction between binding principles and non-binding guidance is unclear to some regulatees. It therefore considers that the current implementation is not achieving the full advantages of the approach.

A key perceived attribute of OFR is that, by shifting the focus away from the detail of individual prescriptive rules (which seek, in combination, to achieve a regulatory outcome) to the regulatory goal or outcome itself, regulatees should be encouraged to think more carefully about the ultimate objective and how best to achieve it. This, it is argued, should avoid mechanistic adherence to (or technical avoidance of) regulatory rules.¹⁶⁹ In addition, the approach is seen as more durable than detailed

¹⁶⁹ In short, OFR can change the mindset of regulatees by requiring them to ‘think through’ the consequences of their actions and how they correspond to a particular regulatory outcome.

prescription because high level principles and open-textured provisions can capture a wide range of behaviours, and avoid large enforcement or compliance gaps emerging where market conditions change and new risks emerge. This is seen as particularly important in sectors, such as legal services, where significant market change is occurring (such as through the emergence of new supply methods or rapid technological change).¹⁷⁰

The main risk with OFR stems from the potential for imprecision and vagueness, which can leave regulatees uncertain as to how to comply with a required regulatory outcome. In some contexts, this can have a chilling effect on behaviour and foster a degree of conservatism among regulatees, and stifle what may be desirable behaviours.¹⁷¹ This risk can potentially be mitigated through the publication of non-binding guidance or indicative actions and behaviours that illustrate or exemplify compliance with a goal. However, if a regulator overuses this mechanism such that regulatees are confronted with a proliferation of guidance, or if regulatees treat such guidance as prescriptive rather than exemplary, this will create similar issues to those that arise under a prescriptively detailed rules based approach.¹⁷² One of the SRA's concerns underlying its proposed changes to the Handbook is that regulatees are treating the non-binding indicative behaviours in the Handbook as prescriptive, which may be undermining some of the potential benefits of the OFR approach. A related risk is that such regulatees feel compelled to seek out expert advice as to what actions are in accordance with regulatory goals. This can foster the development of a 'compliance industry' that may have incentives to lead regulatees to engage in risk reduction activities at costs that are significantly disproportionate to potential benefits¹⁷³ i.e. this can lead to 'over-compliance'. It follows that the extent to which regulatory arrangements guide regulatees in relation to the practical detail of their obligations, without fully prescribing these, will be important in any implementation. Finally, smaller firms may face disproportionate costs in having to assess how to comply with their regulatory requirements.¹⁷⁴ Again, mitigation of this risk can only occur through the specifics of implementation.

The key point is, because the potential range and extent of risks associated with OFR vary according to contextual factors, there may, in any implementation, be a period of learning, such that regulatory arrangements may need to be refined over

¹⁷⁰ Mumford: (2011) describes the general approach as a '*policy experiment to facilitate technological innovation.*'

¹⁷¹ See Cunningham (2007) on this point.

¹⁷² See Black (2008) on proliferation of guidance in financial services regulation.

¹⁷³ See Deighton-Smith (2008).

¹⁷⁴ Coglianese, Nash and Olmstead (2002) note that principles/outcomes based approaches can impose excessive costs on smaller firms because they have to search out ways of complying, and that some firms may simply prefer to be told exactly what to do.

time¹⁷⁵ to take account of evidence derived from sectoral experience.

¹⁷⁵ For example, the extent to which a regulated community embraces responsibility; the degree of trust between the regulated and regulators; changes in the nature of risks or the relative risk-aversion of regulatees etc.

5. Assessment of the rationale for the proposed changes

This section focuses on assessing the rationale for the proposed changes to the SRA Handbook. In particular, it focusses on exploring the specific reasons why the various changes outlined in section 2 above are considered necessary, and the potential, in-principle, benefits and risks of the changes. The possible impacts attached to these benefits and risks are then considered in section 6.

In considering the rationale for each of the specific changes, the discussion takes account of changes to the legal services market (as discussed in section 3) and the framing issues discussed in section 4, such as the wider rationale for legal services regulation, and the need to strike an appropriate balance between consumer protection regulation and competition, particularly in contexts of market change.

5.1 Simplifying and restructuring the Handbook

It is proposed that the Handbook be simplified and restructured to make a clearer separation between regulations that apply to solicitors as individuals, and regulations that apply to regulated providers. According to the SRA, the current Handbook contains areas of overlap between individual and entity regulation. For example, individual solicitors are subject to different obligations depending on the type of entity that they provide services through.

One of the stated rationales for the proposed changes is to make clear to solicitors, regulated entities, consumers and the wider public the core set of principles that apply to solicitors and regulated entities. Individual solicitors will be subject to a set of core regulatory principles and code of conduct irrespective of whether they practise in a traditional regulated provider, in a provider not authorised by the SRA (or another legal regulator), or in-house. These core principles and code of conduct will focus on competence and ethics, values and appropriate behaviour. Regulated providers will be subject to a set of minimum standards and code of conduct irrespective of the business structures that they operate within. The standards and code will focus on business protections, systems and control processes.

In a nutshell, the changes appear to be directed at making regulatory requirements less complex, proportionate and accessible. From an economic perspective this could lower the costs of compliance for those regulated, and enhance consumer and public understanding of regulatory protections in ways that build confidence in providers and are market expanding. The simplification should also allow regulation to keep in step with some of the wider market changes discussed in section 2, in particular the increasing diversity of business structures in which legal services are being provided. This should address the SRA's concern that the current structure of the Handbook has complicated its ability to develop regulation for different types of

provider, such as multi-disciplinary ABSs, and solicitors who work in providers that are regulated by other approved legal regulators.¹⁷⁶ The restructuring is also necessary to accord with other proposed changes, particularly the change to allow individual solicitors to provide non reserved activities through alternative legal services providers (discussed below). Finally, a simple Handbook could instil greater confidence in consumers who have a better understanding of the minimum service standards they can expect of solicitors and regulated firms, which can be market expanding.

There are some, in-principle, risks associated with this proposal. In particular, to the extent to which the simplification and restructuring creates material gaps in coverage, this can lead to discord with policy objectives, which can impact on consumers. The extent to which this risk will arise in practice will depend greatly on the content of the principles and codes of conduct and whether they are sufficient to cover all circumstances that may arise in practice. A further risk is that the simplification results in unintended changes to the established meaning or understanding of words and concepts, this might impact on the achievement of regulatory objectives.

5.2 Reduction in Handbook size and removal of redundant requirements

The SRA is proposing to reduce the size of the Handbook and remove redundant or duplicative requirements. It is expected that the size of the new Handbook will be substantially reduced to around 50 pages from its current size of around 400 pages. Some of this reduction in size will come from the removal of requirements that are covered by other laws and regulations.

The SRA is of the view that the current Handbook is too large and complex, and that because of the level of detail contained in the Handbook it needs regular amendment to remain up to date with relevant developments. This is particularly problematic given the pace of change in the legal service market (as described in section 3). Moreover, some of the detail in the current Handbook is relevant only to certain solicitors or types of business practices and only at specific points in time – for example the requirements relating to overseas and specialist services, or authorisation proceedings. This can make it hard to navigate, and potentially means that the SRA risks over-regulating in certain areas. The Handbook also contains a significant amount of material which has been copied across from legislation and case law. The inclusion of such material directly in the Handbook in itself creates a need for regular changes to the Handbook.

In addition, the SRA is seeking to remove provisions that are related to risks which are adequately covered by other pieces of legislation. For example, the Handbook contains some regulations providing specific consumer and client protections.

¹⁷⁶ Solicitors Regulation Authority (2015a).

However, as general consumer protection laws and other laws (such as data protection) have been introduced, these specific additional protections are becoming less important. Removing these provisions can avoid the risks of 'gold plating' generally applicable regulations, or of duplicating requirements in a particular area via multiple instruments, which can unnecessarily increase the costs and burdens of regulation.

The SRA's expectation is that a Handbook which is substantially reduced in size, and in level of detail, will provide an accessible, one-stop document where both solicitors and regulated entities can easily ascertain the specific requirements that apply to them.

As a general observation, there is no common size for 'Handbooks' or similar compendiums of regulatory requirements observed across regulated sectors. In some areas, such as the energy sector, many of the requirements are contained in highly technical codes, some of which can be long, however in other areas, these documents can be relatively short. The critical criteria in any case is whether the information is accessible and comprehensible to its target audience. If a Handbook or compendium is intended for a wide, non-technical audience, such as consumers or the public at large, then it may be particularly important to ensure it is not unduly lengthy or inaccessible. However, even among technically-proficient regulatees, large and complex documents can be undesirable. Behavioural economics research suggests that large and complex documents can create attention bias in readers, leading them to rely on heuristics and rules-of-thumb. This may be particularly problematic in an outcomes-focused regulatory approach where regulatees are expected to think through how their actions contribute to, or hinder, desired outcomes.

Reduction in the size and complexity of the Handbook is also hoped to improve the understanding of both regulatees and consumers of the basis on which enforcement actions and decisions are taken. According to the SRA there are currently 40 to 50 different rules invoked for enforcement action. This can result in poor signalling of why an action was taken, which can, in turn, reduce the disincentive effects on other regulatees of the enforcement action, as well as reducing the confidence of consumers and the general public that appropriate action will be taken for contraventions of regulation.

Again, the in-principle, risks associated with reducing the size of the Handbook and removing redundant requirements relate to the creation of material gaps in regulatory coverage, and mitigation of this will lie in the specifics of how this change is implemented.

5.3 Refinement of outcomes-focussed regulatory strategy, including replacing non-binding Indicative Behaviours and guidance

The SRA proposes to refine its implementation of the outcomes-focussed approach to regulation in two material respects. Firstly, it proposes to reduce the number of principles and standards to which regulatees are subject, and cast those that remain more clearly. Secondly, it proposes to more clearly separate binding regulatory requirements from non-binding regulatory guidance. In particular, it is proposing to remove non-binding Indicative Behaviours and guidance from the Handbook and to replace these with online resources such as case studies and toolkits. In developing the case studies and toolkits the SRA proposes to work collaboratively with a range of bodies, including trade associations and other groups.

There are a number of potential, in-principle, benefits of such refinements. Firstly, moving the non-binding elements outside of the Handbook should create greater clarity for solicitors and regulated providers as to the status of different requirements. Secondly, the change will make it easier to update the non-binding guidance/toolkits/case studies to remain in step with changes in the market, and any specific problems that emerge. In this respect, the regulatory assistance provided can be more dynamic, which may be particularly important where, as in legal services, a sector is undergoing rapid and significant change. Finally, making some of the principles and standards more general, and the methods for achieving these less prescriptive, may better encourage regulatees to think through the consequences of different courses of action. As discussed in section 4, a benefit of OFR is the potential to foster a regulatory mindset focussed on complying with a regulatory objective rather than a specific prescriptive rule, which can allow for new and innovative ways of compliance to develop across the diverse areas regulated, while at the same time capturing a wide range of behaviours. In this way, it can avoid large enforcement or compliance gaps emerging. Such an approach can also build the capacity of those being subject to regulation, encouraging a proactive relationship with regulatory objectives rather than a reactive response to prescriptive rules.

However, the proposed changes also raise some potential regulatory risks. Reducing the number, and increasing the generality, of principles and standards raises the risk of increasing uncertainty among regulatees as to what actions will constitute regulatory compliance. As discussed in section 4, such uncertainty can result in over- or under-compliance. Under-compliance obviously raises risks for the achievement of regulatory objectives, however over-compliance can also have undesirable effects – in particular by unnecessarily increasing costs for regulatees, and potentially leading to the emergence of a third-party compliance industry ready to capitalise on such uncertainty. As a general observation, it might be expected that solicitors and regulated legal service entities should be better equipped than other professions and areas of regulation when it comes to dealing with vagueness or uncertainty in legal provisions or regulations. Nevertheless, the time and cost implications of dealing with

undue uncertainty mean that, in combination, the binding principles and standards and non-binding guidance must be sufficiently eloquent to provide solicitors and other regulated firms with the basic information they need to understand what it means to be compliant with a specific regulatory principle or standard.

A second general risk associated with the move to fewer, and more general, principles and standards, and a clearer delineation between the binding and non-binding elements of regulation, is that the regulator itself does not sufficiently adapt its own enforcement behaviour and processes to these changes. In particular, the regulator will need to moderate its approach to enforcement to match the increasing discretion afforded to regulatees under the approach – e.g. by recognising the potential for differences in interpretations that might arise in specific factual contexts. In this respect, the culture of the SRA, and its adaptability to the proposed changes, will be important. For example, it would be inconsistent with the rationale of the proposed changes for the SRA to give excessive weight, in its enforcement activities and decisions, to forms of compliance detailed in non-binding case-studies and to treat with suspicion other, novel, ways regulatees may seek to meet an objective.

5.4 Development of public and business facing guides

The SRA proposes to develop a series of public and business facing guides to accompany its changes to the Handbook. These guides are intended to help consumers of legal services, and the wider public, to understand what protections they have in dealing with solicitors and different types of providers, and to clarify the minimum standards of service and conduct they can expect. The SRA are also proposing to develop tools to help consumers choose the right legal services for their needs.

Such guides are intended to address what is perceived to be current confusion among some consumers about what solicitors offer – and how this compares to other service providers – as well as their rights when obtaining such services. For example, the Law Society has noted that: “[D]espite the volume and significance of changes in the legal marketplace, the public on the whole remain confused about what a solicitor can offer them and about their own rights as purchasers.”¹⁷⁷ In addition, as the Law Society observes, this confusion extends to ‘knowledgeable consumers’ who can find it very difficult to work out which provider is most appropriate for their needs. However, as already noted, other research suggests that market rationing operates to channel more severe problems towards advice and formal processes, including independent help and law firms.¹⁷⁸

In principle, the benefits associated with providing public and business facing guides include making it clearer to consumers which type of provider is most suited to their

¹⁷⁷ The Law Society (2016).

¹⁷⁸ See Pleasence and Balmer (2014).

needs and requirements. To the extent to which this additional information empowers consumers, this can potentially result in more active and engaged consumers, which can, in turn, expand the legal services market. In this respect, such guides could potentially address some of the problems associated with unmet demand that were identified in section 3. The guides will also be important in the context of other proposed changes – particularly the proposal to allow solicitors to provide legal services through alternative legal services providers. An important benefit of such guides in this context could be in assisting consumers to recognise the differences between providers – such as regulated and alternative legal services providers, or those providing services on the Internet – and to understand the different service levels and protections they can expect in relation to each type.

It is difficult to identify any, in-principle, risks associated with the development of public and business facing guides. However, there are obviously potential risks if such guides are poorly developed, and serve to increase customer confusion and dis-engagement from the market. Accordingly, careful thought will need to be given to the various target audiences of such guides, the information to be included and the accessibility of such information.

5.5 Allowing solicitors to deliver non reserved activities through alternative legal services providers

An important change being proposed by the SRA is to remove requirements that currently restrict individual solicitors from delivering non reserved activities to the public, or a section of the public, by practising outside a regulated provider. Specifically, under the current regulations, solicitors who work in providers that are not regulated by the SRA, or another approved legal regulator, cannot provide non reserved activities to the public, except in some specific circumstances.

The SRA is of the view that these regulations are having a number of adverse impacts on competition and consumers; in particular, that they restrict choice for consumers by not allowing them to access the services of a solicitor outside a regulated provider. Moreover, the SRA is of the view that the regulation limits the opportunities for solicitors to choose to work in a range of different providers. This, in turn, could be limiting competition and innovation in supply models to the ultimate detriment of consumers.

In proposing to remove this requirement, the SRA's aim is to allow solicitors the flexibility to deliver non reserved activities through a range of different business structures and alternative legal services providers. Solicitors will be able to deliver non reserved activities in ways which are most responsive to their customer needs and consistent with their business strategy.

In considering the, in-principle, merits of this proposal it is necessary to briefly explore how the existing restrictions evolved, and to consider whether such a framework is still relevant. Prior to 2007, most solicitors practiced in traditional solicitor firms, or as employed solicitors providing advice to their employers.¹⁷⁹ Traditional regulated providers delivered both reserved and non reserved activities, and were subject (as they are now) to a mix of individual and entity-based regulation. That is, some consumer protections were directed at the regulating the conduct of individual solicitors, while some protections were directed at regulating the entity in which the solicitor practised. However, as discussed in section 3, since 2007 there have been significant changes in how legal services are delivered. There is now a range of providers who provide legal services, including traditional solicitor firms and ABS providers, and providers regulated by other approved legal regulators. There are a large number of solicitors who are now working in-house or on a contracting basis. There is also substantial provision of non reserved activities by non-solicitors/non-solicitor firms. Given these changes, the SRA's view is that the restrictions placed on the types of entities through which solicitors can deliver non reserved activities is no longer relevant and may be having adverse effects on competition, innovation and ultimately consumers.

From an economic perspective, there are a number of, in-principle, potential benefits associated with allowing solicitors to deliver non reserved activities through alternative legal services providers. Firstly, to the extent to which solicitors choose to provide advice through alternative legal services providers, this could increase competition in the supply of these services. That is, solicitors could offer a differentiated service to those currently being offered by capitalising on their specific qualifications, skills and expertise to compete against the existing providers. In addition, to the extent to which solicitors are allowed to bring their expertise to operate in innovative or different businesses – such as legal technology or legal process outsourcing companies – this can facilitate innovation and new methods of service delivery, which can be market-expanding and potentially address some of the issues associated with unmet demand for legal services identified in section 3. Secondly, the proposed changes will expand the choice options for solicitors in terms of the types of businesses through which they can deliver non reserved activities. This could lead to an even more diverse legal market and one consistent with suggestions that there will be more rather than less opportunities for solicitors in the future.¹⁸⁰ Thirdly, it can allow in-house solicitors, including those working in membership organisations, charities and local authorities, to provide legal advice to the public, without the need to seek a waiver.¹⁸¹ This could open up more

¹⁷⁹ See Solicitors Regulation Authority (2015a).

¹⁸⁰ The Law Society (2016).

¹⁸¹ The current waivers framework can be cumbersome and potentially confusing for solicitors, consumers and the public about what obligations apply to different types of solicitors. The SRA has issued 81 limited waivers, the majority to local government bodies and advice services, in relation to rules relating to in-house solicitors. See Solicitors Regulation Authority (2016).

opportunities for these providers to advise the public, or certain segments of the public, including vulnerable consumers. Finally, at a more general level, the proposed change will remove what might be classed as an asymmetric regulatory restriction. Currently, solicitors who are regulated by the SRA are restricted in how they can deliver non reserved services, while non-solicitors who deliver similar types of services face no such restriction. The proposed changes remove such restrictions and therefore 'levels the playing field' for solicitors and non-solicitors delivering non reserved activities to the public. The change will also address a trend that has been observed in the wake of this asymmetry, of some solicitors relinquishing the title solicitor so as to deliver advice through a firm that is not a regulated provider.¹⁸²

There is a number of, in-principle, risks associated with the proposed change. Firstly, and most importantly, there may be concerns around certain consumer protections that will not be available under the new arrangements. For example, consumers will not have access to the SRA Compensation Fund, or to client money-holding rules or to mandatory professional indemnity insurance requirements¹⁸³ where a solicitor delivers non reserved activities through an alternative legal services provider. We understand that consumers may also not have the benefit of legal professional privilege in relation to advice provided through an alternative legal services provider (unless novel contractual arrangements are developed). There will also be no mandatory controls on the systems and processes of the business. Finally, consumers will not automatically have firm-wide protection in relation to any conflict of interest they have with other clients of the alternative legal services provider, as they do in regulated providers. That is, while individual solicitors in alternative legal services providers will be under a duty not to act where there is a conflict of interest between two or more of *their* clients, this duty will not extend to any conflict between the solicitor's clients and clients served by others in the firm (subject to any voluntary policy the provider may have in this respect).

However, it should be noted that these protections are also unavailable if legal services are provided by firms who deliver non reserved activities through non-solicitors. Table 5 compares the consumer protections available under the three alternative supply models.

¹⁸² See the Law Society (2016).

¹⁸³ It has been suggested in discussions that the minimum terms and conditions contained in mandatory regulated insurance requirements are generous to consumers and might not be replicated in standard commercial professional indemnity insurance arrangements.

Table 5: Consumer protection by type of provider

Protection	Solicitor working in regulated provider	Solicitor working in alternative legal services provider	Non-solicitor working in non authorised provider
Individual solicitor is authorised and regulated by the SRA	✓	✓	
Individual standards apply to solicitor	✓	✓	
Solicitor subject to sanctions for misconduct	✓	✓	
Provider is authorised and regulated by the SRA	✓		
Mandatory insurance applies for loss due to negligence	✓	May have voluntary professional indemnity insurance	
Access to SRA compensation fund	✓		
Specific business/managerial standards apply to provider, including rules about the handling of client money	✓		
Provider's advice is subject to legal professional privilege	✓	May depend on novel contractual arrangements emerging	

Automatic provider-level conflict of interest protection applies	✓	May voluntarily have a conflict of interest policy	
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Some specific concerns that have been expressed around the loss of certain protections for consumers under the proposed model are discussed later in this paper. At this stage, the relevant point is that there is no in-principle economic objection to allowing consumers to trade-off the protections they receive under different service/provider models where they perceive they receive benefits in relation to this trade-off, such as reduced prices or greater accessibility to a service. In short, it is not an economic issue *per se* to allow consumers to make market choices based on their risk-preferences, and such allowance is an increasing feature of other regulated industries.

However, a crucial related issue in allowing consumers to exercise such preferences is whether consumers are able to understand relevant distinctions – i.e. to recognise whether the entity through which they consult a solicitor is subject to legal services regulation or not, and to appreciate differences in consumer protections in each case. In this respect, the proposed Code of Conduct for Solicitors places information obligations on solicitors to advise their clients on how services are regulated and the protections available to them. It might also be expected that, in marketing their services, regulated entities will make much of the enhanced consumer protections available to users of their services, which might further highlight relevant distinctions to the market. In general, the extent to which consumers will make informed choices in this context will depend on effective implementation and enforcement of the regulated information requirements as well as any other communication strategies of regulators and market participants.

A further potential, in-principle, risk that may arise from allowing solicitors to practice in a range of providers – including non-traditional providers such as high-street retailers or other companies – is that this results in a reduction in the collective reputational brand of solicitors. A downgrading in consumer conceptions of the ‘solicitor’ brand could, in principle, have wider knock-on effects to the rest of the profession. As solicitors themselves will remain regulated they will, it might be argued, have strong disincentives to compromise professional principles such as would degrade their reputation. There is, however, a second discipline or check on solicitors in regulated providers, as the entity itself is subject to a regulatory requirement to have processes in place to ensure their employees comply with the regulatory arrangements that apply to them and such firms are also required to notify the regulator if they become aware of misconduct or regulatory breaches. The removal of this entity-level monitoring in the proposed new arrangements is not necessarily problematic from a regulatory perspective if the SRA’s supervision of individual solicitors is effective. In this respect, to the extent that the SRA has, to

date, relied heavily on entity level supervision of solicitors in targeting its monitoring and enforcement activities, there may be a need to adapt its approach toward the individual level.

A separate risk relates to the stability of the provider through which a consumer receives legal services. Regulated providers are subject to certain obligations in relation to their business management processes. Specifically, regulated entities are required to monitor their financial stability and business viability as well as risks to their business arising from connected practices. Alternative legal services providers will not be subject to these specific entity-level requirements. Again the potential significance of this risk must be assessed in relation to the type of services that solicitors will provide through alternative legal services providers – i.e. are these services of such a nature that the effects of business disruption or failure would have effects substantially in excess of the effects of failures in the provision of other types of non-legal services (for which no such provisions are available)? In addition, are these protections of a type that consumers might plausibly trade-off for other benefits in terms of supplier choice, costs or accessibility? Further, might other market information assist consumers in assessing business stability and viability? - e.g. where a provider is a large 'brand' or a listed entity etc.

Finally, we understand that legal professional privilege may not be available where a solicitor provides advice to a client through an alternative legal services provider. However, it has been suggested that there may be scope for novel contractual arrangements between consumers and individual solicitors, or between regulated providers and alternative legal services providers, that will allow such privilege to be retained. The scope for such arrangements to develop raises both legal and practical commercial considerations. However if, in practice, legal professional privilege is not available to consumers of alternative legal services providers, this could have potential market impacts. In particular, it could impact on the attractiveness of alternative legal services providers to consumers, and on the type of services such providers will offer. The extent of this impact is debated. On one view, the availability or otherwise of legal professional privilege may be of limited significance in the context of non reserved activities (having far greater importance in reserved activities, such as litigation). In particular, it is suggested that many consumers are unaware of privilege, or if they are aware, do not value privilege for the advice they are obtaining. However, others consider that legal professional privilege can be of high importance for some consumers and in certain non reserved activities (such as tax advice or will writing). In addition, there may be significant implications of legal professional privilege being unavailable where, for example, an alternative legal services provider supplies services in relation to matters that later become the subject of litigation. Even if consumers are prepared to forgo the benefits of legal professional privilege in relation to certain legal services, there will again be important issues around the need to advise such consumers on the implications of agreeing to forgo this benefit, and obtaining meaningful informed consent. In short, as with the unavailability of certain consumer protections discussed above, there will

be a need to deal with any legacy expectations consumers may have when dealing with solicitors, of which legal professional privilege may be an important one.

6. Assessment of possible impacts

In section 5 we assessed the rationale for the proposed changes to the SRA Handbook, identifying some of the, in-principle, potential benefits and risks associated with the changes. This section builds on this analysis, to consider and map out some possible impacts of the proposed changes on competition and innovation, and on different types of stakeholder (consumers, solicitors, providers). As emphasised throughout this paper, these possible impacts are assessed having regard to the current and expected changes in the legal services market identified in section 3 (i.e. the relevant context).

The approach adopted in this section is that, from an economic perspective, what matters is how the changes to the Handbook impact on behaviour, which in turn has wider economic effects, rather, than say, how the wording or presentation of regulation changes. Specifically, the key areas of focus are whether the proposed changes could: encourage entry by new providers or expansion by existing providers; increase (or decrease) costs, price and quality of legal services; increase (or decrease) consumer confidence and therefore expand (or contract) consumer choice in the market; and decrease (or increase) the incentives for innovation.

In considering possible impacts, the approach adopted in this section follows the standard approach to exercises of this type (albeit at a more general and abstract level). Specifically, it follows four steps:

- (i) It sets out the problem that is sought to be addressed by the proposed changes to the Handbook.
- (ii) It sets out, in a very general way, possible options for addressing the problem identified, including a 'do nothing' approach.
- (iii) It identifies the different categories or type of economic impacts that may be associated with the proposed changes.
- (iv) It maps the impacts across to different affected parties.

6.1 The problem

Previous sections of this paper have set out various specific 'problems' the proposed changes to the Handbook are seeking to address. For the purposes of the assessment of impacts, these problems, in aggregate, might be summarised in the following way:

The current version of the SRA Handbook may be limiting consumer choice, competition and innovation because it:

- *is large and over-complex, contains some redundant provisions and is too prescriptive in some parts;*
- *is insufficiently clear in delineating between regulation of solicitors and the regulation of entity providers;*
- *restricts the ability of solicitors to deliver non reserved activities outside regulated providers; and*
- *is not fit for purpose given the changes that have occurred, and are occurring, in the legal services sector.*

For the purposes of the discussion in the remainder of this section, we assume that the problems noted above are correctly specified – that is, it is accepted that these are problems with the current model and approach. Our focus is therefore to, first, consider alternative options for addressing the problems, and second, identify possible impacts associated with the SRA’s preferred option for addressing the problems.

6.2 Alternative options for addressing the problem

In sections 2 and 5 we set out, and then assessed the rationale for, the changes that are being proposed to the Handbook by the SRA. It is, however, worth briefly considering, in a general way, whether the problem identified above could be addressed through alternative approaches.

A ‘do nothing’ approach

It is standard practice in assessments of the impacts of different policies to consider whether the specific problems identified are capable of being addressed in the absence of further regulatory action. This is sometimes referred to as the ‘do nothing’ or ‘baseline’ option. In this context, the ‘do nothing’ approach might involve making minor changes to the current regulatory model and to the Handbook to address specific issues (such as removal of duplicative requirements) and to update the current Handbook to reflect changes in the legal services market. Put differently, the question is whether the problems identified could be addressed through the existing regulatory model.

Looking at the nature of the problems set out above, this approach could potentially address some of the problems identified by the SRA. For example, efforts could be made to address the specific provisions that are considered to be too long or complex. Similarly, it might, in principle, be possible to make it more clear that Indicative Behaviours are non-binding – for example, by placing them at the back of the Handbook or as an appendix. However, for some of the other problems identified it seems unlikely that they could be accommodated without more radical change to the Handbook. For example, efforts to more clearly delineate the regulations that apply to solicitors as individuals and entities, and to specify requirements or adaptations where solicitors are providing services through alternative legal

providers, will arguably necessitate a fairly significant restructuring of the Handbook.

The question of whether the removal of some of the restrictions could be accommodated within the current regulatory model, absent the changes proposed, is a debatable one. If the policy position is that these restrictions can, in certain circumstances, limit customer choice and competition then one possibility might be to maintain and expand the current waiver system. For example, solicitors who wished to deliver non reserved activities through an unauthorised provider may be able to apply to the SRA to waive this requirement on a case-by-case basis. Put simply, an 'opt-out' approach could be applied. However, experience of the use of widespread waiver systems in other regulated contexts suggests that this could develop to be a complex and potentially confusing approach for solicitors, consumers and the general public.

Finally, there is the question of whether the current model is sufficiently fit for purpose given the changes that are occurring in the legal services market as outlined in section 3 above, including greater diversity in the profession, business structures and delivery methods. The current Handbook, may, in principle, be able to be adapted to accommodate such changes, however, this may require further expansion of the Handbook to cover a widening range of circumstances and behaviours, and may also involve frequent changes over time. The risk in this respect is that the Handbook becomes longer, more complicated, and less accessible to solicitors, consumers and the public.

A shift towards greater reliance on self-regulation and the market

An alternative option in responding to the problems identified might be to go further than the SRA proposals, and make even more significant reforms to the regulation of legal services. For example, it might be argued that, given the pace and nature of change occurring in the legal services market, a combination of competition and market reputational mechanisms, aligned with a minimum framework of additional regulation to ensure consumer protection, is the most appropriate approach. This approach might be based on an assessment that regulation is itself a cause of some of the problems identified, and is restricting consumer choice, competition and innovation rather than facilitating it.

Although there are many possible variants of this approach, one possibility would involve a more radical restructuring of the Handbook, including the removal of even more restrictions, to focus only on key areas of potential consumer harm. For example, specific requirements in the Code of Conduct about standards of service and complaints handling might be removed on the basis that, as in other professional services contexts, there will be natural market incentives for solicitors to foster and maintain a reputation for high standards and fair dealing (i.e. by effectively dealing with complaints).

The appropriateness of this approach clearly depends on a number of factors. One

factor is the intensity of competition in the market, and whether such competition is sufficient to ensure services are competitively priced and of sufficient quality to protect consumers (see discussion in section 4 about the interaction between competition and consumer policy). Another factor to be considered is the wider rationale for legal services regulation. This topic was also considered in section 4, where it was noted that among the reasons that legal services remain subject to sector-specific, rather than just general consumer protection, regulation is because of concerns about: asymmetric information; the way in which legal professionals have historically organised themselves; and the link between high quality legal services and economic performance.

Taking these points into account, it can be conjectured that the option of making more radical changes to the Handbook by removing further restrictions would like only be valid in circumstances where it was concluded that: (1) competition is sufficiently intense that it delivers good price and quality outcomes for consumers; and (2) the various specific rationales for legal services regulation are no longer valid, as competition is addressing concerns about asymmetric information, ensuring an open and diverse profession, and maintaining the high quality of legal services required for a robust, functioning economy.

Applying all existing regulated consumer protections to alternative legal services providers

A third option might involve attempting to bring all consumer protections that apply to legal services provided by authorised entities to attach to legal services provided by solicitors in alternative legal services providers. In particular, to allow clients of solicitors working in alternative legal services providers to have access to the SRA compensation fund and legal professional privilege, and to be covered by mandatory professional indemnity insurance and client money-holding requirements.

While attractive in principle, there are a number of potential problems that could arise from a practical point of view. First there is a question about the SRA's legal and practical power to influence alternative legal services providers (which it does not regulate). Second, if it is necessary to devolve current entity-level obligations to individual solicitors, this might place impractical burdens on individual solicitors. This could deter solicitors from working in alternative legal services providers and therefore not address the specified problem of limited consumer choice, competition and innovation.

6.3 Typology of impacts

The standard approach to assessing impacts associated with proposed policy changes is to assess such impacts relative to a counterfactual, or benchmark, which is the current policy situation. Although the impacts of all possible options are typically assessed as part of a policy proposal, our focus in this paper is assessing the possible impacts associated with the SRA's preferred policy option as described

in section 2. Moreover, the focus is solely on economic impacts, and not on impacts in other areas, such as social or environmental impacts.

In terms of economic impacts, we have specifically focussed on the following:

- Impacts on choice (e.g.: entry, expansion and exit of providers)
- Impacts on price and costs (including compliance costs)
- Impacts on quality
- Impacts on enforcement
- Impacts on innovation
- Impacts on demand, and access to justice
- Wider economic impacts associated with the changes.

Having discussed, in a general way, how the proposed changes might impact on these dimensions, the following sub-section then maps these impacts across to the different types of affected parties.

Impacts on choice - entry, expansion and exit

The main elements of the proposed changes to the SRA Handbook that are likely to have a material impact in terms of the entry, expansion or exit of providers are the changes which will allow solicitors to deliver non reserved legal activities through an alternative legal services provider. As noted above, in principle this will allow solicitors operating through alternative legal services providers to compete directly with solicitors providing services through regulated providers, as well as with non-solicitors who deliver non reserved activities. The changes would also allow solicitors working in-house to provide advice directly to the public, although such a possibility may be contractually proscribed within a specific employment relationship.

The impact on entry of this change will depend on a number of factors. Among the most important are: 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 alternative 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.

There is an obvious connection between the supply-side incentives for solicitors and providers to enter or expand their activities, and the demand-side behaviour of consumers in terms of whether they would be willing to switch to new and alternative providers. Accordingly, it can be conjectured that if: a large number of solicitors do not take up the opportunity to deliver non reserved services through alternative legal services providers, or consumers do not consider such services to be substitutes for the services provided by others, there would likely be only a minimal impact on entry and expansion, and therefore competition.

If, on the other hand, large numbers of solicitors do, over time, choose to deliver non reserved activities through alternative legal services providers, and consumers do see these services as substitutes for those provided by solicitors in regulated firms, or by non-solicitors who provide similar services, a material impact on entry, expansion, and therefore competition, can be anticipated.

The key point is that the extent of entry and expansion, and the associated competitive impact, will depend significantly on supply-side (i.e. number of solicitors who deliver non reserved activities through alternative legal services providers) and demand side responses (the extent to which consumers see the services offered by such solicitors as substitutes).

One factor in the demand side response to alternative legal services providers is the extent to which consumers value the particular consumer protections that attach to provision through a regulated provider, including the significance of retaining legal professional privilege in relation to the services sought. These matters may have a higher significance in relation to certain legal services than others. For example, the balance may fall differently for drafting an employment contract to structuring a transaction, or in the context of drafting a will in sensitive circumstances.

There are different views on the potential scope for in-house solicitors to provide advice to the public under the changes. On one view, the change will have little impact because employers will be reluctant to allow their employee solicitors to provide advice to third parties. Another view is that it may be attractive to organisations where the in-house team wants to create a separate legal function, and where such a team could be 'spun off' into a separate entity. It has also been suggested that the changes could be particularly attractive to some charities and local authorities who wish to provide legal services or advice direct to the public.

A further consideration is the potential size of the market for non reserved activities. According to the SRA, as a rough estimate, the majority of work undertaken by larger firms is non reserved, while for smaller firms, approximately two-thirds of the work undertaken involves reserved activities. This implies that expansion of activities of current providers into non reserved activities might be more likely to occur for larger providers than for smaller providers.

There is also the possibility that the changes might result in some market exit. For example, if solicitors who deliver non reserved activities through alternative legal services providers directly challenge, and attract a significant volume of business away from, smaller regulated providers. While this type of exit is a function of the competitive process, and should not be seen as a negative impact if it also leads to better outcomes for consumers, it is potentially complicated in the case of legal services by difficulties associated with exiting the sector. Specifically, some regulated providers may see their custom and revenues drop, but may not be able to fully exit the sector because of an inability to fund the appropriate run-off insurance etc. However, to the extent to which this impact arises, this requires separate

consideration.

Finally, it should be noted that some regulated providers, who do not undertake reserved activities (or very little), may choose to relinquish their current regulated status, and only undertake non reserved activities. Again, although these providers are 'exiting' the regulated sector, they are not exiting the supply of non reserved activities. They are, however, exiting the supply of reserved activities.

Impacts on prices and costs - including compliance costs

In effectively competitive markets the ability of firms to price well in excess of underlying costs is typically constrained by the potential to be undercut by current or potential rivals. Assuming that there is a reasonable degree of competition in the provision of legal services, a key consideration is the impact that the proposed changes will likely have in terms of costs (including compliance costs) and the knock-on effects that this could have on prices for these services.

The potential impacts of the proposed changes on costs, and therefore prices, are likely to differ according to the specific proposal. The impact will also depend significantly on the effectiveness of measures introduced alongside each proposal – for example, whether the online resources and toolkits are more effective in allowing solicitors to understand what they need to do to be compliant with regulations relative to the existing guidance contained in the Indicative Behaviours. In addition, there are likely to be one-off or transitional costs, and on-going cost considerations to take into account. Taking each proposed change in turn:

- Other things equal, the proposal to simplify and restructure the Handbook (to more clearly separate the regulations that apply to solicitors as individuals, and regulations that apply to regulated providers) and to remove redundant and duplicative requirements, might be expected to reduce costs or result in no material change in costs over the long term. This is because to the extent to which they clarify regulatory requirements, this should reduce uncertainty and the potential costs associated with complying with redundant or duplicative requirements. There may, however, be some transitional costs associated with solicitors and providers having to adjust to the changes, in particular for solicitors providing services through non authorised entities where they take over certain obligations currently met at the entity level in relation to regulated providers. There may also be additional costs if the simplification results in unintended changes to the established meaning or understanding of words and concepts.
- The potential cost impact of changes to refine the outcomes-focussed approach, including the replacement of non-binding Indicative Behaviours and guidance with online resources such as case studies and toolkits, will depend significantly on the extent to which such changes reduce regulatory uncertainty. As discussed in sections 4 and 5, if the changes result in a situation where guidance emerges more rapidly in response to market developments, and regulated providers take

advantage of the greater flexibility afforded them in choosing how to comply with principles or standards to experiment and innovate, this can potentially reduce the costs of compliance, and allow providers to price more competitively. On the other hand, if the changes increase uncertainty for solicitors and regulated providers, this could raise costs and ultimately prices.

- To the extent to which the proposed public and business facing guides improve consumer understanding of their rights and obligations, and reduce search costs, this will allow consumers to exert greater service and pricing pressure on legal service providers. There may be some costs associated with the production of such guides, although it is unclear how material the costs would be and who would bear the costs.
- It is difficult to identify a direct cost impact of the proposals to allow solicitors to deliver non reserved activities through alternative legal services providers. There may be some indirect costs in terms of the potential insurance implications and other requirements that are placed on providers that employ solicitors (e.g. solicitors working in alternative legal services providers may face higher or lower insurance premiums than they currently do through a regulated provider).¹⁸⁴ This proposed change might reduce prices to the extent to which they reduce costs¹⁸⁵ and intensify competition in non reserved activities. Recent surveys indicate that cost of services is now considered to be the most important factor when searching for a provider,¹⁸⁶ and that unauthorised providers are seen as having a perceived cost benefit.¹⁸⁷ Solicitors working in alternative legal services providers may offer consumers a price advantage relative to solicitors in regulated providers because such providers do not have to make payments into the compensation fund etc. On the other hand, consumers who suffer loss as a result of fraud by, or the inadequate insurance of, a solicitor in an alternative legal services provider, will not have access to the SRA compensation fund in relation to this loss (which is a cost to those consumers who would have been eligible for fund protection). The potential loss of legal professional privilege when obtaining advice from alternative legal services providers may also represent a potential cost to some consumers.

¹⁸⁴ In one discussion it was suggested that solicitors currently benefit from lower insurance premiums as a result of the ability to bulk purchase insurance. However, the SRA has previously found that for many firms – such as sole practitioners with low turnover or say £100k - £250k per annum and low levels of transactions - the level of compulsory cover may be above what is really needed. See Solicitors Regulation Authority (2014b).

¹⁸⁵ It has been suggested, for example, that unauthorised legal service providers who send advice out to third party solicitors in certain areas will be able to provide cheaper services if such advice can be provided within the organization rather than through third party arrangements.

¹⁸⁶ YouGov (2015).

¹⁸⁷ See Pleasence and Balmer (2014).

- Costs and associated prices might further be reduced in these circumstances if the alternative legal services provider is able to cross-subsidise some of the costs associated with employing a solicitor by revenues generated from other non-legal services that it provides. This is arguably already a possibility in relation to MDPs, however the change could increase the scope for service bundling and/ or cross-subsidisation across a wider range of business services and products. Nevertheless, the cost to consumers who use a solicitor through an alternative legal services provider may be higher than the cost of using a firm who employs non-solicitors to provide non reserved activities because of the premium the solicitor's skills and training is likely to cost the provider, as well as the need to absorb the solicitors' regulatory costs.
- Some currently regulated providers might choose to focus solely on non reserved activities and become alternative legal services providers, which would reduce their regulatory costs at the entity-level, and should, other things equal, allow them to charge keener prices (albeit without SRA consumer protections). As noted above, to the extent to which there are a fixed level of regulatory costs to be recovered this may have knock-on impact for those regulated providers who deliver reserved activities in terms of higher regulatory costs (i.e.: as a result of a fixed level of costs being recovered through a smaller number of regulated providers) and, other things equal, prices. This is not inevitable, and changes to charging methodology can potentially address this problem to some extent (i.e.: by re-balancing revenues obtained from individual solicitors and regulated providers).

Impacts on quality

As with the other economic impacts considered in this section, the potential impacts of the proposed changes on the quality of legal services are linked to each specific proposal. The proposals most likely to have an impact on quality are those to develop public and business facing guides and to allow solicitors to deliver non reserved activities through alternative legal services providers. Each of these is considered briefly in turn below.

The production of public and business facing guides is principally aimed at improving consumer understanding of their rights and obligations, and should be expected to lead to better-informed consumers. This in turn could reduce the information asymmetry that some consumers of legal services face, and increase the countervailing power they can exercise in dealing with legal providers. Other things equal, more empowered and knowledgeable consumers should be able to demand higher quality services from legal providers.

Allowing solicitors to deliver non reserved activities through alternative legal services providers could potentially lead to higher quality provision of non reserved activities. This is because solicitors can bring their skills, expertise and experience to these

activities in a wider variety of business arrangements.¹⁸⁸ However this depends on whether these attributes are valued by consumers – i.e.: some consumers may prefer to continue being supplied by non-solicitors. Some firms who currently provide non reserved activities but are not regulated providers are of the view that there will be demand for such attributes, particularly as paralegals are not perceived by some consumers to be as impressive a brand as solicitors.

However, concern has been expressed that solicitors acting in alternative legal services providers may face less quality oversight than in regulated providers, and pressure to provide poorer quality service. More particularly, it is argued that in traditional regulated law firms there is a strong commercial incentive on all solicitors in the firm to oversee and control quality because of the impact poor quality work by one solicitor will have on the reputation and livelihood of all solicitors in the firm. On this view, the proposed changes will allow legal services to be provided without an appropriate structure of control and oversight. The merits of this argument are beyond the scope of this assessment insofar as it relates, in part, to the wider issue of whether external non-lawyer parties should be able to own and control regulated entities (which is currently permitted under the ABS provisions). It also touches on questions of how the internal cultures and oversight practices of regulated providers and other providers differ, which is in essence an empirical question. However, as discussed in section 4, in principle, irrespective of the internal culture and practices of the provider, the quality of service provided by an individual solicitor should be conditioned by the minimum standards expected of all solicitors under their code of conduct.

Finally, there is a question around whether any loss of legal professional privilege in relation to advice provided by solicitors in alternative legal services providers might influence the level of disclosure by consumers, and the manner or form in which advice is provided, in ways that impact on (service) quality. Similar questions might also be raised about potential impacts on quality associated with the loss of mandatory firm-wide conflict of interest protection.

Impacts on implementation and enforcement

Changes to regulation typically have an impact on regulators in terms of the relative burden and costs associated with implementing and enforcing regulations. There can also be indirect impacts in terms of the staff and capacity requirements of a regulatory agency. The proposals that are most likely to impact on enforcement activity, including costs, are those directed at refining the outcomes-focussed regulatory strategy and to allow solicitors to deliver non reserved activities through alternative legal services providers.

As discussed in section 4 above, one of the in-principle benefits of an outcomes-

¹⁸⁸ For example, it has been suggested that solicitors could provide better and more accurate advice in housing sector disputes.

focussed regulatory approach is that it can capture a wide range of behaviours and avoid large enforcement or compliance gaps emerging. However, for the SRA's implementation of this approach to be effective it must be equipped with staff that are willing to, and capable of, assessing whether or not the judgements made by those subject to regulation are consistent with the principles and desired outcomes. This may have a cost dimension. More generally, enforcement costs could rise if the SRA's further refinement of the outcomes-focussed approach results in more opaque and vague provisions that are open to multiple interpretations, and lead to more disputes arising between the regulator and parties subject to regulation.

Allowing solicitors to provide non reserved activities through alternative legal services providers might, in principle, be expected to have a mixed effect on the implementation and enforcement of regulation, and it follows, on associated costs. As the scope of SRA entity regulation only applies to authorised firms, and not other providers of non reserved activities, the proposed change does not change this situation and no costs will arise in this respect. However, as discussed earlier, to the extent that the SRA has relied materially on entity-level supervision of solicitors in its monitoring and enforcement activity, the changes may require a greater monitoring and enforcement focus at the individual solicitor level, which may have costs.

Finally, the proposed change might be expected to reduce implementation and enforcement activity to the extent to which some currently regulated providers decide to focus only on non reserved activities (i.e.: become an alternative legal services provider) and therefore opt-out of entity regulation.

Innovation impact

Generally speaking, the relationship between regulation and innovation can be a delicate one. Well-designed, proportionate and targeted regulations can foster an environment conducive to innovation. In contrast, regulations that are poorly designed, insufficiently targeted, disproportionate or inadequately enforced, can stifle innovation and different ways of doing things. In principle, all of the proposed changes might be expected to have impacts on the incentives for providers to innovate. However, the most important impacts on innovation are likely to flow from the proposed changes to simplify the Handbook and refine the outcomes-focussed approach, and from allowing solicitors to deliver non reserved activities through alternative legal services providers.

As discussed in section 4, an outcomes-focussed approach to regulation can foster innovation in compliance insofar it affords regulatees flexibility to choose how their actions can best satisfy a regulatory objective. This flexibility can lead regulatees to experiment and seek out methods and practices that can reduce compliance costs and improve their position relative to competitors. However, this general benefit can be tempered in settings where there is detailed guidance in relation to the principles which is interpreted by those subject to regulation as being binding. In this respect, to

the extent to which the proposed changes to the SRA Handbook make a clearer distinction between binding principles/standards and non-binding guidance, this may foster a better environment for regulatees to achieve the benefits of innovation which are available under the approach.

More generally, as noted, the outcomes-focussed approach can create conditions for technological innovation by allowing those subject to regulation the freedom to experiment with alternative processes and technologies, which might lower production costs or improve quality. As discussed in section 3, technological change, particularly developments in information technology, are having significant impacts on the legal services sector. To the extent to which the proposed changes provide solicitors with greater freedom to experiment in delivering outcomes, this could promote technological innovation in terms of the production and delivery of legal services.

Allowing solicitors to deliver non reserved activities through alternative legal services providers will provide solicitors with the freedom to offer their skills and expertise to the public within a wider range of business structures and delivery mechanisms. This may provide opportunities for innovative service bundling for consumers and other innovations in service delivery commensurate with the potentially great variety of non-law firms' business models. One possibility that has been suggested is that online legal exchanges will be further developed to allow consumers to put up jobs, and for individual solicitors to bid for work. At the moment such exchanges only allow for law firms to respond to bids, but in the future the potential might exist for individual solicitors to participate and respond to individual jobs.

Impacts on demand, and access to justice

As discussed in section 3, a recurring area of concern is that there may be a significant degree of unmet demand for legal services. This unmet demand might, in turn, be seen as impacting the access that some consumers of legal services could have to justice.¹⁸⁹ The main proposed changes which could impact on demand for legal services, and access to justice, are those directed at developing public and business facing guides and allowing solicitors to deliver non reserved activities through alternative legal services providers.

To the extent to which the development of public and business facing guides improve

¹⁸⁹ On the basis of their analysis of how people resolve legal problems, Pleasence and Balmer (2014) draw the following conclusion: “*Our findings do not suggest any broad crisis of access to justice, with market rationing operating to channel more severe problems towards advice and formal process and some inaction appearing entirely rational. However, the legal services market and civil justice system do not ensure fair and equal access to justice, with deficiencies attributable largely to the difficulty of enabling vulnerable populations with limited capability and resources (e.g. those with health problems, low levels of education and/or lower income) to access appropriate help in a complex legal services market in which innovations to broaden service reach have often emanated from outside of the traditional legal professional sphere.*”

consumer understanding of their rights and obligations, instill a higher degree of confidence in the legal services market, and reduce search costs, this could encourage more consumers to purchase legal services. However, as discussed in section 7, for this to occur careful consideration must be given to the design of such guides to make them meaningful for consumers.

The ability of solicitors to deliver non reserved activities through alternative legal services providers could, in principle, lead to a greater number and diversity of providers of regulated legal services. Some of these providers might introduce new delivery mechanisms – for example, through retail outlets or via the Internet – which could tap into unmet demand for a service of regulated quality provided through less intimidating or more convenient avenues.¹⁹⁰ The potential for new entry, and expansion of providers, who have new delivery mechanisms might lead providers to target consumers of legal services in different, non-traditional ways. This effect may be significant as some (current) unauthorised providers estimate that around half of their customer base consists of consumers, including small and micro business consumers, who would not have taken legal advice from a traditional regulated provider.

One potential risk of the changes is that, as noted above, it may lead to the exit of some current providers, particularly smaller providers, who may not be able to compete with larger alternative legal services providers who attract away substantial amounts of their non reserved activity work and undermine their profitability. While, as noted, the exit of providers is a normal part of the competitive process, it could potentially have impacts on demand and access to justice if the exit of such providers is concentrated in specific geographical locations or particular customer segments.

Wider economic impacts associated with the changes.

In section 4, it was noted that a well-functioning legal system can have important impacts on economic performance, insofar as it can reduce transaction costs and facilitate trade and exchange. In this way, well-functioning legal systems can assist in expanding market activity throughout the economy. The relevant question is whether the proposed changes to the Handbook might impact on transaction costs in ways that could facilitate, or hinder trade and exchange, and expand (or contract) economic activity in other markets.

It is difficult to make any definitive assessments on how the proposed changes might have wider economic impacts. However, it is possible to speculate that, to the extent to which the proposed changes remove unnecessary restrictions on trade, this may result in the development of alternative delivery mechanisms and service provisions which could reduce transaction costs. For example, solicitors who offer their

¹⁹⁰ In a 2014 survey of 500 adults around a third of respondents said that they would be willing to try national brands supplying legal services. IRN Research (2015).

expertise and skills to the public from within an IT or legal technology firm may be enabled to do so through innovative mechanisms – such as online products and services. These products and services might reduce the time and cost associated with acquiring legal services and lower transactions costs. Some existing tech-based non-law firms claim that they are able to increase the speed of contract management and reduce the costs of contracting by as much as 30-40%.¹⁹¹

These products and services might also broaden the access points for some consumers, making it easier to access legal advice and services, including in relation to risk, which could increase confidence in transacting. Conversely if the proposed changes fail to address, or increase, consumer confusion and uncertainty this can reduce confidence in the legal services market and could increase transaction costs.

6.4 Mapping impacts to specific affected parties

The previous section focussed on identifying different types of impacts, which cumulatively, are likely to impact on competition and economic welfare. As is standard with assessments of this type, the next step involves mapping across the impacts to different types of affected parties. In the current context the specific affected parties include:

- Consumers
- Solicitors
- Regulated providers (including small providers)
- Firms who provide non reserved activities through non- solicitors

It is not the purpose of the current paper to assess the likelihood or magnitude of the possible impacts to specific affected parties identified. Rather the aim is to simply map impacts across to different types of affected party.

Possible impact on consumers

There is enormous diversity in in who constitutes the ‘consumers’ of legal services. Some consumers are large businesses who are repeat buyers, other consumers are smaller businesses, households or individuals who only infrequently acquire legal services at specific points in time (for a house purchase, to make a will etc.). Other consumers are what might be termed ‘involuntary’ in that they need to acquire legal services at specific points in time or in distressed circumstances (e.g.: those involved in a divorce, or in relation to employment matters upon being made redundant).

The relevant point is that the consumers of legal services differ significantly in terms of: the specific services they acquire (reserved or non reserved activities; criminal, civil, commercial or business advice etc.); the frequency with which such services are acquired; the circumstances in which they acquire legal services; familiarity and experience with acquiring such services and their ability to understand and specify

¹⁹¹ For example, Axiom (see: <http://www.axiomlaw.com/what-we-do/service/contracts>)

their preferences and requirements.

One of the main direct consumer impacts of the proposed changes will flow from allowing solicitors to deliver non reserved activities through a range of alternative legal services providers, some of which may not provide the same level of protection that consumers of regulated providers may be familiar with. Consumer impacts will also flow from proposals to produce public and business facing guides, and from the ability of some currently unauthorised providers to seek to be regulated by the SRA.

In general terms, consumers can be expected to benefit from the proposed changes to the extent that they: improve consumer understanding of the legal services market; widen the number of providers and delivery mechanisms available to consumers; allow consumers increased access to the high standards of professionalism and education that is provided by solicitors; and allow some consumers to trade-off some protections for additional benefits. Moreover, to the extent to which the changes result in more intense competition and innovation this might ordinarily be expected to benefit consumers in the form of lower prices, alternative pricing arrangements, higher quality and the introduction of new products and services. All of this might draw more consumers into the market and address concerns about unmet demand.

On the other hand, and again in general terms, some consumers may be adversely impacted by the changes if they create confusion around the different protections attaching to services provided by solicitors through regulated providers and alternative legal services providers – e.g.: a mistaken belief that in gaining advice from a solicitor through an alternative legal services provider they are subject to the same protections as if that solicitor worked in a regulated provider (for example, the SRA compensation fund protection; the availability of legal professional privilege in relation to information imparted and advice provided; regulated indemnity insurance levels). As discussed elsewhere, separate concerns have been raised in some quarters that consumers may receive lower quality services from solicitors in alternative legal services providers. The reasons cited for this include: the loss of regulated entity-level supervision; the potential loss of legal professional privilege in relation to information imparted and advice provided by such solicitors; and the loss of automatic firm-wide conflict of interest protection.

Having regard to these general points, it is possible to speculate on how different broad categories of consumer might be impacted by the proposed changes.

Business consumers who have a good understanding of the legal services market and are typically repeat buyers – such as medium and larger businesses – might benefit from the changes insofar as they result in more supply options and a greater diversity in providers. It may also provide them with greater scope to purchase unbundled legal services from a range of providers or bundled services (legal plus other services) from a single provider. In addition, such consumers are likely to understand their rights and protections under different providers, and might, it would be assumed, actively seek to understand what level of protection they have (i.e.:

whether a provider has an appropriate level of insurance, the implications of not having legal professional privilege etc). Some in-house solicitors have noted that they are under obligations to their employer to find the cheapest way of sourcing legal advice at the right level of quality, and that they sometimes do not obtain desired legal services for cost reasons. It has been suggested that the proposed changes will increase the scope for in-house lawyers to manage budget and risk by assembling their own team of individual solicitors to work on aspects of specific projects, rather than relying on a team supplied by a traditional law firm.

The impact on individuals is likely to vary significantly according to their specific legal need, their circumstances, and their familiarity with, and understanding of, the legal services market. Individual consumers who are 'savvy' and reasonably knowledgeable about legal services, might familiarise themselves with public facing guides offered and take the time to acquaint themselves with their rights and protections under different forms of provider. These 'savvy' consumers could potentially benefit from the changes insofar as it widens the potential pool of providers. It may also allow some of those consumers who are willing to be exposed to some risk, to trade-off certain protections (such as access to the compensation fund) in exchange for lower prices or alternative mechanisms of service delivery.

At the other end of the spectrum are consumers who are unfamiliar with the legal services market, infrequent purchasers of such services or in distressed circumstances (what might be termed 'non-savvy' consumers). There is the potential that such consumers may not fully understand that, in acquiring the services of a solicitor through an alternative legal services provider, they are potentially foregoing some of the protections that currently exist (e.g.: in terms of access to the compensation fund, regulated indemnity insurance requirements, the availability of legal professional privilege etc.). To the extent to which this confusion is not addressed by measures proposed by the SRA – such as requirements for solicitors working in alternative legal services providers to inform consumers of their rights and protections, or through the public guides and outreach programmes – then this could lead to decreased confidence in the legal services market, a consumer bias against certain types of providers (reducing the potential benefits of the proposed changes) or more widespread avoidance of the legal services market.

As discussed in more detail in section 7 below, the potential for this situation to arise depends on a number of factors. In particular, such risks may be mitigated where: solicitors are required to make meaningful disclosures to consumers in relation to available protections; alternative legal services providers have their own commercial incentives to take out insurance and other protections; and the public outreach programmes are effective. Moreover, concerns around consumer confusion assume that there is currently a high level of understanding among consumers of the difference between regulated providers and firms who provide 'legal services' but are not subject to legal services regulation, and that the changes will create confusion around this understanding. However, research for the Legal Ombudsman has found

evidence that consumers currently lack understanding about the difference between regulated and unauthorised providers and their respective options for redress.¹⁹² In particular, some consumers are of the view that unauthorised providers are regulated. More generally, as the Law Society has observed, there remains a ‘great deal’ of uncertainty among consumers – including knowledgeable consumers – about the types of lawyers and legal services. Having said this, other research suggests that market rationing operates to channel more severe problems towards advice and formal processes, including independent help and law firms.¹⁹³ In this respect, the extent of concern around the risk of consumer confusion in relation to the proposed changes must be conditioned by the state of existing consumer understanding.

In summary, the potential impact on consumers of the proposed changes might generally be expected to be a positive one for larger and more savvy consumers of legal services, while the potential impacts for less savvy consumers will depend significantly on the effectiveness of the proposed consumer information/guidance. More generally, as differing consumer protections will be available in relation to solicitors providing services through regulated providers and alternative legal services providers, a key matter will be the extent to which consumers understand the different protections attached to various providers.

Possible impact on solicitors

As described in section 3, there is increasing diversity in how solicitors are choosing to work and practise law. While a large number of solicitors continue to work in what might be termed ‘traditional’ law firms, who deliver both reserved and non reserved activities to a range of consumers, an increasing number of solicitors are working in alternative and increasingly non-traditional ways. This includes a substantial number of solicitors who are employed in-house and provide advice to a single client; solicitors working through ABSs; and solicitors who work on a contract basis or undertake outsourced work.

All of the proposed changes to the Handbook are likely to have impacts on solicitors. The changes of the Handbook which are likely to have the greatest impact are those which change the structure and content of the Handbook, and those which remove requirements that currently restrict the ability of individual solicitors to deliver non reserved activities to the public, or a section of the public, outside a regulated provider.

In general terms, the changes to the structure and content of the Handbook could result in benefits for solicitors by clarifying their regulatory obligations, reducing their compliance burden (by removing duplicative or redundant requirements) and allowing them greater freedom and agency in determining how to comply with various principles and standards. The removal of Indicative Behaviours and non-binding

¹⁹² Northumbria University (2014).

¹⁹³ See Pleasence and Balmer (2014).

guidance from the Handbook could also address any confusion that exists about the status of such materials. The proposed refinements of the outcomes-focussed regulatory approach might also reduce the frequency with which changes to the Handbook are made, and therefore the need for solicitors to constantly keep abreast of such changes.

Similarly, in general terms, allowing solicitors to deliver non reserved activities to the public through alternative legal services providers could benefit some solicitors by increasing the scope for them to leverage their specialist skills, knowledge and expertise into new areas, and through alternative providers and delivery mechanisms. Put simply, it broadens the supply routes through which solicitors can deliver non reserved services, and arguably, the potential consumers that they can target. This is likely to particularly benefit solicitors who are responsive to consumer needs and preferences,¹⁹⁴ and those more willing to embrace technology. However, it could also benefit solicitors who wish to develop an expertise and presence in niche practice and advice areas.¹⁹⁵ A different, less sanguine, perspective raised in one stakeholder meeting is that the type of solicitors who might be attracted to alternative legal services providers may be solicitors with low levels of experience, or those who seek minimal oversight of the quality of their services.

Again in general terms, there is potential for some adverse impacts on solicitors associated with the changes. The changes to the structure and content of the Handbook could introduce the potential for misunderstanding of the new compliance arrangements, although as noted above, in principle, solicitors should be better equipped than most to understand, and deal with, regulatory changes. The move to more clearly delineate binding principles from non-binding guidance and to replace the detailed Indicative Behaviours with new forms of assistance, while being more consistent with an outcomes-focussed regulatory approach, may create additional work from practitioners in determining how best to exercise their permitted discretion to best meet regulatory outcomes in their particular circumstances. This could increase the costs and time associated with compliance, and, in the event that it proves unduly onerous, lead to over- or under-compliance.

Allowing solicitors to deliver non reserved activities to the public through alternative legal services providers might have differential impacts on solicitors. As described above, those solicitors who remain in the regulated provider market may find

¹⁹⁴ As the Law Society has noted more generally: “Solicitors who can reach out to help consumers clearly understand their issues and options, and market themselves as such, should do well as more providers enter the market and confusion around choice grows.” The Law Society (2016).

¹⁹⁵ As the Law Society has noted there is a general growth in the number of niche providers: “The number of niche firms has grown as solicitors identify an opportunity to service a particular market more competitively than larger, more broad-based firms. Niche practices, by specialising, often tend to be market leaders in their fields, possessing clarity about what the firm does and projecting a lucid brand message.” The Law Society (2016).

themselves facing more intense competition from solicitors providing non reserved activities through alternative legal services providers. While this is likely to be beneficial overall for consumers, it could nevertheless have distributional impacts on solicitors who lose custom and revenue as a result of the changes.

More generally, there is some concern that allowing solicitors to provide advice through a range of alternative legal services providers – such as large retail outlets or a range of other consumer-facing firms – may in some way ‘water down’ or reduce the collective reputation attached to the ‘solicitor’ brand. In a nutshell, the concern is that it might result in a changed consumer conception of solicitors which could, in principle, have knock-on effects on the wider profession. To the extent to which the brand is ‘watered down’, solicitors may come to be seen like other service providers who are not subject to the same requirements of education, skills and integrity. However, an alternative view is that, rather than diminish the ‘solicitor’ brand, the proposed changes will strengthen it. On this view, the changes will increase the visibility and accessibility of solicitors, improving understanding of the specialist skills and knowledge they can offer. In addition, if solicitors come to be perceived as less ‘elite’, this may widen access and attract more consumers to use their services. Moreover, as the SRA notes, in this context, any reputational advantage attached to the brand ‘solicitor’ will depend on actual consumer experience, and the extent to which consumers see value in acquiring the specialist services of solicitors.¹⁹⁶

A different concern that has been raised in some quarters is that solicitors working in alternative legal services providers might face pressure from such providers to ‘cut corners’ or compromise their professional principles in the interest of commercial expediency. While it is not possible to predict whether conflict may arise between solicitors and their employers along these dimensions, the solicitor themselves will, as the regulated party, have strong disincentives to compromise professional principles.

Having regard to these general observations, the specific impacts on solicitors are likely to differ according to the structure through which they deliver legal services. It is possible to speculate on the possible impacts on broad categories of solicitor including those working in traditional legal structures and those who choose to work in alternative legal services providers, in-house or alternative arrangements.

Solicitors who continue to provide advice through traditional legal structures will be directly impacted by the changes to the structure and content of the Handbook. This could in principle reduce the regulatory burden that they face, although as noted, if not accompanied by appropriate and targeted guidance it may also increase uncertainty and potentially raise costs. As discussed, in section 7, within this broad category, solicitors working in some smaller traditional law firms may also face more intense competition from solicitors working in alternative legal services providers.

¹⁹⁶ Solicitors Regulation Authority (2015b).

Some solicitors who currently work in traditional providers may take advantage of the removal of restrictions on how they can deliver non reserved services to leverage their skills and knowledge to target consumers who are currently supplied by non-solicitors providing similar services.¹⁹⁷ To the extent that there are non-practising solicitors who currently provide advice outside a regulated provider,¹⁹⁸ such solicitors will be able to become regulated by the SRA on an individual basis, and continue to provide such services, but under the ‘solicitor’ brand. Some solicitors working in-house are likely to benefit from the proposed changes insofar as they will be allowed to deliver non reserved activities to the public (subject to their employment contract). This benefit will particularly be felt by those solicitors working in membership organisations, charities and local authorities, which currently obtain a waiver in order to provide such services. In-house solicitors may also be able to benefit in terms of providing advice in terms of how companies manage and handle their risk exposures and appetites. Once developed, this risk-based advice could be provided to a wider range of consumers.¹⁹⁹ Solicitors who work on a contracting basis are also likely to benefit as it broadens the potential avenues and providers through which they can offer their specialist skills and expertise.

There may, however, be cost impacts for individual solicitors to the extent that they take over, in their individual code of conduct, some of the responsibilities traditionally performed at the entity level. For example, solicitors working in alternative legal services providers will have to establish and maintain, or participate in a complaints handling procedure. Similarly, to demonstrate compliance with some of the general high-level principles in their Code, solicitors may be required to develop and maintain certain policies, systems and processes which might traditionally have been, in practice, part of the regulated providers regulatory remit of establishing compliant business systems. Finally, there is a question around whether the scope for solicitors’ advice to be outside legal professional privilege and disclosable might impact the manner in which services are provided.

Possible impact on regulated providers, including smaller providers

As discussed in section 3 above, wider changes in the legal services market are

¹⁹⁷ The Law Society (2016) recognises this potential: “ *Solicitors themselves may choose to shed the shackles of regulation and utilise their legal knowledge to work in or as unauthorised providers. It is not yet clear what the full implications of this possibility may be, apart from the fact that the individual will not be able to use the solicitor title or practise reserved activities under the current regulatory framework.*”

¹⁹⁸ See the Law Society (2016): “*Overall, we expect to see more solicitors exploiting the developments in the B2C market arising from competition between regulators, such as relinquishing official use of the solicitor title and setting themselves up as non-lawyer and/or unauthorised providers.*”

¹⁹⁹ The Law Society (2016) observes that risk is an area “*underserved by current market suppliers*” noting that: “*There are opportunities here for in-house counsel and law firms to develop offerings and advice around how companies handle risk, and manage their risk appetites.*”

creating both challenges and opportunities for both regulated and alternative legal services providers of legal services.²⁰⁰ It is important then that the possible impacts of the proposed changes be considered within this wider context, and having regard to differences in the size, location and specialisation of providers.

The proposed changes to the Handbook which are likely to have the most significant impacts on regulated providers are those which change the structure and content of the Handbook and allowing solicitors to deliver non reserved activities through an alternative legal services provider.

If effective, the proposed changes to the structure and content of the Handbook – particularly the changes involving a clearer distinction between individual and entity regulation, and the removal of duplicative and redundant requirements – should benefit regulated providers by reducing the complexity of the Handbook. It could also benefit regulated providers by removing overlapping or redundant regulatory requirements that currently apply to regulated firms. All of these changes might be expected to reduce the regulatory burden placed on regulated providers, which should reduce costs. However, as noted above in relation to solicitors, to the extent to which such changes are opaque or confusing, they might increase regulatory uncertainty. This could lead some regulated providers to either over- or under-comply with regulations, or seek out the services of third-party compliance experts. These measures could raise the costs associated with regulation, and reduce the ability of some providers to compete.

The ability of individual solicitors to deliver non reserved activities to the public by practising in an alternative legal services provider may have a number of possible impacts on (currently) regulated providers. First, it may have impacts in terms of attracting and retaining staff to work for them. Some solicitors may decide to deliver solely non reserved activities through an alternative legal services provider. Second, it could have impacts in terms of the ability to compete with some alternative legal services providers, particularly those which have strong consumer brand recognition. As the Law Society has recently noted, in the future regulated providers who do not offer the right services to consumers may be ‘bypassed’ as consumers seek out familiar brands.²⁰¹

As discussed above, the potential also exists that some currently regulated providers may choose to focus only on non reserved activities in the future, and therefore avoid the costs and obligations of entity level regulation. This could potentially place these

²⁰⁰ As the Law Society (2016) has noted “*Changes to the legal services market bring both challenges and opportunities for those selling legal services. However, the opportunities for solicitors cannot be distinguished from the opportunities for other types of lawyer, or non-lawyer-owned businesses. Solicitors will need to be quick and act confidently to keep up with their competitors, be they peers or others.*”

²⁰¹ The Law Society (2016): “*Solicitor firms who fail to get offerings right for consumers may see these retail buyers bypass them to seek refuge in familiar brands.*”

providers at a competitive advantage *vis-à-vis* providers who do deliver reserved services and are therefore subject to regulation (including the costs associated with regulation). However, alongside the costs, there may be certain reputational and other benefits associated with being regulated (such as the availability of legal professional privilege), and this may act as a disincentive for some providers to 'opt-out' of regulation.

The potential impacts on regulated providers will differ according to their size, location and the types of advice and activities they provide. Around 48% of regulated entities are classified by the SRA as small providers, while a further 29% are classified as medium sized providers. According to the SRA, the majority of work undertaken by larger firms tends to involve non reserved activities, while for smaller firms approximately two-thirds of the work undertaken involves reserved activities. Table 6 details the distribution of firms according to various criteria.

Table 6: Distribution of regulated providers by size

	% of total	No. of firms	Basis of classification
Small	48%	5,150	Up to 4 partners/members/directors/ turnover < £400k
Medium	29%	3,112	Less turnover than top 1000 firms, but are not small
Large	8%	858	Next top 900 firms by turnover
Very large	1%	107	Top 100 firms by turnover
Other	14%	1,502	Include those not providing services
Total	100%	10,730	

Source: SRA.

It is generally acknowledged that larger providers, and those which target business customers, are likely to be best placed to adapt to changes in the legal services market.²⁰² They will also potentially be best equipped to adapt their activities to the

²⁰² This is consistent with a more general trend in terms of their ability to adapt to wider changes in the market. As the Law Society (2016) has noted more generally: “*Top 200/City firms and those corporate firms (large or specialist/niche) which serve business buyers appear better placed to weather storms in the service delivery climate.*”

changes being proposed by the SRA. Some of the more innovative providers may see this an opportunity to introduce new compliance and delivery methods. These larger providers already face competition from a range of international and specialist providers, as well as increasingly from ABSs such as large professional services and accounting firms, for non reserved activities.

The potential impact on smaller traditional regulated providers is more difficult to assess. Changes to the structure and content of the Handbook, and the refinement of the outcomes-focussed approach, have the potential to increase or decrease the burden and costs associated with complying with regulation depending on whether they increase clarity or create greater uncertainty. However, as discussed above, the ability of solicitors to deliver non reserved activities through a range of providers, may lead certain consumers to move away from smaller regulated providers to large alternative legal services providers who have a strong geographic presence (such as large retailers or other consumer-facing firms). The ability to deal with this competitive threat may be more limited for smaller, traditional providers as, for various reasons (such as their location) they may have to continue to deliver both reserved and non reserved activities.²⁰³ This issue is discussed in section 7.

Possible impact on firms who provide non reserved activities through non- solicitors

As discussed in section 3 above, some estimates suggest that the number of non-solicitors providing non reserved activities is in the vicinity of 130,000. These services range from general legal advice, corporate and commercial advice, housing advice, employment advice, to will writing and mediation services etc. Very little is known about the size and composition of the providers in which these non-solicitor advisors work. However, given the diversity in services provided, there is potentially a wide range of such providers in the market.

The proposed changes could potentially impact materially on these providers in two ways. First, and most obviously, current non-solicitor advisors working in such providers may in the future face more intense competition from solicitors working in alternative legal services providers. However, for the provider itself, the change may represent either a threat or an opportunity. Some providers may seek to recruit solicitors and therefore compete on this basis. Others may retain their existing business model and potentially face some competitive pressure from solicitors working in alternative legal services providers. To the extent to which consumers value the skills and expertise of solicitors working in alternative legal services providers, this could result in lower custom and revenues for providers who employ non-solicitors – i.e.: they may lose market share. However, there may be cost/pricing

²⁰³ More generally, it is acknowledged that smaller traditional private practice firms will find the competitive environment more challenging in the future. As the Law Society (2016) notes “*The harder transition will be for smaller traditional private practice firms, and it seems likely that existing firms will have fewer solicitors working in them in 2020.*”

differentials between using a solicitor or non-solicitor advisor and, if so, providers who do not use solicitors will only lose custom to the extent that consumers consider any additional quality or consumer protection provided by dealing with a solicitor represents value for this price increment.

A second potential impact of the proposed changes is that some firms who recruit solicitors to deliver non reserved activities, may choose to become regulated by the SRA. That is, they may 'opt-in' to regulation. Although this would expose them to additional costs associated with regulatory obligations including mandatory insurance requirements, and compensation fund contributions, such regulation may have commercial value as a form of 'quality stamp' that differentiates such providers from some of their competitors and signals to the market that they offer additional protections. It may also have particular value if it ensures the availability of legal professional privilege for the services provided by their solicitors. The incentive to opt-in to regulation might be particularly attractive to cutting-edge or innovative providers who want to reassure consumers that they are subject to various controls and processes, and that service users will be afforded traditional protections.

7. Specific questions relating to the changes

Drawing on the discussions throughout this paper, but particularly in section 6, this section addresses a set of key questions that have been identified by the SRA.

- i. What might be the effects of the proposed changes in terms of competition, costs for the consumer, choice and market growth?*

The specific potential impacts of the proposed changes on competition, consumer costs (i.e.: prices) and market expansion was considered in section 6 in detail. However, in brief, the main points to emerge from those discussions are as follows.

Competition

A key element of the proposals by the SRA is to remove what might be classed as an asymmetric regulatory restriction and therefore 'level the playing field' for solicitors and non-solicitors in relation to the provision of non reserved activities. The potential impact on competition of the removal of restrictions will depend on supply-side responses (i.e.: number of solicitors who deliver services through alternative legal services providers) and demand side responses (the extent to which consumers see the services as substitutes). Solicitors working for traditional regulated providers may find themselves facing more intense competition from solicitors providing non reserved activities through alternative legal services providers. Similarly, current non-solicitor advisors may face more intense competition in relation to some services from solicitors working in alternative legal services providers. To the extent to which allowing solicitors to practice within alternative legal services providers (including, familiar-brand providers) reduces consumer perceptions of elitism or intimidation associated with acquiring solicitor services from traditional law firms, or makes access to solicitors more convenient, this could, as discussed below, generate market growth in areas of unmet demand. However, the extent of competitive pressure exerted by alternative legal services providers will depend on the extent to which consumers are willing to forgo some traditional protections and rights they have enjoyed when obtaining legal services from a solicitor (for example, legal professional privilege).

Prices

The potential impacts of the proposed changes on costs to the consumer (i.e.: prices) are likely to differ according to the specific proposal, and critically, the extent to which any cost reductions experienced by providers are passed on to consumers. This, in turn, is dependent on the intensity of competition in the market. Proposals to simplify and restructure the Handbook and remove redundant and duplicative requirements should, other things being equal, reduce, or result in no material change, in costs and prices over the long term (although there may be transitional costs). The potential cost and price impacts of changes to refine the outcomes-focused approach, will

depend significantly on how this is implemented. As discussed, if solicitors and regulated providers take advantage of the greater flexibility afforded them to experiment and innovate this can potentially reduce the costs of compliance, and allow them to price more competitively. On the other hand, if the changes are too imprecise or vague, and not accompanied by adequate guidance, this could increase costs and prices as those subject to regulation may commit resources, and implement processes, in excess of regulatory requirements or feel compelled to pay for advice as to what actions are in accordance with the principles/standards.

Proposals to develop public and business facing guides could improve consumer understanding of their rights and obligations, reduce search costs, and therefore allow them to place greater pricing pressure on existing providers. There may be some costs associated with the production of such guides though, although it is unclear how material the costs would be and who would bear the costs. Finally, the proposals to allow solicitors to deliver non reserved activities through alternative legal services providers might result in reduced prices for non reserved activities to the extent to which it intensifies competition in those activities. However, the ability of all providers to reduce prices may depend on the extent to which they deliver reserved and non reserved activities; solicitors who provide both activities, and remain subject to regulation, may not be able to price as competitively as providers of only non reserved activities.

Growth

In principle, the proposed changes could expand the market for legal services by removing restrictions that limit different business models and ways of doing things. As discussed, it could potentially lead to entry by new providers, including innovative providers, who can target their offers to specific customer segments using a range of delivery methods including by utilising new technology. It may also lead to entry by well-known retail brands, which could use their strong reputation to reach a wider segment of consumers. Some existing providers of legal services – such as charities and municipal bodies – may expand their activities to deliver non reserved activities directly to the public. Furthermore as discussed below, the ability of solicitors to use their skills and experience through a range of business models, could address concerns about unmet demand in the legal services market.

However, in some very specific circumstances, the proposed changes may not result in growth in the market, or could even lead to a contraction of the market in some areas. One possible scenario is if, as a result of the changes, consumers become more confused about the rights and protections that they have under different providers, and lose confidence in, and avoid, the legal services market. A second possible scenario is where, as a result of the changes, regulated providers in certain geographic locations – such as small, traditional providers – are subject to intense competition from new alternative legal services providers which makes their business models unsustainable. If these smaller regulated providers choose, or are compelled, to exit the market, this may result in some unmet demand for reserved legal services

in those specific locations. Finally, growth in the alternative legal services provider sector may be limited if consumers prove unwilling to forgo certain traditional protections and rights they have enjoyed when obtaining legal services from a solicitor (e.g.: access to legal professional privilege).

ii. How might the proposed changes improve access to legal services for the public and business users?

As noted in earlier sections, there is a widely held view that there exists substantial unmet demand for legal services, particularly for individuals and smaller businesses. This unmet demand might, in turn, be impacting the access that some consumers of legal services have to justice.²⁰⁴ A key question is whether the proposed changes might address this issue.

The proposal to provide public and business facing guides should, if effective, increase consumer understanding of the legal services market, which could potentially result in more active and engaged consumers, and, in turn, expand access to legal services. Allowing solicitors to deliver non reserved activities through different types of providers may, as noted above, facilitate innovation in service delivery, creating more convenient, or lower cost, access points – for example, through retail outlets or via the Internet – and expand the market and reduce some unmet demand. Moreover, to the extent to which a significant number of providers seek to opt-in to regulation this could enhance the collective reputation of those involved in the delivery of non reserved legal services, potentially increase consumer confidence in these services, and reduce further the risk of unmet demand. However, if consumers are confused by, or suspicious of, the differing protections that apply to legal services depending on the entity through which a solicitor provides them, this may reduce consumer confidence in the market, and reduce access.

Finally, as noted above, if some current regulated providers, particularly smaller providers, exit the market, and such exit is concentrated in specific geographical locations or customer segments, this could potentially have impacts on consumer access to reserved services in those areas (and consequently ‘access to justice’ more generally).

iii. In what circumstances might a consumer decide to choose a 'qualified' professional in an alternative legal service provider?

As discussed in section 6, there are many types of ‘consumers’ of legal services, and

²⁰⁴ Although see Pleasence and Balmer (2014) who conclude that there is not a “*broad crisis of access to justice*” but that the “*legal services market and civil justice system do not ensure fair and equal access to justice, with deficiencies attributable largely to the difficulty of enabling vulnerable populations to access appropriate help.*”

the circumstances in which legal services are required can vary significantly. However, in general terms, the decision of a consumer to choose a solicitor working in an alternative legal services provider might be influenced by a various factors. First, consumers may appreciate the skills and expertise of solicitors in legal matters (which is warranted by their accreditation), and the fact that solicitors are bound by certain ethical obligations and professional responsibilities.

Second, consumers are likely to be influenced by price differentials between different service providers. If the price of a solicitor providing services in an alternative legal services provider is lower than that of a similarly qualified and skilled solicitor working in a regulated provider, this may be influential. As noted above, surveys indicate that cost of services is now considered to be the most important factor when searching for a provider, and providers who are not subject to legal services regulation are seen as having a perceived cost benefit. In addition, as noted, because alternative legal services providers will not incur some costs associated with regulation, this should lower their cost levels allowing them to compete more effectively on price. Nevertheless, in relation to the provision of certain types of legal services, consumers may be comparing the prices of solicitors with the price of non-solicitors offering similar services. In these circumstances, consumers may only prefer a solicitor where they perceive any increase in quality and protections available to be at least as valuable as the price differential. However, there is likely to be a portion of non reserved activities that are not typically dealt with by non-solicitors, and for which consumer choice will lie only between solicitors operating from regulated or alternative legal service providers.

A third reason why a consumer might choose the services of a solicitor working in an alternative legal services provider is that the provider utilises new and innovative delivery mechanisms. For example, if an alternative legal services provider better uses technology to reach consumers, or has a broader geographic scope of interfaces with consumers (for example, through a branch of retail outlets) than traditional regulated providers, or even ABSs. Consumers may also be influenced by a provider showing an enhanced understanding their needs and preferences. For example, an alternative legal services provider might offer higher levels of customer service, or different operating hours etc.²⁰⁵

- iv. *What are the best ways to support consumer confidence to make effective purchasing decisions as we open up the range of options for choosing and buying legal services?*

²⁰⁵ This is consistent with the general view that, given changes occurring in the market, solicitors reach out to help consumers clearly understand their issues and options, should do better. See the Law Society (2016).

As emphasised throughout this paper, it is of central importance to the achievement of the desired regulatory objectives that the proposed changes do not increase consumer confusion, and are accompanied by measures which are educative in nature and seek to help consumers better understand differences in services and protections being offered. Combining educative and information measures with appropriate redress mechanisms might therefore best support consumer confidence. Put simply, consumers should be clear about the different protections and rights attached to different types of provider, and be confident that, should they not be satisfied with the service they receive, there is an acceptable means of seeking redress. This does not mean that consumers need to fully understand the detail of the regulatory architecture, but rather that they are aware of various signposts or signals that can guide them in their choice. This can include specific brands – such as the solicitor brand, or ‘SRA regulated’ – or the general reputation attached to major consumer brands.

In terms of consumer education and information measures, the proposals by the SRA to publish public facing guides should, if effective, support consumer understanding. Moreover, there are requirements that solicitors working in different types of providers disclose to consumers how they are regulated and what protections are available in relation to the services they provide. To be effective this may need to be accompanied by a policy of informed consent, whereby the consumer has to acknowledge that they have understood this. Having said this, informed consent policies can be meaningless if information is presented in a profuse or inaccessible way, and there may be some benefit in considering innovative presentational methods (e.g. the use of short videos, or simple diagrams or charts to set out relevant information and differences between different providers, rather than dense text). This may also need to be tailored to make such consent meaningful to particular groups of consumers, and to take account of different contexts in which such services are being sought.

Consumer confidence might be enhanced by an enforcement approach that rigorously disciplined failures of providers to disclose to consumers their rights and protections or misled them in this respect. As any such enforcement/disciplinary activity might be expected to have reputational consequences for the alternative legal services provider, vigilance in this area by the regulator may also provide commercial incentives for the provider to ensure their solicitors abide by their regulatory requirements.

v. *What might be the impact of these proposals on vulnerable legal consumers?*

The question of what constitutes a ‘vulnerable’ consumer is one that arises in a range of economic sectors. Research by consumer bodies has identified a range of conditions and circumstances which increase the risk of a person being, or

becoming, vulnerable.²⁰⁶ Moreover, it is increasingly emphasised that the concept of vulnerability is dynamic and multi-dimensional, and consumers can be vulnerable at different points in their life.²⁰⁷

The Legal Services Consumer Panel has adopted a notion of vulnerability that encompasses individual risk factors that are particularly relevant to legal services.²⁰⁸ Among the individual risk factors identified are: age, inexperience; learning or physical disabilities; location; lack of internet access; living alone; low literacy; low income; cultural barriers; health problems; relationship breakdown or release from prison. Although the exact number of consumers who might be classified as vulnerable is difficult to estimate, the SRA has found that around 10.6% of all turnover generated by regulated providers comes from work that is often associated with indicators of vulnerability.²⁰⁹

Clarity about what constitutes 'vulnerability', and the proxies used to identify vulnerable consumers, is however, important as it impacts on the choice between policies which are primarily targeted at issues associated with poverty (where consumers cannot afford certain services), and policies directed at a wider notion of vulnerability, which, as described above, encompasses a much wider set of consumers (those with health problems, or who may be IT illiterate etc.) and problems that certain groups of consumers might have in making effective and informed decisions in particular markets.

Of particular relevance to the current proposals is research that suggests that, in the legal services market, certain vulnerable consumers might face specific barriers to access such as physical (geography, disability), cultural (language) or service delivery (use of jargon).²¹⁰ Vulnerable consumers may also face additional barriers in complaining or seeking redress, and may be less willing to challenge a solicitor through a formal or official complaints process.

²⁰⁶ Among these: lack of self-confidence; low-literacy, numeracy and/or financial capability; low/insecure income; being unemployed; being a high-level carer of another person; having a physical impairment or mental health problems; living in social or public housing; and living in a lone parent household. See Consumer Focus (2012).

²⁰⁷ An implication of this point is that consumer vulnerability can sometimes be a transient state, be triggered by events such as unemployment, the onset of mental illness, a temporary illness or disability or the becoming a carer. See Vulnerable Consumer Working Group (2013).

²⁰⁸ They draw on the British Standard on Inclusive Service Provision. See Legal Services Consumer Panel (2014a).

²⁰⁹ See Solicitors Regulation Authority (2015). The categories identified as being often associated with indicators of vulnerability are: family/matrimonial (3%), probate and estate administration (2.7%), bankruptcy/ insolvency (1.5%), children (1.4%), debt collection (0.8%), immigration (0.8%), mental health (0.2%), discrimination/ civil liberties/ human rights (0.1%) and social welfare (0.1%).

²¹⁰ See Legal Services Consumer Panel (2014a).

Having regard to these points, the proposals might, in principle, have positive impacts on vulnerable consumers in a number of ways. First, it introduces the possibility that vulnerable consumers who currently use non-solicitors for certain legal services could, in the future, have access to the skills and expertise of a solicitor working in an alternative legal services provider. These advisors are more qualified, and subject to specific controls in terms of ethics and accountability etc, including in identifying, and making adjustments when providing services to, consumers with particular needs and circumstances. The entry of these new providers does not come at the exclusion of existing providers, but rather introduces another supply option for vulnerable consumers. Second, new providers may aim at providing more accessible services to all consumers, including vulnerable consumers. In order to develop their share of the market, they may engage in outreach activities and seek to target specific customer groups that may have unmet legal demand or may be supplied by non-solicitors. Some solicitors may seek to address the issues of specific segments of the community (e.g.: certain ethnic groups) or interact with consumers through non-traditional access points (i.e.: at legal centers operated by charities, community groups etc.). Moreover, attempts to differentiate themselves might lead to innovative and customer-driven charging arrangements (e.g.: fixed fees etc.), different and more flexible trading hours (e.g.: weekends) or through different delivery mechanisms, such as taking advantage of unbundling to lower the costs to vulnerable consumers. Finally, to the extent to which some vulnerable consumers feel intimidated by traditional regulated providers – on the basis that they appear ‘elite’ – the entry of new providers, with different business models and approaches, including those with a reputation in other areas (such as retailing or charities) could make obtaining legal services seem less intimidating, and increase access to such services.

There are also some risks for some vulnerable consumers associated with the proposals. A general risk identified throughout this paper is that there is the potential for consumer confusion to be increased, insofar as consumers do not fully appreciate or understand that different level of protections apply when obtaining advice from solicitors in regulated and alternative legal services providers. This risk is potentially more acute for vulnerable consumers than it is for consumers generally. This is because, even if an individual solicitor working in an alternative legal services provider informs the consumer that they do not have the same protections, the consumer may not for reasons of vulnerability, appreciate or fully understand the consequences of this.

However, the extent of this risk arising needs to be considered relative to the current situation where research indicates that consumers are generally not aware of the difference between regulated and unauthorised providers of legal services and are surprised to learn that some legal services are not regulated.²¹¹ Moreover, the Law Society has suggested that there are currently a proportion of non-practising solicitors who already provide advice through firms that are not regulated providers.

²¹¹ See University of Leicester (2011).

Some of these practitioners might be telling consumers that they are qualified solicitors – effectively ‘trading on their brand’ – while not being regulated by the SRA. Put simply, the current situation is arguably also confusing for consumers,²¹² and so the key question is whether the incremental change will be to clarify some of this confusion (by allowing solicitors to work in alternative legal services providers, and to fully disclose the regulatory status) or to further exacerbate the confusion for vulnerable consumers (by making the choice of provider more diverse).

Another potential, in-principle, risk is that intense competition by solicitors working in alternative legal services providers might encourage the over-provision of advice to vulnerable consumers. That is, vulnerable consumers might purchase the services of a solicitor working in an alternative legal services provider in circumstances where it was not needed, either because the issue could have been dealt with in a different way, or a non-solicitor advisor could have provided such advice at lower cost. Such over-provision of advice, particularly to vulnerable consumers, may in some circumstances be promoted by those who own or control the alternative legal services provider. However, while this is a potential risk, it may be mitigated by the requirement under the proposed solicitor’s code of conduct that solicitors take account of their client’s needs and circumstances, and do not take unfair advantage of their clients and others.

Finally, there is the question of the impact of the proposed changes on the ability and willingness of vulnerable consumers (and consumers more generally) to complain and seek redress. As noted, according to research there is currently confusion among consumers about the difference between regulated and unauthorised providers and who they can apply to for redress.²¹³ The proposed changes do not appear to materially reduce consumers’ access to complaints mechanisms or information requirements in relation to available redress mechanisms. The proposed code of conduct for solicitors will require solicitors to establish and maintain, or participate in, a procedure for handling complaints, and must inform customers about the various redress mechanisms available to them. These obligations sit with the entity in the case of a regulated provider, so responsibilities are devolved to individual solicitors when working in alternative legal services providers. Individuals and SMEs will also continue to have access to the Legal Ombudsman Service to resolve complaints in relation to solicitors operating from alternative legal services providers.

²¹² As the Law Society (2016) has noted; “*There remains a great deal of uncertainty amongst consumers about different types of lawyer and legal businesses. It is currently very difficult, even for knowledgeable consumers, to work out which provider is the most appropriate for their particular issue.*”

²¹³ See, generally, Northumbria University (2013).

- vi. *Will the proposed changes likely reduce the cost of delivering legal advice, and if so, are these cost reductions likely to be passed on to consumers?*

The possible cost impacts associated with the various specific proposed changes was discussed in detail in section 6.3 above.

As discussed in response to question (i) above, the likely extent of 'pass-through' of any cost reductions to consumer prices will depend on various factors, but most critically on the degree and intensity of competition. Where competition is weak, providers may be able to take any cost reductions as additional profit without fear that rivals will lower their prices (in response to the reduced costs) and attract custom. In contrast, if competition is effective, it might ordinarily be expected that some proportion of the reduced costs will be reflected in reduced prices, as providers seek to attract business away from their competitors.

- vii. *What are some of the possible impacts on regulatory compliance costs (transitional and ongoing) of simplifying the handbook and changing the approach to guidance for firms? Will they differ between different types and sizes of firm?*

The possible impacts on regulatory compliance costs associated with the specific proposed changes were also discussed in detail in section 6.3.

On the question of the relative distribution of these impacts among firms of different size, this will depend on various factors. The main change which could impact on compliance costs are those associated with changes to the structure and content of the Handbook and the refinement of the outcomes-focussed approach. As discussed, these changes, particularly the refinement of the outcomes-focussed approach, could either increase or decrease compliance costs for regulated providers *depending on how they are implemented*. On the one hand, if, as a result of the changes, regulated providers spend less time and resources on compliance, or take advantage of the greater flexibility afforded them in how they comply with a given principle/standard, this could lower compliance costs. On the other hand, if the proposed changes increase uncertainty because they are vague or imprecise, or are not fully understood, this could result in both raised compliance costs and poorer regulatory outcomes.

Experience from other sectors indicates that medium and larger sized firms are best equipped to take advantage of the flexibility associated with more open regulatory strategies. Smaller firms, on the other hand, have less resources and capabilities and can find it difficult to understand what it means to 'be compliant' in a given set of circumstances. As discussed in section 4 above, this can lead them to unnecessarily avoid specific activities for fear they may be in breach of a particular regulatory principle/standard. In the current context, this potential impact on smaller providers

may be mitigated by the proposal to introduce online guides and toolkits. Further specific measures might usefully be addressed at smaller providers, particularly those who are not IT literate. This could include a dedicated outreach team, and the introduction of case studies and toolkits targeted at smaller providers.

viii. How might allowing solicitors to work across an expanded legal services market improve the diversity of the profession? Is it possible to identify groups that will benefit and also those to whom the proposed changes will have a less apparent or non-existent effect on their careers and advancement?

As discussed in section 3, there is an increasing diversity in how legal services are being delivered, and how solicitors are working. An increasing number of solicitors are working in-house, as contractors or in various forms of non-traditional business structures. The general point is that solicitors are no longer only working in traditional professional service firms, but are working in a range of providers. The proposed changes may further contribute to this change by allowing solicitors the flexibility to work as a solicitor in the delivery of non reserved activities through a diverse set of alternative legal services providers.

This flexibility might, in turn, attract to the profession individuals who have a wide range of preferences and wish to work through alternative providers – i.e.: who were not attracted to the traditional provider model. The solicitors may, in turn, be in greater alignment with the diversity of the community, and better equipped to address the issues of specific segments of the community (e.g.: certain ethnic groups) or interact with consumers through non-traditional access points (i.e.: at legal centres operated by charities, community groups etc.). A greater range of potential providers through which solicitors can work might also attract solicitors who are attracted to organisational cultures more accustomed to flexible working arrangements – e.g.: on a part-time, or out of business hours basis.²¹⁴ This might address concerns that some women do not take advantage of flexible working hours offered within traditional providers, because of fears that it may be harmful to their careers.

In terms of the possible impacts on different groups, the group that possibly stands to lose the most are current non-solicitors providing non reserved services in certain areas (and the firms that employ them). Although the extent of the impact will depend on whether consumers value, and are prepared to pay for, the additional skills, quality and expertise of solicitors providing non reserved services as well as additional protections. The extent of this will also depend on how closely aligned the two types of service providers are in specific areas of advice. For example, the types of legal services currently provided by non-lawyers (e.g.: housing law advice etc)

²¹⁴ It has been suggested that alternative providers might be particularly attractive to younger solicitors, who want to work in 'modern' organisations, have flexible working arrangements (e.g.: an ability to work from home), and who are not interested in the long-hours associated with traditional law firms.

might be well provided by niche experts in the area rather than more generalist solicitors. Whereas solicitors working in alternative legal services providers may be more involved in the range of non reserved activities which non-solicitor providers do not tend to operate (e.g. transactional corporate advice and advice relating to risk).

For solicitors it might be argued that delivering non reserved activities through an alternative legal services provider will preclude the traditional career path open to solicitors within regulated providers – i.e. training contract, associate, associate, partner etc. However, it might equally be argued that such a career path is not an inevitable one and does not exist for solicitors working in very small regulated providers, or for the increasing proportion of solicitors who work in-house or as contractors. There is also some evidence to suggest that there are barriers to progression along this traditional career path for certain groups, such as women solicitors and Black, Asian and minority ethnic (BAME) solicitors. Moreover, as discussed in section 3, technological changes are increasingly eroding some of traditional law firms' more junior functions. Finally, solicitors working within alternative legal services providers will likely have their own potential career trajectory and to be able to advance internally within the provider (e.g.: to become head of the division etc.).

Nevertheless, a key implication of the proposals is that solicitors working in an alternative legal services provider will never, in their practice, be exposed to reserved activities. This lack of experience of wider areas of law, including reserved activities, could potentially limit the ability of these solicitors to advance their career in a regulated provider in the future. Of course, some solicitors working in an alternative legal services provider may not aspire to work in a regulated provider. Rather they may seek to develop a niche area of expertise in non reserved activities or to exploit some of the cross-disciplinary opportunities that working in an alternative legal services provider might allow. Further, many solicitors in regulated providers can end up working wholly outside reserved activities (after their training contract).

ix. Is there likely to be a geographic dimension to the impact of the changes?

The possible geographic impacts of the changes depend on a number of factors. First, and most obviously, it depends on where solicitors working in alternative legal services providers decide to establish a presence. They may, for example, decide to concentrate largely on urban areas, and not offer services in smaller rural areas. In these circumstances, the potential impact on consumers, and solicitors working in regulated providers in rural areas, may be minimal or non-existent, as consumers in those areas do not face any additional choice. Secondly, and related to the above point, the geographic impact will depend on the type of provider and the type of presence or delivery mechanism they employ. For example, if an alternative legal services provider chooses to deliver non reserved activities largely via online means or through a telephone-based service then this could have national coverage. Similarly, if a large retailer with a national geographic footprint chooses to employ

solicitors to offer non reserved activities the geographic reach of such service provision could be significant.

Depending on the scale and nature of entry by alternative legal services providers, it is possible that the impacts for consumers located in different parts of the country could be positive, neutral or negative. The impacts could be positive in circumstances where, as a result of the changes, consumers are offered additional supply options. For example, if in a specific town which has a regulated provider, an alternative legal services provider decides to establish itself and deliver non reserved activities. This potentially introduces some competition to the regulated provider, and can be beneficial to the consumer. In addition, if some solicitors working in alternative legal services providers deliver non reserved activities via the Internet or telephone services (i.e.: virtual law firms), then this can expand coverage to geographic locations where there may only be one physical regulated provider of legal services.

In contrast, as discussed elsewhere in this paper, there could potentially be negative impacts for consumers in circumstances where the entry by an alternative legal services provider undermines the financial sustainability of regulated providers who provide both reserved and non reserved activities in a specific geographic location. For example, if a large number of consumers choose to move away from the regulated provider for non reserved services and mainly use the online services of a solicitor employed by an alternative legal services provider (such as an Internet-based provider or a large retailer), this could make the regulated provider – such as a local High Street practice – unsustainable and result in closure. One effect of this is that consumers in that area will no longer have access to a local physical provider of reserved activities. However, the likelihood that this might occur depends on a number of factors. For example, it may be the case that, given the nature of services provided, some consumers continue to value face-to-face relationships with a known and regulated provider. In addition, the susceptibility of the regulated provider to closure will depend on the relative proportion of reserved and non reserved activities they undertake, as well as any niche expertise they may have that could give them a competitive edge against a more generalist provider.

More generally, it has been noted that although the changes could lead to the closure of some law practices, this does not mean that there will be less solicitors, and some of these solicitors may find employment in alternative legal services providers. That is, these solicitors will continue to provide legal services, but the provider through which they deliver such services may change.

- x. *Are there likely to be any negative or unintended consequences associated with the proposed changes?*

We have identified various risks, or possible unintended consequences, associated with the proposed changes throughout this paper. Among the most significant of these are:

- That, as a result of simplification, the Handbook no longer adequately covers all of the complex circumstances that arise in practice, and that this may create gaps of coverage, which can impact on solicitors (in fulfilling regulatory objectives) and consumers (in benefiting from desired regulatory outcomes and protections).
- That some of the duplicative or apparently redundant requirements do, in fact, provide additional consumer protections over and above those contained in other legislation or regulations. If so, removal could result in consumers having fewer protections than under the current arrangements.
- That proposals to refine the outcomes-focussed regulatory strategy, particularly removing areas of prescription and the Indicative Behaviours, could create greater uncertainty for some of those subject to regulation as to how to comply with regulatory principles to meet regulatory objectives. This could result in over- or under-compliance, and increased costs and potentially foster growth in the third-party compliance industry.
- The development of public and business facing guides could be ineffective in practice, either because they are poorly targeted, or do not contain the right sorts of information that consumers and the public need.
- Allowing solicitors to deliver non reserved activities to the public, or section of the public, through alternative legal services providers raises a number of potential risks. First, certain protections afforded to consumers who use solicitors through regulated providers will not automatically be available to consumers utilising solicitors through alternative legal services providers. Second, consumers may be confused by the different consumer protections available under the different forms of legal service provision, reducing their confidence in the market. Third it could reduce the collective brand of 'solicitors', which could, in principle, have wider knock-on effects to the rest of the profession. Fourth, consumers may, for reasons associated with the loss of entity-level supervision, receive lower quality services from solicitors in alternative legal services providers. Fifth, it may – depending on a number of factors – lead to the exit of some current providers, particularly smaller providers, who may lose non reserved activities custom to larger alternative legal services providers to an extent that undermines their profitability. This could potentially have impacts on demand and access to justice if the exit of such providers is concentrated in certain geographical locations, such as those with only a single local provider of reserved services.

As discussed in this report, certain measures associated with implementation may be able to mitigate some of these risks. Among these: the development of targeted and effective guidance for solicitors which assists them in understanding how to comply with regulatory principles; ensuring that public facing guides and other materials are used to meaningfully inform and educate consumers; and, potentially, the use of effective informed disclosure requirements for solicitors working in alternative legal services providers, to ensure that consumers are fully aware that they are 'opting-in' to a supply arrangement with different protections to those which exist for regulated providers.

Finally, and as discussed in section 4, the potential risks and unintended consequences associated with the proposed changes must be weighed against the potential benefits in terms of greater competition and innovation as well as the additional protections that will be available to consumers who currently use non-solicitors for non reserved legal services. Put simply, the relevant question is: are the potential risks for some consumers outweighed by the potentially significant gains for consumers generally?

- xi. Which legal services are likely to be most affected by the increased presence of solicitors being allowed the flexibility to provide legal services in a wider range of firms?*

According to various surveys, consumers are currently more likely to use a non-solicitor for advice relating to consumer law, debt and benefit problems, neighbour and employment disputes, and housing or tenant problems. However, this list should not necessarily be taken as indicative of the types of legal services that are likely to be most affected by the proposed changes. This is because the opportunity to access a solicitor outside a regulated provider to give advice on a wider range of areas has not existed for consumers. Put differently, some consumers may not have contemplated going to a non-solicitor for certain non reserved activities to date. So too, non-solicitor providers may have tended not to offer services in relation to some non reserved activities on the basis either they did not feel competent to provide these or that there was no market for the provision of these by non-solicitors.

It is possible to speculate that there are at least two areas of legal service which might be particularly affected by the proposed change. One area is the provision of commercial or corporate legal advice, particularly to small and medium sized firms. Notwithstanding the fact that legal problems are estimated to cause annual losses of £9.79 billion for SME's, it is claimed that there is a level of unmet demand for advice to SME's, with only 13% of SMEs regarding lawyers as cost effective. This suggests that SME's are reluctant to pay for the services of a regulated provider, and such consumers may be attracted to an alternative legal services provider if they price more competitively. In addition, some firms (such as firms of accountants) may

choose to employ a solicitor and target SMEs to assist them in areas such as sales of businesses or commercial transactions, or in helping business to manage and handle their risk exposures and appetites. The potential scope for firms to offer such advice through solicitors may be significant.²¹⁵ According to the SRA, around 67% of all turnover generated by the firms they regulate comes from commercial or corporate work, and that this work does not necessarily involve a reserved legal activity.

A second possible area that might be affected by the changes is the provision of legal advice to the public by solicitors working in membership organisations, charities and local authorities. The changes could broaden access for customer segments to utilise such services, and the legal press has reported existing demand by local authorities for such scope to use their in-house solicitors to provide services to other authorities and parties.²¹⁶

Finally, some firms who are not regulated providers consider the potential opportunities created by the changes are wide, and cover the 'full spectrum' of non reserved activities, and the provision of such services to individuals, households and small businesses.

²¹⁵ The Law Society (2016) sees risk advice as a growth area.

²¹⁶ See Legal Futures (2016).

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Annex 7

Tracking document for SRA Code of Conduct 2011

<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(1.1)		X - but new 1.2 in Code for Solicitors and new 1.1 in Code for Firms amended to "you do not abuse your position by taking unfair advantage of clients or others" - merged with O(11.1) and elements of IB(11.7-11.10)		
O(1.2)		X (covered by other standards and revised Principle 1)		
O(1.3)		X (no need to duplicate requirement to comply with law)		
O(1.4)		X (but new 3.3 in Code for Solicitors and new 4.3 in Code for Firms addresses this)		
O(1.5)	X - but split into 2 new standards (3.2 and 3.4 in the Code for			

	Solicitors) and covered by one new standard in the Code for Firms (4.2)			
O(1.6)		X (not required and partly covered by revised Principle 6)		
O(1.7)	X - new slightly amended 8.9 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms and include guidance on what you might need to tell clients depending on where you work			
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(1.8)		X - to potentially include within other regulatory arrangements instead		
O(1.9)			X - with O(1.14) to make new 8.3 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms	
O(1.10)	X - new 8.4(a) in the Code for Solicitors and addressed by			PLUS new 8.4(b) added to cover ADR signposting

	new 7.1(b) in the Code for Firms			requirements
O(1.11)	X - but amended to remove "openly and effectively" and add "free of charge" in new 8.5 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms			
O(1.12)	X - but amended to start with "You give clients information in a way they can understand. You ensure they..." in new 8.6 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms			
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(1.13)	X- but amended to include "about how their matter will be priced...and any costs incurred" in new 8.7 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms			
O(1.14)			X - with O(1.9) to make new but amended 8.3 in the Code for Solicitors and	

			addressed by new 7.1(b) in the Code for Firms	
O(1.15)	X - new 4.1 in the Code for Solicitors and new 5.1 in the Code for Firms with "your instructions" amended to "their instructions"			
O(1.16)	X - new 7.9 in the Code for Solicitors and new 3.5 in the Code for Firms which is slightly amended to read "you inform clients promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the SRA, you investigate whether anyone may have a claim against you"			
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(1.1)		X - not needed		
IB(1.2)		X - not needed		
IB(1.3)		X - but might be included within a case		

		study		
IB(1.4)	X - but slightly amended to make new 5.1(b) in the Code for Solicitors and addressed by new 7.1(a) in the Code for Firms			
IB(1.5)		X - but some guidance might be needed		
IB(1.6)		X - but partly covered by new 3.1 and 3.4 of the Code for Solicitors and new 4.1 and 4.2 of the Code for Firms and addressed in a case study		
IB(1.7)		X - not needed and covered by revised Principle 6		
IB(1.8)		X - not needed in Codes. Potentially to be covered in other regulatory arrangements		
IB(1.9)		X - not needed		
IB(1.10)		X - but guidance might be needed		

<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(1.11)		X - but guidance might be needed and partly covered by new 8.9 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms		
IB(1.12)		X - not needed		
IB(1.13)		X - not needed		
IB(1.14)		X - but guidance might be needed		
IB(1.15)		X - but guidance might be needed		
IB(1.16)		X - but guidance might be needed		
IB(1.17)		X - but guidance might be needed		
IB(1.18)		X - but guidance might be needed		
IB(1.19)		X - but covered by new 3.4 in the		

		Code for Solicitors and new 4.2 in the Code for Firms		
IB(1.20)		X - but guidance might be needed		
IB(1.21)		X		
IB(1.22)	X - IB(1.22(f)) now reflected in new 8.5 and other elements partly in new 8.2 of the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms	X - rest removed but some guidance might be needed		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(1.23)		X - but guidance might be needed		
IB(1.24)		X - but guidance might be needed		
IB(1.25)		X - but elements included in new 3.1 in the Code for Solicitors and new 4.1 in the Code for Firms and will be addressed in a case study		

IB(1.26)		X		
IB(1.27)		X - not needed		
IB(1.28)		X - but elements included in new 3.1 in the Code for Solicitors and new 4.1 in the Code for Firms and will be addressed in a case study		
O(2.1)	X - but amended to "you do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services" in new 1.1			
O(2.2)		X - covered by revised Principle 5		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(2.3)		X - not needed as covered by revised Principle 5		
O(2.4)		X - not needed as covered by revised Principle 5		

O(2.5)		X - as mostly covered by new 8.5 in the Code of Conduct for Solicitors (but narrowed to clients' complaints) and addressed by new 7.1(b) in the Code for Firms		
O(2.6)		X - but new 1.2 in Code of Conduct for Firms covers this now		
IB(2.1)		X - but guidance might be needed		
IB(2.2)		X - but guidance might be needed		
IB(2.3)		X - but guidance might be needed		
IB(2.4)		X - but guidance might be needed		
IB(2.5)		X - but guidance might be needed		
IHP(2.1)		X - no longer needed as Code for		

		Solicitors, RELs and RFLs 2017 will apply to those practising in-house		
Provision	Retained	Removed	Merged	Added
O(3.1)		X - but Code for Firms (new 2.1 and 2.5) covers this		
O(3.2)		X - can be covered by Guidance in Code for Firms		
O(3.3)		X - can be covered by Guidance in Code for Firms		
O(3.4)	X - but slightly amended. New 6.1 in both Codes			
O(3.5)	X - but slightly amended to form new 6.2 stem for both Codes which includes specific "client conflict" definition			
O(3.6)			X - with former O(3.7) to make new 6.2(a) and (b) and alternative wording provision for both Codes - now more streamlined and clearer	

O(3.7)			X - with former O(3.6) to make new 6.2(a) and (b) and alternative wording provision for both Codes - now more streamlined and clearer	
IB(3.1)		X - but partly covered by new 4.3 in Code for Firms "you ensure that your employees are competent to carry out their role..."		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(3.2)		X - but guidance/case studies might be needed we are consulting on alternative option for drafting		
IB(3.3)		X - but guidance/case studies might be needed we are consulting on alternative option for drafting		
IB(3.4)		X - but guidance/case studies might be needed we are consulting on alternative option for		

		drafting		
IB(3.5)		X - but guidance/case studies might be needed we are consulting on alternative option for drafting		
IB(3.6)		X - but case studies might be needed		
IB(3.7)		X - but case studies might be needed		
IB(3.8)		X - but case studies might be needed		
IB(3.9)		X - but case studies might be needed		
IB(3.10)		X - but case studies might be needed		
IB(3.11)		X - but case studies might be needed		
IB(3.12)		X - but case studies might be needed		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(3.13)		X - but case studies might be needed		

IB(3.14)		X - but case studies might be needed		
O(4.1)	X - new 6.3 in both Codes and include guidance as to how this will work in-house			
O(4.2)	X - but merged into a new 6.4 stem for both Codes			
O(4.3)		X - will be covered by case study		
O(4.4)	X - but merged into a new 6.5 (and elements used for new 6.2 as well) for both Codes - now reflects case law and not gold-plating the position			
O(4.5)		X - now covered by 2.5 in Code for Firms (monitoring and managing all risks to your business)		
IB(4.1)		X - but guidance/case studies might be needed		

IB(4.2)		X - no need for this duplicative type of provision		
IB(4.3)		X - but guidance/case studies might be needed		
IB(4.4)	X - (a), (b), (c) and (d) feature in new 6.4(a)-(d) in both Codes			
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(4.5)		X - not needed but partly covered by new 6.5 in both Codes		
IB(4.6)		X - but guidance might be needed		
IB(4.7)		X - but guidance might be needed		
O(5.1)			X - merged with former O(5.2) to make new 1.4 in the Code for Solicitors which now includes "clients" and "others"	
O(5.2)			X - merged with former O(5.1) to make new 1.4 in the Code for Solicitors which	

			now includes "clients" and "others"	
O(5.3)			X - merged with former O(5.4) to make new 2.5 in the Code for Solicitors	
O(5.4)			X - merged with former O(5.3) to make new 2.5 in the Code for Solicitors	
O(5.5)		X - but guidance might be needed		
O(5.6)		X - covered by revised Principle 1		
O(5.7)		X - but new 2.1 covers misuse and tampering or attempted misuse and tampering of evidence more widely		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(5.8)	X - new 2.3 - but "make payment" revised to "provide or offer to provide any benefit to witnesses dependent upon the nature of..."			
IB(5.1)		X - but guidance		

		might be needed		
IB(5.2)	X - made into new 2.7 in the Code for Solicitors - "or procedural irregularities which are likely to have a material effect on the outcome of the proceedings" added			
IB(5.3)		X - but guidance might be needed		
IB(5.4)		X - guidance might be needed but partly covered by new 1.4 in the Code for Solicitors		
IB(5.5)		X - but guidance might be needed		
IB(5.6)		X - but guidance might be needed. Covered by revised Principles 3 and 6		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>

IB(5.7)(a)	X - partly covered by new 2.4 in the Code for Solicitors			
IB(5.7)(b)		X - not needed		
IB(5.8)(a)		X - not needed		
IB(5.8)(b)		X - not needed		
IB(5.9)		X - but guidance might be needed and partly covered by new 1.4 in the Code for Solicitors		
IB(5.10)	X - partly covered by new 2.2 in the Code for Solicitors			
IB(5.11)	X - covered by new 2.1 and 2.2 in the Code for Solicitors			
IB(5.12)		X - but guidance might be needed		
IB(5.13)		X - not needed		
Dispute resolution and proceedings before courts, tribunals and inquiries 2.4				New 2.4 - "you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable"

Dispute resolution and proceedings before courts, tribunals and inquiries 2.6				New 2.6 - "you do not waste the court's time"
O(6.1)		X - not needed as covered by revised Principles 6 and 3		
Provision	Retained	Removed	Merged	Added
O(6.2)			X - merged with former O(9.4) to make new 5.1(a) in the Code for Solicitors - streamlined to combine referrals by you to third parties and introductions from third parties to you. Also addressed by new 7.1(a) in the Code for Firms	In 5.1(d) "receive" added - so we have parallel obligations for payments and receipts in this respect
O(6.3)			X - merged with former O(9.3) to form part of new 8.6 in the Code for Solicitors - streamlining two provisions to form part of one new standard. Also addressed by new 7.1(b) in the Code for Firms	

O(6.4)		X - not needed but case study/guidance might be a good idea		
IB(6.1)		X - not needed		
IB(6.2)		X - not needed		
IB(6.3)		X - but covered by new 2.1(a) and (b) in the Code for Firms		
IB(6.4)		X - covered by new 2.2 in the Code for Firms		
IB(6.5)		X - not needed		
IB(6.6)		X - not needed		
O(7.1)		X - too vague and covered by more tailored new standards in the Code for Firms		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(7.2)	X - covered by 2.1(a)-(d) in Code for Firms			
O(7.3)	X - covered by 2.5 in Code for Firms			
O(7.4)	X - covered by 2.4, 2.5 and 5.2 in Code for Firms			

O(7.5)	X - covered by 7.1 in Code for Solicitors and by 2.5 in Code for Firms			
O(7.6)	X - covered by new 3.6 in Code for Solicitors and by new 4.3 in Code for Firms			
O(7.7)		X - replicates an existing statutory duty to comply		
O(7.8)	X - covered by new 3.5(b) in Code for Solicitors and by 4.4 in Code for Firms			New 3.5(a) in Code for Solicitors - "where you supervise or manage others providing legal services, (a) you remain accountable for the work carried out through them"
O(7.9)		X - but some elements covered by 2.1(a)-(c) in the Code for Firms		New 7.2 added which states that "you are able to justify your decisions and actions in order to demonstrate compliance with your obligations under the SRA regulatory arrangements"
O(7.10)	X - some elements covered by new 2.1(a)-(c) in the Code for Solicitors and new 2.3 in the			New 7.2 added which states that "you are able to justify your decisions and actions in order to demonstrate compliance with

	Code for Firms			your obligations under the SRA regulatory arrangements"
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(7.11)		X - no provision required in the Codes		
O(7.12)	X - covered by new 2.5 in Code for Firms which is now drafted more widely			
O(7.13)		X - not being included in the Codes		
IB(7.1)		X - partly covered by new 5.2 in Code for Firms		
IB(7.2)		X - partly covered by new 2.4 in Code for Firms		
IB(7.3)		X - partly covered by new 2.5 in Code for Firms		
IB(7.4)		X - partly covered by new 2.5 in Code for Firms		
IB(7.5)		X - partly covered by new 2.5 in Code for Firms		

IB(7.6)		X - not needed		
O(8.1)			X - merged with former O(8.2) to form new 8.8 in the Code for Solicitors - "you ensure that any publicity you are responsible for in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which interest is payable by or to your clients". Also partly covered by revised Principle 2.	
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(8.2)			X - merged with former O(8.1) to form new 8.8 in the Code for Solicitors - "you ensure that any publicity you are responsible for in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which interest is payable by or to your clients". Also partly covered by revised Principle 2.	

O(8.3)		X - but covered by new 1.2 in the Code for Solicitors and new 1.1 in the Code for Firms to a certain extent		
O(8.4)		X - but covered by parts of the new 8.6 and 8.9 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms		
O(8.5)		X - a revised provision is to be included in revised regulatory arrangements to be reviewed in Phase 2		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(8.1)		X - but partly covered by new 8.9 in the Code for Solicitors and addressed by new 7.1(b) in the Code for Firms		
IB(8.2)		X - but partly covered by new 8.9 in the Code for Solicitors and addressed by		

		new 7.1(b) in the Code for Firms		
IB(8.3)		X - not needed		
IB(8.4)	X - becomes new 5.5 in the Code for Solicitors but revised to "Where you and a separate business..." and addressed by new 7.1(a) in the Code for Firms			
IB(8.5)		X - Code does not need to cover this		
IB(8.6)		X - but partly covered by 2.3 in Code for Firms		
IB(8.7)		X - but partly covered by new 8.7 and 8.8 in the Code for Solicitors		
IB(8.8)		X - but partly covered by new 8.8 in the Code for Solicitors		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(8.9)		X - but partly covered by new 8.8 in the Code for		

		Solicitors		
IB(8.10)		X - a revised provision is to be included in revised regulatory arrangements to be reviewed in Phase 2		
IB(8.11)		X - but partly covered by new 8.8 in the Code for Solicitors		
IB(8.12)		X - but partly covered by new 1.4, 8.6 and 8.8 in the Code for Solicitors		
O(9.1)		X - not needed. Independence covered by revised Principle 3		
O(9.2)		X - covered by revised Principle 6		
O(9.3)			X - merged with former O(6.3) to form part of new 8.6 in the Code for Solicitors - streamlining two provisions to form part of one new standard. Addressed by new 7.1(b) in the Code for Firms	

O(9.4)			X - merged with former O(6.2) to make new 5.1(a) in the Code for Solicitors - streamlined to combine referrals by you to third parties and introductions from third parties to you. Addressed by new 7.1(a) in the Code for Firms	
Provision	Retained	Removed	Merged	Added
O(9.5)	X - now new 5.1(b) in the Code for Solicitors			
O(9.6)	X - merged into new 5.1(d) in the Code for Solicitors but "or who have the benefit of public funding" removed. "receive" also added - so we have parallel obligations for payments and receipts in this respect			
O(9.7)	X - now new 5.1(c) in the Code for Solicitors			
O(9.8)		X - not needed (but case study/guidance might be a		

		good idea)		
IB(9.1)		X - not needed		
IB(9.2)		X - not needed and covered by revised Principle 6		
IB(9.3)		X - not needed		
IB(9.4)	X - but becomes new 5.1(e) in the Code for Solicitors			
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(9.5)		X - not needed as partly covered by 5.1(a) in the Code for Solicitors		
IB(9.6)		X - not needed as partly covered by elements of 3.4 and 8.6 in the Code for Solicitors and 4.2 and 7.1(b) in the Code for Firms		
IB(9.7)		X - partly covered by elements of 2.1(a)-(c) in Code for Firms and new 7.2 in Code for Solicitors		
IB(9.8)		X - not needed in the		

		Code		
IB(9.9)		X - not needed in the Code		
IB(9.10)		X - but partly covered by new 7.2 in the Code for Solicitors		
IB(9.11)		X - not needed		
IB(9.12)		X - but partly covered by new 5.1(e) in the Code for Solicitors		
Cooperation and accountability				New 7.1 added - "You keep up to date with and follow the law and regulation governing the way you work"
Cooperation and accountability				New 7.2 added - "You are able to justify your decisions and actions in order to demonstrate compliance with your obligations under the SRA regulatory arrangements"
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
Cooperation and accountability				New 7.3 added - "you cooperate with the SRA, other regulators, ombudsmen and bodies with a role overseeing and

				supervising the delivery of, or investigating concerns in relation to legal services"
Cooperation and accountability				<p>New 7.4 added - "you respond promptly to the SRA and:</p> <p>(a) provide full and accurate explanations, information and documents in response to any request or requirement; and (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA"</p>
Cooperation and accountability				New 7.5 added - "You do not attempt to prevent anyone from providing information to the SRA"
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
Cooperation and accountability				<p>New 7.6 added - "You notify the SRA immediately if you become aware:</p> <p>(a) of any material changes to</p>

				information previously provided to the SRA, by you or on your behalf, about you or your practice; and (b) that information provided to the SRA, by you or on your behalf, about you or your practice is or may be false, misleading, incomplete or inaccurate"
Cooperation and accountability				New 7.7 added - "You ensure that a prompt report is made to the SRA or another approved regulator, as appropriate, of any serious breach of their regulatory arrangements by any person regulated by them (including you). If requested to do so by the SRA you investigate whether there have been any serious breaches that should be reported to the SRA"
Cooperation and accountability				New 7.8 added - "You act promptly to take any remedial action requested by the SRA"
Cooperation and accountability				New 7.9 added - "You inform clients promptly of any act or omission which could give rise to a claim by them"

				against you. If requested to do so by the SRA you investigate whether anyone may have a claim against you"
Cooperation and accountability				New 7.10 added - "Any obligation under this section to notify, or provide information to, the SRA will be satisfied if you provide information to your firm's COLP or COFA, as and where appropriate, on the understanding that they will do so"
O(10.1)		X - but covered by new standards in the Cooperation and accountability Section in the Code for Solicitors (7.4-7.9) and elements of 3.3-3.9 in the Code for Firms		
O(10.2)		X - but covered by new 7.4 (a) in the Code for Solicitors and 3.3(a) in the Code for Firms		
O(10.3)		X - covered by new 7.6(a) in the Code for Solicitors and 3.6 in the		

		Code for Firms		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(10.4)	X - but slightly amended to make new 7.7 in the Code for Solicitors and 3.9 in the Code for Firms			
O(10.5)		X - but covered by new standards in the "Cooperation and accountability" and "Cooperation and information requirements" sections of the Codes		
O(10.6)		X - but covered by new 7.3, 7.8 and 7.9 in the Code for Solicitors and 3.2, 3.4 and 3.5 of the Code for Firms		
O(10.7)		X - but partly covered by new 7.5 in the Code for Solicitors but no longer extends to LeO, just SRA		
O(10.8)		X - but covered by new 7.4 in the		

		Code for Solicitors and 3.3 in the Code for Firms		
O(10.9)		X - but covered by new 7.4 in the Code for Solicitors and 3.3 in the Code for Firms		
O(10.10)		X - but covered by new 7.4 in the Code for Solicitors and 3.3 in the Code for Firms		
O(10.11)		X - but covered by new 7.4, 7.8 and 7.9 in the Code for Solicitors and 3.3, 3.4 and 3.5 in the Code for Firms (apart from former O(10.11)(d))		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(10.12)		X - but partly covered by new 7.2 in the Code for Solicitors		
O(10.13)		X - but covered by parts of 2.4 and 3.4 of the Code for Firms		

IB(10.1)		X - not needed		
IB(10.2)		X - but covered by parts of 2.4 and 2.5 of the Code for Firms		
IB(10.3)		X - but covered by 3.6(a) of the Code for Firms		
IB(10.4)		X - but covered by parts of 2.4 and 3.6 of the Code for Firms		
IB(10.5)		X - not needed		
IB(10.6)		X - not needed		
IB(10.7)		X - but partly covered by 3.5, 3.8 and 3.9 of the Code for Firms		
IB(10.8)		X - but covered by 3.6(c) and 3.8 of the Code for Firms		
IB(10.9)		X - but covered by general requirements in 2.1 of the Code for Firms		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(10.10)				X - new 7.6 and 7.7 of the Code for

				Solicitors and new 3.8 and 3.9 of the Code for Firms added to expand upon this IB
IB(10.11)		X - not needed as covered by new standards		
IB(10.12)		X - not needed		
O(11.1)	X - new 1.1 in the Code for Solicitors and 1.2 in the Code for Firms but amended to "you do not abuse your position by taking unfair advantage of clients or others" - merged with O(1.1) and elements of IB(11.7-11.10) (have removed "professional/personal capacity" part)			
O(11.2)	X - amended to become new 1.3			
O(11.3)		X - not considered necessary (perhaps cover with case study or guidance)		
O(11.4)		X - not needed in Code		
IB(11.1)		X - not needed		

		in Code		
IB(11.2)		X - not needed in Code		
IB(11.3)		X - not needed in Code		
IB(11.4)		X - not needed in Code		
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
IB(11.5)		X - not needed in Code		
IB(11.6)		X - not needed in Code		
IB(11.7)		X - but covered by new 1.1 in the Code for Solicitors and 1.2 in the Code for Firms		
IB(11.8)		X - but covered by new 1.1 in the Code for Solicitors and 1.2 in the Code for Firms to an extent		
IB(11.9)		X - but covered by new 1.1 in the Code for Solicitors and 1.2 in the Code for Firms to an extent		
IB(11.10)		X - but covered by		

		new 1.1 in the Code for Solicitors and 1.2 in the Code for Firms to an extent		
O(12.1)	X - become new 5.2 in the Code for Solicitors (with "and have safeguards in place to" removed)			
O(12.2)	X - become new 5.3 in the Code for Solicitors (with "directly or indirectly" removed)			
O(12.3)		X - not needed		
O(12.4)	X - become new 5.4 in the Code for Solicitors (with "to your doing so" at the end)			
<i>Provision</i>	<i>Retained</i>	<i>Removed</i>	<i>Merged</i>	<i>Added</i>
O(13.1) and O(13.2)	X - but substantively amended and to feature at start of each Code in "Introduction"			
O(13.3 - 13.6)		X - as formerly deleted		
O(13.7)		X - may feature in Introduction if		

		needed		
O(13.8-13.12)		X		
Waivers		X - to be covered in one separate waiver policy		
Interpretation	X - to be reviewed and amended substantively in next phase			
Transitionals	X - to be reviewed and amended as "supplemental notes"			
New standards - some taken from summary above				
Dispute resolution and proceedings before courts, tribunals and inquiries 2.4				you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable"
Dispute resolution and proceedings before courts, tribunals and inquiries 2.6				"you do not waste the court's time"

Service - taking instructions 3.1				"You only act for clients on instructions from the client, or from someone authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your client's wishes, you do not act unless you have satisfied yourself that they do"
Service and competence 3.5(a)				"Where you supervise or manage others providing legal services: (a) you remain accountable for the work carried out through them"
Client money and assets 4.2				Taken from a former Principle - "You safeguard money and assets entrusted to you by clients and others"
Client money and assets 4.3				"Unless you work in an authorised body, you do not personally hold client money" - include guidance/case studies
Cooperation and accountability				"You keep up to date with and follow the law and regulation governing

7.1				the way you work"
Cooperation and accountability 7.2				"You are able to justify your decisions and actions in order to demonstrate compliance with your obligations under the SRA regulatory arrangements"
Cooperation and accountability 7.3				"You cooperate with the SRA, other regulators, ombudsmen and bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to legal services"
Cooperation and accountability 7.4(a) and (b)				"You respond promptly to the SRA and: (a) provide full and accurate information and documents in response to any request or requirement; (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the

				SRA"
Cooperation and accountability 7.5				"You do not attempt to prevent anyone from providing information to the SRA"
Cooperation and accountability 7.6 (a) and (b)				"You notify the SRA promptly if you become aware: (a) of any material changes to information previously provided to the SRA, by you or on your behalf, about you or your practice; and (b) that information provided to the SRA, by you or on your behalf, about you or your practice is or may be false, misleading, incomplete or inaccurate"
Cooperation and accountability 7.7				"You ensure that a prompt report is made to the SRA or another approved regulator, as appropriate, of any serious breach of their regulatory arrangements by any person regulated by them (including you). If requested to do so by the SRA you investigate whether there have been any serious breaches that

				should be reported to the SRA""
Cooperation and accountability 7.8				"You act promptly to take any remedial action requested by the SRA"
Cooperation and accountability 7.9				"You inform <i>clients promptly</i> of any act or omission which could give rise to a claim by them against you. If requested to do so by the SRA you investigate whether anyone may have a claim against you"
Cooperation and accountability 7.10				"Any obligation under this section to notify, or provide information to, the SRA will be satisfied if you provide information to your firm's COLP or COFA, as and where appropriate, on the understanding that they will do so"
Client identification 8.1				"You take appropriate steps to identify who you are acting for in relation to any matter"
Complaints handling				"You ensure that, as appropriate in the circumstances, you either establish and maintain, or

8.2				participate in, a procedure for handling complaints in relation to the legal services you provide" (partly based on IB(1.22) but not completely)
Complaints handling 8.4 (b)				"You ensure that clients are informed, in writing: (b) if a complaint has been brought and your complaints procedure has been exhausted: (i) that you cannot settle the complaint; (ii) of the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the complaint; and (iii) whether you agree to use the scheme operated by that body"

Based on versions: (i) SRA Code of Conduct for Individuals 2017 - v6 draft 2.docx and (ii) SRA Code of Conduct for Firms [2017] – v6 draft 2 to be circulated to Board members for Board taking place on 1 June 2016

Tracking document for SRA Code of Conduct for Solicitors, RELs and RFLs [2017]

<i>Proposed standard</i>	<i>Provenance in current 2011 Code</i>
Maintaining trust and acting fairly	
1.1	O(2.1) - but amended to "you do not unfairly discriminate by allowing your

	personal views to affect your professional relationships and the way in which you provide your services"
1.2	Amended to "you do not abuse your position by taking unfair advantage of clients or others" - O(1.1) merged with O(11.1) and elements of IB(11.7-11.10)
1.3	O(11.2) but amended to include "and do so" and "or if no timescale has been agreed then"
1.4	O(5.1) and O(5.2) merged - now includes "clients" and "others" as opposed to just "court"
Dispute resolution and proceedings before courts, tribunals and inquiries	
2.1	O(5.7) and IB(5.11) merged - but proposed 2.1 covers misuse or tampering or attempted misuse or tampering of evidence more widely
2.2	IB(5.10) and IB(5.11) merged
2.3	O(5.8) - but amended to "provide or offer to provide 'any benefit ' " (as opposed to 'make payment')...
2.4	NEW and elements of IB(5.7)(a)
2.5	O(5.3) and (5.4) merged
2.6	NEW
2.7	IB(5.2) but with "which are likely to have a material effect on the outcome of proceedings" added
Service and competence	

3.1	NEW but based partly on IB(1.25)
3.2	O(1.5) - now split into two separate standards
3.3	O(1.4) but amended
3.4	O(1.5) and elements of IB(1.19)
3.5(a)	NEW
3.5(b)	O(7.8)
3.6	O(7.6)
Client money and assets	
4.1	O(1.15) - slightly amended
4.2	NEW (based on former Principle 10) and IB(7.1)
4.3	NEW
<i>Proposed standard</i>	<i>Provenance in current 2011 Code</i>
Referrals and introductions	
5.1(a)	O(6.2) and O(9.4) merged
5.1(b)	IB(1.4)
5.1(c)	O(9.7)
5.1(d)	O(9.6) but amended
5.1(e)	IB(9.4)
Separate businesses	

5.2	O(12.1)
5.3	O(12.2)
5.4	O(12.4)
5.5	IB(8.4)
Conflict of interests	
6.1	O(3.4)
6.2(a) and (b)	O(3.5), O(3.6), O(3.7) and parts of O(4.4) merged and amended to include specific "conflict" definition only applicable for this Code
Confidentiality and disclosure	
6.3	O(4.1)
6.4	O(4.2)
6.4(a)	IB(4.4(c))
6.4(b)	IB(4.4(a))
6.4(c)	IB(4.4(b))
6.4(d)	IB(4.4(d))
6.5	O(4.4(b)(i) and (ii))
Cooperation and accountability	
7.1	NEW
7.2	NEW but reflects O(10.12)
7.3	NEW but reflects O(10.6) and former

	Principle 7
7.4	NEW but reflects former Principle 7 and removes "within a timely manner"
7.4(a)	NEW but takes in O(10.1) and O(10.8)
7.4(b)	NEW but based slightly on O(7.10)(b) and O(10.9) of the Code
7.5	NEW but takes in O(10.1) and O(10.7)
7.6(a)	NEW but takes in O(10.3)
7.6(b)	NEW but takes in O(10.1) and IB(10.10)
7.7	NEW but takes in O(10.1), O(10.4) and IB(10.10)
7.8	NEW but takes in O(10.1), O(10.6) and O(10.11(a))
7.9	NEW but takes in O(1.16), O(10.1), O(10.6) and O(10.11(a))
7.10	NEW
When you are providing services to the public or a section of the public	
Client identification	
<i>Proposed standard</i>	<i>Provenance in current 2011 Code</i>
8.1	NEW
Complaints handling	

8.2	NEW but partly takes in IB(1.22)
8.3	O(1.9) and O(1.14)
8.4(a)	O(1.10)
8.4(b)	NEW - to reflect ADR signposting requirements
8.5	O(1.11) and IB(1.22(f))
Client information and publicity	
8.6	O(1.12)
8.7	O(1.13)
8.8	O(8.1) and O(8.2) but removing in O(8.2) reference to "VAT and disbursements" being included
8.9	O(1.7)

Based on versions: (i) SRA Code of Conduct for Individuals 2017 - v6 draft 2.docx and (ii) SRA Code of Conduct for Firms [2017] – v6 draft 2 to be circulated to Board members for Board taking place on 1 June 2016

Tracking document for SRA Code of Conduct for Firms [2017]

<i>Proposed standard</i>	<i>Provenance in current SRA Handbook</i>
Maintaining trust and equality and diversity	
1.1	Amended to "you do not abuse your position by taking unfair advantage of clients or others" - O(1.1) merged with O(11.1) and elements of IB(11.7-

	11.10)
1.2	Amended but based on O(2.6) of the Code
Compliance and business systems	
2.1(a)	Amended but based on O(7.5) of the Code and Rule 8.1(a) and 8.2(a) of the SRA Authorisation Rules 2011 (ARs)
2.1(b)	Amended but based on Rule 8.1(a) and 8.2(a) of the ARs
2.1(c)	Amended but based on Rule 8.2(b) of the ARs
2.1(d)	Amended but based on Rule 8.5(a) of the ARs
2.2	NEW
2.3	New but based slightly on O(7.10) of the Code
2.4	NEW but based slightly on O(7.4), O(10.13) and IB(10.2) of the Code
2.5	Amended but based on O(7.3) and O(7.12) of the Code
Cooperation and information requirements	
3.1	NEW
3.2	Amended but based on Principle 7 and O(10.6) of the Code
3.3	NEW but based on Principle 7 and "promptly" used rather than "within a timely manner"

3.3(a)	NEW but based slightly on O(10.1) and O(10.8) of the Code
3.3(b)	NEW but based slightly on O(7.10)(b) and O(10.9) of the Code
3.4	NEW - but based on part of IB(10.5) of the Code
3.5	NEW but based on O(1.16) and O(10.11)(a) of the Code
3.6(a)	Amended but based on O(10.3) and IB(10.3) of the Code
3.6(b)	NEW but based on O(10.3) and IB(10.3) of the Code
3.6(c)	NEW but based on O(10.3) of the Code
3.7	Amended but based on Rule 8.7(a) of the ARs
<i>Proposed standard</i>	<i>Provenance in current SRA Handbook</i>
3.8(a)	NEW but based on O(10.3) of the Code
3.8(b)	Amended but based on Rule 8.7(d) of the ARs
3.9	Amended but based on O(10.4) of the Code
Service and competence	
4.1	NEW but based slightly on IB(1.25) of the Code

4.2	Amended but based on O(1.5) of the Code
4.3	NEW but based slightly on O(7.6) of the Code
4.4	NEW but based on O(7.8) of the Code
Client money and assets	
5.1	O(1.15) of the Code
5.2	Based on Principle 10 and IB(7.1) of the Code
Conflict of interests	
6.1	Amended but based on O(3.4) of the Code
6.2 (a) and (b)	Amended but based on O(3.5), O(3.6), O(3.7) and O(4.4) of the Code
Confidentiality and disclosure	
6.3	O(4.1) of the Code
6.4	Amended but based on O(4.2) and IB(4.4) of the Code
6.5(a) and (b)	Amended but based on O(4.4) of the Code
Applicable standards in the SRA Code of Conduct for Solicitors, RELs and RFLs 2017	
7.1	See tracking document for SRA Code of Conduct for Solicitors, RELs and RFLs – 5.1 to 5.5, 8.1, 8.2 to 8.5 and 8.6 to 8.9

Managers in SRA authorised firms	
8.1	NEW
Compliance officers	
9.1	Amended but based on Rule 8.5(c) of the ARs
9.2	Amended but based on Rule 8.5(e) of the ARs

Based on versions: (i) SRA Code of Conduct for Individuals 2017 - v6 draft 2.docx and (ii) SRA Code of Conduct for Firms [2017] – v6 draft 2 to be circulated to Board members for Board taking place on 1 June 2016

Annex 8

Looking to the Future: a strategy to increase understanding and support implementation

What is our strategy?

1. Our Looking to the Future (LTTF) programme proposes changes to how we regulate. If we implement proposals outlined in our consultation documents on the SRA Codes of Conduct and SRA Accounts Rules, it is likely that the content, application and design of the current Handbook will change.
2. We recognise that changes to our regulation creates uncertainty for some stakeholders, for example, how to comply with new requirements. We are clear that we must help people understand our proposals and support implementation and compliance with changes we make. Our strategy describes how we are going to do this and how we will work with stakeholders to:
 - increase their understanding of our proposals and any changes to our regulation
 - help us identify the challenges to implementation and compliance they might face
 - ensure that they have the right support to implement our changes
 - review our support post implementation to make sure it remains useful.
3. Our strategy is aimed at:
 - individual solicitors
 - COLPs and COFAs
 - organisations that are regulated by us (and their managers and employees)
 - organisations that aren't regulated by us but employ solicitors (for example, a Local Authority)
 - individuals and organisations that support compliance with our regulation, for example, Reporting Accountants
 - other stakeholders interested in how we regulate.
4. This work compliments our “supporting consumers to choose and use legal services” strategy.

Why do we need a strategy and what do we know already?

5. We know that stakeholders sometimes need time and support to understand and implement changes to our rules and processes. In response to our consultation on our new approach to continuing competence for example, respondents called for a longer lead in time for implementation to ensure they could understand and implement our proposals. A similar approach was also applied in relation to our regulation of consumer credit.
6. Any changes we make as part of the LTTF programme need to be easily understood and implemented. Our strategy will focus on explaining what we are doing, that we are listening to challenges that stakeholders are facing and that we provide appropriate support material to help overcome these challenges.
7. We have already engaged with stakeholders to identify the problems they face understanding and applying our current regulation. Feedback to our Usability research²¹⁷ suggested that stakeholders find the current Handbook too long and difficult to navigate. Different types of stakeholders also told us that they need different types of support, for example, small businesses called for more tool kits and compliance resources whereas COLPs wanted to discuss issues more directly with us.
8. Our proposals have already been shared with our Looking to the Future, Equality and Inclusion and Small Firm Virtual Reference Groups. We have also met with a wide range of representatives from different groups, for example: the Legal Services Consumer Panel, sole practitioners, in house lawyers, local authority lawyers, Multi Disciplinary Practices, accountants and various Law Societies. This had enabled us to identify and explore emerging challenges from these groups.
9. We also know that some support we provide is helpful to our stakeholders. Over 89% of people that have used our continuing competence tool kit said it was useful²¹⁸. We have received positive comments on the range of material we have provided to support our Training for tomorrow, regulation of consumer credit activities and for Small Firms.
10. We also recognise the important role that wider organisations play in helping communicating our messages and supporting implementation. We want to work collaboratively with these organisations as we move forward.
11. Overall our proposals have gained 'in principle' support from many of these groups – as well as several legal commentators. However, emerging feedback and our wider research suggests that there is more we can do to support change²¹⁹; our regulation should not be a barrier to the provision and access to legal services

²¹⁷ SRA Usability Research, December 2015

²¹⁸ Recent continuing competence survey. April 2016

²¹⁹ SRA research “Innovation in Legal Services”, July 2015

Our strategy

12. We have identified 4 strands of work to deliver our strategy. Each strand has the following objective, timetable and activities for delivery:

Strand 1 Helping people understand what we are doing	
Objective	<p>To make sure that stakeholders understand why we are making changes to our regulation, what the impact might be and how they can get involved.</p> <p>Use feedback to refine our policy development.</p>
Delivery timetable	Ongoing until implementation
What we will do	<ul style="list-style-type: none"> • We have developed a comprehensive communications strategy to make sure stakeholders are aware of what we are doing and why. This includes webinars, social media, articles in SRA and wider communications • We have developed digital content (blogs, videos, web content) to explain our thinking. We will continue to develop this • We have set up Virtual Reference Groups to share our thinking on a regular basis • We will host a number of roundtable discussions with specific stakeholders, for example, in house, special bodies, accountants and BAME representative groups to hear and discuss their views • We will run a number of workshops during the consultation period to share our consultation proposals and provide opportunities for feedback.
Strand 2 Increasing our understanding of what stakeholders need	
Objective	<p>To make sure that we understand the issues that stakeholders face with understanding and implementing our changes.</p> <p>To make sure we understand the most effective ways</p>

	we can help stakeholders
Delivery timetable	Ongoing until implementation
What we will do	<ul style="list-style-type: none"> • Use our engagement events to get feedback from stakeholders on issue they need support with • Crowd source ideas from the profession for further case studies and guidance and provide a mechanism for them to comment • Map out best practice as to how other organisations provide support • Hold a roundtable with representative and network groups to tell us how we can support them • Periscope sessions with profession to tell us what support we need to provide • Use our Virtual Reference Groups to inform our thinking and review material • Use twitter polls to test our thinking • Create a “thought board” on our website that allows people to post ideas on issues that they are facing and what type of support they need • Develop an online survey to capture ideas from the profession and wider stakeholders on issues they need help with and how we can support them
Strand 3 Providing support for stakeholders	
Objective	To make sure we provide a wide range of accessible and relevant support help stakeholders implement our changes
Delivery timetable	Support provided before implementation
What we will do	<ul style="list-style-type: none"> • Produce a suite of guidance, case studies and video case studies to support implementation • Produce an online tool kit for the profession to provide a range of resources to help with implementation • Deliver webinars on our new Handbook and how to implement it • Work with practitioners to provide case studies on how they implement our new approach • Deliver a series of regional surgeries explain and support implementation of the new Handbook • Work with representative bodies to support them

	<p>with implementation</p> <ul style="list-style-type: none"> • Use our range of Virtual Reference Groups to distribute material • Work with stakeholders to ensure that our guidance, case studies and support material is relevant and speaks their language.
Strand 4 Reviewing our support	
Objective	To make sure our support remains relevant and up to date post implementation.
Delivery timetable	6 months and 12 months after implementation
What we will do	<ul style="list-style-type: none"> • Carry out research to understand how stakeholders have implemented our new approach • Carry out research to understand the effectiveness of our support material and whether we need to provide more material • Review our material in light of these findings.

Annex 9

Case studies

The consultation document we issued on the 1 June 2016 included several case studies. They were designed to illustrate our thinking and help readers understand how some of the proposed obligations and requirements could be met in a range of scenarios.

Based on feedback received, we have decided to move this material to Your questions. Visit <http://www.sra.org.uk/sra/policy/future/your-questions.page>.

If you have already downloaded a version of the consultation document with case studies included, please continue to use them to help you understand our proposals.

We are interested in hearing from you about scenarios or proposed obligations where you think further clarity or support would be helpful. We encourage you to submit to us your views on how you interpret, understand or would apply our proposed obligations. Visit <http://forms.sra.org.uk/s3/futures>.