Solicitors Regulation Authority

Our response to consultation: Looking to the Future - flexibility and public protection

June 2017

Contents

Our response to consultation - Looking to the future: flexibility and public protection

Executive summary

1. Our *Looking to the future: flexibility and public protection*[1] consultation is a major step forward in reforming our current Handbook. It forms part of a wider programme of work to modernise our approach to regulation and meet the demands of a changing legal services market. In this document we set out our response to the issues raised in consultation. We also explain the changes we have made in response to the feedback received. It covers both our decision to remove the current restrictions on where solicitors can practise and our decision to introduce a new set of principles and codes.

Our proposals and why change is needed

2. Setting and maintaining clear, high professional standards is fundamental to both good consumer protection and public trust and confidence in solicitors and law firms. We are reforming the way solicitors qualify by introducing the Solicitors Qualifying Examination (SQE), which will make sure all solicitors meet consistent, high standards at the point of entry to the profession.

3. We also need to make sure that our principles and codes set out clearly the high professional standards we expect of solicitors and firms. Our current Handbook with its 30 page code of conduct and more than 400 pages of rules, is long, complex and costly to apply.

4. So we proposed creating a shorter, sharper, clearer Handbook. Our first consultation focused on a revised set of principles and codes.

5. We proposed a separate code for individual solicitors, and a separate code for firms. We want to make sure that every solicitor is absolutely clear about their personal obligations and responsibility to maintain the highest professional standards, whether they work in-house, or within or outside an LSA regulated firm[2]. By having a separate code for firms, they will have clarity about the systems and controls they need to provide good legal services for consumers and the public.

6. The proposals put greater trust in professional judgment. Our view is that solicitors and firms do not need pages and pages of detailed, prescriptive rules to do the right thing. Our focus is on principles and what matters - maintaining the high, consistent professional standards that the public

[1] http://www.sra.org.uk/sra/policy/future/looking-future.page

[2] When we refer to Legal Services Act regulated firms, we mean those who are authorised to deliver reserved legal activities under the Legal Services Act (LSA).

expect. They also provide the clear basis for us to take action where solicitors do not meet their responsibilities and fall short of these standards.

7. We also proposed, in a separate consultation, updating our Accounts Rules by stripping out unnecessary bureaucracy, and focusing on what really matters: keeping clients' money safe.

8. The other problem our proposals aimed to address was that too many people and businesses do not, or cannot, access legal services. Only around one in ten people use a regulated professional when they have a legal problem.

9. There is growing market of non-LSA regulated firms providing legal services such as will-writing and resolving employment disputes. Yet the current rules mean that solicitors are banned from working in these firms. This means at the moment that anyone from a plumber to an accountant can provide legal advice in such firms, but not a solicitor.

10. We proposed changing the rules to give solicitors more choice as to where they work, and to make it easier for people to access the high standards and expertise that solicitors offer, in potentially more affordable ways.

Our decisions

11. In this document we have set out how we will move forward with proposals to remove the current unnecessary restrictions on where solicitors can practise. Under the changes, solicitors will have more flexibility to provide non-reserved services[3] to the public from outside firms that we or another legal services regulator oversees. We think this will provide greater opportunities for solicitors to offer their ethical expertise to the public, and will increase choice for consumers and businesses. This view is supported by the Competition and Markets Authority (CMA) in its recently published report into the legal services market, which recommended that we implement this proposal.

12. Alongside this response we are publishing a revised set of principles and codes of conduct. These new requirements set out what we expect from those we regulate. They are about the standards and behaviours that have to be at the heart of professional practice.Together, they allow more flexibility for individuals and firms to decide how best to comply than is provided under our current prescriptive rulebook. They also provide the basis for us to take action where solicitors fall short of the standards required.

13. Consumers will have the confidence that all solicitors, however they practise, will be held by us to the same clear standards established in our Principles and Code of Conduct for solicitors. Those high standards mean high standards of consumer protection, which in turn underpins trust in the profession.

14. All solicitors entering the profession will be assessed on a consistent basis and to the same high standards through the introduction of the Solicitors

[3] For a full definition of reserved legal activities (RLA) see footnote 10

Qualifying Examination (SQE). This will include assessment on the standards within the codes so that from the point they first qualify all solicitors clearly understand our standards and how these relate to their professional obligations.

Extensive engagement

15. We are grateful to the thousands of individuals, firms and other organisations for their valuable contributions to the consultation process. Altogether, we have engaged with around 11,000 individuals, firms and other organisations in reaching the position set out in this response document. In addition to the formal written consultation process, we have held workshops, focus groups and spoken to our reference groups. We have also engaged widely through social media and digital and online activity, such as webinars. A detailed analysis of formal responses to the consultation is included in the Question by question analysis section. We have also published all those responses where the respondent gave us permission to do so.

16. This engagement has helped shape our decisions. Examples of areas where we have responded to feedback include:

- We have made changes to the wording of our second principle around upholding public trust in the profession. This makes it clear it is about trust and confidence in SRA-regulated professionals.

- We have made it clear that the ban on cold calling remains.

- We recognise that our proposals around greater flexibility on client money, in our accounts rules consultation, could have had cost implications for some firms. So we have amended our definition of client money and the vast majority of firms with a client account can continue as they are.

Consultation responses

17. The responses we received support many of our proposals, for example our plans to simplify the Handbook and our approach to drafting. Many endorsed our objective of clearer, shorter codes, and provided detailed feedback to help us refine them. A number of respondents were keen to understand more about the implications for our approach to enforcement. We will be consulting on our enforcement strategy later in the year, alongside the remainder of the Handbook.

18. Our proposals to give solicitors greater flexibility about where they can practise were supported by a wide range of stakeholders alongside the CMA, including charities and consumer bodies that we spoke to during consultation. These respondents highlighted:

- The current difficulties for consumers (particularly vulnerable consumers) in accessing the legal help that they need from solicitors.

- The corresponding opportunity that exists for the legal market to grow to serve these people.

19. However, these same proposals also received robust challenge. Many were concerned that solicitors within firms we do not regulate would not have to have the same professional indemnity insurance (PII) as those working in firms we do, and that their clients would not have access to our Compensation Fund. They viewed these protections as being at the core of what it means to be a solicitor.

20. Concerns were also raised as to the extent to which the public can make an informed choice between a wider range of service providers, and the risk of consumer confusion about the protections which apply to each. PII and the Compensation Fund are important regulatory protections and will continue to apply to firms we regulate, giving them a clear opportunity to market themselves as a regulated law firm with these protections. If consumers value them they will choose accordingly. However, they are not the only regulatory protections, nor are they the basis on which many people make their choice of legal services provider[4]. Our proposals will allow consumers to have greater choice, especially for non reserved services.

21. We acknowledge that these are difficult issues, but we remain confident in the basis for our proposals. The CMAs year-long study into the legal services market highlighted that consumers already buy services from the alternative legal services market, such as:

- planning advice from architects
- will writing services
- employment advice from HR firms.

22. A solicitor is often involved in these businesses (and other businesses not covered in the CMA report, such as large accountancy firms) either as an adviser operating under the title of "non-practising solicitor" (having given up their practising certificate) or as a supervisor of unqualified staff[5].

23. It is likely to benefit consumers, and to increase a take-up of services, if people can rely on the title "solicitor" with the protections that our regulation brings with it. Our rules already allow solicitors to practise outside of firms we regulate in prescribed circumstances. This therefore happens now across the market but in a way that is neither flexible nor consistent. Moving away from the current blanket restriction with limited prescribed exceptions, towards a more open and flexible model is likely to improve consumer choice and increase the protections afforded to those consumers purchasing services in the unregulated part of the market.

24. Put simply, consumers can already choose to buy non-reserved legal services from unregulated businesses, and our proposals will simply add

[4] Research shows that consumers expect there to be some sort of redress, should things go wrong, but they are not aware of detailed consumer protections that are available. These are therefore unlikely to be an influencing factor in determining choice

[5] Source: SRA The Changing Legal Services Market

solicitors into those firms, who bring high standards of expertise and ethics to bear and who are regulated to maintain those standards. Clients also have the right to contact the Legal Ombudsman (LeO) if they have a complaint to make about a solicitor. In addition, solicitors will be required to comply with the standards in the individual Code of Conduct.

Consumer information

25. To help consumers navigate the market and make informed choices, we will make sure they receive appropriate information on the services they are buying and the protections available. A large part of the CMA report is focused on improving transparency to help consumers understand the regulatory status of different providers, the redress available, the price they will pay and the service they will receive. We think consumers need to receive this information in a way that allows them to make choices quickly and easily, while being able to choose the "best" option for them.

26. Our October 2016 discussion paper, *Regulatory data and consumer choice in legal services*[6], opened up debate on these issues. We will be considering what action we can take to make sure consumers have access to good quality, authoritative information to benefit fully from the increased choices we are making available to them. We are also reviewing the recommendations in the CMA report in detail. We will launch a consultation on these issues in autumn 2017.

Next steps

27. We will consult on our proposals for the rest of the Handbook, including our new enforcement strategy, in autumn 2017. This consultation will contain our new authorisation and practising requirements, which will implement the change to allow solicitors to provide legal services to the public outside of firms we regulate.

28. We will introduce the changes covered by the first and the second consultation at the same time. We acknowledge that this may require significant adjustment for individuals and firms, and so we are committed to publishing a comprehensive guidance and toolkit resource alongside our new Handbook. We will also allow individuals and firms a reasonable period of time to familiarise themselves with the new arrangements before they are implemented.

29. At the moment, we do not anticipate that we will introduce the new arrangements any earlier than autumn 2018, but we will continue to keep stakeholders updated on the likely timescale for implementation.

Key themes and our response

Removing restrictions on where solicitors can practise

[6] http://www.sra.org.uk/sra/consultations/discussion-papers/regulatory-data-consumer-choice-legal-services.page

30. Our consultation proposed removing the current restrictions on solicitors providing non-reserved legal services to the public from providers that are not authorised by the SRA or regulated by any other legal services regulator. We asked respondents for views on the threats and opportunities arising from the proposals. There was a diverse range of views. There was strong support from the CMA, as well as consumer and charity groups, yet also strong opposition from the Law Society and some solicitors

Stakeholder responses: charities and consumer groups

31. Our proposal received strong support from the charities and consumer groups who attended our focus groups in summer 2016. Attendees at these focus groups considered that increasing opportunities for solicitors to provide their services more widely would benefit consumers through lower-priced services and increased access to justice.

32. They also suggested that increased accessibility to solicitors could help to reduce nervousness around using their services, by making them more visible and less intimidating. It was suggested that the greater flexibility for solicitors to offer new, cheaper services may help to reduce the postcode lottery that people in under-served areas currently experience.

33. Some said the opportunities for greater competition between businesses would be good for consumers because, as well as competition on price, they would compete in the way they provide services. So, to stand out, they may offer better services, especially for vulnerable people. Examples given included improved staff training (particularly for reception staff) and providing services in an inclusive and accessible environment.

34. While generally supporting our approach, the Legal Services Consumer Panel (LSCP) highlighted challenges with relying too heavily on information remedies. It suggested that there may be a need for prescriptive rules in certain areas to mitigate the risks of consumer confusion as to the regulatory protections provided. The LSCP noted that it is important to provide the right information at the right time. It suggested consumer testing in developing information remedies. The LSCP also considered that it will be important for us to work with other regulators to guard against harmful information gaps.

35. We agree with the LSCP on the need to consider the complexities around consumer information requirements. Following our discussion paper on open data, which closed earlier this year, we are working on this area. We will be consulting separately on this later this year. We are working closely with the other regulators as part of our response to the CMA report and we will be looking to introduce any requirements in a supportive and structured way. This is likely to involve research to assess the likely effectiveness and efficiency of any new arrangements and monitor the benefits to consumers and the impacts on firms.

Stakeholder response: Competition and Markets Authority report

36. The CMA report recommended the removal of regulatory restrictions on solicitors providing services to the public outside of firms we regulate. The report states:

"This is likely to have a positive impact on consumers by generating greater competitive pressure on price, and creating new routes and choice for consumers to access advice from qualified solicitors."[7]

37. The CMA found that consumers rely on regulated titles such as "solicitor" as an indicator of quality. The restrictions placed on firms outside our regulation from employing solicitors to deliver non-reserved legal activities may, therefore, reduce the ability of these firms to compete[8].

38. The CMA highlighted the potential benefits to consumers (both in terms of improved access to legal advice at a lower cost and improved protections for those using firms outside our regulation. The report also considered the potential risks to uninformed consumers of using providers offering less regulatory protection.[9] The CMA found that, provided the proposals we put in place to mitigate consumer confusion were effective, "...the benefits to competition of removing the restriction would likely outweigh the consumer protection concerns identified."[10]

Stakeholder responses: regulated solicitors and representative bodies

39. We received strong opposition to our consultation proposals, mainly from the Law Society and endorsed by a number of its members. The Law Society responded that our proposals would create a 'two-tier' solicitor profession as a result of different rules and protections applying to clients, depending on whether the solicitor worked in an SRA regulated firm or not. They argued this would have a detrimental effect on consumer understanding and protections.

40. There was a view that unless protections available to clients of solicitors working in firms we do not regulate were broadly similar to those to clients in firms we do regulate, consumers could be confused and potentially disadvantaged particularly in cases where something went wrong.

41. Respondents also raised the potential tension between a solicitor's professional obligations and responsibilities under the individual code, and the commercial interests of their employer. The obligations around conflicts of interest were seen to be the main area of tension, but respondents cited other potential pressures and suggested these tensions could result in undue pressure being placed on the individual solicitor.

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[7] Paragraph 5.107 of CMA final report

[8] Paragraph 51 (c) of CMA final report

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

[10] Paragraph 5.116 of CMA final report

42. Some respondents also suggested that the consultation position provided an unfair commercial advantage to firms outside our regulation, who would find it cheaper to employ solicitors. The possibility that firms we regulate would restructure so as to avoid entity regulation for much of their business was also raised. It was suggested that smaller firms and sole practitioners would be disproportionately disadvantaged by the proposals, on the assumption that most new businesses would be likely to be small in size, and therefore in direct competition with these firms. Respondents considered smaller traditional firms would be less able to take the opportunity to restructure.

43. A number of respondents (including some in-house solicitors) thought that the lack of Legal Profession Privilege (LPP) for legal advice provided outside LSA regulated businesses was likely to make giving such advice an unattractive option in practice.

44. Finally, respondents were concerned that the changes may lead to an increase in the level of fees they would need to pay to us. This, they felt, would be as a result of firms choosing to leave entity regulation, but also because of increased pressure on the Compensation Fund and higher contributions for solicitors working within firms regulated by us.

Opportunities

45. A small number of respondents said that they would be either likely or very likely to take immediate advantage of the greater flexibility. Greater numbers were currently neutral, or were planning to adopt a "watch and wait" approach and to factor the increased flexibility into future strategic planning.

46. Outside the consultation process, but as part of our wider reform programme, we launched the SRA Innovate scheme in 2015. We highlighted the availability of this scheme during the consultation period. Through this scheme, we are already seeing examples of solicitors and businesses wishing to take advantage of the flexibility our reforms would provide. One example is qualified solicitors working within existing businesses as non-practising solicitors who wish to provide the same services as a fully regulated practising solicitor. Illustrations of some of the types of scenarios we are seeing are set out in the case studies below. These highlight the complexities and dis-benefits to consumers and providers of the current restrictions.

Case study 1: a subscription-based service offering advice in a range of areas. Solicitors can provide telephone and limited email advice (made possible by a waiver). The email advice is provided based on a written summary of the facts provided by the client, but solicitors are not permitted to view original documents. The entity may wish to extend its service to receive and review original documents, bring more work in-house and offer a greater choice to their customers.

Case study 2: a legal services provider delivering non-reserved legal services by paralegals to small businesses. Solicitors deliver services by becoming non-practising, meaning they

cannot use their title and are not bound by our requirements and code, or by using their expertise to support non-qualified advisers to provide advice. The firm may wish to have greater freedom to provide services directly to its customers using its in-house solicitors - regulated and using the title that they qualified for.

Case study 3: a qualified solicitor provides non reserved employment advice services in-house. The solicitor may like to extend the business to employ a number of solicitors on a contractual basis in order to provide additional non-reserved services online. To do so we would have to authorise a new entity, adding additional cost to what was intended to be a fixed-fee model.

Our response

47. We remain of the view that we should proceed with proposals to remove the current restrictions on solicitors providing non-reserved legal services to the public from outside firms we regulate. We intend to consult on the more detailed rules over the autumn as part of the planned consultation.

48. Our current rules go further than primary legislation requires for non-reserved legal activities[11]. We no longer think this can be justified and have not been persuaded otherwise by the responses received. We have noted the clear and detailed analysis in support of our proposals in the CMA report.

49. As we set out in our November 2015 Policy Statement[12], we think that consumers should be able to choose and use legal services flexibly from:

- an unregulated business[13]

[11] The Legal Services Act 2007 (LSA) sets out the six reserved legal activities which lawyers must be authorised by an approved regulator to provide: the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths. Legal activity that falls outside of the framework of the LSA and is therefore unreserved includes any activity that does not fall under the reserved legal activities including general legal advice

Legal activity that falls outside of the regulatory framework of the Legal Services Act 2007 (LSA), and is therefore unreserved, includes:

- providing legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
- providing representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes; and
- any activity that does not fall within one of the six reserved legal activity categories as set out on our FAQs main page.

[12] http://www.sra.org.uk/sra/policy/regulation-reform.page

[13] By this we mean a business that is not authorised by an approved regulator under the Legal Services Act 2007 and does not employ any authorised persons. Such businesses will be subject to the normal range of consumer, competition, and common law.

- a regulated individual working in an unregulated business (a non-LSA regulated firm)
- a fully regulated firm.

50. At the moment, the choice is between the first and last of these options, except in the limited circumstances allowed by our rules.

51. We believe there are real benefits for consumers, solicitors and firms in offering this further choice: increased opportunities for innovation, greater competition, a raising of standards and protections in the unregulated sector.

52. We accept that in some respects the level of consumer protection may be different depending which of the three choices is taken. We do not agree with the view that our proposals will create two tiers of solicitors. All solicitors will be subject to the same education and training requirements and held to the same ethical standards. The standards are set out more robustly and are more clearly articulated than before in the new Code of Conduct for individuals.

53. From a consumer's perspective, this is far clearer than the current position, where in most cases solicitors can act in the capacity of a "non-practising solicitor" (having given up their practising certificate) or as a supervisor of unqualified staff[14]. It is likely to benefit consumers and to increase in a take-up of services in these businesses, if consumers can rely on the title "solicitor" with the protections that title brings with it.

54. The wider legal services market already has different tiers, in that non-reserved services are delivered outside LSA regulation and outside our jurisdiction[15]. As highlighted in the case studies above, we already see complex and opaque business models driven by the current restrictions. These changes will help bring the role and status of solicitors into the open within some of these businesses. Nevertheless, we accept that more choice can be confusing for some types of consumers.

55. We set out, in detail, at paragraphs 116 to 122, the tools and information we are developing to make sure consumers can make informed choices about the type of provider they choose and the protections that they will have. We will consult on proposals for very clear mandatory information requirements that will apply to all solicitors. This will help to mitigate the risk of consumer confusion under the new regulatory arrangements, but will also address the current position where consumers do not know what protections come with different types of providers, including solicitors.

[14] Source: SRA The Changing Legal Services Market

[15] SRA report –'The changing legal services market 2016 http://www.sra.org.uk/risk/resources/changing-legal-services-market.page

CMA report paragraphs 2.26 -7, 2.38-2.41 and annex F.
https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf

56. Another risk raised by respondents relates to the potential tensions between a solicitor's professional obligations and the interests of their employer. This tension already exists within regulated firms driven for example by the need to make profit or please an important client, as well as when working in house or within a special body. Recent research highlights the pressure that many junior solicitors feel they are put under within regulated firms[16].

57. The ability to deal with this tension is essential to being an ethical professional. Our toolkit will include resources to support solicitors in recognising ethical dilemmas and understanding and meeting the standards that apply to them in this context. We will also produce corresponding guidance for their employers. This essential guidance will be available in advance of implementation to support solicitors and firms through the introduction of the new arrangements.

58. To help support junior solicitors when responding to pressure and applying their professional judgment, we have proposed that the SQE will not just assess candidates' ability to apply legal knowledge. It will also assess their ability to spot and apply the Code of Conduct. We propose that ethical questions should pervade all parts of the assessment. Newly qualified solicitors will, therefore, have been assessed on the standards required of them by the time they enter the profession. This should make sure they are clear on their obligations under the code and able to act accordingly.

59. We do not aim to provide a commercial advantage to any type of firm. We seek to provide an environment where fair competition is enabled. We think regulated firms employing solicitors will continue to provide a strong "brand"; the difference is the ability to provide the full range of legal services (including reserved activities), the availability of legal professional privilege (LPP), and a range of consumer protections that are unrivalled by any other profession, either in the UK or internationally.

60. Small firms tell us that they currently get the majority of their business through local contacts and local brand recognition, as well as through word of mouth. It is unlikely that this will change significantly in the near future. Added to this, our previous work with small firms indicates they carry out relatively high levels of reserved legal activity for their clients, which only they (and other LSA regulated businesses) can provide.

61. We do not propose any changes to our regulatory fees at this stage. In the future, should we consider that this position should change, we will, of course, undertake a full consultation. As part of any future review, we will ensure that we do not impose an unfair regulatory burden on regulated firms. Nor do we currently think there is a case for a different fee for individual practising certificates in SRA regulated or non-SRA regulated firms. We will monitor this and review each year as part of the fee-setting process.

[16] http://communities.lawsociety.org.uk/Uploads/g/x/g/jld-resilience-and-wellbeing-survey-report-2017.pdf

Legal professional privilege

62. Our consultation paper set out our position in relation to solicitors providing services through non-LSA regulated firms, and whether advice provided to clients attracts LPP. In summary, at common law, LPP attaches only to certain confidential professional relationships. It does not apply to any professional other than a qualified solicitor, barrister, or appropriately qualified foreign lawyer. The Supreme Court confirmed this in 2013.[17]

63. We received a range of views on the issue of privilege and whether or not it would apply in these circumstances. We also received views on the potential impact this would have on the concept of privilege overall.

64. This is a matter of substantive law. It is therefore for the courts or parliament. We recognise the importance of LPP in many situations, but we do not consider it appropriate for us to place artificial barriers in the market simply to make sure all work done by solicitors falls within the legal boundaries of privilege. Further, we consider that the overall advantages of increased access to solicitors outweigh any disadvantages.

65. It is important to remember that advice given by a solicitor, from wherever they practise, will be confidential to the client, and the business will have its own obligations under the laws of confidentiality and data protection. Also, not all communications between solicitors or regulated firms and their clients would attract privilege in any event, nor would the protection from disclosure or inspection this confers be considered necessary by all clients in all situations.

66. It is down to the individual solicitor to make it clear to their clients what level of protection that client has and where such protections would be appropriate and/or relevant. In most circumstances this will not be an issue, but there may be occasions when a solicitor working in a non LSA regulated firm should advise their client on the benefits of privilege. This may include advising them of the option to seek advice from a solicitor in a regulated firm in order to make sure that this attracts privilege.

Special bodies[18]

67. In our consultation we stated that we aimed to develop a regulatory framework that is flexible enough to allow the Legal Services Board (LSB) to consider ending transitional arrangements for special bodies, and to bring special bodies within our entity regulation, but that we would discuss the issue with those bodies.

68. After our discussions with special bodies, we consider that there is no immediate need to bring the transitional arrangements to an end. We do not

[17] *R (on the application of Prudential plc and another) (Appellants)* v *Special Commissioner of Income Tax and another (Respondents)* [2013] UKSC 1 (23 January 2013)

[18] Special bodies are charities and not for profit bodies classified in the LSA as entitled to deliver reserved legal services under transitional arrangements within a framework that reflects their unique status.

consider it would be in the public interest to seek to impose the extra costs of entity regulation on special bodies in what is currently a harsh funding environment for many of them, and we bear in mind that many of the services they provide involve non-reserved activity, sometimes delivered by volunteers. We will continue to regulate solicitors in special bodies, and propose to retain current PII requirements on those bodies (see below).

Principles and standards

Application

69. The consultation responses raised a number of comments about the application of the revised Principles and Codes of Conduct. Having considered the responses carefully, we are satisfied that it is appropriate for the Principles to, as now, apply to all we regulate. The Principles address universal behaviours which apply equally to behaviour towards clients, third parties and others.

70. We are satisfied that they should apply outside of the practice context as well as within it. This is because they relate to standards of behaviour which, if not met (irrespective of context), would give rise to the need to take action to protect the public or to uphold public confidence in the profession and authorised persons delivering legal services. The way in which we approach this in practice will be set out in our new enforcement strategy. This will be subject to consultation later this year.

71. By contrast, the Codes of Conduct will apply in the practice context to the individuals and firms we regulate and those who work in and for them. Some respondents suggested that these should apply differently to those carrying out work for friends and family or pro bono. We are satisfied that the behaviours targeted by our new standards should be met in respect of any work done by a solicitor or firm in the course of practice irrespective of whether or how it is funded.

72. Following consultation, we have decided that the scope of the code for firms will reflect our current regulatory reach:

- recognised bodies and sole practices - we regulate all activity. Maintaining the status quo was strongly supported on consultation[19].
- alternative business structures - we regulate all legal activity[20]

[19] As part of the Separate Business Rule consultation in 2014, we asked respondents whether we should explore the possibility of achieving similar arrangements for recognised bodies with the option of some activities being excluded from our regulation. Responses at the time were mixed. We returned to this issue in this consultation, with the proposal that we maintain the current position where we regulate all activity within a recognised body or recognised sole practice. Respondents to this question overwhelmingly agreed with our proposal, and said that we should regulate all work. We will therefore maintain this position.

[20] as set out in Section 12 of LSA 2007.

- multidisciplinary practices - as above (but we will not regulate some non-reserved legal activities in certain circumstances eg where they are covered by another regulator).[21]

73. Several respondents to the consultation were concerned that the new individual code would replace the current Overseas Rules. This is not the case. We will be consulting on any changes to the Overseas Rules along with the rest of the Handbook in the autumn.

Principles

74. A range of respondents supported the simplification of the Principles and our focus on overarching values and behaviours. Some respondents, however, felt there was no need for change.

75. We believe the revised set of principles better reflect the universal values we expect all those we regulate to hold. For example, the principles about running a business set out in current Principles 8 and 9[22] have only a tenuous connection to the majority of in-house lawyers or employees in regulated firms.

76. A number of consultation responses suggested reinstating core principles which have been "lost", such as the obligations to:

- protect client money and assets
- comply with legal and regulatory obligations
- provide a proper standard of service.

77. These obligations remain (within the codes) and are directly enforceable. Some of the principles referred to (for example, confidentiality) are in fact outcomes in the current Code of Conduct (and remain as standards in the proposed new codes). Therefore, we are satisfied that there is no need to expand the proposed list of principles.

78. To reflect comments received, we have made some changes to the wording of the specific principles. We have amended the new Principle 2[23] to make it clearer that the obligation is to uphold public trust (emphasising the fiduciary nature of the relationship between solicitor and client) and public confidence. In response to comments, we have amended the wording to confirm that this attaches only to legal services that are regulated by an approved regulator under the LSA.

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[22] These are:

8) run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9) run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; [..]

[23] the consultation version was to 'ensure that your conduct upholds public confidence in the profession and in those delivering legal services'. Post consultation, Principle 2 now reads 'act in a way that upholds public trust and confidence in the solicitors profession and in legal services provided by authorised persons'.

79. We have considered comments on the move from the current obligation "not to allow your independence to be compromised", to the obligation to "act with independence". We believe it is important to maintain the latter, more positive obligation in the consultation proposal. This reflects the wording in section 1(3) of the LSA.

80. We believe that honesty is one of the most fundamental tenets of the solicitor's profession, and should be reflected in the new Principle 4[24]. We are comfortable that the terms "honesty" and "integrity" may overlap, but that action can be taken if someone fails to demonstrate one or another. Including them in the same principle does not mean they have to be pleaded together.

Codes of Conduct

81. Some respondents were in favour of introducing separate codes for individuals and firms. Some respondents expressed concerns that this was unnecessary and/or queried the position where there was a conflict between the two codes. We agree with feedback that the separate code for individuals is easier to navigate, particularly for in-house solicitors. It helps to focus all solicitors on the same core personal, ethical and regulatory responsibilities. Some unintentional inconsistency in language has been addressed in the final versions. We believe the two codes work together to apply a complementary set of obligations on solicitors and SRA regulated firms.

82. Some respondents (including the Solicitors Disciplinary Tribunal (SDT)) confirmed that they find the new codes to be "short and focused, clear and easy to understand". Others expressed concern about the use of language they believe to be "imprecise" (for example: promptly, persistent, reasonable, appropriate), and the use of absolute obligations (for example: ensure). Some expressed a preference for input measures (for example, reasonable steps), or for obligations to be qualified (for example, to "knowingly" mislead).

83. Our new approach is to describe the standards to be achieved, and give flexibility as to how these apply in any given situation. In doing so, we recognise that what is appropriate (for example, in terms of promptness), will depend on the circumstances and will as a rule best be judged by the solicitor or firm involved.

84. Also, the judgments as to whether these standards have been met, and what constitutes a serious breach or misconduct, will depend on the circumstances. This will include the individual's attitude towards the events or the extent to which they have responsibility or control over the systems in place. This is particularly an issue for solicitors working outside LSA

[24] We have placed honesty and integrity together in the drafting of Principle 4 as these are key in a profession whose reputation depends on trust. Case law [Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin)] suggests there is a clear legal distinction between honesty and integrity, although the case of Malins v- Solicitors regulation Authority [2017] EWHC 835 (Admin) suggests that the terms are synonymous. That decision is subject to appeal. We are confident that nonetheless both terms should be used and, where a distinction can be made, they can be pleaded separately.

regulated businesses, as reflected by some of the consultation responses. These judgments will be governed by our new enforcement strategy.

85. We have carefully considered suggestions that we should seek to impose certain obligations on non-LSA regulated businesses via conditions on solicitors' rights to practise within them[25] (for example, introducing a compliance officer role, or to prohibit the business acting in a situation of conflict). However, we do not think it is appropriate to attempt to introduce system regulation in firms that we do not regulate through our jurisdiction over the individual working within the business.

86. For that reason, we consulted on a proposal to prohibit individual solicitors in non-LSA regulated businesses from holding client money. Following further discussion with special bodies[26] and other organisations, we recognise there will be limited types of organisation where it is appropriate and necessary to allow solicitors to hold client money.

87. Therefore, we have responded by introducing a power to prescribe certain types of non-LSA regulated organisation in which a solicitor may hold client money and the conditions under which it must be held. We intend to include special bodies[27] within that category. We will discuss the issue with representatives of special bodies but our current view is that the money will need be held under the same terms as our Accounts Rules.

88. We received some suggestions to limit or remove the application of certain standards to those other than the client. However, we believe that the relevant behaviours (misleading others, abuse of position, making submissions that are not properly arguable) should all be prohibited more widely than in the context of a client-solicitor relationship.

89. For similar reasons, we believe that the current obligation to inform current clients of any act or omission that might give rise to a claim (Outcome 1.16) required amendment. The consultation position extended the requirement to cover current and former clients. Following responses to the consultation, we have changed the wording to make the underlying ethical behaviour clear and to avoid a focus on the technicalities of the underlying retainer and any potential claim, namely to require solicitors and firms to be open and honest when things go wrong. We have also amended the standard[28] to ensure that the obligation to identify (on request) whether a person has a claim, includes the obligation to notify the person and to let us know. This better reflects the powers under s158 LSA (which are set out in the current outcome (10.11)). It does not, however, return us to the position that solicitors need to identify and notify all "claims".

90. We have also made the following substantive changes to specific standards in response to feedback. We have:

[25] We would have no power to impose conditions on these businesses directly.

[26] See footnote 17.

[27] see footnote 17.

[28] standard 7.9 in the individual code and standard 6.4 in the firm code

- extended the probity and advocacy obligations in 1.3 to 2.7 of the individual code to firms

- qualified the obligation to act only on a client's instructions and in accordance with their wishes to cover situations where this cannot be ascertained (for example, where they lack capacity)

- retained the current rule against cold calling[29]

- introduced an obligation for solicitors to inform clients which activities will be done by them as an authorised person. This allows the client to understand what work (if done outside a firm authorised as a legal services provider, will fall within the LeO's jurisdiction

- amended 6.4 in both the individual and firm codes relating to the disclosure of material information that is prohibited by law. The intention was to translate the existing IB (4.4) which, combined with outcome (4.3)[30], is targeted towards legislation intended to safeguard national security and the prevention of crime (in that there is a reference to AML/counter terrorism legislation). However the drafting in the consultation raised the question as to whether confidential information is excluded from the requirement to disclose material information to a client. The exclusion has now been more narrowly drafted to make this limited to restrictions in the interests of crime prevention and national security. Any other scenarios in which duties may conflict will be handled in guidance, as currently

- amended standard 8.9 in the individual code to clarify that this relates to "advertising" services (not just "publicising" them). We have also excluded clients and former clients.

Conflicts of interest

91. Our consultation set out two options for handling situations giving rise to a conflict of interest or a significant risk of a conflict:

- Allowing limited exceptions to the prohibition against acting for clients in actual conflict or where there is a significant risk of conflict[31] (broadly replicating the current situation).

- Prohibiting acting where there was an actual conflict, but allowing this where there was a significant risk of a conflict if the client had given informed consent and information safeguards were in place. This

[29] We have not duplicated the prohibition on referral fees which is set out in Section 56 LASPO, but we replaced the provision in the current code that the burden of demonstrating that a fee is not a prohibited referral fee is on the regulated person (made under section 57(8) LASPO).

[30] Outcome 4.3 has been removed because the suggestion that confidentiality will prevail does not sit well with the existing caselaw which suggests that the two obligations cannot be reconciled (Hilton –v- Barker Booth).

[31] Outcomes 3.6 and 3.7 in the Code of Conduct

approach recognised that the current exceptions really operate in effect to prevent potential conflicts from becoming actual ones.

92. Opinion was split, but more respondents preferred option 1. Several respondents felt that a robust conflicts system puts us in good standing internationally.

93. There was some misunderstanding among respondents as to what is prohibited and what is permitted under the current provisions. A number of respondents suggested that both options consulted on were unworkable in practice (even though option 1 mirrors the current conflict provisions in the existing Code of Conduct, which they favoured).

94. Some we spoke to during the consultation suggested they could envisage a further option that could liberalise the conflict obligations while maintaining appropriate protections. However, specific proposals were not put forward.

95. Both the options we put forward are compliant with the conflicts position at common law. However, given the weight of the responses in favour, we have decided to retain the current position on conflicts (option 1), and have used feedback to the consultation to tighten the drafting. We have tested this drafting with a small number of stakeholders and are satisfied it represents a significant improvement on the drafting of the current conflicts rule. We remain open to a more significant change to the conflict provisions in the future and may undertake a review of the operation of the new standard.

96. Concerns were raised about the perceived difference in standards for, and the unfair advantage that may be afforded to, non-LSA regulated firms should they be able to more freely employ solicitors to provide services to clients.

97. Where solicitors are providing services to the public outside of SRA regulated firms, the standard on conflicts will apply at a personal level. However these will not apply to the business itself, and as stated above we do not believe it appropriate to regulate the business through our jurisdiction over an individual within it, in circumstances where the legal framework would not currently require it to operate with such controls.

98. Our requirements on the solicitor to comply with standards around disclosure and confidentiality will provide additional safeguards both for their clients and others of the business which may present a conflict. Further, the solicitor may only continue to act if it remains in their client's best interests to do so notwithstanding the conflict. These requirements mean that, in effect, certain safeguards will be needed at a systems level to make sure these regulatory and fiduciary duties are met by the solicitor. We propose to make this clear in guidance for those organisations and businesses we do not regulate which may seek to employ solicitors.

Guidance and toolkits

99. There was support for the removal of indicative behaviours, and agreement that the status of these was unclear. There was a strong consensus on the need to ensure that the Principles and standards were properly understood and how they could be met in practice.

100. The consultation highlighted possible areas for guidance and asked people for feedback. We subsequently ran a profession-wide survey from October 2016 to January 2017 asking people which areas in the new standards they needed help and clarification on. More than 1,000 individual solicitors and firms responded to our survey. Respondents noted that they did not need guidance in clear "black and white" scenarios. Instead, support is needed to help them comply in real and complex situations. Responses also highlighted areas where existing requirements are not well understood.

101. We are committed to supporting solicitors and firms in the transition to the new arrangements and will be producing a toolkit of resources. We will also be reviewing all existing guidance in advance of implementation to ensure that it is up an to date, accessible, relevant, and easily searchable resource. We do not intend to replicate whole sections of the Handbook in the guidance. It will be genuine guidance, not enforceable, and not a replication of the current rules.

102. Alongside our enforcement strategy, these tools will assist solicitors and firms in understanding the new standards and in reaching their own view on how they comply. We acknowledge this is a change in approach and are grateful to those respondents who have offered to work with us on the development of the supporting material over the coming months. We will continue to work closely with the profession, representative bodies and our virtual reference groups to help us further develop and deliver the resources needed.

103. Examples of some of the areas and themes for guidance identified by respondents are as follows:

- Guidance on the interplay between the Principles, with a particular focus on the meaning of independence.
- Definition of services delivered to the public/section of the public.
- Guidance on requirements we enforce but which are found outside of our code (for example, referral fees and money laundering) and case studies that show how various obligations work together.
- Whistle blowing and confidentiality.
- Guidance for non-SRA regulated firms on employing a solicitor.
- Conflict, the use of information safeguards, and the principles of informed and continuing consent.
- Effective client engagement and information requirements.

Consumer protection issues

Legal Ombudsman

104. The Law Society has suggested that clients in non-LSA regulated firms would not have access to the redress scheme operated by the LeO. However, this is not the case. LeO agrees with this view and, in its response to the consultation, supported the aims of our proposals. However, it also highlighted enforcement challenges that it might face in dealing with complaints against individual solicitors when it does not also have jurisdiction over the employing organisation. We are working with LeO to resolve these practical issues. LeO also referred to its longstanding ambition to extend its jurisdiction to unauthorised legal services providers as this would resolve some of the potential challenges.

105. We note that the CMA has made a recommendation in its final report that the Ministry of Justice (MoJ) should consider extending the remit of LeO to cover complaints about non LSA regulated businesses. We support this recommendation.

Requirements for Professional Indemnity Insurance (PII) cover and client access to the Compensation Fund

106. We proposed that solicitors' clients outside firms we regulate would not be able to make a claim to the Compensation Fund in any circumstances. We asked whether respondents agreed with this proposal. We also asked respondents whether they agreed with our proposal not to make PII cover for these solicitors a regulatory requirement.

107. Some respondents thought that all solicitors should contribute to the fund, and their clients should be able to access it, no matter where the solicitor worked. However, the majority of respondents agreed with our consultation position on the Compensation Fund. The Law Society took the view that the fund belongs to solicitors, and that it may be inappropriate for us to make any changes which could have an impact on fund viability without officially balloting its members.

108. Some respondents suggested that firms we do not regulate must either be required to set up their own compensation scheme, or that we should set up a separate fund for solicitors working outside firms we regulate and make them contribute to it. There was a clear view that the fund (and its reserves) had been built up through the contributions of solicitors in regulated entities and it would be inappropriate for it to be used to subsidise or support legal services providers who had not contributed to the scheme.

109. Respondents supported our proposal not to make PII a regulatory requirement on the individual. However, respondents felt strongly that the firms where solicitors worked should have PII cover given the importance they attached to this as a consumer protection. A small minority of respondents suggested that a compulsory PII requirement would undermine the benefits of increasing choice in the legal services market.

Our response

110. Having carefully considered the responses received we intend to proceed with both proposals in the consultation.

111. By way of clarification, the Compensation Fund comprises contributions from both solicitors and regulated firms. We hold the money on trust and operate the fund under public law principles for the statutory purposes established for compensation arrangements. Any decision to change the way in which the fund operates, including the eligibility requirements for making a claim, would need to be fair, reasonable and subject to open consultation.

112. To set up a compensation scheme for solicitors working in firms outside our regulation would be expensive to establish and maintain. We think there would be disproportionate costs associated with running this fund, particularly given the pattern that current claims are generally linked to either breaches of our Accounts Rules or misuse of client money[32]. Solicitors working outside firms we regulate will not be permitted to hold client money except in certain exceptional cases.

113. We know that our current PII requirements are a significant compliance cost on the firms we regulate. The average premium, according to Law Society research, is around 5 percent of gross fee income. For small firms and sole practitioners the percentage is even higher, at around 7 percent. We are planning to review our minimum terms and conditions in this area and to consult on these later this year. Our own research suggests that solicitors are currently subject to the most wide-ranging PII requirements of any legal professionals internationally, and costs and requirements exceed those of other comparable professions in England and Wales.

114. We think that asking solicitors in firms we do not regulate to be covered by mandatory PII could undermine our proposals by adding costs and reducing the availability of lower cost options for consumers. It would hamper flexibility and could reduce the movement of solicitors into and out of the wider legal services market.

115. We also spoke to a number of special bodies during the consultation, as we currently ask them to have a "reasonably equivalent" level of PII to that required by our Indemnity Insurance rules when providing legal services to the public through a solicitor. This arrangement appears to provide sufficient flexibility for special bodies in practice, and therefore we propose to maintain it.

Consumer information

116. We asked whether we should require firms we regulate to display detailed information about the protections available to consumers. There was general support for this proposal. Some respondents thought the onus should be on non-LSA regulated firms to set out the protections they did not have. Other respondents were reluctant to signpost protections as they thought it might encourage clients to complain about their services, and/or noted that this information is only relevant where something has gone

[32] We hold data on the reason for claims on the Compensation Fund. The main claim reasons over the period 2011-2105 have included, return of payment on account of cost, probate – balance due to estate, failure to pay Stamp Duty Land Tax/Land Registry fees, return of deposit (conveyancing) and failure to account for damages received.

wrong. There was a view that consumer information may get lost in the large amount of information provided at the start of a matter.

117. We think it is really important that consumers have enough information to make an informed decision at an early stage. There are some challenges in requiring solicitors in non-LSA regulated firms to provide information to their clients on the protections they do not have. In some firms the client will not be directly engaging with a solicitor, who may only become involved in a case part way through. Even where initial contact is with a solicitor, inclusion of this information in the client care letter or at the initial meeting is potentially too late to affect choice. Our preference is therefore to make sure that clients know the difference and have access to good quality, authoritative information. This will enable them to navigate the additional choices available to them and make effective decisions about which legal services provider can best meet their needs. Information should be provided in a way that allows people to make choices quickly and easily, while being able to choose the "best" option for them.

118. We have tested consumer attitudes to our changes through a series of focus groups and meetings with members of the public, small businesses, charities and advice agencies. In particular, we focused on how consumers felt about trading-off some protections in exchange for cheaper services. There was, generally, good high level feedback on all our proposals. Participants in the focus groups were clear that it would be important for consumers to have the information they needed to help them to make well-informed decisions.

119. We are developing our consumer information strategy, which will set out how we make sure that the good quality, authoritative information that consumers need is available and accessible at the points at which they need it. As well as enabling people to make well-informed choices this will also empower the public to drive competition on price and quality, which will bring benefits to all consumers.

120. We will achieve this through a combination of routes. We will provide information directly to the public and to charities that people might approach for help. We will also require solicitors to provide some information including being clear about the consumer protections attached to the services they provide. For instance, the individual code requires solicitors to ensure that clients understand whether and how services are regulated (standard 8.10). Solicitors must also ensure their clients understand the regulatory protections available to them (standard 8.11).

121. We have already identified a number of priority areas in which we need to make sure that people have access to information. These areas are based on hearing directly from members of the public and groups representing them. The priority areas are helping consumers to:

- understand when they have a legal problem
- understand how a solicitor is regulated as an individual and whether a solicitor works in a business regulated by us
- understand what to expect of a solicitor

- compare different solicitors and firms
- understand the different protections available if something goes wrong, depending on which solicitor or firm they choose.

122. The table below sets out our current thinking on the products we will develop to meet these consumer information needs. All products would be delivered in time to support the launch of the new Handbook. Development will be subject to consultation and consumer testing where appropriate.

Products	Will help consumers to...
We will ask solicitors to publish key information In our discussion paper, *Regulatory data and consumer choice*, we considered the types of information we could ask those we regulate to publish The CMA also made recommendations in this area. We will consider the responses to our discussion paper, alongside the CMA recommendations, and consult on our proposals in autumn 2017. Information we may ask those we regulate to publish includes: • that we regulate them • how to make a complaint, including to LeO • what protections are in place if things go wrong. We will also consider whether solicitors in non-LSA regulated firms should be required to inform their clients that they will not be eligible to claim on the compensation fund and whether or not the firm holds professional indemnity insurance.	• understand whether a solicitor is regulated • understand the different protections available, depending on which solicitor they choose.

We will develop a logo that regulated firms may display to help consumers: • **recognise when a firm is regulated by us** • **know when a client of a particular firm has access to our Compensation Fund.** We sought views on the creation of these logos in our *Regulatory data and consumer choice* discussion paper[33], and the suggestion received broad support although a number of respondents felt it should be on a voluntary basis. It tested well in consumer focus groups. We will work through options for the development of these logos and include proposals in a consultation planned for autumn 2017.	• understand whether a firm is regulated • understand whether a key protection (access to our minimum PII requirements and Compensation Fund) would be available if they chose a particular legal services provider.
We will publish a plain English and Welsh guide to help consumers understand their choices when they are actively looking to appoint a solicitor The guide will cover subjects in very basic terms, including: • solicitor regulation • questions to ask to help choose the right solicitor • what to do if things go wrong, including how to complain, and the protections that may be available • where to find information to compare solicitors and firms.	• understand whether a solicitor is regulated • understand the different protections available depending on which solicitor they choose • understand what to expect of a solicitor • understand how to compare different solicitors and firms.

[33] http://www.sra.org.uk/sra/consultations/discussion-papers/regulatory-data-consumer-choice-legal-services.page

We will review and update the content on Legal Choices (www.legalchoices.org.uk) The Legal Choices website is a partnership project managed by seven legal regulators. The focus is on factual, non-commercial information about lawyers and legal services. The website also uses social media to provide key messages to members of the public in an informal way. The CMA recommended that we develop Legal Choices further, helping consumers to make good decisions as they choose legal services ie will use Legal Choices as a tool to deliver some key messages to consumers. For example, we can discuss the different protections available, depending on which solicitor they choose. We will also work with the other legal regulators to invest in and develop Legal Choices as a tool to provide information to consumers to help them identify when they have a legal problem that a lawyer may be able to help with. This has been identified as one barrier to accessing legal services.	• understand when they have a legal problem • understand whether a solicitor is regulated • understand the different protections available, depending on which solicitor they choose • understand what to expect of a solicitor. • understand how to compare different solicitors and firms.

We will review and update content on the "consumers" section of our website Our website sets out key information to help consumers when they are using solicitors, including content on what to expect from a solicitor. We will review and update these pages in line with any changes delivered through our Looking to the future programme. We will promote this updated content to consumer organisations and frontline advice services.	• understand whether a solicitor is regulated • understand the different protections available, depending on which solicitor they choose • understand what to expect of a solicitor • understand how to compare different solicitors and firms.
We will develop a companion guide to our Handbook This will be a short, simple, plain English guide, so that consumers can easily understand what we require of their solicitor.	• understand what to expect of a solicitor
We will open up access to more of our regulatory data Our *Regulatory data and consumer choice* discussion paper considered the types of information we may provide through a public register to support consumer confidence and help consumers more effectively compare different legal services providers. Several CMA recommendations have influenced the information we may provide. We will consider the responses to our discussion paper, alongside the CMA recommendations, and consult on our proposals in autumn 2017.	• understand whether a solicitor is regulated • compare different solicitors and firms • choose a solicitor or firm that best meets their legal need.

Next steps

123. We will consult on our proposals for the rest of the Handbook, including our new authorisation and practice requirements, and enforcement strategy, in autumn 2017. We welcome early engagement with stakeholders to make sure all views are considered.

124. We sought views in the first *Looking to the Future* consultation on a number of areas, such as the Suitability Test, which will form part of the second phase of our review. We have summarised the responses received, in the Question by question analysis, but we will be addressing the issues raised, in detail, in our autumn consultation.

125. We will introduce all the changes to our regulatory arrangements at the same time. We acknowledge that this will be a significant change for individuals and firms and so we are committed to publishing a comprehensive guidance and toolkit resource alongside our new Handbook. We will also allow individuals and firms a reasonable period of time to familiarise themselves with the new arrangements before they are implemented.

126. At the moment, we do not anticipate that we will introduce the new arrangements any earlier than late 2018, but we will continue to keep stakeholders updated on the likely timescale for implementation.

Question by question analysis

Section 1: Introduction and overview

Section 1 of the consultation paper (Introduction and overview) set out our proposed regulatory approach, why there is a need for change, and the benefits that change would bring. It also detailed the potential impact these reforms may have. In this section of the consultation paper, we flagged up intention to review our existing Suitability Test.

Question 1: Have you encountered any particular issues in respect of the practical application of the Suitability Test (either on an individual basis, or in terms of business procedures or decisions)?

Very few respondents to this question reported having encountered any particular issues with the current test. However, a small proportion of respondents suggested some issues with the existing requirement, and suggestions for the way in which it could be improved, as follows:

- To avoid issues coming to light only once students reach the point of admission, and when they have already committed considerable time and financial resource.
- We could be more proactive in flagging the Suitability Test to students at an early stage. The test is not user-friendly for non-lawyers, who can easily misinterpret the questions.

- It takes a long time to complete the manual process, and applicants are left waiting for a decision.
- The test is too rigid and does not allow for discretion (eg, where offences are historical, and/or have already been considered by another regulator).
- We should ask for certain types of information only once, and not at different points, as is the current situation.
- We should consider "deeming" approval – where another regulator has already undertaken a similar or equivalent suitability test. We should also consider dropping the requirement for a "certificate of good standing", which is a duplication of effort.

Section 2: Principles and Codes of Conduct

We set out a proposed set of revised principles in the consultation, and asked for respondents' views. We noted that we had moved a number of the current Principles[34] to the revised in the draft Codes of Conduct, because we considered them to be practice-specific standards, rather than reflecting overarching values. The Principles that moved to standards in the Code of Conduct were those relating to:

- providing a proper standard of service to clients
- compliance with regulatory obligations and regulators and ombudsmen
- standards which relate to running a business, and effective supervision of work[35]
- protection of client money and assets.

As we noted in the consultation document, we do not regard the decision to reflect these requirements in the standards as a dilution of their importance. The standards in the Codes of Conduct and in the Principles have equal status and force, and are not interdependent.

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[34] The current Principles are as follows:

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each client
5. provide a proper standard of service to your clients
6. behave in a way that maintains the trust the public places in you and in the provision of legal services
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner
8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles
9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity, and
10. protect client money and assets.

[35] Reflecting the current requirements of Principle 8 above.

The proposed Principles in the consultation were as follows:

You must:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interests of each client.

Question 2: Do you agree with our proposed model for a revised set of Principles?

The majority of respondents disagreed with the proposed model, with many respondents endorsing the Law Society's response.[36] There was concern that some of the current Principles had been "lost"[37] or made to seem less important by their removal as principles, and being placed into the code as standards. These respondents raised concerns that this would result in weakened protection for consumers and lower professional standards.

A number of respondents agreed in principle with our proposed model. They commented that the reduced number of principles simplified the current rules, were less prescriptive, and would be easier for solicitors to understand and adhere to. Others commented that the proposed model effectively maintained the fundamental tenets of ethical behaviour and provided an adequate level of protection for consumers of legal services. However, a number of respondents who agreed in principle with the proposed model suggested that we should take the opportunity to provide further guidance on how some of the principles applied in practice.

Others disagreed with the changes on the basis that they could not understand the need to amend the current 2011 Principles, which, in their view, were well embedded and understood. Some suggested that further change to this area within such a short period of time would cause confusion within the profession, particularly to those who had recently qualified.

[36] This concern is likely to have been driven by the misunderstanding in the Law Society's response, which made reference to "lost" principles. The Law Society also provided some detailed comments on the drafting, which were picked up and endorsed by a number of respondents.

[37] As noted above, the proposal is that they move to the Codes of Conduct – and so are not 'lost', these are the standards that the SRA considered were more 'business specific'. We can, and will, enforce equally against both the Principles and the Codes.

Some respondents considered that there should be a standalone principle dealing specifically with confidentiality, as this was considered to be of the utmost importance to the profession and a defining characteristic of a solicitor's role.

A very small number of respondents commented specifically on proposed Principle 5 (act in a way that encourages equality, diversity and inclusion). Respondents either welcomed the inclusion, or questioned its place as a high level principle at all, on the basis that it was not specific to the profession.

A very small number of respondents neither agreed nor disagreed with the proposed model. In general, these respondents outlined that they broadly agreed with the approach, but raised concerns in relation to the removal or wording of specific principles.

Question 3. Do you consider that the new Principle 2 sets the right expectations around maintaining public trust and confidence?

Principle 2: ensure that your conduct upholds public confidence in the profession and those delivering legal services

Although a number of respondents agreed that the proposed Principle set the right expectations, the majority of respondents disagreed. Issues raised in relation to the drafting of Principle 2 included:

- It is too broad, and is arguably at the mercy of rapidly changing norms and opinion.
- It is ambiguous and the old principles made clearer what was required.
- The proposed principle does nothing to assist solicitors in meeting the stated aim.
- Further clarification is needed as to how this principle would operate in practice.
- Reference to "those delivering legal services" should be removed, as solicitors should only be responsible for ensuring that their conduct upholds public confidence in their profession and not the wider legal services market.

However, a significant proportion of respondents who disagreed did not do so because of any stated issue with the drafting of proposed Principle 2, but used this question to reiterate their responses to Question 2 around the proposed model for a revised set of principles.

Question 4. Are there any other principles that you think we should include, either from the current principles or which arise from the newly revised ones?

A number of respondents stated that they were happy with the proposed revised set of principles, and they could see no reason why further amendments should be made. One respondent commented that the principles we propose to remove are implicit in those retained. Others suggested that the simplified approach would make it easier to apply the principles across the different practice areas, and to both the public and private sector.

A significant number of respondents felt that some, or all, of the current principles should be reinstated. The majority supported the Law Society's view that current

Principle 5 (provide a proper standard of service to your clients) and 10 (protect client money and assets) should be retained, as these were considered as being of the utmost importance with regard to consumer protection and professional standards. A small number of respondents also wanted to see the retention of current Principle 7 (comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner) and 8 (run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles).

In addition, a significant number of respondents proposed the implementation of a new principle outlining the duty to keep the affairs of clients confidential, given its status as a core, defining, characteristic of the solicitors' profession.

Outside the widespread suggestion that there is a need for a separate principle on confidentiality, some respondents stated that it was notable that there was no principle referring explicitly to conduct with third parties. They suggested that this would be needed as solicitors move to provide services within alternative legal services providers.[38] It was suggested that its omission also created an impression of excessive client focus and a lack of commitment to the public interest.

A small number of respondents made suggestions on:

- drafting
- areas where guidance would be of assistance
- areas where further clarity may be helpful.

For example, the SDT raised concerns around the drafting of Principle 4, considering that the revised principle links honesty and integrity in a way that may be unhelpful to the regulated community and in a way that could potentially cause confusion among solicitors and their clients.

Question 5: Are there any specific areas or scenarios where you think that guidance and/or case studies will be of particular benefit in supporting compliance with the codes?

A number of respondents made detailed suggestions for guidance, relating to individual Standards within the codes, or asked us to define terms or terminology. The Law Society set out a list of areas where they consider that guidance would be needed alongside the proposed codes, and a number of respondents endorsed this list.

A significant number of respondents identified conflict and confidentiality as being the areas where further clarification, by way of guidance and case studies, would be most needed. The main areas and themes identified by respondents were as follows:

- conflict (in a range of different business models and practice settings)

[38] One respondent suggested an additional Principle that a solicitor:

'*must not take unfair advantage of third parties in either a professional or personal capacity*'

- duties of confidentiality and disclosure and the use of information barriers/Chinese walls
- more clarification on material breaches for compliance officers
- undertakings (particularly between solicitors in regulated and unregulated entities)
- costs information
- client care and duty to your client
- LPP
- referral arrangements
- specific guidance for in-house solicitors to assist them with interpreting the codes.

Some respondents value the indicative behaviours in the current Code of Conduct, and considered that they should be retained. Conversely, other respondents suggested that the indicative behaviours are of a "one-size-fits-all' approach and of limited use. A small number of respondents expressed concern that the guidance and toolkit would just move material from the current code into a lengthy set of guidance, which may complicate compliance with the codes. One respondent made reference to the potentially temporary nature of guidance. They suggested we might seek to enforce against guidance that had been on the website for only a short period of time.

More generally, respondents noted that they do not need guidance in the clear "black and white" scenarios – support is needed to help them comply in real and complex situations. A number of respondents stated that they currently found it difficult to endorse the proposed code fully without further detail on, or sight of, the wider support package.

Question 6: Have we achieved our aim of developing a short, focused code for all solicitors, wherever they work, which is clear and easy to understand?

As noted above, a number of respondents, while broadly supportive of the approach (and of the drafting of the proposed code), were not able to offer full endorsement of the code in the absence of detailed guidance and support and/or sight of the revised enforcement strategy, which would underpin the codes.

A number of respondents welcomed the simplified approach to drafting, and agreed that we have achieved our aim in developing a short, focused code for all solicitors. Among these responses, views included:

- "the proposed new code provides more freedom for solicitors, and flexibility in how to comply"
- "the code distinguishes the responsibilities of an individual solicitor"
- "the simpler, more focused code is to be welcomed and is easier to follow"
- "the code will put the onus on solicitors to take responsibility for their own actions and be aware of their obligations, rather than leaving it to the firm, or assuming all responsibility is with the firm"
- "the proposed code does achieve the aim of being clearer and easier to understand for the public and the profession, and will enable the SRA to more clearly articulate breaches and regulatory risks when seeking to enforce the Code"

- "placing in-house solicitors on an equal footing with other solicitors is to be welcomed".

Conversely, a significant number of respondents endorsed the Law Society's position in their responses. It said that separating the current Code of Conduct into separate codes for solicitors and firms would introduce the concept of a "two-tier" solicitor profession. Consultation respondents thought that this would introduce detrimental effects on consumer protections, the reputation of solicitors and the legal profession more widely.[39] In summary, the Law Society also considered that:

- our consultation position proposals would result in reduced client protection depending on where the solicitor is working, which is likely to be confusing and not in clients' best interests
- the Law Society should own the individual code, because it relates to the standards of the profession
- our proposals dilute the availability of LPP
- there is no clear path through the "grey" areas, holding the potential for more disputes with us, with the most serious, no doubt, triggering enforcement action.

Other views from those who responded to this question included the following:

- "brevity also requires clarity, more information is needed from the SRA to underpin the code"
- "removing the indicative behaviours from the code will lead to greater uncertainty surrounding interpretation"
- "the current code is not considered as too long, confusing or complicated and is well understood and embedded within the profession"
- "two codes are unnecessary as ethics are viewed in a broader sense and individuals are aware of the parameters"
- "although both codes focus on brevity and simplicity, they provide less certainty about what is and is not permitted, and the shortened code provides more grey areas"
- "concern that members currently complying could find themselves in breach of the proposed new codes"
- "the SRA has too much flexibility and scope to enforce, conversely, firms are not clear on the precise requirements, extensive guidance will be needed"
- "some respondents would prefer to have a more definitive, prescriptive approach"
- "guidance will also be needed on interpretation of the code, in particular outlining where unacceptable and acceptable behaviours start and end"
- "moving the detail from the code to supporting guidance achieves little and could lead to confusion".

[39] One response stated: "The SRA repeatedly states that its aim is to encourage competition, yet by having unclear guidelines it will stifle competition by ensuring that regulated firms have to spend more time and money dealing with and resolving compliance issues, something which our unregulated competitors do not have to be so concerned about."

Question 7: In your view is there anything in the code that does not need to be there? and question 8: Do you think that there is anything specific missing from the code that we should consider adding?

The responses to this question were limited. A small number of respondents provided some specific drafting suggestions for consideration.

A number of respondents specifically mentioned retaining the current Outcome 8.340 on cold calling. Some of these respondents had also raised their concerns regarding the removal of this outcome during the consultation period and as part of our wide programme of stakeholder engagement.

Question 9: What are your views on the two options set out for handling actual conflict or significant risk of conflict between two or more clients and how do you think they will work in practice?

We consulted on two options for handling actual conflict or significant risk of conflict. The first version broadly replicates the current outcome, and allows limited exceptions (with effective safeguards in place, informed consent obtained, and risk benefit analysis undertaken) to the prohibition against acting for clients in actual conflict or where there is a significant risk of such (for example where there is a common purpose or clients are competing for the same objective).

The second version takes an approach that recognises the current exceptions are really about preventing potential conflicts from becoming actual ones. This second version, therefore, works on the basis that you should never act if there is an actual conflict, and sets out the parameters for when you can act where there is a significant risk of conflict (ie with effective safeguards in place, informed consent obtained and ceasing to act if actual conflict arises). Of those that responded to this question, a large proportion supported the Law Society's response.

The Law Society stated:

> "Option 1 largely replicates the 2011 Code, in prohibiting a solicitor from acting where there is a conflict or significant risk of such a conflict, unless specified circumstances are met and protections are provided.
>
> "Option 2 would narrow the ability to act, given that it provides for a complete bar on acting where there is an actual conflict, and protections to be put in place if there is a significant risk of a conflict.
>
> "Option 2 may be unworkable because it is not always possible to identify that an actual conflict exists and a solicitor may unwittingly act in a conflict situation. Because the non-regulated colleagues of regulated solicitors would not be subject to conflict rules, there is a risk of confusion to consumers, a

[40] Outcome 8.3 states: 'you do not make unsolicited approaches in person or by telephone to members of the public in order to publicise your firm or in-house practice or another business'.

very favourable competitive advantage to unregulated entities and lack of a fundamental consumer protection for clients of unregulated entities."

Those who favoured option 1

More than two-thirds of the respondents who did not directly endorse the Law Society's response were in favour of option 1. The main reasons were the current arrangements work effectively, or that option 1 was clearer, more detailed and less uncertain than option 2.

Some suggested that option 1 was more consistent with the drive to remove barriers relating to the provision of legal services and to foster consumer choice. This was because it allowed solicitors to continue to assess and determine conflicts with their clients on a case by case basis. The current exceptions preserved by option 1 were said by respondents to be essential to the profession, relied upon regularly and were widely understood in practice, particularly by sophisticated clients.[41]

Many of the respondents favoured option 1 on the basis that they considered option 2 to be unworkable. Some believed that option 2 unduly restricted the solicitor's ability to act if a conflict arose. Some also suggested that option 2 would lead to an increased number of withdrawals from acting, which would, in turn, add delay and costs to clients, who would be unable to permit solicitors to continue acting when there was an actual conflict.

However, other respondents who favoured option 1 suggested that the changes outlined, such as removing the indicative behaviours, weakened the existing rules. In some instances, respondents did not specify a reason.

Those who favoured option 2

A minority of respondents favoured option 2, preferring this as a clearer, simplified and more practical approach, which better dealt with the reality of client conflict. Some respondents liked that it prohibited a solicitor from continuing to act where there is an actual conflict of interest, and suggested that option 1 could lead to uncertainty and unforeseen complications. However, a number of respondents who favoured option 2 suggested that clearer guidance would be required with case studies or scenarios outlining how the specifics of the rules should be applied in practice.

Those who considered both options unworkable

The majority of respondents considered that both options for conflict would be problematic and potentially unworkable for solicitors working in an alternative legal services provider, as the entity would not be governed by the rules around conflicts of interest, whereas the individual solicitor would.

[41] It is our understanding that "sophisticated clients" refers to those who instruct solicitors frequently, or those clients which have an in-house legal team. Some respondents suggested that a sophisticated client exception, requiring informed consent, would be a useful extension to the conflict rule, offering greater flexibility to clients and helping to alleviate some of the level playing field concerns. Some thought that, if a sophisticated client exception were to be introduced, it should not be available in a litigious/similar context but only where there is “indirect adversity”.

Many respondents could not understand the rationale behind why both sectors should not be subject to the same obligations in regard to conflicts, and raised concerns to this effect. They also suggested that imposing the requirement upon the regulated individual, and not the unregulated entity, may result in technically compliant (but unethical) practices, leading to a lowering of professional standards. Similarly, many respondents suggested that the distinction may also lead to confusion for consumers of legal services.

Other respondents raised concerns that any changes would introduce further uncertainty to an area which needed to be as clear and unequivocal as possible, and that significant guidance was required in order to understand its application in practice.[42] In addition, some respondents raised concerns about whether option 2 was compliant with the conflicts position at common law.

Others were unsure as to why any change was being made to the status quo, as the current rules were effective.

Those with no preference with regard to the options

A very small number of respondents indicated that they did not have a preference. Some of these respondents explained that they viewed both options as effective, practical and conceptually sound. However, others could not see the benefit of moving away from the current principles, which they considered to be fit for purpose.

Question 10: Have we achieved our aim of developing a short focused code for SRA regulated firms, which is clearer and easier to understand?

A small number of respondents agreed that we had achieved our aim of producing a clear, concise and intelligible code for firms. However, a number of these respondents qualified their responses by stating that this agreement was subject to further guidance being provided, to aid interpretation.

The majority of respondents considered that, although the code had been made shorter, it had done so at the expense of clarity, and that it lacked the key detail on which firms and individuals rely (including the indicative behaviours, which a number of respondents state are helpful in understanding how to run their practices).

Some respondents would welcome more certainty and prescription in the code specifically outlining the boundaries of prohibited and non-prohibited behaviour, rather than standards. As with the code for solicitors, there is a concern that the high level code provides us with too much discretion in how to enforce it, and that firms who are currently compliant with the current Code of Conduct may not remain so in the future.

A small number of respondents raised the overlap between aspects of the Code of Conduct for firms and that for solicitors as a potential issue, as it was not clear which code would take precedence in such instances.

Other respondents who neither agreed or disagreed also reiterated the need for guidance to support the codes[43], without which it was more difficult to endorse the

[42] Some also indicated that they would welcome guidance specific to particular areas of practice.

[43] One respondent suggested that user friendly videos could be used to provide guidance, This would be particularly useful for smaller firms.

proposed codes. In the main, responses that raised these concerns repeated the Law Society response to this question.

Question 11: In your view is there anything in the code that does not need to be there?

Some respondents believed that there was material in the proposed code that did not need to be included. Many of these responses referred to "vagueness", "duplication", the creation of a two-tier profession, or made specific drafting suggestions to respond to this point.

A higher number of respondents stated that the code did not need any material removing. However, most of these outlined that it in fact required more material included, whether by way of guidance or detail added to the code itself.

A large number of respondents took the opportunity to endorse the Law Society's view, or referred to previous answers they had provided. A very small number of respondents gave detailed comments on the drafting of specific standards in the code. In particular, special bodies asked us to work with them in developing guidance on the code.

Question 12: Do you think that there is anything specific in the code that we should consider adding?

A large number of respondents did not provide any views. Some respondents submitted that there was specific material missing from the code. Some of these made specific drafting suggestions, or stated that general guidance and detail was required. In general, responses to this question mirrored those in question 10, or referred to the Law Society's response on these questions.

Question 13: Do you have any specific issues on the drafting of the code for solicitors or code for firms or any particular clauses within them?

A small number of respondents submitted detailed drafting suggestions as part of their consultation responses. A small number of other respondents also submitted minor drafting suggestions, or endorsed the detailed submissions that had been made by the Law Society or the City of London Law Society.

Question 14: Do you agree with our intention to retain the Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) roles for recognised bodies and recognised sole practices? In responding to this question, please set out the ways in which the roles either assist or do not assist with compliance.

The majority of respondents to this question were in favour of retaining the roles, but raised a number of specific points around the usefulness, or otherwise, of the roles in different sizes and types of organisation. Views tended to differ, depending on where respondents were based. For example, a number of sole practitioners suggested that the roles were obsolete in their firms and added a layer of bureaucracy that is unnecessary, as they undertake the roles anyway. Those working in larger firms tended to share the view that compliance officer roles worked better for smaller firms than they did for larger or multinational firms, which have well-developed compliance and risk teams and functions.

On the whole, respondents were generally positive about the roles themselves, and felt that they did embed a compliance culture, provided a useful point of contact, and should be retained (though whether they should be retained in their current form or for all firms was questioned by some respondents).

In terms of larger and international firms, it was noted that the COLP rarely had day-to-day responsibility for actual compliance work, however this was not seen to be an issue. Some respondents thought that the main weakness of the compliance officer role was most likely to be in medium-sized firms – which is where the perceived risk of a "go to" single compliance resource (and the handing off of compliance responsibilities by other people in the firm) was thought likely to be highest.

A small number of respondents were concerned that solicitors working outside firms we regulate would not have the benefit of the compliance officer roles. A subset of these respondents suggested that we should make the compliance officer roles a condition of those businesses employing a solicitor, whereas others just noted their concern that the solicitor would not have recourse to a compliance officer role.

A very small number of respondents considered the roles should be revisited, suggesting that the COFA role may have more relevance in the future than it has done to date. A wide range of respondents also supported the Law Society's view that we should undertake thematic work/carry out a survey of COLPs and COFAs to explore in more depth how the roles have developed and how useful they are.

Question 15: How could we improve the way in which the COLP/COFA roles work or provide further support to compliance officers in practice?

Respondents made a number of suggestions regarding the provision of further support, including guidance (particularly on material breaches), training, continuing our annual conference and our attendance at significant COLP and COFA meetings and forums. However, other respondents noted that there is already a substantial compliance support industry that has developed since the introduction of the roles.

A number of respondents suggested, again, that we should undertake a survey of (or research into) the roles and how they are working in practice. There was some suggestion that the roles could be redefined, perhaps by having two tiers of compliance officer or compliance requirements. Alternatively, this could be done by allowing the COLP to be a non-lawyer in firms where this better suits the business structure.

A small number of respondents suggested it would be helpful to have a compliance helpline where COLPs and COFAs could receive anonymous, expert, comprehensive help and advice from us on compliance issues. Another subgroup of respondents considered that this service was already provided by the ethics helpline, which respondents reported as finding helpful and supportive.

Section 3: Our revised approach - where solicitors can practise

Question 16: What is your view of the opportunities and threats presented by the proposal to allow solicitors to deliver non-reserved legal services to the public through alternative legal services providers?

A number of respondents were in favour of the proposal, and thought that it would benefit solicitors and their clients. As noted in the responses to question 17 below, a number of respondents would be likely or very likely to take immediate advantage of any greater flexibility introduced, or to do so in the future. Some respondents strongly favoured the proposal, and saw the benefits of allowing the most qualified professionals to operate more flexibly, outside our restrictive current Practice Framework Rules (PFR). Respondents also noted that the PFRs were unnecessarily restrictive in the context of the provision of pro bono services, and welcomed a relaxation of the requirements in this area. Among those who supported our proposal, comments included:

- "the proposals are a positive move towards establishing a code of practice fit for the 21st century and the legal services market"
- "strongly agree with the SRA's proposals in terms of both policy and almost all of the detail"
- "approve the proposal – the public safeguard is the individual practitioner's status as a solicitor"
- "fully in support of the proposal, which will greatly benefit both solicitors and their clients"
- "this is an appropriate and logical proposal, provided the consumer is aware of all the risks, the consumer should be able to make an informed choice"
- "good for start-up businesses seeking affordable advice from qualified solicitors, who cannot afford law firm charge-out rates"
- "choice is good, provided adequate protection is in place"
- "the proposal is a proactive step to recognise the change in consumers' attitude to legal services"
- "unarguable fact that solicitors have been restricted from providing services that other unregulated individuals can provide, and both solicitors and clients have been disadvantaged by that"
- "allowing individual responsibility goes a long way in showing faith in the individual solicitor 'brand' and the training received to obtain that qualification"
- "we share the SRA's view – subject to appropriate protections being in place".

A recurrent theme among respondents who support the proposal is the need for appropriate protections to be in place for all consumers accessing a solicitor's services.

In our consultation paper, we suggested that neither PII requirements nor our Compensation Fund would attach themselves to individual solicitors in these circumstances. We also proposed that the individual solicitor could not hold client money, and consulted on the provision of detailed information on available consumer protections. Detailed stakeholder responses to those questions are summarised in section 4, below.

In terms of threats posed by our proposals, consumer protection emerged strongly as a general stakeholder concern. This was aligned to comments that unless consumer protections were broadly similar to those currently available within entity regulation,

that consumers would be confused and potentially disadvantaged. Respondents noted that consumers do not understand the concept of reserved legal activities. Consumers will think that they are accessing the same type of protections from all solicitors and assuming that they are aware of and understand the protections provided. They may not be aware that this is not the case until something goes wrong.

A number of respondents were also concerned that LPP would not apply. In-house solicitor respondents also thought that the lack of LPP for non-reserved legal advice was likely to make the giving of such advice an unattractive option for them in practice. Respondents urged us to give careful consideration to the LPP aspect of the proposals.

Respondents also raised the underlying tension between a solicitor's professional obligations and responsibilities under the Code of Conduct, and the commercial interests of the alternative legal services provider. This was mainly raised with reference to conflict, and covered in some detail in the summary of Question 9 within this paper, but was also seen to affect the wider work of the solicitor in the organisation. For example, in terms of being able to give undertakings, or for solicitors in regulated entities to receive undertakings from solicitors working outside entity regulation. While a solicitor retains many of their obligations, such as competence, conflict of interest or complaints handling, these are not obligations for the firm, and could result in undue pressure on the individual solicitor.

Some respondents also considered that the consultation position provided an unfair commercial advantage to alternative legal services providers, who would find it cheaper to employ solicitors. It was also suggested that smaller firms and sole practitioners would be disproportionately disadvantaged by the proposals due to them being in direct competition with new business structures. Smaller firms that we regulate are less likely to be in a position to adapt their business model to compete – these firms serve some of the most vulnerable in society – and there is a risk that these businesses could fail, reducing access to justice.

A number of respondents made the point that one of the greatest regulatory costs for regulated firms are the PII premiums. As well as this providing a significant cost advantage to non-SRA regulated firms, it was also noted by some respondents that it is a barrier to entry for innovative start-up business models. One respondent noted it would be more cost-effective to obtain cover from a "non-Law Society backed insurance, which at the minute is a cartel that only benefits big and wealthy law firms". Local authority in-house solicitors considered that the proposal to offer non-reserved advice may have a significant impact in increasing liability exposure, and that there was a risk the advice would need to be covered by the local authority's insurance.

Respondents, including LeO, queried how intervention into a solicitor's practice would be affected, particularly where the solicitor is working as part of a mixed team, or supervising the work of case workers in a non-LSA regulated firm.

A number of respondents supported the Law Society's response in expressing the view that the implementation of our proposals would likely lead to an increase in fees (or that we had not properly assessed the impact of our proposals on fees in our initial impact assessment). The basis for this view was twofold. First, respondents thought that many firms would choose to leave (or limit their exposure to) entity regulation, leading to increased costs for those firms that choose to remain fully

regulated. Second, respondents were concerned that contributions to the Compensation Fund would likely increase for regulated firms.

Question 17: How likely are you to take advantage in the greater flexibility about where solicitors can practise as an individual or as a business?

Of those respondents saying they were likely or very likely to take advantage of greater flexibility, reasons given included:

- A respondent who is already preparing to launch an alternative legal services business, which would provide only non-reserved legal services.
- A locum who is regularly approached by potential clients who would like them to perform ad hoc non-reserved legal work for them. The current regulatory framework has prevented them from accepting this kind of work without establishing themselves as a sole practitioner.
- An unregulated legal services provider is very likely to take advantage of this new freedom by hiring solicitors to provide legal advice to customers to supplement the law firms already partnered with to provide this advice.
- A solicitor with 25 years' experience, who would look to develop a business providing advice in technology, media and telecom matters, especially commercial contracts. This respondent went on to say there will be many others who will do the same. This new market will be to the benefit of everyone, particularly to buyers of legal services.
- "It would be beneficial for me to practise as an individual, but this would be on a fairly limited basis."
- "Very likely, we already employ people as solicitors, but have to restrict the work they do due to the current rules."
- "The group would be highly likely to take advantage of this flexibility as it coincides with both client and solicitor need that we observe in the market. It would allow our lawyers to offer a wider range of services, and it would allow a wider range of clients (small businesses in particular) to access those services. It would also allow us to expand the offering from our new online platform."

Of those who supported the proposal, a number of respondents stated that, while they had no immediate plans to work in this way, it would factor into their overall strategic planning, and they would be likely to consider working in this way in future (ranging from 20 percent likelihood to 100 percent likelihood).

A number of respondents also said that, while they did not currently support the proposal, were we to proceed, they would be likely to take advantage of the opportunity. However, a small number of those respondents also considered that our proposal would set off a "race to the bottom". Among other respondents, a number supported the Law Society's response to this question, and/or stated that they were very unlikely to want to take advantage of the greater flexibility. Although most did not elaborate further, some flagged up the advantage of being able to promote entity regulation and the additional consumer protections that brings.

The flexibility was generally seen as being unattractive by City firms, who noted that our proposals were of most interest to them in their capacity as purchasers (rather than providers) of legal services.

Question 18: What are your views about our proposal to maintain the position whereby a sole solicitor (or registered European lawyer (REL)) can only provide reserved legal services for the public (or a section of the public) as an entity authorised by the SRA (or another approved regulator).

We consulted on a position to maintain the current arrangements whereby a sole solicitor (or REL) can only provide reserved legal services as an entity authorised by us or another approved regulator. We noted that this may inhibit the development of solicitors as genuine freelance lawyers and solicitors working in chambers models when delivering reserved activities. We therefore sought views on the impact of this restriction and whether it was proportionate.

A large majority of respondents to this question were in favour of maintaining the current position. However, respondents also noted:

- "The compliance burden for sole practitioners/small firms is disproportionate (particularly PII requirements)."
- "There should be more scope to allow chamber-style practice and consultancy to unregulated firms."
- "The categories of reserved legal activities should be widened to provide more protection for the public."
- "A regulated sole solicitor should be able to provide services to any client without authorisation by the SRA."
- "Why should a solicitor not be able to contract directly and as an individual with a client (as almost any other legal services provider can). It specifically disadvantages solicitors in an area in which innovation is possible and of value to consumers, eg chambers-type structures, in which back office functions and costs are shared."
- "Very unfair, why single them out? They should be allowed to practise unregulated and alone."
- "Individuals unconnected to an entity should be able to provide pro bono. This can include solicitors on career breaks looking to maintain their skills and experience by volunteering between employment."
- "Whatever approach is adopted, it should be adopted consistently... we consider that the suggested approach is going too far in providing opportunities to those who are presently not regulated, if the rules continue to require organisation-level regulation for a sole practitioner".

Question 19: What is your view on whether our current "qualified to supervise" requirement is necessary to address an identified risk and/or is fit for that purpose?

Around a third of respondents that answered this question supported the removal of the current requirement. Respondents felt:

- it was overly prescriptive without providing any real assurance of competence
- other regulations provide similar assurances and protections
- it did not reflect the reality of modern practice.

Others questioned the disconnect between the qualified to supervise requirements and our new approach to continuing competence.

Two-thirds of respondents strongly opposed our consultation position. Respondents, including a number of local law societies, argued that removal would increase consumer detriment because inexperienced solicitors would be encouraged to become sole practitioners. It was felt that a period of supervised practice enables solicitors to embed their learning and increase their management and practical experience.

The Junior Lawyers Division and others argued that the removal was potentially unfair to the newly (36 months) qualified solicitors who benefit from support and supervision during that period. The SDT, supported by its own empirical evidence, considered that removing the "qualified to supervise" requirement would be dangerous in terms of client protection and public confidence in providers of legal services. It said we should retain the requirement until our new continuing professional development and competence statement were well embedded before reviewing our position.

Section 4 – Handbook Reform: what it means for consumer protection

In this section of the consultation we set out the regulatory protections under the proposed new arrangements and existing consumer protections. We noted that, rather than expecting consumers to understand regulation or its structure, they needed to have signals and signposting that helped them choose and use such as brands. This included:

- the solicitor brand
- the "regulated by the SRA" brand
- consumer-facing brands.

Information provided by their legal adviser and required in our proposed codes would help inform choices. Access to information and services, such as comparison sites and other intermediaries, will also play an increasingly vital role.

Question 20: Do you think we should require SRA regulated firms to display detailed information about the protections available to consumers?

Opinion was fairly evenly divided between:

- those who thought that regulated firms should display information (to differentiate themselves from unregulated firms with lesser protections)
- those who thought that the onus should be on unregulated firms to set out the protections that may not apply to them (acknowledging, however, that we do not have the regulatory reach to make such firms comply with that requirement).

A high number of respondents agreed with our proposal, but did not provide any further comments.

Some respondents were reluctant to provide regulatory information explicitly and up front, as they were concerned that flagging up the avenues of redress available to clients was bad for business/a poor marketing tool, and might encourage more clients to complain. Others pointed out that this information is only relevant to clients if something has gone wrong.

A number of respondents felt that the onus should be on us to provide regulatory protection information, perhaps by means of a leaflet that could be handed out to all clients by all solicitors, showing which protections they were able to access should the need arise, or via a link to our website. Respondents also queried our use of the word "detailed" and sought clarification on this point, and asked for guidance from the us on the level of information required. It was also noted that clients receive a large amount of information at the start of their matter, and consumer information may get lost as a result. Linked to this, some respondents also questioned our use of the term "display".

How we are working to help consumers choose and use legal services

In our consultation, we included a short section setting out how we are working to help consumers choose and use legal services. We noted that our market analysis work, impact assessments and research findings point increasingly to consumer information as a key area for development. We commissioned an initial Impact Assessment and an independent economist's report to support the launch of this consultation, and sought views from respondents on the analysis in that assessment, and any further information to support our initial impact assessment.

Question 21: Do you agree with the analysis in our initial Impact Assessment?

Question 22: Do you have any additional information to support our initial impact assessment?

The Law Society submitted a detailed response to, and critique of, our initial impact assessment, along with an alternative economic assessment. Outside this, few respondents replied to this question in any detail.

Client money

Our consultation paper proposed that individual solicitors working for an alternative legal services provider would not be permitted to hold client money separately in their own name. We had, therefore, included a provision in the code for solicitors that they do not personally hold client money.

We noted that some in-house solicitors and those in special bodies had indicated that they currently hold client money as individuals, and noted that we would be interested to hear more about the circumstances where this might happen to help understand the potential impact of our proposals in this area.

Question 23: Do you agree with our approach that solicitors working in an alternative legal services provider should not be allowed to hold client money in their own name?

Most respondents to this question agreed with our approach. Of those respondents who disagreed, most did so because they opposed our proposals in general. A significant number of respondents endorsed the Law Society's response to this question.

One respondent suggested, however, that the effect of this proposal would be to negate the ability of solicitors working in alternative legal services to provide

undertakings. This would affect their ability to carry out routine work, such as conveyancing, thereby undermining our proposals.

Another respondent agreed with the principle of the proposal, but considered it might be beneficial to re-consider its overall effect for freelance and/or sole solicitors working in areas where client money can be important (eg, commercial real estate). Other respondents noted that:

- "Solicitors operating in the not-for-profit sector are currently responsible for any money and assets, which have to be held in their own name."
- "We should consider a provision in relation to authorised firms that would mean they cannot refuse to hold money being paid on account to meet an award while a matter is going through appeal where the representatives of the other party are not able to hold the money themselves."
- "Consideration should also be given as to whether or not a non-regulated firm can set up a client account to hold money in the firm's name where it is overseen by a solicitor if that firm is also regulated for financial matters, such as by the Financial Conduct Authority. There could be strict rules over the circumstances in which such money can be held, allowing it to be overseen by a responsible person with appropriate safeguards while not holding it in their own name".

Question 24: What are your views on whether and when in-house solicitors or those working in special bodies should be permitted to hold client money personally?

Most respondents to this question did not consider that in-house solicitors or those working in special bodies should be permitted to hold client money personally. Among those whose views differed from this position, respondents commented:

- "SRA regulated solicitors in special bodies providing reserved legal activities to the public should continue to be permitted to hold client money personally, and if the SRA decides to allow in-house solicitors to advise members of the public they should be subject to the same requirements."
- "Accounts Rules should be equally applicable to in-house solicitors."
- "Those working in special bodies do hold money in their own names and have done so for decades. Similarly, those working in-house have been allowed to hold client money (eg, where they do debt collection work for their employers). There is no evidence that this has caused real problems."
- "Having a client account in the name of the senior solicitor in a special body is the best option, and provides the strongest consumer protection."
- "For special bodies delivering reserved legal activities, the strongest protections are needed. For in-house solicitors providing unreserved services, it would simplify the position if they were not permitted to hold client money."
- "Holding money in the name of SRA regulated solicitors who are subject to the SRA Accounts Rules provides protection via the requirements of those rules."
- "Special bodies hold client money and need to be able to continue to do so."

A small number of respondents thought that in-house solicitors should be able to hold client money personally, given that this is what many external bodies are used to (if they have dealt with traditional firms). They therefore thought it sensible and in the interests of opening up the market to alternative service delivery models.

The Compensation Fund – our proposals and position

As we set out in our consultation document, we had considered whether clients of solicitors working in alternative legal services providers should be able to make a claim to the Compensation Fund in certain limited circumstances, and in particular where there had been losses to the consumer as a result of dishonesty on the part of the solicitor. Following careful consideration, our consultation position was that clients of solicitors outside of SRA regulated firms would not be able to make a claim on the Compensation Fund in any circumstances.

Question 25: Do you agree with our proposal that the SRA Compensation Fund should not be available to clients of solicitors working in alternative legal services providers? If not, what are your reasons?

A significant proportion of respondents to this question agreed with our proposal. Of those who disagreed, a variety of responses were given, but the general themes were that all solicitors should contribute to the scheme, and all clients of solicitors should be able to benefit from the scheme. Similarly, a number of respondents picked up on the Law Society view that a smaller pool of solicitors and regulated entities paying into the Compensation Fund would result in an increase in contributions to the fund and an increase in the overall regulatory burden on firms we regulate.

Among other respondents, some suggested that unregulated entities should set up their own compensation scheme (or that we should set up a separate fund for solicitors working in alternative legal services providers, and require them to contribute to that). There was a clear view that the fund (and the reserves of the fund) had been built up through the contributions of solicitors in regulated entities, and that it should not, therefore, be used to subsidise or support alternative legal services providers who had not contributed to the scheme. A number of respondents linked the Compensation Fund and PII requirements – both in respect of the "two-tier" concern raised by the Law Society, but also in terms of consumer protection and consumer awareness of those protections.

Outside of these more general themes, respondents made a number of other observations, which included:

- "This is inextricably linked to the issue of PII... the benefit of being in the Compensation Fund is completely outweighed by the cost of purchasing Law Society-backed insurance."
- "If they do not have to pay PII or provide protection for clients, why should the money I pay for protection be used for their clients. Clients should be made aware of these risks."
- "Regulated entities should be able to be distinguished from unregulated entities."
- "If there is no holding of client money, then yes, we agree the risk to the consumer would be low."

- "There should be no need for customers of unregulated businesses to access the fund, as they are already protected under existing law and have easy redress through the online courts."
- "Yes, if they don't hold client monies they should not need to pay into this – claims normally come from identifying breaches/misuse."
- "I think this is more complex than it first appears."
- "We agree, the protection is something which forms part of the brand, and it ought to be limited".

Professional indemnity insurance

We consulted on leaving it to the individual solicitor to evaluate the risk in terms of whether work they chose to undertake within an alternative legal services provider would be covered by appropriate PII. We took the position that it would not be practicable to expect the solicitor to be able to separate their own practice from the rest of the firm's business, and then decide the level of insurance that is appropriate.

Question 26: Do you agree with our proposal not to make individual PII cover for solicitors a regulatory requirement on the individual solicitor?

Question 27: Do you think there are any difficulties with the approach we propose, and, if so, what are these difficulties?

Although respondents supported our proposal not to make individual PII cover a regulatory requirement on the individual, respondents felt strongly that the PII cover should be a requirement on the firms in which they worked, and that solicitors should not be able to operate from unregulated bodies without such cover, as it is such a fundamental consumer protection. However, a small minority of respondents suggested that a PII requirement may make our proposals unworkable, as it would become more unattractive for solicitors to move (certainly their businesses) into the alternative legal services market. There was a strong view that some form of PII should be in place as a key consumer protection – but less detail provided on the mechanism to do so.

PII in special bodies

We consulted on a proposal to maintain insurance requirements on solicitors in special bodies when they provided reserved legal services to the public or a section of the public. We sought views as to what insurance requirements we should impose and the meaning of the "reasonably equivalent" provision in practice.

We noted that we were interested in discussing PII with special bodies (and other interested stakeholders) as part of the consultation process – in particular the issue of alternatives to "'reasonably equivalent" levels of insurance.

Question 28: Do you think that we should retain a requirement for special bodies to have PII when providing reserved legal activities to the public or a section of the public?

A large majority of the respondents who answered this question agreed that we should retain a requirement for special bodies to have PII when providing reserved

legal services to the public, to ensure a level playing field, and equal consumer protections. A number of respondents noted that clients of special bodies were likely to include some of the most vulnerable of legal services consumers.)

One respondent noted that they currently have to apply for a number of waivers on behalf of the pro bono clinics in their network to allow for "reasonably equivalent" rather than "qualifying insurance", and suggested the new arrangements should make "reasonably equivalent" the default option in the context of pro bono services.

Another respondent suggested that PII should be proportionate to the level of activity taken and likely risk, when reserved activities only form a small part of a special body's work and the risk of a claim is low. The same respondent noted they were in favour of a minimalist regulatory approach for charities and not-for-profit organisations (and the solicitors employed by them) that is proportionate to their risk profile and recognises the valuable legal services they provide to members of the public. Another special body supported the retention of the requirement and noted that they have had no difficulty in obtaining PII cover.

Question 29: Do you have any views on what PII requirements should apply to special bodies?

Respondents to this question considered that special bodies should be subject to the same PII requirements as entities we regulate, and some respondents reflected the Law Society's response to this question. It suggested that minimum terms and conditions should apply to special bodies. Other comments from respondents included the following:

- "Clients of special bodies need the protection that PII brings in any case. However, it should be possible to allow less expensive PII cover when only low risk work is undertaken."
- "We consider that there should not be a one-model-for-all situations, minimum terms and conditions recommended by the SRA. We are in discussion with the SRA on PII issues."
- "Many firms struggle with telephone number-sized PII insurance premiums, and I think the requirement for insurance should be modified to pay a per transaction insurance fee, if they want to, rather than leaving the entire burden of providing cover (including run-off cover) to the solicitor."
- "To the extent that special bodies provide legal services to the public, those clients should be entitled to PII protection in the same way as clients of traditional law firms."
- "It makes no economic sense for special bodies to pay for more cover than they may foreseeably need."
- "Indemnity insurance requirements should allow for a block insurance approach, which will enable special bodies to maintain effective client protection at an affordable rate".

Entity regulation – the threshold approach

In the consultation paper, we set out our thinking about a threshold approach to entity regulation. For a number of reasons, we did not consider that it was desirable to impose a threshold on the number of solicitors involved in the management or control of a business before it required entity regulation. We considered that the imposition

of entity regulation threshold would disadvantage such firms compared with other alternative legal services providers who employ solicitors.

Question 30: Do you agree with our view that it is not desirable to impose thresholds on non-SRA regulated firms, which are mainly or wholly owned by SRA authorised solicitors?

A number of respondents disagreed with our proposal, but, in the main, those were the respondents who are opposed to the proposal to allow solicitors to work outside firms we regulate in any circumstances, and/or believed that we should regulate all legal services firms. For the same reason, some respondents declined to answer this question.

Other respondents considered that, should the changes proceed, a low threshold should be applied. Other respondents considered that we should seek to retain enforcement powers over such entities. Comments from those who consider that thresholds should be imposed included:

- "A trigger (eg, if 50 percent are solicitors) in a non-SRA regulated firm seems more sensible to me."
- "No, all firms should be SRA regulated."
- "Threshold should be imposed to provide equality of arms and protection for the public."
- "By failing to apply a threshold, the proliferation of unregulated entities is being encouraged."
- "This is a contradiction in terms. It cannot be right that SRA authorised solicitors are allowed to run non-SRA regulated firms."
- "There has to be a threshold placed at some level... suggest maybe this is to do with the size or the turnover, rather than the number of solicitors."

However, a significant number of respondents agreed with our view, with respondents noting that thresholds would be arbitrary in nature, easily circumvented in practice, and likely to put this type of firm at a commercial disadvantage. Comments from those who agreed with our view included:

- "A threshold is open to abuse and manipulation by keeping the number of regulated individuals just below the limit."
- "It would be unfair to place them at a disadvantage to their competitors.
- Yes, it would be difficult to decide what threshold means a firm should be regulated. It may also prevent solicitors from working together.
- Yes, there are already rules on whether a firm must or must not be regulated for the work it does, or intends to do, as part of its business. That should trigger the need for regulation.
- Threshold requirements would be too easily avoided.
- Solicitors should be free to set up unregulated businesses in any way they choose, even if this does include a lot of solicitors.
- We agree with the SRA's view that it is not desirable. It is inconsistent with the legislative requirements and would be inconsistent with the approach otherwise being adopted in terms of opening up the market.
- Yes, consistency is essential. Regulate the entity if the activity is reserved, not otherwise.

- Any threshold would be arbitrary, create a market distortion, prevent the liberalisation you are looking to deliver… and… operate to the detriment of solicitors without delivering any perceivable or clear benefit to clients.

In relation to the last bullet point above, a small number of respondents took the opposite view, stating that if we did not regulate these types of businesses, this would cause consumer confusion, as they would not be able to differentiate them from a solicitors' firm, where solicitors were in the majority.

Question 31: Do you have any alternative proposals to regulating entities of this type?

This question did not generate any views from respondents – the one (on size and turnover) was provided in response to question 30. A large number of respondents to both questions referenced and endorsed The Law Society's response – which, in brief, was opposed to threshold approach, but from the perspective that it would not do anything to mitigate the harms they said would be caused by our proposals.

Intervention into solicitors working in unregulated firms

In our consultation paper we noted that although we have no power to intervene into a firm that we do not regulate, we can intervene into the individual solicitor's practice within that unregulated entity if the grounds for doing so are made out. We acknowledged that this might be complex in practice, in terms of defining the scope of the solicitor's practice within the firm, and accessing relevant client money. We stated that we could rely on other statutory powers to provide information and documents, taking the view that these powers could be useful in the context of making sure an unregulated assisted us with any investigation.

Question 32: Do you have any views on our proposed position for intervention in relation to alternative legal services providers, and the individual solicitors working within them?

Responses to this question were mixed. A number of respondents thought that it would be problematic to intervene, and questioned how effectively we would be able to do so in practice, and requested further detail or suggested this needs further thinking through. This view was reflected in LeO's response, which raised a number of areas for further discussion with us and the MoJ.

SRA regulated activity within a recognised body or a recognised sole practice (RSP)

As part of the separate business rule consultation in 2014, we asked respondents whether we should explore the possibility of achieving similar arrangements for recognised bodies – with the option of some activities being excluded from our regulation. Responses were mixed, with some considering that this would be a sensible liberalisation of the market, with others such as the Law Society wishing to maintain the principle that we should regulate all work within a solicitors' firm.

We returned to this issue in our recent consultation. Our consultation position was to maintain the current position, in which we regulate all activity within a recognised

body or recognised sole practice (RSP). Our reasons for maintaining this position were that:

- A key driver for the development of the multi-disciplinary practice policy had been the duplication and conflict between the provisions of different regulators of the entity. However, a solicitors' firm will not generally be regulated as an entity other than by us.

- Creating boundaries between activities we regulate and those we do not within a recognised body or RSP could lead to unnecessary complication.

- Our recent reforms to the separate business rule mean that recognised bodies and RSPs now have the flexibility to create structures to deliver joint services with other professions, should they wish to do so.

Question 33: Do you agree with our proposal that all work within a recognised body or a RSP should remain regulated by the SRA?

Respondents to this question overwhelmingly agreed that all work within a recognised body or a recognised sole practice should remain regulated by us.

Stakeholder engagement

Over the past two years, we have engaged with a wide range of stakeholders to develop and refine our policy proposals. This work has included meetings (and workshops) with the profession, representative groups, the public, charities and consumer bodies[1], setting up a VRG , and delivering a significant programme of digital and online activity. In addition:

- more than 14,000 people engaged with the Looking to the future content on our website

- we have engaged with more than 4,000 people through meetings, workshops and events

- we have engaged with more than 2,000 people through webinars, Twitter polls and Periscope sessions.

Our formal consultation, *Looking to the future: Flexibility and Public Protection*, took place between 1 June and 21 September 2016. We received more than 300 responses. We have published all those responses where the individual or organisation gave their consent for us to do so.

The table below provides an analysis of the respondents based on the information they provided.

[1] Including Citizens Advice, Action on Hearing Loss, Alzheimer's Society, Shama Women's Centre, Victim First, the Restorative Justice Initiative, Race Equality Centre, Leicester Lesbian, Gay and Transsexual Centre, Mencap, Mind, Age UK, the Women's Equality Network, the Gypsy and Travellers Unit, Law Centres and branches of the Personal Support Unit.

Respondent Type	Amount	%
Academic	4	1%
Law Firm	83	26%
Law Society	35	11%
Member of the Public	0	0%
Other Capacity	24	7%
Other Legal Professional	12	4%
Representative Group	30	9%
Solicitor (Employed)	56	17%
Solicitor (Private Practice)	70	22%
Solicitor (Trainee)	2	1%
Student	0	0%
Not disclosed	6	2%
TOTAL	**322**	**100%**

Out of the responses received, more than 60 were in a variety of formats which did not follow the structure of our consultation responses. These took the form of correspondence, face-to-face meetings and emails. We have analysed these responses and they are included and reflected in our analysis. However as we do not have permission to publish these, they are not part of the formal responses.

In addition, we received additional consultation feedback through other routes (such as articles, blogs and emails during the consultation period). All of these responses have helped to shape our final proposals, and all responses are reflected in the analysis that underpins this responses document.