



Centre for
**Strategy & Evaluation
Services**

Standards and Regulations – one-year evaluation of SRA reforms

Final Report

A Report to the Solicitors Regulation Authority

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Centre for Strategy & Evaluation Services LLP
Westering House
17 Coombe Road
Otford, Kent TN14 5RJ
United Kingdom
E: enquiries@cses.co.uk
T: +44 (0) 1959 525122

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Executive summary

The reforms

In November 2019, the Solicitors Regulation Authority (SRA) introduced the Standards and Regulations (STAR) reforms. The reforms were intended to eliminate outdated prescriptive rules and unnecessary bureaucracy, place greater trust in solicitors' professional judgment, provide solicitors with more flexibility about how they work and provide consumers with more choice about how and where to access legal services. They were developed over a four-year period, and informed by four major public consultations.

The reforms include:

- updated Principles, new and separate Codes of Conduct for individual solicitors and for firms
- allowing solicitors to provide legal services to the public on a freelance basis or in an entity not regulated by the SRA (subject to certain conditions and restrictions)
- reforms to the SRA Handbook (for example, around authorisation of individuals and firms)
- reforms of Accounts Rules
- a revision to the SRA's Enforcement Strategy, which was introduced in February 2019 and anticipated the other reforms by increasing the focus on the most serious issues.

The evaluation

On behalf of the SRA, the Centre for Strategy and Evaluation Services (CSES) has undertaken a one-year evaluation of the Standards and Regulations reforms. The evaluation has considered impacts on law firms, individual solicitors, consumers of legal services, and the wider legal services market. It has attempted to identify (where possible, recognising this is an early "direction of travel" evaluation) any emerging unforeseen risks or unintended consequences, which may prompt adaptations to particular reforms or require immediate regulatory attention. The study has examined the impact of the reforms against what was expected and aims to ensure that lessons learned are fed back into the decision-making process. Where possible, the research has attempted to take the impact of the COVID-19 pandemic into account in the data analysis. It is too early to identify the full impacts of the reforms. However, the SRA is planning further evaluations after three years and five years.

The evaluation was conducted between February 2021 and October 2021. It featured a review of literature and media articles, analysis of SRA data, consultations of industry stakeholders (e.g. bodies representing solicitors or consumers), an online survey of solicitors (receiving over 1,250 full responses), consultations of practising solicitors (including freelance solicitors) and consultations of consumers.

Overall effects of the reforms

Overall, the evidence at this one-year stage suggests that the Standards and Regulations reforms have the potential to bring about the intended effects in terms of facilitating a focus on high standards and giving solicitors the freedom to run their businesses as best suits them and their clients. Of the solicitors that are familiar with the reforms, the proportion that is positive about their effects (compared with the previous SRA Handbook) is much greater than the proportion that is negative. Individual solicitors and law firms have been given the flexibility to operate in ways that better suit them and their clients. There is little, if any, evidence of increased harm to consumers or of significant unintended consequences arising from the reforms.

The majority of practising solicitors responding to the survey are familiar with the STAR reforms to a great or reasonable extent (74%). Of those, a majority understand the changes very well or reasonably well (76%). However, a sizeable minority of practising solicitors reported not being reasonably familiar with the reforms (26%). Solicitors working outside regulated law firms (e.g. in-house solicitors) were less likely to be familiar with the reforms and less likely to understand the reforms than solicitors in law firms.

The majority of practising solicitors (54%) report that the reforms have provided them with more flexibility about how they work (compared with the previous SRA Handbook), whilst only a small minority (11%) report less flexibility. Similarly, more practising solicitors (37%) reported that the reforms offered more flexibility to respond to the challenges of Covid (compared with the previous SRA Handbook) than reported less flexibility (6%).

Principles and Codes of Conduct

These reforms involved shortening and simplifying the rules and standards that apply to solicitors as individuals, and regulations that apply to regulated providers. The SRA Code of Conduct (2011) was replaced with a separate Code of Conduct for Firms and a separate Code of Conduct for Solicitors, Registered European Lawyers (REs) and Registered Foreign Lawyers (RFLs). At the same time, a revised set of Principles was introduced.

Given that all solicitors are required to comply with the Codes and Principles, the intention would naturally be that the majority are familiar with them and understand them. Encouragingly, there is high awareness that the Standards and Regulations have replaced the SRA Handbook, with 92% of practising solicitors responding to the survey reporting that they were aware. Awareness was highest amongst solicitors with least years of post-qualification experience and amongst solicitors working within firms regulated under the Legal Services Act (LSA), whilst it was lowest amongst in-house solicitors. The new Codes of Conduct and the updated Principles are seen as clearer than the previous Code by the majority of solicitors. The introduction of separate Codes for individuals and firms is clear, justified and welcomed by solicitors and law firms.

The SRA's intention was for the process of adjustment to be easy and to provide solicitors and law firms with more freedom in how they operate without unduly increasing risks to consumers or to the profession. The new Codes and updated Principles have not required the majority of firms to significantly adjust their ways of working or incur significant administrative burdens. The majority of solicitors reported that the new Codes and updated Principles allowed them to use their judgment in how to comply, that it has been easy to adjust and that the tools and guidance were helpful. However, a significant minority report increased difficulty in applying the Codes and Principles (29%), limited clarity (31%) or increased time and cost of compliance (27%). Qualitative evidence suggests that some solicitors perceive a continued risk of different interpretations (having to "second guess" the SRA's interpretation) and a possible risk to standards (e.g. unscrupulous solicitors abusing flexibility), although there is no evidence to suggest that this risk has increased because of the reforms.

Revision of rules on authorisations

The SRA revised certain rules related to the authorisation of firms and individuals.

First, SRA-regulated organisations are now permitted to have a practising address in Northern Ireland or Scotland in order to ensure that rules do not unnecessarily restrict the development of online or cross-border services. So far, 62 SRA-regulated firms with addresses in Northern Ireland or Scotland have taken advantage of this possibility.

Second, the SRA has removed the restriction that only individuals could be managers of regulated organisations and instead now allows firms to be managers. This requirement went beyond the

provisions of the LSA and thus risked unnecessarily restricting how law firms operate. The rule has so far affected only a small proportion of law firms, but its effects are viewed positively by solicitors who are familiar with it.

Third, the SRA no longer requires regulated organisations to have within their management structure someone who is “qualified to supervise” (i.e. someone entitled to practise for at least three years and who undertook training specified by the SRA). According to the SRA, this rule was widely misunderstood as a requirement that solicitors must themselves be supervised for at least three years post-admission, or that solicitors must have three years' experience before they can set up as a sole practitioner.¹ Nonetheless, the SRA's consultation prior to the reforms identified that solicitors considered that three-year rule to be a basic safeguard to protect clients from inexperienced and newly qualified solicitors practising on their own.² Firms are now required to have at least one manager or employee with at least three years' practising experience but there is no requirement to undertake training. Only 11% of solicitors have had reason to refer to this rule, but the vast majority of them reported either a positive effect or no difference, whilst very few reported any negative effects.

Fourth, the SRA has revised the assessment of character and suitability that is performed on individuals applying for admission or restoration to the roll of solicitors or registration as an REL or RFL. This assessment, which was seen as rigid and binary has been replaced by a more flexible approach based on a set of indicative events and behaviours, aggravating and mitigating factors which apply equally to all, taking account of an individual's circumstances and the nature of their role. Individuals can also apply for an early assessment of their character and suitability if they have any concerns that their past will not enable them to enter the profession. Whilst only 13% of practising solicitors had referred to the rule, the vast majority of those (76%) reported that it was clear and that the effect had been either positive or at least made no difference.

Fifth, the SRA has revised the rules on suitability of individuals to be managers and owners of regulated organisations in order to maintain the right balance between removing unnecessary burdens on firms and limiting risks to the profession. The new rule is clear to most solicitors who are familiar with it. However, the evidence suggests that the reform has affected very few firms to date.

Revised Enforcement Strategy

In February 2019, the SRA's Enforcement Strategy was adapted to provide greater clarity for the public and the profession about when and how it would or would not take action against a solicitor or law firm. The revised Strategy complements the new Codes and updated Principles by moving away from an approach based on prescriptive rules. It includes guidance on the expected behaviours that underpin the SRA standards, clarity about how, and when, the SRA will and will not enforce, and clarity about events that need to be reported to the SRA.

There is low awareness of the new Enforcement Strategy with only 25% of Compliance Officers for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) reporting that they had familiarised themselves with it. The most common reasons for solicitors familiarising themselves with the Enforcement Strategy were to understand updated obligations and reduce the risk of non-compliance. However, most of those that had familiarised themselves were broadly positive about the clarity and content of the Strategy in terms of its focus on the most important issues relating to high professional standards.

Some solicitors perceive that a number of risks remain, despite the introduction of the Enforcement Strategy, namely, a risk of the SRA and solicitors arriving at different interpretation of the Codes and

¹ SRA (2017), Looking to the future: phase two of our Handbook reforms, p.11.

² SRA (2018), Looking to the Future: phase two of our Handbook reforms, Our post consultation position

Principles; a risk of an inflexible approach to enforcement; and a risk of investigations taking an unduly long time to be completed. Some solicitors also reported that they did not agree with enforcement actions being taken in relation to behaviours that do not impinge on professional conduct.

Practising flexibly reform: freelance solicitors

Individual freelance solicitors are now allowed to provide legal services to the public without being authorised as an entity. In order to provide services, they must satisfy certain conditions, such as having at least three years' practising experience since admission or registration, having adequate and appropriate professional indemnity insurance (PII), and only holding client money when it is for payments on account of costs and disbursements not yet billed. Freelance solicitors are not allowed to provide immigration, claims management or regulated financial services, unless regulated by another suitable regulator.

Some 300 solicitors have begun operating on a freelance basis, and the survey suggests that more are planning to or might consider doing so, which offers the potential to increase competition. Freelance solicitors are diverse in terms of the services offered, the clients served and their previous experience (with one-third not previously working in regulated organisations serving the public). They are also more likely to be Black/Black British and equally likely to be Asian/Asian British compared with the overall population of solicitors and the overall population of England and Wales.

The option of working on a freelance basis is proving beneficial to those who take it up. The primary motivation of freelancers typically relates to how they operate (i.e. having a better work-life balance, practising more flexibly, having more independence and reducing operating costs). Freelancers report that this ambition is being realised in practice. Fewer than half are particularly motivated by opportunities to change service provision, but those that are report having done so. Freelancers perceive that the main benefits for clients are easier access to a solicitor, lower fees and greater protections (compared with using a non-solicitor). There have been very few misconduct reports concerning freelance solicitors.

The majority of freelance solicitors are satisfied with the regulatory requirements related to their freelance status. They are mostly satisfied with the rules and the tools and guidance provided by the SRA. However, the restrictions on claims management services or immigration services provide difficulties for the small minority of freelancers who wish to provide such services.

All freelance solicitors are required to have professional indemnity insurance (PII) that is adequate and appropriate in light of the services that they provide. Some freelance solicitors intend only to offer low risk services and therefore consider that they do not require PII. However, others report that they face a difficult choice between incurring PII costs that are high relative to their turnover (albeit lower than for Registered Sole Practitioners) or having to limit the nature of the services they provide to those that carry less risk. The high cost of PII may reflect the fact that this segment of the market is still quite small but raises challenges for insurance providers who may lack precedents on which to assess the risks posed by freelancers.

Practising flexibly reform: solicitors working in non-regulated organisations

Another reform aimed to provide greater flexibility for solicitors and firms by allowing solicitors to provide non-reserved services to the public whilst practising in an organisation not regulated under the LSA. Previously, solicitors working in such organisations could not provide any services to the public, except in specific circumstances. The reform was introduced in part to address concerns that the previous regulations may have been adversely impacting on competition and consumers, by restricting choice and not allowing consumers to access the services of a solicitor outside a regulated organisation. The regulations also unnecessarily limited the opportunities for solicitors to work in

different types of organisations. By removing these requirements, the SRA's aim was to allow solicitors greater flexibility to deliver non-reserved activities through a range of different business structures and services providers and in ways which are most responsive to their customers. Solicitors providing services in this way must inform their customers of the organisation's non-LSA-regulated status and of protections available to them, most notably that the client has access to the Legal Ombudsman but not the SRA Compensation Fund.

There is evidence of some solicitors taking up the option to practise in non-regulated organisations to serve the public. Comprehensive data is not yet available on the number of solicitors providing services in this way. However, the survey suggests an indicative figure of 17% of practising solicitors working in non-LSA-regulated organisations that are now providing legal services to the public. These include solicitors that have been newly recruited to provide services in this way, as well as in-house solicitors that can now provide services externally and also solicitors that were already working in another business area prior to the reform (such as human resource consultancies or charitable entities) but did not maintain a practising certificate. Solicitors providing services in this way serve a wide variety of clients and are employed in a diversity of sectors (including public, private, NGO) by organisations of diverse sizes.

There is evidence that a small proportion of SRA-regulated firms are moving some or part of their business outside of SRA regulation, as the survey identified ten instances of SRA-regulated firms setting up separate non-regulated organisations to provide services to the public. The main motivations for such firms were to reach new clients, lower the regulatory burden, offer lower fees and to increase turnover. These non-regulated firms were mostly serving business consumers rather than individual consumers.

As yet, there is no evidence of increased harm to consumers of services provided by freelance solicitors or solicitors in non-regulated organisations compared with solicitors in law firms. There is no evidence of any significant and sustained increase in complaints against solicitors in non-regulated organisations since the reform and the number of complaints against freelance solicitors is very low and does not raise any immediate concerns. It remains to be seen whether a significant increase in take-up of these practising options will lead to a significant change in misconduct reports. But there is a need to ensure that consumers using solicitors in non-regulated organisations are aware of the protections (un)available to them.

Accounts Rules

The SRA has shortened and simplified the Accounts Rules in order to ensure a better focus on keeping client money safe and separate, while removing unnecessary prescription about how firms manage their finances. The previous Accounts Rules were considered to be unnecessarily detailed and prescriptive and led to a focus on minor technical breaches rather than on client protection. The reforms included: simplification of the Rules; revised definition of client money and client liability; confirming the use of third-party managed accounts (TPMAs); updated rules on accountants' reports and when they are due; updated rules about how firms manage clients' own bank accounts (where the firm is a signatory) or joint accounts.

The revised Accounts Rules are generally well understood and have provided new opportunities but have had limited impact to date. Of the solicitors that are familiar with the new rules, the majority find them clear. The vast majority of COLP/COFA also report that they find each of the individual new rules clear. Whilst the number of law firms operating a client account has fallen since the 2019 reform, this number had already fallen in the years prior to the reform and the survey suggests that very few firms have stopped operating a client account specifically in response to the reforms. The number of complaints related to client money and accounts were falling before the 2019 reforms but have fallen at a faster rate since the reforms (although the impact of COVID-19 on the number of complaints is

not known). There has been limited take-up of the option to use TPMAs. However, such accounts, where used, can result in a lower administrative burden, time savings and better risk mitigation and management.

Recommendations

Regarding the Codes of Conduct, updated Principles and Enforcement Strategy:

1. The SRA could take further steps to promote awareness and understanding of the revised Enforcement Strategy.

Regarding the authorisation reforms:

2. The SRA could consider enhancing communication about new opportunities resulting from the authorisation reforms, most notably in respect of the opportunity for firms with a registered address in Northern Ireland or Scotland and new possibilities around management of SRA-regulated law firms by other firms.
3. The SRA could review the appropriateness of some of the details of the authorisation reforms, if only to ensure continued appropriateness.

Regarding the reform allowing the provision of legal services to the public by solicitors operating in non-SRA-regulated organisations:

4. The SRA could more systematically gather and monitor data about number and profile of solicitors in non-SRA regulated organisations providing legal services to the public.
5. The SRA could monitor key indicators that relate to the extent to which regulated firms move all or part of their services outside the scope of SRA regulation.

Regarding the reform allowing solicitors to operate on a freelance basis:

6. The SRA could take steps to further reduce barriers to the effective operation of freelance solicitors, including raising awareness of this practising option, engaging with insurance providers with a view to stimulating a better supply of insurance policies, and reviewing whether it is possible and desirable to allow freelance solicitors to provide claim management and immigration services.

Regarding the revised Accounts Rules:

7. The SRA could (continue) to take steps to raise awareness of the possibilities to use third party-managed accounts.

1. Introduction

1.1 Purpose of the report

In February 2021, the Solicitors Regulation Authority (SRA) commissioned the Centre for Strategy and Evaluation Services (CSES) to provide a one-year evaluation of the Standards and Regulation Reforms introduced in November 2019.

The overall aim of the study was to provide information on the ‘direction of travel’, giving an early indication of changes in the market regarding competition, practising more flexibly, consumers’ access to legal services and consumer choice. More specifically, the research objectives were to:

- evaluate the Standards and Regulations reforms looking at implementation by and impacts (including equality, diversity and inclusion impacts) on law firms, individual solicitors, public and consumers of legal services, and the wider legal services market;
- identify (if possible, at this early stage) any detrimental emerging risks or unintended consequences (positive or negative), which may prompt adaptations to particular reforms or require immediate regulatory attention;
- analyse SRA data related to these reforms to provide insights and trends.

The study has examined the impact of the reforms against what was expected and is designed to ensure that lessons learned are fed back into the decision-making process. It is too early to identify the full impacts of the reforms. However, the SRA is planning further evaluations after three years and five years.

1.2 Focus of the study

On 25 November 2019, the SRA introduced the new Standards and Regulations reforms.³ The reforms were based on the SRA’s 2015 position paper “Looking to the future”, which outlined the SRA’s new model for regulating legal services. This model centres on a targeted and proportionate regulatory approach, which is fit for purpose in a fast-changing and dynamic sector. As well as modernising the SRA’s rules, the reforms were designed to focus the SRA’s activity on the core purpose of providing protection for the public and supporting the operation of the rule of law and the proper administration of justice.

The 2019 reforms represented a substantial overhaul of the rules governing the way that solicitors practice, the aim being to place greater trust in professional judgment, eliminate outdated prescriptive rules and provide solicitors with more flexibility about how they work. By introducing the reforms, the SRA aimed to facilitate a focus on high professional standards rather than simply on compliance with rules and also to give solicitors the freedom to run their businesses as best suits them and their clients.

The reforms were developed over a four-year period, and informed by four major public consultations, with more than 35,000 members of the public, the profession and wider stakeholders getting involved. Their introduction was supported by a major communications effort targeted at solicitors, law firms, and other industry stakeholders. The revised Standards and Regulations are also complemented by a revised Enforcement Strategy introduced in February 2019.

³ The Standards and Regulations reforms were part of the Looking to the Future reforms. See: <https://www.sra.org.uk/sra/policy/future/looking-future>

The main Standards and Regulations reforms are as follows.

- Practising flexibly reforms:
 - Updated SRA Principles: these comprise the fundamental tenets of ethical behaviour that the SRA expects all solicitors to uphold⁴
 - Replacing the SRA Code of Conduct (2011) with a separate Code of Conduct for Firms and a separate Code of Conduct for Solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs)
 - Allowing solicitors to provide legal services to the public on a freelance basis in certain circumstances
 - Allowing solicitors to provide legal services to the public in an entity not regulated by the SRA or another legal services regulator, under certain circumstances.
- Reforms to the SRA Handbook, including changes to the:
 - Requirement to have a practising address in England and Wales
 - Forming and managing authorised bodies rules
 - 'Qualified to supervise' rule
 - Assessing character and suitability
 - Approving managers and owners
 - Regulation of overseas practices
 - SRA Enforcement Strategy.
- Reforms to Accounts Rules, including:
 - Revised definition of client money and client liability
 - Use of Third Party Managed Accounts (TPMA)
 - Revisions to rules on Accountants' reports and when they are due
 - Revisions to rules governing joint bank accounts or clients' own bank accounts.

Fuller descriptions of each reform are provided in the relevant sections presenting the study findings for each reform.

1.3 Methodology

The evaluation gathered a mix of quantitative and qualitative data and evidence from the following sources;

- literature review: including key publications of the SRA, reports or statements of opinion/policy by key stakeholders, academic papers and media articles;
- analysis of SRA data relating to the number and profile of solicitors and firms regulated by the SRA, reasons for firm closure, firms holding (or ceasing to hold) client money, accountants' reports, complaints made against solicitors, enforcement actions taken, and SRA fee income.

⁴ <https://www.sra.org.uk/solicitors/standards-regulations/principles/>

Where appropriate, significance tests were undertaken at the 95% confidence level.⁵

- online survey of solicitors: three parallel surveys were undertaken between 25 June 2021 and 26 July 2021. The response rate to the three surveys is presented in the table below.

Table 1 Volume of survey responses

| Type | Full response | Partial response | Total |
|----------------------------------------------------------|---------------|------------------|--------------|
| Practising solicitors (other than freelancer solicitors) | 844 | 1,503 | 2,347 |
| Freelance solicitors | 79 | 119 | 198 |
| Non-practising | 329 | 357 | 686 |
| TOTALS | 1,252 | 1,979 | 3,231 |

- consultations of practising solicitors: freelance solicitors and other practising solicitors responding to the survey were invited to state their willingness to participate in a research interview to explore their experiences and opinions in more depth. All those that responded received an invitation to participate in an interview, and 26 were interviewed.
- consultations of stakeholders: a range of stakeholders were invited to participate in a research interview, including bodies representing the profession and bodies representing or with a strong connection to consumers (although most chose not to offer a view).
- consultations of consumers: 14 individual consumers and 10 small or medium-sized enterprise (SME) consumers were interviewed regarding their experience of receiving services from solicitors practising in non-regulated organisations or in law firms.

⁵ A 95% confidence level means that if the same population is sampled on numerous occasions and interval estimates are made on each occasion, the resulting intervals would bracket the true population parameter in approximately 95% of the cases. It is thus possible to be 95% confident that any changes or differences in the data are not due to chance.

2. Overall perception of reforms

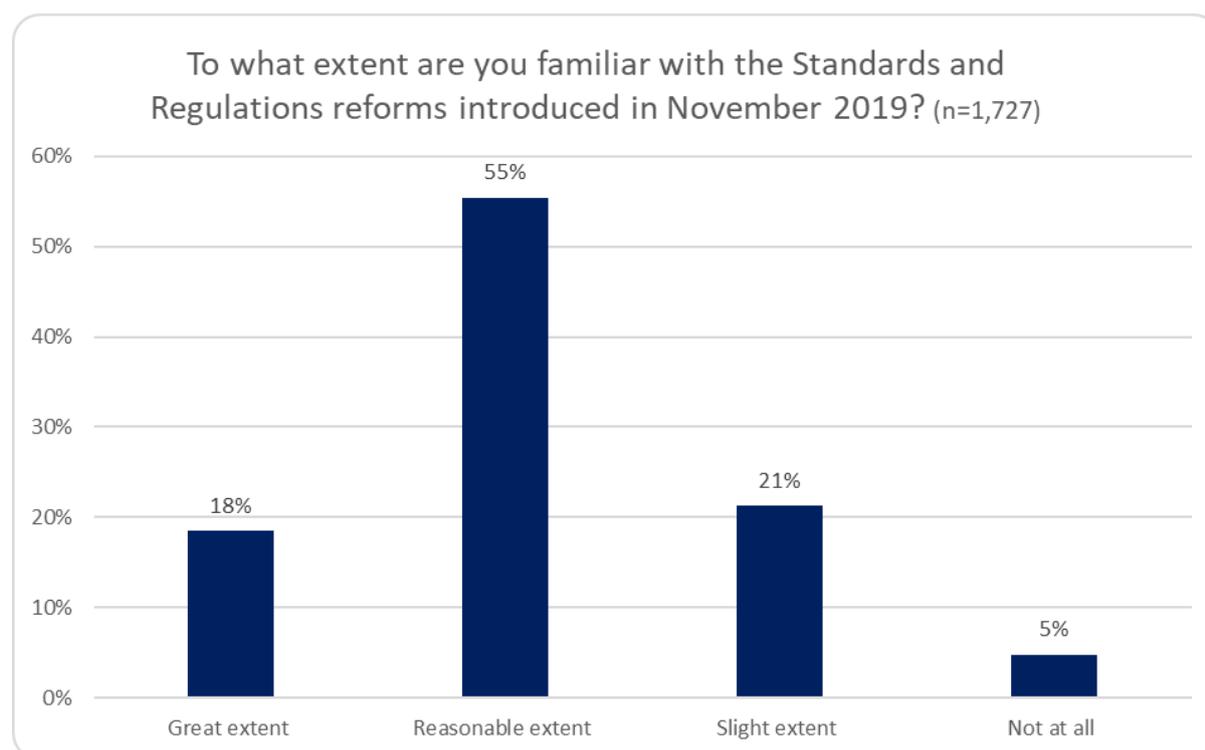
As noted in section 1.2, the SRA introduced the Standards and Regulations reforms in November 2019. The reforms include updated Principles, new and separate Codes of Conduct for individual solicitors and for firms, allowing solicitors to provide legal services to the public on a freelance basis or in an entity not regulated by the SRA (subject to certain conditions and restrictions), reforms to the SRA Handbook (for example, around authorisation of individuals and firms) and reforms of Accounts Rules.

The solicitors responding to the on-line surveys were asked a series of questions concerning, first, their familiarity with and understanding of the Standards and Regulation (STAR) reforms and, second, their perception of the effects of the reforms.

2.1 Familiarity and understanding

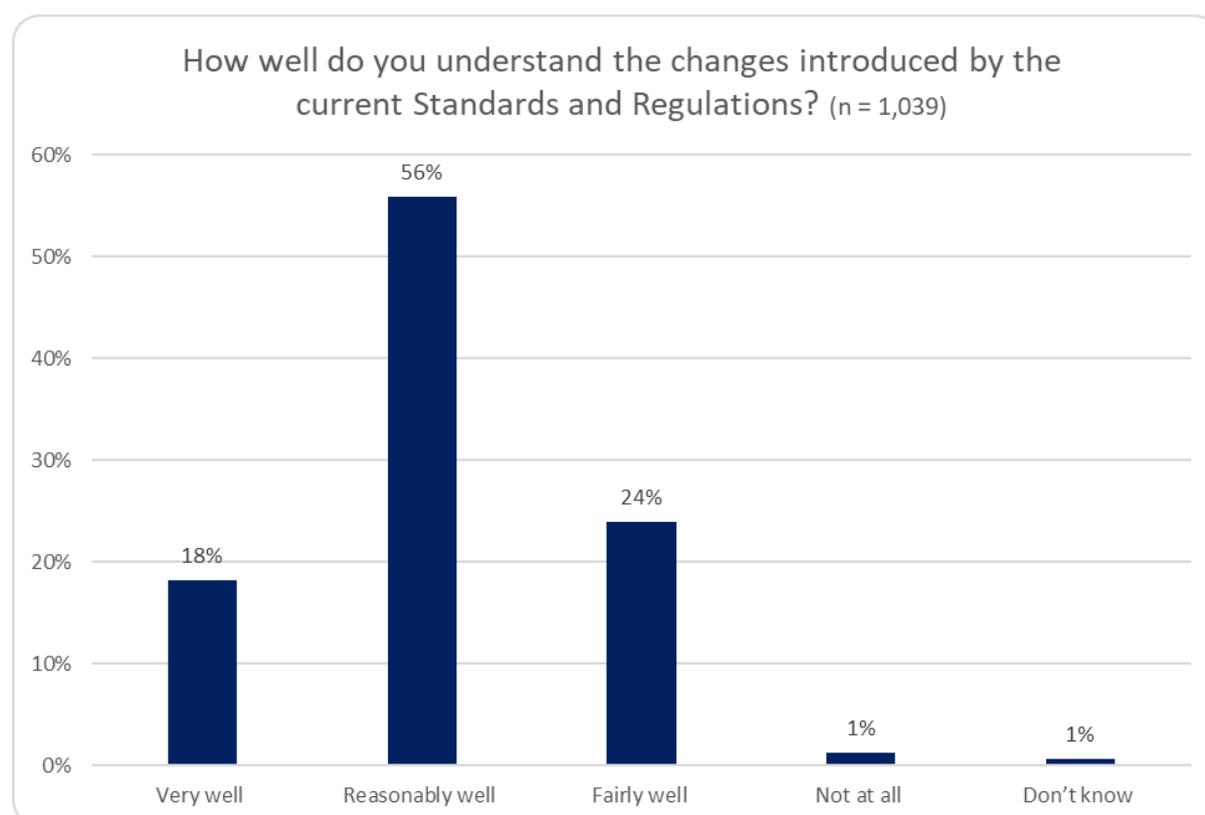
The majority of practising solicitors responding to the survey are familiar with the STAR reforms to a great or reasonable extent (73%). Some 31% of non-practising solicitors were aware to a great or reasonable extent. However, a sizeable minority of practising solicitors reported not being reasonably familiar with the reforms (i.e. 26% only to a slight extent or not at all). The survey responses showed no significant differences in familiarity on the basis of ethnicity or sex.

Figure 1 Extent of familiarity with the Standards and Regulations reforms



Source: CSES surveys of freelance solicitors and practising solicitors.

Of the practising solicitors who are familiar to a great or reasonable extent, a large majority understand them well. As shown in Figure 2, some 74% of respondents understood the reforms very well or reasonably well. Only 2% did not understand them at all or did not know.

Figure 2 Understanding of the reforms

Source: CSES surveys of freelance solicitors and other practising solicitors. NB: only includes only respondents that were familiar to a great or reasonable extent (see Figure 1).

Solicitors working outside law firms regulated by the SRA or another LSA regulator were less likely to be familiar with the reforms. Such solicitors constituted 37% of respondents who were familiar with the reforms only to a slight extent or not at all, whilst representing only 20% of all respondents. Moreover, solicitors working outside regulated law firms who were familiar with the reforms to a great or reasonable extent were also less likely to understand the changes to the reforms very well or reasonably well than were solicitors in regulated law firms.

Table 2 Understanding of the reforms by type of solicitor

| | All respondents (n=1,180) | Familiar with reforms to a great or reasonable extent (n=897) | Understand reforms very well or reasonably well* (n=685) |
|----------------------------------------------|------------------------------|------------------------------------------------------------------------|-------------------------------------------------------------------|
| SRA-regulated law firm | 79% | 84% | 86% |
| Law firm authorised by another LSA regulator | 1% | 1% | 1% |
| In-house solicitor | 15% | 11% | 9% |
| Non-LSA-regulated organisation | 3% | 3% | 3% |
| Other | 2% | 1% | 1% |
| TOTALS | 100% | 100% | 100% |

NB: only solicitors that were familiar with the reforms (to a great, reasonable or slight extent) were asked about their understanding of the reforms. Source: CSES surveys of practising solicitors.

The number of years of post-qualification experience appears to have little impact on the level of familiarity with the reforms.

Table 3 Understanding of the reforms by years of experience

| | All respondents | Familiar with reforms to a great or reasonable extent |
|--------------------|-----------------|-------------------------------------------------------|
| More than 10 years | 74% | 75% |
| 5-10 years | 11% | 10% |
| 2-5 years | 6% | 5% |
| Less than 2 years | 8% | 8% |
| Prefer not to say | 2% | 2% |
| TOTALS* | 100% | 100% |

Source: CSES surveys of practising solicitors. NB: sum of all respondents does not total 100% due to rounding.

2.2 Perception of effects

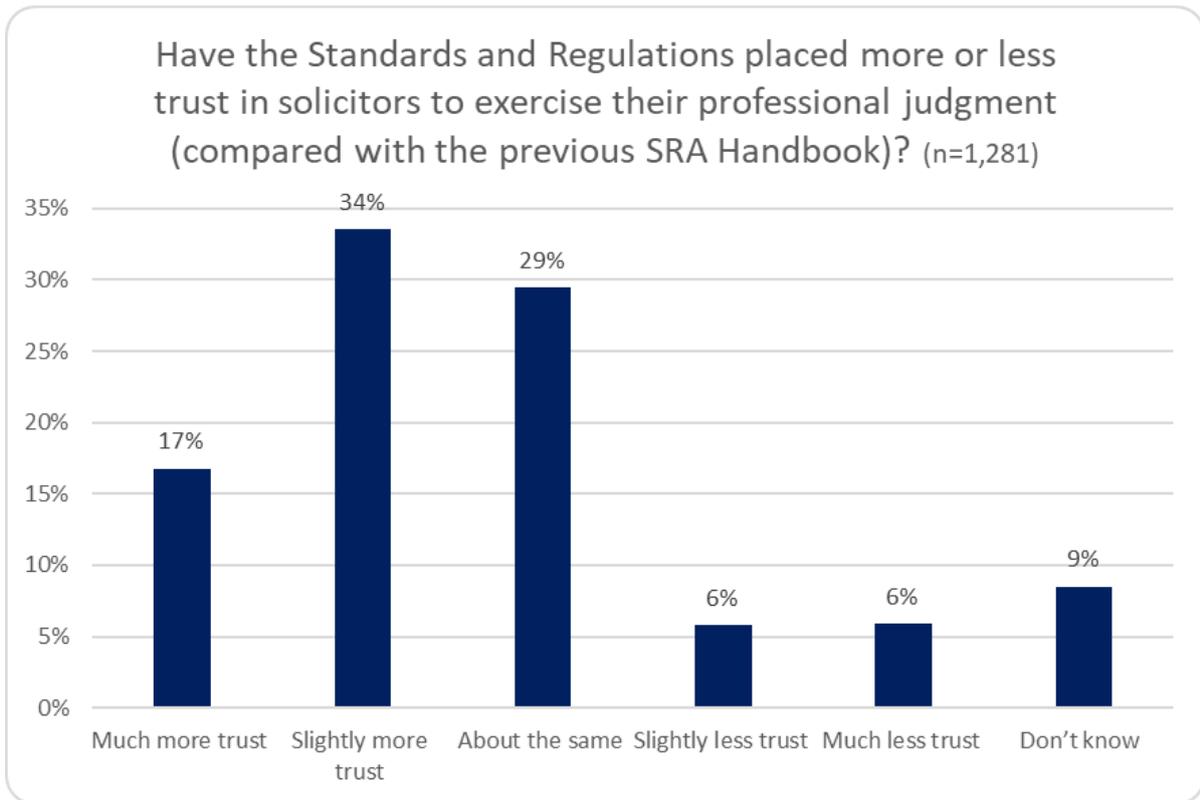
Of the respondents that are familiar with the reforms, the proportion that is positive about their effects is much greater than the proportion that is negative.

Solicitors were asked whether the SRA now places more trust in them to exercise their professional judgment, as a result of the STAR reforms. Amongst practising solicitors responding to the survey, the percentage perceiving more trust (51%) is far greater than the percentage perceiving less trust (12%). The large majority (80%) perceive that there is more or about the same level of trust, as shown in Figure 3.

More practising solicitors report that the reforms have reduced (37%) rather than increased (20%) the burden associated with compliance compared with the previous situation, although for about one third the level of burden is about the same.

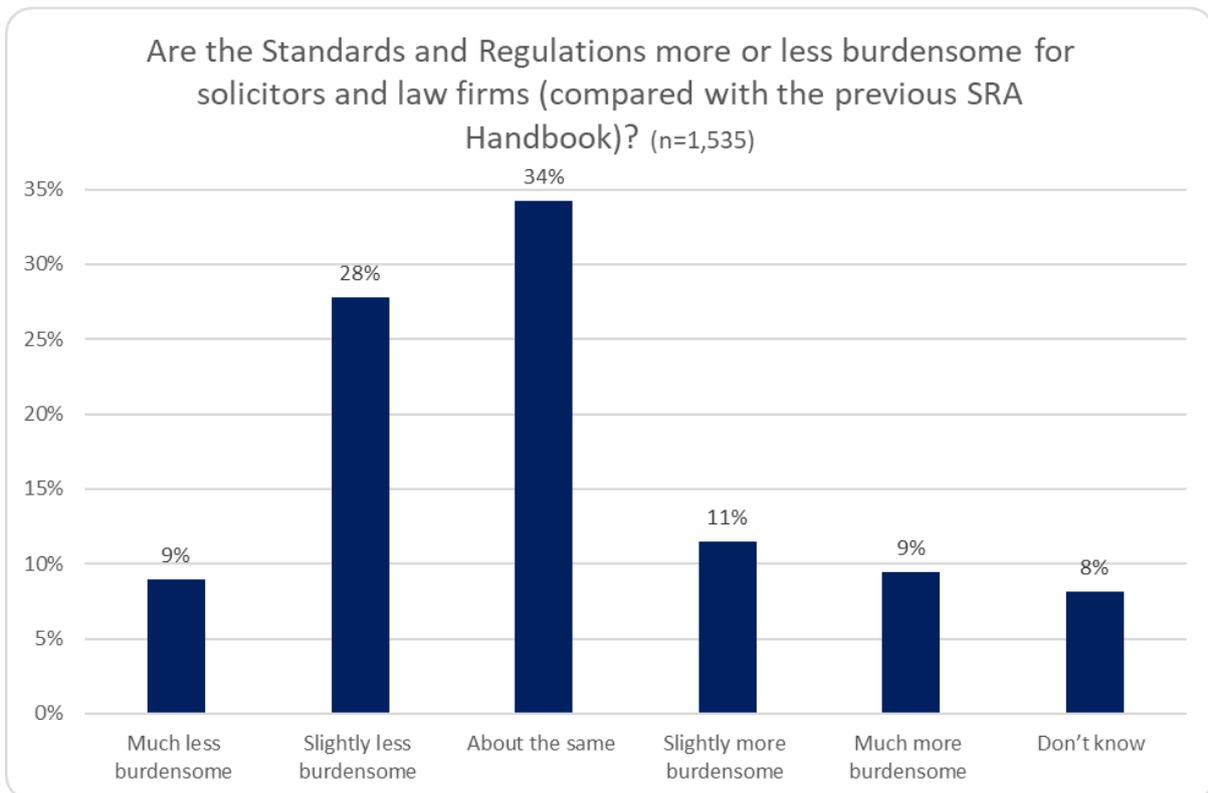
Solicitors were asked whether the STAR reforms have provided them with more flexibility about how they work compared with the previous SRA Handbook. The majority of practising solicitors (54%) report that the reforms have provided them with more flexibility about how they work and only a small minority (11%) report less flexibility. Similarly, a considerable minority of practising solicitors (37%) reported that the reforms (compared with the previous SRA Handbook) offered more flexibility to respond to the challenges of Covid than reported less flexibility (6%), although for nearly half (41%), the new standards and regulations had made no difference.

Figure 3 Opinion on extent of trust placed in solicitors' professional judgment



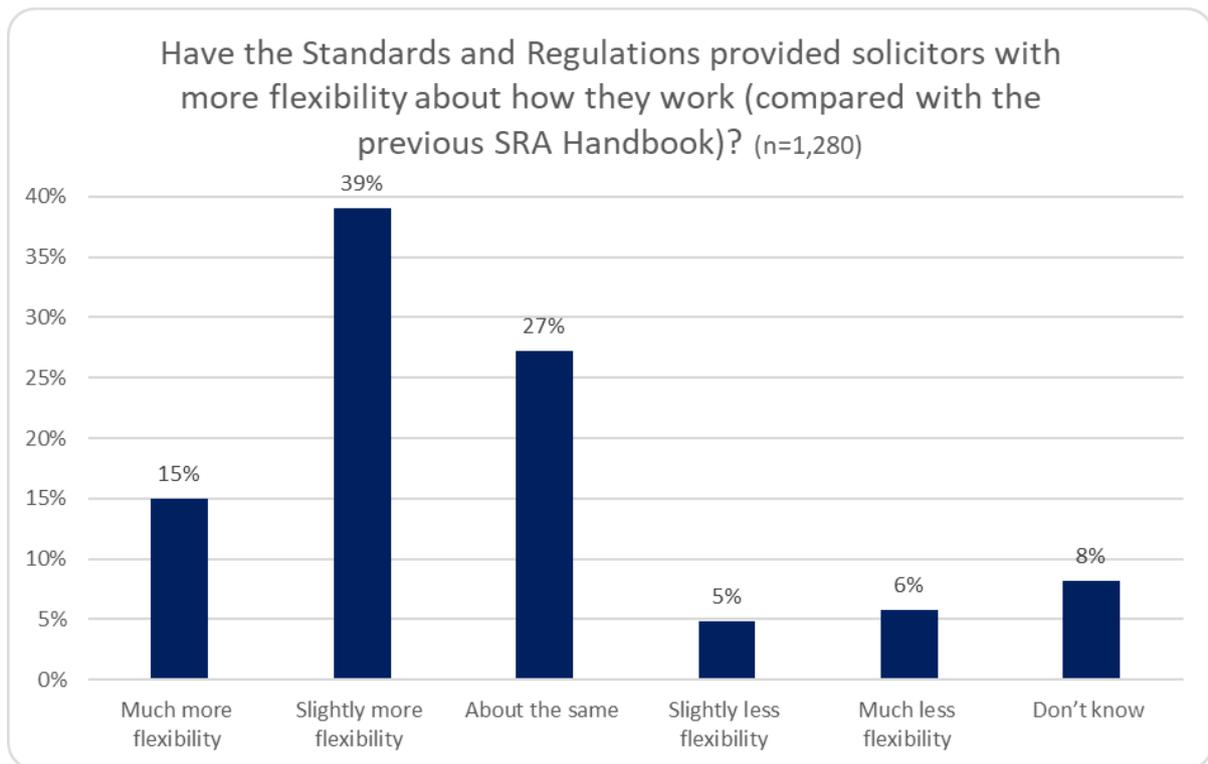
Source: CSES surveys of freelance solicitors and other practising solicitors

Figure 4 Opinion on level of burden associated with reforms



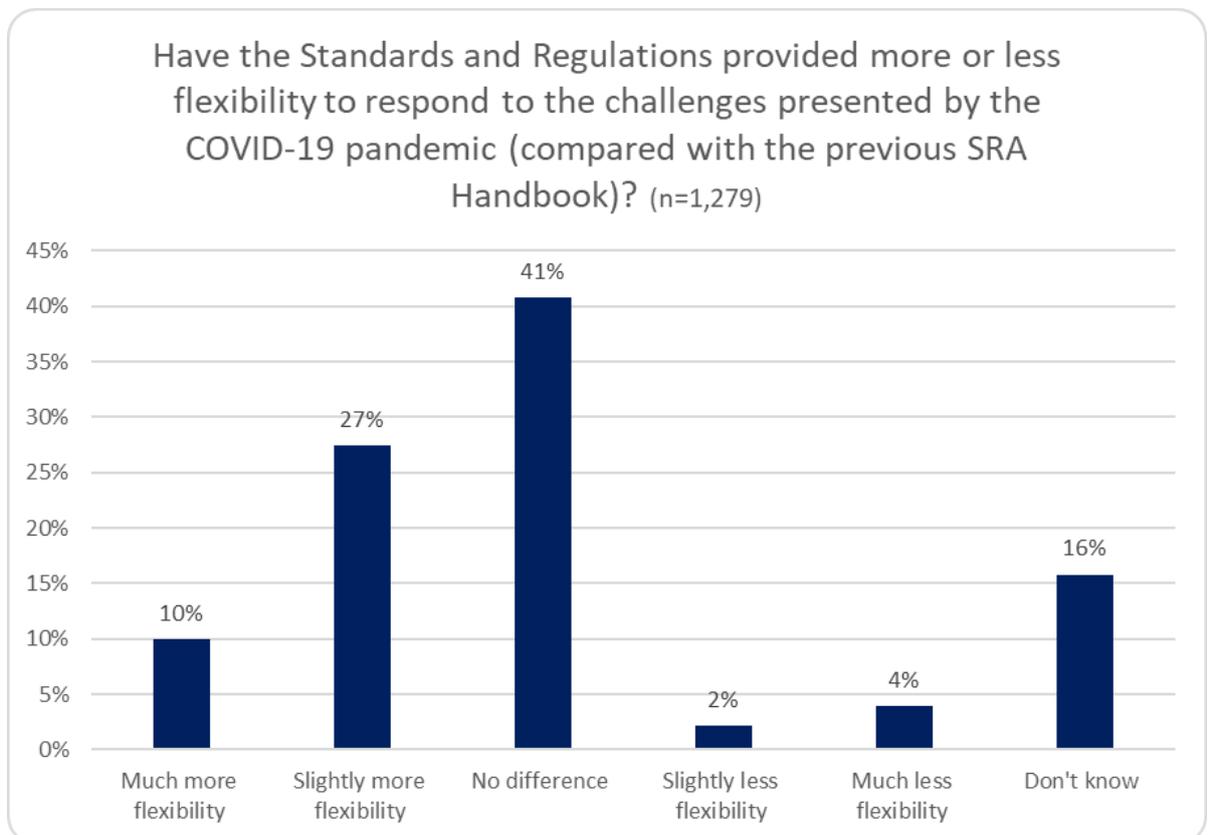
Source: CSES surveys of freelance solicitors and other practising solicitors.

Figure 5 Opinion on degree of flexibility provided by the reforms



Source: CSES surveys of freelance solicitors and other practising solicitors.

Figure 6 Opinion on degree of flexibility to respond to challenges of COVID-19



Source: CSES surveys of freelance solicitors and other practising solicitors.

3. Handbook reforms

3.1 Principles and Codes of Conduct

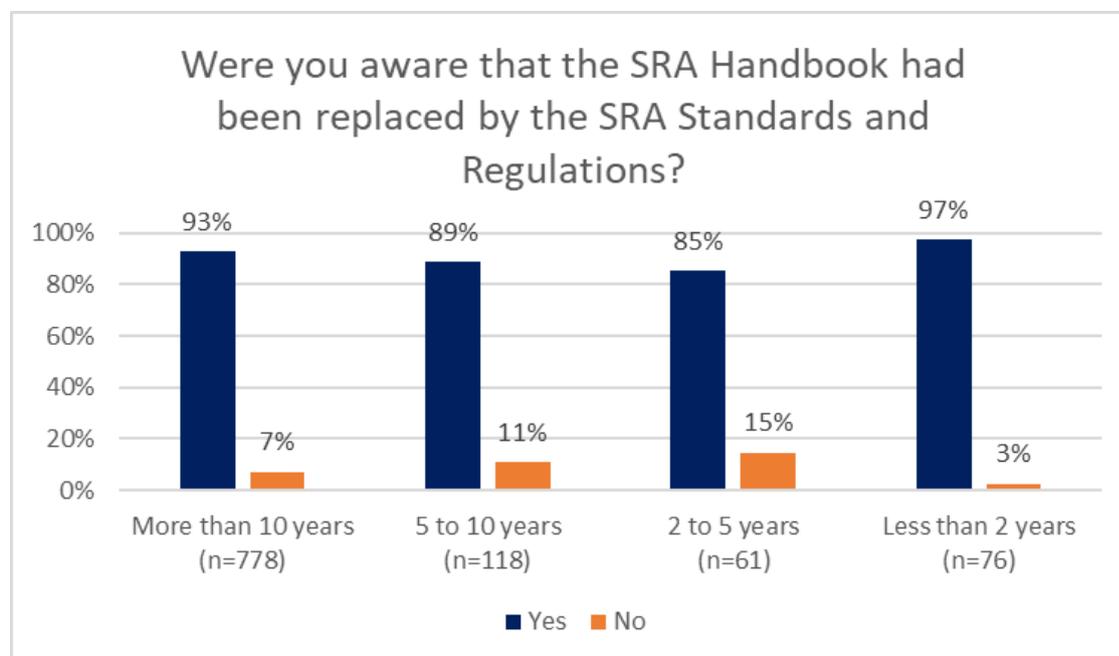
3.1.1 The reform

Reforms involved shortening and simplifying the rules and standards that apply to solicitors as individuals, and regulations that apply to regulated providers. This involved changes to the SRA Principles as well as introducing separate Codes of Conduct: a Code of Conduct for Solicitors, RELs and RFLs and a Code of Conduct for Firms. The new Codes and updated Principles are based on clear universal standards but are less prescriptive, the intention being to allow solicitors more scope to use their professional judgment.

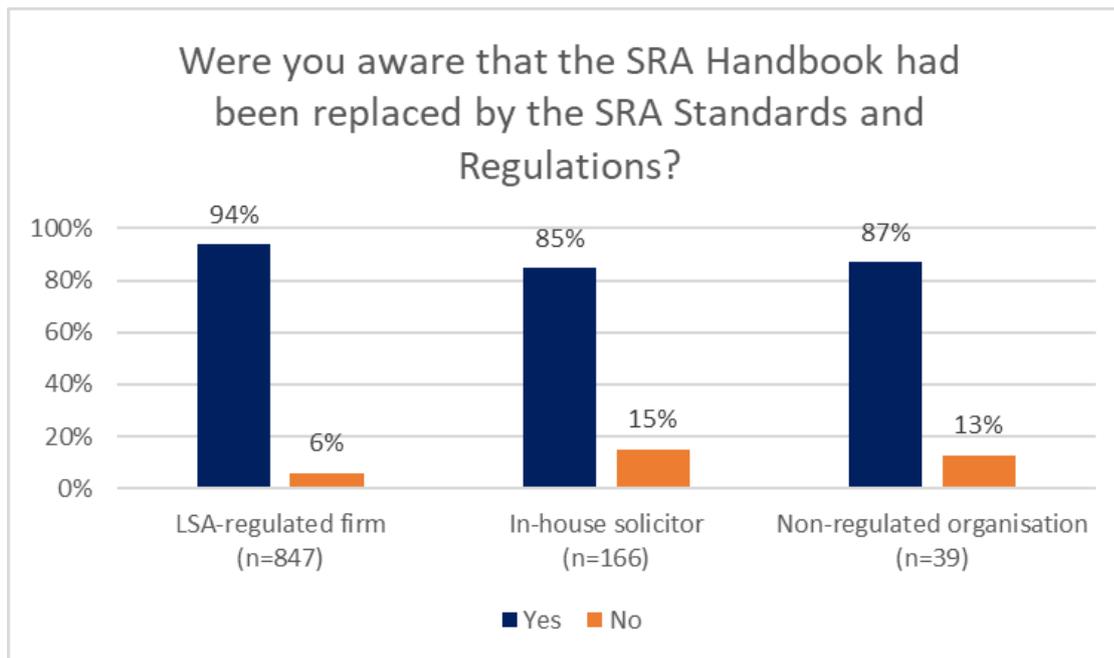
3.1.2 Clarity

There is high awareness that the Standards and Regulations have replaced the SRA Handbook, with 92% of practising solicitors responding to the survey reporting that they were aware. As shown in Figure 7, awareness was highest amongst solicitors with least experience, perhaps reflecting the fact that they will have had to familiarise themselves as part of their training to enter the profession. Figure 8 shows that awareness was highest amongst solicitors working within LSA-regulated firms, whilst it was lowest amongst in-house solicitors. The interviews have suggested that differences in awareness according to type of organisation is in part explained by the fact that solicitors in SRA-regulated firms (who comprised the vast majority of respondents within LSA-regulated firms) are typically required and supported by the COLP (and by the wider compliance team, in larger firms) to maintain their awareness.

Figure 7 Awareness of Standards and Regulations by length of experience



Source: CSES survey of practising solicitors.

Figure 8 Awareness of Standards and Regulations by type of organisation

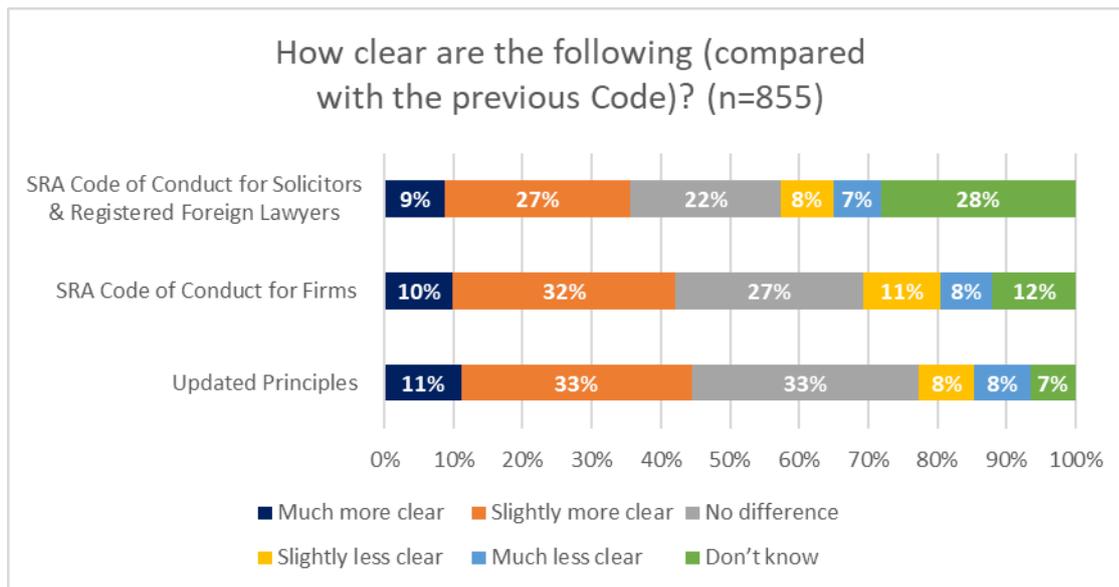
Source: CSES survey of practising solicitors.

The new Codes of Conduct and the updated Principles are also seen as clearer than the previous Code by the majority of solicitors. More solicitors consider that separate Codes for individuals and firms is clearer (43%) than feel it is less clear (15%).

Evidence from the interviews of solicitors suggest that **the introduction of separate Codes may have offered most benefit for solicitors working outside SRA-regulated organisations**, since they generally do not need to refer to standards and regulations relating to law firms. The Code for individuals now provides those solicitors with all the necessary standards and regulations in a shorter document. As one in-house solicitor noted: *“When I started the in-house legal department in 2010 under the old SRA Handbook, it was daunting. I had come from a large law firm with an in-house regulations team supporting me but all the rules applied to me in this new in-house role, even though what I do is very limited. I had no resources except my own knowledge. There was a disconnect around what you needed to expect from an in-house solicitor, but this has been addressed quite well in the new Codes. It’s clearer to have a separate Code and the Code for individuals is thin enough to read in its entirety”*.

In contrast, one solicitor in a large law firm suggested that separating the Codes had made no particular difference to the firm. Solicitors in that firm were aware of their personal professional obligations (which were perceived not to have changed in any material way through the introduction of the Codes) but on a day-to-day basis tended to refer mostly to the Code for firms. This solicitor reported that the main reason for the firm to refer to the Code for individuals would be if a staff member committed a breach or was the subject of an investigation.

Some 58% reported that it was no more difficult (26%) or easier (32%) to interpret and apply updated Principles and Codes. Only 29% reported that it was harder. The majority (53%) reported that the new Codes and updated Principles made clear what standards are expected to a reasonable extent (45%) or great extent (8%). Those who offered a positive comment reported that the main benefits were that the new Codes and Principles were shorter and easier to understand. Some of those respondents also highlighted the greater flexibility provided. In a few cases, firms had taken the opportunity of the new Codes and updated Principles to remind staff of their obligations (including through training) and to reinforce internal procedures.

Figure 9 Clarity of Codes of Conduct and updated Principles

Source: CSES survey of practising solicitors.

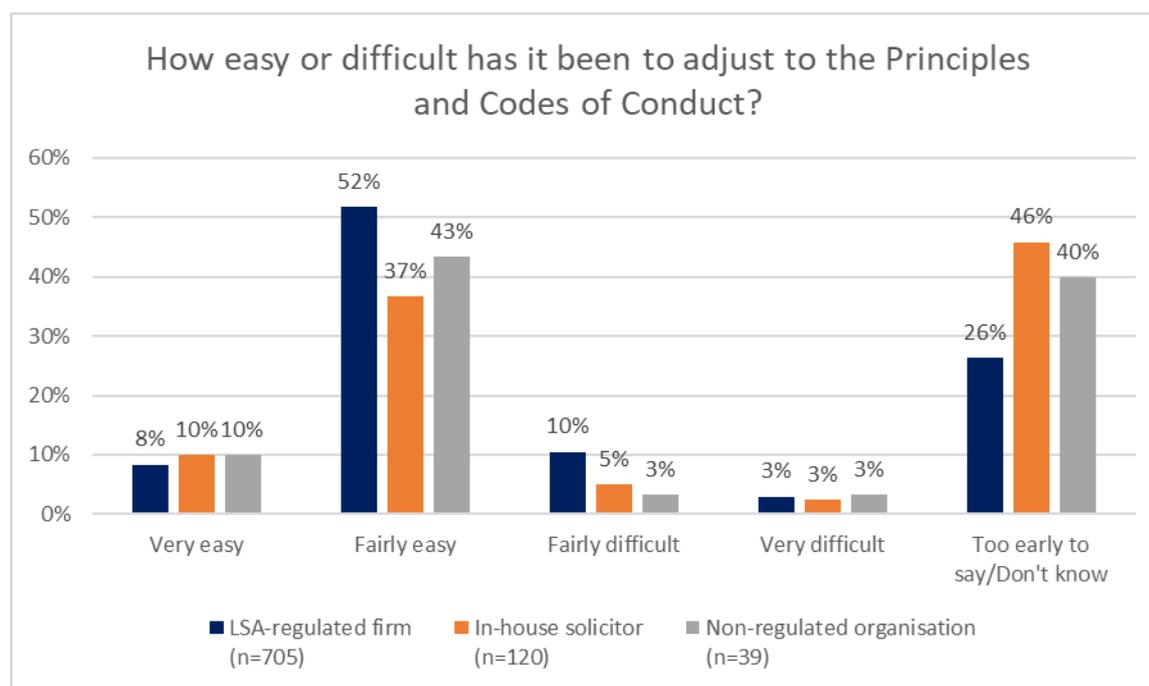
3.1.3 Effects

Concerning implementation, whilst most solicitors were positive or neutral about the impact of the new Codes and updated Principles, there was a divergence of opinion with a sizeable minority expressing strong negative views.

The majority (54%) reported that the new Codes and updated Principles allowed solicitors to use their judgment in how to comply to a reasonable extent (42%) or a great extent (12%). The majority (57%) see the tools and guidance as helpful (of which 9% very helpful) with 20% reporting them as unhelpful. However, some of the solicitors interviewed reported that the guidance was issued at a late stage. Some 27% report that there has been an increase in the time and cost of compliance. In contrast, 45% reported no increase (35% reported no change and 10% reported a reduction). Only a minority report any particular difficulty in adjusting to the new Codes (13%).

One large law firm reported that the introduction of the new Codes and updated Principles had provided a good opportunity to remind staff of their professional obligations. The firm had provided mandatory face-to-face training for all 1,000 staff in all its offices. The training consisted of a 45-minute presentation of the reforms followed by a 45-minute training session. Any absent staff were required to watch a recording of the training sessions at a later date. The main benefit reported by the firm was to remind staff of the connection between corporate compliance processes and the requirements of the regulations.

Figure 10 shows that the majority of solicitors in regulated law firms, in-house solicitors and solicitors in non-regulated organisations report that it has been easy to adjust to the new Principles and Codes of Conduct. However, there remains a degree of uncertainty, particularly amongst in-house solicitors and solicitors in non-regulated organisations, with 46% of the former and 40% of the latter reporting that it was too early to say or that they did not know.

Figure 10 Ease of adjustment by type of employer

Source: CSES survey of practising solicitors.

A sizeable minority of solicitors report negative effects from the new Codes and updated Principles:

- more difficult to interpret and apply Principles and Codes (29% of respondents)
- less clarity about how to comply (31%)
- limited clarity about expected standards (33%)
- limited potential to apply own judgment about how to comply (29%)
- increased time and cost of compliance (27%).

Amongst this minority, the qualitative responses to the survey suggest a high strength of negative feeling. The main risks reported by this minority were, first, a loss of clarity by the move away from prescription and, second, a risk of different interpretations (having to “second guess” the SRA’s interpretation) and third, a possible lowering of standards (e.g. unscrupulous solicitors abusing flexibility).

To help address these risks, the SRA provides a Professional Ethics helpline for solicitors. Two of the solicitors interviewed had used the helpline and reported that it had been helpful, although one of those said it was not currently as useful as it had been prior to the reforms. This solicitor’s recent experience highlighted the possible risks just described. The solicitor reported that when seeking advice from the helpline in respect of a possible conflict of interest, she had been disappointed, as she felt the response focused on different possible interpretations of the standards and regulations, rather than providing a definite answer to her question.

3.2 Authorisation reforms

3.2.1 Requirement to have a practising address in England or Wales

Prior to the reform, all SRA-regulated organisations were required to have a practising address in England or Wales. This restriction meant that firms outside this territory were unable to offer reserved

legal services to clients in England and Wales. The reform lifted this restriction for firms with a practising address in Northern Ireland or Scotland in order to ensure that rules do not unnecessarily restrict the development of online or cross-border services.⁶

Data from the SRA shows that 62 SRA-regulated firms with addresses in Northern Ireland or Scotland have taken advantage of this possibility. This represents 0.6% of the 10,377 organisations regulated by the SRA.

The scope of the research did not extend to exploring the extent to which law firms in Northern Ireland and Scotland were aware of this reform. However, the modest take-up of this reform suggests a possible need for additional communication efforts targeted at such firms, in order to ensure that the development of online or cross-border services is not restricted by a lack of awareness of this option.

3.2.2 Corporate managers

Previously, the Practice Framework Rules required an SRA-regulated organisation to always have a manager that was an authorised individual, as opposed to an authorised person which may include a body corporate.⁷ However, this requirement went beyond the provisions of the Legal Services Act and thus risked unnecessarily restricting how law firms operate.

The Handbook reforms remove this requirement, allowing firms to be managers of authorised bodies. Post-reform, the SRA no longer seeks to formally approve individual managers within corporate manager entities as part of the authorisation rules. Instead, the SRA will look into the ownership chain, as appropriate on a pragmatic basis, to see whose involvement to take into account when approving the corporate manager itself. The process is intended to ascertain who ultimately manages and controls that company, and to refuse authorisation if the SRA is not satisfied they are suitable.

The specific nature of this reform means that only 7% of practising solicitors reported that they had had reason to refer to this rule (out of 890 answering this question). However, 37 out of 56 who answered this question (66%) reported that the rule was clear and only 14 (25%) reported that it was unclear.

The effects of the rule are, on balance, viewed positively by those who are familiar with it, although the rule has so far affected only a small proportion of law firms. Some 43% of solicitors reported positive effects, whilst only 12% reported negative effects, with 20% reporting no difference (and 25% unable to give a view). However, one respondent raised a concern around the difficulty of interpreting who would need authorisation. Another respondent questioned the need for further checks to be made on a non-lawyer who was already a manager of a law firm trading as a limited liability partnership, simply because the firm was becoming a limited company.

Given this concern and the low awareness of the reform, there may be scope for the SRA to increase communication about the possibilities for new forms of ownership.

3.2.3 Qualified to supervise

Previously, the SRA required all regulated entities and in-house legal departments to employ a solicitor⁸ who was 'qualified to supervise'. To do this a solicitor had to have been admitted for at least three years and have completed at least 12 hours of management training. However, the SRA found that the rule was widely misunderstood as a requirement that solicitors must themselves be supervised for at least three years post admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner.⁹ Moreover, the rule did not directly address or deal with

⁶ SRA (2017), Looking to the future: phase two of our Handbook reforms, p.11.

⁷ SRA (2017), Looking to the future: phase two of our Handbook reforms, p.11.

⁸ Or other lawyer manager in the case of an entity.

⁹ SRA (2017), Looking to the future: phase two of our Handbook reforms, p.11.

issues of technical competence and supervision of work, or the management experience of competence of those running a legal business. The effect of the rule was to prevent someone practising alone until they had been qualified for three years.¹⁰ Nonetheless, the SRA's consultation prior to the reforms identified that solicitors considered that three-year rule to be a basic safeguard to protect clients from inexperienced and newly qualified solicitors practising on their own.¹¹

The rule was replaced by a requirement that any firm authorised by the SRA (including recognised sole practitioners) must have at least one manager or employee who has practised as an authorised person for three years. In all cases, that individual will be responsible for supervising the work undertaken by the authorised body. The SRA also introduced a restriction on solicitors and RELS practising on their own, requiring them to have three years of experience before they can deliver reserved legal services to the public.

The specific nature of this reform means that only 11% of practising solicitors report that they had had reason to refer to this rule (out of 885 answering this question). However, the vast majority of those respondents (81%) reported that the rule was clear and only 16% reported that it was unclear.

The revised rule has had a modest positive impact. Of the solicitors that had referred to the rule, 37% reported a positive effect and another 45% reported that the rule had made no difference. Only 4% of respondents reported any negative effects. None of the survey respondents chose to make any significant comments on the clarity or the effects of the rule.

3.2.4 Assessing character and suitability

The SRA requires all individuals applying for admission or restoration to the roll of solicitors or those applying for or renewing their registration to be an REL or an RFL must be of satisfactory character and suitability. Character and suitability is determined by an assessment carried out by the SRA.¹²

Prior to the reform, the assessment of character and suitability was seen as rigid and binary. The reform therefore introduced a more flexible approach, by moving to a set of indicative events and behaviours, aggravating and mitigating factors which apply equally to all, taking account of an individual's circumstances and the nature of their role. It also extends elements of the test to apply to RELs and RFLs. There used to be provision for students to have their character and suitability assessed in advance of applying for admission, but this was removed. A new character and suitability rule was included in these reforms, which enables individuals to apply for an early assessment of their character and suitability if they have any concerns that their past will not enable them to enter the profession.

The specific nature of this reform means that only 13% of practising solicitors report that they have had reason to refer to the revised rule (out of 879 answering this question).

Amongst those who have had reason to refer to the revised rule:

- most (78%) report that it is clear (versus 20% unclear)
- most (76%) report that the effect has been positive (38%) or made little difference (37%), whilst few (14%) report that it has been negative.

A few solicitors chose to offer comments on this rule. One solicitor reported that the rules offer more flexibility in assessing character and suitability, whereas the previous rules simply stated the circumstances under which the SRA would refuse an application if a particular issue was present. Another solicitor welcomed the move away from a rigid and binary approach but highlighted a need for the SRA to ensure that the flexible approach took full and fair account of the diversity of individuals' circumstances and backgrounds, for example, where applicants are seeking to enter the profession

¹⁰ www.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#headingTwo

¹¹ SRA (2018), Looking to the Future: phase two of our Handbook reforms, Our post consultation position

¹² <https://www.sra.org.uk/solicitors/standards-regulations/assessment-character-suitability-rules/>

through non-traditional routes. This was essential if law firms were to fulfil their aspirations to recruit from a wider pool of talent. For this solicitor, there was a need to ensure that SRA assessors had received proper training and guidance and, if possible, had a diversity of backgrounds themselves. They also reported a need for the SRA to provide illustrative anonymised examples of successful applicants describing the specific questions that the assessment considered and the reasons for decisions.

One concern (albeit reported by only three solicitors) related to a possible risk of overlap or incoherence of this rule with other rules, namely anti-money laundering compliance requirements, the placing of conditions on practising certificates and general reporting requirements (e.g. the need for minor offences to be reportable although not under the character and suitability rules).

3.2.5 Approving managers and owners

Prior to the reform, all solicitors, RELs and RFLs without a condition attached to their practising certificate were automatically deemed suitable to be managers and owners of authorised bodies on admission or registration, without the need for SRA approval. However, SRA-authorised persons with a condition on their practising certificate, and all other LSA-authorised persons (such as barristers or licensed conveyancers) needed the SRA's approval every time:

- they became managers or owners of a new body; or
- their existing body changed constitution, e.g. moving from partnership to a limited company.

As a result of the reform, solicitors, RELs and RFLs are deemed suitable to be managers and owners of authorised bodies on admission or registration, unless (i) they have a condition on their practising certificate; (ii) a regulatory decision against them, and/or (iii) are undergoing an investigation. Should individuals be in any of these situations, they must be specifically approved by the SRA.

Other LSA-authorised persons are now deemed suitable to be managers and owners of authorised bodies on admission or registration unless (i) they have conditions attached to their approval for a role, (ii) are undergoing an investigation, and/or (iii) have regulatory findings against them. Should individuals be in any of these situations, they must be specifically approved by the SRA.

The specific nature of this reform means that only 6% of practising solicitors report that they had had reason to refer to this rule (54 out of 869 answering this question). However, the majority of those respondents (74%) reported that the rule was clear and only 18% reported that it was unclear.

Amongst the 54 solicitors that were familiar with the reform, opinion was divided concerning its effects, with similar numbers reporting it had been positive (29%), negative (32%) or made little difference (30%). However, it cannot be known whether these views reflected the experience of firms affected by the reform or merely opinions. Since the survey respondents offered very few comments about the clarity or effects of this rule, it would seem that the reform has directly affected very few firms to date. Over the coming years, there will therefore be the need to observe whether the right balance is struck between avoiding unnecessary restraint of trade and limiting the risk of unsuitable individuals becoming owners or managers of regulated organisations.

3.3 Revised Enforcement Strategy

The SRA's Enforcement Strategy was adapted to provide greater clarity for the public and profession about when and how it would - or would not - take action against a solicitor or law firm. The revised Enforcement Strategy seeks to:

- enforce standards through a transparent framework that can be easily understood
- set standards that establish clear expectations

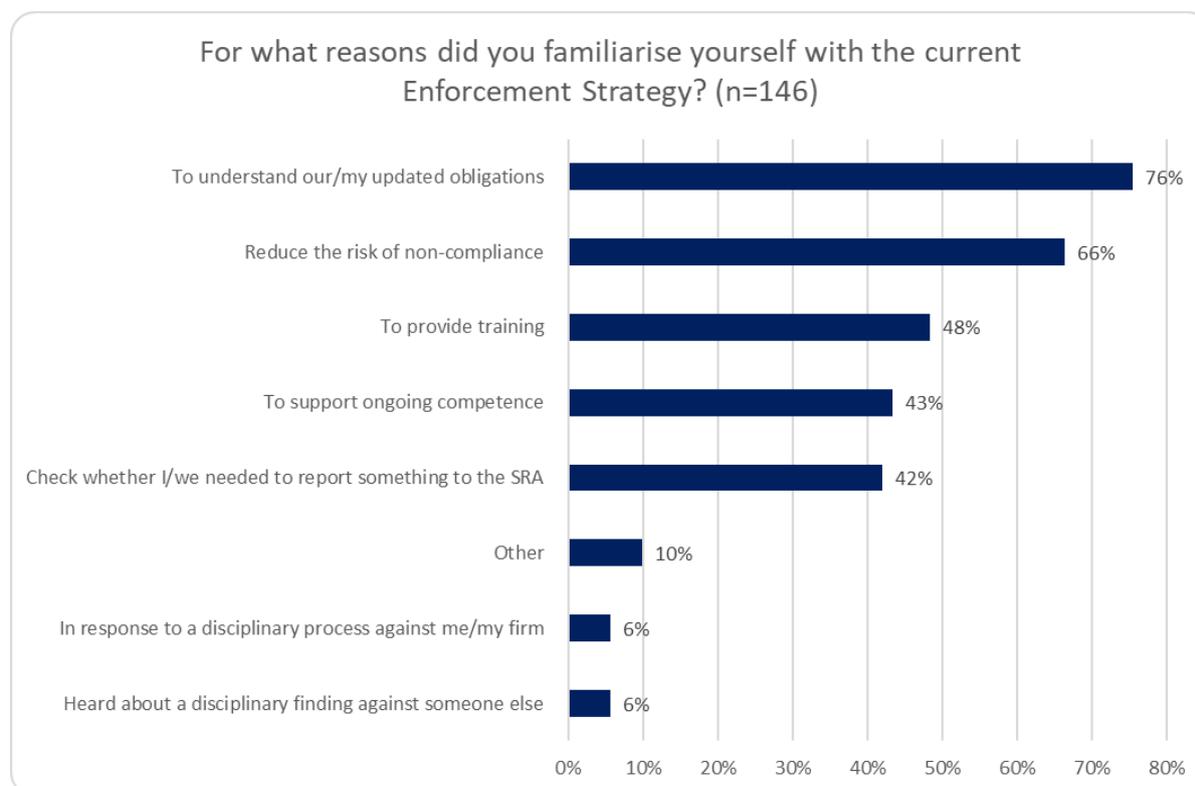
- make the approach to enforcement more principles-based and flexible
- clearly set out reasons for decisions taken
- help SRA staff and legal professionals understand the risks of certain behaviours
- provide the transparency and assurance requested by solicitors.¹³

The revised Enforcement Strategy complements the new Codes of Conduct and updated Principles by moving away from an approach based on prescriptive rules. It includes guidance on the expected behaviours that underpin the SRA standards, clarity about how, and when, the SRA will and will not enforce, and clarity about events that need to be reported to the SRA.

The vast majority of solicitors (including COLP/COFA) have not felt the need to familiarise themselves with the Enforcement Strategy. Only 16% of practising solicitors (including freelancers) and 25% of COLP/COFA reported that they had had reason to familiarise themselves with it. The survey responses showed no significant differences in familiarity on the basis of ethnicity or sex.

The most common reasons for solicitors familiarising themselves with the Enforcement Strategy were to understand updated obligations and reduce the risk of non-compliance. One practising solicitor (and academic expert) suggested that many solicitors do not necessarily realise that the Enforcement Strategy has statutory force and, in that sense, forms an integral part of the Standards and Regulations, alongside the Codes and Principles. One stakeholder representing the profession stated that “most solicitors have no clue about the Enforcement Strategy. They rely upon urban myths and tales from the bar”. One law firm had covered the Enforcement Strategy in its mandatory training for staff on the new Codes and updated Principles, as it saw the Strategy as an integral part of the reforms and as a useful document for staff to understand the enforcement role of the SRA.

Figure 11 Reasons for familiarisation with the SRA Enforcement Strategy



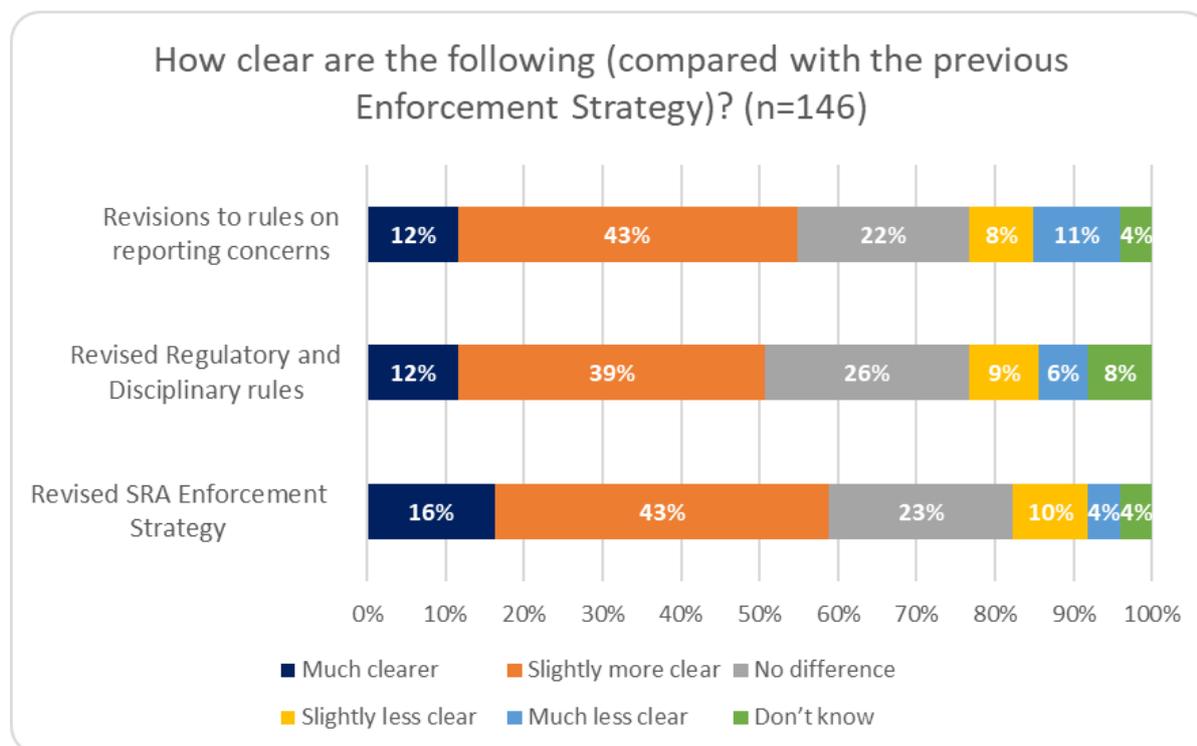
Source: CSES surveys of freelance solicitors and other practising solicitors.

¹³ SRA (2018), Looking to the future: Phase two of our Handbook reforms – post-consultation paper.

Although only a small minority of solicitors have familiarised themselves with the Enforcement Strategy, those that had were broadly positive about the clarity and content of the Strategy:

- the majority of those respondents (74%) reported that the rule was clear and only 18% reported that it was unclear
- the percentage of respondents reporting that the Strategy has improved clarity around what constitutes a serious breach exceeded the percentage suggested that it had reduced clarity (46% versus 29%)
- the majority (52%) reported that the new Strategy has a better focus on the most important issues relating to high professional standards, with only 15% reporting a worse focus (and 27% reporting no difference)
- As shown in the figure below, the individual elements of the Strategy are also seen to have introduced greater clarity.

Figure 12 Clarity of revisions to the SRA Enforcement Strategy



Source: CSES surveys of freelance solicitors and other practising solicitors.

Some solicitors perceive that a number of risks remain, despite the introduction of the Enforcement Strategy. At this point, there is insufficient evidence to draw conclusions about how the situation has changed since the revision of the Enforcement Strategy. However, the interviews and the qualitative responses to open questions in the survey highlight some risks related to enforcement that some solicitors feel have persisted. Four main concerns mentioned by solicitors are described here in order to inform the ongoing implementation and monitoring of the Enforcement Strategy by the SRA.

A first concern raised by some solicitors is that the flexibility and trust in solicitors' professional judgment offered by the new Codes and the updated Principles increases the risk that the SRA arrives

at different interpretations from those of solicitors and firms. In relation to this risk, some solicitors stated a personal preference for the clarity provided by the prescriptive approach. As one solicitor stated, *“the SRA guidance is just too vague. Solicitors don’t know what they can and can’t do. Some are facing prosecution for things they were not aware of.”* To mitigate this risk, the SRA has taken steps to ensure consistency in its enforcement through record-keeping of decisions taken, internal reviews of decisions, and collation of similar cases into cohorts.

A second concern raised by some solicitors is that enforcement actions are sometimes taken in relation to actions and behaviours that are not directly related to professional conduct. This concern predates the Standards and Regulations Reforms but has persisted since their introduction. The solicitors raising this concern highlighted the challenges in drawing a line between professional conduct and purely personal conduct, but nonetheless stressed that enforcement should not relate to actions and behaviours other than professional misconduct. In relation to this point, one solicitor highlighted a considerable disparity between the Code of Conduct for Barristers and the Code of Conduct for Solicitors, RELs and RFLs in respect of the definition and interpretation of the requirement to comply “at all times and in all circumstances”. As one solicitor noted *“There is a need to distinguish between what is really unprofessional in how you operate as a lawyer in business and unprofessional personal behaviour, which is unattractive but is much more the responsibility of the employer and civil courts (if necessary), rather than the professional regulator, except in the most egregious of cases”*. The SRA has taken steps to mitigate this risk, such as through providing (or planning to provide) guidance on issues such as personal integrity, use of social media and avoidance of sexual misconduct.

A third concern raised by solicitors referred to the risk of an inflexible approach to enforcement. Two areas were highlighted: first, cases where solicitors admit breaches of the Code and co-operate with SRA investigations; second, cases where relatively inexperienced solicitors breach the Code and Principles and receive severe sanctions, such as disqualification. In relation to such cases, the concern of some solicitors was that co-operation or mitigating circumstances were not always taken into account. As one solicitor stated: *“I’m very conscious that there is disparity in arms between the SRA and lawyers, especially younger ones being hung out to dry. Sometimes its people being human. If someone leaves something on a train and then covers up, they deserve reprimand but do they deserve to lose their whole livelihood? There is a need for more proportionality.”* The SRA has taken steps to mitigate this risk, which will include, for example, guidance on its approach to enforcement in cases in which ill-health is raised as an issue.

A fourth concern mentioned by some solicitors related to the time taken to complete investigations and make judgments, as well as the communication by the SRA during investigations. For example, one solicitor who had self-reported to the SRA (in relation to being arrested for a minor offence unrelated to professional conduct, which the police eventually decided not to take further) reported frustration at a lack of face-to-face contact with the relevant SRA officer during the investigation and at the fact that it took six months to complete. Another solicitor expressed concern at the case of a colleague whose case did ultimately result in a reprimand, but which took two years to resolve. In fact, the new Regulatory and Disciplinary Procedure Rules (RDPR) place new obligations on the SRA: first, SRA to inform a solicitor accordingly and his or her employer as soon as reasonably practicable after commencing an investigation; second, to provide any evidence or documentation that is relevant to the allegation and invite the person to respond with written representations. Whilst the new RDPR are seen by the SRA, solicitors and other stakeholders as fairer and more beneficial to solicitors, there is a need to ensure that the fulfilment of the obligations does not slow down the investigation process.

4. Practising flexibly reform: freelance solicitors

4.1 The reform

Individual freelance solicitors are now allowed to provide legal services to the public without being authorised as an entity. In order to provide services, they must satisfy the following conditions:

- at least three years' practising experience since admission or registration
- being self-employed and practising in their own name, and not through a trading name or service company
- not employing anyone in connection with the services provided
- engaged directly by the client, with fees paid directly by the client
- a practising address in the UK
- taking out and maintaining indemnity insurance that provides adequate and appropriate cover in respect of the services provided
- only holding client money when it is for payments on account of costs and disbursements not yet billed
- not providing immigration, claims management or regulated financial services, unless regulated by another suitable regulator.¹⁴

4.2 Take-up

SRA data shows that 294 solicitors had registered to operate on a freelance basis as of March 2021. This represents approximately 0.14% of all solicitors in England and Wales.

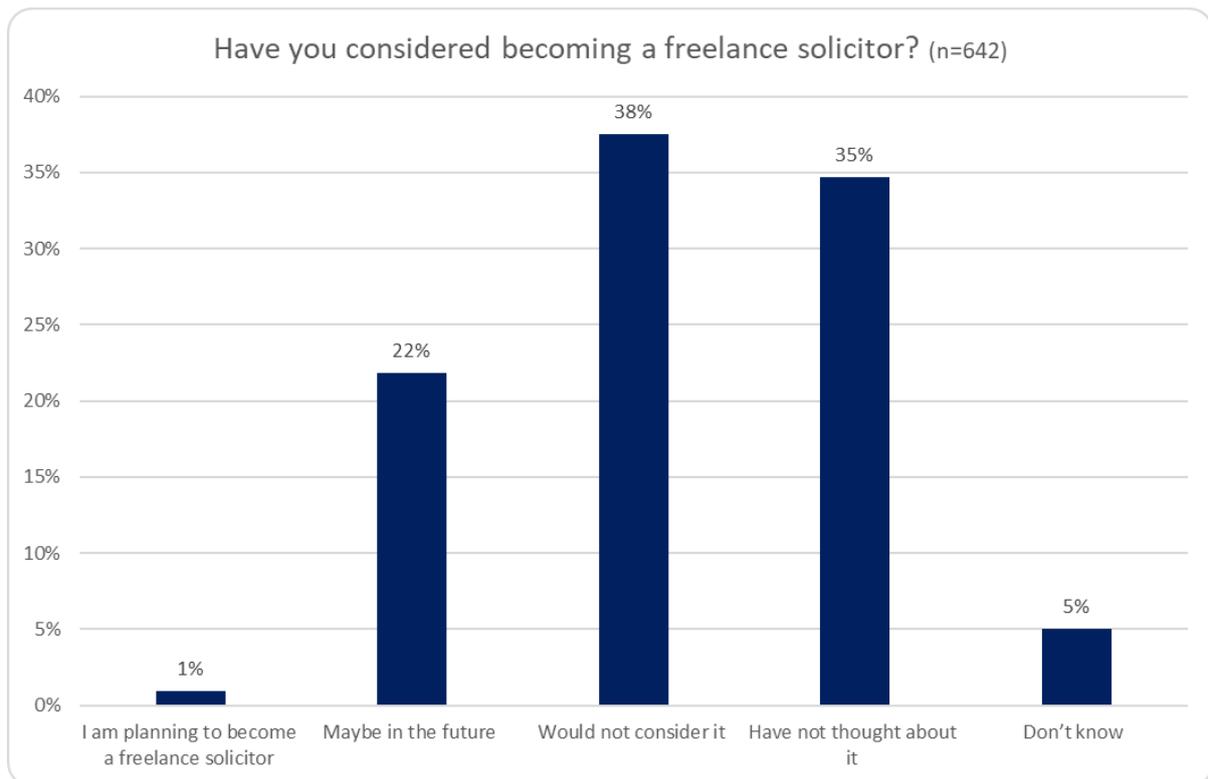
This number might be expected to rise further: of the practising solicitors responding to the survey who were aware of this reform (70% of all practising respondents), 1% were planning to become a freelance solicitor, whilst another 22% would consider it in the future. Should these figures prove representative of the overall population, this would suggest that up to 2,000 solicitors are planning to become freelance, whilst another 44,000 would consider it in the future. However, the take-up of the freelance option might currently be limited by the lack of awareness reported by 30% of solicitors.

Table 4 Types of solicitors considering the freelance option

| | All respondents | Planning or considering becoming freelance |
|-------------------------------|-----------------|--------------------------------------------|
| Registered Sole Practitioner | 8% | 10% |
| Other LSA-regulated law firm | 72% | 68% |
| Practising outside a law firm | 20% | 22% |

Source: CSES survey of practising solicitors.

¹⁴ SRA Guidance: Preparing to become a sole practitioner or an SRA-regulated freelance solicitor; 25 November 2019.

Figure 13 Proportion of practising solicitors considering becoming freelance

Source: CSES survey of practising solicitors.

4.3 Profile of freelance solicitors

4.3.1 Demographic profile

Data from the SRA shows that freelance solicitors are similar to the overall population of solicitors in terms of their age and level of experience. They differ in terms of their ethnicity, location and sex (less likely to be white and/or female, more likely to be located in the East of England and South East of England).

Compared with the overall population of solicitors, freelance solicitors are:

- of similar age (48.6 years compared with 46.2 years)
- similarly experienced (17.7 years compared with 18.3 years)
- more likely to be male (61% compared with 48%)
- less likely to be White (71.8% compared with 82.6%); this difference is significant (at 95% confidence interval) and is in contrast to solicitors in general, within which the percentage of White people is similar to within the working-age population (83% compared with 86%).
- more likely to be Asian/Asian British. Whilst people of this ethnicity are highly represented amongst solicitors in general (11.4% compared with 8% in the working-age population), they are even more highly represented amongst freelance solicitors (i.e. 15.4%). However, this difference is not significant at the 95% confidence interval.
- more likely to be Black/Black British. Despite being under-represented amongst solicitors in general compared with the working age population (2.6% compared with 3.4% in the working-age population), people of this ethnicity are highly represented amongst freelance solicitors (i.e.

7.7%). This difference is significant at the 95% confidence interval.

- much more likely to be located in the East of England and South East of England, and slightly more likely to be located in the East Midlands and West Midlands
- much less likely to be located in London, North East England, North West England or Yorkshire and the Humber, although this difference is not significant at the 95% confidence level (NB: London still accounts for more freelance solicitors than any other region, i.e. 40%, although this is low compared with the overall population of solicitors, i.e. 50%).

Table 5 Comparison of freelance solicitors with all solicitors

| Indicator | Freelance | All solicitors |
|---------------------------------|-----------|----------------|
| Personal characteristics | | |
| Number | 294 | 206,729 |
| Average age (years) | 48.6 | 46.2 |
| Years active | 17.7 | 18.3 |
| Female | 39.1 % | 52.3 % |
| Male | 60.9 % | 47.7 % |
| Ethnicity | | |
| Asian / Asian British | 15.4 % | 11.4 % |
| Black / Black British* | 7.7 % | 2.6 % |
| Mixed / Multiple ethnic group | 3.1 % | 1.6 % |
| Other ethnic group | 1.0 % | 1.4 % |
| Prefer not to say | 1.0 % | 0.4 % |
| White* | 71.8 % | 82.6 % |
| Region | | |
| Channel Islands | 0.0 % | 0.5 % |
| East Midlands | 4.5 % | 3.6 % |
| East of England | 9.0 % | 4.5 % |
| Isle of Man | 0.0 % | 0.1 % |
| London | 40.1 % | 50.0 % |
| North East | 2.6 % | 2.1 % |
| North West | 9.0 % | 10.0 % |
| Northern Ireland | 0.4 % | 0.1 % |
| Scotland | 0.4 % | 0.4 % |
| South East | 16.1 % | 8.6 % |
| South West | 6.7 % | 6.4 % |
| Wales | 1.1 % | 2.7 % |
| West Midlands | 7.1 % | 5.5 % |
| Yorkshire and the Humber | 3.0 % | 5.6 % |

Source: SRA data. NB: some data were not available for all freelancers: age and years active (n=243); gender (n=238); ethnicity (n=195); region (n=267). *denotes a significant difference at the 95% confidence interval.

Table 6 Ethnicity of freelance solicitors

| Indicator | Freelance solicitors | All solicitors | Working age population (18-64 years) | Total population |
|-------------------------------|----------------------|----------------|--------------------------------------|------------------|
| Number# | 294 | 206,729 | 34,882,472 | 56,075,912 |
| Asian / Asian British | 15.4 % | 11.4 % | 8.1 % | 7.5 % |
| Black / Black British* | 7.7 % | 2.6 % | 3.4 % | 3.3 % |
| Mixed / Multiple ethnic group | 3.1 % | 1.6 % | 1.7 % | 2.2 % |
| Other ethnic group | 1.0 % | 1.4 % | 1.1 % | 1.0 % |
| Prefer not to say | 1.0 % | 0.4 % | - | - |
| White* | 71.8 % | 82.6 % | 85.7 % | 86.0 % |

Source: SRA data. #NB: total population of freelancers was 294, however, ethnicity data were not available for all freelancers (n=195). *denotes a significant difference at the 95% confidence interval in the population of freelance solicitors compared with all solicitors.

4.3.2 Professional profile

Freelance solicitors are diverse in terms of their previous role, the areas of law practised and their clients, according to the survey.

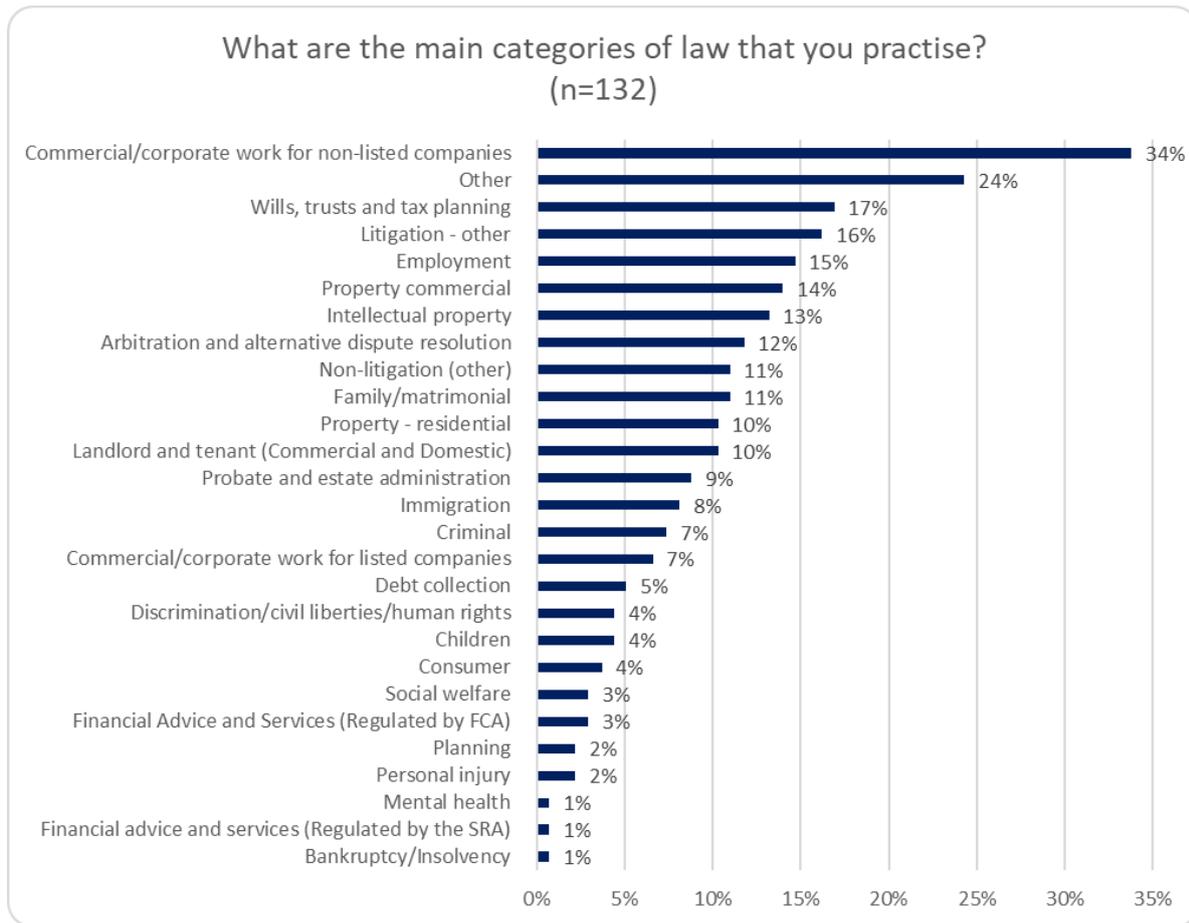
Most solicitors (62%) previously worked in regulated organisations serving the public (48% in SRA-regulated law firms, 14% as Registered Sole Practitioners). As a comparison, some 80% of practising solicitors (not including freelancers) responding to the survey, worked in regulated law firms.

About one-third (34%) were not previously working in regulated organisations serving the public (21% in-house, 10% non-practising, 4% non-regulated). As a comparison, some 20% of practising solicitors (not including freelancers) responding to the survey, were not working in regulated law firms. This suggests that the possibility to operate on a freelance basis is increasing the supply of solicitors serving the public, thus increasing competition and consumer choice.

Freelancers practise a wide variety of areas of law. As shown in Figure 14 below, the most commonly practised area of law was "commercial/corporate work for non-listed companies". However, this was practised by only 34% of freelance solicitors, suggesting considerable diversity in the areas of law practised.

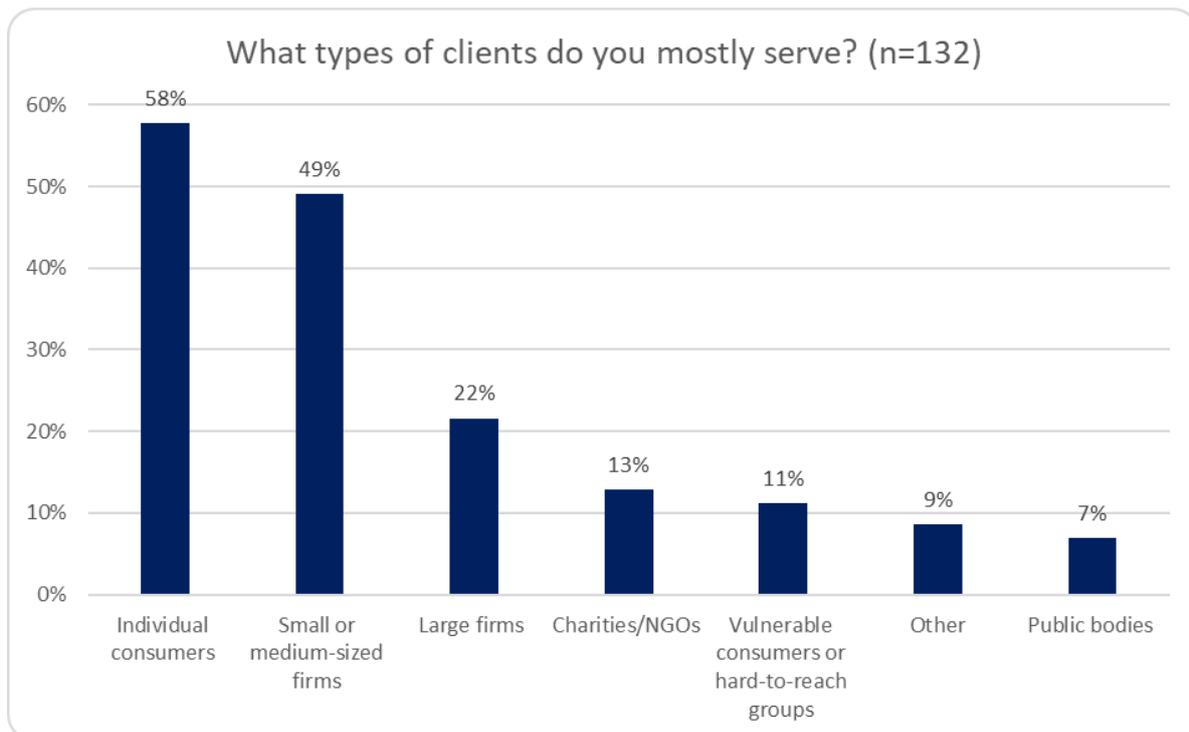
Freelancers serve a diversity of clients with individual consumers being most common (58%). In some cases, freelancers are not contracting directly with clients to provide legal services. Examples identified through the survey included a consultant with an LSA-regulated law firm working under the umbrella of other firms as a solicitor, a solicitor engaged as a locum by a local authority, and a solicitor providing training rather than legal services.

Figure 14 Main categories of law practised by freelance solicitors



Source: CSES surveys of freelance solicitors.

Figure 15 Main types of clients served by freelance solicitors



Source: CSES surveys of freelance solicitors.

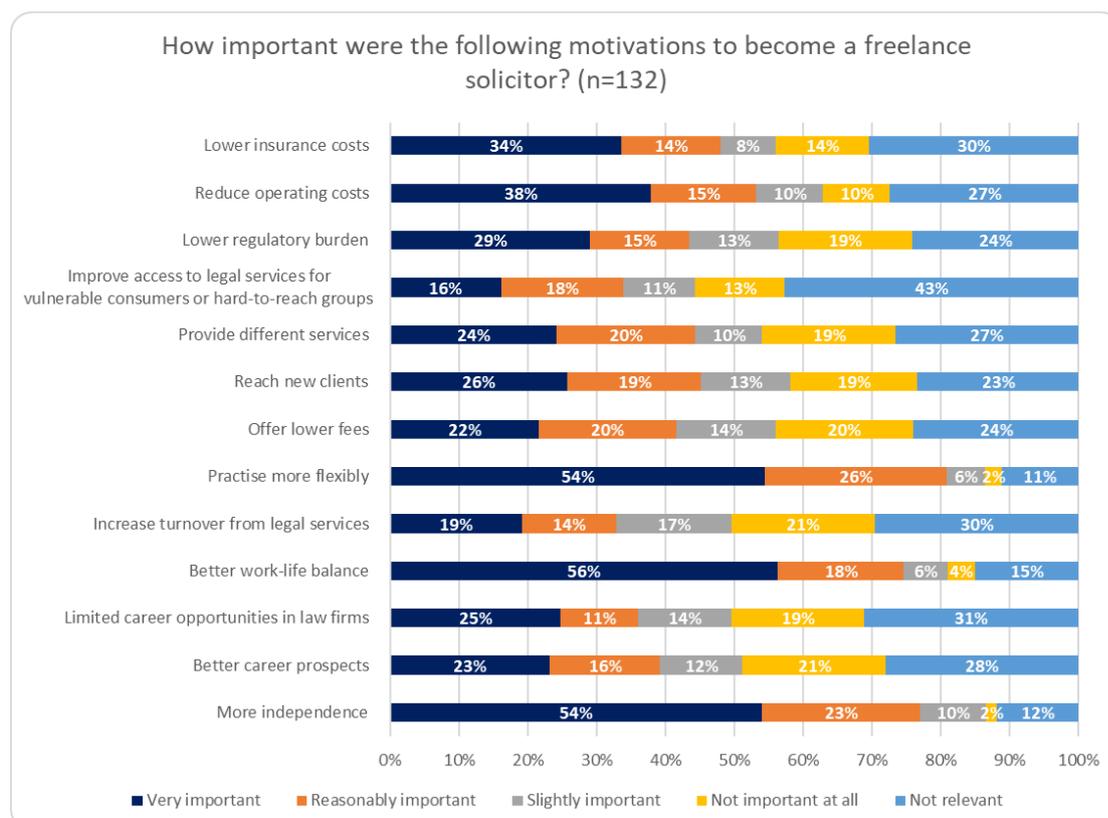
4.4 Motivations

The primary motivations for becoming a freelance solicitor relate to how they operate (i.e. having a better work-life balance, practising more flexibly, having more independence). Another important motivation was reducing operating costs, mentioned by 53% of freelancers.

Only a minority are particularly motivated by opportunities to change service provision. Fewer than half of freelance solicitors reported that it was very important or reasonably important to be able to provide different services, offer lower fees, reach new clients or improve access for vulnerable or hard-to-reach consumers. Nonetheless, one freelance solicitor has highlighted the opportunity to change service provision. This freelance solicitor has sought to offer a “modern, flexible, personal and convenient service” to clients at lower price, including a “mobile legal service” whereby she will visit clients either during or outside standard office hours.¹⁵ Services offered include wills and trusts, powers of attorney, court of protection, probate and employment law. In setting up as a freelancer, the solicitor received support from the government’s New Enterprise Allowance Programme¹⁶ via the North East Business and Innovation Centre.¹⁷

An even smaller minority are particularly motivated by income or career development (i.e. increased turnover, better career prospects, limited career opportunities in law firms). For example, one freelance solicitor reported that her income as a freelance solicitor was less than it had previously been when working for a large law firm but that she preferred the greater freedom and flexibility of her freelance status compared with the large firm.

Figure 16 Main motivations in becoming a freelance solicitor



Source: CSES surveys of freelance solicitors.

¹⁵ <https://rebeccacalvertls.co.uk/>

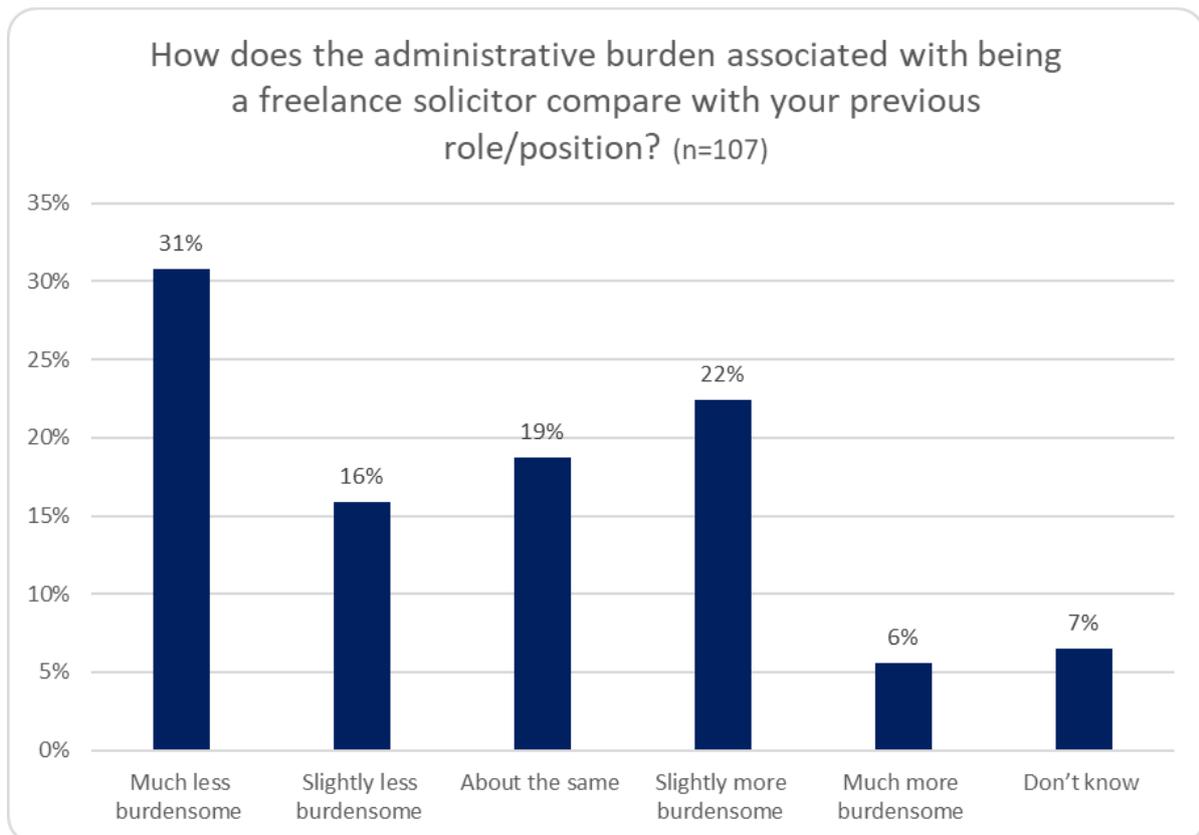
¹⁶ <https://www.ne-bic.co.uk/starting-your-business/new-enterprise-allowance/>

¹⁷ <https://www.ne-bic.co.uk/legal-eagle-swoops-in-on-law-change/>

4.5 Operational considerations

The majority of freelance solicitors are satisfied with the regulatory requirements related to their freelance status. Like all solicitors, freelance solicitors are required to comply with the SRA Code of Conduct for Solicitors, registered European lawyers (RELS) and registered foreign lawyers (RFLs).¹⁸ The Code of Conduct describes the standards of professionalism that the SRA expects of solicitors, RELS and RFLs that it authorises. Amongst the freelance solicitors responding to the survey, 79% reported that the Code of Conduct is clear, whilst 71% reported that it is easy to comply with the Code of Conduct rules for freelance solicitors. In line with this, as shown in Figure 17, the majority of freelance solicitors (65%, after rounding) reported that the administrative burden associated with being a freelance solicitor was no greater than that associated with their previous position.

Figure 17 Administrative burden associated with being a freelance solicitor



Source: CSES surveys of freelance solicitors.

Freelance solicitors are mostly satisfied with the rules and the tools and guidance provided by the SRA. In order to start operating on a freelance basis, solicitors must notify the SRA and specify whether they intend to deliver reserved legal services. To help them, the SRA offers guidance on “Preparing to become a sole practitioner or an SRA-regulated freelance solicitor”.¹⁹ The guidance sets out the conditions that must be satisfied if a solicitor is to operate on a freelance basis. Amongst the freelance solicitors responding to the survey, 62% reported that the tools and guidance are very helpful or fairly helpful.

¹⁸ <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>

¹⁹ <https://www.sra.org.uk/solicitors/guidance/preparing-sole-practitioner-regulated-independent-solicitor/>

Restrictions on claims management services or immigration services provide difficulties for a small minority of freelancers: 9% in the case of claims management services and 6% in the case of immigration services. Although these restrictions affect only a small number of freelancers, those solicitors reported considerable difficulties and a degree of frustration. One freelance solicitor suggested that since the legislation provides that a solicitor can carry out such work and does not specifically exclude freelance solicitors, it follows that there is no legislative barrier. The same solicitor also suggested that freelance solicitors can very often be well placed to provide advice and representation for vulnerable people requiring immigration services.

Some freelance solicitors struggle to access affordable insurance. All freelance solicitors are required to have adequate and appropriate insurance. However, some 45% reported that gaining insurance can be difficult (compared with 22% reporting that it was easy). Similarly, 29% reported that it was costly (compared with operating in a law firm), whilst only 4% reported that it was low cost. For example, one freelance solicitor reported a doubling in the cost of an annual policy (compared with her first year as a freelance solicitor), which she suggested was due in part to limited competition in the market.

Reflecting this, **some freelance solicitors report operating without insurance through necessity rather than choice**, i.e. because of the cost and difficulty involved, which limits the nature of services they can provide to those that carry less risk. For example, one freelance solicitor (who provides dispute resolution services for individuals and small businesses) stated: *“It’s been a total nightmare. I went to every broker and almost all said they wouldn’t provide PII to freelance solicitors.”* As a result, the solicitor trades without insurance (whilst fully informing his clients) and is thus limited in the scope of services that he can provide. Another freelance solicitor reported difficulties in purchasing insurance but had eventually been able to purchase insurance that allowed the provision of freelance services (e.g. wills, power of attorney, pension disputes) not only in England and Wales but also in another country outside the UK; the insurance provider was based in the other jurisdiction.

In other cases, **some freelance solicitors consider that no insurance is needed, given the nature of their work and the low risks attached.** For example, one freelance solicitor interviewed operates as a consultant to a small, high street law firm providing services such as property, conveyancing, wills, etc. In this role, the freelance solicitor is covered by the firm’s insurance policy and did not therefore require a separate policy. Another freelance solicitor was able to access relatively low cost PII, as all her work was for LSA-regulated organisations. Another freelance solicitor reported that he did not require PII as he practices as an in-house solicitor for healthcare companies.

The possible uncertainty around the level of insurance held by freelance solicitors was said by one law firm to be problematic for them when working with freelancers. The difficulty was that the law firm could not know in advance what level of indemnity the freelance solicitor would have. This required the law firm to ask freelancers to provide evidence of adequate insurance in advance of using them; in contrast, when working with other law firms, a law firm can be sure what minimum level of cover any solicitor has.

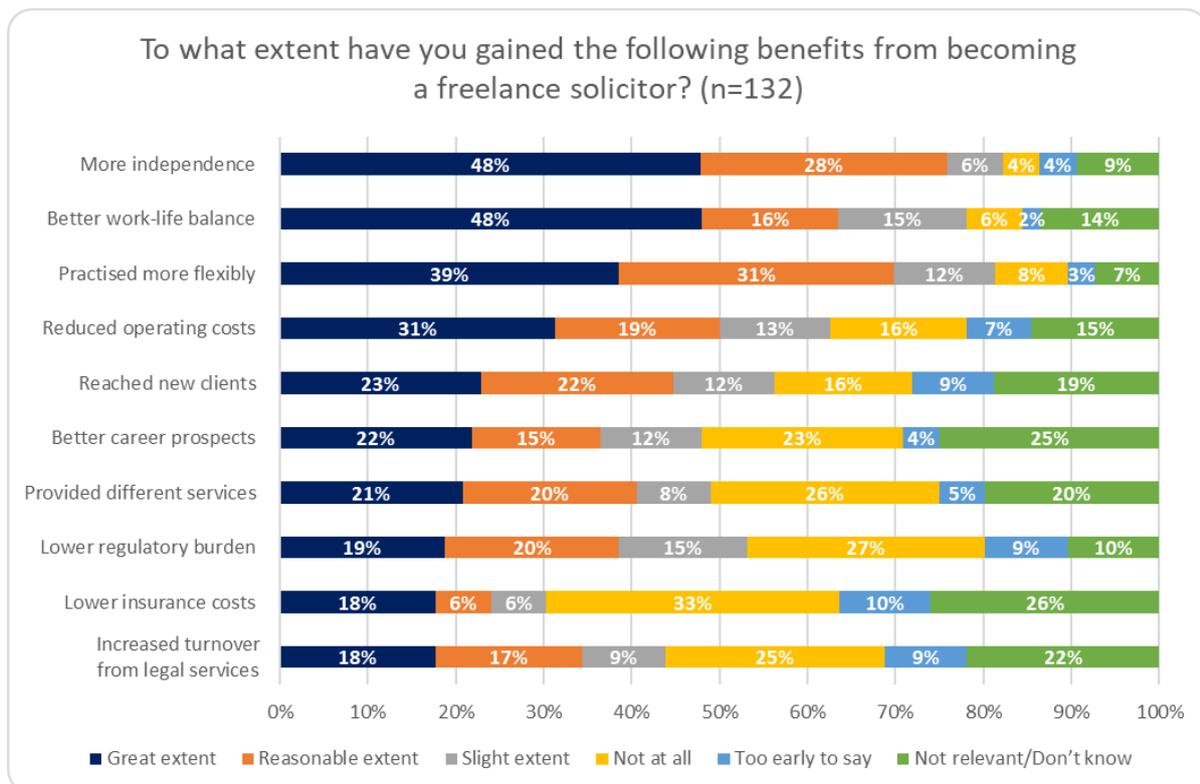
The difficulties in obtaining insurance may reflect a limited supply of insurance tailored to freelancers. Indeed, this point was confirmed by one provider of insurance to freelance solicitors. This provider highlighted the considerable uncertainty for insurers, given the lack of precedents on which to assess risks posed by freelancers. More positively, the insurer reported that premiums for freelance solicitors are lower than for Registered Sole Practitioners. To date, the small number of freelance solicitors means that the market for insurance is not particularly lucrative. However, as the number of freelance solicitors steadily grows, it may be the case that more insurers consider serving this market and become better able to assess the risk. One option suggested by a stakeholder representing the profession might be for freelance solicitors to be allowed to operate via a limited company, which might allow the insurer to have a more standard business relationship with the solicitor.

4.6 Effects for freelance solicitors

The benefits realised in practice are in line with the motivations for becoming a freelance solicitor. According to the survey results:

- The majority of freelance solicitors report benefits in how they operate (i.e. having a better work-life balance, practising more flexibly, having more independence and reducing operating costs).
- A sizeable minority have changed service provision (i.e. providing different services or reached new clients).
- A smaller minority have enjoyed improved income or career development (i.e. increased turnover, better career prospects, limited career opportunities in law firms).

Figure 18 Main benefits reported by freelance solicitors



Source: CSES surveys of freelance solicitors. n=132

4.7 Client experience

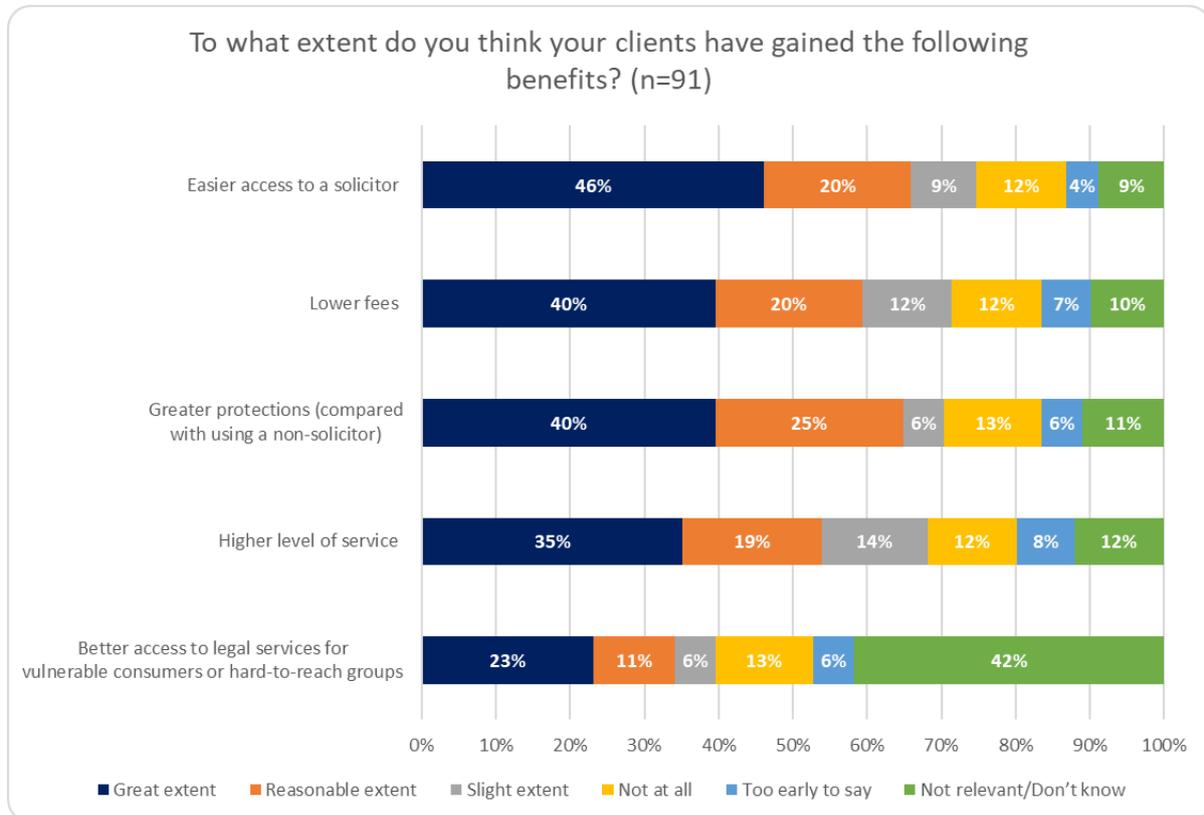
Freelance solicitors use a range of means to inform their clients about their freelance status. These particularly include written statements (60% of respondents to the survey) or verbal statements (42%) provided at the outset, as well as their websites (40%). Some 21% of freelance solicitors mentioned a range of “Other” means, such as client engagement letters or written agreements. The interviews and the survey also identified examples of freelance solicitors mostly providing services for friends and other personal contacts, or longstanding professional contacts. In such cases, the personal connection and high trust meant that it was not necessary to inform their clients through very formal means, such as written statements.

The majority of freelancers are confident that their clients are aware of the protections available to them. Some 59 out of 91 (65%) respondents answering this question in the survey reported that their

clients were reasonably aware or very aware. Only 8 respondents (10%) believed that their clients were unaware.

Freelancers perceive that the main benefits for clients are easier access to a solicitor, lower fees and greater protections (compared with using a non-solicitor).

Figure 19 Freelance solicitors’ perceptions of benefits gained by their clients



Source: CSES surveys of freelance solicitors. n=132

There have been very few complaints concerning freelance solicitors. Since the introduction of the reform in November 2019 and up to March 2021, the SRA had seen just three complaints against freelance solicitors, whilst the Legal Ombudsman had received just one. Of these complaints, one is possibly connected to the freelance status of the solicitor, since it relates to “practices in breach of Regulation 10.2 (within the SRA Authorisation of Individuals Regulations), which concerns to “Practising on your own”.²⁰ The other complaints concerning freelance solicitors do not appear to be particularly connected to their status, since they relate to “breach of Principle 2” and “offensive behaviours”. The very small number of complaints does not allow testing of the significance compared with the overall population of solicitors. However, it does suggest that there is no immediate cause for concern.

The existence of the regulations for freelance solicitors have proved to be useful in cases where the SRA identifies cases of solicitors practising as de facto freelancers in a way that is not permitted. This risk predates the reform and in some cases might arise through ignorance of the regulations. Where such cases arise, the SRA is now able to refer to such solicitors to the freelance regulations.

²⁰ <https://www.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/>

5. Practising flexibly reform: solicitors in non-regulated organisations

5.1 Background to the reform

Another set of reforms introduced in November 2019 aimed at providing greater flexibility for solicitors and firms by allowing solicitors to provide non-reserved services to the public or a section of the public, by practising in a non-Legal Services Act (non-LSA) regulated provider.

Under the previous rules, solicitors who worked in organisations not regulated by the SRA, or another approved legal regulator, could not provide non-reserved activities to the public, except in some specific circumstances.²¹ In addition, clients of such non-LSA regulated organisations could not make a complaint to the Legal Ombudsman (LeO).

5.1.1 The reform

The reforms were introduced in part to address concerns that the previous regulations may have been adversely impacting on competition and consumers, by restricting choice and not allowing consumers to access the services of a solicitor outside a regulated organisation. In addition, the regulations limited the opportunities for solicitors to choose to work in a range of different organisations. This, in turn, could have limited innovation in business and supply models to the ultimate detriment of consumers. The SRA also considered that the existing arrangements created an unnecessary and restrictive ‘artificial entity’ model around solicitors operating as individuals.

By removing these requirements, the SRA’s aim was to allow solicitors and firms greater flexibility to deliver non-reserved activities through a range of different business structures and alternative legal services providers. This was expected to allow solicitors to deliver non-reserved activities in ways which are most responsive to their customer needs and consistent with their business strategy.

Following the reforms, solicitors in non-LSA regulated organisations are no longer compulsorily required to hold professional indemnity insurance (PII),²² and clients of solicitors practising from non-LSA regulated firms also do not have access to the SRA Compensation Fund. To address the risks this presents, the SRA requires solicitors working in non-LSA regulated organisations to inform clients before engagement of their PII and Compensation Fund status. In addition, solicitors working in non-LSA regulated organisations are subject to conduct rules under the Code of Conduct for Solicitors. Clients also have access to LeO.

²¹ Six specific legal service activities are ‘reserved’ in the Legal Services Act (2007). These include: exercising rights of audience (the right to appear before a court); conducting litigation; probate services; reserved instrument activities (conveyancing); acting as a notary; administering oaths. By definition, any activity that is not a ‘reserved activity’ is a non-reserved activity. Examples of non-reserved activities include: general legal advice; housing advice; employment advice; advice on planning disputes; mediation services; will writing; and advice provided by law centres, citizens advice bureau and university legal services on a range of legal issues (such as housing, commercial, family, employment etc.)

²² While not mandatory non-LSA regulated organisations can choose to take out PII, and are also subject to consumer trading regulations.

5.1.2 Potential benefits and risks of the reform

A number of potential benefits associated with this change were identified when they were introduced.²³ These included:

- **increased competition** which would come by allowing solicitors to capitalise on their specific qualifications, skills and expertise in non-LSA-regulated organisations
- **greater innovation** and new methods of service delivery, which can be market-expanding and potentially address some of the issues associated with unmet demand for legal services
- **potentially address unmet demand** by providing consumers with more choice
- **expanding choice options for solicitors** which could lead to an even more diverse legal market
- **more opportunities for in-house providers** to advise the public, or certain segments of the public, including vulnerable consumers (subject to their employment contracts)
- **a ‘level playing field’** for solicitors and non-solicitors who provide non-reserved services.²⁴

Alongside these benefits, various risks associated with this change were also identified, including the following.

- **Certain consumer protections will not be available** where services are provided by solicitors through alternative legal services providers.
- **Consumers may not have the benefit of legal professional privilege** in relation to advice provided through an alternative legal services provider (unless novel contractual arrangements are developed).
- **Consumers may fail to understand relevant distinctions**, and to appreciate differences in consumer protections when using different providers.

5.1.3 Recent assessments of the reforms

Before setting out the results of the analysis, it is useful to consider the findings and submissions on the impacts of allowing solicitors to practise in non-LSA regulated organisations identified in other more general reviews of legal services in the England and Wales.

(a) Competition and Markets Authority (CMA), Review of the legal services market study in England and Wales, (2020)

In its December 2020 review of its Legal Services market study (the Market Study), the CMA commented on the specific reforms to allow solicitors to work in non-LSA authorised firms. The CMA observed that some stakeholders had told them that the ability to employ solicitors is a benefit given that the title of ‘solicitor’ is an important brand for legal services in the UK. It also noted that one stakeholder considered that the entry and expansion of new legal services firms had partly been as a result of these reforms. The CMA noted that in response to their Call for Inputs there was no evidence of consumer protection concerns arising as a result of allowing solicitors to practise in non-LSA

²³ See SRA (2017). ‘Looking to the future: better information, more choice: initial impact assessment’. September 2017; Decker (2016) ‘Assessment of the economic rationale for, and possible impacts of, proposed changes to the Solicitors Regulation Authority Handbook’ April 2016.

²⁴ Specifically the change would remove what might have been classed as an asymmetric regulatory restriction in that solicitors were restricted in how they can deliver unreserved services (i.e.: only through an SRA regulated entity), while non-solicitors delivering similar types of services faced no such restriction.

regulated organisations. Overall, the CMA concluded that *“While it may be too early to evaluate the full impact of this change, we consider that these early signs are positive.”*

As part of its evidence gathering, the CMA asked a question about the impact the removal of restrictions to allow solicitors to practise in non-LSA regulated organisations has had on the availability of lower cost options in the sector. Selected extracts from responses to this question are noted below.

- The Law Society noted that it is too early to assess its full effect of the change, but that in the long-term it might lower operational costs for business, potentially leading to more competition in the market, which could drive costs down for consumers.
- The Association of Consumer Support Organisations (ACSO) – which represents the interests of consumers in the civil justice system – also considered it too early to assess its impact. However, it noted the potential for the change to have a very significant positive effect, by allowing solicitors to operate and deliver legal services in a far more flexible manner and with potentially a greatly reduced cost base, and because it provides more choices for solicitors, which will deliver a more flexible resource pool and more flexible delivery of legal services. In its assessment, the change should *“reduce the cost of delivery while improving competition, and hence overall will have a clear positive impact for the consumer”*.
- The National Association of Licensed Paralegals submitted that it knew that many of its members worked collaboratively with solicitors, though it is not known if this has increased since the change in the regulations.
- The Legal Services Consumer Panel (LSCP) stated that it awaited a thorough review of this policy, noting its concerns around the lowering of consumer protection in this area and made a strong case for monitoring and evaluating this policy to both the SRA and the LSB.
- The Institute of Paralegals noted its belief that consumers are not aware of the difference between authorised and unauthorised firms. It also submitted that it had no data that suggests that solicitors working in unauthorised firms have any effect on the price to the consumer, noting that it will be the firm that makes that commercial decision.

Of particular interest is the response of Hybrid Legal, which is a non-LSA-regulated organisation providing non-reserved legal activity support to SMEs. It identified several advantages to its firm and business model from the changes. It noted that the flexibility of the market reforms had allowed firms such as Hybrid Legal to compete much more effectively, and that the changes had allowed them to be able to refer or hold out their solicitors (who are on the roll and have a current practising certificate) as solicitors in their communications with clients. Hybrid Legal noted that ‘Solicitor’ is an important brand for legal services and that, in their view under the previous arrangements it was *“nonsensical to have fully qualified, experienced solicitors working for our clients who were unable to refer to themselves as such”*. Further it noted that: *“We now confidently hold our highly experienced solicitors out to be comparable with those who are employed within regulated law firms, something we were unable to do previously”*.

(b) The LSB State of Legal Services Report (2020)

In its 2020 assessment of the legal services market, the LSB observed that while the non-LSA regulated sector remains small, there are examples such as will-writing where new entrants have successfully used technology to serve large numbers of consumers. More generally, the LSB refers to research that suggests that non-LSA regulated providers tend to be more innovative and cheaper, which it considered to provide significant benefits given challenges around unmet legal need.

However, the LSB also referred to survey evidence showing that consumers are more dissatisfied with the service they receive from non-LSA regulated providers, noting that many participants in its LSB’s Public Panel expressed surprise and concern that some legal services are not regulated.

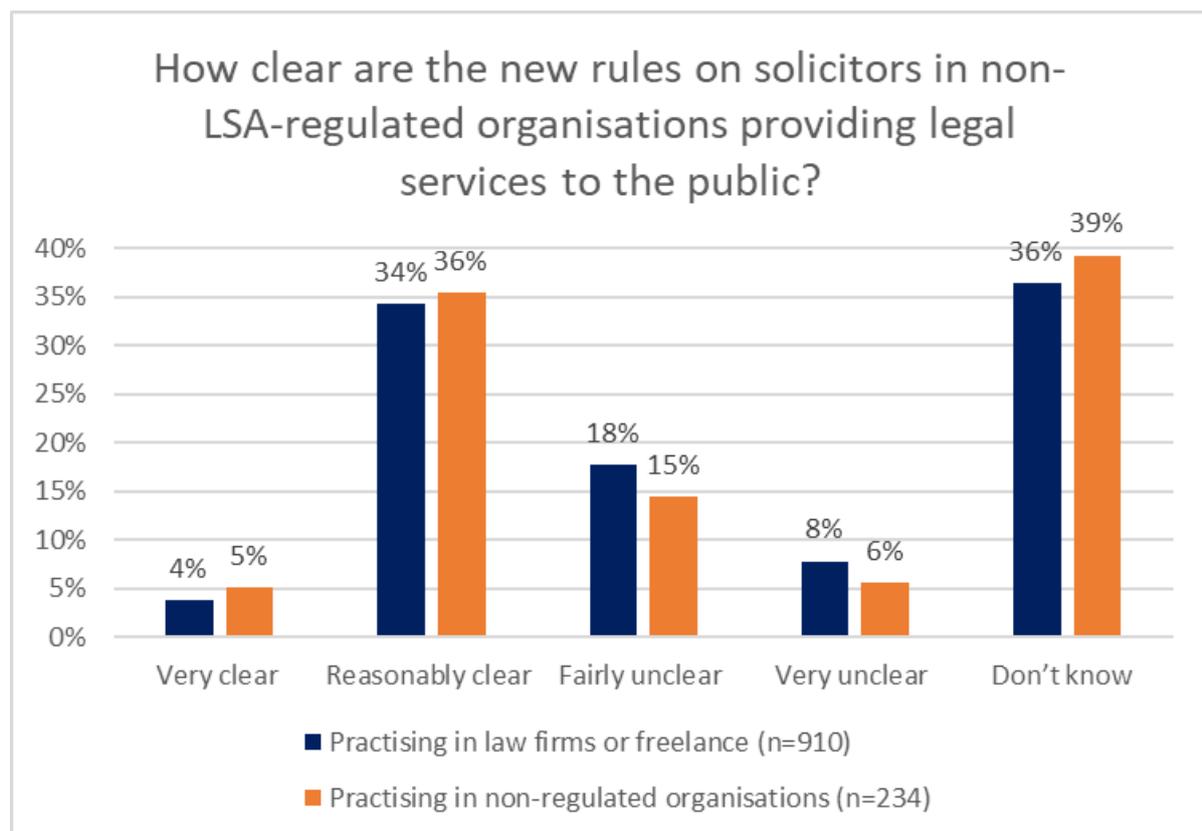
Looking ahead, the LSB noted that Covid-19 could see non-LSA regulated providers grow in influence, and thus gaps in consumer protection widen. In summary, the LSB saw the issue as one of balancing competing tensions of protecting consumers, enabling innovation and increasing the affordability of legal services.

5.2 Clarity of reforms

An overarching aim of the package of Standards and Regulation reforms was to simplify the rules and make it easier for solicitors and organisations to understand the regulations that apply to them.

In relation to this reform, the survey evidence indicates that **more solicitors find the rules clear than find them unclear**. Of those solicitors who offered a response to the question (i.e. excluding 'don't know'), the majority (493 out of 807 responses or 61%) found that the new rules on solicitors in non-LSA-regulated organisations providing legal services to the public were either reasonably clear or very clear. Moreover, there is little difference in the clarity perceived by solicitors in law firms or freelancers compared with solicitors practising in non-LSA-regulated organisations. As shown in Figure 20, 38% of solicitors in law firms or freelancers find them clear, whilst 26% find them unclear. Some 41% of solicitors in non-LSA-regulated organisations find them clear, whilst 21% find them unclear. However, more than one-third of each type did not know.

Figure 20 Clarity of rules for solicitors in non-regulated organisations serving the public



Source: CSES surveys of freelance solicitors and other practising solicitors.

These responses are broadly consistent with information obtained through stakeholder interviews with solicitors. While most solicitors interviewed were aware of the reforms and what they involved, a small number were either unaware of the ability of solicitors to practise within a non-LSA regulated organisation or did not see the changes as relevant to their work.

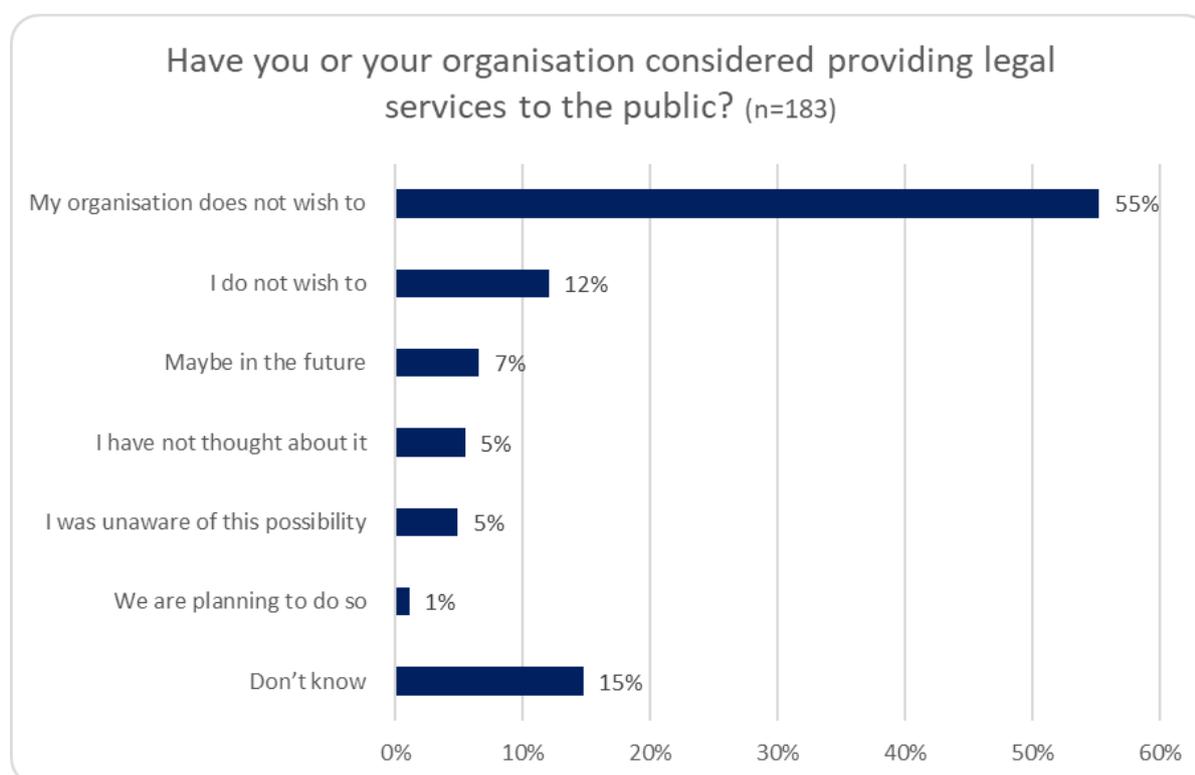
5.3 Solicitors working in non-LSA regulated organisations

5.3.1 Take up of the reforms

Data on the number of practising solicitors in non-LSA regulated organisations that are now providing services to the public is not currently systematically captured by the SRA. However, of the 224 solicitors in non-LSA regulated organisations that responded to the survey, 39 (17%) reported that they provided legal services to the public. In addition, another 14 solicitors (8%) who currently do not provide services to the public through a non-LSA regulated organisation indicated that they were either planning to do so or might do so in the future. When taken together, this suggests that around a quarter of solicitors currently working in non-LSA regulated organisations are, or are potentially considering, providing services to the public.

Figure 21 shows the main reasons why solicitors in non-LSA regulated organisations do not currently provide services to the public. Of the 183 solicitors responding this question, 101 (55%) reported that the organisation does not want to, while 22 solicitors (12%) stated they did not want to. This is again consistent with the observation that many of these solicitors may be working in-house.

Figure 21 Reasons for solicitors in non-regulated organisations not providing services to the public



Source: CSES survey of practising solicitors. NB: some respondents did not answer this question.

5.3.2 Motivation

As described above, among the expected benefits of this reform was that it could expand choice options for solicitors about where they provide services, and provide greater opportunities for in-house solicitors to advise the public, or certain segments of the public, including vulnerable consumers (subject to their employment contracts).

Stakeholder interviews suggested that there were two main types of solicitors that have chosen to work in a non-LSA regulated organisations. The first type of solicitor is someone that was previously

in-house but operated in a non-practising role. This reform means that they can now operate as a solicitor for that one client on an in-house basis (e.g. three days a week) but also allows them to fill the other days with work for other clients. In the views of one stakeholder this reform has been “*a panacea for these solicitors as they can now offer work to others*”. A second type of solicitor who has taken advantage of this reform are those that were already working in another business area prior to the reform but did not maintain a practising certificate. This might include HR consultancies and businesses that want to offer advice to consumers but don’t want the burden of being regulated as a law firm. This also applied to solicitors working in charitable entities.

The survey also provides insight into the reasons why solicitors choose to work in organisations that are non-LSA regulated. Of the 36 respondents who answered this question, 25 solicitors (69%) who work in non-LSA regulated organisations and provide legal services to the public were already working within the organisation prior to the reform being introduced. This suggests that the reform may have allowed them to now practise as a solicitor within that organisation, or to combine the in-house service with work for other clients.

5.3.3 Profile of firms taking up the reforms

Non-regulated organisations employing solicitors that provide service to the public are in a diversity of sectors. Evidence about these organisations was gathered from the survey of practising solicitors. Table 7 shows that almost half of the non-LSA regulated organisations that employ solicitors (17 out of 35) operate in the private sector, with seven (20%) being non-government organisations and five (14%) being public bodies. This suggests that the flexibility of the reforms have impacted a range of types of organisations including private companies, the public sector and charities.

Table 7 Type of non-regulated organisations employing solicitors providing services to the public

| Type of organisation | Percent | Count |
|----------------------|-------------|-----------|
| Private firm | 49% | 17 |
| Charity/NGO | 20% | 7 |
| Public body | 14% | 5 |
| Other | 17% | 6 |
| Total | 100% | 35 |

Source: CSES survey of practising solicitors.

Non-regulated organisations employing solicitors that provide service to the public are of a diversity of sizes. Table 8 presents evidence from the survey, which shows that of the 35 organisations that provide such services, 15 (43%) are micro-organisations employing fewer than nine people, while another 15 (43%) are medium to large organisations employing more than 50 people (including 12 (34%) organisations with over 250 employees), while the remaining five are small organisations employing between 10 and 49 people.

Table 8 Size of non-regulated organisations employing solicitors providing services to the public

| Number of staff | Percent | Count |
|-----------------|-------------|-----------|
| 1-9 | 43% | 15 |
| 10-49 | 14% | 5 |
| 50-249 | 9% | 3 |
| +250 | 34% | 12 |
| Total | 100% | 35 |

Source: CSES survey of practising solicitors.

5.3.4 Types of clients served

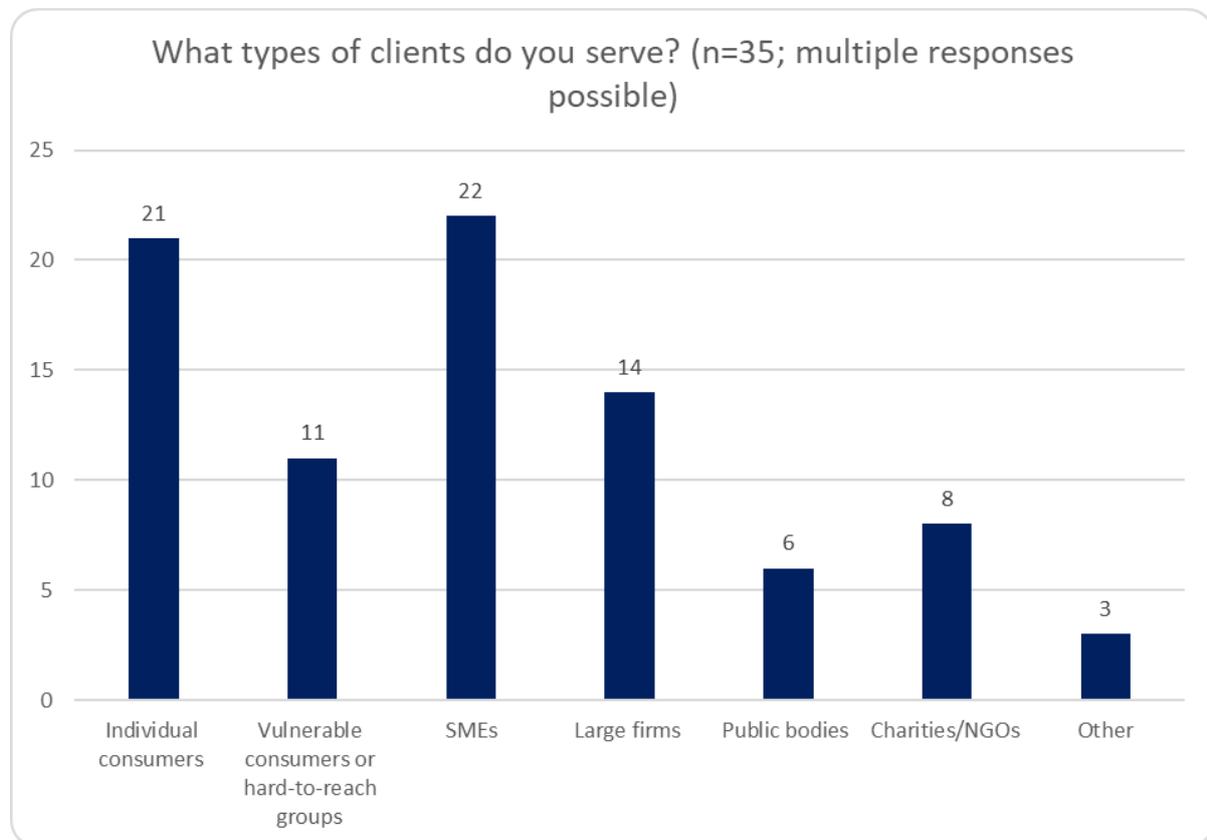
One of the aims of this reform was to potentially address unmet demand in the legal sector by providing consumers with more choice. There was also an expectation that the reforms could provide more opportunities for in-house providers to advise the public including vulnerable consumers.

The survey results indicate that **solicitors who provide services to the public and work in non-LSA regulated organisations serve a wide variety of clients**. Some 22 of the 35 (63%) solicitors who answered this question provided services to SMEs, while 21 out of the 35 solicitors (60%) provided services to individual consumers. This was reinforced by a representative of the profession who perceived that some non-regulated organisations were better placed to reach SMEs, compared with law firms. As a result, many SMEs were able to access legal advice that previously might have been unaffordable to them. Of particular note is the finding that 11 of the 35 solicitors (31%) working in non-LSA regulated organisations providing services to the public, serve vulnerable consumers or hard-to-reach groups.

These survey results are supported by evidence provided during stakeholder interviews. In particular one representative of the profession stated that non-LSA regulated organisations were “*definitely reaching SMEs that were hard for traditional law firms to reach*”. Moreover, it was suggested that solicitors working in these organisations were delivering services to SMEs as if they were ‘in-house’ and as such the proposition can be very attractive to SMEs who don’t want to commit to formal specialist in-house advice.

As shown in Figure 22, in addition to serving individual consumers and SMEs, solicitors working in non-LSA regulated organisations also provide services to large firms (40%), charities (23%) and public bodies (17%).

Figure 22 Types of clients served by solicitors in non-LSA regulated organisations



Source: CSES survey of practising solicitors

5.3.5 Ability to compete

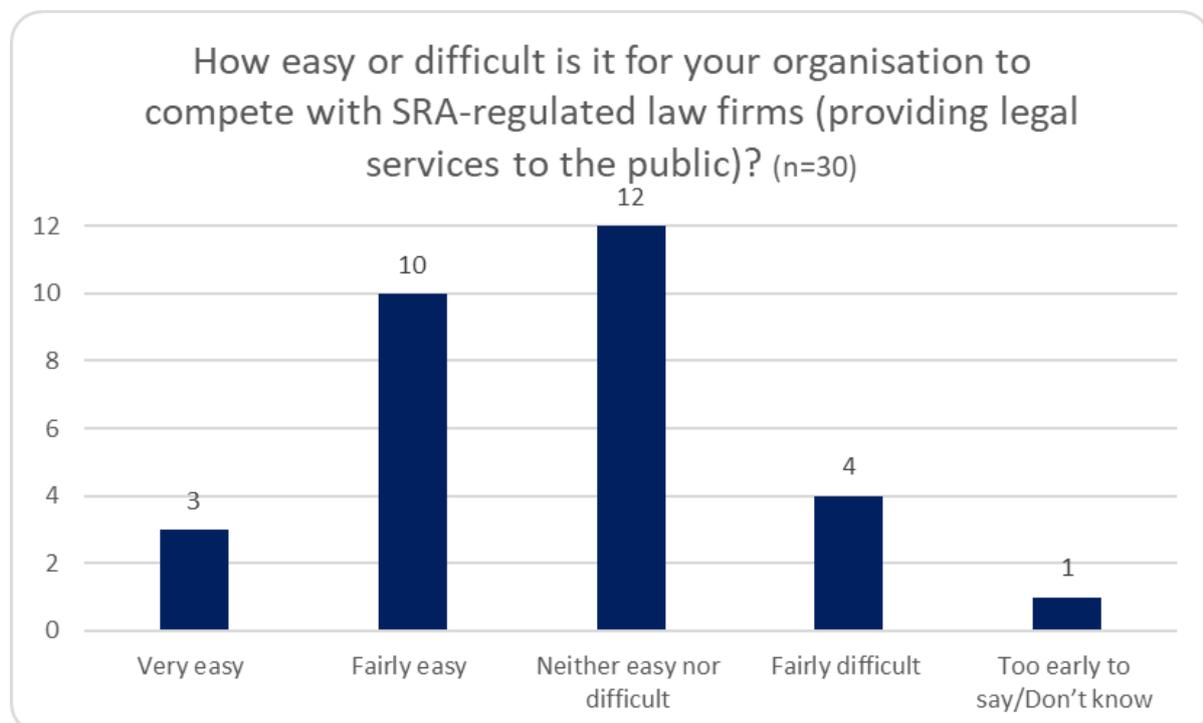
Another expected benefit of the reforms was increased competition, which would come by allowing solicitors to capitalise on their specific qualifications, skills and expertise in alternative legal services providers.

As shown in Figure 23, the survey results indicate that 13 of the 30 solicitors who responded to the question (43%) find it easy to compete with SRA-regulated law firms following the reforms. Only 4 solicitors (11%) reported that it was fairly difficult to compete with SRA-regulated law firms, while 12 solicitors (34%) found it neither easy nor difficult to compete with SRA-regulated firms.

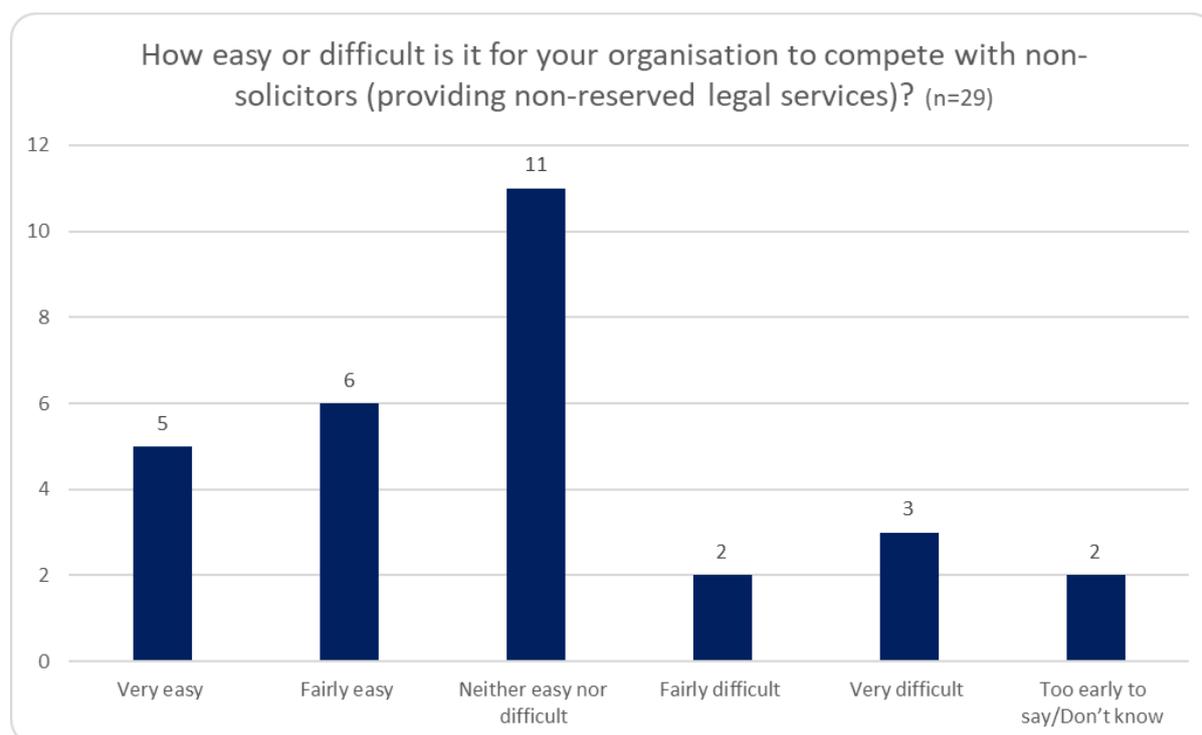
In addition to facilitating competition between solicitors working in SRA regulated firms and non-LSA regulated organisations, another potential benefit of the reform was to facilitate competition between non-LSA regulated organisations and other types of business, such as those that provide professional services (HR businesses, accountants and business advisers etc). Figure 24 shows that 11 of 29 solicitors who answered the question (38%) found it easy to compete with non-solicitor firms, while another 11 solicitors (38%) found it neither easy nor difficult to compete with SRA regulated firms. Only 5 solicitors (14%) in non-SRA-regulated organisations reported that they found it difficult to compete with non-solicitors.

Taken together these results suggest that most solicitors who provide services to the public and work in non-LSA regulated organisations have been able to compete effectively with solicitors working in regulated firms and with other non-solicitor firms. Put another way, the survey evidence does not indicate that a majority of solicitors have found it more difficult to compete with SRA-regulated firms or non-solicitor firms.

Figure 23 Ability of solicitors in non-regulated organisations to compete with regulated law firms



Source: CSES survey of practising solicitors. NB: not all respondents answered this question.

Figure 24 Ability of solicitors in non-LSA regulated organisations to compete with non-solicitors

Source: CSES survey of practising solicitors. NB: not all respondents answered this question.

5.3.6 Benefits and drawbacks of reforms for solicitors and their employers

As described above, the reforms were intended to increase flexibility and expand the choice options for solicitors and the firms that employ them, and to provide more opportunities for in-house providers to advise the public including vulnerable consumers.

As part of the survey, solicitors in non-LSA regulated organisations that provide services to the public were asked whether the reforms had resulted in the following impacts for the organisations that employ them.

- **Increased turnover from legal services:** 11 out of 33 respondents (33%) to the survey indicated that turnover has increased to some extent since the reforms, while 12 respondents (36%) said that it was too early to say. The remaining ten (30%) respondents reported that turnover had not increased.
- **Reached new clients:** nine out of 33 respondents (27%) indicated that the reforms had allowed them to reach new clients, while 11 respondents (39%) said that it was too early to say. The remaining 13 respondents (39%) reported that the reform had no impact on this indicator.
- **Provide additional legal services:** 11 out of 33 respondents (33%) to the survey indicated that the reforms allowed them to provide additional services, while ten (30%) said that it was too early to say and the remaining 11 respondents (33%) reported that it had no impact.
- **Employ a solicitor for the first time:** 6 out of 33 respondents (18%) indicated that the reforms had allowed them to employ a solicitor for the first time, 14 respondents (42%) said that it was too early to say. The remaining 13 respondents (39%) reported that the reform had no impact on this indicator.

When asked to elaborate on other benefits of the reforms to themselves and the organisations that employ them, solicitors reported that these included: cost savings and less bureaucracy; more flexible

and cheaper professional indemnity insurance; less regulatory burden; greater regulatory certainty which has freed up time to focus on competing with other legal service providers.

When asked about the drawbacks of the reforms to themselves and the organisations that employ them, many respondents reported that there were ‘none at all’ or ‘none so far’. However, two respondents mentioned a lack of clarity about the treatment of solicitors that are personally regulated by the SRA but work for organisations regulated in another jurisdiction outside England and Wales. Another respondent noted difficulties of obtaining insurance, and reported that they do not have PII (the respondent did not comment on the adequacy of any PII that the employer might have).

5.3.7 Consumer and client experience

As discussed above, among the potential benefits of this reform was that it could expand consumer choice by allowing consumers to access the services of a solicitor outside a regulated provider, and thus potentially intensify competition and address unmet demand. At the same time, among the potential risks identified prior to the introduction of the reforms was that consumers may fail to understand relevant distinctions, and to appreciate differences in consumer protections when using solicitors in non-LSA regulated organisations.

The consultations of a small number of consumers that had used a solicitor in non-LSA regulated firms revealed the following about the customer experience to date.

First, **some consumers reported that the choice to use a solicitor in a non-LSA regulated organisation was driven by convenience, personal recommendations and cost and accessibility considerations** (especially if a free service). For example one consumer was employed by a university and used a law clinic operated by the same university, in respect of a contractual dispute related to the cladding of an apartment block. The consumer chose to use the law clinic as it offered convenient access to practising solicitors (supported by law students) at low cost. In contrast, the consumer’s perception was that she would have incurred high costs from the outset if using a law firm. One vulnerable consumer had sought legal advice from a charity in respect of a dispute with a landlord, as well as a possible criminal charge. In this case, the consumer’s decision was very clearly driven by cost and convenience, as her vulnerable situation made her reluctant or even unwilling to approach a law firm.

Second, **consumers using regulated law firms tended to have clearer recollections about if and how they were informed of the protections afforded to them**. Some failed to recall how they were informed but ‘think’ that they were, while other consumers recall being linked to an online portal. One consumer noted that written terms and conditions set out a complaint procedure, while another reported that they received a document that had the protections in it and so assumed the information on applicable protections was in there. One consumer suggested that consumer protections should be a more prioritised piece of up-front messaging, while another consumer suggested that the terms and conditions should accompany the quotation for the service. In contrast, the interviews of consumers using regulated organisations tended to report a very clear process by which they were informed about consumer protections. As one consumer noted: *“there was a stringent onboarding process and the firm demonstrated having indemnity insurance in place”*. These consumers reported that the relevant certifications on the website or letterheads of law firms had been reassuring.

Third, **consumers continue to place high value on the professional status of individual solicitors, whether they are working within regulated or non-regulated organisations**. The main benefit reported by consumers relates to the competence that is demonstrated by the training and qualifications associated with solicitors’ professional status. As one consumer noted: *“I might be open to a solicitor in non-regulated firm if they were fully qualified with the right letters behind their name and are who they say are.”* One SME consumer used a law centre in respect of immigration services (related to obtaining visas for staff recruited from abroad), as the centre was local and quoted a reasonable price. The SME reported that it was important to use the services of a solicitor but that the

non-SRA-regulated status of the organisation was less important in this case. An individual consumer who had used the services of a solicitor in a law centre in relation to wills reported that the individual's professional status had been key, both in terms of professional qualification and the possibility to raise a complaint to the regulator in case of dissatisfaction.

Fourth, **some of the consumers stated a clear preference for using a non-regulated organisation as a first point of contact where they are unsure of what legal service they required and were fearful of incurring high costs from the outset.** For example, one SME had benefitted from free advice from Citizens Advice in respect of an employment dispute and a property dispute, based on which it became apparent that the SME would need to make use of a law firm. Another consumer had consulted Citizens Advice in respect of a dispute with a builder, based on which it became clear that it was sufficient (at that stage) to send a letter to the builder rather than to incur the costs associated with appointing a solicitor.

Fifth, **many consumers retain a clear preference for using a regulated law firm for serious matters, given the protections available to them or where specialist legal expertise is required.** For example, the consumer who had the dispute with a builder stated that she would have used a law firm if the compensation she was seeking had been greater (i.e. was only £5,000). Another consumer who had received free legal advice from a solicitor in an unregulated organisation stated: *"If it was an important issue with a potentially big financial impact, I would want to use a regulated firm. The firm is there to cover mistakes, so I wouldn't want to pursue redress against an individual solicitor."* Another consumer purchasing conveyancing services reported choosing a law firm given their specialist expertise in providing legal services for the agricultural sector.

As shown in Table 9, 19 of the 25 solicitors (76%) responding to the survey that provide services to the public indicated that their clients were aware that they were using a solicitor employed by a non-LSA regulated organisation, while a further 4% said it was too early to tell. However, five solicitors (20%) suggested that their clients were not aware that they were using a non-LSA-regulated organisation LSA, even though solicitors are required to inform them.

Table 9 Clients awareness of provider status and consumer protections available

| Response | Percent | Count |
|-----------------------------|-------------|-----------|
| Very aware | 52% | 13 |
| Reasonably aware | 12% | 3 |
| Slightly aware | 12% | 3 |
| Unaware | 20% | 5 |
| Too early to say/Don't know | 4% | 1 |
| Total | 100% | 25 |

Source: CSES survey of practising solicitors.

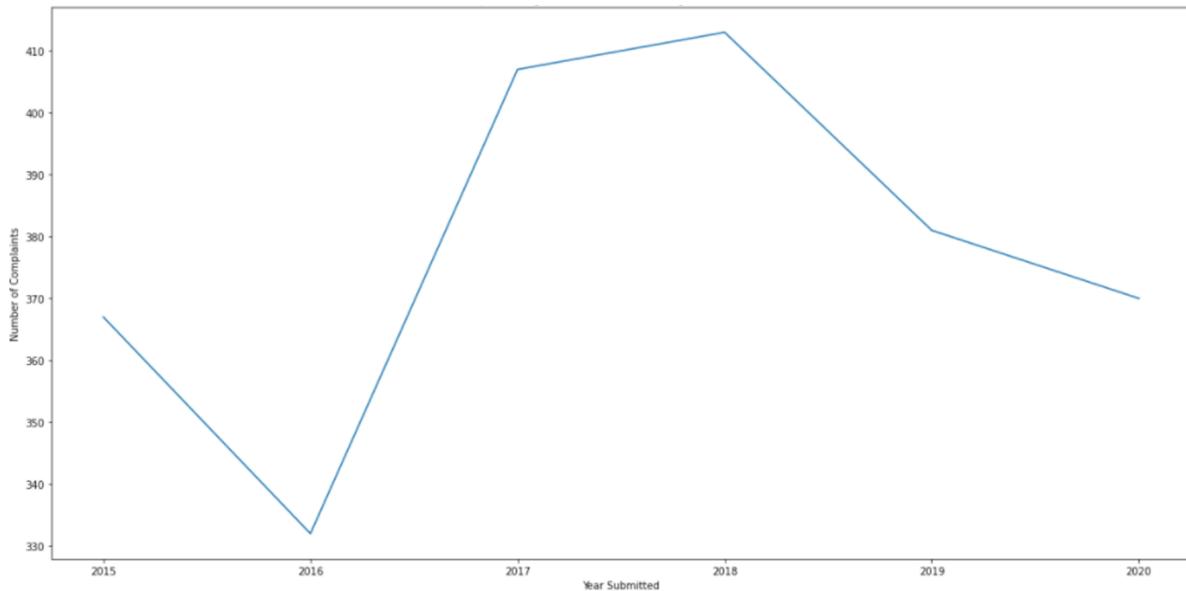
Another indicator of whether the potential risk of harm from consumers failing to appreciate differences in consumer protections when using regulated and non-LSA regulated organisations is the level of misconduct reports.

The analysis suggests that there is no evidence of any significant and sustained increase in reports about solicitors in non-LSA regulated organisations since the reform. Figure 25 draws on the analysis of SRA misconduct reports data and shows that while the volume of reports filed against firms not regulated by the SRA (or other relevant regulators under the LSA) has fluctuated over the past five years,²⁵ it has gone down in the period since the reforms were introduced in 2019. In 2019, there were

²⁵ Non-LSA firms were defined as all firms except 'Authorised Non SRA Firm', 'Court', 'Crown Prosecution Service', 'Exempt European Practice', 'Foreign Law Practice', 'Freelance Solicitor', 'Government Legal Services',

381 reports against non-LSA firms, while in 2020 there were 370 reports. This is down from the 413 reports received by the SRA in 2018.

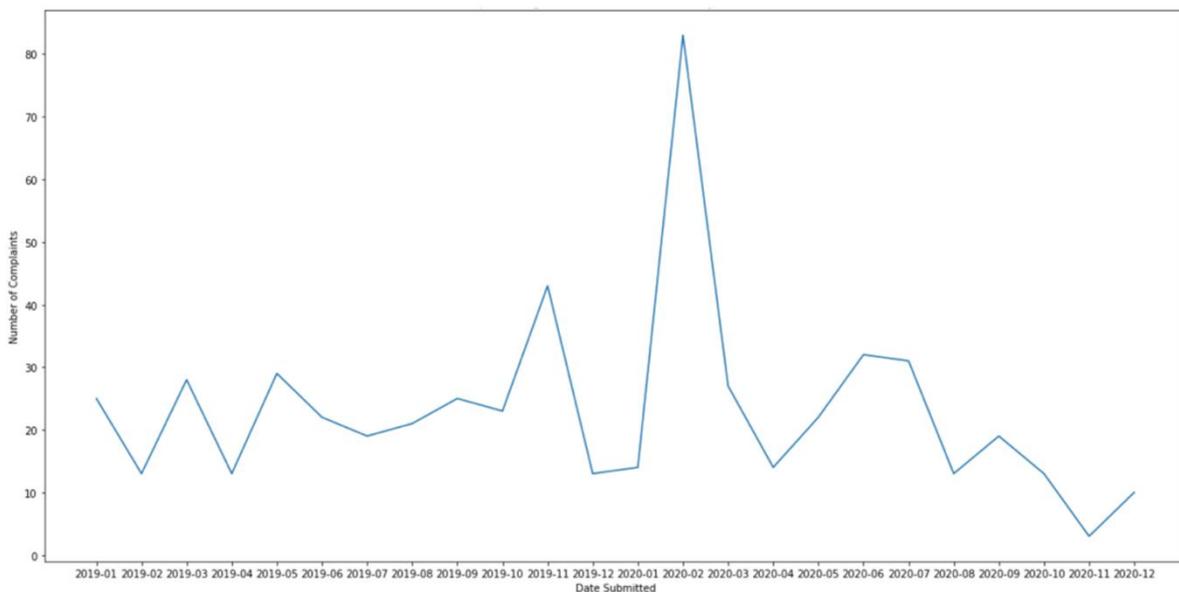
Figure 25 Misconduct reports relating to solicitors in non-regulated organisations



Source: SRA data.

Figure 26 breaks down this total to show the number of monthly misconduct reports from the public against firms not regulated by the SRA in 2019 and 2020. This analysis shows that for most months the number of reports was relatively stable (within a range of 10 to 30). However, certain months show variation: there was a spike in the number of misconduct reports in February 2020 (83 reports), and a very low number of reports in the months of November and December 2020 (< 10).

Figure 26 Misconduct reports relating to solicitors in non-regulated organisations



Source: SRA data.

'Law Practice', 'Licensed Conveyancers', 'Authorised Non SRA Firm', 'Pre-recognised entity', 'Regulatory Body', 'unknown'

Overall, while there was an increase in misconduct reports in one month (February 2020, three months after the reforms were introduced), taken as a whole this analysis suggests that there has not been a substantial increase in the number of monthly misconduct reports against firms not regulated by the SRA post the introduction of the reforms. This is confirmed by the annual estimates which shows that the number of misconduct reports actually decreased slightly in 2020 relative to 2019.

5.4 Solicitors working in separate organisations set up by law firms

5.4.1 Take up of the reforms

The analysis considered the extent to which existing law firms had chosen to either establish a new non-LSA regulated organisation, or to shift their activities from being regulated to non-LSA regulated. Data on law firms establishing non-LSA regulated organisations is not systematically captured within the existing SRA data collection process.

However, stakeholder interviews and the available data that are collected by the SRA shows little indication that established legal practices have decided to move outside of being regulated by the SRA. In 2020, there were only two cases of firms no longer requiring recognised body status. However, there was a slight drop in SRA fee income and the number of regulated firms, which might suggest that some new entrants are choosing to establish themselves outside of the SRA's regulatory ambit (although it is recognised many factors could determine changes in these indicators).

To address this information gap, the survey asked respondents whether their law firm had established a separate non-LSA regulated organisation. Some ten out of 837 solicitors (1%) that responded to the survey indicated that their law firm had set up a separate non-LSA regulated organisation to deliver legal services.

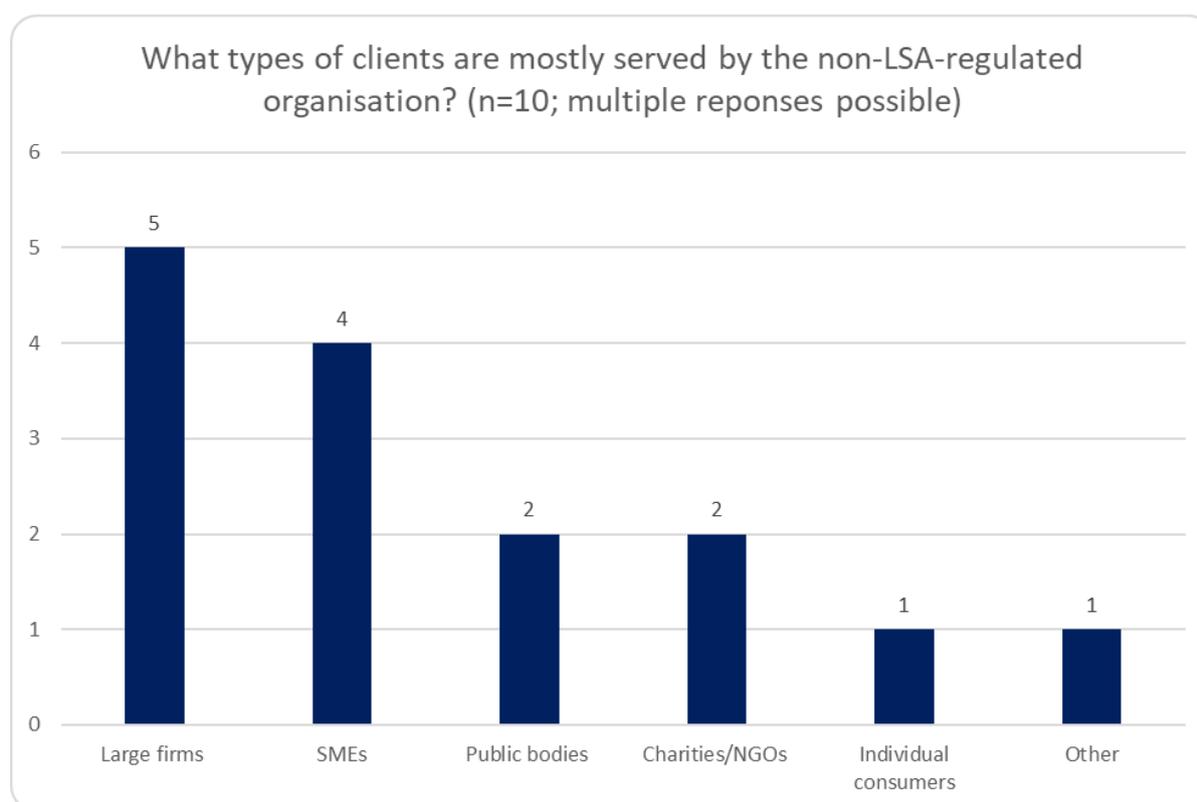
5.4.2 Motivation

Stakeholder interviews suggested that the attractiveness of the reform to law firms appears to vary by type of entity and business focus. For example, stakeholders at large City law firms and medium-sized firms expressed little interest in establishing a separate non-LSA regulated organisation. A number of solicitors reported that this was, in part, because they considered there to be certain reputational advantages to being regulated by the SRA. This is both in terms of the public perception of external accountability, but also because their clients and solicitors representing counterparties expect them to be regulated by the SRA.

The survey also provides insight into the reasons why law firms might set up a non-LSA regulated organisation to deliver legal services. Among the ten solicitors who worked in law firms that had established a separate non-LSA regulated organisation to deliver legal services, eight (80%) reported that the ability to reach new clients or the possibility to lower the regulatory burden were important or reasonably important motivations. Other important factors noted were to lower fees for clients (7 respondents) and to increase the turnover from legal services (7 respondents).

5.4.3 Types of clients served

The survey indicates that non-LSA regulated organisations set up by law firms to deliver legal services mostly serve corporate rather than individual clients. Five of the ten solicitors in such organisations provided services to large firms, with four solicitors also providing services to SMEs. Only one solicitor working in these organisations provided services to individual consumers. As shown in Figure 27, in addition to serving large firms and SMEs, solicitors working in law firms that have set up a non-LSA regulated organisations also provide services to charities (2 solicitors) and public bodies (2 solicitors). These organisations thus appear to focus on more corporate clients, compared with solicitors in other non-regulated entities (not set up law firms) that appear to focus more on individuals, including vulnerable consumers or hard-to-reach groups (see section 5.3.4 above).

Figure 27 Types of clients served by non-regulated organisations set up by regulated law firms

Source: CSES survey of practising solicitors.

5.4.4 Ability to compete

As noted, among the expected benefits of the reforms was increased competition and a more level playing field for solicitors and non-solicitors who provide non-reserved legal services.

Six out of nine solicitors in law firms that have set up a separate non-LSA organisation reported that they found it easy to compete with firms that are regulated under the LSA, while two solicitors said it was too early to say. Only one solicitor reported that it was fairly difficult to compete.

Similarly, six out of nine solicitors in law firms that have set up a non-LSA organisations found it easy to compete with non-solicitor firms providing non-reserved legal services, while two solicitors reported that they found it difficult to compete with non-solicitors.

These results are similar to those reported in section 5.3.5 above, and suggest that most solicitors who work in law firms that have set up a non-LSA organisation are able to effectively compete with solicitors working in LSA regulated firms and with other non-solicitor firms.

5.4.5 Benefits and drawbacks of reforms for solicitors and law firms

In order to understand whether the expected benefits to solicitors and law firms that have established a non-LSA organisation have been realised, the survey asked solicitors whether the reforms had resulted in the following impacts for the organisations that employ them:

- **Practise more flexibly:** eight out of nine respondents (89%) indicated that the reforms allowed them to practise more flexibly. The remaining 11% said that it was too early to say.
- **Provide different legal services:** seven out of nine respondents (78%) indicated that the reforms allowed them to provide different legal services, with the remaining 22% indicating that it was too

early to say.

- **Increased turnover from legal services:** seven out of nine respondents (78%) indicated that turnover has increased to some extent since the reforms, while 22% said that it was too early to say. No respondent reported that turnover had not increased.
- **Reached new clients:** six out of nine respondents (67%) indicated that the reforms had allowed them to reach new clients, while 22% said that it was too early to say. Only 11% of respondents reported that the reform had no impact on this indicator.
- **Attract new staff:** six out of nine respondents (67%) indicated that the reforms had allowed them to attract new staff, while 22% said that it was too early to say. The remaining 11% of respondents reported that the reform had no impact on this indicator.
- **Lower regulatory burden:** five out of nine respondents (56%) indicated that the reforms had lowered the regulatory burden, while 11% said that it was too early to say. The remaining 33% of respondents reported that the reform had no impact on the regulatory burden.

When asked to elaborate on other benefits to their firm in providing services via a non-LSA regulated organisation, solicitors reported that these included: less regulation (including less time spent on complying with regulation) and increased profits. One respondent noted that the PII cost is much lower and *“a tiny fraction of what a regulated firm has to pay”*.

When asked to identify any drawbacks of the reforms to their law firm in providing services via a non-LSA regulated organisation, one respondent reported there are *“very few to be honest”*. Another respondent reported that there is a need to keep the organisation separate so that any organisational risk does not *“blow back on the regulated business”*.

5.4.6 Consumer and client experience

In terms of the impacts on consumers that use the services of non-LSA regulated organisations that have been set up by law firms, seven out of nine solicitors that responded to this question in the survey stated that the main benefit was lower fees. Other benefits to clients include easier access to a solicitor (five out of nine respondents) and greater protections as compared with using a non-solicitor (five out of nine respondents). However, only one solicitor reported that the non-LSA regulated organisation provided better access to legal services for vulnerable consumers or hard-to-reach groups.

Finally, as noted above, one of the key risks identified prior to the introduction of the reforms was that clients and consumers may fail to understand relevant distinctions, and to appreciate differences in consumer protections when using solicitors in non-LSA regulated organisations.

Six out of nine solicitors that work for law firms that have set up a non-LSA regulated organisation reported that their clients were aware that the organisation was not regulated by the SRA. The same number also reported that their clients were aware of the protections that were available to them when using the non-regulated organisation.

Two out of nine respondents said it was too early to tell if clients were aware they were using a non-LSA regulated organisation and the protections available to them.

Only one solicitor reported that their clients were not aware that they were using an organisation not regulated under the LSA, nor of the protections that were available to them.

6. Accounts Rules

6.1 The reform

The SRA has shortened and simplified the Accounts Rules in order to ensure a better focus on keeping client money safe and separate, while removing unnecessary prescription about how firms manage their finances. The previous Accounts Rules were considered to be unnecessarily detailed and prescriptive and led to a focus on minor technical breaches rather than on client protection.

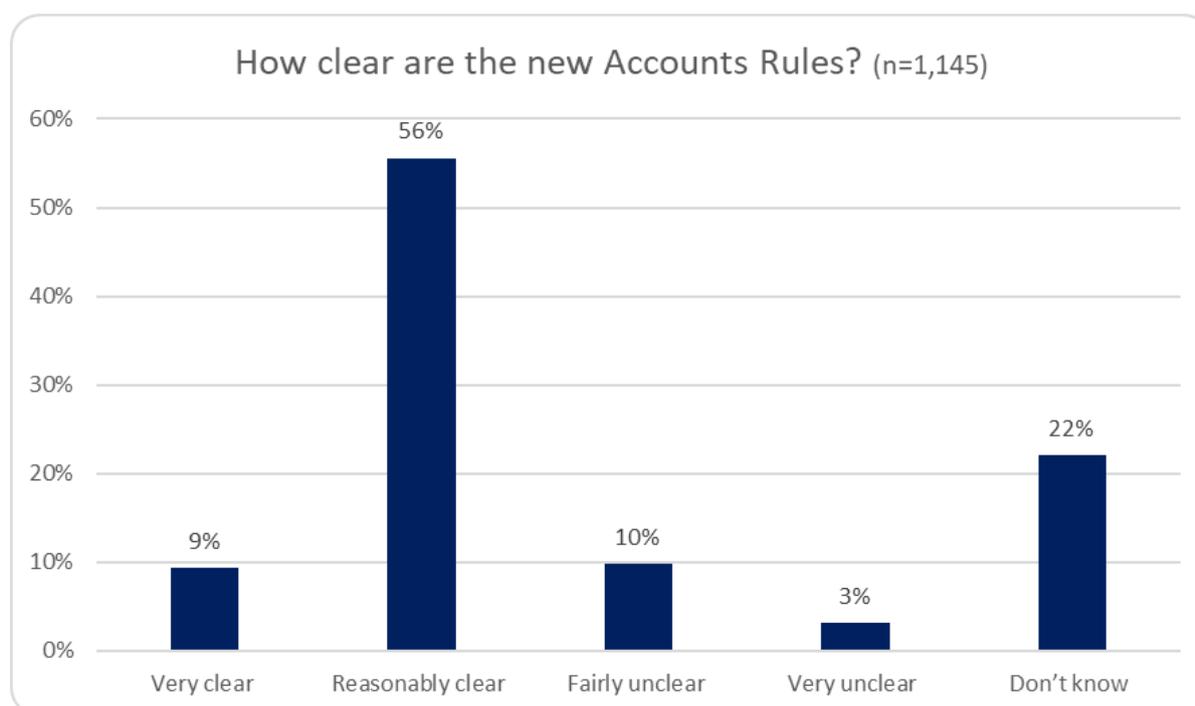
This package of reforms is comprised of the following five individual reforms:

- simplification of the Rules
- revised definition of client money and client liability
- confirming the use of third-party managed accounts (TPMAs)
- accountants' reports and when they are due
- new rules about how firms manage clients' own bank accounts (where the firm is a signatory) or joint accounts.

6.2 Clarity

Of the practising solicitors responding to the survey who are familiar with the STAR reforms, a majority (66%) find the new Accounts Rules to be reasonably clear or very clear (as shown in Figure 28). Amongst non-practising solicitors responding to the survey, the majority (55%) found the rules to be reasonably clear or very clear.

Figure 28 Clarity of the new Accounts Rules



Source: CSES surveys of freelance solicitors and other practising solicitors.

The Compliance Officers for Legal Practice (COLP) or Compliances Officer for Finance and Administration (COFA) responding to the survey and whose firms handle client money were invited to comment on the clarity of the reform. Their responses were as follows:

- The large majority of COLP/COFA whose firms handled client money (298 in total) reported that the revised rules were clear.
- 91% reported that the revised definition of client money was very clear (32%) or clear (59%). Only 6% found it fairly or very unclear.
- 85% reported that the new rules on operating a client’s own bank account were very clear (28%) or clear (57%). Only 7% found it fairly or very unclear.
- 70% reported that the new rules on operating a third party managed accounts (TPMA) were very clear (19%) or clear (51%). Only 12% found it fairly or very unclear, although 18% did not know.
- 86% reported that revised rules about when an Accountant’s report is due were very clear (28%) or clear (58%). Only 7% found them fairly or very unclear.

6.3 Effects of the reform

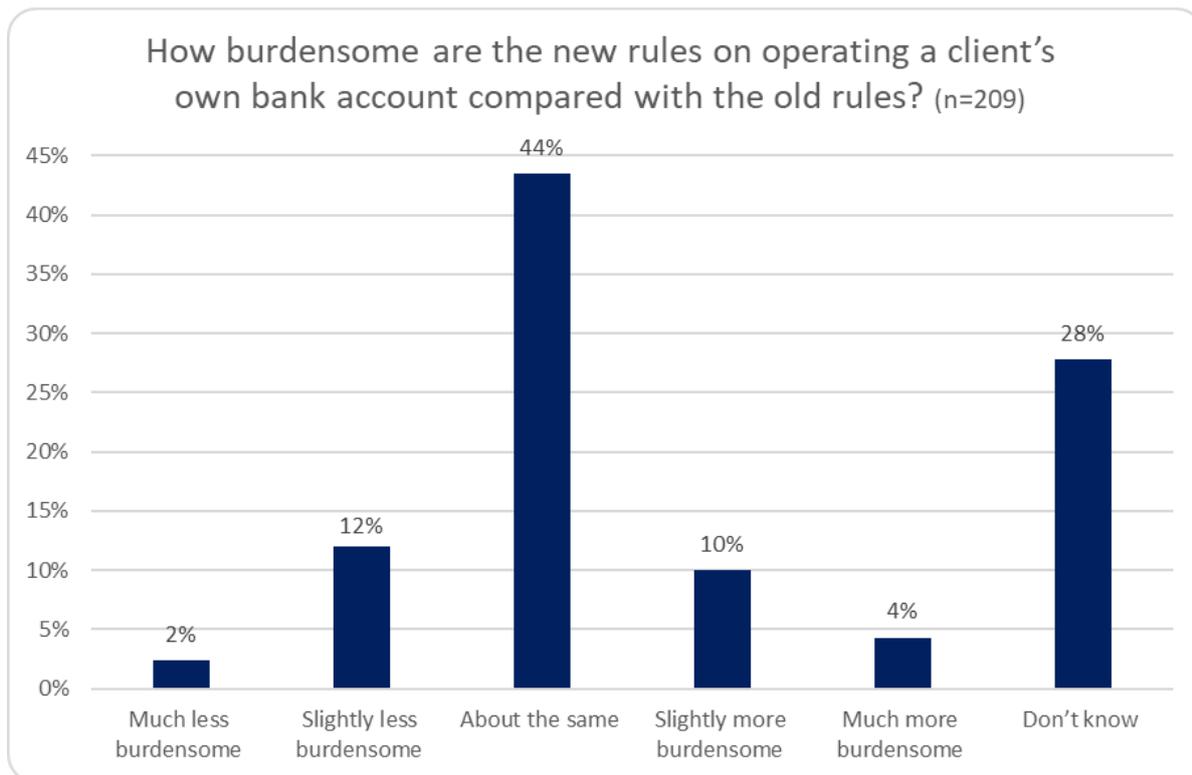
The evidence suggests that **the reform has had limited impact on the number of law firms operating a client account**. Data from the SRA shows that the number of law firms operating a client account has fallen since the 2019 reform, although this number had already fallen in the years prior to the reform. In 2020, some 7,328 law practices operated a client account, holding clients’ money compared with 7,512 in 2019 and 7,667 in 2016.

Of the COLP/COFAs responding to the survey whose firm handled client money and whose firm was not able to rely on the exemption not to have to operate a client account (215 in total), only 1% reported that their firm had stopped operating a client account in response to the reforms.

The complaints related to client money and accounts were falling before the 2019 reforms but have fallen at a faster rate since the reforms (although the impact of COVID-19 on the number of complaints is not known). With regards to the complaints related to “client money” and “accounts”, there seems to be a downward trend that precedes the 2019 reforms. In 2017, there were 1,127 complaints which decreased to 988 in 2018, to 732 in 2019, and to 383 in 2020.

The reforms have had limited impact on the burden associated with operating a client’s own bank account, compared with the old rules. Nearly half of COLP/COFAs responding to the survey whose firms handled client money (44%) reported no change in the administrative burden, whilst only small but equal proportions (14%) reported that the rules were more burdensome or less burdensome than before. However, there remains some uncertainty, with 28% not able to give a view.

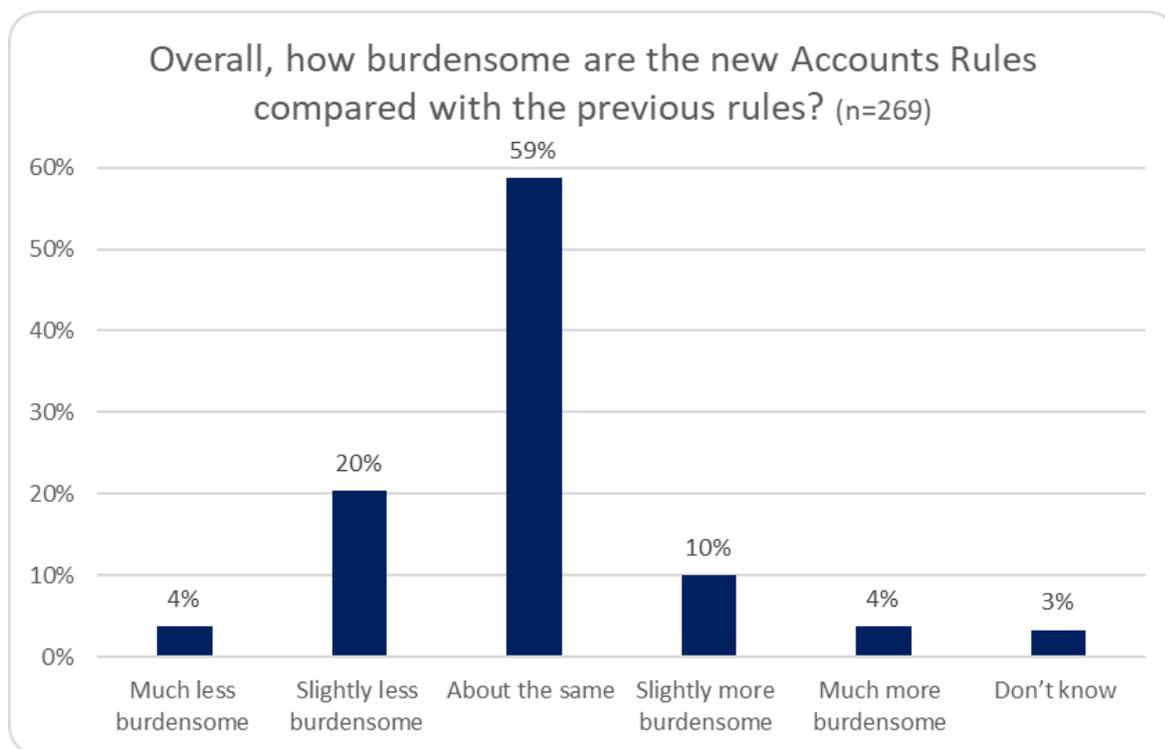
Figure 29 COLP/COFA perceptions of new rules on operating clients' own bank accounts



Source: CSES surveys of practising solicitors.

Concerning the impact on firms, **there is some evidence that the new Accounts Rules are less burdensome compared with the previous rules.** As shown in Figure 30 below, 24% reported a reduced burden, although for most respondents (59%), the burden is about the same. Only 14% reported an increased burden. The main reported benefit was greater flexibility, such as for small firms to respond in line with their situation. When asked about any drawbacks or risks, several respondents highlighted the risk of their own interpretation of the rules differing from that of the SRA. The SRA staff interviewed reported no particular change or increased difficulty in investigation, enforcement or adjudication relating to the new Accounts Rules. If anything, the new rules were clearer and streamlined compared with the previous Accounts Rules.

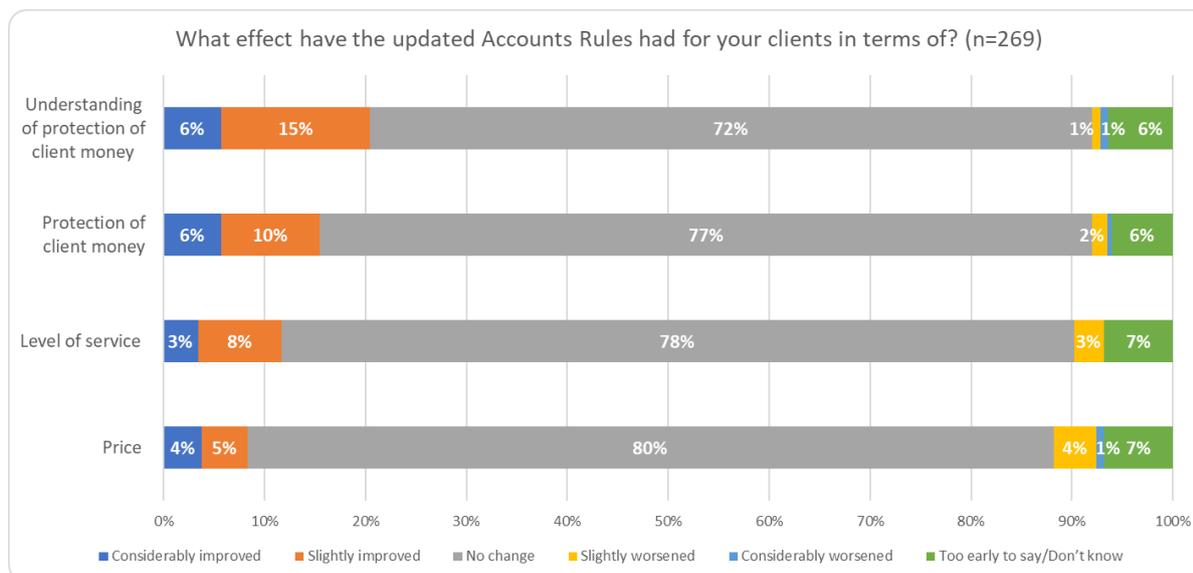
Figure 30 COLP/COFA perceptions of change in burden associated with Accounts Rules



Source: CSES surveys of practising solicitors.

The rules have had limited impact on clients, although the proportion of COLP/COFA reporting an improvement exceeds the proportion that report a worse situation for clients. One anecdotal example of increased risk was mentioned in a stakeholder interview, which related to a small law firm that had failed to commission an Accountant’s Report. The SRA later found that the firm’s accounts were highly disorganised, thus creating risks to the firm and its clients. Had the firm been required to submit an Accountant’s Report, either the accountant would have identified the problem or the SRA would have been alerted by the absence of a report.

Figure 31 COLP/COFA perceptions of effects of new Accounts Rules on clients



Source: CSES surveys of practising solicitors.

There has been limited take-up of the option to use TPMAs. Only one respondent amongst the COLP/COFA responding to the survey whose firms handled client money reported that their firm had started using a TPMA. This respondent reported that the firm was using TPMA as an alternative to the client account but that the costs were about the same as before. One representative of the profession suggested that the main reasons for the low take-up of TPMA were a lack of awareness amongst solicitors, the small number of providers (perhaps no more than five) and, for some firms, a high cost of adjustment in terms of updating a large number of documents.

A provider of TPMA reported that about 40 SRA-regulated firms were making use of their TMPA services. These firms were reported to be mostly small (e.g. no more than 10 fee earners) and often non-typical, e.g. in terms of their contracting arrangements or use of consultant lawyers. They covered a diversity of areas of law.

The provider reported that law firms having the TPMA are active users, with nearly all using them every month. Firms are offered a combined service that also includes digital identification and know-your-client checks. According to the provider, the main benefits for firms were lower costs (e.g. contribution to the SRA Compensation Fund or reductions in statutory audit costs), time (e.g. less management time needed to ensure alignment with SRA rules), and better risk mitigation and management, which insurers see as desirable.

7. Conclusions and recommendations

7.1 Conclusions

This study has considered the clarity and initial impacts of the Standards and Regulation reforms introduced by the SRA in November 2019. It has gathered evidence from previous studies and other literature, data provided by the SRA, interviews with stakeholders, consumers and solicitors, and a survey of solicitors. This approach has allowed us to identify general trends and to look at a number of solicitors that are practising on a freelance basis or in organisations not regulated by the SRA. Of course, the full impacts of the reforms will not be visible for some time and the SRA has committed to undertake further evaluations after three years and five years. However, the analysis of the available evidence allows us to draw some conclusions about the initial impacts of the reforms.

1. **The early evidence at this one-year stage suggests that the Standards and Regulations reforms have the potential to bring about the intended effects in terms of facilitating a focus on high standards and giving solicitors the freedom to run their businesses as best suits them and their clients.** Of the solicitors that are familiar with the reforms, the proportion that is positive about their effects (compared with the previous SRA Handbook) is much greater than the proportion that is negative. Individual solicitors and law firms have been given the flexibility to operate in ways that better suit them and their clients. There is little, if any, evidence of increased harm to consumers or of significant unintended consequences arising from the reforms.
2. **The Standards and Regulations reforms are clear to most solicitors who are familiar with them.** This applies both to the overall package of reforms and to each individual reform.
3. **There is a need (to continue) to raise awareness and understanding of the reforms.** More than one quarter of practising solicitors responding to the survey were not familiar with the reforms to a great or reasonable extent. Solicitors practising outside LSA-regulated organisations were least likely to be familiar with the reforms. Moreover, a sizeable minority of solicitors who are familiar with the overall package of reforms and with each individual reform do not understand them reasonably well.
4. **There is high awareness and understanding of the new Codes of Conduct and updated Principles.** The creation of separate Codes for individuals and firms is clear, justified and generally welcomed by solicitors and law firms. The new Codes and updated Principles are understandable in themselves and have not required the majority of firms to significantly adjust their ways of working or incur significant administrative burdens. That said, some solicitors noted that in interpreting the Codes and Principles they rely on previous understandings of what was and was not permissible, and that more junior staff do not have this experience which could make it more difficult for them.
5. **Whilst the new Codes and updated Principles have generated few, if any, concrete adverse effects to date, a considerable number of solicitors (albeit a minority) remain highly concerned about future risks.** Most notably, this minority fear that some solicitors, although acting in good faith and using their own professional judgment, may become the subject of enforcement actions due to a difference of interpretation between them and the SRA. This concern is carried over into solicitors' view of the revised Enforcement Strategy.
6. **Only a small proportion of solicitors have had reason to familiarise themselves with the various authorisation reforms, but those who are familiar with the new rules are mostly positive about their clarity and effects.** Notwithstanding this, solicitors raised concerns about some of the details of the new rules.

7. **Some solicitors perceive risks in enforcement, albeit ones that predate the revised Enforcement Strategy.** These risks include: first, that the flexibility and trust in solicitors' professional judgment offered by the Codes and Principles may lead to the SRA arriving at different interpretations from those of solicitors and firms; second, the risk of enforcement actions being taken in relation to actions and behaviours that are not directly related to professional conduct; third, the risk of an inflexible approach to enforcement.
8. **To date, a small proportion of practising solicitors have taken up the option to operate on a freelance basis, but there is evidence of increased competition and increased diversity.** Some 300 solicitors have so far begun operating on a freelance basis, one-third of whom were not previously working in regulated organisations serving the public. Freelance solicitors are diverse in terms of the services offered and the clients served. They are more likely to be Black/Black British and equally likely to be Asian/Asian British compared with the overall population of solicitors and the overall population of England and Wales.
9. **The option of working on a freelance basis is proving beneficial to those who take it up.** The primary motivation of freelancers typically relates to how they operate (i.e. having a better work-life balance, practising more flexibly, having more independence and reducing operating costs). Freelancers report that this ambition is being realised in practice.
10. **There is evidence of some solicitors taking up the option to practise in non-regulated organisations to serve the public.** Systematic data are not currently gathered by the SRA on the number of solicitors providing services in this way. However, the survey suggests an indicative figure of up to 17% of practising solicitors outside SRA-regulated law firms or authorised non-SRA firms are now serving the public (albeit based on a modest sample size).
11. **There is evidence that a small proportion of SRA-regulated firms are moving some or part of their business outside of SRA regulation.** The extent to which this is happening cannot be known with any certainty. However, the survey identified ten instances of SRA-regulated firms setting up separate non-regulated organisations to provide services to the public. There has also been a slight reduction in SRA fee income and in the number of regulated firms (although there are very few cases of firms no longer requiring recognised body status). This is not necessarily evidence of firms moving outside of the scope of SRA regulation, however, should a larger and more sustained reduction materialise, this would suggest a need for more investigation as to the causes. Stakeholder interviews suggested that some firms saw reputational and commercial benefits to continue being regulated by the SRA.
12. **As yet, there is no evidence of increased harm to consumers of services provided by freelance solicitors or solicitors in non-regulated organisations compared with solicitors in law firms, although this may reflect in part a modest take-up of these practising options.** The number of misconduct reports against freelance solicitors (three) is too low to undertake any statistical analysis or to draw any conclusions. There is no evidence of any significant and sustained increase of complaints (both in total and from members of the public) against solicitors in non-regulated organisations since the reform. It remains to be seen whether a significant increase in take-up of these practising options would lead to rise in misconduct reports.
13. **Whilst there is no evidence of increased harm to consumers, there is a need to increase consumers' awareness where they are using solicitors in non-regulated organisations.** Whilst most solicitors in non-regulated organisations reported that they comply with the relevant requirements about making clients aware of the protections available to them, some nonetheless reported that they believed their clients were unaware they were using a non-LSA regulated organisation and therefore that the redress available to them differed.

- 14. New Accounts Rules are generally well understood and have provided new opportunities but have had limited impact to date.** Of the solicitors who are familiar with the new rules, the majority find them clear. The vast majority of compliance officers also report that they find each of the individual new rules clear. Whilst the number of law firms operating a client account has fallen since the 2019 reform, this number had already fallen in the years prior to the reform and the survey suggests that very few firms have stopped operating a client account specifically in response to the reforms. The number of complaints related to client money and accounts were falling before the 2019 reforms but have fallen at a faster rate since the reforms. There has been limited take-up of the option to use TPMAs.

7.2 Recommendations

The conclusions noted above will inform the development of the evaluation framework against which to assess the reforms at three years and five years. In addition, based on the conclusions, we offer some recommendations for the SRA to consider.

Regarding the Codes of Conduct, updated Principles and Enforcement Strategy:

- 1. The SRA could take further steps to promote awareness and understanding of the revised Enforcement Strategy.** There is need to promote increased awareness of the Strategy in general, as well as to promote better understanding of specific issues, such as the line between professional and personal integrity.

Regarding the authorisation reforms:

- 2. The SRA could consider enhancing communication about new opportunities resulting from the authorisation reforms,** most notably in respect of the opportunity for firms with a registered address in Northern Ireland or Scotland and new possibilities around management of SRA-regulated law firms by other firms.
- 3. The SRA could review the appropriateness of some of the details of the authorisation reforms, if only to ensure continued appropriateness.** Specific elements that might merit review include: in respect of the corporate manager rule, the need for further checks to be made simply because a firm is changing its legal form (e.g. from a limited liability partnership to a company limited by guarantee); in respect of the character and suitability reviewing the risk of overlap or incoherence of this rule with other rules, namely anti-money laundering compliance requirements, and reviewing the placing of conditions on practising certificates; in respect of the rule on approving managers and owners, ensuring the right balance is struck between avoiding unnecessary restraint of trade and limiting the risk of unsuitable individuals becoming owners or managers of regulated organisations.

Regarding the reform allowing the provision of legal services to the public by solicitors operating in non-SRA-regulated organisations:

- 4. The SRA could more systematically gather and monitor data about number and profile of solicitors in non-SRA regulated organisations providing legal services to the public.** This would allow the SRA more opportunity to mitigate risks and also to identify impacts and communicate successes. Mitigation of risks might include additional steps to ensure that solicitors in non-regulated organisations adequately inform their clients about their status and the relevant consumer protections.
- 5. The SRA could monitor key indicators that relate to the extent to which regulated firms move all or part of their services outside the scope of SRA regulation,** such as the level of fee income or the number of regulated firms with a view to identifying any indication of significant or sustained movement of firms outside of SRA regulation. Of course, the aim of such

monitoring is not to discourage or prevent such movement, but would instead be to understand any trends in order to better identify impacts and assess risks.

Regarding the reform allowing solicitors to operate on a freelance basis:

6. **The SRA could take steps to further reduce barriers to the effective operation of freelance solicitors.** This includes enhanced communication to raise awareness of this option amongst the profession, continuing to engage with insurance providers with a view to stimulating better supply of insurance policies, and reviewing whether it is possible and desirable to allow freelance solicitors to provide claim management and immigration services to the public (for example, through further consultation of the relevant regulators, such as the Office of the Immigration Services Commissioner and the Financial Conduct Authority).

Regarding the revised Accounts Rules:

7. **The SRA could (continue) to take steps to raise awareness of the possibilities to use third party-managed accounts,** given that awareness and take-up of this option has been relatively low.