

# **Encouraging innovation: transparency about our waiver decisions**

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## Contents

Background.....	3
About us .....	3
SRA Innovate .....	4
Transparent decision making.....	4
Waivers decisions .....	6
Overview .....	6
Waivers to permit new business structures.....	8
Waivers to how and where solicitors can practise.....	10
‘Innovation Space’ waivers .....	12
Other waivers .....	14

# Background

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## About us

1. We regulate 185,000 solicitors and 10,400 law firms in England and Wales. We work in the public interest, setting and enforcing high professional standards. We protect consumers and support access to affordable legal services and the rule of law and the administration of justice. We do this by:
  - overseeing all education and training requirements necessary to practise as a solicitor
  - licensing individuals and firms to practise
  - setting the standards of the profession
  - regulating and enforcing compliance against these standards.
2. Our Handbook sets out the standards we expect of solicitors and firms and the rules we expect them to follow. We have always allowed some of our rules to be waived in certain circumstances. Where we grant a waiver the individual or firm does not need to comply with the specific rule or rules to which the waiver applies. Where we decide to waive rules, we do so consistently, permitting only waivers that are in the public interest. We set out in our decision-making guidance the criteria and approach we take to requests for waivers.
3. Over the past few years we have used waivers to allow new business models. For example, waivers have been essential to facilitate the development of Multi-Disciplinary Practices (MDPs). MDPs are the vehicle that allows legal and other connected services to be provided under one roof. We have also granted waivers to the complex and difficult to rationalise restrictions set out in our “in-house rules”. We have allowed solicitors providing a telephone service to the public (which is allowed under our rules) to also correspond with those clients by email (which is not). We have used waivers to increase the amount of pro-bono advice provided by solicitors in law clinics.
4. Intelligence gathered through the waiver process has informed our approach to regulation and the changes we are making to our regulatory arrangements as part of our Looking to the Future programme. This programme aims to reform our regulation bringing high professional standards into sharp focus while reducing the costly burden of bureaucracy. These changes are being submitted to the Legal Services Board (LSB) for approval this summer. If approved, we will reduce our Principles, Codes and rules by over 300 pages simplifying our requirements and removing outdated constraints on solicitors and firms.

## SRA Innovate

5. We want to encourage firms to innovate and offer new, affordable services to help the public. Ahead of the changes to our regulatory arrangements, we formally launched our SRA Innovate initiative in Spring 2016. This supports firms who are thinking how they could offer legal services or manage their business in a new way but are uncertain if our regulations might stop them. We provide support to both existing and new firms. Alongside guidance, we use waivers as we have previously, to let innovation benefit the public.
6. During 2016 we also tested an 'Innovation Space' for firms to explore new ways to run their organisation by introducing original ideas to benefit people and small businesses. This is a 'safe space' for firms to test out ideas in a controlled way that could benefit the public. We work collaboratively with innovators to make certain proper protections are included when they deliver legal services in new ways. This approach should encourage greater innovation. It often involves a waiver. Additional controls and monitoring are also built in if a firm passes our threshold test to work in the Innovation Space.
7. The threshold test is intended to separate truly innovative applications from applications that could be considered under our existing policies and processes. The test also considers:
  - the benefits of the innovation to the users of legal services
  - whether sufficient consumer safeguards, including access to appropriate redress, have been considered as part of the application.

Our criteria for the threshold test are published on our website [include link].

## Transparent decision making

8. Following the successful launch of SRA Innovate, we consulted on proposals to develop our Innovation Space and to streamline our waiver process with clearer criteria to help firms know what might be possible. Our response to this consultation was published earlier this year and we said we would go ahead with the proposals. We have now formally launched our new waiver decision-making guidance and the Innovation Space. We expect the need for waivers to reduce if the new less prescriptive and restrictive rules are approved by the LSB.
9. The new single set of simplified criteria for granting waivers is based on our regulatory objectives and public interest purpose. This is to ensure public protection and to make sure solicitors and firms properly fulfil their obligations to the court and, to the proper administration of justice.

10. We have previously only published information about waivers associated with the authorisation of Alternative Business Structures (ABSs). These can be found on the [ABS register](#). In future, we will publish a more information on all waiver decisions to make sure these decisions are transparent. We expect to publish the information shown in the table below. We will expect the person applying for a waiver to make the case if they think any of this information should not be published for example because it is commercially sensitive. We may then decide to either delay publication or publish a limited set of information. We will always confirm with innovators the information that we decide to publish.

Information Type	Details
Individual applicants' details	Name, address, SRA number, type of person (e.g. solicitor, other lawyer, other regulated person)
Firm applicants' details	Firm name(s), addresses, SRA number, type of firm (e.g. recognised sole practice, recognised body, licensed body)
Summary of request	A summary of the waiver application including whether it relates to a single rule or multiple sets of rules
Decision outcome	Whether we have granted or refused the application. Where granted: <ul style="list-style-type: none"> <li>• broad category of waiver</li> <li>• detail on rule or rules waived</li> <li>• outcome/impact of waiver</li> </ul>
Decision details	Explanation of the reason we have granted or refused the waiver, including specifically how we have applied the waiver decision-making guidance.
Conditions	The full set of any conditions attached to the waiver and any other relevant information
Timescale	Period of waiver, including start date, end date and any review date

11. Our General Counsel team will carry out additional consistency checks to make sure that our decision-making guidance is being applied fairly. Details of this will be included in an annual Innovation Report. We have also looked back at previous waivers we granted. The next section of this report provides details of the waivers, granted and refused, in the past two and a half years. We provide additional detail about the waivers that we have granted for the firms working in our 'Innovation Space' in paragraphs 16 to 19 of this report.

# Waivers decisions

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## Overview

12. The tables below distinguish between waivers of our:

- Authorisation Rules and Code of Conduct to permit new business structures (a and b) and we provide a further breakdown of the types of waivers we have given at paragraph 15
- rules that set how and where solicitors can practise (c and d) and we provide a further breakdown of the types of waivers we have given at paragraph 16
- professional indemnity requirements (e)
- reporting and other requirements (f and g and h).

<b>Waivers granted</b>	<b>2015–16</b>	<b>2016–17</b>	<b>November 2017– May 2018</b>
a) Authorisation Rules	43	48	8
b) Outsourcing obligations	2		
c) Practice Framework Rules	40	69	23
d) Access to solicitors through the 'Innovation Space'		5	3
e) Professional Indemnity Insurance requirements	17	1	
f) To submit Accountants' Reports	433	460	198
g) Appeal period		1	
h) Compensation Fund fee	2	1	1
<b>Total</b>	<b>537</b>	<b>585</b>	<b>232</b>

<b>Waivers refused</b>	<b>2015–16</b>	<b>2016–17</b>	<b>November 2017– May 2018</b>
a) Authorisation Rules		2	1
b) Outsourcing obligations			
c) Practice Framework Rules	4	2	1
d) Access to solicitors through the 'Innovation Space'			
e) Professional Indemnity Insurance requirements		2	2
f) To submit Accountants' Report		6	
<b>Total</b>	<b>4</b>	<b>12</b>	<b>4</b>

13. The highest volume of waivers we grant relate to the reporting requirements in our Accounts Rules. We ask firms to send us an Annual or Final Accountant's Report. A final report is required where the firm is closing. More information about these reports can be found [here](#).
14. We may consider that the cost of obtaining the report is disproportionate. This is when considering the number of client account transactions that have taken place, or where only a very small volume of client money has been handled in the accounting period. In deciding whether to grant the waiver, we assess the risk to the public, including any disciplinary and complaints record of the firm.

## Waivers to permit new business structures

15. We have granted waivers to our Authorisation Rules and the outsourcing requirements set out in our Code of Conduct to permit new business structures. Most of these waivers will be unnecessary under our new arrangements. The areas and reasons why we have given these waivers are:

Area	Request	Rules waived	Reason
COLP and COFA <sup>1</sup>	To permit a non-trading recognised body (RB) not to have a COLP and COFA	Rule 8.5(b) and (d) of the Authorisation Rules.	To avoid the unnecessary burden of authorising a non-working corporate manager owner RBs in order for the body beneath to remain an RB.
Practising address	To withhold from public inspection the practising address of a recognised sole practice.	Rule 34.3(a) Authorisation Rules as it applies to the practising addresses of a firm under Rule 34.2(e) and (f) of the Authorisation Rules	This waiver is normally only given where solicitors may be at risk from dangerous clients.  This is already permitted for recognised bodies in the Authorisation Rules and individual solicitors.
Individual authorised manager	To not require a licensed body (LB) to have an individual authorised manager	Rule 14.2 of the Practice Framework Rules (PFR) subject to conditions that he body has an authorised person manager	To replicate statute that allows a LB to have an authorised person as a manager, not an authorised individual.

<sup>1</sup> compliance officer for legal practice (COLP) and compliance officer for finance and administration (COFA).



Area	Request	Rules waived	Reason
Manager(s) of a corporate manager	To not require managers of corporate managers of authorised bodies to be approved	Rule 8.6(a)(ii) of the Authorisation Rules.	To avoid unnecessary burden where we consider the managers of a corporate manager are not involved in the trading body.
Managers of an authorised body	To not require all managers of an authorised body to be approved.	Rules 8.6(a)(i) and 8.7(c) of the Authorisation Rules, and Rule 18.2(c) of the PFRs.	To avoid the unnecessary burden of certain members in large LLPs being approved as managers. We do specify which groups of managers will still require approval.
Pre-approval of managers	To not require all managers to be approved in advance of their appointment.	Rule 8.6(a)(i) of the Authorisation Rules and Rule 16.2(b) of the PFRs.	To permit management structures where senior managers may be appointed at short notice, for example by election. The managers still need approval but are given a period following being appointed to apply.
Revocation period	To permit a recognised body to have authorisation revoked without us giving 28 days' notice	Rule 22.2(c) of the Authorisation Rules.	To remove the protection from no-notice or short notice revocation of their authorisation at the request of the firm and there is no risk to the public.
Definition of 'partnership'	To permit an overseas LLP to be authorised.	Rule 23.1 PFR applying to the definition of 'partnership' in Rule 15.1 of the PFR.	To allow the rule that permits overseas LLP to be authorised to operate as intended.

Area	Request	Rules	Reason
Outsourcing obligations	To not require outsourcing contracts to contain specific terms enabling our agents to access information	Outcome 7.10(b) of Chapter 7 of the Code of Conduct.	To allow proportionate regulation of large Multi-Disciplinary Practices (MDPs). These firms may have numerous outsourcing contracts, most of which will never be used for the legal services business.

## Waivers to how and where solicitors can practise

16. We have granted waivers to our currently complex and restrictive Practice Framework Rules (PFRs) for many years, including before our Handbook reform consultations. The types of waivers we have granted are explained in the table below.

Area	Request	Rules	Reason
Framework of practice: in-house	To permit an in-house solicitor to act for clients other than their employer, including delivering legal services to the public.  This includes permitting solicitors to practice as a solicitor in their unregulated firm.	Rule 1.1(e) and 4.1(a) of the SRA Practice Framework Rules 2011	We have allowed this where there is a benefit to the users of legal services and they remain properly protected.

Area	Request	Rules	Reason
Framework of practice: solicitors and registered European lawyers (REs)	To allow solicitors and REs to act other than as an employee, manager, interest holder or sole practitioner – for instance, as a volunteer.	Rules 1 and 2 of the SRA Practice Framework Rules 2011	We have allowed this where there is a benefit to users of legal services and they remain properly protected.
Experience required to set up a firm	Allowing a solicitor to set up with less than three years' experience	Rule 12.2(b) of the SRA Practice Framework Rules 2011	We permit these where the applicant provides evidence that they have experience in the areas that they wished to practice and shows they have reached a satisfactory level of competence.
Registered office and practising address criteria	To permit an authorised body to not have a practising address in England and Wales	Rule 15 of the SRA Practice Framework Rules 2011	To allow firms with to continue to be authorised where there is no risk to the public without a practising address in England and Wales. In general, these have been firms based in Scotland.

## 'Innovation Space' waivers

17. Like other regulators, we want to facilitate innovation and growth that is in the public interest, including access to solicitors delivering high professional standards.
18. While developing out the 'Innovation Space' concept, we were approached with waiver requests that allowed us to pilot it. After reviewing the applications against our 'Innovation Space' eligibility threshold tests, we granted waivers to our Practice Framework Rules (PFRs) to a limited number of businesses allowing solicitors to practise as a solicitor in their unregulated firms. These waivers were granted before our new waiver guidance and policy to publish information about waiver decisions, subject to commercial sensitivities was launched.
19. The legal advice is limited to legal activities that, under the law, do not need to be regulated. In some cases, they are an extension of existing services to the public we have already permitted under our PFRs, to allow face-to-face as well as telephone and email advice. We only granted, a waiver if it is in the public interest to do so, increasing the accessibility and availability of ethical and well-regulated solicitors to the public. These waivers extend the regulatory obligations that arise for any solicitor with a practising certificate. We also attached conditions to the waivers designed to protect people who use solicitors working in these firms by:
  - prohibiting any reserved legal activities or immigration work being carried out
  - requiring Professional Indemnity Insurance (PII) to be in place that is reasonably equivalent to that required by our rules and allowing people to access the Compensation Fund
  - requiring that people using these services are informed how the services provided by solicitors are regulated and the protections available to them
20. We limit the waivers to 24 months and actively monitor the service provided. The firms we have given these waivers to are:
  - DMC Legal Consultancy – the waiver provides the opportunity to offer legal advice to small and medium sized companies on a range of areas, including landlord and tenant, contracts and employment law.
  - Parental Choices Limited – the waiver allows them to offer legal advice on employment law to families who employ staff to work in their homes on non-contentious employment law and commercial matters.

- Which? Legal – the waiver makes it easier for their members to be provided with more information and have more direct access to solicitors on a range of legal issues.
- Peninsula Business Services Limited – the waiver allows them to offer a wider range of legal services related to employment law through their team of solicitors.
- Rocket Lawyer UK Limited – the waiver allows a solicitor to provide legal advice within the organisation rather than having to outsource the work.
- Michael Else & Company Limited – the waiver allows them to provide legal advice as part of their work in maritime insurance, legal maritime consultancy services.
- Croner Group Limited – the waiver allowed the organisation to offer a wider range of legal services related to employment law through their team of solicitors.
- Hybrid Legal - the waiver provides the opportunity to offer legal advice to small and medium sized companies.

## Innovation Space waiver case study

**The business:** Parental Choice helps parents to find childcare solutions. Its services include guidance on looking for a nanny or au pair, helping families to relocate and managing the administration involved in employing domestic help. Sarah-Jane Butler, chief executive and solicitor, wanted to offer clients legal advice on becoming an employer to make them aware of their obligations. She also wanted to make sure nannies and other domestic staff knew their rights and were treated fairly.

**Waiver we granted:** We allowed Sarah-Jane to offer legal services in a business that is not regulated by us or another regulator. The services Sarah-Jane wanted to offer included non-contentious employment matters and commercial legal advice. Without the waiver, Sarah-Jane would have had to outsource legal services, resulting in a fragmented customer experience and additional cost.

**The result:** Parental Choice is now piloting these services in our Innovation Space. They are initially being offered to existing clients and represent around 15 percent of Parental Choice's overall business. The legal services the business now offers are becoming more established, with initial feedback suggesting the clients are valuing the flexibility and diversity of the service.

## Other waivers

21. Our MDP policy says we will not require these firms to get PII insurance on our Minimum Terms and Conditions as this would be disproportionate, unnecessary and not in the best interests of users of legal services. We therefore waive the PII requirements (substituting alternative terms) if they can show the alternative insurance will give equivalent or better protection for the public. In a very small number of cases we have waived a firm's contribution to the Compensation Fund where there is no risk of a claim on the fund because the firm only held a very small amount of client money for a very short period.
22. A small number of waivers have also been granted to individuals relating to our rules on training contract requirements<sup>2</sup>. These accounted for less than 15 waivers over the period 2015 to 2017.

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<sup>2</sup> The 'SRA Training Regulations 2014 - Qualification and Provider Regulations