

# Your questions

## *Looking to the future*

12 June 2017

Here are answers to the most common questions we have received about our work.

Read our responses to the LTF - flexibility and public protection [\[sra/consultations/consultation-listing/code-conduct-consultation/\]](#) consultation and Accounts Rule review [\[sra/consultations/consultation-listing/accounts-rules-review/\]](#) consultation.

We'll continue to post answers to your questions— so keep them coming. If you have a question that hasn't been answered, please send us your question and we'll do our best to respond.

## *The new Principles*

Open all [#]

### *Why are you proposing fewer Principles?*

*Some of the existing SRA Principles and professional principles are reflected in the revised standards in the draft Codes of Conduct as they relate to practice rather than overarching values. [More](#)*

It is important to emphasise that we do not regard this as a dilution of their importance.

### *Where can I find out more information about the proposed Principles?*

*You can read more in our consultation response. [More](#)*

## *The Code for Individuals*

Open all [#]

### *Why are you proposing a Code for Individuals?*

*We are proposing a separate Code because we believe it will be easier for solicitors to understand and apply the standards and behaviours we expect of them. [More](#)*

Our new Code will make it clear the regulation that applies to solicitors where ever they practise.

### *Where can I find more information about changes to the content of the current Handbook?*

*Our rationale document outlines detailed drafting and content changes we are making to how we regulate solicitors. [More](#)*

You can also watch our videos and webinars [\[sra/policy/future/videos-webinars-looking-future\]](#) .

## *Is there an overlap between the Code of Conduct for Solicitors and the Code of Conduct for Firms?*

*Although the Codes set out some of the same standards and address similar regulatory issues, they apply very differently in practice. More*

The Code of Conduct for Solicitors sets out clearly the professional standards and behaviours expected of solicitors in practice. Consumers will know what they can expect irrespective of where that solicitor is employed.

The Code of Conduct for Firms aims to provide clarity to firms that we regulate about the business systems and controls that they need to have in place and what their responsibilities are as a SRA regulated business.

We think this approach is much clearer for solicitors, firms and consumers of legal services.

## *The Code for Firms*

Open all [#]

### *Why are you proposing a Code for Firms?*

*We want to make it easier for entities we regulate to understand the regulation that applies to them. More*

Separating rules that relate to controls and systems from obligations on individual solicitors will make it easier to do this.

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## *Support for solicitors and firms*

Open all [#]

### *How will you support solicitors with implementation?*

*We recognise that we need to provide comprehensive support to solicitors and firms to help them understand and apply any changes we may make. [More](#)*

We have already engaged with over 1,000 members of the profession to understand the issues where they may need support and how we should provide this.

### *Where can I find the new Handbook?*

*During 2019, we are replacing the existing Handbook with the SRA Standards and Regulations. We have published a [PDF of the new SRA Standards and Regulations](#) to help firms and solicitors prepare. [More](#)*

If you decide to download the PDF of the SRA Standards and Regulations [[/sra/policy/future/resources#resources](#)] onto your computer, or print it, you will need to check back on our website for updates. This is because we will make some minor changes to certain rules before the new SRA Standards and Regulations come into force. There is a table on p2 of the PDF that shows where we are likely to change the rules and what the change is likely to be.

### *Benefits of our new approach*

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#### *How will your proposals reduce costs for solicitors and organisations?*

*Our proposals will make it clearer and easier for solicitors and organisations we regulate to understand our regulation. [More](#)*

We believe these changes will increase flexibility in the delivery of legal services and reduce the cost of compliance and regulation by:

- lowering the cost of training
- reducing compliance with information requirements which are currently spread across different parts of the handbook
- removing the need to understand frequently changing regulations
- removing record keeping and processes of dealing with rule breaches

#### *How will your proposals reduce costs for consumers of legal services?*

*Clearer and flexible regulation reduces entry barriers to the legal services market. This helps increase competition and lowers prices. [More](#)*

We believe our proposals have the potential to help increase the supply and variety of legal services to benefit consumers. Read the Economist's report [[/globalassets/documents/sra/consultations/code-of-conduct-annexes.pdf?version=4a1ad3](#)].

#### *Do you think your proposals will increase costs for small firms who will now need compliance experts?*

*No. [More](#)*

Our proposals make our regulation much easier to understand and apply. The removal of

unnecessary regulation means that small firms can decide how they comply with our regulation. We will also provide a range of support for small firms to help them understand and apply our changes.

## *Compliance and enforcement*

Open all [#]

### *How do I know I am meeting the required standards?*

*The Codes have been designed to be clear. Compliance with the standards set out in the Codes should be fairly straightforward to measure and evidence. More*

We are moving away from complex and overly prescriptive rules, and want to give professionals more responsibility and flexibility to decide how they comply. This will inevitably create some 'grey areas' when it comes to compliance. We will be reviewing all of our current guidance and information to determine what support is needed.

We will need to get the balance right. We do not want to try to outline all possible scenarios in guidance, and end up repeating the detailed rules of the current Handbook. This would simply undermine the flexibility we are trying to create.

### *Will the SRA's proposed new enforcement policy reflect the flexibility and discretion given to solicitors by the new Codes?*

*Yes. Our approach requires firms and individuals to exercise their judgment in applying our standards to their situation and deciding the appropriate course of action. More*

If that course of action comes into question, we will assess the risk that action poses to both the public and to our regulatory objectives as set out in the Legal Services Act 2007 and then take appropriate action. We are currently working on a revised enforcement strategy, which we will consult on as part of phase 2.

### *How will the SRA decide whether there has been a breach?*

*We will take into account the particular circumstances of each case when deciding whether to take regulatory action. More*

If we do take action, we will make sure our reasons for doing so are clear, proportionate, targeted and transparent. Our approach to enforcement will be set out in our revised enforcement strategy which we will be consulting on later this year.

## *Accounts Rules*

Open all [#]

### *How has the definition of client money changed?*

*The new definition of client money is simpler and does not distinguish between different types of disbursements or payments for fees. More*

All fees and disbursements paid in advance are considered client money until the point at which they are billed. These payments must therefore be held in a client account, unless they are the only categories of client money held by the firm and the firm takes advantage of the exemption that is set out in new rule 2.2.

*A firm operates a client account now to hold monies paid in advance for fees and unpaid disbursements - will they now have to hold these outside of a client account?*

*No, you will not have to hold this money outside of client account. The rule that only client money can be held in client account is still in place. More*

If you hold monies paid in advance for fees and disbursements as well other types of client money then you will need to continue to operate a client account as now.

If the only money held or received by you is advance payment for fees and any unpaid disbursements (prior to delivery of a bill for the same) then you can choose to not operate a client account (as permitted in rule 2.2) and hold these monies in your business account.

You can also choose to continue to operate a client account even if the only client money you hold is for fees and disbursements paid in advance. You do however need to inform your client (ahead of you receiving any client money) where and how it will be held.

*What records should firms keep if they use the exemption in rule 2.2?*

*If you do not operate a client account you will need to comply with the record keeping requirements in rule 8.1(a). More*

You must also obtain at least five-weekly statements of your business accounts (rule 8.2) and keep a readily accessible central record of bills or written notifications of cost given by you (rule 8.4).

You do not have to comply with the requirements in rule 8.1(b), 8.1(c) and 8.3.

*Do firms need to obtain an accountants report if they rely on the exemption in rule 2.2?*

*No. More*

There is no requirement on you to obtain an accountants report if the only money held by you is money that is held or received in accordance with this rule.

*Can a client object to paying in advance if a firm does not operate a client account (if they rely on the exemption in rule 2.2)?*

*Firms that choose not to operate a client account will have to inform the client about where and how the money is held. Clients can opt either to not pay in advance or use a different firm, which does have a client account if they do not want to use a particular firm. More*

*What does "disbursements for which you are liable" mean?*

*This includes for example, Counsel's fees or fees of a professional or other agent or expert instructed by you and whom you are responsible to pay, including the fees of other professionals that you might have engaged with. More*

*Do firms need to keep unpaid disbursements in client account if they have billed the client for them?*

*No. Once you have billed the client the money is yours and does not constitute client money. You must promptly transfer the money out of the client account. More*

*Are you going to provide new guidance for reporting accountants?*

*We intend to conduct a review of the existing guidance. More*

We will update and make additions as required. Any new guidance will be made available well in advance of the new rules coming into force.

*Do the rules allow for long term deposit accounts to be used to hold client money?*

*Firms and clients can come to alternative arrangements around the holding of client money. More*

In rule 2.3 we set out the requirements for any such agreement. The client needs to be made aware of how their money is being held and know what this means for them.

You need to ensure that you are acting in the best interest of your client (as required by our Code of Conduct) when handling client money.

*What has happened to the whistle-blowing requirements?*

*As part of our work to simplify and shorten the Handbook, we have removed rules that duplicate requirements on Reporting Accountants that exist in legislation. More*

The whistle blowing requirements are set out in section 34 of the Solicitors Act 1974. As such, we have removed the duplication from our Accounts Rules, but the whistle blowing duties remain in place for Reporting Accountants.

*Can a firm still use agreed fees in the future?*

*We have removed the concept of 'agreed fees' from the rules and the scope for confusion over the status of agreed fees and fixed fees, which are different things. More*

The rules now treat all money for fees equally. Provided you have given a bill of costs, or other written notification, to the client you can take any such payment for the specific sum identified into your firm's business account.

*If a firm only receives money from the Legal Aid Agency (LAA), do I need to operate a client account?*

*No. More*

Where the only money represents payments received from the Legal Aid Agency for your costs then you do not need to hold this in a client account.

### *What has happened to the requirement to submit a final cease to hold report?*

*We have removed the requirement for all firms that cease to hold client money to obtain a final accountant's report. More*

We have instead introduced a rule that allows us to require a report if we think it is necessary in order to ensure that client money has been properly dealt with when a firm shuts down and closes its client account.

We will issue guidance for the criteria and relevant risk factors we will use when making the decision to require a report to be submitted.

### *If a firm was exempt from obtaining an accountant's report under the 2011 rules, will it be exempt in the future?*

*Yes. Rule 12.2 preserves the position that is set out in the SRA Accounts Rules 2011. More*

### *Is there a requirement to pay interest earned on client money to the client?*

*Rule 7.1 confirms that you must account to clients or third parties for a fair sum of interest on any client money held by you on their behalf, unless you have reached a separate agreement with your client. More*

### *Can a firm operate a client account and also enter into an arrangement to have a TPMA for one or more clients?*

*Yes. More*

The rules allow you to discuss and agree with your client what arrangements work best and are in their interests. You can therefore, hold money for one client in a client account and agree to enter into a TPMA with another client.

### *Can a firm terminate a TPMA without the client's consent?*

*No. The agreement is between you, your client and the TPMA provider. More*

## **Implementation**

Open all [#]

### *Why will it take so long to implement your proposals - can't you do it quicker?*

*These are complicated reforms and we want to get it right. More*

We have engaged extensively with a wide range of stakeholders and we want to give as many people as possible an opportunity to share their views. This will help future proof the Handbook so that we don't have to keep changing it every year. We have received a diverse range of responses to our consultation and analysing these has required careful consideration.

Obtaining approval from the Legal Services Board for changes to our regulation also takes time. Once our proposals have been approved, we also need to give people time to understand and implement them

*If there are going to be any changes, when will they come into force?*

*Subject to outcome of the Phase 2 consultation later this year and following necessary submission by us to the Legal Services Board of an application to alter our regulatory arrangements, the earliest we plan to implement our proposals will be late 2018. More*

*What can I do if I want to innovate now?*

*We have created an Innovation Space which lets you explore new ways of running your business and introducing original ideas. More*

This is a 'safe space' is for existing firms, as well as new entrants to the legal services market.

It lets you test out ideas that are likely to benefit the public in a controlled way.

***Non-LSA regulated firms***

Open all [#]

*Why are you proposing to allow solicitors to work in non-LSA regulated firms?*

*There is growing market of 'non-LSA regulated' firms providing legal services such as will-writing and resolving employment disputes. More*

Yet the current rules mean that solicitors are banned from working in these firms. This means at the moment that anyone from a plumber to an accountant can provide non-reserved legal advice to the public in such firms, but not a solicitor.

The proposed changes would make it easier for solicitors, who are arguably best placed to provide quality services, to work in this expanding market. This could help push standards up while driving costs down. It could also help tackle the problem that many people and businesses still do not access the legal services they need. For example only 13 per cent of small businesses say that lawyers provide value for money.

***What are the effects on consumer protections of the SRA's proposals to allow solicitors to work in firms not regulated by the SRA?***

*Consumers already have the option of going to an alternative legal services provider that is not regulated by the SRA, and many are doing so. More*

But at the moment they cannot access the services of a solicitor in that market. Our proposals



to allow solicitors to work in non-LSA regulated firms bring additional consumer protections to clients of alternative legal services providers and offer more choice to consumers.

Solicitors will bring their training and qualifications, ethical behaviour and standards of conduct to non-LSA regulated firms and their clients. The Code of Conduct for Solicitors would apply to them, as it would to any other individual acting as a solicitor. This will include making sure they keep their professional knowledge and skills up to date, and supervise the work of those they manage or supervise, and the work being done for clients.

### *Will all solicitors' clients have access to the Compensation Fund, and if not, why not?*

*Claims to the Compensation Fund are usually linked to either breaches of the SRA Accounts Rules, or misuse of client money. More*

As solicitors in non-LSA regulated firms will not be allowed to hold client money, we consider it disproportionate to require them to contribute to the fund.

Clients of these solicitors will be protected by existing consumer protection legislation, for example, if the work is not completed or if the firm becomes insolvent. All solicitors, wherever they work, will have an obligation to provide information to their clients about the regulatory protections available.

Consumers will have a clear choice between different types of providers and the associated consumer protections. We are committed to making sure there is very clear communications to inform that choice at an early stage. We are looking at what information, for example logos, might help consumers to navigate those choices more effectively. We will be consulting later this year on more detailed proposals for consumer information

### *Can clients of solicitors outside regulated firms take a complaint to the Legal Ombudsman if something goes wrong?*

*Yes. More*

Access to the Legal Ombudsman attaches to services provided by 'authorised persons' - which will include solicitors working outside SRA regulated firms

### *Will solicitors working in non-LSA regulated firms and their clients have the benefit of professional indemnity insurance (PII)?*

*We are not proposing to place a requirement on individual solicitors working in the alternative legal services market to have PII. More*

This is primarily because individual solicitors are unlikely to have control over the PII coverage of their employer.

In practice, legal services providers - like many other businesses - are likely to have insurance so that they and their employees are protected from liability. This is something that solicitors will need to discuss with their potential employer.

We are aware that we need to make sure there is absolute clarity for consumers about what protections are in place for them, and are currently thinking through what information solicitors will need to provide to clients to make sure they know about the package of protections in place. The individual code requires solicitors to ensure that clients understand whether and how services are regulated (standard 8.10). Solicitors must also ensure their clients understand the regulatory protections available to them (standard 8.11).

We are also looking at what tools consumers might need to help them navigate this choice including what information can be provided at an early stage. We will be consulting later this year on more detailed proposals for consumer information.

### *Who will supervise the work of solicitors (and/or their staff) in a firm that is not regulated by the SRA?*

*As is the case in firms that are regulated by the SRA, the solicitor will need to make sure that they maintain their competence to carry out their role and to keep their professional knowledge and skills up to date. More*

Solicitors who are supervising others will remain accountable, and will need to effectively supervise the work being done for clients. The Code of Conduct also requires solicitors to make sure that the individuals they manage are competent to carry out their role, and keep their professional knowledge and skills up to date.

### *Is it possible for a firm to be totally unregulated to enable it to develop and compete against unregulated organisations providing legal advice?*

*Under our new rules, solicitors working in a firm providing only non reserved legal activities to the public would be subject to the Code of Conduct for Solicitors. More*

The firm would not need to be regulated by the SRA if no reserved legal activities were being provided, although a firm may choose to be regulated by the SRA if that is what they want or need.

## *Looking to the future consultation*

Open all [#]

### *Where can I find the analysis of responses to the consultation?*

*Read the analysis of responses. More*

### *Who did you engage with?*

*We have engaged with around 11,000 individuals, firms and other organisations in reaching the position set out in this response document. More*

In addition to the formal written consultation process, we have held workshops, focus groups and spoken to our reference groups. We have engaged widely with consumers and consumer representative bodies.

We have also engaged widely through social media and digital and online activity, such as webinars. A breakdown of the respondents to the formal consultation is provided in our response to consultation.

### *Can I read the responses to the consultation?*

*We have published all responses where the individual or organisation*

*has agreed to us doing so. [More](#)*

Read the full set of published responses [[/sra/consultations/consultation-listing/code-conduct-consultation/](#)]

### *Where can I find your impact assessment?*

*Read the impact assessment. [More](#)*

We have also commissioned the Centre for Strategy and Evaluation Services (CSES) and Dr Chris Decker, of Oxford University, to help us to develop an evaluation framework to measure the impacts of the changes.

### *When are you consulting on the rest of the current Handbook?*

*We plan to consult on the rest of the Handbook later on this year. [More](#)*

This will include changes to our practising and authorisation requirements.

### *How do your proposals fit with Section 15 of the Legal Services Act?*

*Our consultation proposals are designed to better align our regulation to Section 15 of the Legal Services Act. [More](#)*

Our current Practice Framework Rules go beyond the requirements of Section 15 and prevent solicitors from providing non-reserved legal services to the public unless permitted to do so. We know this is problematic for some organisations because our rules mean that they cannot respond to consumer demand or develop their business model. Our proposals to allow solicitors to provide non reserved legal services to the public through non SRA authorised organisations will better reflect S15.1 <sup>[#note1]</sup>

1. S15(4) allows employees (who are individually authorised) to carry on reserved legal activities for unauthorised employers provided the employer does not provide reserved legal services to the public or a section of the public as part of its business.

### *Do you think that the reserved activities are the right ones?*

*The reserved activities are outlined in primary legislation and we detect no appetite for large scale review. [More](#)*

Our proposals are designed to ensure that the way we regulate solicitors and those organisations providing reserved legal services:

- Is robust, clear, appropriate and easy to understand
- Upholds standards and core professional values
- Enables growth, access and innovation in legal services

### *What can I do if I think your current rules do not work?*

*If you have examples or issues with our current rules for example, our*

*authorisation requirements, we would like to hear from you. More*