

Encouraging innovation: transparency about our waiver decisions

June 2018

Background

About us

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:

- over seeing 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.

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

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.

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 out dated constraints on solicitors and firms.

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.

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.

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.

Transparent decision making

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.

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.

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 [<https://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page>]. In future, we will publish 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: <ol style="list-style-type: none"> 1. broad category of waiver 2. detail on rule or rules waived 3. outcome/impact of waiver
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

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.

Download full report: Encouraging innovation: transparency about our waiver decisions (PDF 14 pages, 259KB) [<https://www.sra.org.uk/globalassets/documents/sra/research/waivers-innovation.pdf?version=4a1ac0>]