



SRA CONSULTATION **REGULATORY REFORM PROGRAMME**

Response by the Junior Lawyers Division of the Law Society of England and Wales

The Junior Lawyers Division of the Law Society of England and Wales (the "JLD") represents LPC students, LPC graduates, trainee solicitors, and solicitors up to five years qualified. With a membership of approximately 75,000, it is important that we represent our members in all matters likely to affect them currently and/or in the future.

The JLD has reviewed the SRA's Regulatory Reform Programme consultation (the "Consultation") and carefully considered the SRA's proposals. We respond to each of the Consultation questions below.

Simplifying compliance officer approval for small firms (1-4 managers)

Consultation question 1: Do you agree with the SRA's proposal to introduce deemed approval for the COLP/COFA roles for sole practitioners and 1-4 manager firms?

As the role of COLP or COFA should be fulfilled by someone with sufficient seniority, it is unlikely that this role will fall to a junior lawyer. If the relevant individual has had to successfully pass a similar application process to become a manager, it is logical not to repeat the check for their appointment as a COLP or COFA. There does appear to be a risk that in some cases the COLP or COFA will not have already been authorised to become a manager, and the SRA may want to consider how it monitors those exceptions - the suggestions in paragraph 14 of the Consultation appear to provide a logical solution to this problem.

Consultation question 2: Do you believe that deemed approval of COLPs/COFAs should be limited to certain types of firms? If so, which firms and why?

Unclear. Whilst it is appropriate that regulation should be proportionate and targeted, any changes must ensure the same level of protection to the client and the profession. It is unclear whether allowing ABS' to benefit from deemed approval of their COLPs/COFAs would necessarily ensure that level of protection.



Consultation question 3: Do you believe there are certain criteria or characteristics in a prospective COLP/COFA which should require us to assess their application nonetheless? If so, which criteria or characteristics, and why?

Yes.

The JLD considers the suggestions in paragraph 14 of the Consultation to be logical and proportionate. However, our expertise does not lie in assessing the suitability of COLPs/COFAs; therefore we cannot go as far as to say we agree with the suggestions.

Simplify candidate declaration and notification processes

Consultation question 4: Do you have any views on the SRA's proposal to simplify candidate declaration and notification processes?

The SRA have not provided any rationale for the changes in paragraphs 17 and 18 of the Consultation. Without knowing the rationale for these changes, the JLD must disagree with the proposals in paragraphs 17 and 18 of the Consultation.

Paragraph 17 - we strongly disagree with this proposal. Candidates who are seeking approval to become a manager, owner or compliance officer should declare that the information supplied about them in the relevant application is correct and complete. Otherwise there is a material risk that incorrect information will unknowingly be provided to the SRA.

Paragraph 18 - it seems proportionate to notify each individual candidate named in the application whether they have been approved or denied by the SRA. If candidates can "opt in" to receiving this notification, then we are less concerned by the proposal in paragraph 18 - however, it is unclear whether this "opt in" could work in practice, if the proposals suggested in paragraph 17 are adopted.



Remove the requirement for firms to carry out reserved legal activities

Consultation question 5: Do you agree with our proposal to simplify authorisation by removing the requirement for firms to carry out reserved legal activities?

No.

The JLD believes that this may dilute what it means to have authorisation and cause confusion. At the moment, consumers and other legal professionals know that if a firm has authorisation, it is likely to be carrying out reserved legal activities. We are concerned that junior lawyers who seek to gain training in such firms may do so believing that they will gain experience of reserved legal activities by virtue of that firm being authorised when in fact they will not.

ABS Authorisation - operational changes and improvements

Consultation question 6: Do you agree with our proposals to simplify the authorisation process for ABSs by:

a. removing the requirement for approval of managers in ABS corporate owners;

The JLD points out the potential risk of relying on an ABS corporate to employ managers who are appropriate to run a business authorised by the SRA (as opposed to the previous SRA approval mechanism which ensured that those individuals were appropriate). We would be interested in knowing how many applications to date have been rejected by the SRA; if there have been rejected applications, our concerns are greater and we would encourage the SRA to reconsider this amendment.

b. removing the 7 day notification requirement for authorised manager or owner of an ABS

This appears to be a logical amendment.

c. revising the rules relating to reserved legal activity?

This is particularly concerning for the JLD, as it is unclear from the Consultation what rules the SRA are proposing to revise in relation to reserved legal activities. This is not addressed in paragraphs 28-31.



Consultation question 7: Do you have any specific concerns regarding the SRA's proposals to simplify the authorisation process for ABSs? If so, please specify what these are.

None other than that explained in our response to question 6 above.

Consultation question 8: Do you have any specific suggestions for the further simplification or streamlining of ABS authorisation?

No.

Changes to insolvency rules

Consultation question 9: Do you agree with our proposal to adjust the regulations to cover the event of partnerships entering administration?

Whilst we have no specific objections to this proposal, our expertise does not lie in insolvency rules. Therefore we cannot go so far as to "agree" with the proposal.

Alternatives to client accounts

Consultation question 10: Should the SRA approve third party managed accounts?

Yes.

The JLD understands that client accounts are expensive for firms to run. If a more cost effective solution could be found - and one which protects the consumer to an equal or greater extent than current - the JLD would support such an initiative.

The Consultation states that misuse of client accounts is a common problem and so anything done to reduce this will benefit the profession's reputation and the consumer. However, the JLD feel that more information is needed to show how the use of third party managed accounts can prevent misuse of client funds and exactly what protections would be in place to ensure that those providing the account are independent.

If the SRA are making this amendment because of a growing number of cases showing misuse of client funds, then the SRA must provide a hands-on approach to ensure that individuals are using third party managed accounts correctly. Option 1 in paragraph 42



would provide a welcome layer of protection in this regard; it is the JLD's view that "option 1" should be taken.

Consultation question 11: If so,

- **should these be assessed and considered by the SRA on a case by case basis, or**
- **should the SRA identify a minimum set of safeguards that should apply to all third party managed accounts?**

The JLD feel that a set of safeguards is the minimum that should be implemented by the SRA if third party managed accounts are approved. The JLD would prefer assessment on a case by case basis. Whilst a list of criteria is useful there is scope for it to be ignored and this could lead to a worse situation than the SRA are currently reporting with client accounts.

Consultation question 12: Are there any additional safeguards, not set out in Annex A, that you think we should consider in authorising the use of third party managed accounts?

It is important that:

- clients are informed of alternative options if they do not wish to use the third party managed account; and
- clients are provided with information on the repercussions for a firm if they misuse the money and/or account.

However, we do not believe these particular requirements are relevant to the list in Annex A.

Guidance on recording of non-material breaches

Consultation question 13: Does the SRA's additional guidance on recording of non-material breaches provide further clarity on this requirement?

No. Paragraphs 46-49 do not make the position clearer. It is not clear exactly what needs to be reported, by whom, when and how. This could be broken down and made clearer.

Consultation question 14: Should the SRA also give consideration to removing the requirement for non-ABS firms to record such breaches? If so, why?

The JLD has concerns that if the requirement is removed there would need to be very clear guidance as to what is a material breach and what is a non-material breach and what happens in instances where the line in between is blurred.



Clarification on the outsourcing of legal and operational functions

Consultation question 15: Does the current rule in relation to outsourcing present unforeseen difficulties to firms wishing to take advantage of cloud computing options?

The SRA appear to be looking for practical examples from firms in response to this question, and therefore we do not deem it appropriate to take a position in response to this question.

However, it is possible that firms may be dissuaded from taking advantage of cloud computing options given the current rules, as we would imagine that cloud providers would not accept a contractual term permitting such access to premises. This could lead to a dilemma for a firm who is worried that, in the absence of obtaining such a contractual right, they would be breaching SRA regulations.

Consultation question 16: Does the addition of a guidance note on Outcome 7.10 provide sufficient clarity, or should the SRA make changes to this Outcome to provide further guidance to firms?

The provision of a guidance note would appear to be the first logical step and the JLD would support this proposal; however, if firms still found this to be unclear, then the SRA would need to look at whether a change to Outcome 7.10 is appropriate.

Recording and reporting of diversity data

Consultation question 17: Do you have any comments on the SRA's proposal to clarify the current requirements for the recording and reporting of diversity data?

The JLD supports this proposal. This amendment will provide clearer information for firms on the requirements placed on them.

Update on Apprenticeship Route to qualification

Consultation question 18: Do you agree with our proposal to enable qualification as a solicitor through an apprenticeship route?

Unclear.



The JLD supports initiatives which promote access to the profession. In the development of these initiatives, it is paramount that standards of quality of the "solicitor" brand are maintained.

The JLD believes that apprenticeships will - in the near future - be a welcome addition to the profession. Indeed, we are seeing firms develop their own apprenticeship schemes - for example, City firm Mayer Brown have announced an "apprenticeship" scheme whereby students study for their LLB and LPC alongside their training contract. The JLD supports these forward-thinking initiatives.

However, we are unable to support the SRA's proposals in paragraphs 64-74 of the Consultation for two reasons:

- We understand from the Consultation paper that the SRA has been working alongside an employers group to develop an Apprenticeships Standard leading to qualification as a solicitor. We have not seen this Apprenticeships Standard. Further, we understand that an assessment plan has not been developed yet. It is therefore not clear to us what is being proposed in practice by the Consultation.
- The SRA's Competence Statement and forthcoming Assessment Framework is designed to create a universal assessment for qualification as a solicitor. The Consultation suggests that the SRA are now proposing to adopt a second framework for qualification as a solicitor for apprentices. This would undermine the value in the Competence Statement and universal Assessment Framework. A better approach may be to consider how apprenticeships could fit into the Assessment Framework.

The JLD would like to make clear its support for "apprenticeships" as a general concept. However, the definition of an "apprentice" is not always clear in the context of a legal career and the SRA have not provided any information on what is in practice being proposed. Some could argue that individuals can already qualify as a solicitor through an apprenticeship route, such as the Mayer Brown scheme.

The JLD would encourage the SRA to consult further and more openly on this matter (including by providing information on how this qualification route would work in practice) to ensure that the apprenticeship route is properly formulated in the context of a legal career.



Fee sharing and referrals

Consultation question 19: Do you consider that Outcome 9.6 should be retained or removed? Please give your reasons why.

Outcome 9.6 should be retained.

We understand that the SRA are looking to generate an open debate on referral fees in a business context. The JLD, like many other lawyers as noted in the Consultation, finds it distasteful for lawyers to use referral fees to pass clients between businesses. However, we understand this is largely irrelevant from a regulatory perspective - the real question is whether it would be in the best interests of the consumer to remove Outcome 9.6.

On the facts presented, it is not clear to the JLD that removing Outcome 9.6 would be in the best interests of the consumer; the risk is that businesses will pass clients to lawyers who will pay the highest referral fees, rather than necessarily the lawyer who is best suited to advise that client.

Removing Outcome 9.6 has the potential to cause a conflict of interests in numerous scenarios, and therefore from a regulatory perspective, it is the JLD's view that Outcome 9.6 should be retained.

If, however, the SRA were able to find clear evidence that the removal of Outcome 9.6 would be in the best interests of the consumer, our concerns would be alleviated.

Thank you for taking the time to consider the above.

The Junior Lawyers Division

11 June 2015

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