



SRA consultation

Regulation of insolvency practice

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 'Regulation of Insolvency Practice' Consultation (the 'Consultation'). We note that the SRA's screening of the potential impact of the proposal reveals that of the 124 solicitor insolvency practitioners ('IPs'), 81% are aged between 40 and 60. Although level of qualification, and not age, dictates an individual's eligibility for membership of the JLD, the majority of our members fall outside of this age range and one may conclude that there are very few solicitor IPs who are members of the JLD. Nonetheless, the JLD must assume that some of the 124 solicitor IPs are JLD members, and responds accordingly.

The disproportionately low number of 24-39 year olds who are solicitor IPs may indicate there are existing barriers, such as high fees or accessibility of training and development, to become a solicitor IP. These barriers may have a negative impact on the SRA's duty to advance equality of opportunity between solicitors who are younger than 40 and those aged 40 or over in accordance with the Equality Act 2010 and the Equality Act 2010 (Specific Duties) Regulations 2011. The JLD is cautious in providing our support to this proposal, specifically due to the following concerns that we have:

1. The annual fee currently payable by solicitor IPs authorised by the SRA is £520. Other Recognised Professional Bodies ('RPBs') charge IPs an annual fee of between £1,650 to £3,400 (although we understand that some RPBs charge a reduced fee for non-appointment takers of £630 to £3,300). This is a significant increase and it is very possible that it could cause the number of current solicitor IPs to further decrease. It could also see the number of new applications from solicitors decrease even further, which is likely to disproportionately affect the junior end of the profession. It may also be a factor which increases costs to the consumer.
2. The consultation paper suggests that solicitor IPs will be able to seek reauthorisation under an alternative RPB and it states that the SRA is currently exploring transitional arrangements with other RPBs. It is concerning that the paper stops short of saying that



an express commitment has been given by any alternative RPB, that it will accommodate solicitor IPs should the SRA withdraw. The JLD suggests that the SRA should seek express assurances from an alternative RPB that it will accommodate solicitor IPs in the event that the SRA withdraws. This will enable clear guidance to be provided to those solicitor IPs seeking reauthorisation and also for new applicants.

3. The JLD is concerned by the statements made in Paragraph 24 of the Consultation, specifically: (i) in relation to the impact of the applicability of the Compensation Fund; (ii) the lack of clarity in relation to the position for solicitor IPs in SRA licensed bodies. It is unclear why this information will only be released after the consultation period has ended.
4. On timing: it is unclear why this Consultation was released the day before the third reading of the Small Business, Enterprise and Employment Bill 2014-2015 in the House of Commons, when the regulatory reforms to which the Bill relates is a key driver behind the need for reform.
5. The JLD is becoming increasingly concerned by the number of regulators that will be responsible for the legal profession. Specifically, we would strongly disagree with the SRA's statements in Paragraph 18 of the Consultation. The JLD fears that consumers will be confused by which regulator is overseeing the various aspects of a solicitor's role (rather than being 'confident that solicitors are regulated effectively in all of the activities they carry out', as suggested in the Consultation). Ultimately, we fear, the consumer will lose confidence due to this confusion. The JLD believes that the fact that the SRA are not 'effectively regulating' specific areas is not a sufficient reason to withdraw from regulating those areas. The JLD would propose that in these situations, the SRA should be establishing how it (as the regulator of solicitors) can better regulate those areas, for solicitors.

That being said, the JLD recognises the need of the SRA to appropriately manage its time and resources whilst meeting its obligations as a RPB. Given the small numbers of IPs regulated by the SRA and the relatively insignificant role of the SRA compared to other RPBs, the JLD is concerned as to whether the SRA has effectively promoted this route of authorisation for solicitors and whether it remains a legitimate and credible regulator in the insolvency sector.

The JLD appreciates that a decision on this proposal has been deferred before. However, the JLD would request that the SRA defers on this point once again, and re-opens the Consultation if and when the Small Business, Enterprise and Employment Bill 2014-2015 is enacted, and, as importantly, when the SRA can properly answer the questions in points 2 and 3 above.



The information in the Consultation is insufficient for the JLD to undertake a full impact assessment. Further information would assist the JLD to address many of the concerns raised in this response. Until that detail and the outcome of the Small Business Enterprise and Employment Bill 2014-2015 is known, the JLD takes the view that the decision ought to be deferred.