



## SRA consultation

### Separate Business Rule

#### 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 Separate Business Rule consultation (the '**Consultation**') and carefully considered the SRA's proposals.

The JLD has had an opportunity to read the Law Society's substantive response to the Consultation. We fully endorse the Law Society's response. In short, we are: (i) highly concerned by the proposals in Part A of the Consultation; and (ii) in support of the proposals in Part B of the Consultation. In addition to the Law Society's comments, we add the following:

#### Part A

1. The JLD is concerned by this proposal, which may be detrimental to consumers. It is of utmost importance that a consumer of legal services should be entitled to rely on their current protections, including access to the Legal Ombudsman and the compensation fund. Second, it is important that the profession is not brought into disrepute, which we consider to be a risk under this relaxed rule.
2. The case studies in the consultation document were limited. The JLD would have preferred to see more studies that show how the changes could affect smaller firms whose main practice areas are conveyancing and probate/estate administration services. Family law was not considered, and in light of the recent cuts to legal aid, firms are looking at other opportunities to make their business profitable, which could mean changes to the way in which they work with separate businesses. We agree with the Law Society that it is likely that there will be more complex structures set up under the relaxed rule and these are not reflected in the case studies.
3. We agree with the Law Society that the impact assessment is inadequate given the potential repercussions of the rules change proposed. We would also reiterate the concern considered at paragraph 8 of the draft Impact Assessment (i.e. we consider it a very real risk that consumers will make a choice based on a misapprehension



that the alternative service carries the same protections as the SRA regulated one). If the proposals are enforced, the JLD would want the SRA to maintain stringent checks on firms who are referring work to separate businesses to ensure that consumers are not misled or suffering loss. In this sense, we agree with the Law Society that referrals between businesses are notoriously difficult to regulate.

4. We agree with the Law Society that non-practising solicitors i.e. those on the Roll without practising certificates, should not be allowed to use the title 'non-practising solicitor'. However, this may be difficult to achieve in practice. The JLD would be particularly interested to know how the SRA would enforce this rule.
5. Small firms may be disproportionately impacted by this proposal, which appears to benefit larger firms who can separate their business, rather than high street firms who are unlikely to be in a position to do so. Larger firms, who will be able to run the separate business cheaper without the insurance and practicing certificates costs, may be able to undercut smaller firms in the provision of services such as estate administration, which have often been carried out by high street law firms along with the obtaining of a grant of probate. In the long term, we are concerned that this will increase the cost to the consumer of obtaining advice from a regulated entity (decreased volume of work could mean that firms are required to charge higher fees to maintain their business, or leave the market altogether).
6. We also would agree with the Law Society that the outcomes as drafted cannot address the more serious problems associated with referral from unregulated business to a regulated firm. It is very likely that unregulated businesses will be used as a source of work for firms and the regulator will be in no position to enforce, at the start of the relationship, the transparency that consumers will need. We consider that there is a significant danger, together with a potential for conflict, particularly if the regulated body discovers that its unregulated separate business has been negligent.

## **PART B**

7. The JLD supports the proposal in Part B of the consultation - particularly the proposal to allow recognised bodies and recognised sole practitioners to provide the additional services. The JLD particularly considered the fact that these services would be regulated by the SRA. In light of the implementation of ABS' and further to our comments above regarding competition and the protection of the consumer, the JLD in theory supports initiatives that widen the scope of services a firm can offer. There is a limit to this - the JLD would not wish to see the reputation of solicitors devalued



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by the provision of extra services to the point that legal advice is seen as incidental to the provisions of these other services.

The JLD repeats its endorsement of the more comprehensive Law Society response, and we thank you for taking the time to consider the above.

**The Junior Lawyers Division**

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