



Response to SRA consultation

“LOOKING TO THE FUTURE”

General Remarks:

The South London Law Society is the local law society for solicitors' firms in the South London Boroughs of Wandsworth, Lambeth, Southwark, Lewisham and Greenwich.

There are approximately 400 South London firms providing legal services in the justice system. These are approximate figures which are taken from “Find a solicitor”, the Law Society's website accessed by members of the public looking for a solicitor.

Members of the South London Law Society work in the majority for high street firms, partnerships with three or less partners, sole practitioners' practices and fewer than five large firms.

The South London Law Society is concerned with the proposals put forward by the SRA, in particular as it considers that the proposals, if implemented, would adversely affect consumer protection and the trust the public places in the profession. They are also likely to result in confusion for consumers where they wish to seek redress against a solicitor.

There is also scope for increasing the risks to solicitors working in unregulated practices.

We set out our comments to some but not all consultation questions in more detail below.

Consultation Questions

Question 2 - Do you agree with our proposed model for a revised set of Principles?

The Society is concerned that reducing the principles is not helpful. It is suggested that it will be absolutely clear to solicitors how they must act, but the lack of indicative behaviours/ other guidance may lead to difficulties for solicitors in deciding how to proceed in a given situation.

Removal of the requirement to protect client money and assets is a concern as this is fundamental to trust placed in the profession.

Question 3 - Do you consider that the new Principle 2 sets the right expectations around maintaining public trust and confidence?

The Society is concerned that removal of the reference to 'you' detracts from the personal responsibility all solicitors have to uphold trust in the profession.

Question 4 Are there any other Principles that you think we should include, either from the current Principles or which arise from the newly revised ones?

We consider that the obligation to provide a proper standard of service to clients is fundamental to the role of solicitor and justifies the trust placed in the profession. We consider it should therefore be retained.

We are also concerned about the removal of the obligation to protect client money and assets and consider this should be retained.

Question 6 Have we achieved our aim of developing a short, focused Code for all solicitors, wherever they work which is clear and easy to understand?

The Society considers that the wording of the Code is loose and open to interpretation. Most solicitors with whom we have come into contact prefer certainty and clarity as to what they can and cannot do. As drafted, the code may give rise to misunderstandings.

Question 7 In your view is there anything specific in the Code that does not need to be there?

As noted above, we consider that greater detail would be welcomed by solicitors, not less.

Question 8 Do you think that there anything specific missing from the Code that we should consider adding?

Again in the interests of greater certainty, we consider a prohibition on unsolicited approaches to clients be retained. We note it is proposed current Outcome 8.3 be removed. This may lead to confusion amongst the profession and consumers.

We also consider that there is an issue in relation to undertakings and that there may be reluctance to accept an undertaking from a regulated solicitor working in an unregulated entity. We consider the Code might address these concerns, perhaps by reference to the disciplinary nature of a breach of the undertaking.

Question 10 Have we achieved our aim of developing a short focused Code for SRA regulated firms which is clear and easy to understand?

We are concerned that having different regulation of solicitors and entities, and allowing solicitors to carry out unreserved activities in non-regulated entities is liable to give rise to confusion and endanger the protection of consumers.

Question 11 In your view is there anything specific in the Code that does not need to be there?

As stated above, we consider greater detail rather than less would be appropriate.

Question 14 Do you agree with our intention to retain the COLP and COFA roles for recognised bodies and recognised sole practices?

In responding to this question, please set out the ways in which the roles either assist or do not assist with compliance.

The South London constituency contains a significant number of small firms and sole practitioners for whom the regulatory burden is becoming increasingly difficult. There may be scope for some

flexibility in how rules apply to smaller practices. We consider the principles behind the COLP and COFA roles need be maintained with further thought given to implementation.

Question 16 What is your view of the opportunities and threats presented by the proposal to allow solicitors deliver non-reserved legal services to the public through alternative legal services providers?

We consider that the proposals give rise to a number of concerns as touched on in our introductory paragraph. These include:

- Greater confusion / lack of understanding by the public, particularly when it comes to seeking redress from solicitors working in unregulated entities, particularly given the proposal for removal of the need for PII cover and lack of access to the compensation fund.
- A shift of the cost of regulation to smaller firms: if larger commercial firms move the majority of their work to non-regulated entities, paying less towards the cost of compliance, these costs could very well be placed on smaller regulated entities.
- Greater exposure to solicitors working in unregulated entities
- Possible conflicts of interest between regulated solicitors and the commercial interests of his / her non-regulated employer entity.
- Creation of a two-tier profession

Question 18 What are your views about our proposal to maintain the position whereby a sole solicitor (or REL) can only provide reserved legal services for the public (or a section of the public) as an entity authorised by the SRA (or another approved regulator?)

We agree with this proposal.

Question 20 Do you think we should require SRA regulated firms to display detailed information about the protections available to consumers?

We consider that in the interests of consumer protection detailed information about the protections available should be available and easily accessible. Guidance on the precise detail should be given.

This information could readily be provided in a SRA leaflet given to all clients at the outset of a retainer.

We have concerns about non-regulated entities not being required to provide this information – and more specifically details of the protection that are not afforded to clients of regulated solicitors not in regulated practices.

Question 21 Do you agree with the analysis in our initial Impact Assessment?

We do not agree with the premise that the proposals will contribute to meeting an unmet legal need as set out by the SRA and there seems little robust evidence to support this.

On the contrary, the unmet legal need in the UK is of those who, with the drastic reductions in legal aid and increases in court and tribunal fees are not able to engage a solicitor at any price point. We do not consider removing the need for providers of non-reserved activities to be regulated will

reduce prices sufficiently, and indeed would remove many important protections for some of the most vulnerable in society.

Question 23: Do you agree with our approach that solicitors working in an alternative legal services provider should not be allowed to hold client money in their own name?

We do not agree solicitors should be able to provide services through alternative legal service providers, and as such the question should not arise.

Question 24: What are your views on whether and when in house solicitors or those working in Special Bodies should be permitted to hold client money personally?

We consider that any solicitor working in a non-regulated environment (which presumably encompasses in house solicitors) should not be able to hold client money.

Question 25: Do you agree with our proposal that the SRA Compensation Fund should not be available to clients of solicitors working in alternative legal services providers? If not, what are your reasons?

As noted above we do not support any solicitors working in ALSPs for the very reason that access to the compensation fund would not on current proposals be available. We note the reasons for this but suggest that claims on the compensation fund can arise from the provision of non-reserved activities.

Question 26: Do you agree with our proposal not to make individual PII cover for solicitors a regulatory requirement on the individual solicitor?

We strongly oppose this proposal. PII cover is a fundamental client protection and to maintaining trust in the profession. We also suggest that maintaining PII is a necessary corollary of acting in a client's best interests.

Question 28: Do you think that we should retain a requirement for Special Bodies to have PII when providing reserved legal activities to the public or a section of the public?

Yes. Special bodies can provide reserved activities for some of the most vulnerable members of Society for whom the highest level of consumer protection is paramount.

This also goes to the principle of fair and consistent regulation for all solicitors.

Question 29: Do you have any views on what PII requirements should apply to Special Bodies?

We consider the requirements should be the same as for traditional law firms.

Question 32: Do you have any views on our proposed position for intervention in relation to alternative legal services providers, and the individual solicitors working within them?

It is not clear to us how this would operate in practice; we anticipate there would be significant practical difficulties.

Question 33: Do you agree with our proposal that all work within a recognised body or an RSP should remain regulated by the SRA?

We agree with this proposal.

Mr Gareth Ledsham, President, South London Law Society

Mr Robert Hush, Vice President, South London Law Society