



Solicitors  
Regulation  
Authority

## **Multi-disciplinary practices**

Consultation paper

May 2014

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## Purpose of the consultation

1. This consultation seeks views on policy changes and associated amendments to the SRA Handbook (Annex A) aimed at achieving a proportionate regulatory framework for the authorisation and supervision of multi-disciplinary alternative business structures providing legal and non-legal services.
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## Summary

2. A multi-disciplinary practice (MDP), in this context, is deemed to be a licensed body that combines the delivery of reserved legal activities<sup>1</sup> with other legal and other professional services. MDPs were expected to be a key part of the post Legal Services Act (LSA) market and the SRA made clear its desire to regulate this type of alternative business structure (ABS) when applying to become a licensing authority in 2011. In the first two years of its operation as a licensing authority, the SRA has licensed a wide range of business models but has seen only limited entry of MDPs.
3. We are concerned that some of the rules in the SRA Handbook may have become an impediment to the effective licensing and regulation of some licensed bodies; and in particular, those rules that require all legal activity within an SRA authorised MDP to be SRA regulated. The use of a separate business, waivers and intensive one-to-one work with applicants has been necessary to achieve the sort of market entry and effective regulation that the SRA has sought to deliver. This may have added costs to firms and deterred entry. We are concerned that this could have impacted on consumers of legal services by providing them with less choice than might otherwise have been available. We have particularly noted that small business consumers are acknowledged as poorly served by the existing legal market<sup>2</sup>.
4. Consideration of our regulatory objectives and other duties under the LSA (including the obligation under s 52 LSA to reduce duplication of regulation), the better regulation principles and the obligation to promote growth by proportionate regulation have led us to conclude that we need to propose changes to our rules to deal with the issue. These proposals form part of a programme of work by the SRA to deliver on our commitment to reduce regulation and encourage market entry, innovation and growth.

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<sup>1</sup> Reserved legal activities are defined in section 12(1) Legal Services Act as (a) the exercise of a right of audience; (b) the conduct of litigation;(c) reserved instrument activities;(d) probate activities;(e) notarial activities; and (f) the administration of oaths.

<sup>2</sup> See 2013 'Small business legal needs survey'  
<https://research.legalservicesboard.org.uk/reports/consumers-unmet-legal-needs/>

5. This consultation therefore proposes that where an SRA authorised ABS that is an MDP carries out non-reserved legal activities, the SRA may agree that these activities will not be SRA regulated subject to:
    - (a) The activity not being carried out or supervised by an authorised person<sup>3</sup>,
    - (b) The type of activity being subject to suitable external regulation.
    - (c) The ABS having procedures in place to ensure that clients are aware that the activity is not SRA regulated.
    - (d) The activity not being of a type that the SRA defines as integral to the provision of reserved services.
  - 6 The consultation also discusses the links between this issue and other emerging features of a more dynamic legal market. It considers the impact any changes to rules for ABSs might have on the separate business rule as it applies more generally including to 'traditional' solicitor firms and outlines plans for a review of that rule and of current restrictions on the range of activities that solicitor firms can carry out. The consultation also clarifies the individual regulatory obligations of solicitors practising in authorised non SRA firms.
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## Background and description of issues

- 7 The situation that this consultation is particularly concerned with is where an MDP will be providing some or all of its non-reserved legal services through staff that are professionally regulated other than as lawyers.
- 8 One example would be an accountancy practice that wishes to become an ABS. Such a firm is likely to be already providing services in relation to a number of areas – including: tax returns; auditing; business advice, including tax effective structures; investment advice; and advice on individual taxation or accounting issues. These services will include advice in relation to actual or potential disputes around areas of law or fact relating to taxation, accounting etc. and the practical application of established laws and procedures to the client's case.
- 9 This advice will often have involved the accountant engaging in 'legal activity' under the LSA. This is defined in the LSA s12 (3) as including:

*'(i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;*

*(ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.....'*

LSA s12 (5) provides that "legal dispute" includes *'a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person's legal rights or liabilities'*.
10. The LSA does not require that all 'legal activity' has to be provided by an LSA regulated entity or authorised person - only the reserved legal activities. As

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<sup>3</sup> For the purposes of this paper, 'authorised person' has the meaning given in S18(1)(a) LSA

outlined above, accountants will of course regularly advise clients on the application of taxation law in their particular case, and will act for them in disputes with HMRC relating to their circumstances. Chartered Accountants are also able to represent their clients at Taxation Tribunals. Any regulation for that advice and representation will be via their accountancy qualification and practice rules.

11. Under current SRA rules, if the accountancy firm wishes to add reserved legal activities to the services that it currently offers and applies to become an ABS, then all of that firm's legal activities including the non-reserved activities carried out by the accountants will also fall under SRA regulation. This is in line with SRA rules that require all of the 'legal activity' (as defined in the LSA) carried out by an authorised body to be regulated by the SRA – not just the reserved legal activities.
12. Cases where the requirements for all legal activity to be SRA regulated are likely to be an issue will include a number of other types of professional services MDPs. So for example:
  - A firm of chartered surveyors will need to be familiar with planning rules and regulations - and may give general advice on them to clients that would technically count as a legal activity. If such a firm wished to become an ABS (or own a share in an ABS) employing specialist lawyers who could deal with planning litigation, then under current rules that general advice given by the qualified surveyor would also need to be SRA regulated.
  - A management consultancy might offer services to business including advice on restructuring – which will potentially bring into play employment or contract management issues which have a 'legal' aspect. Whilst the consultancy may well bring in specialist legal advice when required, their own non-lawyer specialist consultants (for example human resources experts) would need to be familiar with the framework in which they are operating and may sometimes engage in what would technically be non-reserved legal activities, which would be caught by regulation if the entity became or was connected with an ABS.
  - A non-lawyer entity might currently provide advice to individuals on wealth and asset management issues – this might include taxation advice and estate management. Whilst it might benefit clients if the entity were able to provide probate services by becoming an ABS (thus sparing the estate the extra cost of external probate practitioners) the extension of SRA regulation to all of their 'legal activities' may well act as a deterrent to the entity taking such a step.
13. The rules that require all legal work carried on by SRA Authorised Bodies to be SRA regulated aim to extend consumer protection, avoid the hiving off of work from regulation, and ensure that clients are not misled into thinking that the services that they receive are the subject of protection when they are not.
14. However the problem under discussion relating to MDP authorisation concerns a situation that was not specifically envisaged by the rules - namely that the non-reserved legal services are already regulated elsewhere. Imposing SRA regulation on these services is likely to lead to:

- Duplication and conflict of regulation – with different codes of practice, complaints procedures, client money rules, and insurance requirements potentially applying to the same work streams.
  - Confusion for the ABS applicant, licensed bodies, and clients, as to the boundaries and overlaps between regulatory systems.
  - Disputes as to which part of turnover will be subject to which regulators’ practising fees.
  - Unnecessary restrictions on business models, and therefore detriment to competition and consumer choice.
15. The problem has already led to delays in processing ABS applications. It is important to bear in mind that these issues not only complicate the current process for ABS authorisation but also act to deter potential MDPs from applying to the SRA for approval at all. This is evidenced by, for example, SRA’s ongoing discussions with well-regulated organisations that would like to become ABSs but are currently prevented from doing so.
16. One ‘work around’ has involved applicants structuring their business such that other professional services are provided in separate legal entities from the proposed ABS and then applying for a waiver of the SRA’s ‘separate business rule’.
17. The separate business rule in chapter 12 of the SRA Code of Conduct prevents both traditional solicitors and ABSs from providing certain prohibited legal activities through a connected separate business<sup>4</sup>.
18. Although any reserved legal activities included in the prohibited list would have to be authorised and regulated under the LSA in any event, the “prohibited separate business” activities also include non-reserved legal activities. These include instructing counsel or providing legal advice or drafting legal documents.
19. To date there have been 42 waivers of the separate business rule in relation to ABSs. However, forcing applicants to split their business and apply for a waiver leads to delay and expense in applications, deters applicants that do not wish to restructure their business, and can deprive clients of the benefits of the type of holistic services that the LSA was designed to help achieve.
20. Achieving a settled position on the issue (which was largely not envisaged by the current rules) will assist MDPs in preparing their applications and the SRA in determining them, and if it allows more MDPs to be appropriately authorised will bring benefits to consumers. These benefits will include the greater convenience of having a range of services available in one place, greater choice and potentially lower costs. MDPs may be able to offer that choice at a competitive cost by, for example, combining overheads, attracting external investment, and using existing networks to bring legal services to

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<sup>4</sup> SRA Handbook Glossary: **separate business** means a business, wherever situated, which is not an *authorised body*, a *recognised sole practitioner*, an *authorised non-SRA firm*, or an *overseas practice*, or comprises *in-house practice* or practice overseas which is permitted by the *SRA Practice Framework Rules*

consumers that do not currently access them. MDPs, also of course, offer opportunities for solicitors themselves to reach wider markets and bring in investment.

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## Proposed policy change

21. We believe that in order to achieve our objectives we should create an exception to the principle that we regulate all non-reserved legal activity within an MDP. We do not believe that continuing to impose a rigid principle irrespective of the circumstances (and in particular without considering whether the activity is regulated elsewhere) would amount to proportionate regulation in light of the evolving legal market. Our preferred solution is set out as option 1 below. In proposing this option, we have considered our statutory and other duties, including:

- The full range of our regulatory objectives. Our detailed consideration of the proposal against the objectives is contained in the impact statement at Annex B.
- The need as an approved regulator under LSA s28 (3) to have regard to the principles under which regulatory activities should be accountable, proportionate, consistent and targeted only at cases in which action is needed.
- The provisions of LSA s54 which states that licensing authorities should take such steps as are reasonably practicable to prevent regulatory conflict or unnecessary duplication with 'external' (i.e. non-LSA) regulatory regimes.
- The better regulation principles of proportionality, accountability, consistency, transparency and targeted.
- The drive to reduce the burden of regulation on small businesses
- The regulators code – in particular the provision that regulators should carry out their activities in a way that supports those they regulate to comply and grow.<sup>5</sup>
- The risks to consumers and to the regulatory objectives of different options for reform

22. We have ruled out putting forward an option for consultation that restricts SRA regulation within an MDP to reserved activities only. We accept that, as a matter of statute, non-reserved legal activities are not generally required to be regulated, and indeed there is nothing to stop anyone opening up a business providing advice in a non-reserved area such as employment disputes or providing a will writing service without any regulation at all. However once a person or entity has to be authorised under the LSA, the

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<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262915/13-1016-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262915/13-1016-regulators-code.pdf)

LSA does not confine the ambit of any regulation to reserved services, nor does the LSA repeal or codify the relevant provisions of the Solicitors Act under which the SRA has never been restricted to regulating reserved activities only. The fundamental point is that a risk based approach to regulation means that we consider that a blanket approach of removing regulatory protection for non-reserved legal activities would fail to meet our regulatory objectives. The list of reserved activities has grown up for historical reasons rather than via the application of risk based principles, and we note, for example, the LSB's views on the risks to consumers posed by unregulated will providers<sup>6</sup>. There are also areas of non-reserved activity that are closely linked to reserved services, such that to regulate one without the other in the same entity would cause consumer confusion and resulting detriment.

23. We do not believe that our position restricts consumer choice - consumers can, if they wish, choose to go to providers of unregulated services, and even for reserved services there will be an increasing number of 'brands' to choose from as the number and remit of other licensing authorities under the LSA widens.

#### Consultation question

1. *Do you agree with our analysis of the problems facing MDP applicants and the need to make changes?*

## Policy proposals

### A: Regulatory Framework within a single entity MDP

#### Option 1

24. We propose to create an exception to the principle that all non-reserved legal activity within an SRA authorised ABS must be subject to detailed SRA regulation.
25. Our proposal is that where an SRA authorised ABS that is an MDP carries out non - reserved legal activities, the SRA may agree on the terms of the licence that some or all of these activities will not be SRA regulated. Any such agreement will only be made in relation to a particular activity if we are satisfied that **all** of the following conditions will be met:
- (a) The activity not being carried out or supervised by an authorised person.**
  - (b) The type of activity being subject to suitable external regulation.**
  - (c) The ABS having procedures in place to ensure clients are aware that the activity is not SRA regulated.**

<sup>6</sup> See the LSB's 'Sections 24 and 26 investigations: will writing, estate administration and probate activities Final report 13/02/13'

**(d) The activity not being of a type that the SRA defines as integral to the provision of reserved services**

26. For the purposes of this paper we refer to this as the ‘the external regulation exception’.
27. Under the terms of the external regulation exception, the entity as a whole will continue to be authorised and regulated as an ABS by the SRA. The licensed body, managers, employees and owners will continue to have the general obligations set out in the LSA and in the SRA Handbook – such as the duties to have appropriate arrangements in place for compliance and to provide information set out in the SRA Authorisation Rules 2011, and the duties to comply with the SRA Principles 2011 and not to do anything that causes the licensed body to breach its regulatory arrangements. Information from across the MDP will be disclosable to the SRA – and misconduct of the MDP in non SRA regulated areas may be taken into account in relation to the entity’s fitness to hold the licence, or compliance with conditions. The duty to maintain client confidentiality in relation to information provided in respect of legal services will apply across the whole entity, as will the duty to co-operate with the Legal Ombudsman.
28. SRA regulated activity will comprise all reserved legal activity and all non-reserved legal activity that is not subject to the external regulation exception.
29. Individual solicitors will remain subject to individual regulation by the SRA.
30. This will produce the following SRA regulatory structure for an MDP ABS:

<b>(1) ENTITY</b>	
<b>(Authorised and regulated by the SRA as a Licensed Body)</b>	
<b>(2) ACTIVITY</b>	
(A) Reserved legal activity Non-reserved legal activity (SRA regulated)	(B) Non-reserved legal activity Non-legal activity (Non-SRA regulated <sup>7</sup> )
<b>(4) SOLICITORS (Individual SRA regulation)</b>	

**(a) The activity not being carried out or supervised by an authorised person.**

31 We intend to maintain the principle that where authorised persons provide legal services within an SRA authorised entity that activity must be SRA regulated – with the provisions of the Code of Conduct applying in full as appropriate to the circumstances. This is subject to the limited exception set out in paragraphs 42-43 below. Where a client instructs an authorised person for a legal service, they will rightly have the expectation that this brings with it SRA regulatory protection. The same principle will apply to those acting under the supervision of the authorised person.

**(b) Suitable regulation by an external regulator**

32. By external regulator, we mean the regulatory arrangements of a body that exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non – statutory). We do not include a body that is an approved regulator or licensing authority under the LSA *when acting in that capacity*, since by definition we are discussing SRA authorised entities.

33. It is important to stress that in considering whether there is suitable external regulation the SRA is not purporting to make any judgement on the adequacy of other regulatory arrangements for the purpose for which they were created – these are matters for public policy and for Parliament, not the SRA.

34. What we are proposing to consider is whether, in the context of an entity that is authorised and regulated by the SRA, the external regulatory arrangements provide enough of a fit – such that imposing SRA regulation would lead to unnecessary duplication and conflict and may deter the authorisation of MDPs. When legal activity is carried out in an SRA regulated body, then our range of duties and obligations, as well as consumer expectations from a body that we authorise, means that we consider it appropriate to require that certain safeguards are in place if we are not to regulate the activity. The external regulation will, of course, have been created for a different context, and usually not for the purposes of regulating legal services as such.

35. We are clear that suitable external regulation does not mean ‘identical regulation’ to that of the SRA as this would defeat the object of the proposal. However, we consider that there should be certain minimum features to that external regulation in order for SRA activity regulation to be disapplied.

36. In particular, we consider that the rules set by external regulation must apply to all non-reserved legal activity that the MDP is seeking to carry out outside SRA regulated activity, and that these rules must be sufficient to satisfy us that their effect will be to ensure that the mandatory SRA principles will be complied with. These principles are set out below, together with any specific comments on what we would expect to see in this context.

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<sup>7</sup> Subject to the power to impose conditions under s 85 LSA

1. **Uphold the rule of law and the proper administration of justice**
  2. **Act with integrity**
  3. **Not allow your independence to be compromised** (We would expect rules to provide for referrals to be made in the best interests of the clients and for any interest the firm has in the referral to be declared).
  4. **Act in the best interests of each client** (We would expect rules to protect clients in the event of conflicts of interest, and rules to ensure the confidentiality of clients' information).
  5. **Provide a proper standard of service to clients**  
(We would expect there to be arrangements for qualification, for competence of service, and for supervision of staff).
  6. **Behave in a way that maintains the trust the public places in you and in the provision of legal services**
  7. **Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner**  
(We would expect the regulatory scheme to provide for complaints, disciplinary procedures and enforcement. We would not consider external regulation to be suitable unless there are effective mechanisms to enforce the rules. If, for example, a member can escape liability by simply resigning their membership and yet continue in practice, this could not provide an effective remedy. We would also expect the regulator to maintain regular reporting requirements and to carry out assurance checks/visits on a risk basis).
  8. **Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles**
  9. **Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and**
  10. **Protect client money and assets.** (We would expect rules to make specific arrangements for protecting client assets and money).
37. In this context, we are considering external regulation that is not authorisation by an approved regulator or licensing authority under the LSA acting as such. However where, coincidentally, the regulators arrangements have been given approval under the LSA, we will consider these to be suitable. (For example, the Institute of Chartered Accountants in England and Wales (ICAEW) regulates accountancy work in its capacity as one of the six bodies authorised to confer the title 'chartered accountant' on its members, but many of the same regulatory arrangements have also been approved by the LSB and Lord Chancellor in connection with the ' ICAEW application for approval as a licensing authority and approved regulator for probate).
38. We have considered situations where the external regulation meets some but not all of the tests of suitability – for example it meets requirements such as

appropriate practice rules and disciplinary procedures but does not contain arrangements for protection of client's money. In our view, it would overcomplicate the regulation of entities and be likely to cause confusion to clients if the legal activity was partly subject to SRA regulation and partly subject to the other regulation. Our view therefore is that to meet the criteria we would need to be satisfied with the regulatory arrangements as a whole, such we consider it appropriate that SRA regulation would not apply to the activity.

39. We would intend to publish a list of external regulation that we would consider to be suitable for these purposes before any implementation of the proposal. This list would be added to as new MDPs with different regulators emerge.
40. As part of the development of the proposals, we have already considered some external regulatory schemes based on the proposed criteria. Our view is that, for example, the ICAEW and the Association of Chartered Certified Accountants (ACCA) schemes would meet the criteria in relation to their regulation of accountancy services. We also consider that, given the common standards that apply across all Recognised Professional Bodies (RPBs) for insolvency practitioners, we would regard the other RPB' regimes as suitable external regulation.
41. We would not regard the activity as 'subject to' suitable external regulation if any requirement for that regulation falls away as a result of authorisation as a licensed body. An example would be the requirement to have immigration services in a non-authorised body regulated by the Office of the Immigration Services Commissioner (OISC); this requirement will no longer apply once an ABS licence is granted. The licensed body and anyone working under its supervision will be qualified persons for the purposes of the Immigration and Asylum Act 1999 and will not require OISC accreditation. There is however an anomaly in the current SRA Practice Framework Rules 2011 which restricts the activities of non-lawyers in an SRA authorised body in relation to immigration tribunal proceedings, and we are consulting on the removal of this restriction<sup>8</sup>.

#### ***Non-reserved legal activities as a minor and subsidiary part of the service***

42. Inevitably, some professional services delivered as part of a potential MDP will not be subject to suitable external regulation. Human resources services are one example where there is no overall regulator as such. Most of these activities will be non-legal, but there will be circumstances where some legal activity is engaged in as a subsidiary part of the exercise of that profession. For example, a human resources advisor might advise a commercial client on setting up a complaints system. This might incidentally involve advising how that system should be compliant with equality and diversity requirements. In those circumstances, separating that aspect of the work out and insisting that it be SRA regulated would be likely to be impracticable. This situation differs, for example, from the taxation position set out above, as in the latter case advice on the application of the law to the individual's case cannot be said to

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<sup>8</sup> See Annex A –proposed deletion of rules 6.1 (e)(f) and (g) and 7.1 (e)(f) and (g) in the SRA Practice Framework Rules 2011.

be a subsidiary part of the work. Where all the conditions set out in paragraph 25 above are met save (b)'suitable external regulation', we therefore propose that the SRA will have discretion to allow the type of activity to fall outside SRA regulation where the non-reserved legal activity is a minor and subsidiary part of that service. However, given that an exception of this kind is difficult to define in exact terms, and could be open to potential misapplication, we intend to create a defined list of any services where this exception could apply. We will take into account the type of client that would tend to access the advice – those seeking human resources advice will tend to be employers used to accessing a range of different services and able to make their own judgements about when to purchase specialist legal advice. We are minded to include human resources services in such a list, but would invite views on what other services, if any, should be included.

43. We also consider that there should be a requirement in these cases that the client must not have engaged the ABS for the purposes of providing legal advice in the matter concerned.

**(c) The ABS having procedures in place to ensure that clients are aware that the activity is not SRA regulated.**

- 44 It is important that the terms of engagement make it clear what regime the work is regulated under.
- 45 The MDP will need to make it clear to clients (both individually and in more general publicity) which services are SRA regulated legal services and which are not.
- 46 Where the external regulation exception applies, we will also wish to ensure that clients are protected from their case being shifted between regulatory schemes solely in order to suit the convenience of the provider. There will obviously be situations where a matter that is being dealt with by a non-legal professional team moves towards the need for litigation or detailed litigation advice, and clearly that work will then need to move to the SRA regulated work stream. However, the same cases should not move 'in and out' of SRA regulation in a way that is likely to reduce protection or lead to unclear regulatory reach and we will consider how best to impose conditions on licences granted to MDPs in order to prevent this.

***Cases involving multiple professional teams***

- 47 We need to reflect there may not always be a neat division of work and MDPs are likely to want to offer clients multi-professional input. There will be cross over issues when a non-legal professional wants input from a lawyer and vice versa. However these situations already exist in the current market, it is merely that the instructions usually go to a separate organisation. For example, an accountant can instruct counsel at the moment via direct access, or a solicitor can obtain a specialist accountant's report and it does not raise insuperable issues of regulatory confusion. The point is that the consumer, the MDP, and the regulators will need to be clear about which regulator is responsible in each scenario.

- 48 The SRA's general position is that where a service involves both authorised persons and other professionals then any legal activity engaged in will be an SRA regulated activity.
- 49 However our discussions with some MDPs have shown that there are some circumstances where the authorised person will be involved in a minor or subsidiary role in a mixed team and will not be providing a service identifiable to the client as a legal service. We propose that we may, if appropriate in relation to the circumstances of the individual MDP, allow a non- reserved legal activity carried on by a multi professional team to be included in the external regulation exception on the licence despite the involvement of the authorised person where the other conditions are met and all of the following apply:
- The involvement of the authorised person is subsidiary
  - The authorised person is not providing reserved services in the same matter
  - The client has not directly engaged the authorised person or legal team
  - The authorised person is not carrying out a discrete piece of work that is identifiable to the client as a legal service.
  - The authorised person's work is not separately billed to the client.
  - The authorised person is not handling client's money.

50 However, in these circumstances, authorised persons that are practising solicitors (and those working under their supervision) will remain SRA regulated as individuals even if the work stream that they are taking part in is not SRA regulated as a whole. Thus the SRA Principles 2011 will continue to apply. However, we do not think it practical or necessary to apply the whole SRA Code of Conduct to the work that the solicitor will be carrying out as this is likely to cause conflict with the other professional regulation. Instead we propose that the following provisions of the Code will apply to the solicitor in this category of mixed case:

Chapter 1 – the following outcomes

O1.7 - clients are informed whether and how the services provided are regulated and how this affects the protections available to them.

Chapter 4 (confidentiality and disclosure) – the entire chapter.

Chapter 10 (you and your regulator) – the entire chapter.

Chapter 11 (relationships with third parties) – the entire chapter.

Chapters 13, 14 and 15 (application, interpretation and transitionals).

### **Non-reserved legal activities that the SRA considers integral to the provision of reserved services.**

51 There are some categories of case which are routinely so closely linked to the provision of reserved services that in our view it would be not be appropriate to have different regulatory regimes applying to different parts of the work within the same entity. It would be too difficult to define and operate any boundary, or to explain this boundary to consumers when they were instructing a single entity. We propose that these activities will therefore continue to be regulated by the SRA.

- 52 Claims management activity within an ABS is one example of such a category, where the link with the reserved activity of litigation is such that we consider that the whole claim should be SRA regulated. However, because an SRA authorised ABS will be exempt from the requirements of the Claims Management Regulator<sup>9</sup>, the MDP would no longer need to maintain its separate regulation under that regime in any case. This means that requiring SRA regulation of the activity does not impose any conflict or duplication of regulation.
- 53 Insurance companies may also wish to set up as ABSs providing a number of different services. Where insurance activities within an ABS involve engaging in non-reserved legal activity on behalf of policy holders, then we consider that work should be SRA regulated as falling within the category of work that is integral to the provision of reserved services.
- 54 In our view debt collection and debt counselling activities will also be often closely linked with the provision of reserved services. These activities are regulated as consumer credit activities by the FCA. However, issues of the extent to which the regulatory regimes of the SRA and the FCA do or do not overlap go much wider than ABSs and concern any SRA authorised bodies that engage in these activities. We are currently taking forward these issues in discussion with the FCA.
- 55 We considered whether to include estate administration in this category given the need to obtain a grant of probate before carrying out the work. However, whilst obtaining the reserved service is a pre-requisite to the non-reserved activity of administering the estate, it is an easily separable part and we do not consider that it would be difficult to apply a regulatory boundary or for consumers to understand their position. We also take into account the fact that much estate administration work does not involve legal activity at all. We therefore consider that any non-reserved legal activity carried out as part of estate administration could be subject to the external regulation exception if the conditions were met.

## **Other issues relating to the external regulation exception**

### **Conditions**

- 56 As with all other authorisations, we will consider applications on an individual risk basis, and may impose conditions where we consider these to be appropriate. These might, for example, include conditions about how the SRA and non SRA regulated legal activities will be presented to clients and how clients will be made aware of their rights.

### **The role of the Legal Ombudsman**

- 57 The jurisdiction of the Legal Ombudsman is not dependent on whether or not the SRA regulates the activity. It is a decision for the Ombudsman as to whether a complaint is accepted in accordance with its statutory remit and the scheme rules. Once an MDP becomes a licensed body, it will be authorised under the LSA, and the Ombudsman will have jurisdiction over its activities whether or not they fall within SRA activity regulation. For this reason, the

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<sup>9</sup> Compensation (Exemptions) Order 2007 Article 4

SRA requirements to co-operate with the Ombudsman, and to provide clients with details of their right to complain (where they have one) will apply to the whole ABS and not just when SRA regulated activities are engaged in.

### **The Compensation Fund**

58 Under the SRA Compensation Fund Rules 2011, the Fund will only cover defaulting licensed bodies where losses are incurred in the course of performance of a “regulated activity”. Therefore, defaults will not be covered if they fall outside of SRA regulated activity in accordance with the external regulation exception.

### **Professional Indemnity Insurance**

59 We would prefer the same insurer across the MDP to avoid consumers being prejudiced by disputes over which policy covers a particular situation. We would expect that all legal activity whether SRA regulated or within the external regulation exception should be covered by a policy that meets the SRA’s minimum terms and conditions. However, we will consider requests for waivers on a case-by case basis where acceptable alternative arrangements may be in place.

### **Turnover**

60 Appendix 3 to the SRA’s fee determination for licensed bodies defines turnover for the purposes of SRA periodical fees as: “a firm’s total estimated gross fees arising from regulated activities undertaken from offices in England and Wales.....”

61 We propose to maintain this definition. The effect would be that non-reserved legal activities that fell out of SRA regulation because of the external regulation exception would not be included in turnover for the purpose of calculating periodical fees.

### **SRA Handbook changes and impact statement for option 1**

62 Annex A sets out the draft changes to the SRA Handbook in relation to option 1 and Annex B contains the initial impact statement.

### **Consultation questions**

2. *Do you agree with the proposed external regulation exception?*
3. *Do you agree with the way that we propose to consider the suitability of external regulation?*
4. *Are there any other non- reserved legal activities (in addition to activity as part of human resources advice) that you consider we should allow outside of SRA activity regulation as minor and subsidiary to a non- legal service?*
5. *Do you agree with our proposal in relation to cases involving multiple teams?*
6. *Are there any other non-reserved legal activities that should be considered as integral to the provision of reserved services?*

7. *Do you have any comments on the draft changes to the SRA Handbook in Annex A?*
8. *Are there any other ways in which you consider the SRA could act to make its regulation of MDPs more proportionate and targeted?*

## Option 2

- 63 The SRA could maintain the current position of regulating all legal activity within an ABS, and require all MDPs to either submit to dual regulation or to separate their businesses out and seek a waiver.
- 64 We do not consider that maintaining the status quo would best meet the regulatory principles or the range of duties as set out above. In considering the need to regulate proportionally we have to consider whether there will be likely consumer detriment if the burden of regulation is reduced. Where activities are already regulated by an external regulator without significant evidence of consumer detriment, this must be a factor in determining the extent to which the SRA needs to impose its own rules on such activity. Any risks that will arise due to the nature of different professional services being provided together (for example potential consumer confusion about which regulatory system applies) can be dealt with in a more proportionate way by appropriate rules requiring the provision of clear information and individual conditions on licenses rather than by insisting that all non-reserved legal activity is SRA regulated.
- 65 It should also be borne in mind that there are risks to consumers in not authorising bodies as well as in authorising them. These opportunity costs of regulatory restrictions have to be weighed carefully alongside the benefits that can be accrued from removing or mitigating certain risks to consumers. The fact that research has shown that around 4 out of 5 small businesses recognise that legal services are essential but that solicitors are unaffordable is something that may be tackled by greater freedom for MDPs to emerge in the legal services market<sup>10</sup>.
- 66 A key consumer benefit of allowing MDPs into the system is that clients gain the benefit of holistic services and access to a range of professionals and services acting together. There would appear to be little policy justification for significantly reducing this benefit by requiring MDP applicants to structure their services into separate legal entities and apply for a waiver of the separate business rule (not to mention the cost, delay, and uncertainty of such a process).
- 67 In any event, the distinction as to whether the joint services provided by an MDP group are provided by a 'separate business' or not can be a somewhat artificial one. The attraction of an MDP from a consumer point of view includes the range of professionals it can offer. It is likely to be irrelevant to

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<sup>10</sup> See 2013 'Small business legal needs survey'  
<https://research.legalservicesboard.org.uk/reports/consumers-unmet-legal-needs/>

the client whether the MDP operates via separate legal entities behind the scenes. The key is consumer clarity on what services they are buying and who regulates them, and the existence of appropriate arrangements for issues such as protecting confidentiality of information and preventing conflicts of interest.

### Consultation question

9. Do you agree with our analysis of the disadvantages of option 2?

#### B The separate business rule

68 Any changes made in relation to the issue of MDPs and non-reserved legal services will have a potential impact in a number of scenarios other than a 'one stop shop' MDP ABS. These will include a number of scenarios covered by the separate business rule<sup>11</sup>:

- A separate ABS as part of a wider MDP group of companies.
- A non-lawyer professional individual or entity owning a material interest in an ABS.
- An ABS actively participating in, connected with, or having an interest in a non-lawyer professional business.
- A solicitor or Recognised Body actively participating in, connected with, or having an interest in a non-lawyer professional business.

69 Therefore, although the option for reform in this paper concerns MDP applicants for ABS status, any changes to rules that are ultimately agreed will have an impact on the wider SRA regulated community. For example, an individual solicitor or Recognised Body may be connected with a separate business providing multi-disciplinary professional services in circumstances that will not require an ABS application (e.g. a solicitor acquires a share of that separate business) but which would fall foul of the current rules. In our view it would be inappropriate to have one rule for 'one stop shop' ABSs and a more restrictive rule for separate businesses.

70 As a second stage of the work, we therefore intend that there should be a wider review of the separate business rule in light of the outcome of these proposals. Whilst this review would look at restrictions that could be unnecessarily holding back the market and consumer choice, we would wish to ensure that appropriate safeguards remain in place. Although the risk of consumer confusion might seem to be lower where different professional services are split into separate entities, such a split may not be apparent from the client's perspective. We will therefore want to look at the reality of different situations and maintain requirements for clients to be made clearly aware of what services they are buying and who regulates them. The SRA will want to

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<sup>11</sup> SRA Handbook Glossary: **separate business** means a business, wherever situated, which is not an *authorised body*, a *recognised sole practitioner*, an *authorised non-SRA firm*, or an *overseas practice*, or comprises *in-house practice* or practice overseas which is permitted by the *SRA Practice Framework Rules*

ensure that the rules and authorisation processes will prevent the splitting of services into separate entities in order to avoid appropriate regulation. This would suggest a flexible approach to separate business provisions that is focused on the consumer rather than on business structure or on a list of activities.

- 71 We are not making formal proposals for reform of the separate business rule at this stage; such proposals will be issued following decisions made on this consultation. However, responses to the consultation question set out below will help inform our options. We are clear that any changes to the separate business rule should apply equally to whoever is connected with the separate business, whether an ABS, Recognised Body, or individual solicitor.

### Consultation question

10. *What changes to the separate business rule do you think that we should consider for further consultation?*

### **C Recognised Bodies and Recognised Sole Practitioners**

- 72 The external regulation exception will not apply in relation to the work that 'traditional' solicitor practices (Recognised Bodies or Recognised Sole Practitioners) carry out. S9 (1) (A) of the Administration of Justice Act 1985 has the effect that SRA rules in relation to Recognised Bodies must 'prescribe the requirement that (subject to any exceptions provided by the rules) Recognised Bodies must not provide services other than (a) solicitor services, or (b) solicitor services and other relevant legal services'
- 73 The SRA is committed to a level playing field in that there should no favours or benefits for particular business models. However where the issues that we are tackling are different in different market segments, we must respond in a manner that is consistent with the better regulation principles. We therefore think that there is scope to consider different provisions for different types of firms recognising the variety of firms, services, and consumers
- 74 However there are currently a number of non-legal services that Recognised Bodies are allowed to carry out as exceptions provided by rules made under s9 (1) (A). In particular, Rule 13.2 of the SRA Practice Framework Rules 2011 allows Recognised Bodies to carry out activities within their firm that could be offered through a permitted separate business under chapter 12 of the Code of Conduct. These services include estate agency and management consultancy. In tandem with our review of the separate business rule, we will consider the widening of these exceptions as part of a further consultation. Our view is that s9 (1) (A) needs to be interpreted in light of the changed environment brought about by the LSA and our regulatory objectives under that Act. Given those objectives, our preliminary view is that we do not consider that it should be necessary for a Recognised Body to have to bring in non-lawyer ownership and apply to become an ABS in order to offer a wide range of multi-disciplinary professional services.

## Consultation question

11. *Do you agree that Recognised Bodies should be able to provide a wide range of professional services if they wish to do so?*

### **D Solicitors employed by non SRA authorised firms**

- 75 On 6 March 2014, the Lord Chancellor approved the following designation applications: ICAEW as an approved regulator and licensing authority for probate; the Intellectual Property Regulation Board as a licensing authority; and the Institute of Legal Executives) as an approved regulator for probate and conveyancing.
- 76 In that context we think it timely to clarify our rules in relation to the work that practising solicitors can carry out in non SRA authorised bodies.
- 77 Rule 1.1 of the SRA Practice Framework Rules 2011 states:  
'You may practise as a solicitor from an office in England and Wales in the following ways only.....  
.....(d) as a manager, employee, member or interest holder of an authorised non-SRA firm, provided that all work you do is:  
(i) of a sort the firm is authorised by the firm's approved regulator to carry out; or  
(ii) done for the firm itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that firm, accordingly;.....'
- 78 The phrase in paragraph 1.1(d) "of the sort the firm is authorised by the firm's approved regulator to carry out" is intended to refer to services that are required to be authorised under the LSA – i.e. reserved services. So, for example, a solicitor employed by a licensed body authorised for conveyancing and probate services by the Council of Licensed Conveyancers could provide those services to the public, but not any other reserved services such as litigation.
- 79 However, the intention of rule 1.1 (d) was not to restrict the non-reserved legal activities that the solicitor can engage in for the non-SRA authorised body. So, in the above example, the solicitor could also provide non-authorised legal activity in any category of law for the CLC authorised body, unless of course it was prevented from doing so by the terms of the body's licence.
- 80 We accept that this intention was not as clear as it could be from the drafting of 1.1 (d), and are consulting on an amendment to clarify this provision see Annex A)

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## Timetable and next steps

- 81 Responses to this consultation are required by 18 June 2014
- 82 Once we have announced our decision following this consultation, we will send the changes to the provisions in the SRA Handbook to the Legal Services Board (LSB) for approval – subject to which we would expect any changes to come into effect in October 2014.
- 83 We also expect to launch a second consultation on the separate business rule and on the widening of exceptions under s9 (1A) of the Administration of Justice Act in the early autumn of 2014 at the same time as announcing the results of the MDP consultation. The intention would be to implement any rule changes in April 2015.

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## Consultation questions

### Consultation questions

1. Do you agree with our analysis of the problems facing MDP applicants and the need to make changes?
2. Do you agree with the proposed external regulation exception?
3. Do you agree with the way that we propose to consider the suitability of external regulation?
4. Are there any other non-reserved legal activities (in addition to activity as part of human resources advice) that you consider we should allow outside of SRA activity regulation as minor and subsidiary to a non-legal service?
5. Do you agree with our proposal in relation to cases involving multiple teams?
6. Are there any other non-reserved legal activities that should be considered as integral to the provision of reserved services?
7. Do you have any comments on the draft changes to the SRA Handbook in Annex A?
8. Are there any other ways in which you consider the SRA could act to make its regulation of MDPs more proportionate and targeted?
9. Do you agree with our analysis of the disadvantages of option 2?

10. What changes to the separate business rule do you think that we should consider for further consultation?
11. Do you agree that Recognised Bodies should be able to provide a wide range of professional services if they wish to do so?
12. Do you agree with our analysis in Annex B of the impact of the proposals in Option 1, and are there any other impacts or available data or research that we should consider?

### How to respond to this consultation

#### Online

Use our online consultation questionnaire—  
<https://forms.sra.org.uk/s3/consult-mdp>—to compose and submit your response. (You can save a partial response online and complete it later.)

#### Email

Please send your response to [consultation@sra.org.uk](mailto:consultation@sra.org.uk). You can download and attach a Consultation questionnaire.

Please ensure that

- you add the title " Multi –disciplinary practices" in the subject field,
- you identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- you attach a completed About You form,
- if you wish us to treat any part or aspect of your response as confidential, you state this clearly.

If it is not possible to email your response, hard-copy responses may be sent instead to

Solicitors Regulation Authority  
Multi Disciplinary Practices consultation  
Policy and Strategy Unit  
The Cube  
**199 Wharfside Street,  
Birmingham,  
B1 1RN**

#### Deadline

Please send your response by 18 June 2014.

## Confidentiality

A list of respondents and responses may be published by the SRA after the closing date. Please express clearly if you do not wish your name and/or response to be published.

Though we may not publish all individual responses, it is SRA policy to comply with all Freedom of Information requests.