SRA Standards and Regulations: minor amendments consultation

14 December 2022

Contents

About this consultation

In 2019, we introduced significant reforms to the SRA Handbook through the new SRA Standards and Regulations.

These included:

- the creation of less prescriptive rules
- separate codes of conduct for firms and individuals
- the adoption of simplified Accounts Rules
- a new enforcement strategy.

Since their implementation, we have identified areas of the new rules which are causing practical difficulties either for firms or operationally for the SRA. This was through engagement with external stakeholders and our one year evaluation of the Standards and Regulations.

In some instances, we have found that the original policy intention is not being met by the rules. In others the wording in our rules needs further clarification to achieve the intended outcome. In a number of cases, we have already clarified our position, for example, through guidance.

We are now seeking feedback on proposed minor amendments to the Standards and Regulations to address the issues.

Once the consultation concludes, we will collate and analyse all the responses. We will then publish:

- a summary of the responses and other stakeholder engagement activities
- details of intended next steps (having considered the feedback we receive).

This consultation will close on **8 March 2023**.

How to respond

Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond via the SRA website. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

Reasonable adjustment requests and questions

We offer reasonable adjustments. Read our policy to find out more.

Contact us if you need to respond to this consultation using a different format or if you have any questions about the consultation.

Publishing responses

We will publish your response unless you request otherwise.

Amending the SRA Standards and Regulations

The SRA Standards and Regulations are designed to be shorter, simpler and less prescriptive. They strip out unnecessary bureaucracy and focus on high professional standards, placing greater trust in a solicitor's professional judgement, reducing regulatory burdens. And providing them with greater flexibility about how and where they practise.

We are committed to evaluating the reforms' impact to make sure that they deliver on our policy intentions and that we understand any unintended impacts.

Our recent one-year evaluation shows that the majority of solicitors and law firms are positive about the new codes of conduct and rules. There are also increasing numbers taking advantage of opportunities to work in new ways and deliver their services more flexibly. However, we have identified a small number of issues that we think we need to address.

These issues are causing practical difficulties, either for individual solicitors or firms or operationally for the SRA. In several cases, we have already made our intentions clear publicly, for example, through additional guidance or by issuing a letter of comfort.

We are inviting views from stakeholders directly affected by the proposed amendments. And we are keen to hear views on the clarity of the new draft rules and on the impacts that these minor changes may have in practice.

Proposed amendments to the SRA Standards and Regulations

SRA Accounts Rules

The SRA Accounts Rules outline the requirements for SRA authorised firms when receiving and dealing with money belonging to clients. Since implementation, we have actively engaged with stakeholders and monitored the impact of these rules. As a result of feedback, we are proposing three amendments:

Amendment 1: Firms taking money for costs in advance of work being done

Law firms have told us it is unclear when it would be appropriate to take client money for anticipated costs from their client account into their business account.

The current wording of the rules does not prevent firms from sending a bill and then transferring money from their client account for their anticipated fees. (In advance of work being done or for future disbursements not yet incurred.)

This would result in the client's money losing the protection that it would otherwise have had if held in a client account. To help law firms and reporting accountants we issued guidance outlining how firms could satisfy our requirements.

What we are changing

We are now consulting on proposed changes in rule 2.1(d). We hope this will make it clear that, in order to transfer funds from client account into the firm's business account, the bill, or other written notification of costs, must be for costs that have already been incurred.

The proposed amendment can be seen in Annex 1.

Question 1: Do you have any feedback on the proposed change outlined under Amendment 1?

Amendment 2: Reimbursements for money spent on behalf of the client

Firms have asked us whether they need to deliver a bill or written notification of costs incurred before they move money from their client account to reimburse themselves for disbursements which have already been paid on behalf of the client. For example, where the firm has paid for Land Registry search or court fees using their own money (often by a direct debit from the firm's business account).

In our guidance we are clear that the client must understand how their money will be used and have confirmed their instructions. If so, we see no risks to the client in transferring money into the firm's business account for disbursements that have already been paid on their behalf. This can be without a bill being issued first.

What we are changing

Our proposed rule changes make it clear that in the circumstances above there is no requirement to deliver a bill or written notification of costs before moving money from the client account. This can be in full or partial reimbursement of money spent by the firm on behalf of the client.

The proposed amendment can be seen in Annex 1.

Question 2: Do you have any feedback on the proposed change outlined under Amendment 2?

Amendment 3: Operating a clients' own account

Law firms and individual solicitors can operate a bank or building society account that belongs to their client. For example, when a solicitor has been appointed as a deputy (Court of Protection) or attorney (under a power of attorney). We call this operating a client's own account. This enables solicitors to make and/or receive payments directly from/into that account. And means there is no need for the client's money to be transferred into the law firm's client account.

Since we introduced the new rules, firms operating a client's own account have reported difficulty in implementing our requirements (which match those for law firm client accounts). These are set out in rule 10.1(a) and (b) and mean they must reconcile client accounts every five weeks and obtain bank statements.

We introduced the rules to recognise where solicitors have access to a client's own personal bank account the risk to that client's money being misused is greater.

Those clients are also more likely to be vulnerable and may be unable to self-advocate.

We have heard from many firms that it is often not possible to access monthly bank statements to an account belonging to a client which they control. In response, we issued guidance on how to satisfy our requirements without increasing the risk to the client.

What we are changing

We now propose to amend rule 10.1(a) and (b) in order to make the arrangements workable so that firms must:

- undertake reconciliation every 16 weeks
- maintain a central register of clients' own accounts under control of the firm and
- keep records of transactions carried out by the firm on behalf of the client and record bills and other notification of costs relating to the client's matter.

The proposed amendment can be seen in Annex 1.

Question 3: Do you envisage any difficulty when implementing the new requirements outlined in Amendment 3? If yes, please explain your reasoning.

Easing restrictions on freelancer activities

Under the Standards and Regulations, a solicitor practising freelance can provide reserved legal services without being authorised as a recognised sole practice. This is if they meet a number of conditions set out in regulation 10.2(b) of the Authorisation of Individuals Regulations.

Freelance solicitors are required to have practised for a minimum of three years since admission or registration and have adequate and appropriate insurance. Under regulation 2.1(g) of the SRA Roll, Registers and Publication Regulations (RRPRs), they must also notify us of their intention to practise as a freelancer.

Almost 500 solicitors have so far begun operating on a freelance basis, many of whom were not previously working in regulated organisations serving the public. We think this is an important development in relation to widening access to justice and encouraging flexibility in practise.

We are therefore keen to make sure our rules are not more restrictive than necessary, taking into account the risk to the public. We are therefore proposing to revise our rules in relation to two areas.

Amendment 4: Pro bono work provided outside of a firm or organisation

Pro bono work is legal advice or representation provided free of charge by legal professionals. Under our rules, if solicitors wish to provide pro bono services outside a firm or organisation, they are acting as a freelancer. They must notify us of their intention to practise in this way.

Having engaged with stakeholders and considered our evaluation findings , we are concerned that this notification requirement may deter solicitors from providing pro bono services. These are services that can help to increase access to justice for those who are unable to afford to pay for legal services.

What we are changing

We propose to remove the notification requirement for solicitors providing pro bono services outside of their firm or organisation. This is in order to encourage more solicitors to provide this valuable public service.

However, where such services are reserved legal activities, the risk to the public is greater. And so the solicitor must still meet our requirement of having practised for a minimum of three years since admission or registration. And they must have adequate and appropriate insurance.

This change will be reflected in an amendment to the RRPRs ‘Information in respect of individuals’

The proposed amendment can be seen in Annex 2.

Question 4: Do you have any feedback on the proposed change outlined under Amendment 4?

Amendment 5: Administering oaths or statutory declarations outside of employment

Administering oaths or statutory declarations is a reserved legal activity and a solicitor or registered European lawyers (REL) undertaking this activity outside of employment is a freelancer and subject to the requirements set out above.

Based on the findings of our evaluation activities, we believe our requirements are deterring some solicitors from providing this service outside of their employment.

In particular, junior solicitors or RELs (who have practised for less than three years), are, according to our rules, unable to administer oaths or statutory declarations outside of an authorised firm. This would have been allowed before the Standards and Regulations came into force on 25 November 2019.

We have also heard that solicitors who have practised for more than three years have been deterred from administering oaths and statutory declarations outside of their normal practice. This is because of the requirements to have in place adequate and appropriate insurance and notify us that they are practising in this way.

We issued a 'comfort letter' in January 2022 to give reassurance to those who wished to provide this service. This states that we think this is a low-risk activity which provides a useful service. And we do not consider it necessary for us to be notified before this activity can be undertaken.

We do not consider it to be in the public interest to prevent or deter solicitors from administering oaths or statutory declarations. This is where it is done on an ad hoc basis rather than as part of a business.

What we are changing

We now propose to amend our regulations so that solicitors administering oaths or statutory declarations outside their normal practice will not be regarded as a freelance solicitor provided that:

- these are the only reserved legal services that they provide whilst practising in this way
- they do not charge a fee for these services other than the statutory fee
- they do not provide these services by way of business.

The proposed amendment can be seen in Annex 2.

Question 5: Do you have any feedback on the proposed change outlined under Amendment 5?

SRA Authorisation of Firms Rules

The SRA Authorisation of Firms Rules (AFRs) set out the SRA's arrangements for the authorisation of firms. This includes:

- recognised bodies (a body recognised by the SRA)
- licensed bodies (a body licensed by the SRA)
- recognised sole practices (the practice of a sole solicitor or REL which is recognised by the SRA).

The rules set out:

- our authorisation and application requirements
- the effect of authorisation by the SRA on the legal activities such bodies may provide
- how and when we may restrict or limit a firm's authorisation or bring it to an end.

An authorised body is a body that has been authorised by the SRA to practise as a licensed body, a recognised body or a recognised sole practice.

Amendment 6: Cessation of owner approval

Under the AFRs, we may approve a person's designation as owner of an authorised body. This is if we are satisfied that the individual is fit and proper to undertake the role.

We define an owner for the purposes of the AFRs as any person who holds a material interest in an authorised body. And in the case of a partnership, any partner regardless of whether they hold a material interest in the partnership.

We define 'material interest' in line with the Legal Services Act 2007 as 10% or more of shares and/or voting rights. However, daily fluctuations can take the shareholder above or below that line and this has led to difficulties for those affected by this.

What we are changing

We propose to amend rule 13.7(c) so that approval only ceases for owners when they cease to be an interest holder, or a partner, as appropriate. The proposed amendment can be seen in Annex 2.

Question 6: Do you have any feedback on the proposed change outlined under Amendment 6?

Amendment 7: Deeming approval of solicitors with a practising certificate to be managers or owners of authorised bodies

Under the AFRs rule 13.1, we are able to deem approval of solicitors (and certain other authorised persons) to be managers or owners of authorised bodies. This means that where solicitors hold a current practising certificate, they are not required to go through the usual fit and proper test.

However, the wording of the current deeming provision is not limited to solicitors with a practising certificate, as intended, and as was the case previously. This is an oversight that we intend to rectify.

What we are changing

We propose amending the rule to limit the deeming provision, so far as it relates to solicitors, to those solicitors with a practising certificate as originally intended.

The proposed amendment can be seen in Annex 2.

Question 7: Do you agree that Amendment 7 will make it clear that the deeming provision is limited to those who hold a practising certificate? If no, please explain your reasoning.

Question 8: Do you have any further feedback on Amendment 7?

SRA Code for Individuals

Amendment 8: Solicitors carrying on reserved legal activities in a non-commercial body

Our Code for Individuals (Paragraph 5.6) requires solicitors carrying on reserved legal activities in a non-commercial body to ensure that the body has indemnity insurance.

Our original policy intention had been to limit the requirement to circumstances where services are being provided to the public. (And not, for example, where a body is offering services to associated parts of the business, such as NHS Trusts). We have issued individual waivers of this requirement on a case-by-case basis.

What we are changing

We propose to amend our Code for individuals so it's clear that our requirement for solicitors to make sure that a non-commercial body has indemnity insurance is limited to where reserved services are being provided to the public.

The proposed amendment can be seen in Annex 2.

Question 9: Do you have any feedback on Amendment 8?

SRA Glossary

Amendment 9: SRA Glossary definition of solicitor

We are proposing to tidy up the definition of ‘solicitor’ in our Glossary. This will remove the reference to the SRA Indemnity Insurance Rules and the Minimum Terms and Conditions of Insurance (MTC) as this is no longer relevant.

What we are changing

We will remove the references to the SRA indemnity Insurance Rules and Minimum Terms and Conditions of Insurance (MTC) from the definition of solicitor.

The proposed amendment can be seen in Annex 2.

Question 10: Do you have any further feedback on Amendment 9?

Equality diversity and inclusion

We have considered whether there are any equality diversity and inclusion (EDI) considerations or impacts arising from our proposals. We have not identified any. This is because the majority of the proposed amendments are technical in nature and are fulfilling our original policy intention. This means that in many cases, individuals and firms will not need to introduceany changes as a result of our proposals since we have already set out our position through our published guidance or other communications.

We will consider any consultation feedback relating to EDI and we will also consider EDI perspectives through our ongoing monitoring and evaluation activity to make sure we are continuing to consider, and respond to, any emerging EDI impacts.

Our questions in full

Question 1: Do you have any feedback on the proposed change outlined under Amendment 1?

Question 2: Do you have any feedback on the proposed change outlined under Amendment 2?

Question 3: Do you envisage any difficulty when implementing the new requirements outlined in Amendment 3? If Yes, please explain your reasoning.

Question 4: Do you have any feedback on the proposed change outlined under Amendment 4?

Question 5: Do you have any feedback on the proposed change outlined under Amendment 5?

Question 6: Do you have any feedback on the proposed change outlined under Amendment 6?

Question 7: Do you agree that Amendment 7 will make it clear that the deeming provision is limited to those who hold a practising certificate? If no, please explain your reasoning.

Question 8: Do you have any further feedback on Amendment 7?

Question 9: Do you have any feedback on Amendment 8?

Question 10: Do you have any further feedback on Amendment 9?