

## **Guidance**

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### **Multi-disciplinary practices: Regulation of non-reserved legal activity**

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### **Status**

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

### **Who is this guidance for?**

All SRA-licensed bodies that are a multi-disciplinary practice (MDP). This is a licensed body that combines the delivery of legal services and other professional services.

All solicitors, registered European lawyers (REs) and registered foreign lawyers (RFLs) working in an MDP.

Any managers or employees involved in the delivery of legal services within an MDP.

### **Purpose of this guidance**

To help you understand how the SRA will regulate reserved and non-reserved legal activity in an MDP. 'Reserved legal activity' and 'legal activity' have the meaning prescribed by s12 of the Legal Services Act 2007 (LSA).

### **General**

When licensing an MDP, we will be flexible about whether we need to regulate non-reserved legal activity performed by non-legal professionals - driven by the risks posed by the particular circumstances. However, we will have regard for our regulatory objectives and to the principles set out in this guidance.

If we agree that any particular non-reserved legal activity will be excluded from the activity that we regulate, then:

1. Reserved legal activities and immigration work will always be regulated by us.
2. Any claims management activity engaged in by solicitors, RELs and RFLs will be regulated by us, unless the MDP is also authorised by the Claims Management Regulator.
3. The MDP as a whole will be authorised and regulated by us. The MDP, its owners and employees will need to comply with our authorisation and practising requirements for licensed bodies (as set out in the SRA Standards and Regulations. For example, information from across the MDP will be disclosable to us in accordance with the provisions of s93 LSA. And any misconduct of the firm, its members or employees in non-SRA regulated areas may be taken into account when considering the firm's fitness to hold the licence, or compliance with conditions.
4. Solicitors, RELs and RFLs will continue to be subject to personal regulation by us, this will include the [Code of Conduct for Solicitors, RELs and RFLs](https://update.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [<https://update.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>].
5. However, if an activity falls outside the services that we regulate, the MDP will not be subject to many of the other detailed provisions of our scheme. This includes the professional indemnity insurance and compensation fund provisions, our Accounts Rules, the SRA Principles or the SRA Code of Conduct for Firms (the 'Code for Firms').

Reserved legal activities and immigration work will always be regulated by us, as will those activities that are integral to them. Linked to this is the obligation to act in the client's best interests and not to 'case split' in a way that removes appropriate protections, or which will leave the client confused as to the regulatory position (see SRA Principle 7 and paragraph 4.2 of the SRA Code for Firms).

This is a non-exclusive list of activity that we consider as integral to reserved legal or immigration activity and this therefore regulated by us:

- Claims management when the MDP is instructed to conduct the litigation
- Administering an estate when the MDP is acting on the grant of probate
- Legal advice on liability or quantum when the MDP is instructed to conduct the litigation
- Providing employment advice on a client's right to enter or remain in the UK when the MDP is acting for the client in relation to the visa application
- 'Administering' a client's conveyancing matter whilst the MDP is instructed to draft the reserved instruments.

We are particularly concerned that cases involving the provision of reserved legal activities do not move between SRA regulated and other services in a way that causes detriment.

## **Subsidiary but necessary**

If a non-reserved legal activity is performed as a subsidiary but necessary part of the activity of a non-legal professional (whose main activity does not involve the provision of legal advice or services), then subject to any risks posed in the particular case we will agree to exclude this from the SRA-regulated legal activity on the licence.

Examples could include a consultant providing advice on a new IT system that includes compliance with data protection legislation. Or a human resources consultant who designs new disciplinary systems which includes procedures that are compliant with equality legislation.

The greater the amount of legal activity involved, and/or the closer it may be to reserved legal activity, we are less likely to exclude it from activity we regulate. For example, we are unlikely to exclude:

- will writing
- general legal advice
- debt recovery
- legal advice on debt or personal injury liability
- the work of a chartered accountant who regularly acts in disputed tax matters.

But the [suitable external regulation \[#suitable\]](#) exception may apply.

In the interests of certainty, and the effectiveness and transparency of our supervision and enforcement, we will include a description of the excluded activities in the terms of the licence.

### **Example 1**

A firm of chartered surveyors wants to open a legal department to act in contested planning matters and applies to us for authorisation as a licensed body. The surveyors' normal work may from time to time involve providing what is effectively legal activity in relation to planning requirements.

We are satisfied that the applicant firm has to date successfully delivered this service outside of legal services regulation with no consumer protection issues and has in place appropriate arrangements to refer the client to the legal team (for example, if the matter becomes contested or there is an issue of disputed law). We therefore agree to exclude this activity from our regulated activity. In this case, the relevant wording on the licence could read:

"The following will be regulated by the SRA:

- All reserved legal activity and immigration work
- All non-reserved legal activity except for any such activity carried out by a surveyor as a subsidiary but necessary part of the provision of surveying services".

## Suitable external regulation

There might be a substantial overlap between legal activity provided by a non-legal professional and the kind of legal work that a lawyer would provide or supervise. Where this happens, we are likely to include this as SRA regulated activity, unless it is subject to suitable external regulation. Examples of this would be:

- taxation advice
- providing legal advice on transactions or disputes in the role of a general consultant
- legal advice on debt or insolvency.

In those cases, where providing legal advice could be said to be the core part of the service, we consider that extra protections should be in place in an SRA-regulated entity.

For us to accept that an external regulatory scheme would be suitable, we will need to be satisfied that that the SRA Principles will also be complied with. These principles set out below provide that you must act:

1. in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice
2. in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by *authorised persons*
3. with independence
4. with honesty
5. with integrity
6. in a way that encourages equality, diversity and inclusion
7. in the best interests of each

We would also 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.

For example, if 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.

We agree that we need to apply the text flexibly to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address gaps in the external regulation.

We have already reviewed the schemes of the following regulators using these principles and are satisfied that they currently meet the test:

- Association of Chartered Certified Accountants
- Association of Taxation Technicians
- Chartered Institute of Taxation
- Financial Conduct Authority
- Insolvency Practitioners Association
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Royal Institution of Chartered Surveyors.

## **Authorised individuals**

Subject to the paragraphs below, any legal activity carried out by authorised individuals or under their direction or supervision will remain an SRA-regulated activity.

By authorised individual we mean an individual referred to in s18(1)(a) LSA who is authorised to provide one or more reserved legal activities.

However, there will be circumstances where the non-reserved legal activity will be provided under suitable external regulation as part of a service within the MDP that is not identified to clients as a legal service.

For example, this could be legal advice on liability for tax as part of an accountancy engagement carried on by a mixed team of legal and non-legal professionals which is covered by ICAEW regulation. In such circumstances, we may agree on the MDP licence that specified services engaged in or supervised by the authorised individual will not be SRA regulated activity. This will be provided that the authorised individual is not providing a reserved service in the same matter and that the regulatory position is made clear to consumers.

In these circumstances although the work will not be an SRA-regulated activity within the licensed body, the SRA Principles and Code of Conduct for Solicitors, RELs and RFLs will apply to the involvement of any solicitor, REL or RFL.

In deciding whether to allow this exception, the factors that we will consider will include:

- the firm's arrangements for clear terms of engagement
- arrangements for deciding when it will be in the client's interests for the matter to be under SRA regulation
- the nature of a firm's client base, for example are they principally corporate and professional clients who are likely to have experience



of purchasing legal services and other professional services.

The MDP should make sure that the activity is carried out at the direction and under the supervision of an authorised individual when it is in the client's interests to do so – for example when it is important for the work to attract legal professional privilege.

## Example 2

An accountancy firm is regulated by the ICAEW, so its activities are subject to their Code of Ethics, professional indemnity insurance provisions, and (if the activity forms a significant part of turnover) the inspection regime. As well as providing accountancy services, the firm provides general consultancy services that are likely to include legal activities which would fall into the normal range of what a lawyer would deliver. We agree that a suitable external exception is appropriate.

If the firm is authorised, the description on the licence could read:

“The following will be regulated by the SRA:

- All reserved legal activity and immigration work
- All legal activity prescribed by the SRA as integral to reserved activity
- All other non-reserved legal activity performed by or under the supervision of an authorised individual (except where: (a) the service in the matter falls into the categories of accountancy services or management consultancy advice overall and is identified as such to consumers and (b) the authorised individual is not providing a reserved service in the same matter.”

The background to this decision will be that the rest of the firm's non-reserved 'legal activity' will be regulated by ICAEW. We would place a condition on the licence that they have to notify us if their regulatory position changes or there is disciplinary action taken against them by another regulator.

In this example, the rules on conflict of interests would apply to the MDP as follows:

- Two SRA-regulated matters – paragraphs 6.1 and 6.2 of the Code for Firms will apply
- Two non-SRA-regulated matters – the ICAEW Code of Ethics will apply
- One SRA-regulated matter and one non-SRA-regulated matter – there will be a conflict of interests but not an SRA-regulated conflict of interests so the ICAEW Code of Ethics will apply.

Where solicitors, RELs or RFLs are involved in scenarios (a) to (c) they will be subject to the duties regarding conflicts of interest set out in

paragraphs 6.1 and 6.2 of the Code for Solicitors in relation to their personal involvement. So, they cannot act if there is an own interest conflict and cannot personally act for both clients together unless the safeguards in paragraph 6.2 are met. [See our guidance on conflicts](https://update.sra.org.uk/solicitors/guidance/conflicts-interest/) [\[https://update.sra.org.uk/solicitors/guidance/conflicts-interest/\]](https://update.sra.org.uk/solicitors/guidance/conflicts-interest/).

## **Clients, complaints and the Legal Ombudsman**

Any MDP must have procedures in place to make sure that clients are aware of their regulatory position, as well as which activity we do and do not regulate. See paragraph 7.2 (c) in the Code for Firms incorporating paragraph 8.10 of the Code for Solicitors, RELs and RFLs.

The exclusion of work from our regulation does not mean a client cannot take a complaint to the Legal Ombudsman about legal activities performed by an individual authorised person or of the MDP itself.

Clients will therefore need access to a suitable complaints procedure and to be informed of their rights to pursue a complaint to the Legal Ombudsman, even where the work is not SRA-regulated activity.

## **SRA Compensation Fund**

Under the SRA Compensation Fund Rules, the fund will only cover defaulting licensed bodies where losses are incurred through an activity we regulate (as detailed on the terms of the licence). Other losses will not be covered.

## **Professional Indemnity Insurance**

The SRA Indemnity Insurance Rules require the MDP to insure the SRA regulated activity under a policy of qualifying insurance which complies with 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 and in accordance with our [guidance on granting waivers](https://update.sra.org.uk/sra/decision-making/guidance/granting-waiver/) [\[https://update.sra.org.uk/sra/decision-making/guidance/granting-waiver/\]](https://update.sra.org.uk/sra/decision-making/guidance/granting-waiver/). This might be, for example, where a prospective MDP has existing adequate and appropriate insurance covering all of its work which will now include the SRA regulated work and there are significant advantages to having a single insurer across the body

## **Turnover**

Non-reserved legal activities that fall out of SRA-regulated activity will not be included in turnover for the purpose of calculating periodical fees.

## **Further guidance**

[Guidance on conflicts](https://update.sra.org.uk/solicitors/guidance/conflicts-interest/) [https://update.sra.org.uk/solicitors/guidance/conflicts-interest/]

### **Further help**

If you require any further assistance, please contact the SRA's [firm based authorisation team](https://update.sra.org.uk/solicitors/firm-based-authorisation/) [https://update.sra.org.uk/solicitors/firm-based-authorisation/].