**Response to SRA Consultation on**

## Looking to the Future: Handbook Reform Phase 2

## Overview

1. The Law Centres Network is the membership body for Law Centres in England, Wales and Northern Ireland, each of which is a not-for-profit legal practice providing legal help and advice in civil law, with a particular focus on social welfare law. Law Centres support the rule of law and, as part of it, universal access to justice. In particular, they target their services at the most disadvantaged and vulnerable people and groups in society, helping make their rights a reality and aiming to tackle the root causes of their poverty or disadvantage.
2. Law Centres are embedded in local communities and run by committees of elected local people drawn from community, legal sector and health sector organisations. The Law Centres Network ('LCN', the trading name of the Law Centres Federation) has coordinated and represented Law Centres collectively since 1978. There are currently 44 Law Centres across the UK represented by the Network. They are primarily funded by a mix of civil legal aid contracts, local authority grants or contracts and fixed-term project grants from charitable trusts and foundations.
3. LCN members work with clients who are vulnerable, most often because of social, cultural and/ or economic disadvantage. We believe that rules of practice and regulation must be clear and transparent; this is as important in areas that provide for Law Centre clients as it is for practices that provide for middle and high-income clients needs.
4. In our response, we focus on the areas that impact on our members and on those aspects where we consider we can offer the most knowledge and experience.

The Law Centres Network recognises the objectives of the regulator are to reduce and clarify the Handbook and Practice Framework Rules, and align both with current practice and competencies. Our concerns are significant and include lack of clarity in some of the singular proposals and when all are aggregated together, making it difficult to assess impact and the implications for clients of our member Law Centres, and the quality standards of individual solicitors' practice. In particular concerns relate to:

- the impact of removing the qualifying years practice and the potential benefits of peer support framework for newly qualified solicitors if permitted to set up new businesses at the early stages of a career,
- the potential impact of client harm and client confidence due to inexperience of new practice start-ups, and where no supporting evidence or analysis is offered,

- the absence of evidence that these changes are timely or necessary, and
- that they are proposed before time allowed to let the changes in the first stage of Handbook, new training and competency regulations and several others bed in before the impact on vulnerable clients can be understood.

**Authorising firms**

**Question 1 Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?**

We recognise that this could provide greater efficiency for providers regulated in other countries and assist a business model where their client work crosses jurisdictions. However before taking this further, we would wish to see how insurance and enforcement measures are addressed to ensure consumers are entitled to the same protections when they access services that are regulated outside of England & Wales.

**Question 2 Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is "qualified to supervise" should be removed?**

**If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?**

The consultation explains the apparent obsolete nature of this rule largely as a perceived confusion between firstly, business management and secondly, case management and supervision rules. This is not our experience. Practising solicitors understand the two parts of the Qualification to Supervise Rule. The Rule may need to be reviewed if the SRA finds uncertainty and ineffectiveness in practice, but developing clarity in good quality practice, standards and client protections are not served by simply removing the rule.

It has been suggested that the rule change is supported by the fact that complaints recorded by regulators do not indicate an over-abundance of complaints about those who are under three years PQE, and thus there is no more or less risk in enabling newly qualified practitioners to run their own business. We doubt that the direct link of one with the other is that obvious. Complaints can be made or recorded in the name of the practice rather than individual and the internal complaints records of firms are less than transparent. This is highlighted in the SRA's parallel consultation calling for greater information and transparency in complaints recording from the profession.

Considering the two parts: of business management and skills in supervision:

A) Business operation/management skills and knowledge: these could be embedded with improved impact in the proposed training regulations and made more robust in the capability assessment at the final stage of SQE and at Years 1-3 post qualification. Guidance in the work place content and experience could ensure that those preparing for practise gain business capability during work experience.

B) Experience sufficient to deliver a new solicitor's 'own' practice. We do not agree that trainees are ready to run a business from day one of qualified practice, whether with or

without experienced support staff. Some may have life skills and experience in training that can enable them to do so, that is recognised. However, it is the experience of LCN and our members that most recently qualified are new to the vast range of problems that come up in professional practice and in financial and regulatory requirements. Two years' work experience does not always prepare a person to run a practice: this is particularly so in areas of social welfare and public administrative law – areas that are reducing as public funding cuts impact on delivery. Capacity to build this essential learning in trainee practice (in the period just before qualification) is of particular concern given the uncertainties in the assessment requirements of the new two-year workplace experience provisions.

The initial years' post-qualification does not of course provide the technical skills for all work areas but does provide a transition to enable improved skills and experience to develop in order to run a business: there is much to gain from the mentoring of supportive senior colleagues in practice.

That period, as with many professions, can deliver the initial few years of collaboration, mentoring, confidence building and support from experienced colleagues and is vital for a number of reasons. Anticipating problems in managing complex clients and sometimes gruelling cases does not come easily; the use of solicitors' power to influence and guide clients is a responsibility not quickly learned and its mis-use from lack of experience can have a great impact; coping with the demands and pressures of new, complex and unknown cases can be an isolating experience when working alone.

We consider there is no parallel substitute for the current rule, as is suggested, in the assistance that can be provided for the new solicitor in contacting the SRA regulatory and professional guidance team. That suggestion is not supported by any information or illustration of those that would have the self-awareness or wish to attract that exposure and use that route.

When aggregated with other rule changes, the removal of the 36 month requirement would have the result that the individual can practice in areas in which they may not have had any experience in training or work place experience. These include financial and debt counselling, immigration and claims management which have been acknowledged, elsewhere in the Consultation, as particular areas where clients protection is paramount.

We see a dissonance between the proposal for this rule change, in the levels of Threshold Test in the initial post qualification years and in the SRA's statements of differing levels of experience informing the draft enforcement strategy: these differences are more particularly described in the Law Society Response to this Consultation (paragraphs 42-43)[1] and we support that analysis.

There is a lack of evidence to support the regulator's perception that the 3 year PQE rule is counter-productive to enabling development of businesses per se, or to enabling development in casework and representation that are lacking or poorly served. There is an absence of data to indicate that solicitors with less years qualification to practice are held back by the current benchmark, of whom, if the rule were removed, they would inevitably provide services that sustain access to justice measures, such as legal work in court representation in employment, consumer affairs, family and social welfare law, or in the development of mental health law.

[1] http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/sra-consultation-looking-to-the-future-phase-two-of-our-handbook-reforms-law-society-response/

The practise requirement could be made more effective and transparent by

- changing the requirement from 36 months entitlement to practice to 36 months' actual practice and within the last 6 or 7 years. Such period would take in the need to address equality requirements around breaks in careers due to family life, or long term health conditions, whilst at the same time making post qualification experience more recent,

- improved competency measurements for all practice solicitors, including solicitors in unregulated bodies and individual self-employed solicitors, to ensure that their practices are effective and protective of client rights.

**Question 3 Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?**

**Question 4 Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR-authorised firms (or equivalent)? If you disagree, please explain your reasons why.**

These areas should have regulatory oversight. However, we stated in the response to the previous consultation on the Handbook Rules that if one area of legal work required regulation, then all did. Picking out different areas by subject matter and maintaining different regulatory frameworks for the same work areas is a retrogressive step. It can serve to increase complexity in the layering of rules and their enforcement and can only add to confusion in the protections available for clients/consumers who are unfamiliar with investigating the detail of protections and rules.

A problem lies in the lack of will in the regulators to take an alternative approach which is to deal with a revision of the description of reserved legal activities in a changing world of legal services, which area has been substantially discussed in earlier consultations and commentary.

We note that, in relation to immigration, the consultation is confusing when read with the wording of the Authorisation of Individual Solicitors Regulations draft ('AISRD') and we would welcome clarification.

AISRD Rule 9.1 when read with Rule 9.5, appears to deal only with solicitors in non-SRA regulated bodies working in non-reserved activities, and regulation by OISC: these delivery models are understood. Solicitors in Law Centres work in non-SRA regulated entities in reserved immigration work. LCN and other providers of similar services have had extensive discussions with SRA and with OISC relating to this dual regulation (in circumstances where there are no unregulated immigration advisers) and these need not be repeated here.

We welcome confirmation that Solicitors who are regulated by the SRA will continue to be able to practice immigration reserved legal activities and will not be required to register their employing agency with OISC.

**Authorising individuals**

**Question 5 Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?**

The proposal is a newly framed rule for solicitors working in sole practice, that is, those not through an otherwise regulated entity: it distinguishes sole practitioners and a new category of individual self-employed solicitors. It refers to indemnity insurance for the latter.

For other groupings, there is a reference to not replicating the current exceptions applying to Special Bodies and pro bono practitioners, amongst others (paragraphs 48 and 49 of the consultation): though nothing further is stated about those categories.

It appears that the purpose of the rule change is to deal only with the three categories, those in regulated entities, those in sole practice and those self-employed: this has created confusion. Absent is a reference to the conditions and client protection framework that applies to Special Bodies, pro bono lawyers (and other exceptions) currently described under Rule 4 of the Practice Framework Rules (PFR). The proposed replacement SRA Authorisation of Individuals Regulations draft ('AIRd') are silent on this item and do not appear to offer clarity.

We understand, from the Consultation, that the new AIRd will remove the current Rule 4 framework (for the agencies listed). This then serves so as to remove clear required standards of practice, and of client protection through PII.

The authority to practise is then by default contained to the Legal Services Act 2007, which requires solicitors to practise lawfully: we have been unable to find a reference to a quality standard or indemnity insurance standard. We are willing to stand corrected but, if our analysis is correct, it is unexpected, as it signals no framework that spells out a consistency of standards and client protection when compared to all other solicitor groups that are set out in the rule: solicitors in regulated bodies, practising as sole practitioners and individually self-employed.

We do not think this was the intention and we request clarification.

However, if it is the intention to leave the draft Rules as they are, it would mean that clients who use services directed at those who have no money to pay, would be required to tease out these differences. Those who use the services of pro bono lawyers, Law Centres and those of other Special Bodies, are less likely to have the resources or experience or circumstances to identify the different levels of regulation framework and client protection and redress and to make appropriate choices. They are most often vulnerable consumers or those making consumer decisions at times of distress. Lack of clarity is increased when this is added to the plans to enable solicitors to work in non regulated bodies in non reserved legal activities.

The SRA's impact assessment for the separate "Better information, More choice" Consultation supports this view:

"*..Our proposals are most likely to assist middle income consumers because high net worth individuals are better placed to make informed purchasing decisions. The most vulnerable*

*consumers are less likely to benefit directly as they are unlikely to have the capacity to engage with more information and ways to choose a legal services provider".* [2]

The application of the framework rules for our Law Centre members' practice during the 'transition period' of the LSA, as extended, has often proved convoluted for both providers and regulators, and particularly in recent 'transition extension' years: however at least there is a framework. We welcome the suggestion elsewhere in the Consultation for sector discussions with the SRA and recommend that the replacement of PFR Rules 1 and 4 is postponed and the current wording inserted into the AIRd.

We understand that it is intended that plans as to insurance requirements are likely to be consulted upon at some stage in the future, but for now, we are asked for comment on this proposal. We do not agree with the proposal for these reasons.

**Question 6 What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?**

We focus on the areas that impact on our members in order to manage our resources and we have no substantial comment on the inter relationship of the current transition in teaching regulations and how the new assessment would apply or 'sit' with those proposals. As a general recommendation, any changes should be drafted so as to avoid reducing the SRA ability to reasonably extend the requisite period of time for a student to provide evidence of suitability.

We believe that solicitors, at any time, can exhibit a powerful position and influence particularly over vulnerable clients and this should be the guiding factor in the implementation of assessment rules.

**Question 7 Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing routes when the SQE comes into force?**

For the same reason as above, we do not comment on this proposal in any depth and recognise the greater value in contribution and knowledge that experienced staff who work in the University / Law Schools sector can offer.

Remaining consultation areas

We have focussed on the areas that particularly impact on our members in order to manage our resources and we have no substantial comment.

**In summary**, we are not persuaded that the changes to flexible regulation levels for individuals as described will open up more service delivery or reduce costs substantially, so as to justify substantive change that creates inconsistent client protection, or open routes to representation in areas where access to justice is reduced or non-existent. Further evidence or explanation may well assist understanding.

[2] SRA, Looking to the future: Better information, better choice consultation, 27 September 2017

It is essential that clients and sector staff alike are able to understand the different delivery and flexible practices that are open to both firms and individuals. A new framework must be supported by clarity as to the retention of consistency in skills and in competency requirements.

There is a need for clear rules and straightforward explanation so that they can be followed. Introducing different layers of rules and subsets of practice with changing client protections, will only cause confusion.

Further, given the aggregate of the many changes proposed across the two consultations and already introduced in recent months, we recommend a better pacing of the proposals around individual solicitors' regulations and those to clarify and reinforce client protection and information requirements. We would encourage the SRA to give time to enable such proposed future transparency and information measures as are decided, to be implemented and to provide the encouragement to further the standards of quality. This information could then provide indicators as to how and at what stage the extensive remit of any solicitors' practice should be subject to more or less regulation.

## Law Centres Network

For further contact:

Cathy Gallagher
Solicitors Regulation and Pro Bono Development Lead
Law Centres Network
M: 0759 005 0896
T: 0203 637 1341
E: cathy@lawcentres.org.uk

Law Centres Network Floor 1, Tavis House, 1-6 Tavistock Square, London WC1H 9NA