Consultation on minor amendments to the SRA Standards and Regulations

Analysis of responses

March 2023

Respondents to our consultation

We received 25 responses to our consultation, from the following types of respondents.

Individual respondents	**7**
Solicitor	4
Other legal professional	1
Non-legally qualified	2
Organisation respondents	**18**
Law firm or other legal services provider	4
Local law society	2
Professional representative groups (including the Law Society)	4
Other (including accountants and auditors)	7
Consumer representative (the Legal Services Consumer Panel)	1

Responses to our questions

The responses to our questions included these key views and comments.

Almost all responses focused on our specific questions, and only two respondents made comments on the consultation proposals generally. The Legal Services Consumer Panel's response made a wider comment regarding consumer research:

> "We appreciate the SRA's efforts to tweak the changes it has made to the standards and regulations to ensure that the policy aims are being met… The Panel is especially interested in the monitoring and evaluation data… The Panel is concerned about the lack of comprehensive consumer research, given that the initial one year monitoring and evaluation report purports to reflect the views of consumers… For example, there is interesting evidence in the report showing that minority ethnic solicitors are more likely than white solicitors to practise as freelance solicitors… there is no data on the demographics of the consumers who use these services to see whether increased diversity in the freelance solicitor pool is attracting a more diverse clientele…"

The Institute of Legal Finance & Management stated in respect of the accounts rules proposals (Amendments 1-3):

> "Further to a substantive survey to [our] members and others, on the proposed minor amendments to the SRA Accounts Rules, we can confirm, on behalf of the ILFM and

> following the feedback from the survey, that we are supportive of the proposed amendments in their entirety."

Amendment 1

We propose amending SRA Accounts Rule 2.1(d) with the aim of making 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.

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

Support for the proposal

Many respondents were positive about this proposal.

> "A consumer's money being held by a solicitor is protected in the client account and therefore should only be moved once it is required to pay a bill for work that has been completed, never in advance of the work being done." (Legal Services Consumer Panel)

> "I agree with the Amendment. It is important that it is clear that it is either a bill or other written notification of costs because production of an invoice can create additional administration, when fee earners are already notifying client of, for example, Land Registry fees." (individual solicitor)

> "The proposed change is agreed." (local Law Society)

Some of those supporting the proposal were accounts professionals.

> "This is a very welcome amendment and should help cut down on ambiguity." (reporting accountant)

> "We agree and welcome more clarity to this rule, it will provide additional protection to clients against firms invoicing prior to carrying out the work and further protects client funds if there were a reason preventing the firm from carrying out the work e.g. insolvency, and the client potentially not being able to recover the amount they have paid." (auditor)

> "I agree that funds should only be transferred from client to office when the costs have been incurred. Costs not yet incurred should be considered as client money only. At the point that it becomes office money when billed then monies should be transferred from client to office. Firms should be raising VAT invoices when the work has completed or at a certain point in the transaction as an interim bill rather than raising invoices for work not yet done and paid VAT on this." (accounts manager)

Concerns about the proposal

The Law Society, however, did not agree with the proposal.

> "It is not unusual for firms to ask for money on account of their costs from a client, based on an estimate of those costs. Under the current Accounts Rules… firms are still able to pay such costs… into the business account, provided the client has been

> properly advised about where the money will be held and the client agrees… We are aware of several firms, particularly high street practices, which legitimately operate in this way. This approach lowers risk on both sides… [the proposal] will represent a major change for those firms using fixed fees as we describe above… the Society is not persuaded to support the proposal to amend rule 2.1(d), which in any event appears unnecessary in the absence of any evidence of problems arising under the existing regime."

The Law Society had a number of other comments on the proposal.

> "…there are already safeguards in place within the Rules that provide that if there are alternative arrangements to client money being paid into a firm's client account this must be explained and the client properly informed of the risks before being agreed with the client in writing… The SRA has previously identified in its guidance that there are risks in invoicing for work that has not yet been undertaken… However, we are not aware of any evidence which suggests that in practice any clients have suffered prejudice or detriment, or that there is a systemic problem of non-compliance… If the proposed rule change is implemented, there is also a danger of two-tier regulation by the SRA so that firms using client accounts will be treated differently and less fairly than freelance solicitors or those firms which do not operate a client account."

As well as agreeing about the "2-tier" impact, a local law society also raised similar concerns to those voiced by the Law Society.

> "We are concerned that, where fees are fixed and agreed with a client at the outset of a retainer, the proposed wording may restrict the transfer of monies until the work has been completed… We are concerned that there are a substantial number of firms who agree fixed fees in advance of their work with clients. There are a number of advantages to both clients and firms to arrangements of this nature."

They went on to argue that this could change the way firms bill clients.

> "The proposed amendment would lead to firms reconsidering whether to agree fixed fees with their clients and instead retain the use of hourly rate billing arrangements with clients or only agree to higher fixed fees where monies can only be taken at the conclusion of the retainer."

A property solicitor set out a specific aspect of these concerns.

> "With the current wording about billing for costs incurred, if I apply that to property transaction I understand that since the work is not done and all costs incurred until the transaction is registered at Land Registry, then money could not move from the client account to the office account… this proposal seems to be a serious threat to cashflow. For example I have a new-build purchase awaiting registration at Land Registry for which the estimated registration date is 23 months from the application following completion; would I have to wait this long before money on a final invoice issued at completion of the purchase could be transferred from the client account to the office account?"

Comments on the drafting

Several respondents, most of whom agreed with the aims of our proposal, had comments and suggestions relating to the drafting of the changes. In addition to affirming their support for the proposal, the Legal Services Consumer Panel stated:

> “It may be helpful to use very clear wording in section 2.1(d) so that client money is demarcated as money for which no bill or other written notification (for fees or unpaid disbursements) has been communicated to the client. Once a bill has been communicated to the client, the billed amount may be transferred out of the client account as it is no longer client money.”

A law firm stated:

> “The principle of the change is sensible and reflects practical considerations where acting for clients - such as where for expedition of a matter you may incur disbursements on behalf of the client in advance of receipt of funds. The drafting remains confusing though. In some instances you are referring to fees, disbursements, money and costs interchangeably and in some instances just costs. Clarity of these terms… is the real issue facing solicitors in practice…”

The majority of the drafting suggestions were from accountancy firms:

> “We support the SRA’s objective of preventing firms taking money received on account of costs into the business account by raising a bill in advance of work being done or disbursements being incurred. However, we believe that the proposed wording does not appear to achieve the aim. We suggest the following wording: ‘in respect of your fees and any unpaid disbursements if held or received prior to your costs or the disbursements being incurred.'"

> “While we agree with the changes… we would make the following additional comments and recommendations: The term ‘incurred’ should be defined. We understand this to mean, in respect of any ‘fees’ element that the work has been done? In respect of the disbursements element does this mean actually paid (from the firm’s resources), or does it also refer to those disbursements that the firm has incurred a legal liability to pay?... The wording at 2.1(d) may not be entirely clear. We would suggest 2.1(d) In respect of your fees and unpaid disbursements if held or received in advance of those costs being incurred and prior to the delivery of a bill, or other written notification of the costs incurred.”

> “We would strongly recommend that the term 'properly incurred' should be used opposed to 'incurred'. This would align the terminology with the Solicitors Act and hopefully reduce any ambiguity.”

Amendment 2

We propose amending adding a new Rule 4.4 to the SRA Accounts Rules, to make it clear that there is no requirement to deliver a bill or other written notification of costs before moving money from the client account in full or partial reimbursement of money spent by the firm on behalf of the client.

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

Support for the proposal

Many respondents supported the proposed change.

> "An excellent amendment, avoiding the administration and waste of time involved in creating an invoice in circumstances where the client is already aware of the outlay." (law firm)

> "This will have a very large positive impact on the firm. Clients are always made aware at the beginning of the transaction what approximate disbursements will be however these often change in value ever so slightly so we are not able to transfer. This will make it a lot easier to operate." (non legally qualified individual, working in legal services)

> "I agree with the amendment if needed as it would improve cashflow for firms. If the money in client account is for the purpose of disbursements incurred through office account, then it would be beneficial to transfer funds without needing to notify the clients." (account manager)

Concerns about the proposal

Only a small number of respondents disagreed with the proposal, although these included the Legal Services Consumer Panel, who stated:

> "It seems fair to assume that dealing with a legal issue is frequently a prolonged experience, during which the importance of being kept abreast of how one's money is being used increases. Therefore, even if a client is clear on how their money will be used and has confirmed instructions, it may not be prudent to discontinue the requirement for a bill or other written notification to be sent when using a client's money to reimburse the solicitor for disbursements already paid."T

An accountancy firm stated:

> "We strongly believe introducing rule 4.4 will create confusion across the profession as well as reversing some of the good practices/behaviours that rule 4.3 has created through greater cost transparency… The requirement for clients to understand how their money will be used and have confirmed their instructions is clear from the consultation document but not in the proposed wording of 4.3 and 4.4."

Comments on the drafting

The Law Society stated:

> "We consider there to be a difference between 'incurred' and 'paid'… We concur that clients must be informed and agree how their money will be used. We also support the proposed change in the wording to rule 4.3 and to the addition of rule 4.4 … as slightly amended… '4.4 Rules 4.3 does not apply where you withdraw client money from a client account in full or partial payment or reimbursement of money incurred or paid by you on behalf of the client, or the third party for whom the money is held'."

Similarly, an accountancy firm (who agreed with the proposal) commented:

> "Proposed Rule 2.1(d) refers to 'incurred' disbursements whereas proposed 4.4 uses the term 'spent'. Given the changes proposed at amendment 1 to remove the anomalies between current 2.1(d) and 4.3 the term 'spent' should either be changed to incurred or be defined (if incurred is not the intention). We would have thought that to maintain consistency while still meeting the protection obligations 'spent' would

reasonably be defined as any disbursement ‘paid (from the firm’s resources), or a disbursement the firm has now incurred a legal liability to pay’.”

Another accountancy firm stated:

> “We support this proposed change. We suggest adding the following wording to the new Rule 4.4 ‘Rules 4.3 does not apply where you withdraw client money from a client account in full or partial reimbursement of money spent by you on behalf of the client, or the third party for whom the money is held provided you have informed your client or the third party for whom the money is held in writing (for example as part of your engagement terms) in advance of the withdrawal’”.

A local Law Society stated:

> “The proposed change is agreed. Our only suggestion is whether in the amended Rule, it is clear this can only happen with the client's permission.”

Amendment 3

We propose amending SRA Accounts Rule 10 so that when operating a client's own account as signatory, 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.

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

Responses which did not identify difficulties

Many respondents said they would have no difficulty with this, or that they did not feel the need to comment. One accountancy firm stated:

> “We feel these changes are positive, especially for firms who operate a large number of client's own accounts, which would have seen a large increase in resources to maintain these type of accounts and remain compliant with the current rule 10. We feel it would be useful for you to provide some future guidance around what this record might look like and how it should be kept.”

The Law Society was overall positive about the proposal, but had some comments on the detail.

> “We welcome the longer period in such circumstances and believe that firms will find this helpful. There is a slight conflict between the terminology used in the consultation paper and that used in the proposed draft rules at Annex 1. The paper refers to a ‘central register’ and the draft rules to ‘central record’. We support the proposal that firms maintain a central record of clients’ own accounts under the control of the firm. However, the record of bills or other written notifications of costs should not be part of a central record, as this would create unnecessary duplication with the bills needing to be cross-referenced with the ledger. Accordingly, we suggest that paragraph 10.1 (c) of the proposed rules be omitted.”

Comments on the time period

Some respondents felt that 16 weeks between reconciliations was too long a period:

> "The Panel appreciates that flexibility in documentation is required, and agrees that safeguarding the client's money should be the focus, as opposed to strict requirements outside the solicitor's control. Expanding the time for reconciliations from 5 to 16 weeks does, however, seem excessive… reconciliations are an important method of identifying any anomalies in the use of client accounts and such a process is even more important, given that consumers whose solicitors are operating their accounts are often vulnerable." (Legal Services Consumer Panel)

A local Law Society stated:

> "As members of our Regulatory Committee have, in practice, dealt with a number of regulatory issues arising from the use of such client accounts, and as the overriding duty should be to protect client monies, we instead suggest an 8 week period as being a proportionate change, rather than the proposed 16 weeks."

An accountancy professional body also felt the period was too long, and gave a suggestion:

> "We are also not persuaded that the time is appropriate given the digital access to accounts, including investment accounts, that is available and has been available for some time. We believe that a move to something more reasonable like 8 weeks would be a more proportionate response. The SRA could take steps to raise awareness of the possibilities to use third party managed accounts as an alternative…"

However, a law firm stated:

> "Statements are not provided with sufficient regularity from some investment providers to enable reconciliations every 16 weeks."

An auditor stated:

> "We are in agreement that the Rules should recognise that 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. However, Rule 10 still poses some issues: Firms have difficulty gaining access to the client's bank statements and, therefore, we still think they would struggle to undertake reconciliations even every 16 weeks. Although this does provide firms more time to request the statements, for many firms the issue is not timeliness; it is that they have no access at all."

A representative group stated:

> "What does reconciliation constitute? (an accountant's approach to this is likely to be different to a solicitor's). In reality we're only going to be able to confirm if it was anticipated and authorised expenditure. Not all financial organisations provide statements on a 16 week or more frequent basis. Often statements are only every 12 months. It is not clear what would be caught by this (i.e. bank accounts, ISAs, investment portfolios, NS&I, cash accounts)."

Comments on accountant's reports and compliance staff in firms

Two respondents focused on accountant's reports and the role of compliance staff in firms.

> "Is the current system of a single [accountant's report] covering all client accounts (including clients' own) expected to remain sufficient? If not then the extra cost and administration burden would be significant… Accountants will be being asked to sign off on transactions/accounts they will have huge difficulty in reconciling fully/correctly. Solicitors will have great difficulty in providing the information required by an accountant based on these rules… Whilst the risks this rule attempts to mitigate are potentially high, the frequency of those instances are, fortunately, low. Given this would it not be more appropriate to have more stringent tests on the controls of a law firm in relation to clients own accounts, rather than the individual transactions themselves? This would enable accountants to confidently sign off on controls they can rigorously test and verify." (law firm)

> "In our view the key risk is that, due to a lack of internal processes, controls and accounts oversight on an ongoing basis there is a higher risk of misuse of these funds with client own accounts and that misuse could be going undetected for a considerable period of time. Protection of other people's money should be part of the day-to-day operations as opposed to a limited check later down the line i.e. every 16 weeks… additional more detailed guidance could be produced for firm's COFAs / managers that would be of benefit to support the above point covering areas such as sample client file review processes to cover say: Undertaking detailed checks of the initiated transition records to the client file documentation not just the bank statements. Undertaking a review of the client file for any documentation therein for transactions that have not been recorded by the appointee to provide assurance they have been actioned separately. Enquire into any documentation for transactions that are not supported by the client own bank account statement or the firm's main client bank accounts / client ledger card. Making enquires into transactions on the client own account bank statement which do not feature on the list of initiated transactions. Arguably the above in part could be extended to the Reporting Accountants checks of compliance and added to the existing overall guidance issued, to aid managing the risks in this area. All of the above needs to ensure it remains proportionate as a cost benefit exercise against the level of the risk mitigation, both for the legal sector and the client." (local Law Society)

Deputyship issues

An accountancy firm stated:

> "The need for regular reconciliations appears to duplicate the requirements already in place for Deputyship accounts. It will be challenging for a member of staff outside of the Deputyship/POA teams to identify any anomalous payments or receipts without having a detailed understanding of that particular matter. It would be highly challenging for the COFA or a member of the accounts team to identify an erroneous transaction in a large firm where there are hundreds of clients' own accounts in operation. There also remains a reliance on the fee earners involved to inform the central finance team of any clients' own accounts they may be initiating transactions for. If this is not noted, it will be very difficult for the central accounts team, the SRA or Reporting Accountants to identify these accounts, opening up the possibility of funds being misappropriated."

Other respondents also made detailed comments in respect of Deputyship.

> "In our view this is one of, if not the highest risk, area of the SRA Accounts Rules… a key risk which Rule 10 in its existing form and that proposed does not fully address, is that compliance relies predominantly on the individual personal appointee within the law that is operating a client's own bank account. In the first instance it relies on the individual making an internal notification that they operate the account to be included within the central register. Secondly it relies on the appointee being fully open and transparent in recording the transactions they are initiating on these accounts… We understand Deputyship bank accounts have fuller oversight by the OPG, where the OPG annually reviews the matter, to include the deputyship bank accounts and requests a report of all transactions contained therein annually. Thus arguably the risk is reduced for these types of accounts but as mentioned, this is only an annual process, and routine processes by law firms in safeguarding the funds in the interim for these accounts is still important." (accountancy firm)

> "We can't reconcile all payments – often clients will be given funds to manage for themselves (perhaps through a separate account or cash card) or continue to manage their own accounts. An existence of a deputyship order or use of a LPA/EPA on the grounds the client cannot manage their broader affairs, it does not mean the client lacks capacity to manage smaller sums… Maintain a central register - It is not clear what this looks like. For example, is it one list of all accounts (and if so, what accounts/assets are to be included) or for each individual client… Deputies already provide the information required to the OPG as part of their annual reporting - Deputies are required to obtain and maintain security by way of a security bond - Attorneyships are considered higher risk as there is no ongoing obligation to report to the OPG (although the Mental Capacity Act 2005 and Code of Practice) do require them to keep receipts, accounts and a record of their decision making process. - In relation to trustees, there would usually be more than one and trustees are required to act unanimously (although some financial organisations will accept instructions on a different basis) - It is not appropriate for payments to be verified by a third party: It is the deputy or attorney who is appointed in that capacity (usually in a personal capacity, although trust corporations may also be appointed in some situations) and their decision making should not usually be challenged by a third party – the decision making lies with the deputy/attorney. Dealing with banks is problematic. They would not understand the concept of having someone without authority (perhaps a member of the accounts team) as someone to be added to authorise payments. They struggle where there's a deputy or attorney in place as it is. That third party is not authorised to decline a payment. An alternative would be to use the firm's client account as a banking facility but 1) that's not currently allowed 2) the deputy/attorney is still the individual authorised to make the decision… More administration will cause firms to not deal with this type of work and it's the vulnerable customer who is ultimately affected (negatively) by this." (representative group)

The Professional Deputy Forum stated:

> "It should be noted a professional Deputy will have a Security Bond in addition to their own PII cover. 2. Many professional Deputies are appointed solely and in their personal name (as opposed to jointly / severally with another or as a Trust Corp). Single appointed personally named professional Deputies are not in a position to provide a 'second pair of eyes' in respect of authorisation of financial transactions. No one else has authority to approve transactions. That sole appointed is by the Court and they are supervised by the OPG, subject to annual reporting and visits etc. 3. 2 above will also apply to many professionally appointed Attorneys. Whilst they will not have a Security Bond and whilst it isn't a Court appointment, subject to OPG supervision, it was an appointment by the Donor when they had capacity to choose.

> 4. Banks will not understand the need for another signatory who is not otherwise authorised to make decisions under the Deputy Order / LPA. Regardless - that 2nd person would have no legal authority to either make or decline payments."

Other comments

An accountancy firm stated:

> "We understand the difficulties that can be encountered when a solicitor is operating a client's own account. We also observe the potential for considerable risk to the client in these situations. We believe that this is an area where the SRA should consider whether the Accounts Rules and the SRA Code of Conduct for Firms should be strengthened in response to the degree of risk envisaged… While the need for a more comprehensive revision of the rules surrounding operation of clients' own accounts is considered we recommend the current proposals are introduced as a temporary measure. However in our view these should be enhanced where the deputy or attorney is the sole operator of the client's own account to require the transactions to be recorded in a cash book or ledger and periodic reconciliation of the balance on that record to the balance shown by the statements received to be carried out."

A law firm felt that the language should be clarified to apply it to modern practice:

> "You reference bank statements which is a very traditional description and envisages a paper received document… clarity is required that the description of bank statement includes electronic downloads of bank records for the relevant period or periods for the relevant account. In the absence of that clarity compliance with this provision - even with the extension in time period for reconciliation - is wholly dependent on when we can obtain the bank statements formally from the account provider. The drafting needs to reflect the modern world rather than the traditional past."

An accountancy firm stated:

> "Whilst many firms will welcome the proposed amendments as it does loosen the requirements somewhat, the fundamental difficulties remain, in separately recording all of the transactions carried out by the firm… There is an inherently greater risk when dealing with clients' own accounts which are not regularly reported to a third party… The central register of clients' own accounts should continue to be seen as a non-negotiable aspect of the Rules as it is a fundamental control… The key question is whether the proposed amendment to this specific rule is addressing the core risks involved."

Amendment 4

We propose adding a new regulation 2.2 to the SRA Roll, Register and Publication Regulations, to remove the notification requirement for solicitors providing pro bono services outside of their firm or organisation.

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

Support for the proposal

Some respondents were positive about the proposal, but some of them mentioned that insurance could still be a barrier.

> "The proposed change is agreed. This is particularly welcome by our members who undertake prob bono work at local legal advice centres, where the need for such advice is ever increasing." (local Law Society)

> "I am delighted that the SRA has recognised that the requirement to register as a free lance solicitor in order to do pro bono work restricts access to justice. This was a new requirement by the SRA. So too was the requirement to be insured. That requirement restricts in house solicitors doing pro bono work. My employer's insurance covers my work for my employer. Not pro bono work. In the past all that was required was to notify the person receiving pro bono advice that I was not insured. It is then their decision whether or not to accept the advice. Of course in those circumstances one is very careful about whether to give the advice because it does create a personal responsibility. That is the personal decision of the adviser giving pro bono advice. PI insurance is very expensive and not cost effective for the occasional bit of pro bono advice." (in house solicitor)

The Legal Services Consumer Panel was positive about the proposal but had comments on the drafting.

> "The Panel agrees that pro bono legal services ought to be encouraged by the SRA. Our only comment is that as drafted the amendments are not explicitly clear that the solicitor providing pro bono services will still need to meet the requirements of having practised for a minimum of three years and of having adequate and appropriate insurance even if they are exempt from notifying the SRA of their pro bono practice. Furthermore, the drafting of the regulations should be easily accessible so that the rules are clear and easily understandable on their face. The SRA may want to consider whether the notification process could be made easier and/or voluntary, especially considering it could be an opportunity to encourage solicitors to reach out if they are unsure of whether their insurance would cover pro bono reserved activity legal services or how that coverage could be obtained."

Concerns about the proposal

One respondent felt that insurance was the critical obstacle.

> "I cannot see that notifying the SRA is a barrier so much as obtaining the relevant insurance, so do not see that this change is necessary." (individual solicitor)

A law firm was concerned that the proposal might confuse consumers.

> "The societal benefits of such activities are welcome. Whilst you are lessening the SRA requirements there are practical considerations for the regulated entity where such activities are performed by an employee of a firm. The public will not understand or even know that the provider of such services is a "freelancer". They will not comprehend what that means in terms of protection and insurance. Who is policing the obligation to have adequate and appropriate insurance in such instances?... The public will perceive that the solicitor is performing any service in the name of the firm and hence if there is an issue redress will be sought from the firm."

The Law Society stated:

> "We do not support this proposal. We consider that the requirement to notify the SRA is not onerous and protects both the public and the individual solicitor. We do not consider that it would deter a solicitor from providing pro bono services but would, in fact, assist the SRA to keep abreast of the activities of those it regulates. Furthermore, there is concern that removing this requirement might give people licence to act beyond the areas of their expertise, which would be a risk to the public and damaging to the reputation of the profession."

Amendment 5

We propose amending SRA Authorisation of Individuals Regulation 10.2 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, and they do not provide these services by way of business.

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

Support for the proposal

A number of respondents were positive about the proposal.

> "This is a welcome change as this has stopped some from wanting to carry out this service." (Non-legally qualified, working in legal services)

The Legal Services Consumer Panel was positive about the proposal, subject to clarification in the drafting.

> "The Panel agrees that Amendment 5 should be applied to ensure that solicitors are not discouraged from providing ad hoc legal services to administer oaths or statutory declarations outside their normal practice… We agree administering oaths or statutory declarations is a low risk activity but for the avoidance of doubt, it would be useful to explicitly state whether appropriate insurance would be required to offer this service outside a regulated firm and have solicitors inform consumers accordingly. Again, the drafting of the regulations should be easily accessible so that the rules are clear and easily understandable on their face."

The Law Society was also broadly supportive.

> "Subject to our reservations in paragraph 23 below, we support, in principle, the proposal… 23. However, solicitors need to be alert to the fact that they may be prohibited from undertaking this type of work by their contract of employment without the express consent of their employers and should be advised to check this first. Furthermore, if these activities are conducted outside of their employment, they will not be covered by their employer's professional indemnity insurance."

A local Law Society stated:

> "The proposed change is agreed. Our only question is whether the wording "by way of business" in the amended Rule is sufficiently clear, or whether a definition should be provided."

An accountancy firm did not comment on the proposal itself but made a suggestion for guidance.

> "Not all solicitors, especially junior solicitors, may realise that oath fees are taxable income. We would suggest that a simple reminder is included in any guidance; if you are undertaking oath fees or statutory declarations outside of an authorised firm, you may wish to consider your tax position."

Concerns about the proposal

One law firm felt this was an area of risk, and that regulation should not be reduced.

> "Whilst it may be perceived be a low risk activity, this assumes that the person seeking the service is an honest, upright member of society. This is an area which can be used as a gateway to give perceived legitimacy to documentation… I cannot see that the amendment proposed does anything other than widen the risk presented and will enable those wanting to pursue criminal activities to do so more easily." (law firm)

Amendment 6

We propose to amend SRA Authorisation of Firms Rule 13.7(c) so that our approval of a person's designation as owner of an authorised body only ceases for owners when they cease to be an interest holder, or a partner, as appropriate.

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

Most respondents did not respond to this question. Some respondents stated they agreed with the proposal but did not elaborate. Only two respondents made comments. The Law Society stated:

> "We support the proposed amendment to rule 13(7) of the AFR's so that approval only ceases for owners when they cease to be an interest holder, or a partner, as appropriate."

A law firm stated:

> "The trend in the commercial world and in particular for AML reasons is to have greater and clearer transparency of beneficial ownership. The overall definition of material interest is the issue and is out of step with society and all beneficial ownership regardless of amount should be the measure. That would then give complete clarity and align with society and all business laws and approaches. You are an owner regardless of percentages until you are not an owner. a black and white approach is simple and would only be changed by specific events rather than a fluctuation of a minor nature. For consistency removing the material interest percentage aligns corporate entities such as companies and LLPs with general partnerships. The rules would be the same."

Amendment 7

We propose amending Authorisation of Firms Rule 13.2 to limit our deemed approval of solicitors' designation to be a manager or owner of an authorised body to solicitors with a current practising certificate.

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.

Many respondents did not respond to this question. All those who did respond agreed with the amendment, but only one provided any comment.

> "It makes it clear to me that it refers to solicitors with a current practising certificate, as well as the other categories at 13.2(a)."

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

Most respondents did not answer this question. The Legal Services Consumer Panel did comment, and was positive about the proposal.

> "Yes, the amendment provides clarity. For the avoidance of doubt, the Panel assumes that any restrictions on the solicitor's authorisation would be cross checked at an appropriate point in this process and is adequately covered by the stipulation that such a solicitor is also "not subject to a regulatory or disciplinary investigation, or adverse finding or decision of the SRA, the Tribunal or another regulatory body".

The Law Society stated:

> "Members have informed us that experience has shown that approval for those under investigation is unduly delayed due to the slowness of the deliberations of the SRA on the investigation. 28. Whilst the SRA has indicated that it is aware of the problems that currently exist in the investigation section, the fact that consideration and approval remains on hold during an investigation can be extremely prejudicial for commercial reasons. 29. Whilst it is understandable that the SRA will wish to control the suitability status of managers or potential managers, it should not automatically prevent or delay the ability of an entity to change its status, for example from LLP to limited company or to change its trading name. These applications should be processed and given due consideration based on risk, rather than being the subject of a temporary disqualification."

A non-legally qualified individual stated:

> "Not on our account but this does limit employee-owned legal services businesses? I believe there are now a few out there?"

Amendment 8

We propose amending Paragraph 5.6 of the SRA Code of Conduct for Solicitors, RELs and RFLs, which requires solicitors carrying on reserved legal activities in a non-commercial body to ensure that the body has indemnity insurance, to make it clear that this requirement is limited to where services are being provided to the public.

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

Only two respondents, the Law Society and a local Law Society, responded to this question. The Law Society stated they had no objection to the amendment, and the local Law Society agreed with it.

Amendment 9

We propose amending the definition of 'solicitor' in our Glossary to remove the reference to the SRA Indemnity Insurance Rules and the Minimum Terms and Conditions of Insurance, as this is no longer relevant.

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

The Law Society was the only respondent who answered this question, stating:

> “We have no comment on the proposed amendment to the term ‘solicitor’ in the Glossary. 32. We would suggest an amendment to the wording under the term ‘employee’ in that employee means an individual who is: a. engaged under a contract of service by a person, firm or organisation or its wholly owned service company; b. engaged under a contract for services, made between a firm or organisation and: I. that individual; II. an employment agency; or 8 III. a company which is not held out to the public as providing legal services and is wholly owned and directed by that individual, or under which the person, firm or organisation has exclusive control over the individual's time for all or part of the individual's working week, save that: The above definition should read with the word ‘or’ deleted. The requirement for the firm or organisation to have exclusive control has been a requirement for all instances of a person being regarded as an employee.”