



The Law Society

SRA consultation Sole practice: modernising authorisation

Law Society Response

March 2011

supporting
solicitors

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Introduction

The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Law Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to comment on the SRA's proposals to remove the sole practitioner endorsement procedure. The SRA has proposed to change legislation so that sole practitioners will become recognised bodies, and be subject to the same authorisation process as other recognised and licensed bodies. The SRA's proposal centres on the mechanism for authorising sole practitioner firms and the mechanism for taking certain regulatory steps in relation to sole practitioners.

We understand the advantages of the SRA's aim to harmonise processes and to achieving a single authorisation process. We also recognise that there may be potential benefits for sole practitioners as a result of the SRA's proposals, specifically that,

- sole practitioner firms will not be subject to annual renewal of their authorisation
- treating sole practitioner firms as a form of recognised body will enable a firm to change its composition without having to undergo a new authorisation process
- a common authorisation process for all types of firm- including ABSs- will facilitate transition between one status (recognised body) and another (ABS), thus enabling firms to adapt in a changing market.

The Law Society recognises the potential benefits that this proposal may offer, but also believes that the SRA should confirm that they will adopt a proportionate approach to sole practitioner firms, in treating them as recognised bodies. This is particularly in relation to the Authorisation Rules and the fact that there may be difficulties for sole practitioners complying with a blanket application of the rules. Applying the same regulatory requirements to sole practitioners, compared with all other firms, has the potential to place a disproportionate burden on them as they potentially have fewer resources to meet requirements. We would welcome recognition that sole practitioner firms will not be expected to simply 'fit in' with a regulatory approach designed to suit all recognised bodies.

Q1. Do you have any comments on the proposal to remove the endorsement mechanism for sole practitioners and treat sole practitioners as a form of recognised body?

The Law Society believes that there will be advantages in removing the endorsement mechanism and moving to licences that are unlimited in duration for sole practitioner firms. This is particularly so, if the result is that the regulatory burden on sole practitioner firms is reduced. If the full renewal process is replaced by an information and fee-gathering process, this may be less of a regulatory burden on sole practitioners. Proposals to potentially reduce the regulatory burden on firms, particularly in the current climate of regulatory change, are welcome. It would be helpful if more information was provided on what will be involved in the information and fee gathering process, as currently it is not clear how beneficial this will be for sole practitioner firms. We also recognise the fact that this proposal will lead to more streamlined processes, which may benefit not only the SRA but the profession as a whole.

Furthermore, we understand the SRA's view that there is no substantive justification for a separate authorisation regime for sole practitioners and that a single, harmonised process for authorising all types of firms should be adopted. We recognise that there are a variety of business models for sole practice, as sole practice can be either an individual practising with little or no support or a sole practitioner controlling a substantial enterprise, so agree that separate authorisation is not required on the grounds of the business model of sole practice.

We believe a further benefit may arise in treating sole practitioner firms as a recognised body, in that this will enable firms to change their composition and adapt without having to undergo a new authorisation process. It will certainly be beneficial for firms to be able to switch status e.g. from sole practitioner to partnership, without having to reapply for authorisation. Also, a common authorisation process for all types of firm, including ABSs, will facilitate transition between one status (recognised body) and another (ABS), thus enabling firms to adapt in a changing market.

A potential consequence of this proposal is that if regulatory action were taken by the SRA, then it could be taken against the firm's authorisation instead of the individual's PC endorsement. It is not clear here, whether in the case of sole practitioners, action could be taken against both the firm and the individual. We do not think this would be a proportionate approach as this has the potential to impose greater regulatory burden on sole practitioner firms, than those that are currently in place, so would welcome clarification from the SRA on this point.

A further point for consideration is that sole practitioner firms being recognised bodies has the result that the Authorisation Rules, in their entirety, will then apply to them. Although this point is moving away from the issue of the mechanism for authorising sole practitioner firms, we believe that the Authorisation Rules present certain challenges and these are certainly applicable to sole practitioner firms. There is no mention about whether the Authorisation Rules will apply proportionately to sole practitioner firms and there are some areas in the Authorisation Rules where there may be difficulties for sole practitioners in complying with a blanket application of the rules.

For example, rule 8.5, on the requirement of compliance officers, is a concern the Law Society has raised previously in relation to sole practitioner firms. There is a high probability that within sole practitioner firms these positions will be filled by one and the same person. If this is the case then it is concerning that the SRA removing

approval of a compliance officer, in the case of sole practitioners, could effectively result in the firm being unable to continue to practice. We believe that reassurance should be provided by the SRA that this will not be used as an alternative route to shut down sole practitioner firms. This is a unique problem to sole practitioner firms and is also an example of where the Authorisation Rules may not be entirely appropriate to apply to sole practitioners in their entirety. Furthermore, rule 8.7 on information requirements, is of concern to sole practitioners as they are less likely to have resources to deal with the new information requests or have the appropriate systems in place to capture data.

When considering the application of the Authorisation Rules, we believe that the SRA should make it clear that they will take into account the different practicalities of different types of firm when considering what information they will require from firms. In relation to sole practitioner firms particularly, the SRA needs to consider the fact that they are less likely to have systems in place to capture information, they may need more time to gather information together and may also need more warning about what information they will be required to provide. We would welcome clarification that the SRA has considered the differences inherent to sole practitioner firms, compared to other firms, and will adopt a proportionate approach.

Q2. Do you have any comments on the Solicitors (Keeping of the Roll) Regulations- consequential amendments?

No comments.

Q3. Do you have any comments on the draft statutory instrument?

Article 2 proposes that solicitors with an existing valid annual sole solicitor endorsement will be passported into the new authorisation system. However, it is not clear how this will actually work in practice. We know that a sole solicitor's endorsement will come to an end and the sole solicitor will instead be granted recognition by the SRA pursuant to section 9 of the Administration of Justice Act 1985, which will be unlimited in time. The SRA will also have the power to impose such conditions as it considers appropriate on the recognition. Further clarification would be welcome from the SRA on what this means in practice, as no further explanation is provided in either the consultation document, or impact assessment, in what circumstances conditions would be imposed.

Q4. Do you have any comments on our impact assessment?

The impact assessment sets out two options, which are either 'do nothing' or 'propose a section 69 Order so that the regulatory regimes for all firms are harmonised'. The latter is the preferred option. The Law Society recognises the potential benefits for sole practitioners of this proposal, and these are set out in question 1.

In relation to the costs, the SRA notes that although they are still developing their policy in respect of setting annual and initial authorisation fees, they believe that these changes will have minimal impact in terms of costs to sole practitioner firms. However, the amount of resource required by sole practitioners is very much open to question, both in terms of the initial one off cost and of the ongoing cost of some of the proposals. The nature of sole practitioner firms may mean that they will not have the resources to implement changes, in the same way other firms may do. Confirmation on the exact cost from the SRA would be very helpful here.