



## Supporting Solicitors



### July 2015 Strategic Review

With the holiday season nearly upon us this month's Review includes comment on market and trends (including LeO's 'groundbreaking' study into users of legal services), and forthcoming regulatory change to the separate business rules, and other regulatory matters. All suitable reading for the pool-side and beach no doubt.

The Relationship Management Team

#### Market Conditions

Mergers and lateral hires helped push fee income at top-100 law firms up 6.3% in the year ending 2015, with firms forecast to continue to outperform the UK economy in the year ahead, according to a regular market survey. Deloitte's [quarterly legal sector survey](#) also showed fee income rising 6.7% in the last quarter of the year, compared with the same period in 2014. Firms with a predominantly London focus outperformed those dealing with UK markets outside London or internationally.

Other market surveys include:

The [Bank of England June summary of business conditions](#):

- Consumer services and retail sales turnover had continued to grow moderately.
- Housing market transactions remained lower than a year earlier, with some contacts reporting shortages in the supply of homes for sale as the driver of this weakness.
- Investment intentions had pointed to moderate growth in capital expenditure over the following twelve months.
- Business services turnover growth had remained robust and broad-based.

- Manufacturing output growth had edged higher for the domestic market. Growth in goods exports had remained
- subdued overall.
- More ...

The [CBI Industrial Trends survey](#) indicates that a fall in export demand slowed the recovery in the UK's manufacturing sector in June. Output growth improved again in the three months to June and is expected to improve slightly in the next three months, although growth still remains below rates reached in late 2013 and early 2014.

[RICS suggest that construction output in 2014](#) was significantly higher than previously thought. The Office for National Statistics released revised construction output figures on 12 June 2015, which showed some major revisions from the data released in May 2015. Total construction output was revised upwards to a rise of 9.5% in 2014 from the previously published 7.4%, and total new work output was also revised upwards to an increase of 10.1% from 7.2%.

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### **Retaining talent**

During member engagement as part of our 2020 strategy, a persistent message to the Relationship Management team has around difficulties in recruiting and retaining high calibre staff as the economy has picked up. Firms are therefore exploring more innovative ways in which they can recruit and retain talent.

Flexible working patterns are seen by some as a real draw to an organisation. [DLA Piper](#) recently announced its plans to have a pool of alumni it can call on to work flexible hours or send on secondments to key clients.

In addition, firms are looking at ways in which to reward loyalty. [A&O](#) recently announced a new bonus pool for top performing partners and lateral hires – aimed at giving them more compensation in order to bind them in and protect them from offers from other firms.

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### **Legal services users – YouGov profiles**

The 'typical' legal service user counts Strictly Come Dancing, Coronation Street, and Britain's Got Talent among their favourite television programmes, according to the findings of a [YouGov study](#) commissioned by the Legal Ombudsman (LeO), writes the [Solicitors Journal](#).

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### **Information Security Breaches Survey**

PWC UK companies' [Information Security Breaches Survey](#) on cyber security incidents and emerging trends. The survey aims to provide greater awareness amongst UK business of the risks, insights on how companies are mitigating those risks (or not) and key trends. The survey results also provides companies with information to benchmark themselves against others in their sector and beyond.

On the same theme, last year the Law Society, BIS and ICAEW, produced a free short [online training course](#) to help solicitors to develop skills to protect their clients and themselves from cyber attacks.

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## Regulation Update

### **Separate Business Rule – levelling the playing field**

Changes to the [Separate Business Rule](#)—which mean that solicitors can own or be connected to separate businesses providing non-reserved legal services, have been agreed by the SRA.

The opening up of the legal market already allows other types of businesses to own law firms and deliver innovative services. By changing the Separate Business Rule, all law firms can own separate businesses, allowing them to compete on a level playing field with alternative business structures (ABSs). As part of the same package of reforms, the rules on what activities can be undertaken within solicitors firms have been relaxed, making it easier for those firms to create one-stop shops for professional services.

The changes need the approval of the Legal Services Board. If agreed, they will be part of Version 15 of the Handbook when it goes live on 1 November.

### **EU ADR Directive**

The government has updated the guidance for alternative dispute resolution. Solicitors now have until October 2015 to comply with the [EU ADR Directive](#).

From 9 July 2015, all traders selling to consumers will have access to a certified provider of ADR services in their sector. Certification of ADR providers ensures quality and consistency of standards across ADR services. For some traders, especially those in regulated sectors, this will mean little change as they are obliged by existing legislation to use ADR for their consumer disputes ([see Law Society guidance](#)).

The regulations do not make use of ADR mandatory for all traders, however from 1 October 2015, all traders selling to consumers, whether or not they intend to use ADR, will need to:

- a. Give the consumer details of the certified ADR provider in their sector AND
- b. Inform the consumer about whether they intend to use that provider.

### **New Consumer Credit Proposals (open consultation to 6 August)**

The SRA has issued new proposals for the regulation of solicitors doing [consumer credit work](#). Under the proposals, the SRA would continue to regulate solicitors undertaking certain consumer credit activities as long as they are central to the legal services they provide.

SRA-authorized firms that mainly carry out consumer credit activities already require FCA regulation. The changes mean firms may now also require authorisation by the FCA if they undertake prohibited activities that are not considered central to their legal services practice.

The SRA will produce specific guidance around consumer credit work, and will hold a webinar to give those affected the opportunity to hear current thinking and pose questions directly to the SRA.

### **SRA consultation on its regulatory reform programme (closed consultation response)**

The SRA has consulted on a range of proposals aimed at reducing unnecessary burdens and costs for regulated firms, and to ensure proportionate and targeted regulation. The consultation includes numerous topics which the SRA considers to be non-controversial and of less significance, and therefore requiring less in-depth consideration. The [Law Society's response to the reform proposals](#) is available, and an edited summary of the key points is included below.

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### **Practice Notes from the Law Society**

[Meeting the Needs of Vulnerable Clients](#)

[Social media](#)

[Outcomes-focused regulation: overview](#)

[Information on letterheads, emails and websites](#)

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### **Events**

Upcoming key conferences are highlighted here:

[Small Firms Division](#) Annual Conference (24 September 2014)

[Commercial Litigation](#) Conference (5 October)

[National Property](#) Law Conference (9 October)

[Lexcel Conference](#) (21 October)

[Law Management Section](#) Finance & Business Conference (11 November 2015)

[Anti-Money Laundering](#) and Financial Crime Conference (18 November 2015)

For full details on the above and our full programme of events please visit the [events](#) page.

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### **Attachment. Law Society response to the SRA regulatory reform consultation.**

<b>Proposal</b>	<b>The following is abridged text from the Law Society's more detailed response to each area under consideration</b>
Simplifying compliance officer	The proposal to introduce deemed approval for the COLP/COFA roles for sole practitioners and 1-4 manager firms is supported and should be extended to all

approval for small firms (1-4 managers)	non-ABS firms.
Simplify candidate declaration and notification processes	This is supported in relation to 'traditional' solicitors firms. The SRA should defer proposals to reduce regulation on ABS firms to any material degree until there is a greater level of experience. Additional risks which may at present be unforeseen may only emerge over time.
Remove the requirement for firms to carry out reserved legal activities	It would be unwise to look at authorisation rules in isolation. It would have been useful to be provided with the SRA's analysis of the original rationale for the present rules in order to be able to judge whether it is appropriate for them to be removed or relaxed.
ABS Authorisation - operational changes and improvements	<p>Detail is lacking, and the rationale behind the original rule should be explained, the reason why the SRA wish to change the rule and the difference that the SRA thinks this will make before commenting.</p> <p>It can often take several years for problems with firms to become apparent. The full impact of ABS firms is unclear and it is too early to start relaxing regulatory requirements. ABS firms have potential risks: the involvement of non-lawyer managers and the structure of ABSs means that there can be significant cultural differences in approach and therefore safeguards may be necessary.</p> <p>In respect of non-ABS firms, the authorisation process has been developed by the SRA, driven by a perceived need to "harmonise" all forms of application. There is nothing in the Legal Services Act which envisaged that ABS-specific regulation would be applied to all firms including those operating a more traditional model.</p>
Changes to insolvency rules	<p>This seems logical but should form part of a wider debate about the reaction of the SRA to insolvency or the risk of insolvency.</p> <p>Frequent and repetitive demands by the SRA for information from a firm already in difficulty can make the situation worse. The perception established over many years is that the SRA generally regards statutory intervention as a cure-all though it can be of greater prejudice to clients than a properly managed administration.</p>
Alternatives to client accounts	<p>This is a complicated concept which deserves a full consultation of its own. On the face of it, this is a liberalising and permissive measure allowing solicitors to have a choice: however, there has been no meaningful attempt to consider the possible consequences of approving third party managed accounts.</p> <p>Client accounts can represent a risk; there will always be a danger of dishonesty, which is why the compensation fund was established. However of the vast amounts of money passing through solicitors' client accounts each year, the cost of supervising accounts and dealing with dishonesty is low in proportion.</p>
Guidance on	It is reasonable to allow firms to develop their own systems without prescription, which

recording of non-material breaches	<p>is all that is proposed. Guidance on material breaches linked to practice would be useful as defining a material breach can be difficult.</p> <p>Retaining a prescriptive requirement for a record to be kept is also of questionable value. The obligation to report material breaches including any pattern converting non-material to material should be sufficient.</p>
Clarification on the outsourcing of legal and operational functions	<p>Consideration of whether or not the current wording of O 7.10 is stifling innovation is a useful exercise.</p>
Recording and reporting of diversity data	<p>Initiatives towards promoting diversity and access are welcome. Whether the SRA needs to alter Outcomes or IBs is questionable, in this instance, the existing Principles seem sufficient.</p>
The Apprenticeship Route to qualification	<p>A move towards enabling qualification as a solicitor through the apprenticeship route is supported so long as they meet the same high standard as other currently existing routes.</p> <p>The SRA must also retain control over admission of such candidates, as for those qualifying by other routes.</p>
Fee sharing and referrals	<p>The current ban on referral fees should remain in place. The consultation paper correctly points to a view amongst some solicitors that such fees are regarded as unethical.</p> <p>In terms of crime or any publicly funded work, the reputation of the profession would be adversely affected by payment for work. This is not a situation analogous to referrals from estate agents in conveyancing, for example, where a charge can be properly disclosed to the paying client. The paying client is the LAA so there is a lack of transparency. Most legal aid firms struggle to make this work cost-effective. If they had to make payments to referrers as well, that would damage their economic position further, and may impact adversely on quality.</p>