# LawWorks Policy Consultation Response

# *Looking to the future:* Phase two of the SRA's Handbook reforms

## Introduction

We welcome the opportunity to comment on phase two of the SRA's handbook reforms which focuses on authorisation and enforcement. Our response to this consultation builds on comments we have already made on the SRA's strategy, our response to the phase 1 consultation, and to other recent SRA consultations, including consultations on waivers, and on the SQE and training reforms. Our response focuses on matters relevant to pro bono and access to justice. A theme to our response is that existing regulations and regulatory approaches have sometimes inhibited rather than enabled pro bono and the provision of free legal advice.

### About LawWorks

LawWorks is the operating name of the Solicitors Pro Bono Group, an independent charity which offers a range of support and brokerage services to bring together lawyers and law students, who are prepared to give their time without charge, and individuals and community groups in need of legal advice and support. LawWorks has 20 years of experience in supporting pro bono clinics and has seen the impact that good quality, timely legal advice has on clients' wellbeing, particularly the provision of advice on a range of legal issues, including housing and homelessness, welfare benefits, immigration, debt, childcare, employment and domestic violence and other related legal and money matters.

### General Comments

The proposals for the new handbook demonstrate continuity in the SRA's direction of travel towards a "principles based" and "outcomes focused" handbook, bringing together and rationalising the Code of Conduct and other professional standards and rules in one place, and framed around risks and regulatory proportionality. We are supportive of the SRA's overall approach, however it is essential that in the process of regulatory development the SRA works in dialogue with the Solicitors profession. This is not to deny the importance of leadership, but to caution against getting too far ahead of those who are regulated. It is also important that the SRA grounds its proposals in the regulatory objectives of the Legal Services Act: to improve access to justice, increase public understanding of citizens' legal rights and duties, supporting the rule of law, promoting the public interest, protecting consumers, and encouraging competition in a strong and diverse legal sector adhering to professional principles and standards.

This consultation sits alongside a further set of consultative proposals *Better information, more choice* on mandatory price-reporting in response to last year's market study by the Competition and Markets Authority (CMA).[i] Given that we have less expertise on these matters, we have incorporated comments on the second consultation as an appendix rather than in a separate response. We also note the CMA's second recommendation was that a longer-term review of the regulatory framework should be carried out to ensure that it becomes more flexible, with regulation being better targeted at higher-risk activities, more proportionate and cost effective in its approach, and with a shift away from regulation attaching solely to professional titles.

LawWorks' interest in the regulatory policy agenda is primarily around access to justice, pro bono and how solicitors work in a not-for-profit context. Context is relevant and important, the key point being that solicitors provide pro bono voluntarily, in good faith and without financial remuneration, most often for vulnerable individuals (or charities and not-for-profit organisations supporting them) not eligible for legal aid and otherwise unable to pay. We entirely support the principle that pro bono work must be delivered to the highest professional standards, indeed this principle is written into the Pro Bono Protocol[ii] (supported by the legal professional bodies) along with guidance on the level of supervision, expertise, and required client care. But it is equally important in a risk based regulatory framework for regulators to understand the specific context of pro bono work, the organisations through which pro bono is delivered, and that the risks may be different to those applicable to commercial practice (for example solicitors acting pro bono won't generally hold client funds).

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Although there is no regulatory requirement on the legal profession to undertake pro bono work or deliver a set number of pro bono hour targets, pro bono is now commonly seen as an essential part of being a lawyer. It is an opportunity to use professional skills, experience and knowledge to support the most vulnerable in our communities to access justice. As the Law Society's Pro Bono Charter says "a commitment to access to justice is at the heart of the legal profession and that pro bono work, as one method of achieving this, is an integral part of the working lives of solicitors."[iii] In our response to the SRA's recent strategy consultation we argued that encouraging pro bono could help the SRA meet its own strategic objective of "providing solicitors and firms the flexibility to innovate and better meet the needs of members of the public."

We assess these reforms on the basis of whether they assist access to justice, including the contribution of pro bono. As the SRA knows, the challenge of unmet need is massive; legal needs research from the *Civil Justice and Social Survey* and other research, has consistently shown that around a third of the population have unresolved civil legal problems at any one time, and that a significant percentage (around half, although the figure varies in different surveys) get no legal advice at all in the face of multiple law related problems. This is evidence of a supply and demand mismatch – or market gap. Put simply there is a lack of services appropriate to the needs of low income consumers, a problem which recent legal aid cuts and restrictions have accentuated. The SRA's overriding focus should be on what policy, regulatory and market interventions and innovations can best address these issues; in this respect the handbook reform is a bit disappointing.

## Review of the Handbook and the role of guidance

LawWorks welcomes the SRA's overall policy approach of simplifying the Handbook, for example by removing duplication of rules at the statutory level. We also welcome the SRA's indication that it intends to produce guidance which sits outside its rules, but it is essential that such guidance is clear and helpful. Clear guidance will be especially important for small firms and sole practitioners, and for solicitors working in pro bono clinics or in projects managed by small non-profit agencies, as these organisations do not have the compliance resources of big law firms. The SRA could benefit from working directly with organisations like LawWorks in the design, development and communication of bespoke guidance - for example in relation to pro bono practice issues. As an example of where guidance could be more appropriately framed we cite the SRA's guidance below (see box) on in-house regulations. In light of this we encourage the SRA to consult with stakeholders before issuing guidance around the handbook and/or statutory rules, so as to ensure that it conforms to the SRA's settled policy goal of reducing unnecessary regulatory barriers and simplifying rules.

### Example of unclear guidance: In-house solicitors and pro bono

As regards the type of guidance the SRA envisages, a recent example concerns section 15 of the Legal Services Act 2007 governing, among other things, the carrying on of reserved legal activities by employees of non-regulated organisations (e.g. in-house solicitors): http://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Does-my-employer-need-to-be-authorised-by-an-approved-regulator-.page .

Whilst we welcome the good intentions of the SRA in relation to this challenging piece of statutory language, we are not wholly convinced that the guidance is the sort of clarifying quality needed, combining as it does a mixture of factors to consider, some of which are helpful while others are less so. The relevant parts of the guidance are:

> *In deciding whether you are providing reserved legal services in your capacity as an employee, you may wish to consider whether, for example, you are required by your employer to carry out the activities in question, are held out as carrying out the activities on behalf of the employer and/or are paid for the time spent doing them. When considering whether you are, conversely, acting independently, it may also be relevant whether you are providing the services during working hours and/or from your employer's business premises.*

*...you will want to consider the extent to which the employer is itself involved with the activities (for example, by requiring you to carry them out, or to hold yourself out as acting on their behalf) and factors such as when and where they are carried out...you may in addition wish to consider:*
*(a) whether your employer describes its business as including the relevant services,*
*(b) how regularly it provides the services, the number of employees that do so and the overall proportion of time spent on providing them*
*(c) the extent to which these services complement or enhance the business of your employer*
*(d) whether your employer provides management, training or supervision in relation to the provision of these services, or rewards you (directly or indirectly) for doing the work*
*(e) who provides the necessary indemnity insurance cover..”*

LawWorks' concern around the guidance is that it promotes the very misapprehension surrounding section 15 LSA (and the current Rule 4:10 PFR) which has dogged the profession, namely the idea that as soon as an employer permits, encourages or supports its employees to participate in pro bono arrangements outside the organisation the activity is likely to fall within the statutory prohibition, which Parliament could not have intended. For example, whether an employer provides insurance for pro bono work undertaken by employees should not at all be determinative of the scope of the prohibition, nor any other support, such as use of IT or whether pro bono activity is undertaken inside or outside normal working hours.

Whilst we appreciate that the SRA has made a good attempt to carve out a safe space for pro bono within the section 15 LSA prohibition, in doing so it has inadvertently muddied the picture. In the circumstances, we believe that it might have been better for the SRA to have first published its own research dealing with section 15, taking in to account the views of the profession, including organisations like LawWorks that are grappling with the prohibition, and make recommendations for practice and policy. Had the SRA undertaken its own research, we believe that it would have concluded that the real answer to the challenge of section 15 LSA is a statutory amendment, (possible by way of negative resolution procedure under the Legislative and Regulatory Reform Act 2006), using its role as regulator in making recommendations to ensure the LSA is fit for purpose.

This issue is directly relevant to this consultation. Rule 4.10 of the SRA Practice Framework Rules 2011 (PFRs) was intended to reflect s15(4) of the Legal Services Act 2007 rather than go beyond it, and needs to be read in conjunction with Rule 4.16 which allows services to be provided through law centres and advice services which have the benefit of the transitional arrangements under section 23 of the Legal Services Act, and therefore don't need to be authorised in order to provide reserved legal services. In both the phase one of the *Looking to the Future* consultation (paragraphs 80 and 81 in particular), and in a previous response to the Legal Services Board,[iv] the SRA accepted that the wording of Rule 4.10(c) on the question of "relevant services” is ambiguous, and acknowledged that rule 4 as a whole goes beyond the Legal Services Act.

We had understood that following the phase one consultation, the SRA had decided to remove Rule 4 in its entirety, and had planned to include that proposed change in this consultation, in order to remove all of the restrictions that can prohibit solicitors providing unreserved services either as an individual or from a body that isn't authorised. Although this may be the SRA's intention with its new proposals on authorisation, it needs to be spelt out and it is disappointing that Rule 4 (“in house” practice regulations) and related issues for employed solicitors are not specifically covered in the consultation document. We deal with this issue further in our response to Question 5.

The consultation also does not specifically address issues relating to lawyers working or volunteering in charities and other non profit bodies, and how proposals for the new handbook might impact on this sector especially as uncertainty remains around the future treatment of "special bodies" under section 106 of the Legal Service Act, and how long transitional protection will be maintained. Following consultations by the Legal Services Board (LSB) the position remains unclear.[v] Other issues may also arise in relation to pro bono clinics, many of which will not be constituted as their own legal entities (ie not automatically able to benefit of the transitional arrangements under section 23 of the Legal Services Act). We would invite the SRA to discuss with us regulatory approaches that could allow pro bono clinics to deliver reserved activities where the

individuals advising at a clinic have demonstrated to the SRA appropriate experience and competence. We suggest it should be relatively simple to put in place some form of appropriate authorisation procedure.

# LawWorks Response to consultation questions.

In this next section we respond on the individual consultations questions and issues.

### Authorisation in the UK and overseas

*Q 1* (a) . *Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK? (b). Do you have any views on our approach to overseas practice more broadly and the practising address restriction?*

We do not have strong views on this issue, so our answer will be brief. We can see the case for the SRA's proposals on practicing addresses in the UK, subject to appropriate arrangements being put in place with relevant bodies across jurisdictions (ie the Law Societies of Scotland and Northern Ireland) to monitor the conduct of firms with a practising address in Scotland and Northern Ireland, and that the SRA is able to enforce effectively. We agree with the SRA's approach of maintaining the current practising address arrangements for overseas firms without any connection to the domestic firms the SRA regulates as any wider lifting the restriction could create enforcement challenges.

### Supervision

*Q2 (a): 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?*
*(b): 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?*

LawWorks regards this proposed reform, as currently presented, as virtually impossible to assess or the practical impact it might have for access to justice and pro bono work. That is because the extent to which it protects the public and promotes other regulatory objectives (like access to justice) will turn entirely on the SRA's approach in practice to its retained discretion, whether or not to authorise new firms (nothing is said regarding previously authorised firms and supervisory staff). We recognise what the SRA is aiming to achieve in that the current rule 12 can be confusing, but the SRA's motivation in scrapping the rule entirely is unclear. In this regard, we note the following statement with some concern: "… the effect of the rule is to create a barrier to market entry, by preventing solicitors establishing their own firms as soon as they qualify".

If it is the SRA's intention, pursuant to its policy of opening up the market for legal services, not to refuse to authorise a firm consisting exclusively of newly qualified solicitors under existing (default) rules pertaining to supervision, then, at the very least, it is hard to see how many of the points made by the SRA in support of this reform are relevant at all to the real reason for its removal (for example, the arbitrariness of the rule or the confusions among some respondents as to the rationale). This would, in our view, represent a potentially dogmatic approach to market liberalisation. If, however, the SRA intends to exercise its discretion retained under these proposals in order to genuinely grapple, case-by-case, with the undeniable arbitrariness inherent in the current 3 years rule then we would have less objections to the reform.

This is a case of the devil being in the detail. We are disappointed that the SRA has not provided sufficient information so as to make this aspect of its reforms clear. We would, therefore, urge the SRA to provide more information so as to properly discharge its duty to consult around this proposed reform, and do so in a meaningful way.

LawWorks would support a reformed rule which permitted the SRA to exercise its discretion as regards qualification to supervise, case-by-case, consistent with the SRA's Draft Enforcement Strategy which rightly recognises the challenges for newly qualified and inexperienced solicitors: *"... We recognise that certain stages in an individual's career can present a steep learning curve – such as becoming a trainee, a newly qualified solicitor, or a partner or the first time. We would expect solicitors to gain a deeper understanding of appropriate behaviour and of the law and regulation governing their work as their career progresses. And for those with more seniority and experience to have higher levels of insight, foresight, more knowledge and better judgement."*

Supervision of pro bono work, for example in a Law School clinics context, is an issue that is regularly discussed at our Forums and we would welcome a discussion with the SRA on supervision issues. In our response to the SRA's draft regulations on the SQE we argued that supervising solicitors in pro bono clinics needed to feel comfortable in signing off student volunteering work as "qualifying work experience" and so there may be need for guidance on what good supervision looks like in particular contexts.

## Immigration services and claims management regulation

*Q 4 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?*

*Q 5 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.*

We agree with the SRA's proposals on the basis that the statutory regulation of these sectors needs to be applied in a consistent way. These will also be important protections in relation to the self-employed business models covered in this consultation. As the SRA's impact assessment points out - allowing individuals to deliver legal services in claims management and immigration areas outside regulated firms goes against *'the proper policy intention of the regime'.* Both of these markets have grown in response to unmet needs. The regulatory regimes for both claims management and immigration services have been developed over a period of time by statutory intervention, with a strong degree of cross-party support, in response to quite specific concerns and issues. Specifically evidence about practices, standards and consumer detriment in these sectors have highlighted the need for strong regulatory protections, so that injury victims and those in the immigration system can have improved access to justice.

## "Freelance" Solicitors

*Q5: 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?*

Subject to the issues raised below, in principle LawWorks is open to some of the benefits of this proposed reform which would permit individual solicitors to provide reserved legal services as "freelance" lawyers, for example in a chambers style arrangement or other networks, and enable solicitors to provide non-reserved services to the public from a wider range of organisations and platforms. In particular we are interested in how such a reform might enable solicitors to work more easily in non-profit contexts, community projects, pro bono and clinic settings. The notion of professionals "freelancing," including mixed portfolios of paid (consultancy) and voluntary work, is one that is already quite familiar to third sector organisations, and the freelance model is one that could have particular application to purely voluntary work. By practice and definition much pro bono may involve 'sole solicitors' (ie freelance solicitors) acting outside the protections of a recognised sole practice, or corporate practice.

We do recognise the concerns and risks associated with the proposal and the need to guard against poor or unethical practices developing in the market; clients should be able to trust in the brand title of "solicitor" with a

consistent set of regulatory protections. However as the SRA points out, this is essentially how the majority of barristers currently provide services to the public. What is more, barristers are currently open to operate both out of chambers and through a law firm style set up, and to do so simultaneously if they so choose, and are now able to provide “direct access” to the public. With solicitors increasingly acquiring higher rights of audience and undertaking advocacy throughout the court and tribunal systems, it seems appropriate to us that the SRA should consider moving towards greater regulatory alignment. Barristers' chambers are not regulated entities rather they are treated as no more than a pooling of barristers resources, often via an LLP. We assume that this model of delivery is permissible under these reforms, despite the injunction against freelancers employing people (we would invite the SRA to clarify this point). Consequently, on the face it, failure to align the regulatory landscape could lead to a comparative disadvantage for solicitors. In our view, any such differential treatment should be justified only where is clear evidence to support it.

It is important though that consumers and clients can still benefit from regulatory protections under any of the new proposed arrangements, and to rely on professional standards being upheld, including professional privilege, insurance cover, protection of client funds and data, and access to redress. So we address the more detailed issues of regulatory oversight below.

*Encouraging Pro Bono*

The proposed reform and the additional flexibility they bring may be capable of stimulating additional pro bono activity. In our response to the “Looking to the Future” phase 1 consultation we supported the idea of individual solicitors unconnected to an entity authorised by the SRA being able to provide pro bono services; this might include solicitors on career breaks looking to maintain their skills and experience by volunteering between employment, retired solicitors, and former legal aid practitioners. Previously we have had to rely on obtaining waivers to enable individual solicitors to participate in some LawWorks projects, so the change of approach is welcome (we refer here to our previous response to the SRA’s waivers consultation). However, it is unclear what the SRA means where it says in the consultation "We are keen not to replicate the current complex and confusing system of exceptions (special bodies, pro bono, telephone services etc.) under the SRA Practice Framework Rules 2011."

It appears, based on the limited information from this consultation, that major regulatory inhibitors of pro bono work will still remain in place following these reforms. For example, permitting freelance working does not sidestep Rule 4 Practice Framework Rules 2011 ("PFR"), governing pro bono activity for in-house solicitors, which has dogged the in-house sector since the enactment of the Legal Service Act 2007 (from which the SRA's rule is derived). That is because freelance solicitors would not, we assume, be able to, in effect, contract out of Rule 4 PFR by working for non-regulated commercial organisations in their individual capacity (i.e. freelance). We therefore seek greater clarity from the SRA on these issues, especially the question of whether Rule 4 remains. Annex one provides no detail or clarity on which rules are to be retained, removed or combined with other rules.

Ultimately, the success or failure of the reform to stimulate pro bono will take time to establish. We are interested though in how the model might be usefully developed in a pro bono context, especially for free legal advice clinics where the clinics themselves are not separately constituted legal entities, and may be driven through the initiatives of individual solicitors. Clinics in the LawWorks clinics network are independent and operate through (or associated with) a diverse range of organisations - 9% of clinics are attached to firms whilst 42% of clinics are attached to Law Schools, 22% are attached to local Citizens Advice services and law centres, and the remaining 27% are attached to other not for profit organisations and community projects (not all of which are covered by the ongoing “special bodies” transitional provisions of the Legal Services Act). There are a significant number of solicitors operating in a clinics context. Information from clinic co-ordinators show that last year there were 1,731 qualified solicitors and 506 trainees volunteering in the clinics network. Issues sometimes arise about the regulatory position of the pro bono clinics sector, and we are aware of some examples from registered members of the LawWorks clinics network where advice has been sought from the SRA’s ethics helpline on the boundaries of permissible work for clinics as between the boundaries of

unreserved and reserved legal activities. There are some clinics in our network which have been formed by highly experienced and qualified litigation solicitors as individuals, coming together for example through church groups and other civic associations, and whilst signed up to good practice standards such the Pro Bono Protocol and operating under appropriate PII cover, are nevertheless uncertain of their scope to get involved in county court matters due to the unclear regulatory status of the clinic as an entity.

That there should be any uncertainty in respect of authorisation of competency in such instances is a matter of some concern from an access to justice perspective. Given the well documented problem of litigants in persons in the civil and family courts impacting on the work and effectiveness of the justice system, we would suggest it is the SRA's duty to enable appropriate pro bono resources to be directed towards where they are most needed. We therefore urge the SRA to address these wider regulatory issues for pro bono practice on a more comprehensive basis. In order to give effect to its regulatory objective to improve access to justice, this may require that the SRA take a more "purposive" interpretation of the Legal Services Act (for example in respect of the "conduct of litigation"), or advance new regulatory flexibilities and approaches to the issue.

*Regulatory oversight and guidance*

In order for this reform to work, regulatory burdens should be kept at a minimum, whilst ensuring the highest standards of protecting the public and consumers, and maintaining professional standards. By way of comparison, Registered Sole Practitioners ("RSP") are required go through a rigorous process of registration, in which they are required to make submissions around the major risk centres, such as conflicts of interests, financial stability and complaints handling. Barristers are also required to adhere to minimum terms and conditions in respect of individuals' professional indemnity insurance. Whilst we accept the SRA's point that the Minimum Terms and Conditions applicable to firms of solicitors (including Registered Sole Practitioners (who are able to employ staff)) may not be appropriate, we do urge the SRA to consider adopting appropriate Minimum Terms and Conditions for freelancers. Other areas where there are risks to be managed include health and safety law, data protection, property, commercial contracts, training on money laundering and Solicitors Accounts Rules. There will be a need for information and guidance on these and other areas. We look forward to seeing more of the detail regarding how the SRA intends to strike the right balance so as to manage these risks, whilst freeing the market place for legal services to develop more innovative models.

One potential problem is that professional indemnity insurance may not be required of freelancers carrying out non-reserved work; currently anyone can provide legal advice (i.e. undertake non-reserved activities) to the public, with many of those providers not subject to similar PII requirements. Arguably solicitors could be placed at a comparative disadvantage as compared with other non-regulated legal advisors were the requirement as to PII to be maintained in respect of freelancers undertaking non-reserved activities. This is a policy challenge for a liberalised legal market that the SRA needs to consider. A possible solution might be to regard legal advice as a core activity, i.e. one which in principle should be treated as akin to a reserved activity under the Legal Services Act 2007 with the aim of achieving greater consistency in protection across different types of activity. However, this is not a change that we would advocate; how advice itself is regulated has very significant implications for access to justice, and we would not want to see a more burdensome approach adopted to the not for profit sector than already exists. Early advice has an important role to play in avoiding dispute escalation and resolving problems is a timely manner as the Law Society's recent report emphasises,[vi] so we would not want see regulators act in any way which might potentially restrict the supply of legal advice.

We welcome the SRA's reassurances in respect of the applicability of the Compensation Fund to freelance solicitors. Furthermore, these reforms do not (nor could they) affect the jurisdiction of the Legal Ombudsman to hear complaints about solicitors. The Ombudsman has the power to require disclosure of solicitors' details, as well as information from any sort of arrangement or entity regarding advice given to the public as well as the reasons, regardless of who is the nominal service provider.

In order to encourage the highest standards for freelance work through chambers style or other arrangements – should the proposals be introduced - we urge the SRA to adopt Practice Management Guidelines,

specifically tailored towards self-employed solicitors, as well as considering promoting standardised best practice indicators, such as, by comparison with the Bar, the Bar Mark or the Quality Mark, as well as tailored Equal Opportunity Policies. Further, we urge the SRA, working with the Law Society, to develop off-the-shelf template protocols and constitutions that can be adopted by freelancers working via a chambers structure, governing intra-chambers, member-to-member issues, including decision-making processes. We would also hope that positive cultural norms (again by comparison to the Bar) might emerge, including a culture of pro bono, to play a role in driving up standards and commitments to obtaining justice for clients. It is not possible to predict with any certainty what cultures and norms will develop among solicitors' chambers and acknowledge the experimental nature of these reforms, but we urge the SRA to take an active role in supporting the profession through any transition.

## Character and suitability

*Q6 (a) 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?*
*(b) 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?*

Subject to some concerns, LawWorks broadly agrees with the principle of deciding character and suitability issues on a case-by-case basis, and agree with the SRA's premise of focusing mandatory character and suitability testing to take place at the "point of entry" to the profession. We do however see real benefit in the current system of rules which signal the profession's attitude to behaviour that falls short in a very clear way. Such clarity is useful in terms of public perception of a sector where there is already a significant imbalance between service provider and end-user, a large degree of trust inherent in a solicitor-client relationship, and an ongoing challenge over the issues of diversity in the legal profession, with the concomitant problem of perception among some communities. As just one example of where the problem of "trust" with the legal profession has been cited, we would mention the Lammy Report into treatment of, and outcomes for, BAME individuals in the criminal justice system.[vii] We would be interested in hearing more about how the SRA proposes to operate a much wider discretion, especially around issues which may involve discrimination.

We support (as does the Law Society) the proposals for moving suitability tests for students from a Period of Recognised Training (PRT) to the point of applying for entry to admission to be a solicitor, and align with the approach adopted for apprenticeships. Essentially this aspect of the proposed reform is a re-packaging of the current system of early advice for students in respect of character and suitability. Indeed, the SRA intends to continue to support a programme of initial advice but is at pains to ensure that such advice is not perceived as, in effect, a final decision; in particular by making it clear that mitigating or rehabilitating factors would not have been factored into any such early stage advice.

## Enforcement

*Q 13 Do you agree with our proposed approach to enforcement?*

LawWorks broadly agrees with the SRA's proposed approach to enforcement. Having said that, we would have expected the SRA to specifically consider the impact, if any, of freelance work on its revised enforcement strategy, for example when it discusses its approach to signalling disapproval of firms, as well as or in place of individuals. Consequently, we urge the SRA to set out what, in its view, are the challenges (if any) that a chambers style or other business model arrangement represent to its enforcement strategy, as well as how it envisages its enforcement strategy will apply to the new context.

# Appendix: Better information, more choice

The SRA's second consultation is on the information that is freely available to members of the public about solicitors and their services. Following recommendations of the Competition and Markets Authority, this consultation proposes changes requiring the legal profession to provide better information on price and quality of service with the aim of encouraging the public to compare legal services across the marketplace and to facilitate a good choice of appropriate legal services. This includes:

- making it mandatory for all solicitors and law firms to publish their prices for commonly-used legal services and describe exactly what that price includes
- requiring all solicitors to publish clear, simple information about complaining if something goes wrong
- introducing a new SRA logo that solicitors will need to display, as a quick indicator to people of the protections that are in place if they use a solicitor

The requirement on firms to publish their price for services and a description of the services offered will be limited initially to a select number of legal services such as conveyancing, wills and probate, family, employment tribunal and personal injury, and the new proposed regulations will require firms to publish the required information on their website. The proposals also include requirement for firms to publish data on the first-tier complaints they receive and their areas of practice. This information will also be made available to re-publishers, such as online comparison sites. Firms will be required to make information on SRA regulatory protections available – including introducing a mandatory digital badge that verifies that a firm is regulated by the SRA. In addition, the SRA is proposing to build a digital register to hold key regulatory data about SRA regulated solicitors and firms and make it available to the public, and for use by solicitors in bench-marking their services against other legal service providers.

LawWorks broadly supports the overall objectives of these reforms to achieve greater transparency in the legal services market for consumers, especially for consumers on low incomes. Again we assess these reforms from the perspective of improving access to justice. Increasing the availability of timely, relevant information to help consumers to make informed choices in the legal services market and obtain more affordable legal services – which is a key SRA objective – can better enable access to justice. However, marginally lower cost overall doesn't necessarily assist the most disadvantaged.

The SRA will need to adopt a proportionate approach to implementing these reforms, including non-regulatory methods and guidance on the minimum standards sought. We hope that the SRA can work with stakeholders in producing guidance to help support these changes, using tools such as the Law Society's Price and Transparency Toolkit which includes tips on how to provide the right information at the right time to clients.

Transparency can also play a role in enhancing the profile of pro bono work in the profession, and the impact of firms Corporate Social Responsibility policies. With insufficient recognition of the range, quality and quantity of pro bono work that firms and the solicitors profession undertakes, there is a potential role for regulators in raising the profile of the pro bono work delivered and its impact. We would therefore welcome any positive messaging from the regulator to encourage voluntary commitments to pro bono, such as through the Law Society's Pro Bono Charter. We are not suggesting that there should be mandatory approach to publishing information on pro bono and CSR policies, but rather a best practice approach utilising existing tools such as the Law Society's Pro Bono Charter and Protocol as a way forwards, consistent with the voluntary nature of pro bono activity.

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## ENDNOTES

[i] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

[ii] https://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/The-pro-bono-protocol/

[iii] http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/pro-bono-charter/

[iv] http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/2015/SRA_S15_response.pdf

[v] http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/special_bodies_non_commercial_bodies/sra.pdf

[vi] http://www.lawsociety.org.uk/policy-campaigns/campaigns/early-advice/

[vii] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf