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FROM THE CHAIRMAN

It is a great pleasure to welcome you all to the latest edition of SOLO, the SPG Journal. It has been an exciting time for me since taking office as Chairman of SPG on 10th May 2015 and I hope that from the pages that follow, you will get a flavour of just some of what SPG has been up to since then and some of its plans for the future.

I am delighted to say that the Annual Conference was, as always, a huge success. With a theme of ‘Growing Your Practice’, well chosen by my predecessor Kem Masinbo-Amobi, we received some excellent feedback about how practical and useful you found the sessions to be. Plans are now well underway for our next Conference and your feedback has been very influential in our decision-making.

My main intention over the coming months is to build upon our level of engagement with both you as our members and with other key stakeholders such as the SRA, the Law Society, the Legal Ombudsman, LSB and other bodies which impact upon our practices on a day-to-day basis. I also want to see us become more engaged in lobbying for change through government decision-making. Change takes time but we are continuously building and strengthening our existing relationships with those bodies through open and honest dialogue. I was therefore delighted, shortly after taking office, to have the pleasure of being interviewed by Nick Hilborne of Legal Futures, one of the leading names in market intelligence, on the future for high street firms. I am passionate about the delivery of legal services in the heart of our communities and I see a bright future ahead for sole practitioners. You can read the full article at http://www.legalfutures.co.uk/latest-news/there-is-a-huge-future-for-high-street-firms-new-spg-chairman-says. I was also delighted when the Law Society referred to this article in their own News Summary as it is so important that the wider profession recognises just how strong the SP arm of the legal profession remains, despite the huge changes to the UK legal landscape.

We are thrilled that following on from a long-standing tradition, Law Society President, Jonathan Smithers, has contributed to this edition of SOLO. I enjoyed a lunchtime meeting with Jonathan on 8th September 2015 where we were able to discuss how the Law Society and SPG can work together in serving our sole practitioner members, for the good of both the profession and the public.

I continued with the theme of innovation when speaking on 9th July 2015 at the Westminster Policy Forum, which is the premier environment for policymakers in Parliament, Whitehall and government agencies to engage with key stakeholders in discussions on public policy relating to the law and the judicial system. I was able to share how the sole practitioner arm of the profession is well-placed and highly skilled to take advantage of the opportunities and new doors opening for growth and innovative business models.

Our positive relationship with the SRA has continued with a number of ventures, which have included an address to SRA staff on the issues facing sole practitioners today, all of whom were genuinely eager to understand these so that they can ensure that their practices and procedures are proportionate and reasonable for smaller firms. We also consulted with the SRA in relation to changes to the authorization process, and we were also delighted to be invited by the SRA to attend their annual COLP/COFA conference on 14th October 2015. This gave us an opportunity to meet with some of you, our members, who also came along as well as enter into the debates taking place throughout the day in the various breakout sessions.

In September, I also had the privilege of speaking at The Law Society of Scotland’s Sole and High Street Practitioners Conference, where the delegates very much look to England & Wales as a benchmark for the changing legal landscape and a ‘heads up’ on how sole practitioners have fared. It was a valuable time of sharing ideas and information and we were thrilled to learn that there are also many Scottish sole practitioners practising in England and Wales and we hope to build on those relationships. I also enjoyed a fruitful and informative lunch meeting with Christine McLintock, President of the Law Society of Scotland.

We have worked very hard over recent years to ensure that the way we support you remains relevant and this has meant listening to you,
commissioning formal research into your views about us and then implementing the changes necessary to respond to you as our valued members. On the 9th May 2015, at the Annual Conference, we unveiled our new brand image and launched our new website which we believe is a very user-friendly resource and is packed with useful information, tips and guidance to support you as sole practitioners. You can find the website at www.spg.uk.com. It is the quickest way of finding out exactly what we are doing and what events are coming up.

We have also continued to actively represent your views in response to consultation papers produced by the various regulators and decision-makers within our profession, to ensure that sole practitioners’ views are heard before any change is implemented. You can read more about our responses in this edition. As always, though, we would encourage you to try to find the time to respond individually to important consultations that will impact upon the way that you practice in the future,

Our Conveyancing Lobbying Group is a prime example of how tangible change can be implemented through relationship-building and dialogue and you can read more about the work they have been doing in relation to lenders panels in this edition.

We are also working very hard on your behalf to source excellent products and services that can help support your practice which can either be offered to sole practitioners at preferential rates or delivered in a way that recognises the unique needs of sole practitioner firms.

We really want to help you stay ahead of the game in your practice and so we want to ensure that we are offering you plenty of opportunities to receive formal training, support and development as well as more informal, but equally valuable, opportunities to network with and support one another. One of the huge advantages of sole practice is the ability to both offer and receive support from trusted fellow sole practitioners without the fear of ‘client poaching’ that many larger firms grapple with. Those relationships are built over time, through meeting one another at formal and informal events, and particularly within local groups.

Although we hold a number of our primary events in London, purely to enable as many of our members as possible to come along, we are also very aware that many of you are not based there. We want to improve and increase the number of smaller regional events that we run, so please do keep an eye on our Events Calendar on the website, and on our regular e-shots, which are intended to give you the lowdown on upcoming events, as well as other bite-sized chunks of information. If you are not receiving our e-shots but would like to do so, please contact us by emailing Hilary, our Co-ordinator, at Hilary@spg.uk.com.

Our regional groups are the real lifeblood of SPG. They are growing slowly but surely, with new groups developing all the time. I know only too well how hard it can be to try and squeeze yet another thing into our already jam-packed schedules. However, having recently attended the group run by our new London Regional Representative, Shak Inayat, which brought together an interesting and vibrant mix of corporate, litigation, family and private client lawyers, I would strongly urge you to find out if there is a regional group near you and, if there is, to make time to find out when your next meeting is and get involved. It could well prove to be the best investment of time that you could make for your firm, for yourself and for your family as the support you can gain is second-to-none. If there is not a regional group in your area, why not think about pioneering a new group? It may be that there are other SP’s in the area who may be willing to form a team to run the group and share the load. We are also committed to doing all we can centrally to support and promote our regional groups, from helping you with funding to sourcing venues, speakers and sponsors so contact us if you need help. You can read more about regional groups and how to find out details of meetings in this edition.

We now have almost 3,000 members in our LinkedIn Group. If you have not already done so, please do join and get involved in the lively and varied discussions, which have recently included the pros and cons of self-employed consultancy, whether referring clients to another SP poses a risk of poaching and whether the Bar is better at family advocacy than solicitors! SPG is now also on Twitter and you can see our live Twitter feed on the homepage of our website. Please tweet us with any comments, views or ideas.

We want you to feel that you are receiving real and tangible benefits from your membership of SPG, so that you will be encouraged to get involved in us and if there is anything at all that you would like to see us doing on your behalf, please tell us!

As always, I want to thank the Executive Committee who give of their time so freely to further the aims and objectives of the Group. Through the individual areas of expertise and experience of different Executive Committee Members, we now have a number of specialist groups, which enables SPG as a whole to draw upon a wealth of skills and a formidable knowledge-base.

My door is always open and I therefore invite you, as a member, to contact me so that we may discuss what the SPG could do for you, going forward. I hope to be hearing from you shortly and sincerely looking forward to serving both you and SPG in my time as Chair.

I can be contacted by email at sukhi@spg.uk.com or by telephone on 020 8215 0884.

Best wishes

Sukhjit
Meet Your Executive Committee 2015/2016

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Having worked in some of the most prestigious banking and consultancy organisations, Sukhjit opted to provide a more personal one to one service and believed that this could be best done through his own practice. He has been based in Goodmayes in Ilford since 2003. In his private life, Sukhjit likes to get involved in a number of charitable activities, working with organisations to assist people from all backgrounds and ages in reaching moral excellence either in their private life or in their professional capacity. Whilst he is quite a shy person, Sukhjit has been part of two documentaries exploring the changes that have taken place in the traditional arranged marriage process. His children are still young and take up a great deal of his time but when he does have time for himself, Sukhjit likes to sit, read a good book and watch the world go by.

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Kemi is dual qualified in both England and Wales, as well as Nigeria.

Kemi is called to the Nigerian Bar as a barrister of the Supreme Court of the Federal Republic of Nigeria. She is a single mother of three young men, two of whom play semi-pro football for two separate teams and the family supports Manchester United. In her spare time, when Kemi is not out supporting her son’s football matches, she enjoys music, reading and cooking.

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Kem qualified as a solicitor in November 2002 under the tutelage of Mr Martin Mears (former President of the Law Society). Kem has over twelve years commercial experience gained in a variety of demanding and challenging environments. Kem’s employment history includes time spent at some of the most prestigious legal firms in Suffolk and Norfolk. A keen gardener, Kem has completed the RHS Level 2 Certificate in Horticulture and her other hobbies include reading, travelling and cooking in true “Nigella” fashion.

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info@scraselaw.com

Rupert is an SP in Bristol who specialises in employment law. He is married with 3 teenage children. Most weekends he is out on his bike in the beautiful countryside around Bristol which makes him a MAMIL – a middle aged man in lycra.
Nick was admitted as a solicitor in 1979 and was a partner in two firms in the London area before starting his own practice in the West End in 1987. In 2011 he moved on to create his niche commercial and family practice in Chancery Lane. He is a Member of the Solicitors Family Law Association and has trained other professionals on family law matters and money laundering. Nick is married with four children and he has a range of hobbies which include music, tennis, reading and photography.

Lubna qualified as a solicitor in 1992. She was a partner in a high street firm in West Yorkshire for many years and then started her own practice in Birmingham in 2007 undertaking mediation; family and civil litigation. Lubna became a CEDR accredited Mediator in 2005, and is dual qualified to conduct both Civil and Family mediations. She has done shuttle mediations (where parties prefer not to meet) and also time limited mediations (2-4 hours duration). Lubna is also involved with various regulators and she Chairs a number of Disciplinary/Professional Conduct Committees. She is a Law Society Council member where she represents the interests of sole practitioners.

Lubna has a keen interest in theatre and, in another life (which seems many moons ago!), she was a member of a theatre company which enabled her to perform in lead roles at the West Yorkshire Playhouse, the Bradford Alhambra and other theatres around Yorkshire.

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Having read Law at Cambridge University and completed her training in 1999, Karen set up her niche Private Client firm in 2003. Karen asked her almost 5-year-old son what she does in her spare time. He said “what spare time?” That about sums it up! When she is not working or on various committees, Karen enjoys yoga, looking at the saxophone that she is supposed to be learning and she occasionally paints, plays the flute or does some gardening. Karen also spends far too much time looking at RightMove! Her favourite thing to do is to spend time with her lovely husband and son.

Clive specialises in litigation and has been a sole practitioner in Lymington in Hampshire since leaving a partnership in 1998, covering most aspects of private and commercial work. His other interests are as Chairman of his local Amenity Society in Lymington and trustee of the New Forest Centre Museum in Lyndhurst. In the past he has served as Chairman of the local Citizens Advice Bureau and churchwarden and in the early 70s as a resident magistrate in the Seychelles. Clive has been actively engaged on behalf of SPG over the past 10 years. He was Chairman of the Group in 2003/2004 and has been Honorary Secretary since 2007. Clive feels that, with the benefit of loyal staff, sole practice has been the most rewarding part of his career and the sole practitioners group executive committee one of his most rewarding activities.

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Nick was admitted as a solicitor in 1979 and was a partner in two firms in the London area before starting his own practice in the West End in 1987. In 2011 he moved on to create his niche commercial and family practice in Chancery Lane. He is a Member of the Solicitors Family Law Association and has trained other professionals on family law matters and money laundering. Nick is married with four children and he has a range of hobbies which include music, tennis, reading and photography.
Martin was admitted as a solicitor in 1975 after 5 years articles and acquired his sole general practice in Leighton Buzzard in 1985 where he has practised ever since. Martin has been a member of the SPG National Executive Committee since its inception (he believes that only Ian Lithman is still an “original”). Martin lives with his partner in Leighton Buzzard and when he is not working, he enjoys spending time with her. They share a number of hobbies together, including stamp collecting.

Hamish is based in Fulham, London. Having initially specialised in copyright and trade mark work, both in the City and New York City, his practice now includes conveyancing, wills trusts and probate, as well as litigation. Married with three children, when Hamish is not in the office or involved in SPG matters he enjoys open-air swimming, sailing, overnight bike rides, and also has a passion for the theatre.

In her limited spare time Sue enjoys walks in the countryside and catching up with friends. She is an early riser and enjoys listening to Farming Today and other radio programmes. She has family nearby and a demanding dog!

Tahira has been a practicing solicitor for almost 16 years. She set up as a sole practitioner after being made redundant in 2010. Tahira is a fairly new member of the SPG Committee having joined just over 18 months ago. She has found SPG to be an extremely helpful point of contact on so many issues which are affecting the whole profession whilst paying particular attention to the needs of Sole Practitioners. Tahira understands that being a sole practitioner can be a lonely experience but networking with like-minded individuals makes all the difference. She is glad that there is an independent body outside of the Law Society that is working hard to look after its members interests. Tahira is based in Bury, Greater Manchester where she lives with her husband and teenage son who has just started college. She has lots of interests outside of the law including politics. Tahira is an LEA school governor and has stood as a councillor previously as she passionately believes in doing her civic duty and putting something back into the community. It is a lot to juggle with but Tahira is proud of the work of the SPG because she believes in better representation for Sole Practitioners!

Tina is an Employment Law specialist based in Derby and after many years in private practice across the East Midlands, achieved her life long ambition in 2010, to become a Sole Practitioner and she still thoroughly enjoys the freedom and benefits this brings her. Having qualified as a Workplace Mediator in 2012 and a Commercial Dispute Mediator in 2013, she is finding this work equally as rewarding. Tina is married with a teenage daughter with whom she has recently taken up yoga, but also loves to plan and enjoy theatre trips, travel and entertaining family and friends. As part of her role in the community she feels it important to give something back and so in addition to other committee work, she mentors Law Students at the University of Derby and has been a school governor since 2003, in both Primary and Secondary Schools. Currently she is Vice Chair at Allestree Woodlands Academy School in Derby. She is however, unable to function until she has taken her cocker spaniel (and office companion), Monty for a 5k run each morning.
A THANKYOU TO JULIAN TAYLOR

SPG HAS A NEW HOME!

SPG TOP-TABLE EVENT

SPG ANNUAL CONFERENCE 2016

IT’S A LAWYER’S LIFE…

ADR – WHAT IS THE CURRENT POSITION FOR SPS?

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‘TO INHERIT OR NOT TO INHERIT? THAT IS THE QUESTION’

FIX THE ROOF WHILST THE SUN SHINES

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SOLO JOURNAL

Contributions to SOLO are welcome. Editorial or Advertising – contact details are available on SPG’s website www.spg.uk.com.

Editorial Board – Hilary Underwood, Sukhjit Ahluwalia and Oluwakemi Mosaku.

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Hilary originates from Northamptonshire and qualified as a solicitor in 1999. She set up her family law firm in 2003 in Kent, focusing on legal aid clients and primarily specialising in children law. Hilary is now taking up an exciting new role as SPG Co-ordinator and is looking forward to helping SPG represent and support our members. In her spare time, Hilary loves to read and it is her dream to one day complete her novel (whilst travelling around the world)! She loves to spend time with family and friends, and enjoys nothing better than an evening of food, laughter and a good movie.

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Penny has been an SP specialising in family law for 20 years working with her husband Mike, a Forensic Accountant, on divorce cases involving business and complex asset and income tracing. She won Worcestershire Family Lawyer of the Year Award 2014 and has been nominated for the National Family Law Magazine Family Law Firm of the Year 2015. She has appeared on radio and television and, with Mike, has toured their networking pantomime "Snow White and the Seven Small Business People" internationally.
In this edition of SOLO we wanted to say a huge thank you to our former Honorary Treasurer Julian Taylor and to honour him for his many years serving on the SPG Executive Committee. Julian successfully merged his practice on 1st July 2015 which means that we have had to say goodbye to him on the Committee.

Julian served first in general as an Executive Committee Member and then for a further eight years in the role of Honorary Treasurer, a role which is both demanding and time-consuming, as well as carrying a great deal of responsibility.

Julian wore this mantel with commitment and dedication and we are extremely grateful to him for his valuable input and wisdom over those years. We shall miss him enormously and would like to wish Julian and his family every success and happiness in the future. We hope you will have more time to sit on the beach in Italy, your second home!

We are, however, also pleased to announce that Rupert Scrase, Executive Committee Member and a former Chairman of the Group, has agreed to replace Julian in the role of Honorary Treasurer – a brave thing to do! Thank you Rupert, we have no doubt that you will continue to be a good steward of the Group funds!

SPG Has a New Home!

SPG is thrilled to announce that we have a new home.

Our new office address is:
53 – 59 Chandos Place
Covent Garden
London
WC2N 4HS
Telephone: 0208 618 2247
This is an event not to be missed. On Saturday 14th May 2016, you will be invited to come and sit at the Top Table and join the heads of our key regulatory and representative bodies, including the SRA, the Law Society, Legal Services Board and LeO.

This event is intended to offer you the unique opportunity to chat face-to-face with those who play such a strategic role in shaping the future landscape of our profession.

This daytime event will be followed by an informal dinner with networking opportunities.

Further details will follow.

An excellent practice will always thrive, despite the challenges we face as sole practitioners. So our theme for our 2016 Annual Conference is focused upon helping you to take your practice to the next level, so that you stand out head and shoulders above your competitors.

We will also do a fair bit of celebrating since this will also be our 21st Annual Conference. So put the dates in your diary now and make sure you’re a part of it.

Watch this space for further details about our exciting location and venue.
It’s a Lawyer’s life....
with Jonathan Smithers, President of the Law Society

4. Describe a typical day in the life of Jonathan Smithers
The Presidency brings new challenges every day and there really is no such thing as a typical day. I can be meeting senior members of the judiciary or politicians in one moment, and chairing a meeting or speaking at an event the next, sometimes all of those and more in one day.

5. What would you say has been your greatest challenge in life?
I have worked in my firm for over 30 years. Starting as an articled clerk in 1984, and now becoming senior partner. During that time I have experienced, as a business owner, two significant recessions. In each case the challenge has been to make sure that long-term vision trumps short-term necessity, easy to say but very tough to do.

6. What has been your proudest moment?
From a professional’s perspective taking office as the President, knowing that I will be able to represent the largest profession of the leading organisation of the best jurisdiction in the world.
7. How do you manage to relax away from work?
The Presidency is a six or seven day a week job but I am still hoping to sing with my choir once or twice throughout the year.

8. Is there anything still left to do on your ‘bucket list’?
This may sound trite but I would not define myself by the things that I have not done, rather those which I have been able to do. Having said that the more of the world I see the more I realise there is so much more still to see.

9. What makes you really angry and really happy?
People being lazy and achieving less than they can or being unduly negative makes me cross. Conversely people with energy direction and focus and a positive attitude will always get my vote.

10. If you could change anything about your life, what would it be?
Why would I want to change, I have the best job in the world!

11. How would you like to be remembered?
As someone who tries to make a difference.

12. What advice would you give to sole practitioners today?
Be proud of your profession, be proud of the ethics by which you live and practice. You have chosen a business model which may have more challenges than others but if it gives you the motivation and the flexibility you need and want then you should succeed.

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**ADR – WHAT IS THE CURRENT POSITION FOR SPS?**

The Legal Ombudsman consultation on proposed Scheme Rule changes, which would be necessary for the Legal Ombudsman scheme to comply with the requirements to become a certified Alternative Dispute Resolution entity, closed on 2nd November. The responses were considered by the Office for Legal Complaints (OLC) on 9th December 2015 but it decided that it will not proceed with an application to become an ADR entity based on the changes to its scheme rules on which it consulted.

It has decided instead to explore whether there is an alternative approach to operating as an ADR entity, such as introducing a parallel scheme or offering new “alternative” dispute resolution services that better mitigate the risk and issues it has identified, and that have been raised by stakeholders.

It further concluded that, given that the organisation’s key priority at present is to improve the efficiency and quality of its statutory scheme, it is not the right time to take on the additional risks and operational changes that would arise from proceeding with the scheme rules changes as proposed.

Chair Steve Green said: “We are grateful to all the stakeholders who responded to the application. These responses have enabled us to give full and thorough consideration to how we should proceed.

“We are not giving up the ambition to become an ADR entity but we do want to explore alternative approaches to doing so. We will do this over the next six months.”

The OLC also confirmed that the Legal Ombudsman scheme will ordinarily accept complaints that have first been considered by an ADR entity, where they are otherwise within the Ombudsman scheme. Further guidance on this will follow.

The current position for practitioners is that, with effect from 1 October 2015, at the conclusion of their internal complaints procedure solicitors must provide their clients with information on the Legal Ombudsman as the statutory complaints scheme for solicitors and inform their clients, on a durable medium:-

- that they cannot settle the complaint with their client
- of the name and web address of an ADR approved body which would be competent to deal with the complaint, should both parties wish to use the scheme
- whether they intend to use that ADR approved body

The list of approved providers can be found on the Chartered Trading Standards Institute (CTSI) website at http://www.tradingstandardsuk.org.uk/advice/ADRApprovedBodies.cfm

The Law Society has suggested that solicitors use the following text when notifying their clients:-

“We have been unable to settle your complaint using our internal complaints process. You have a right to complain to the Legal Ombudsman, an independent complaints body, established under the Legal Services Act 2007, that deals with legal services complaints.

You have six months from the date of this (our final) letter in which to complain to the Legal Ombudsman.

Legal Ombudsman PO Box 6806 Wolverhampton WV1 9WJ

Telephone: 0300 555 0333
Email address: enquiries@legalombudsman.org.uk
Website: www.legalombudsman.org.uk

Alternative complaints bodies (such as ………………..) exist which are competent to deal with complaints about legal services should both you and our firm wish to use such a scheme.

We [state whether you do or do not] agree to use [include name of scheme].”

The Law Society’s practice note can be read at https://lawsociety.org.uk/support-services/advice/articles/ changes-to-client-care-information-and-leo-time-limit/
HOW SPG CAN LEAD THE WAY IN INSPIRING SOLICITORS TO REGENERATE OUR SOCIETY

As ‘Contact the Elderly’ celebrates its Golden Jubilee, Trevor Lyttleton MBE, a former sole practitioner, founder and Chairman of ‘Contact the Elderly’ shares with us a little of the history and work of the charity and explains how sole practitioners can make a difference where it really counts.

Let me explain what is involved, where we come from and where we hope to go.

1. What prompted me to start Contact the Elderly

I was motivated to start Contact the Elderly as a Solicitor in my 20’s by:

i. the childhood memory of a small face of an old lady looking down from the window opposite our home day in and day out, seemingly with nothing to do and no one to talk to. The image made an indelible impression and haunts me still

ii. By contrast the lively, vibrant image of my remarkable Grandmother taught me the elderly can be much more fun than most of us realize. A great off-the-cuff speaker, funny, mischievous, she adored telling jokes and stories about her Welsh childhood. She devoured racy books like ‘Forever Amber’ declaring them to be ‘absolute rubbish’ as she avidly turned each page.

iii. By contrast again – an old lady I met in a shop in my 20’s, who told me she lived alone and had no friends, family or electricity, in the centre of London, with nothing to look forward to.

These contrasting influences combined to inspire me to encourage the young to help the old and lonely which remains our mission half a century later.

2. How we started

I persuaded some friends to help bring fun into the lives of lonely old people in our area in 1965.

There was nothing high and mighty about the idea. We simply wanted to get away from the ‘holier than thou’/ ‘Duty to Society’ approach to voluntary work and have fun making new friends young and old along the way.

I was shocked to learn the scale of the problem from the local Welfare Association who told me there were thousands of elderly who lived alone in Marylebone. But at least they knew who they were, which is more than can be said for many Local Authorities today. Indeed, had it not been for the care and foresight of a very special social worker, Contact the Elderly might never have taken off at all. She took immense trouble to select 12 elderly people who would benefit from our activities, providing thumbnail sketches of their individual characteristics, background and special needs.

Above all she gave me invaluable advice, warning me that, once we started taking out the elderly, we must...
continue to do so and 'Never let our old people down'

This became the cornerstone of our activities and our only rule to this day: we never let our old people down

To ensure continuing commitment we have stuck to the simple idea of monthly renewals of friendship, so volunteers know what is expected and have a limited time commitment of:

• an afternoon on the loneliest day of the week once a month for volunteer drivers;
• once or twice a year for Volunteer hosts who only need a 'warm heart, a large teapot and a downstairs loo'

At our first tea party we knew immediately from the fantastic rapport between young and old that, in Mark Twain's words, we could

"We never let our old people down"

"cheer ourselves up by trying to cheer up somebody else" by creating happiness, having fun and enriching lonely lives and our own at the same time.

A courageous Irish lady, Lilian, with legs in irons, after that first outing, taught us the Power of face-to-face Contact in improving health and overcoming disabilities. Despite being previously immobilised, after only two or three outings, she amazed us by climbing a flight of stairs to a tea party. Within a year her RC priest persuaded her to fly to Lourdes in search of a miracle. On her return she proudly announced that her miracle was to be able to get on and off the plane.

3. Expansion and development

The benefits in improved mobility and well-being motivated us to set up more Contact the Elderly Groups and we have expanded across London and nationwide over the last 50 years.

• Contact the Elderly is the only national charity solely dedicated since inception to tackling loneliness amongst older people in this country.

• Mother Teresa said “Being alone and unwanted is the world’s greatest disease” and, thanks to our great staff and 7300 volunteers nationwide, our Sunday afternoon tea parties make the difference between misery and happiness for isolated older people.

• Our simple act of friendship has resulted in over a million face to face individual friendship links with lonely older people since we started in 1965.

• We provide 54000 annual life-enhancing friendship links with lonely older individuals

• Our regular friendship links save taxpayer funds by reducing by 25% older guests’ calls on GPs and NHS.

• Contact the Elderly volunteers meet to do, not to talk about doing. They know what is expected of them right from the start, and understand their commitment

• Our volunteers are highly motivated and stay with us longer. At a recent AGM, Contact the Elderly volunteers received Long Service Awards of 10, 20, 30, and 40 plus years of dedicated service.

Contact the Elderly is effective because:

• Sunday afternoon is acknowledged to be the loneliest day of the week for older people living alone.

• Contact the Elderly’s groups operate on Sunday when most community services for older people are not available.

• The benefits extend beyond the one-Sunday-a-month gathering, with the long term nature of groups creating real and lasting friendships between young and old.

• Our model addresses the emotional needs of older people who wish to remain independent in their own home, but whose diminished mobility makes it impossible for them to maintain regular social contact.

• Our surveys show that our simple act of friendship makes our older guests feel happier, less lonely and part of the community and has enabled them to make friends with the volunteers, and other guests.

We have received awards including:

• John Lewis Charity of the Year 2009
• Queens Diamond Jubilee Award for Volunteering 2012
• Financial Conduct Authority Charity of the Year 2014

Key Golden Jubilee Challenges

But, despite our achievements after 50 years, we do not rest on our laurels in celebrating our achievements in our Golden Jubilee year. We have set ambitious targets to help us meet the growing challenges ahead in a period of increased longevity and austerity.

University and Schools

In our Golden Jubilee Year we aim to encourage more young people to become the heroes of today and ambassadors of tomorrow, in tackling one of the greatest problems of our time.

We have launched a University Challenge to encourage Universities
and students across the country to tackle loneliness in old age by setting up Contact the Elderly Groups, to match our successful Contact the Elderly launches at Liverpool Hope, Durham and Loughborough Universities in the last two years.

State of Emergency

We declared a State of Emergency on loneliness in June 2014, announcing that the problem of the neglected million older people had reaching breaking point.

We remain deeply concerned by Government delays in supporting face-to-face befrienders of the elderly since the Health Secretary, Jeremy Hunt MP rightly described the neglected million elderly in October 2013, as "a National Disgrace." We hope the Government will respond to our request for £1 million funding endorsed by 91 MPs across parliament in an Early Day Motion. We hope this will boost our ‘IF NOT NOW, WHEN? Power of Contact Campaign to create face-to-face happiness links with many more of the neglected million older people.

"At last I have something to live for!"

We know we have a tried and tested solution. We have been delivering it for 50 years. It is as simple as having something to look forward to, a friendly face, human contact, a cup of tea and a chat, or in the words of one older guest "At last I have something to live for!"

We also know there is an epidemic of need for our service and we are frustrated that we cannot do more to help as many older people on our waiting lists and many more of the neglected million we cannot reach without help.

Medical support

We are establishing a Partnership with the Royal Free Hospital and encouraging Medical Practices to follow the lead of a fantastic GP in Liverpool who has started tea parties in his practice.

“...remembering, despite time pressures, to spend a time without the meter running with a little chat that is often more important to isolated elderly than their advice...”

SPG and Sole Practitioners

SPG can help us enlist support from Solicitors advising the elderly to become much more involved in social care, beyond their strict legal remit, e.g.

- remembering, despite time pressures, to spend a time without the meter running with a little chat that is often more important to isolated elderly than their advice (Ask any deliverer of Meals on Wheels who will confirm that, more often than not, they relish the chat more than the meals.

- visiting Court of Protection clients personally rather than delegating the links with frail and vulnerable elderly to the most junior article clerk.

SPG can make a huge difference by encouraging sole practitioners to remember the old lady looking down from the window waiting for someone to take notice and care, and help us fulfil our Golden Jubilee target by doubling the number of our happiness links with many more of the million like her who remain off the radar of support.

In considering legacies they should bear in mind that Contact the Elderly is very cost-effective and every pound we receive is multiplied several times by the free contribution of our 7300 volunteers nationwide. A gift or legacy will therefore go a long way to achieve these aims and find more volunteers who only need to give a little time:

- three hours on a one Sunday afternoon a month as a volunteer driver; or

- once or twice a year to host a tea party. All you need is a ‘warm heart, a large teapot and a downstairs loo’ and the volunteers will help you serve tea and pass the sandwiches.

I hope SPG members will be encouraged to support our national challenge by joining our tea party groups, or hosting tea parties for our local Groups in their area and encouraging financial support in helping us in alleviating loneliness in old age - one of the greatest problems of our time

Trevor Lyttleton MBE Founder and Chairman of Contact the Elderly

http://www.contact-the-elderly.org.uk/
I attended the Law Society Council meeting on 28 October 2015 in my capacity as Council Member representing sole practitioners. I attach below a summary of the key issues raised and decisions made by the Council during that meeting. If you would like any further information, or wish to discuss any issues affecting sole practitioners, or you would like me to raise any matters with the Law Society, please do not hesitate to contact me on info@legalswan.com or on 0121 551 7866.

Strategy Development and Budgets

Following discussions in Council in September, work continued to refine the Law Society’s strategy, three-year plan, and one-year business plan. Council formally signed off these documents in October, and the strategy and three-year plan was publicly launched in November. The Law Society’s strategic aims are:

- To represent solicitors by speaking out for justice and on legal issues
- To promote the value of using a solicitor at home and abroad
- To support solicitors to develop their expertise and their businesses, irrespective of whether they work for themselves, in-house or for a law firm.

These aims are supported by the Law Society’s shared vision for the profession, and commitment to spending members’ money effectively and efficiently. The Council also confirmed that a review will be undertaken to establish whether the Society’s governance is fit for the purpose of delivering the agreed strategy. The Council also approved the budgets for the Law Society, the Solicitors’ Regulation Authority, and the shared services provided by Corporate Solutions. This confirmed the decision in July that solicitors’ practising certificate fees are unchanged from last year.

President’s Update

The President, Jonathan Smithers, presented an update on his first 100 days in office, mentioning meetings with members across the country as well as welcoming international delegates for the Opening of the Legal Year. He has been proactively using social media, including his Twitter channel and three monthly video updates, to improve communication and stakeholder engagement. In September, he launched the Law Society’s business and human rights engagement programme in London and Cardiff, as well as addressing the issue in his keynote speeches at the Opening of the Legal Year and the International Association of Young Lawyers. He has also used public platforms to promote the value of the legal services market to the wider economy, and to support the Society’s wider campaign to raise the profile of pro bono work undertaken by solicitors. The party conference season was a chance to engage with decision makers on a range of topics, notably access to justice.

Criminal Legal Aid

Council heard about the very substantial continuing concerns over the tender process, and over the impact on significant numbers of the profession. In addition to raising these concerns at the highest political levels, support measures are being made available for criminal practitioners who have been unsuccessful in securing a contract.

Criminal Advocacy Consultation

It was also noted that the government’s consultation on criminal advocacy raises a number of questions, including whether there should be a statutory ban on referral fees, and, critically, whether the instruction of in-house advocates by solicitors constitutes a conflict of interest. The Law Society is in active discussion with the Ministry of Justice, and has also contacted local law societies asking them and their members to respond direct to the consultation.

Court Fees and Court Closures

Council heard about the Society’s robust responses to the government’s proposals for further increases in court and tribunal fees, and to the introduction of the criminal court fee charge. The Law Society has also made a substantial submission on court closures, informed by over 800 member responses and with a special focus on helping members campaign against closures in their own areas.

Consumer Credit Regulation

Council was pleased to hear that the SRA has announced that it will continue to be a designated professional body for regulating consumer credit activity, thus accepting the Law Society’s strong representations, and avoiding the need for dual regulation on the part of many firms.

Veyo

Council was informed that the Law Society is continuing to work with Legal Practice Technologies on Veyo so that it can ensure that the product has the right level of functionality and usability before it is launched. The Law Society will not launch the product until satisfied, as the product must meet members’ expectations and serve them well.

Lubna Shuja

SPG Law Society Council Member
November 2015

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EU Regulation 650-2012 –
To Inherit or Not To Inherit? That Is the Question

The EU Succession Regulation (EU/650/2012) (“the Regulation”) came into force on 17th August 2015. The purpose of the Regulation is to harmonise the way in which member States resolve conflict of laws issues when dealing with succession and inheritance matters. The Regulation will apply to Estates where the deceased died on or after 17th August 2015. Although the UK has opted out of the Regulation, it is still vitally important that practitioners and clients alike have regard to it when dealing with an Estate where a person has connections with a country governed by the Regulation. It also hints at a change in the way that habitual residence is to be rationalised.

Nick Woolf practises in Chancery Lane and is a member of the Executive Committee. He, alongside Penny Raby, is responsible for the development of the international arm of SPG.

Sam Cheesbrough was called to the Bar in 2014 and worked with Nicholas Woolf & Co between October 2014 and September 2015. He left this position to commence his pupillage at Selborne Chambers in London, who were ranked as a leading set by the Legal500 in 2014 and Chambers and Partners in 2015.
Case Study

James is an English national domiciled in England. His job involves frequent travel, and over the last seven years he has lived and worked for, on average five months each year in each of France and Spain. He also spends two months visiting friends and family in England. He wants to return to England after he retires, and will then sell the chalet that he owns in France. He rents a small flat in England and a small villa in Spain. The bulk of his moveable property is kept in his Spanish villa. In his English Will, he chose to disinherit his eldest son and split his Estate equally between his two daughters and the National Trust.

James died on 18th September 2015, having recently been posted to Greece for a work assignment. He had just moved into rented accommodation.

The Problems

Each of the four countries in which James has lived have different regimes for dealing with intestate succession. The differences include:

Law Applied to the Estate

The English Law position is that immovable property is governed by the law of the country in which the property is situated. However, under the Regulation the default position is that immovable property will be governed by the law in which James is habitually resident.

The effect of this is that, under English Law, the French Law of succession will be applied to the French property. Spain, France and Greece, however, will apply the law of the country of James’ habitual residence to that property, irrespective of the fact that the property is in France. Under English Law, James’ movable property is governed by the law of the country of James’ domicile; England. Under the Regulation, the default position is that movable property will again be governed by the law in which James is habitually resident.

Forced Heirship

France, Spain and Greece all have systems of forced heirship, whereby a portion of the Estate governed by that country’s law is ringfenced for the heirs of the deceased. This would mean that James’ son may inherit a portion of the Estate even though he was disinherited in the Will.

English Law has no system of compulsory heirship and therefore the Will should be applied prima facie to the Estate governed by English Law. However, there is the possibility of an application under Section 1 of the Inheritance (Provision for Family and Dependants) Act 1975 by the son.

Whereas the compulsory portion for the heir is fixed in many countries, where an application is made under Section 1 there is no guarantee that it will succeed. Even if it does succeed, there is little certainty with regard to the quantum of any maintenance awarded under the Act.

Taxation

Different countries have different levels of tax depending on, for example, the type of property and value of that property. Countries also differ with regard to the people who are required to pay that tax (for example, whether it is paid by the beneficiaries or out of the Estate).

Some Things to Consider

Habitual Residence

James’ habitual residence is not a straightforward matter. Various factors to consider are:

- James has spent more time in each of France and Spain than he has in England or Greece.
- James has spent a significant amount of time in the country of his nationality.
- James owns a significant asset in France.
- James keeps the majority of his movable assets in Spain.
- James’s family and friends are primarily in England.
- James has remained domiciled in England.
- James has lived in Greece, France and Spain primarily for work.
- James intends to return to England when he retires.
- James chose to write an English Will, and no other Will.
- At his time of death, James was living and working in Greece.
Departures from the Default Position

Even if James is found to be habitually resident in one country, this default position may be departed from in two ways:

1. James has a materially closer connection to a different country.

2. James has chosen the law of his nationality to govern his Estate.

In each case, despite the fact that James died whilst habitually resident in one country, the law of another country will apply to his Estate.

Matterially Closer Connection

James died whilst living in Greece. An argument may therefore be made that he is habitually resident in Greece. However, the fact that he has only recently moved to Greece means that he may have a materially closer connection to either France, Spain or England.

It must be noted that this exception is not to be relied upon merely because the question of “habitual residence” is difficult to answer.

Choice of Law

James has not explicitly stated in his Will that he wishes to choose English Law to govern his Estate. However, the fact that he has chosen to write an English Will may result in James being treated as having chosen English Law to govern his Estate.

There is, however, a considerable potential for uncertainty. Suppose an English national died whilst habitually resident in France having previously executed an English Will declaring that they were domiciled in Switzerland.

Under English Law, assuming that the national had lived in Switzerland for a period of time, the declaration of domicile would be strong evidence that the deceased died domiciled in Switzerland. Swiss Law would therefore likely apply to the Estate.

However, under the Regulation there is a potential difficulty. Should a French Court apply English Law to the Estate, because of the implied choice of English Law – by executing an English Will the deceased intends to apply English Law to the Estate, which would ultimately result in Swiss Law applying to the Estate?

Or should the French Court apply French Law to the Estate, because of the implicit non-choice of English Law – by declaring Swiss domicile, the underlying intention is clearly to ensure that Swiss Law, and not English Law, ultimately applies to the Estate? Under the regulation, an English national cannot choose Swiss Law to govern their Estate. Therefore the only other option is the law of the state of habitual residence (in this case, France).

In a world becoming increasing sceptical about elaborate tax avoidance schemes, it is not unthinkable that a Court may choose to scrutinise a person’s choice of law to determine whether that choice is genuine, or whether it is merely a means to an end. The Regulation could enable a Court, should it so wish, to draw back the curtains and assess what is actually intended by the deceased.

Avoiding Uncertainty

There are three main ways in which James could have reduced the uncertainty in disposing of his Estate.

1. If James wanted his Estate to be governed by English Law, he could have made an explicit statement in his Will to that effect. The result of this is that Spain, France and Greece will each apply English Law to James’ worldwide Estate.

2. If James wanted his Estate to be governed by French, Spanish or Greek Law, he could have:

   a. Ensured that he habitually resided in the country of his choice for a period of time; and

   b. Ensured that his Will was drafted in a manner that conformed to the succession rules of the country of his choice.

Whilst the second method provides no guarantees of success (it does not resolve the uncertainty of 1) how to determine a person’s habitual residence changes following the date of execution of the Will), it is nevertheless a stop-gap solution in situations where a conflict may potentially arise.

Future Development of the Law?

In spite of the above, it is possible that the law may develop to resolve this uncertainty. Indeed, the solution may well be found close to home.

The way in which the Regulation has been drafted is notable. The inclusion of the “materially closer connection” exception suggests that the Regulation clearly envisages situations where a person is habitually resident in a country even though they have not physically resided there for a long time.

This may be indicative of a change in the way that habitual residence is rationalised. In particular, this could suggest a shift away from an approach based on physical presence and towards an intention based analysis.

There are already faint hints of this shift in caselaw. For example, when considering the habitual residence of the parties in Winrow v Hemphill and another [2014] EWHC 3164 (QB), Slade J referred to a number of factors including the reasons why the party was in the country, where medical treatment was obtained and where property was owned and/or registered. The length of time spent in the country was a factor, but by no means conclusive.

Similarly, the introductory notes to the Regulation stress that the purpose of the Regulation is to “ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised”. Later, it is suggested that factors to be considered include “the conditions and reasons for that [person’s] presence [in the country]”. It is also stated that “where the deceased [resides in a country] for professional or economic reasons...the deceased
could...be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and social life was located”.

It would be going too far, at this stage, to suggest that the Court is looking for an intention to permanently reside in a particular country. Certainly, there is nothing explicitly stated to that effect. However, if it is possible for a person to be habitually resident in a country even though they have only recently moved there, it is difficult to look beyond such an intention as the underlying reason for that.

If the law was to shift in this direction, then a third possibility opens up for James:

3. If James wanted his Estate to be governed by French, Spanish or Greek Law, he could have:
   a. Ensured that he physically resided in the country of his choice for a period of time;
   b. Made a declaration in his Will that he was domiciled in his country of choice; and
   c. Declared in his Will that his country of choice to be his habitual residence, or that it is his permanent centre of his interests.

This method may not be bulletproof. For example, a person’s intention may change between the time that the Will is executed and the time of death. This means that the declaration of habitual residence in the Will would no longer be an accurate reflection of that person’s intention.

In spite of this, it has long been established that English Wills ought to include a domicile clause irrespective of the fact that a person may change their domicile following the execution of the Will. Such a clause is strongly indicative of a person’s domicile at the time of death, as the burden of showing a change of intended domicile is often a difficult one to bear.

As such, should a shift towards intention to permanently reside take place in respect of “habitual residence”, there is no reason why a similar approach could not be taken in drafting as is currently taken in respect of domicile. A Court may take note of a person’s declared habitual residence, particularly in borderline cases where habitual residence is unclear, so long as the person has physically resided for a period of time in the country so declared.

Conclusion

The Regulation ought to be welcomed as a necessary unifying measure in multi-jurisdictional succession matters. Practitioners must take note of it when advising clients and drafting Wills if they are to avoid running the risks of claims being brought against them or against the Estate.

Nevertheless, the lack of jurisprudence and firm guidelines with regard to determining “habitual residence” pose a difficult problem for practitioners. We no longer live in a world where people settle in one place for the duration of their lives. In a world where commerce and business is increasingly global, and where people may have multiple residences throughout the world that they frequently move between, something more than physical presence is necessary if the concept of “habitual residence” is to be something other than a smokescreen for judicial discretion.

A businessman may be posted to a branch of the Firm in Stockholm for one year, then Lisbon for the next, before returning to England, where they may spend the next year travelling to and from France for a particular project. Determining habitual residence based on physical presence and duration of time in a country would be incredibly difficult, with no certainty that two different Courts would arrive at the same conclusion.

It may well be that to effectively consider the question of “habitual residence”, a shift away from looking at physical residence in a country and towards an intention to permanently reside in that country is inevitable. If the element of an intention to permanently reside in a country becomes stronger, comparisons between “habitual residence” and “domicile” are irresistible.

After all, can there be any greater connection between a person and a country, than where a person calls that country “home”? The solicitor’s duty when drafting a Will must be to remove as much uncertainty as he can at the time of drafting the Will. As for what happens afterwards; he or she can have little, if any, control of.

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24th August 2015

DISCLAIMER

This note is not a substitute for legal advice. Information may be incorrect or out of date, and may not constitute a definitive or complete statement of the law or the legal market in any area. This note is not intended to constitute advice in any specific situation. You should take legal advice in specific situations. All implied warranties and conditions are excluded, to the maximum extent permitted by law.
With the 2015 Professional Indemnity Insurance (PII) renewal season just behind us, the indications that it would be one of the easiest and most benign renewal seasons we have seen for some time proved to be correct.

The economy is looking healthier, work for solicitors as a whole seems to be picking up, especially in the risky areas of conveyancing and general property work. In turn, we saw a plentiful supply of insurer capacity for PII and even noticed new insurers coming into the marketplace. There were a good number of PII options for Sole Practitioners of all sizes and specialisms.

The issue of PII is not the problem many firms experienced it to be three to five years ago when we were suffering the fall-out from the property crisis and ensuing property crash of the late 2000s. The professional indemnity premiums will always run converse to the economy: when the economy is strong; claims tend to be low. When claims are reducing but Premiums are high, underwriters are attracted into the PII sector providing increased capacity for cover in a classic supply and demand marketplace. As we get over capacity so premiums start to fall and options are plentiful.

So times are good, but what’s the catch? Just at the very time that solicitors are proved pleasantly surprised that obtaining PII might not be the issue they thought it once was, they are getting more work than usual. This increased workflow is when most mistakes are made: the mistakes that will turn into claims in the next four to six years when the economy sees another turn in its cycle. It’s the simple reality that when the economy is weak, claims start to come through.

For example, when the economy takes a downturn, repossessions tend to increase: and it’s the repossessions that are the catalyst of many claims, as lenders seek to enforce a security that they believe they have against the property owner. It is at this point that the spotlight will shine on the solicitors who may not have ensured that registrations with both the land registry and the lender were completed.

The cycle broken down

Solicitors, especially those involved in property, should not be so quick to forget the difficulties they experienced in obtaining good PII cover three to four years ago.

2003 – 2005 was a busy time in the property market. Solicitors were inundated with business which really put them to the test. Mistakes were made.

2007 – 2008 not only saw the property market crash, but also saw a large number of claims beginning to come in. It was a quiet time for business, but errors from 2003 – 5 were coming back to haunt firms.

In 2009 – 2012, as a direct result of this increased claims activity, good PII cover at an achievable price was hard to obtain which really impacted a lot of law firms but Sole Practitioners in particular. And it was down to the busy period the market saw six years prior. So the key message is: fix the roof whilst the sun is still shining. It’s all about doing the job carefully and correctly now, so we don’t see problems in the future. Risk management is never more important than when business is good.

How to go about it

It’s really all about four key things:

1. Systems and process
2. Compliance
3. Checklists and audit
4. File review

These aspects will make sure that the job has been done properly from start to finish. In the property market, perhaps most importantly, during the post completion period after a conveyance, key registrations with both the land registry and the lender must be put in place.

So now is a good time to get good PII deals. This is the opportune time for Sole Practitioners to insure with top rated insurers which perhaps you may have struggled to do in the period of 2009 – 2012. This strong economy is likely to see the same cycle occur again: the mistakes made now, will affect a firm in six or so years’ time; precisely when good cover with a rated insurer will be needed the most and also when it will be the hardest to obtain.

Take your PII cover and Risk Management seriously now, so you can avoid claims in the future and stay with the same “rated” insurer at affordable premiums, through the turbulent times which may hit us in the years ahead.

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www.spg.uk.com
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his article represents a first for me – I have not yet had the privilege of writing for Solo magazine in the 18 months or so since I became Chief Executive of the SRA.

A lot has happened since my first day at the SRA, so I'm delighted to have this opportunity to let you know about a number of developments that affect you. The key event was the launch of our Regulatory Reform programme in May 2014, a programme that will deliver real benefits for you.

The aim of the programme is to make sure that our rules and regulations do not get in the way of firms of all sizes getting on with the business of law, if those rules and regulations add nothing to protecting the interests of their clients.

In removing unnecessary regulation to free up firms to do business, we are also ensuring our protections remain effective for people who use legal services.

Our success in cutting unnecessary bureaucracy can be measured in the 30 plus amendments we have made to our regulations over the past 18 months. One of these amendments affects you directly.

It will not have escaped your notice that practising certificate renewals were slightly different this year. You no longer had to apply for an annual endorsement – it has been replaced with a lifetime authorisation after we made a number of changes that have now been approved by the LSB.

These changes have harmonised and simplified regulatory arrangements. You just had to apply for your Practising Certificate renewal in 2015 as normal, we did not ask you to do any more work.

The change to lifetime authorisation has come about following our consultation on the issue in 2010. Legislative changes were made earlier this year, but the changes to the Solicitors Act 1974 and the Administration of Justice Act 1985 do not come into force until 1 November 2015.

The Government agreed in the spring, and we have worked over the summer to put appropriate rules and guidance and processes in place ahead of the renewals exercise starting on 1 October. The changes to our rules and regulations came into effect on 1 November.

Our reform programme also introduced a commitment to offer dedicated support to small firms. We have previously worked hard to strengthen our relationship with bigger firms, which has been successful. In November last year we promised a shift in focus to provide more help and support for small firms. We've backed this commitment up with a number of initiatives.

“We have created dedicated small firms web pages full of information you might find useful; formed a virtual small firms group to offer advice on new developments; and included a specific small firms option for our Ethics Guidance helpline”

We have created dedicated small firms web pages full of information you might find useful; formed a virtual small firms group to offer advice on new developments; and included a specific small firms option for our Ethics Guidance helpline, which now takes more than ten per cent of the calls we receive for professional advice.

Our latest initiative is the launch of a dedicated support team within our Supervision function. The team has expertise in dealing with issues facing small firms and can offer practical support tailored to your needs to help with regulatory compliance. You can contact the new team via our website. One of the team will call you back within three working days of any inquiry to them.

We are not resting on our laurels, however, and our Board agreed in September to a further raft of changes, which had been consulted on over the summer.

These included a proposal to remove the need for sole practitioners to nominate COLPs and COFAs. We know that many of you fulfil a compliance role yourselves, as you cannot employ anyone else qualified to carry this out. You told us it was a burden, and we have listened.

“We meet regularly with your Sole Practitioner Group representatives to discuss the issues that matter to you and we are open to any of your ideas for change.”

We meet regularly with your Sole Practitioner Group representatives to discuss the issues that matter to you and we are open to any of your ideas for change.

We continue to do more for smaller firms where we can. We meet regularly with your Sole Practitioner Group representatives to discuss the issues that matter to you and we are open to any of your ideas for change. Let me know what you think and we’ll keep you up to date with any other relevant changes through the pages of Solo magazine.

Paul Philip
SRA Chief Executive
We are now entering the third phase of our review of accounts arrangements for those holding client money.

Our review forms part of our Regulatory Reform programme which was launched last May. The programme is all about removing unnecessary rules – reducing the regulatory burden without weakening the protections in place for clients.

In the first phase of the review of accounts arrangements, we removed the need for firms to deliver unqualified reports to the SRA. Also, we removed the need for firms that receive all of their fees from legal aid to obtain reports in the first place.

Next, our Board at its July meeting agreed further changes, relaxing rigid requirements on the preparation of accountants’ reports.

Accountants are now able to use their professional judgement in future to assess if the reports they prepare for solicitors’ practices comply with the Account Rules. They no longer need to qualify accounts for trivial breaches of the rules, but instead can focus on risks to client money.

The exemption from the requirement for lower-risk firms to obtain an accountant’s report introduced in Phase 1 is extended to include firms with an average client balance of less than £10,000 and a maximum account balance of £250,000 over their accounting year.

Revised accountants’ report forms are available for use. All firms whose accounting period ends on or after 1 November need to use them. Draft guidance on the new approach is available on the SRA’s website.

It has been developed through an external working group of key stakeholders which included the Law Society, the Sole Practitioners Group, the City of London Law Society, ICAEW and a number of the individual accountancy firms that had responded to the consultation.

In the third phase our aim is to create a reduced and simpler set of Accounts Rules that focus on core risks to clients’ money. We also want to give greater flexibility in how firms can comply with the rules, minimising unnecessary transitional costs.

This would be achieved without reducing client protection – in fact, we would like to increase it by focusing on key risks rather than over detailed rules. We would ensure that any new arrangements stand the test of time.

As well as re-writing the Accounts Rules themselves we will be reviewing outcomes relating to client money in the Code of Conduct, reviewing the definition of client money, and taking stock of the role of the compliance officer for finance and administration.

You might already know that we consulted in the summer on the possibility of allowing third-parties to hold client money. Again we received useful feedback and this concept will also form part of our deliberations. What we won’t be looking at are compensation arrangements as, like professional indemnity insurance, these are the subject of a separate project.

Crispin Passmore is Executive Director of Policy at the SRA.

We will be very interested in the views of sole practitioners during this time.

We will be very interested in the views of sole practitioners during this time. We published a policy position statement in November to outline details of our thinking. We held a webinar on the subject in the autumn and will meet with key stakeholders to explain our position and garner feedback.

There will be a formal consultation this year on our final proposals. Given your positive contributions to date, we very much welcome your further involvement in this next stage.

Crispin Passmore
SRA Executive Director of Policy
REGULATION ROUND-UP
HANDBOOK CHANGES

Harmonising the way you are authorised is just one of a number of changes included in Version 15 of the Handbook, which went live at the start of November.

A number of other amendments should make it easier for law firms to do business. They include:

- Amendments to the Separate Business Rule that enable solicitors to offer other professional services
- Removing the need for the compliance officers of small firms to apply to be licensed by the SRA
- Streamlining a number of processes for law firms applying to be licensed as alternative business structures, such as the need for the SRA to approve individual managers

- Expanding the exemption for firms to obtain an accountant’s report

The Handbook can be found at www.sra.org.uk/handbook

New routes to qualification

Three new legal apprenticeships have just been approved by the Department of Business, Innovation and Skills (BIS), leading to qualification as a solicitor, paralegal and legal executive.

The solicitor apprenticeship is based on the SRA’s new Statement of Solicitor Competence and will provide an alternative to the usual graduate route to qualification for talented young people who don’t want to bear the cost of going to university to study for a degree and then onto a LPC. The apprenticeship also enables employers to widen their talent pool and develop a flexible workforce aligned to their business needs.

To find out more about apprenticeships, go to: http://www.apprenticeships.gov.uk/.

Quality assurance for criminal advocates

In June 2015, the Supreme Court handed down its judgment on the challenge to the introduction of the Quality Assurance Scheme for Advocates (QASA), dismissing the claimants’ appeal and upholding the scheme as lawful and proportionate.

Further information on implementation will be released in due course.

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NEWS RELEASE FROM
NICHOLAS WOOLF & CO

Nicholas Woolf & Co is delighted to announce that Alberto Costa will be providing the firm with legal consultancy services.

Mr Costa is dually qualified as a practising English and Scottish solicitor and a Scottish Notary Public. He was formerly a government lawyer at the Treasury Solicitor’s Department and later established his own London-based law firm although ceased practicing on his own account as he was recently elected as a Member of Parliament.

Nicholas Woolf, director of Nicholas Woolf & Co, commented, “We are delighted to have Alberto on board as a consultant solicitor. We are a Chancery Lane firm with a broad and often international clientele. Alberto brings a wide experience of the legal market both in England and Scotland which our clients are certain to benefit from.”

Alberto Costa said, “I am very pleased to be associated with Nicholas Woolf & Co. While the majority of my time will always be focused on my responsibilities as MP for South Leicestershire, I look forward to developing the firm’s already substantial expertise in the UK legal market.”

ENDS

Note to editors:

- Nicholas Woolf & Co offers a wide range of bespoke legal services to businesses and private clients.
- The firm was founded by Nicholas Woolf, who was admitted as a solicitor in 1979 and is a member of Resolution and POCLA.
- Alberto Costa is a British Conservative Party politician. He has been the Member of Parliament for South Leicestershire since the May 2015 general election.
- http://www.nicholaswoolf.com
- http://www.albertocosta.org.uk
AS A SOLE PRACTITIONER
ARE YOU CONCERNED
ABOUT THE FUTURE?

Maybe you’re looking to retire or dispose of your practice, or you’re seeking financial security.
We believe we can help.
If you’re interested in a discussion
Call Andrew Marsh on 07710420144 or Email abmarsh63@gmail.com
All discussion is informal but confidential.
I’ve been in the legal profession over 30 years and run my own firm for most of it.
I’m interested in building success for the future.
LONDON LEGAL WALK MONDAY 16TH MAY 2016:
SAVE THE DATE AND GET READY TO
PUT YOUR BEST FOOT FORWARD

The London Legal Walk is an annual fundraising event organised by the London Legal Support Trust, an independent charity that raises funds for free legal services in London & the South East. The Trust supports the provision of specialist legal advice through law centres, advice agencies and citizens advice bureaux by providing them with grant funding alongside other forms of support.

The Trust also receives ad hoc donations from law firms and chambers.

In addition to funding, the Trust also offers its knowledge, contacts and experience of the sector to help agencies become more sustainable.

Next year, SPG plan to sign up as a team to join the 10km Walk, which is being held on the evening of Monday 16th May 2016, and we would love for you to join us. The Walk, which sets off between 5.00pm – 6.30pm and attracts 10,000 walkers, promises to be lots of fun, as well as a real opportunity to raise valuable funds for the cause of access to justice – something in which, as sole practitioners, we all believe strongly. Last year, the Walk successfully raised over £700,000 which directly benefited vulnerable people such as the elderly, families living in poor housing conditions and those with disabilities.

Many charities supporting the vulnerable in our society receive funds raised from the Walk, including the Disability Law Service, Shelter and many local Law Centres and Clinics, to enable them to continue in their valuable work.

The teams taking part in the Walk are diverse including leading Chambers and Law Firms, even the Bank of England, as well as law centres and CAB’s.

We believe that sole practitioners have a strong collective presence to contribute to the day, so if you would like to register as part of the team, please contact our Vice-Chairwoman Kemi Mosaku at kemi@spg.uk.com. We will then provide you with all the information that you need, including details of our sponsorship page. We will also be organising team T-Shirts so it is important that you register with us if you would like to be a part of the day.

www.spg.uk.com
Ian Lithman, our globetrotting Council Member, shares his experience of a trip to India.

Thomson’s Dreamliner was the way I flew and the destination was Goa on the West Coast, a former Portuguese colony. The Dreamliner is reputed to have the greatest leg room of any Economy Class plane and I have to admit it is comfortable to the extent of being almost luxurious but at a budget price.

I had been to Goa before and loved the hotel, the extraordinary three day trip to Kerala in the middle of the two week stay and most of all the food and drink shacks on the beach outside the hotel.

Goa for the holidaymaker is separated into two beach areas, with the airport and the old town in the middle. I have never been to the north part, which is reputed to be somewhat noisy and brash, which on my next visit I must see.

On my first visit, I took a taxi into the old town but found it a bit dilapidated, apart from a few expensive boutiques, and not very interesting but I would expect it has changed since then.

I had previously stayed in the south at the Taj Exotica, when outside on the beach there was only the one shack whereas now there are six. I decided to go back for a second time to the same hotel, as the others in the south did not appeal to me and neither did I want to chance my luck by staying on the north beach.

A meal at the hotel would cost about £25 but at the shacks you would pay about £5 for a cocktail or beer and a garnished seafood dish with a view of the sea.

My first visit to the Taj Exotica was at Christmas and New Year, some 15 years ago, and my second was just before Christmas 2014. That time of year, still being high season, is cheaper than Christmas and New Year.

What had impressed me most of all on the first visit was an instant upgrade to a garden villa at no extra cost and holding the room intact whilst in Kerala for three days. There, my room was on the return exactly as it had been left, cleaned and immaculate with clothes and possessions still in place.

That visit to Kerala was magic! From Goa I flew to Mumbai and then on to Cochin, travelling on by taxi to the landing stage for a rice boat. The boat had two crew, one solely for a 9.9 Mariner outboard engine; being what I had and still have on my 9’ dingy. The other crew member was cook, house maid and butler and very skilled at his job.
The accommodation was a double bedroom and shower in the stern and a lounge with dining area in the prow, which at night was the crew's sleeping accommodation. The boat cruised the narrow canals for three days and stopped over for one night of the three at a heritage island on the lake shore.

The excursion was well worth while, despite the plane arriving late into Mumbai, so missing the connection, and having an overnight stay near the airport in a Leila Group 5* hotel at the airline's expense.

I had always wanted to visit Rajastan but was put off by the fact that the car journeys between places of interest usually took 6 hours. On my second visit I decided to choose only one place in Rajastan and that was Udaipur. However the travelling even by air lost one whole day out and half a day back, being shorter due to having got up at 3am despite having paid an exorbitant amount for the hotel night stay.

Udaipur is famous for having the first man-made lake which is oblong in shape. On one long shore is the Maharaja's palace and opposite on the other shore was the Oberoi hotel where I stayed. In the middle of the lake were two hotels, each on an island, the Taj Palace (famous for the James Bond film) and the Leila with a restaurant on the third island.

The town was small and busy with motor bikes and pedestrians mixed together as there were no pavements. The town had a market and small shops but was not in good condition and did not seem to have many places to eat or to stay at budget prices.

The main attraction for tourists, apart from the three very very expensive 5* hotels, was the Maharaja's palace which I visited and because of its size, maze of rooms, corridors, winding staircases and low thresholds occupied some three hours with an entrance fee of just over £1.

It is definitely not to be missed especially because it has toilets (always take your own paper) and cafes.

Maybe someone can tell me how it came to pass that in India the toilets have only a hand held shower hose but no paper or hot air dryer; there must be a history to this phenomena!
Index Property Information are a National Search Provider of all residential and commercial conveyancing searches and reports. They have a network of local regional offices throughout England and Wales. Their central ethos is based on exceptionally high service, over and above that usually offered by other providers. They have been specifically selected for SPG preferred status due to their commitment to this ethos and their ability to provide local solicitors with a completely bespoke service. We believe this will be of specific benefit to Sole Practitioners.

Anne Lucking
Index Managing Director explains
"Index is the fastest growing Conveyancing Search Provider in the UK, and we have achieved this by our commitment to local offices, run by local people which enables us to provide what we believe to be a service next to none. We are extremely pleased to have been chosen by the SPG to represent Sole Practitioners as your preferred provider as we believe our business ethos is very much in line with Sole Practitioners."

"My father was a Sole Practitioner and I worked for him as a conveyancer, so I understand the problems and issues that Sole Practitioners face day to day. The most important part of our business is you, the solicitor, so we tailor our service to your specific needs and provide you with levels of service that will save time and money"

Our commitment to the SPG:

• Support the SPG financially.

• Provide special discounted rates to Sole Practitioners.

• Sponsor and exhibit at the SPG Annual Conference.

• Support SPG regional meetings with free venues and speakers.

• Organise and fund topical CPD events nationally on behalf of SPG members.

To find out more call us on 01206 27
Supporting Sole Practitioners

Anne Lucking, Index Managing Director explains, “Index is the fastest growing Conveyancing Search Provider in the UK, and we have achieved this by our commitment to local offices, run by local people which enables us to provide what we believe to be a service next to none. We are extremely pleased to have been chosen by the SPG to represent Sole Practitioners as your preferred provider as we believe our business ethos is very much in line with Sole Practitioners.”

“My father was a Sole Practitioner and I worked for him as a conveyancer, so I understand the problems and issues that Sole Practitioners face day to day. The most important part of our business is you, the solicitor, so we tailor our service to your specific needs and provide you with levels of service that will save time and money.”

“Technology is a tool to be embraced but in the end you have to engage with people.”

searches and reports. They have a network of local regional offices throughout England and Wales. Their central ethos is based on exceptionally high service, over and above that usually offered by other providers. They have been specifically selected for SPG preferred status due to their commitment to this ethos and their ability to provide local solicitors with a completely bespoke service. We believe this will be of specific benefit to Sole Practitioners.

To find out more call us on 01206 273776 or email askus@indexpi.co.uk

www.indexpi.co.uk
A key factor in allowing us to maintain this position is our participation in the Lender Exchange scheme. Lender Exchange allows us to meet our regulatory obligations by ensuring that we have access to detailed information about our panel firms which is accurate, regularly updated, and verified by other sources where possible.

It is therefore a condition of panel membership that all our panel firms are required to provide the information we need to manage our Panel by means of this system.

We also believe the Lender Exchange solution enables us to maintain stronger assurance around our Panel which benefits both Lloyds Banking Group and its customers. The scheme has received strong support from the Council of Mortgage Lenders membership and we are confident the scheme will continue to present a more efficient way of managing our Panel without the need for us to introduce our own panel membership fee.

I hope that this information clarifies the Banks policy about Sole Practitioners however, I would be happy to discuss this further in person if you would like to get involved with the lobbying group.

Kind regards

Paul McCluskey
Head of Professional Practices
Regional Representative Contacts and Forthcoming Meetings

BIRMINGHAM/WEST MIDLANDS

Jimmy Ogunshakin – Mayflower Solicitors
2 Gatsby Court, 170 Holliday Street, Birmingham, B1 1TJ
Tel: 0845 233 0003 Email: jimmy@mayflowersolicitors.com
Thursday, 21 January 2016 – 7:00 pm at the offices of Mayflower Solicitors
Thursday, 24 March 2016 – 7:00 pm at the offices of Mayflower Solicitors

BOURNEMOUTH

Lauren Annicchiarico – French Law Matters
Suite 1, First Floor, Richmond House, Richmond Hill, Bournemouth, BH2 6EZ
Tel: 01202 355480 Email: lauren@frenchlawmatters.co.uk

BRISTOL

Stephanie Pritchett – Pritchetts
The Moat, 1a Rosery Close, Westbury-on-Trym, Bristol, BS9 3H
Tel: 0117 307 0266 Email: info@pritchettslaw.com or stephanie@pritchettslaw.com
Wednesday 20th January 2016

People should contact Jennifer Renney our BSPG Events and Membership Co-Ordinator at: employment@renneyandco.com to apply for membership (£20 per calendar year) and to sign up for events (then free). Details of the Venue for meetings will then be circulated to all members prior to the meetings.

EAST MIDLANDS

Tina Attenborough – Attenborough Law
Hawthorns, The Close, Derby, DE22 2AD
Tel: 01332 558 508 Email: admin@attenboroughlaw.co.uk

24th February 2016 5pm – 7pm followed by drinks in the bar – Yew Lodge Hotel, 33 Packington Hill, Kegworth, Derby, DE74 2DF
24th May 2016 5pm – 7pm followed by drinks in the bar – venue TBC, please contact Tina for more details.
24th August 2016 5pm – 7pm followed by drinks in the bar – Simpson Solicitor’s Board Room and Severn Restaurant
25th October 2016 6pm – 7pm followed by drinks in the bar – venue TBC, please contact Tina for details.
7th December 2016 5pm – 7pm followed by drinks in the bar – venue TBC, please contact Tina for details.

Regional meetings provide an opportunity for SPs to network and support each other, obtain valuable training and development and cross-refer business to trusted colleagues. In the challenging times that we are facing it is even more important for SPs to meet and discuss how they can use their unique skills to provide effective competition to larger organizations.

Regional Groups

SPG has a number of regional SP groups around the country and details of all SPG Regional Representatives and any forthcoming regional meetings are given below. These details can also be found on our website at www.spg.uk.com.

If you are interested in attending a regional meeting in your area, then please contact your nearest Regional Representative for further information about the next meeting.
If you are interested in setting up a Regional Group within your own area, please contact Hilary Underwood SPG Co-ordinator at info@spg.uk.com as she will be able to assist you with the initial mail shots, expenses, venue and speaker.
HAMPSHIRE/DORSET/WILTSHIRE
Kirsten Woodgate – Woodgate & Co
95-95 Palmerston Road, Southsea, Portsmouth, Hants, PO5 3PR
Tel: 02392 835790 Email: Kwoodgate@woodgateandco.co.uk

KENT
Hilary Underwood – H A Underwood Solicitors
Underwood House, 32 Broadway, Sheerness, Kent, ME12 1TP
Tel: 01795 663555 Email: info@spg.uk.com

LONDON CENTRAL/ESSEX
Shak Inayat – Penn Group
St Mary Le Bow House, 54 Bow Lane, London EC4M 9DJ
Tel: 03333 444548 Email: shak.inayat@penngroup.co.uk

Wednesday 20th January 2016
Wednesday 17th February 2016
Wednesday 23rd March 2016
Wednesday 20th April 2016
Wednesday 18th May 2016

NORTH WEST
Gareth Williams – GHW Solicitors
19 Bolton Street, Ramsbottom, BL10 9HU
Tel: 01706 827042 Email: gareth.williams@ghwsolicitors.co.uk

SURREY
Margaret A. Ilori – Capulet Solicitors
Link House, 140 The Broadway, Tolworth, Surrey KT6 7HT
Tel: 0208 397 6949 Email: Margaret@capuletsolicitors.co.uk

SUSSEX
Martin Ross
61 Church Road, Hove, East Sussex, BN3 2BP
Tel: 01273 726951

YORKSHIRE
Angela Davies – A M Davies
Reynard Crag, Reynard Crag Lane, High Birstwith, Harrogate, North Yorkshire, HG3 2JQ
Tel: 01423 772860

or
Rachel Roche – Roche Legal Ltd
3 Westfield House, Millfield Lane, York, North Yorkshire, YO26 6GA
Tel: 01347 844046

or
Fiona Gillam – My Compliance Colleague
10 Pecketts Holt, Harrogate, North Yorkshire, HG1 3DY
Tel: 0757 079 3728
Cybercrime is a growing problem which is becoming an increasing challenge for all businesses and law firms are not immune to cyber risk.

Firms of all sizes are being targeted by cybercriminals because they consider their systems to be unsophisticated and the information stored and monies held on account to be extremely valuable. Due to the subtlety of cybercriminals some firms may be unaware that they have been the victim of a cyber-attack. Whilst the number of cybercrime related breaches has slightly decreased, the scale and costs associated with having a breach has increased.

It is essential that law firms comply with both their regulatory and legislative obligations and take the necessary steps to protect themselves and their clients. Minimising exposure from the threat of a cyber-attack and ensuring that effective policies and procedures are in place to deal with cyber security is a must for all. Ensuring that all staff receive appropriate training and raising general awareness of the risk, is in our opinion, vital.

WHAT ARE THE RISKS

Risks of cybercrime include but are not limited to:

- Risks to client money and assets
- Breaches of confidential information
- Structure and financial instability
- Business continuity
- Bogus firms
- Reputational damage

CYBER AND THE SRA CODE OF CONDUCT 2011

In accordance with Principle 8 of the SRA Principles (“the Principles”) and the SRA Code of Conduct 2011 (“the Code”) law firms need to consider the risks to their business and their clients from cybercrime. Conducting risk assessments will help firms to identify, assess and understand the likelihood of a cyber-attack happening against the firm and the impact any such attack would have on their business and clients.

- In addition to good risk management principles, firms also have a duty to protect ‘client money and assets’ (Principle 10), and cybercrime presents a significant risk to client money and assets as client accounts are very attractive to cybercriminals.

- Firms also need to take into account the risks of keeping their clients affairs confidential (Outcome 4.1). Cybercriminals consider the information held by law firms on their clients to be very valuable, so ensure effective measures are in place to prevent confidential information being breached. The damage to a law firm’s reputation needs to be considered should any personal and sensitive information that clients have entrusted with the firm be breached.

- Firms need to bear in mind the financial and structural implications of a cyber-attack. If systems are down as a result of a virus, this may lead to a significant disruption to the business and the service provided to clients, and as a consequence the firm may suffer a loss in revenue that may result in financial instability. Data can also be ‘taken hostage’ as a result of a cyber-attack and ransom monies requested by the cybercriminals to release the data.
Firms must be alive to their regulatory obligations under Principle 8, Outcome 7.4 in respect of financial instability and Indicative Behaviour 7.3 in relation to business continuity.

Do not forget the reporting obligations under Outcome 10.3 if the firm is the subject of a cyber-attack and is unable to achieve compliance with the Code.

HOW TO MITIGATE THE RISKS OF CYBERCRIME

ALL LAW FIRMS SHOULD ASK THE FOLLOWING QUESTIONS:

- How secure are my computer systems?
- Could we become a victim of a cyber-attack?
- Would our systems withstand a cyber-attack?
- How should we mitigate risk and minimise our exposure?

FIRMS SHOULD:

- Carry out risk assessments
- Review current policies and procedures to check their efficacy
- Check operating systems, browsers, anti-virus/malware software and firewalls are up to date
- Control access by using strong passwords (do not share) and limit number of failed login attempts
- Frequently backup systems
- Limit use of flash drives (USB sticks) and other forms of unencrypted portable media
- Be mindful and reduce the amount of sensitive information sent in email attachments
- Consider the use of encryption on removal media/portable devices
- Block access to inappropriate sites
- Revoke access rights to staff that have left the firm and close unused accounts
- Train all staff in the dangers of cyber and in the correct procedures to mitigate risk

HAVING CONSIDERED THE ABOVE, HOW ROBUST ARE YOUR SYSTEMS AND WHEN WERE THEY LAST REVIEWED?

- Do your policies and procedures actually include provisions to deal with cyber risk?
- Does your business continuity plan incorporate procedures for dealing with business disruption as a result of a cyber-attack?

How secure is your data? Is there a risk of client confidential information or your sensitive business information being exposed?

CYBER-ATLAS – A CYBER SECURITY RISK MANAGEMENT TOOL KIT

You may wish to consider enhancing your policies and procedures by including a cyber security tool kit called Cyber-Atlas which provides law firms of all sizes with a cyber risk management and security solution.

Cyber-Atlas offers an on-line risk assessment of your systems identifying any areas of exposure and weakness. In addition you will have access to tools and advice about cyber risk, achieve a recognised cyber security accreditation which will demonstrate to your clients and suppliers that you have attained a recognised cyber security standard and you will also have access to other services which will assist with cyber risk issues such as an incident response service and cyber insurance.

By taking these effective measures you should be able to protect yourself and your clients by minimising your cyber risk exposure and also satisfy the requirements of the Principles and the Code.

For further information please contact:

Richard Brown
T: +44 20 3193 9442
E: Richard.Brown@willis.com

Kate Cooper
T: +44 (0)113 283 2970
E: Kate.Cooper@willis.com

Scott Thorne
T: +44 (0) 20 3193 9407
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Willis Limited
The Willis Building
51 Lime Street
London EC3M 7DQ
www.cyber-atlas.com
www.willisfinexglobal.com
CYBER FRAUD ALERT

Over the last 12 months we at RPC have seen a large number of cyber-attacks by increasingly sophisticated fraudsters on solicitors’ and licensed conveyancers’ client and office accounts with substantial sums of money being taken. Typically, the fraud works like this:

- You receive a telephone call (usually a Friday) purportedly from your Bank’s Fraud Unit asking for the Head of Finance/Head Cashier by name.

- This person says that they are concerned about possible suspicious activity and provides information about genuine transactions from your client account which you confirm. This gains your trust.

- Then they refer to the suspect transactions. You agree that they are nothing to do with your firm and the person says they will not be processed. These are fictitious.

- You are told your account is frozen whilst an investigation is undertaken. However, you are asked if any payments need to be made that day and if so that person will do them for you.

- Having gained your trust, if urgent payments are to be made, you unwittingly hand over the online security access pin and security number which gives access to the client account.

The fraudsters often gain confidential banking information via spam emails that someone at the firm inadvertently opens. Another variation involves the interception of emails between a solicitor and client and the raising of bogus invoices by the fraudster diverting funds from the client.

Any unauthorised payments from a solicitors’ client account are a breach of the Solicitors Accounts Rules with potentially dire consequences from a regulatory, insurance and personal viewpoint.

To avoid being a victim of this fraud:

- Never give any access or security information to anyone over the telephone or in an email no matter how genuine they sound. Banks have all the information they need and will not ask you for it.

- If you receive such a call ask for a name, contact number and email address and that you will call that person back. Then contact your own Bank relationship manager and seek to verify the details you have been given. Only proceed when you are totally satisfied.

- Use a dedicated computer for online banking with a dedicated IP address. The Bank is authorised only to act upon instructions received from that IP address.

If you are a victim of any fraud immediately contact:

- Your Bank
- The Police
- Your brokers/Insurers
 USAGE AND ABUSAGE OF DROPBOX - SENSIBLE, SECURE-ALTERNATIVES TO INSECURE DROPBOX

Dropbox is a convenient tool to allow individuals to make use of cloud storage and synchronised file transfers on the web. It is increasingly being adopted by businesses, including some in the legal community, because it is so convenient, works very straight-forwardly and is really easy to set up. What’s not to like? - Data Integrity and security!

WHAT’S THE PROBLEM?

Dropbox doesn’t encrypt files well: meaning that the data and information stored in Dropbox is open to manipulation, alteration and theft. What does this mean?

In order to understand the problem better, we need to reflect on how encryption of cloud services should work in pursuit of privacy at the levels your organisation needs.

1. Cloud storage services need to establish strong encryption keys applied to files when they are downloaded and installed. The service should provide the ability to encrypt these keys with a private (user-only known) encryption password.
2. When your files are encrypted on your device with an encryption key, you can send them over the Internet to the cloud storage computer using a trusted connection called SSL/TLS connection.
3. When the file gets to the cloud computer, files should again be stored with an acknowledged high level of encryption (called 256 AES Encryption Methodology) which means the receiving computer locks your file with a key that has 256 computer characters.

An application that provides all three will be pretty secure and you can have confidence in using it. The BIG PROBLEM WITH DROPBOX is that it only does the first 2.

So it’s not as secure as it needs to be and its very popularity adds to the concern. Because Dropbox works really easily with other programs, it is susceptible to attacks from hackers using this approach route to try to expose files and passwords.

SOLUTIONS TAKE TWO FORMS. The first group is taking additional solutions sometimes called Cloud Lockers that work with Dropbox; the second solution is to dump Dropbox and use alternative cloud storage and file synchronising applications that protect files properly, i.e. by ticking all three of the boxes.

Cloud Locker type solutions have the advantage of meaning you can still use Dropbox but also be provided with an additional security layer around it. The downside is that you have to embrace the additional effort/complexity of encrypting your most important files. There are three versions of this product which you may wish to consider:
1. Boxcryptor
2. CloudFogger
3. Vivo

Alternative applications have the advantage of doing the security right the first time, but the downside is that you have to dump Dropbox. Examples of these applications which you may wish to consider looking at include:
1. Spider Oak for smaller firms and individuals
2. Tresorit for more complex firms
3. Teamdrive for more complex firms European centric

For most small firms, and individuals, combined use of Dropbox and Boxcryptor may prove to be enough. For more complex firms, a discrete alternative app is more likely to be an appropriate response.

CONTACT

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Email: Colin.S.Taylor@willis.com
Reflections on the recent visit of SPG’s Chairman, Sukhjit Ahluwalia, to Bonnie Scotland where he met with sole practitioners who had gathered from the Highlands and the Lowlands to meet in Stirling for the Law Society of Scotland’s Sole and High Street Practitioners Conference.

Scotland is known as the land of the brave and the free, and that is certainly a good description of the 30 – 40 sole practitioners who met together in Stirling to attend the Law Society of Scotland’s Sole and High Street Practitioners Conference on Saturday 18th September 2015. The conference was held in the Stirling Court Hotel, situated at the foot of the William Wallace Monument, an apt location for a conference celebrating the freedom and bravery of sole practitioners who fiercely believe in justice and the face-to-face delivery of high quality legal services despite what sometimes feels like the rising tide of the "big guys".

Scotland’s geography meant that many had come from far and wide to spend their Saturday listening to sessions on billing pitfalls, online business generation strategies, winning and growing your business, exit strategies and financial challenges and opportunities.

The Conference offered a unique opportunity to share with Scottish sole practitioners some of the challenges that sole practitioners in England and Wales have faced over the past few years and to offer them positive encouragement that they, just like us, can weather the storms of change as the Scottish legal landscape increasingly begins to mirror our own.

Like all the greatest meetings of the minds, there was as much to be learned as there was to give and it was clear that Scottish sole practitioners are lacking nothing when it comes to being business savvy and innovative in their practices. Social media and marketing are high on the agenda and there was no shortage of ideas about how to grow a practice, no matter how rural it may be.

The Scots are as passionate as us about access to justice and they are just as determined as we are to hold their own in spite of the widening of the market. It was encouraging to hear Christine McLintock, President of the Law Society of Scotland, address delegates with a positive message about all that the Law Society are doing to support them in a changing marketplace and there was further opportunity to discuss this over a lunch meeting with Christine the following day.

It was also fascinating to discover that there are lots of Scottish sole practitioners practising down south here with us, many of them in London and we hope that we can develop lots of opportunities to continue to share with, learn from and support one another over the coming months.
THE EVER CHANGING WORLD OF COSTS

She was a Deputy for 30 years and she is the first female Costs Judge to be appointed. Further two new extra Costs Officers will be appointed shortly. This is in part to reduce the current waiting list for costs hearing which is currently 6 to 10 months. Most of the Masters are currently listing cases from April 2016 onwards however Master Gordon-Saker is actually listing matters as late as March 2017.

By now many will know that the new format Bill of Costs has been released and is being used in a voluntary pilot scheme at the SCCO which is to run until October 2016 (after which there will be a mandatory pilot scheme). The pilot applies to Bills where costs proceedings where commenced post 1st October 2015 and a costs case management order is in place. For further information see CPR Practice Direction 51L.

The new Bill of Costs is essentially a spreadsheet with 60 columns which is meant to be automatically populated as long as you record your time in accordance with the dreaded “J Codes”.

J Codes mean that you know not only need to prepare notes for how you have spent your time but must also code them by phase, task and activity. In the same vein all your disbursements will need to be coded in accordance with “X Codes”.

The most worrying aspect is the fact that application of J Codes to your work is retrospective. In other words once the pilot is mandatory all those that need to submit bills for assessment to the SCCO will need to go back through their files and codify all their work in accordance with the J Codes. This will be a very time consuming task which will have to be either done by the fee earner or outsourced to a Costs Lawyer.

The important point to take away is that all firms must ensure that going forward they have case management systems which have the ability to record time in accordance with the J Codes otherwise they are likely to go to great expense to prepare Bills and in all likelihood will not be able to recover the cost of the same in the long term.

Interestingly Master Gordon-Saker did say that if people filed the new format Bill of Costs it was highly likely they would get a much earlier hearing date. In relation to the costs hearing the idea is that the Master will have a large screen facing him on which he amends the Bill electronically whilst there is a secondary screen facing the advocates where they can see what the Master is actually changing.

I now turn to the proposal of applying fixed fees to noise induced claims and

James is the Managing Partner of Elite Law Solicitors, The Solicitors Who Specialise In Costs. He began his professional career as a Costs Draftsman in 2001 and later qualified as a Solicitor, working for McMillan Williams (MW) as the Head of the Costs Department and subsequently as Head of Revenue Generation. Whilst at MW James was responsible for supervising costs aspects relating to all fee earners practicing in the areas of personal injury, clinical negligence, family, civil and professional negligence. James was also part of the management team that dealt with MW’s expansion from a small high street practice to a practice employing over 250 staff over 16 branches.

There have been a number of changes related to costs since 1st October 2015. No doubt too many to go through fully but here are some of the highlights.

As many will be aware most costs assessment take place in the Senior Courts Costs Office inside the High Court of Justice. Master Gordon-Saker (Senior Costs Master) attended a conference on 30th September 2015 where he confirmed that five of the eight Costs Judges at the SCCO will retire in the next 5 years and will be replaced by new Judges. Jennifer James has been appointed as a new Costs Judge.

“...many Solicitors will need to think ahead and plan for some of these changes, whether they would like to or not.”
very complex and often costs exceed damages. If such a matrix were to be used it would undoubtedly lead to many potential Claimants being unable to access justice.

As a further point it should also be noted that the Government and the insurers are also looking at capping ATE policy premiums for clinical negligence claims.

Turning to cases involving minors Part 21 of the CPR was changed earlier this year for those of you do not know. Rule 21.12 changed in that it now allows the Court to summarily assess costs at approval hearings where damages are less than £25,000. This means they can assess the success fee and the ATE premium.

An example of the rule change in action can be seen in the case of (1) A (2) M –v- Royal Mail Group [2015] CC (Birmingham) 14/08/15. In this case the Judge ruled that a 100% success fee was unreasonable despite the 25% cap imposed in clinical negligence cases. Liability was admitted. He also questioned the need for ATE. He criticised the lack of a bespoke risk assessment. He eventually ordered the Detailed Assessment. There is anecdotal evidence that there have been a number of these cases over the country, some of which are actually being appealed where literally all the DJS are disallowing success fees in cases involving minors at infant approval hearings.

In relation to mediation the recent case of Laporte v Commissioner of the Police of the Metropolis [2015] is of particular significance. This case is very recent and essentially will put you in a position to understand what costs consequences apply where mediation is refused. In summary even if you win at trial and you failed to mediate the presiding Judge can make an Order for costs that is disadvantageous. This did happen in Laporte where the case did go to trial, they did win but because they refused mediation the Judge made a percentage reduction to the overall potential award for costs.

In this regard it is important to note that as of 1st October 2015 there has been a CPR rule change that is encouraging ‘early neutral evaluation’. This is a type of mediation that is actually administered by the Court. Interestingly there is no requirement for the parties to agree to it, the Judge can just order it.

Finally I turn to costs in the Court of Protection. There has been an important change to Court of Protection claims as of the 1st October 2015 whereby costs estimates now have to be provided when the annual report is completed and will have to accompany any Bill submitted for assessment at the SCCO. The format of the estimate will follow the old Form H.

The above changes to current costs practice is merely a brief summary and many more are afoot. No doubt many Solicitors will need to think ahead and plan for some of these changes, whether they would like to or not.

James Scozzi
Elite Law Solicitors
The Solicitors Who Specialise in Costs
INHERITANCE TAX PLANNING

Mark Green looks at Inheritance Tax Planning: Discounted gift trusts were once the lucrative preserve of life assurance companies but now sole practitioners can use them as an opportunity for new work.

INHERITANCE TAX PLANNING

Mark Green is Managing Director of I-Tax Solutions Ltd and he has worked in the field of taxation for over 30 years. He started his career with the Inland Revenue and later moved into the financial services sector, spending twenty years working for a number of well-known life assurance companies in senior tax roles, including Head of Tax and Estate Planning at Legal & General. He was instrumental in arranging the financing for the Eversden case to be successfully heard before the High Court and Court of Appeal. He also spent many years sitting on the Association of British Insurers committee dealing with tax changes affecting trusts and life assurance products and was frequently involved in HMRC working groups as well as meetings with the Treasury.

For the past two years he has been an independent tax and trust specialist working on his own account for clients, who range from individuals to a high street bank, and has developed a suite of inheritance tax planning solutions for clients who want to retain access to income from equities or let properties.

Many clients have built up significant savings and investments throughout their lifetime and now retired use their savings and investments to supplement their income. So the thought of completely giving away their wealth to their children to save IHT, and enjoy no further benefit from it, is just not feasible.

This is where the Discounted Gift Trust (or DGT as it is commonly referred to) can provide real advantages for older clients – it allows them not only the ability to make a transfer of value for IHT purposes which will fall out of account but also allows them to receive regular fixed payments from the trust during their lifetime – which they can use to supplement their income.

How does a DGT work?

When the client, as the settlor of the discretionary DGT, establishes it, he or she must choose the trustees who will administer the trust and, although the settlor will normally be one of the trustees, it is a good idea for a professional trustee to be appointed. The settlor will also choose the beneficiaries, for example, the settlor’s spouse, children, grandchildren etc. and the trusts from which they will benefit.

When the trust is being established, the settlor will need to choose the level of regular fixed cash payments he or she will receive from the trust – this is referred to as the settlor’s retained rights. For example, the settlor may specify a cash amount of £20,000 each year.

The settlor must also choose the dates in the future when these cash payments will be made by the trustees. For example, the settlor may specify that the cash amount of £20,000 will be paid from May 2016 and on every subsequent May thereafter until either the settlor’s death or the trust fund becomes exhausted, whichever event occurs first.

The settlor can only receive a payment if he or she is alive on those dates.

What is the gift?

The transfer into the DGT comprises two elements: the ‘discount’ and the ‘discounted gift’. The ‘discount’ is the actuarial value of the settlor’s retained rights based on the settlor’s life expectancy and is ascertained by underwriting. The major advantage with DGTs is that the value of the settlor’s retained rights will be immediately outside the settlor’s estate for IHT and importantly on the settlor’s death the retained rights will have no value for IHT purposes.

For example, let’s assume £400,000 has been transferred into a DGT and a cash amount of £20,000 a year will be paid to the settlor. The discount for a sixty year old settlor in good health would be around £281,676 and the discounted gift would be £118,324.

Therefore, the discount of over £281,000 will fall outside the settlor’s estate for IHT immediately with the discounted gift amount falling outside the estate after seven years.

Traditional packaged solutions

Life assurance companies developed the DGT as a packaged IHT planning solution comprising a draft trust deed, an insurance product (normally an offshore investment bond) into which
the trustees will invest and other services such as underwriting. These solutions were marketed on the basis of the trust providing the IHT savings for the client while the offshore investment bond provided income tax savings by way of deferring the tax charge until the encashment of the bond after the settlor’s death. But as an offshore bond is an investment product then investment advice by a regulated person is required. Unfortunately, the need for investment advice was so closely entwined with the legal and tax advice as to preclude many solicitors from the advice process.

That position has now changed because the offshore investment bond is no longer as tax efficient for trustees of a DGT to hold compared with collective investments such as OEICs and unit trusts, for the majority of older clients. The reason for this is very simple – income tax rates have increased while capital gains tax (CGT) rates have decreased.

Offshore investment bond ‘gains’ (which comprise both income and capital growth) are fully subject to income tax on encashment of the bond. Dividend income received from collective investments is subject to income tax as it arises (i.e. there is no deferment of the tax) but the trustees basic rate tax liability on the dividend income is met by the 10% tax credit attached to it. This is a significant tax advantage for collective investments and an advantage not available to offshore investment bonds. Even with the proposed changes to dividend tax credits in 2016, collective investments should still have the advantage over offshore investment bonds.

In addition, the shares of the collective investment can be sold by the trustees during the settlor’s lifetime and any capital gains arising from the disposal of these shares are subject to CGT. A trust also has its own CGT annual exemption which can be utilised each tax year to strip out capital gains from collective investments but cannot be used with offshore investment bonds which are only subject to income tax.

The fact that the trustees pay income tax and CGT during the settlor’s lifetime usually is more than outweighed by the advantage of paying significantly less tax overall and avoiding this potentially large income tax claw back charge when the bond is eventually encashed.

**Independently packaged solutions**

Life assurance companies still market packaged DGTs with offshore investment bonds, even though the tax efficiency of the bond has significantly reduced, but nowadays there is a little more choice for both clients and advisers.

There are now some independent companies, such as ourselves, who are offering packaged DGTs but without pre-selected investments for the trust. They provide a trust deed settled by Counsel and other services, such as underwriting, but do not give legal and tax advice directly to the client or provide investment advice. Instead the investment advice is given by an appropriate investment adviser appointed by the trustees once the trust has been established.

In this way the solicitor can provide the legal and tax advice to their clients who want to set up a DGT. The settlor’s own investment advisers could be instructed by the trustees, as could the settlor’s accountants to produce trust accounts and tax returns. The legal, tax and other advice that was so closely entwined with the investment advice in the packaged DGT solution offered by life assurance companies has been separated out with the new independently packaged arrangements.

**How do HMRC approach DGTs?**

The potential IHT planning benefits of DGTs for clients is obvious. But are they too good to be true at a time when the Government wants to clamp down on tax avoidance considered to be abusive? Fortunately, DGTs are well known to HMRC and are not considered by them to be abusive. The UK anti-avoidance tax legislation simply does not apply to them. One reason for this is their inflexibility once they have been set up, because neither the settlor nor the trustees can increase the settlor’s cash payments once they have been fixed at the outset and they cannot bring forward the dates in the future when the payments will be made to the settlor. Therefore, DGTs have been considered by HMRC to be acceptable tax planning.

**An opportunity for new work**

For solicitors faced with an older client who would benefit from lifetime IHT planning but who need their savings and investments to supplement their income, the independently packaged discretionary DGTs are a potential solution and one that allows the solicitor to provide the legal and tax advice to their client, whilst handing the other services required to set up and administer a DGT to other specialists.

**Mark Green BA, LL.M, ATT, TEP, FPFS**

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Talking to the SRA

— there are approximately 300 of them registered at present. The idea was they would create a kind of one-stop shop but that has not happened. Elsewhere it has been reported that the cost of legal services have not come down as a result of ABS which is what its creators intended. This has somewhat vindicated the submissions made by our Committee at the time ABS’s were introduced.

The SRA are to make some changes to the rules relating to Multi-Disciplinary Partnerships – I think probably this is a result of the lack of “market value” of ABS and the fact that many professional firms now seem to successfully operate as MDP’s which is possibly a more comfortable way for professional people to operate.

The new CEO, Paul Philip, is looking at a three year strategy on equality and diversity; the thinking behind this is to try and create a solicitors profession which is less hide bound by traditional attitudes and more accurately reflects characteristics of society which is seeking equality and diversity as a general objective. We pointed out that implementation of this with an SP’s business is quite difficult because of the severe commercial constraints upon an SP’s practice as numbers and characteristics of staff are likely to be severely limited. One might indeed well ask why this is relevant to an SP practice (bearing in mind the majority of SPs do not have enough staff to be diverse) but the object of the exercise (which I understand has been initiated by the Legal Services Board) is to create a profession which is more diverse and reflects society as a whole. It is not clear how the SRA expect to action any conclusions on the outcome of the diversity survey that we all completed recently.

Another twinkle in the SRA’s eye is to get solicitors firms into modern thinking and to encourage the profession by one means or another to have a business plan for each Practice. We highlighted the problem of SPs setting up with limited experience in this field and the handicap of not having previous “trading history” which would furnish ideas and statistics for creating a business plan. We hope as a result of our discussion that the special position of SPs (especially new ones) will be examined more closely (as for myself, when I started as an SP, I had no business plan whatsoever). We have had discussions with them as to a scheme of mentoring for new SPs needing guidance on starting up.

“...the SRA have now introduced a one-off authorisation for an SP’s practice which will remain good for the rest of the lifetime of that Practice.”
We are pleased that, following our discussions about simplifying the PC renewals procedure, the SRA have now introduced a one-off authorisation for an SP's practice which will remain good for the rest of the lifetime of that Practice.

At our 20th Annual Conference on 8th/10th May 2015 we were pleased to welcome as a speaker Richard Collins who is SRA Executive Director for Policy, Standards, Strategy, and Research. I have known Richard for a number of years and found him empathetic to issues concerning SPs. Richard spoke about the SRAs current programme to create regulatory support for small firms and sole practitioners in a way which is supportive instead of heavy-handed. At the most recent meeting we had with our small group with the SRA we spent some time discussing that. There will be changes to the way small practitioners are authorised being brought in November 2015. There is information about this on the SRA website. They are putting in place a dedicated team for SPs as they recognise that the running of an SPs office is very different from that of multi-partner firms.

Another matter we have discussed with the SRA is its consultation on consumer credit regulation applicable to credit activity engendered by solicitors. The SPG National Executive filed a response to their consultation paper.

The SRA are engaged currently in revision of their Handbook. A revised version was recently published in April 2015.

It appears that QASA is still in the melting pot. Although the objectors to the SRA's proposals did not win their case at the Supreme Court it has given the SRA people some food for thought and they are reviewing the scheme.

At our recent meeting I again raised my pet hobby-horse of having a single application form for professional indemnity insurance renewal so that the categories of work undertaken listed on the SRA form are the same as that as presented to underwriters. The SRA continue to think that it is not feasible because underwriters wish to be able to draft their forms in individual ways.

"....the SRA are very keen that people should have procedures in place for provide for incisive management in the event of an SP becoming incapable..."

We have also spent some time on discussing with them provisions for running SPs Practices or closing them where the SP become incapable of running their affairs. This is a sensitive area and the SRA are very keen that people should have procedures in place to provide for incisive management in the event of an SP becoming incapable so as to avoid the SRA having to take the fall-back position of an intervention, The distilled wisdom from our discussions (currently) is that the SRA do not appear to have strong views as to where the manager of an SPs Practice comes from but the person in charge of the management must be a solicitor with a current practising certificate. For example, this person could be a locum or could be an employee of the SP or a relative etc. It would be necessary to secure recognition of this person as a COLP and/or COFA. Guidance on this is provided in Chapter 7 of the SRA Handbook. If a particular problem arises SPs are invited to contact the Head of Ethics Guidance. It is however wise for an SP to consider creating an LPA and provisions in a Will to cover management of the Practice in the event (although these are not at present mandatory).

Another matter reviewed was the issue of the requirement to have an accountant's report each year. Basically the SRA found that they could not cope with the influx of over 10,000 accountant's reports each year.

Myself, I have always derived comfort from "passing" my accountant's report prepared for the SRA and I am still of the view that some form of certificate from the practice accountant is a plus point. We were invited to attend a meeting on 16th April to discuss this. My colleague Hamish McNair attended the meeting on our behalf.

Another issue of long term strategy for the SRA is maintaining a high level of competence amongst solicitors. The reality of CPD accreditation over the years has been that a good attendance record at seminars produces a cachet but does not necessarily go either for an efficient Practice or a competent practitioner. There are many apocryphal stories of practitioners who have been attending seminars for the last few months of the CPD year and taking up any subject that happens to be going without focusing upon what should be the level of competence in their particular work.

In February 2015 I was invited by the SRA to join a group of other SPs for a work shop with specific reference to the promotion of competence in the place of the discontinuance of CPD. This was run by Richard Williams who is Policy Associate with the SRA and has been involved, amongst other things, with the development of QASA. There was considerable debate as to how to encourage practitioners to ensure that they are constantly up to the mark in the legal subjects which they practice. This is to encourage "continuing competence" as the SRA call it. There are now details on the SRA website announcing the changes and explaining the principles of the new procedures. The emphasis will be on getting practitioners to use a template device on the website to assess their own responses to maintaining competence.

David Leigh-Hunt
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November 2015
Hilary Underwood, former legal aid family lawyer, and SPG Co-ordinator, reviews ‘The Invisible’ by Rebecca Lenkiewicz, a play examining the impact of legal aid cuts on the fabric of our society.

I hope that many of you, like me, will have managed to catch a performance of ‘The Invisible’ at the Bush Theatre during the summer. If you didn’t, you can buy a copy of the playtext from the theatre and I can promise you that it’s well worth a read.

‘The Invisible’ is a play written by Rebecca Lenkiewicz, the first living female playwright to have an original play (Her Naked Skin) staged on the Olivier stage at the National Theatre. Rebecca wrote ‘The Invisible’ in response to the real-life cuts to legal aid. The play weaves together the stories of ordinary people fighting for their right to justice and was sponsored by The Law Society, with Andrew Caplen, former Law Society President, writing the foreword to the playtext. The play was performed at The Bush Theatre from 3rd July – 15th August 2015, with Alexandra Gilbreath in the lead role of legal aid lawyer Gail, and former EastEnders actor Nicholas Bailey in the role of distraught divorcee, Ken.

The play powerfully highlighted the plight of the weak and the powerless – the invisible – who are most impacted by the legal aid cuts and the denial of that most fundamental of rights, justice, which underpins the whole rule of law and without which true democracy is a nonsense.

It was maybe because I lived and breathed legal aid for so long and maybe because the cuts impacted on my clients, my staff and myself
so massively and fundamentally, that I had a real sense of expectancy about the play, alongside a nervous apprehension that they might not get it quite right – that they might not tackle the fall-out and devastation wrought in people’s lives with gut-wrenching reality. And I was desperate for someone to tell the story accurately, without the sugar-coating of politeness and politics - as if they really did understand and were not just giving trendy lip-service to the topic of the hour. This was such a valuable opportunity to raise the profile of this issue in the world of the arts, not politics, and I was anxious that it should not be wasted.

I am so glad to say that I was not disappointed. Other reviews have described the play as “provocative, edgy and dark,” “strong and impassioned”, “warmly insightful” and “generous-hearted”. It was all of those things and much more… and with a good dose of hearted”. It was all of those things and “warmly insightful” and “generous-and dark”, “strong and impassioned”, described the play as “provocative, edgy
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The play was dark, powerful and, at times (particularly during the second half of the performance), jaw-droppingly moving, exploring not only the different stories of the vulnerable in our society, but also the stories of the legal aid lawyers themselves and the staff who care as much about the clients as the lawyers do.

The play dived head-first into issues of domestic violence, homelessness, the elderly, broken families, fathers as litigants in person, depression…and ultimately suicide.

There was a good expose of the long hours worked by legal aid lawyers and the huge impact of this upon the personal lives of those lawyers and their families with one lawyer’s partner saying “I worked it out the other day….the hours…you’re actually on less than minimum wage.” Set starkly against this was another expose of the gross misperception of many members of the public of ‘fat cat lawyers’ through the character of one of the men Gail meets on a first date: “You go on robbing the country with your lawyer’s fees and

charging people a hundred quid a letter. You continue to be a legal parasite…good luck to you in fleecing the nation.”

The playwright also highlighted the commitment and passion of legal aid lawyers and what drives them to keep going when a friend of Gail says: “What happens to people, Gail….it’s not your fault” to which Gail replies “No, I know it’s not my fault but it’s my job to try and sort it.” Her friend warns her “Just be careful. Look after yourself. Don’t become a martyr to the cause.”

There was also a sensitive and poignant portrayal of the financial strain carried for many years by the legal aid lawyers and ultimately the emotional impact, exhaustion and despair, of the final loss of the practice as a result of the cuts, with lines such as “They cut our budget by two-thirds. That should be impossible. But they did it.” and “I can’t keep us on here….We’ll go. And all the other small firms will go….And people don’t even know about it.”

For me, the most heart-stopping scenes were played out by the character of Shaun, a funny, but very lonely and depressed elderly Irish man (excellently portrayed by Niall Buggy). His scenes involved a bravely stark examination of issues affecting vulnerable, older people – his “King Lear-like” scenes were the most moving and the most insightful about the true invisible lives lived by so many lonely people. His words to the lawyer, Gail “Two years ago you saved my life” captured the whole debate in a nutshell. He describes her as “heroic” but two years on, without Gail to help him, he takes his own life. The impact of the cuts don’t get any starker than that “A man needs a roof over his head. Or does he?” Lear managed without. Although he ended up alone. And then
dead.”

The scenery for the play was simple but fabulous for the purpose – row upon row of legal aid forms dangling from the ceiling.

It was clear from the performance that the actors really did care about the message of this play and when I met and spoke with Alexandra Gilbreath after the performance, on discovering that I was a legal aid lawyer and that watching her perform was like looking in a very thought-provoking mirror, she enveloped me in a warm and heartfelt hug.

My favourite line from the play has to be Gail’s cutting remark “We’re not good women. We’re expert practitioners. We may not power-dress but we’re not a knitting circle…..We have done some amazing law in this centre. One of the biggest cases about unfair dismissal was resolved here. It changed the law.” I wonder how many politicians took the trouble to watch the play?

After the difficulties and pain of navigating the cuts, and closing my office, it was something of a salve to the wound to have a play which has been dedicated in the playtext “To all legal aid lawyers, past and present, with respect and admiration.”

This play broke new ground in putting the justice system out on the table for all to see and examine and for that, it is to be applauded – and I certainly did.

My one regret about the play? I wish I had thought of it (or had the time to write it) first! But seriously, a huge thank you to Rebecca Lenkiewicz and all those involved in the production of ‘The Invisible’ and for caring enough to put the real story out there….I echo the words of this final review from The Stage “It’s message needs to be shouted, to be roared…”

Hilary Underwood
SPG Co-ordinator and former legal aid lawyer
October 2015

p.s The irony (and familiarity!) of a first date with a divorcee dad who spends half the time talking about his ex-wife and the other half asking for advice about how to have contact with his children was not lost on me…a hybrid between Bridget Jones and Ally McBeal
‘TILL DEATH US DO PART?’ – A LOOK AT THE CURRENT LAW ON PRE-Nuptial AGREEMENTS

What are pre-nuptial agreements?
1. A prenuptial agreement is a document in which a couple set out their rights to any property, debts, income and other assets purchased together or acquired individually, and how such aforementioned assets shall be shared in the event that the marriage comes to an end.

What is the current status of pre-nuptial agreements?
2. The court when considering granting ancillary relief is not obliged to give effect to nuptial agreements – whether pre-nuptial or post-nuptial. The parties cannot oust the jurisdiction of the court. The court will conduct an assessment under section 25 of the Matrimonial Causes Act 1973. However the court must give appropriate weight to the agreement. The case of Radmacher raises the issue of the principles to be applied by the court when deciding the weight to attach to the pre-nuptial agreements.

Will the pre-nuptial agreement stand in court?
3. The court will consider several factors, summarised as follows:
   a. Did the parties understand the implications of the prenuptial agreement?
   b. Did the parties have independent legal advice?
   c. Were any of the parties under pressure to sign or agree?
   d. Was there full financial disclosure?
   e. Would an injustice be done if the prenuptial agreement were upheld?

The landmark case:
4. The judgment of the Supreme Court in Radmacher v Granatino [2010] UKSC 42, stands as a landmark in the history of English matrimonial and divorce law. This case established that pre-nuptial agreements were now to be given effect to so long as the parties entered into it freely and with a full understanding of the agreement’s consequences.

5. The facts of Radmacher are as follows. The parties were married in London in 1998. The husband is French and the wife is German. They entered into an ante-nuptial agreement before a notary in Germany three months before the marriage at the wife’s behest, to whom the family’s substantial wealth would be transferred if an agreement were signed. The agreement was subject to German law and stipulated that neither party was to acquire any benefit from the property or assets of the other during the course of the marriage or after its termination. The husband at the time was working as a banker; he declined the opportunity to take independent advice on the agreement. The parties separated after 8 years of marriage in 2006. They had two daughters in 1999 and 2002. By the end of the marriage the husband had left his career in banking and embarked upon research studies at Oxford University.

The High Court:
6. The husband applied to the High Court for financial relief. The High Court granted him a sum in excess of £5.5 million. This would afford the husband a £100,000 annual income for life and pay for a house in London where the children could visit him.

Aysha is a barrister with 33 Bedford Row Chambers. She has extensive public authority experience, and was a Legal Adviser for several years at an Attorney General’s award winning Legal Advice Centre. Aysha also has broad experience encompassing family, civil and employment law. In this article, Aysha explores the current law on pre-nuptial agreements.
took into consideration the ante-nuptial agreement but reduced the weight she attached to it due to the circumstances in which it was signed.

Court of Appeal:

7. The wife successfully appealed to the Court of Appeal. The Court of Appeal held that the agreement should have been given full weight. The husband should only be granted provision in his role as father to the two children and not for his long-term needs. The husband appealed to the Supreme Court.

The Supreme Court:

8. The Supreme Court by a majority of 8 - 1 dismisses the husband’s appeal.

9. Paragraph 68 to 74 of the Radmacher judgment sets out the range of factors the court would take into consideration. Importantly in paragraph 61 of the judgment it is noted that the first question will be whether any of the standard vitiating factors are present: duress, fraud or misrepresentation. These factors will negate any effect the agreement may otherwise have had.

10. Secondly in paragraph 73 of the judgment it is stated obiter, that “If the terms of the agreement are unfair from the start, this will reduce its weight”. The concept of fairness will be assessed in the light if the agreement operates unfairly at the time of the breakdown of the marriage.

11. The factors set out in paragraphs 68 to 73 of Radmacher are important in the sense they are generally applicable, they are as follows (I have summarised the paragraphs in a few words):

a. Paragraph 68: “If an ante-nuptial or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue influence or pressure, and informed of its implications”, (Free will and full awareness of implications).

b. Paragraph 69: “…we consider that the Court of Appeal was correct in principle to ask whether there was any material lack of disclosure, information or advice. Sound legal advice is desirable for this will ensure that a party understands the implications of the agreement”, (Full disclosure of facts and independent legal advice).

c. Paragraph 70: “It is, of course, important that each party should intend that the agreement should be effective. …Thus in the future it will be natural to infer that parties who enter into an ante-nuptial agreement to which English Law is likely to be applied intend that effect should be given to it”. (Intention to be bound by the terms of the agreement).

d. Paragraph 71: “The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it. (Duress, fraud, misrepresentation or abuse of position would eliminate weight).

e. Paragraph 72: “The court may take into account a party’s emotional state, and what pressures he or she was under to agree. … Another important factor may be whether the marriage would have gone ahead without an agreement, or without the terms which had been agreed. (Party’s emotional state, maturity and the importance of the agreement).

f. Paragraph 73: “If the terms of the agreement are unfair from the start, this will reduce its weight. (Unfairness of terms).

Cases post-Radmacher

12. Since the Radmacher judgment several cases have passed through the English Courts seeking to apply Radmacher principles. I shall briefly set out the cases and a summary of the facts below, this will help to illustrate the above principles in application.

13. In V v V [2011] EWHC 3230 (Fam): On appeal from a District Judge, Charles J found that the District Judge had failed to attach weight to a Swedish marriage settlement. Charles J exercised the section 25 MCA 1973 discretion and took the statutory factors into account. The marriage was three years in length. Charles J also departed from equality principle to take into consideration pre-matrimonial assets.
In B v S (Financial Remedy: Matrimonial Property Regime) [2012] EWHC 265 (Fam) there was a disputed ‘tacit’ agreement, if it can be called that at all. It was in reality the default matrimonial property regime of separation of goods pertaining to Catalonia. Neither party had taken legal advice as to whether the agreement would be binding nor had they discussed the agreement. Mostyn J afforded “absolutely no weight” to the prenuptial agreement in these circumstances.

14. In Kremen v Agrest (No. 11) (Financial Remedies: Non-disclosure: Post Nuptial Agreement) [2012] EWHC 45 (Fam) Mostyn J. The husband and wife were both Russian. At trial Mostyn J found that the husband had not fully disclosed the true extent of his assets. The couple had been married from 1991 to 2007. When their marriage ran into difficulties the couple entered into an Israeli post-nuptial agreement, this was subsequently converted into an order of the Israeli courts. Mostyn J found that there was not a full understanding by either party of the implications of the postnuptial agreement. This agreement also did not fully consider the needs of the children to the marriage. Mostyn J did not attach any weight to the agreement and proceeded with the section 25 Matrimonial Causes Act 1973 exercise.

What practical steps should Solicitors take when advising clients?

16. The following tips are designed to assist those who advise clients when entering into prenuptial agreements. The following principles should assist clients reach agreements both pre-nuptial and post-nuptial that will fall within the Radmacher principles and be such that the court may attach weight to them:

a. A pre-nuptial agreement should be drafted and signed as early as possible; it should not be left to moments before the wedding. The parties should be able to demonstrate that they have had time to consider the agreement in depth.

b. A full disclosure of the parties’ assets and liabilities needs to be made prior to entering the agreement. Solicitors may be able to provide a financial disclosure form with a declaration for the parties to complete and exchange.

c. Both parties should take independent legal advice, this may be possible within the same firm if Chinese walls are set up between practitioners.

d. The terms of the agreement should be drafted as precisely and clearly as possible but yet detailed enough. This is a matter for the Solicitors; every term should be drafted as unambiguously as possible.

e. The agreement should set out any provisions for children. Great thought needs to be applied to this as the courts have demonstrated that they will not uphold an agreement which does not make adequate provision for the children of the family.

f. The agreement should also set out provisions for other major life events such as illness and unemployment and what terms would apply in such events.

g. The agreement should take into consideration pensions, insurances, inheritances and the acquisition of further assets.

h. The agreement should deal specifically with pre-matrimonial assets, those acquired by the parties outside of their marriage or that inherited through their families.

i. It may be advisable to set reviews within the agreement, as the marriage progresses in time and changes in character certain clauses may become defunct and the need for others may arise. For instance if a second home is acquired, the parties may be advised to review their agreement as seek advice from my instructing solicitors. In the alternative if the parties were to come by a windfall or an inheritance the review clause of the agreement may be activated.

j. Finally, the agreement should be fair and realistic, if it appears unfair to those instructing me, it will probably appear unfair to the court. Those instructing should advise the clients to reach as fair an agreement as is possible.

Aysha Miah
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SOCIAL ENGINEERING: HOW CAN WE COMBAT THE FRAUDSTERS?

It's a sad fact that as technology becomes increasingly sophisticated, so do the techniques employed by criminals to commit fraudulent activity. Here, Paul McCluskey, Head of Professional Practices at Lloyds Bank Commercial Banking, examines different methods employed by fraudsters, and how best to combat them:

Social engineering is an evolving practice that combines psychological manipulation and hi-tech methods in order to steal vital sensitive information, such as passwords, data or PIN numbers. It's a method that takes various guises, including the use of attachments on emails, which enable fraudsters to access your files and track your key strokes should they be opened. There's also emails which replicate those sent by your bank, including a clone of its website, inviting unsuspecting recipients to enter their username and password details.

...fraud techniques involve criminals making phone calls purporting to be from your bank...

Other fraud techniques involve criminals making phone calls purporting to be from your bank, with sophisticated technologies allowing a genuine phone number from the bank to display on your caller ID, adding a sense of legitimacy.

Fraudsters can even manipulate your phone lines. This enables them to intercept any attempt to verify that the email you have received is genuine, impersonating a representative of the bank in the process in order to gain even more sensitive information.

With criminals constantly 'upping their game', it's imperative to take steps to protect your interests. Whilst it's important to be cautious in the event of activity that appears to be even slightly suspicious, investing in the necessary anti-fraud measures, and constantly reviewing them to ensure they remain up to date, should also be a priority.

Often, it can seem that purchasing or renewing your anti-virus software is an unnecessary expense, but the truth is that it's a fundamental means to protecting the interests of your business.

This is imperative, because in a case where a password is fraudulently obtained as a means to steal money, the onus is on the victim to prove that robust measures were in place that should have prevented the crime from taking place. If you find yourself unable to do so, the results can be catastrophic, with no legal recourse to recoup the stolen funds.

As the old saying goes, prevention is better than cure, and it's advisable for you to take action now to avoid these issues from occurring within your business.

The first step is to ensure your virus checker is up to date, fit for purpose, kept updated, and run without fail each day. This should be software that covers vishing, malware, phishing, Trojan virus, firewalls, anti-key loggers, intrusion detectors and bot herders – and even if you're not familiar with those terms, any experienced IT technician that you employ or contract should be well-versed.

It's also worth considering investing in a dedicated terminal for online banking, which is separate from those used for emails, ensuring that any attempted social-engineering scams can be thwarted.

"It's also worth considering investing in a dedicated terminal for online banking..."

In the event that you receive a suspicious request, it's also worth double-checking that it's genuine by calling your bank from a different phone, such as your mobile rather than the office line, and going to a known contact first before trying a public line.

All in all, vigilance is key. Remember, no bank will ever ask for full online log-in details, passwords or card and reader codes on the phone. If in doubt, it's always advisable not to take any risks, and to protect your business.

Issued on behalf of Lloyds Bank Commercial Banking by Citypress

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SPG in Action

Hilary Underwood is the SPG Co-ordinator, Editor of SOLO and deals with all matters concerning Local Groups and Legal Aid.

Martin Smith is leads and co-ordinates the Group’s responses to consultations.

SPG is constantly at work responding to the myriad of consultations issued by the SRA, LSB, MoJ and other bodies whenever those consultations concern the interests of sole practitioners. We thought you may wish to read some of the recent responses that we have submitted on behalf of the Group. We would always encourage you, however, to put in your own individual responses to important consultations to ensure that the sole practitioner voice is heard loud and clear! Forthcoming important consultations which impact on sole practitioners include:

**SPG is constantly at work.......loud and clear!**

Forthcoming important consultations which impact on sole practitioners include:

- **SRA A Question of Trust:**
  http://www.sra.org.uk/sra/consultations.page
  **Closing date: 31st January 2016**

- **Legal Ombudsman 2016 – 2017 Budget Consultation**
  http://www.legalombudsman.org.uk/?portfolio=budget-consultation-2016-17
  **Closing date: Monday 1st February 2016**

- **SRA Training for Tomorrow: Assessing Competence**
  **Closing date: Friday 4th March 2016**
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP TO THE SRA CONSULTATION REGULATION OF CONSUMER CREDIT ACTIVITIES

Question 1: Do you agree with the proposal that firms carrying on any regulated consumer credit activities should be required to seek authorisation directly from the FCA and not be able to rely on the Part 20 exemption set out in FSMA?

No. This proposal would result in unnecessary cost and extra regulation on firms.

The previous ability for law firms to rely upon the OFT group consumer credit licence, which has now transitioned to the exemption under the SRA's exemption arrangements made under Part 20 of the Financial Services and Markets Act 2000 (FSMA) has enabled law firms to engage in regulated consumer credit activities without the additional burden and cost of an additional layer of regulation by a second regulator, which would be engendered by the need to apply to the FCA for authorisation.

The areas of sole practice most likely to be affected by this proposal are:

i) firms undertaking debt recovery work as part of their day-to-day work;

ii) firms undertaking debt advice as part of their day-to-day work;

iii) The offering of a facility to clients to meet their legal costs by way of instalments – such proposals potentially exceeding a period of 12 months and exceeding a total of four repayments, but even if within those limitations, such agreements may include provision for interest; therefore falling outside of the exemption.

It is appreciated that the FCA's regulatory framework as set out in the Consumer Credit Sourcebook (CONC), is designed primarily for financial institutions and imposing detailed obligations, is vastly different to the SRA's approach, which focuses on developing and delivering regulation proportionate to the nature of an entity in an outcomes-focused manner and with the removal of prescriptive rules. It is appreciated that those approaches may seem to be irreconcilable.

However, the FCA's regulatory framework focuses on increasing protection for members of the public who obtain credit. As solicitors subject to a strict code of conduct who are already subject to considerable regulatory scrutiny, the FCA should surely recognise that the risks posed by the regulated legal sector are considerably less than those posed by the financial institutions. Therefore, whilst the FCA's rulebook sets out detailed obligations on firms, and the SRA's handbook is based on an outcome focussed system which is incompatible with this, the underlying principles set out in the FCA's handbook are parallel to the core values of the profession under which solicitors are judged under the existing SRA regulatory regime ie. integrity, honesty, openness and fairness.

It also seems to be a nonsense that the previous approach of the SRA in referring problematic issues that arose concerning individual firms to the OFT for assessment could not continue with the FCA, allowing the SRA to exclude a member from the Part 20 arrangements if necessary and relying upon the consumer credit capability and expertise of the FCA.

The process of applying for authorisation by the FCA will no doubt be burdensome, time-consuming and therefore costly. Further, the fees set out by the FCA for individual applications for authorisation range between £100 - £15,000 dependent upon the size of the firm's income and whether limited or full permission is applied for. Whilst it is accepted that for a sole practitioner firm, the fees are likely to be towards the lower end of that scale, nevertheless any additional regulatory fees to be added to the cost of PC renewals, PII and the overall cost of regulatory compliance for one's firm will be, at best, deeply unwelcome and at worst, prohibitive to practice. One rather cynically wonders whether there is a hope on the part of the FCA, in failing to provide further guidance on Part 20 as had been requested by the SRA, that they will stand to gain significantly from the additional income generated from authorisation applications submitted by firms out of fear of non-compliance.

The FCA's threshold criteria for qualification are also a matter of concern, particularly for sole practitioners. In particular:

i) What will the FCA consider to be an effective level of firm supervision?

ii) What will the FCA consider to be ‘appropriate financial resources’, ‘skills and experience of those managing the firm’s affairs’?

iii) What will the FCA consider to be a suitable level of competence and ability of management?

iv) What will the FCA consider to be an acceptable ‘business model’ and ‘strategy for doing business’?

Whilst it is accepted that the FCA a two-tiered risk-based approach to authorisation, and guidance on whether firms need to apply for limited or full permission, it is simply impractical and onerous to expect sole practitioners to have the time to invest in studying the guidance and completing the application, given the already enormous amounts of time that have to be spent in completing PC renewal forms, authorisation renewal form, PII forms and the list goes on.
Given the natural synergy between the principles within the Solicitor’s Code of Conduct and the FCA rules, it must surely be possible for the FCA and SRA to continue to work together in managing and monitoring the performance and integrity of those firms involved in consumer credit activities in the way it has done to date.

It is submitted that the SRA must insist that the FCA provide additional guidance, as has already been requested, on the Part 20 exemption as it relates to consumer credit activity arising out of, or being complementary to other professional services provided to the client, since this is the difficulty that may mean that firms who conduct debt recovery or debt advice work in isolation to a client may need to be separately and independently authorised by the FCA. There is, however, a vast distinction between firms that may need to be authorised for this purpose (whom it is assumed receive a considerable portion of their fee income from this source) as opposed to a firm who merely offers a ‘pay your bill by instalments’ option to a client.

It would be a nonsense to force all firms to apply for FCA authorisation due to lack of clarity on the part of the FCA, when in fact only a much smaller and narrower number of firms may need to do so. It is not satisfactory that firms may have to decided to apply for FCA authorisation on a precautionary basis, at great cost of time and money, purely to avoid the risk of potentially committing a criminal offence.

Question 2: If you do not agree with the proposal, please offer any alternative suggestions for ensuring that the SRA’s regulatory arrangements in relation to consumer credit activities are targeted, proportionate and do not result in the incorporation of the FCA’s CONC and do not impose unnecessary costs and regulatory burdens on firms.

A sensible alternative would surely be for the firms (no doubt the COLP and COFA) to certify, as part of the PC renewal process, that their firm is compliant with the FCA conduct of business standards and the FCA Handbook in order to qualify for ongoing exemption under Part 20. It has surely always been for firms to ensure that they were compliant with the provisions of the CCA 1974 and guidance published by the OFT in any event, in order to benefit from the OFT group consumer credit licence, on threat of being removed from it, as has been the case for some firms in the past.

It also seems to be a nonsense that the previous approach of the SRA in referring problematic issues that arose concerning individual firms to the OFT for assessment could not continue with the FCA, allowing the SRA to exclude a member from the Part 20 arrangements if necessary and relying upon the consumer credit capability and expertise of the FCA.

It is difficult to see why the approach should now change and the onus should now shift to such an extent that firms must make their own entirely separate application for authorisation?

SSPG would also echo the points made by Birmingham Law Society in its response to this question contained in its reply to this consultation dated 12 December 2014.

Question 3: Do you have any views about our assessment of the impact of these changes and are there any impacts, available data or evidence that we should consider in finalising our impact assessment?

The following scenarios may very well result if these changes proceed:

1. If this proposal goes ahead, due to the burden and cost of additional and dual-regulation, many firms, including many sole practitioner firms who currently offer debt recovery or debt advice work may not choose to become FCA regulated and so be disinclined to offer those services in the future, which will limit their range of legal services offered to the public. Those Clients who wish to restructure/refinance their debts would have to be turned away and have no option but to go to non solicitor debt management firms/loan sharks etc. or to the not for profit sector which is already overburdened. Regarding the exemption for contentious business the proposed changes would result in proceedings being issued after little or no attempt to reach agreement with debtors which would not be in the public interest. In addition this would breach the civil procedure rules, practice direction on pre action conduct indicating the proceedings should be a last resort and alternative dispute resolution should be considered first.

2. Given too that sole practitioners are often those who service the most vulnerable in society both financially and geographically, the proposal is likely to adversely impact upon access to justice for those on the high street and in smaller towns and villages, making yet further adverse inroads into a country about to celebrate the 800th anniversary of the Magna Carta. That risk is further heightened by the likelihood that the Citizens Advice Bureau will also be required to apply for FCA authorisation. SPG would question to what extent the Government are being made aware of these wider access to justice concerns that arise from the FCA’s unreasonable and disproportionate requirements.
3. Furthermore solicitors are often willing to accept payment of their costs by instalments in order to assist clients. As “financial accommodation” must contain the 3 restrictive elements (no more than 4 instalments, payment term of no more than 12 months and no interest or charges) then current flexibility in this respect would no longer be available to clients and would therefore restrict access to justice given the reduction in public funding at the present time. Monthly instalments could not be offered and firms would have to issue proceedings which again is not in the public interest.

4. Firms that specialise in Consumer Credit Activity would have to obtain FCA authorisation to continue in business. This may result in financial difficulty and having to close down. If the application is unsuccessful firms may have to completely change their modus operandi or close down.

Question 4: To what extent are firms providing consumer credit services to clients which would mean that they would need to seek authorisation from the FCA? Are consumer credit arrangements more likely to be offered for particular types of work?

Most firms, including sole practitioners allow clients to pay by instalments which do not fall within the financial accommodation exemption. Debt adjustment/counselling/collecting is undertaken by firms of all sizes in England and Wales. Credit information is offered by some forms to debtors etc. in relation to debt counselling/adjusting arising from litigation/matrimonial work etc.

Consumer credit work may be a small element of a firm’s work complementing other services provided in contrast to those firms who concentrate on this work to the exclusion of most other types.

Question 5: To what extent are firms providing other FSMA regulated activities which would mean that they would need to seek authorisation from the FCA?

Under the current arrangements in addition to debt matters firms undertake general insurance mediation, transfer of shares and other investments in the course of property transactions, matrimonial, probate/trust and corporate work etc.

If the proposals go through then there would be an impact over nearly all areas of work especially over insurance mediation and financial services. Examples in relation to sole practitioners include various property insurances in conveyancing, missing beneficiary in probate, ATE insurance in PI claims etc.

Only a very few firms need FCA authorisation at present due to the Part 20 exemption and transitional provisions.

Question 6: If the proposal is implemented, will firms continue to provide consumer credit services, regulated by the FCA?

SSPG considers that few sole practitioners will wish to incur the additional expense and regulatory burden of applying for FCA authorisation and will therefore stop offering these services to clients.

In addition they will be prevented from agreeing with clients for clients’ bills to be paid by instalments for longer periods than the proposed exemption allows which in turn will cause difficulty to clients and restrict access to justice.

SSPG also questions whether SRA can allow any other body to regulate it except in the most clear cases. These changes should not proceed.

Hilary Underwood December 2014
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLE PRACTITIONERS GROUP (SPG) TO THE SRA CONSULTATION ‘TRAINING FOR TOMORROW: A COMPETENCE STATEMENT FOR SOLICITORS’

Part 1: Developing the competence statement

Question 1: Does the competence statement reflect what you would expect a competent solicitor to be able to do?

Yes, the competence statement does reflect what we would expect a competent solicitor to be able to do. It is encouraging that the competence statement deals with a comprehensive range of skills and abilities since it is important that a competence statement should not be a means of watering down standards of competence within the profession. The integrity and quality of the professional qualification as solicitor must be maintained, even if the traditional pathway to qualification, education and training is changing and becoming broader. It is also important that those standards remain higher for solicitors than other branches of the profession such as Legal Executives and Paralegals, so that the solicitor qualification remains an easily recognisable, trustworthy distinct and recognised title of quality and expertise for consumers. We are pleased to read that flexibility of pathways must not be allowed to lead to flexibility of standards.

Whilst we appreciate that the SRA has consulted with consumers with respect to the draft competence statement, it is important that the competence statement is not reported to the public as a document which the public have essentially devised and which sets out ‘what they can expect from their solicitor’, as has been reported on some websites (eg.www.legalchoices.org.uk/category/news). Otherwise, it has the potential to be abused by the ‘complaining consumer’, who may not have the capacity to understand the competence statement other than at the most basic of levels. This should be a competence statement concerned with standards of competence at the point of admission as a solicitor and beyond, to deal primarily with the need to ensure consistent end-point standards for the emerging flexible pathways to qualification – not as a consumer tool for raising complaints by consumers who perceive that their solicitor has not met the standards.

Question 2: Are there any additional competencies which should be included?

We cannot identify any additional competencies which should be included at the present time.

Question 3: Have we struck the right balance in the Statement of Legal Knowledge between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area?

The Statement of Legal Knowledge does strike the correct balance, in our view, between the broad qualification consumers tell us they understand by the title solicitor and the degree of focus which comes in time with practice in a particular area. It is extremely important that all solicitors have this basic underpinning of legal knowledge at the point of qualification, in order to ensure that they can go on to meet the competency standards, particularly those set out at A3 and A4 of the draft competence statement.

Part Two: using the Competence Statement to assure competence at admission

Question 4: Do you think that the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

On the whole, yes. We would, however, suggest that ‘Standard of Work’ also include reference to appropriate supervision with reference to complex tasks. Given that it is intended that the Threshold Standard is to be read alongside the competence statement, it should be explicit that newly-qualified solicitors will still require supervision (given at an appropriate level, commensurate with the individual solicitors own skills and abilities and the complexity of the particular task in hand). This will benefit both newly-qualified solicitors and their employing firms, to ensure that newly-qualified solicitors are not expected to work without supervision, simply because they have now qualified. This should also be reflected in ‘Autonomy’ and ‘Complexity’.
Question 5: Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

Yes, we agree that the Statement of Legal Knowledge reflects this. It appears to reflect those core elements of legal knowledge that are 'timeless', which individuals may then choose to specialise in as their career progresses. They also cover the areas in which solicitors may need to identify additional issues for a client, often a different issue to the matter about which the client has made the appointment. It is not clear, however, how individuals will be required to demonstrate their legal knowledge as per the Statement, and how this will be assessed.

Part Three: using the Competence Statement to define continuing competence

Question 6: Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the Handbook and ensure their continuing competence?

Yes, we do think that the Competence Statement could be a potentially useful tool to assist entities and individual solicitors in complying with Principle 5 and, in particular, to help them in understanding and implementing the new rules for continuing competence in a way that is more meaningful and beneficial to them. The clarity of the Competence Statement and its wide-coverage are very welcome and should both assist and prompt solicitors to think about education and training gaps that they may not have otherwise identified, simply because those issues did not spring to mind.

As we indicated in our earlier response to the consultation on the new rules for continuing competence, one of our concerns was the lack of clarity surrounding the non-mandatory guidance and the outcomes-focused approach, and the potential for uncertainty that this created. This concern is considerably tempered by the Competence Statement which should assist even the most 'non-reflective' of solicitors, to consider exactly what areas of education and training he or she requires in order to maintain competence (and improve upon it to excellency) with the Competence Statement.

Further, the Competence Statement also alleviates some of our concern surrounding the potential for training budgets to be cut and the resulting potential difficulty for trainee solicitors/newly-qualified and junior solicitors within a firm to persuade a partner that they should have permission to attend training courses (though it is yet to be seen how the SRA proposes to monitor compliance with outcomes – and the cost to the profession of this potential level of engagement). There will be an obligation not only to ensure that trainee solicitors are ready for qualification, but also an obligation to measure ongoing competency against the Competence Statement (though if this is an internal process only, this is not without its risks, given the removal of the mandatory 16 hours). It is still not clear how entities and individuals will be held to account for ensuring the ongoing competency of solicitors and the services they provide.

We are still concerned as to whether the SRA is equipped in terms of time and resources to deal with a new risk-based approach to competency and whether it has the necessary supervisory and enforcement capacity to deal with the wide-ranging approaches that varying entities and organisations may choose to take to education and training.

Question 7: Are you aware of any impacts, either positive or negative, which might flow from using the competence statement as a tool to assist entities and individuals with complying with Principle 5 in the Handbook and ensuring their continuing competence?

There is the potential for the competence statement to be interpreted narrowly, with entities and individuals overlooking other areas of education and training that could be beneficial simply because these are not explicitly referred to within the competence statement. That is, of course, always the danger and a part of the delicate balance to be struck as soon as one starts to put pen to paper to define anything as wide-reaching and varied as the competency standards of solicitors! They must be drafted comprehensively enough to be meaningful and applicable in ensuring a consistency of approach to the award of the title of solicitor, whilst at the same time, it is also impossible to include reference to every single skill or piece of knowledge that it might be useful for a solicitor to have in his or her own capacity and role – such nuances must inevitably be left for the entities and individual solicitors within them to identify themselves.

Hilary Underwood January 2015
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLE PRACTITIONERS GROUP (SPG) TO THE SRA CONSULTATION REGULATION OF INSOLVENCY PRACTICE

Question 1: Do you agree with the proposal that the SRA should take appropriate steps to stop authorising solicitors to act as insolvency practitioners?

We do not agree on principle with this proposal, upon the basis that this proposal is another step further in the diversification of regulation, which the Legal Services Act 2007 was surely intended to prevent?

This proposal will mean that solicitor insolvency practitioners (IPs) will need to be dual-regulated by both the SRA and by an alternative Recognised Professional Body (RPB) under the Insolvency Act 1986. From the perspective of the individual solicitor, this dual-regulation will be potentially burdensome, time consuming and costly, both in terms of actual regulatory fees but also time spent in dealing with two regulators. It is an unenviable position for any professional to find themselves in a dual-regulated position and that is why we suspect that solicitors IP's have maintained all of their regulatory requirements 'under one roof' even though they could have applied to any of the seven RPB's or the Secretary of State for authorisation since 2007.

Further, it is clear that the regulatory fees that would be payable to an alternative RPB are likely to be significantly higher than the current fee charged by the SRA of £520 per annum – possibly as much as £3,000 or more. Having said that, of course, it would seem that even if the SRA continued to authorise solicitors to act as IP's, the regulatory fees charged by the SRA would increase as a result of the need for the SRA to invest time, money and resources into upskilling in order to fulfil its tightening obligations. Whether they would increase to such a significant extent, however, is not clear (and we suspect not even yet clear to the SRA itself).

However, from a practical perspective, we can see that the statistics are incredibly low, there being only 124 solicitor IP's currently authorised by the SRA to undertake regulated IP activity (we do not know whether any of these 124 solicitor IP's are sole practitioners but would suspect that a small number are). We also recognise that it would seem that the SRA have, for some time, in any event been contracting out their regulatory requirements to other RPB's. It is not clear whether the cost of such contracting-out has been fully met by the levies charged to the solicitor IP's or whether the profession in general has been subsidising this process. If the cost of contracting-out can, however, be met in full by levies charged solely to the solicitor IP's, is this not an alternative way forward that could continue, enabling the SRA to meet its regulatory requirements without the burdensome implications of dual-regulation?

We would certainly be loath to see the SRA spending significant sums of the professions money on building up its capability and expertise through the recruitment and training of staff, particularly in light of the potential increased obligations to investigate complaints that will be imposed by the Small Business, Enterprise and Employment Bill 2014-2015 should this receive Royal Assent, simply in order to regulate just 124 solicitor IP's.

If the SRA can properly regulate solicitor IP's (either with or without contracting-out some or all of its regulatory obligations) at a cost that can reasonably be met in full by solicitor IP's, then it should do all it can to continue to do so, even if the cost to each individual solicitor IP increases significantly. Given that solicitor IP's can expect to pay higher regulatory fees in any event, we are sure that most would rather retain authorisation through their own professional body, even at an increased fee, rather than face the task of dual-regulation.

If, however, the SRA can only properly regulate solicitor IP's by incurring a cost to the profession as a whole, given the economies of scale, then it would sadly seem that those few solicitor IP's will need to look at other RPB's for their authorisation and regulation.

Better and clearer information on the potential transitional arrangements should solicitor IP's need to transfer regulators would be extremely welcome, particularly surrounding the proposed costs of this and we note that the SRA is in discussions with other RPB's concerning this. Automatic licensing of solicitor IP's who are currently authorised by the SRA and a smooth, seamless and fee-less transition to another regulator for remainder of the legal year would be sensible, given that solicitor IP's will have recently paid their fees in October 2014. Can the SRA provide clarity on this issue, please?

There is, of course, a risk that some solicitor IP's will not wish to be re-authorised by an alternative regulator, particularly if the fee increase is significant, particularly given that some solicitor IP's may be approaching the latter end of their career, from the statistics given.
It should not be forgotten that there will also some cost to the SRA of working together and sharing information with other regulators, even if this proposal goes ahead, to ensure that there is no duplication of regulatory roles and to ensure clarity of disciplinary jurisdiction etc. given that the SRA will retain the regulatory functions pertaining to the Principles. Solicitor IP’s must be assured that they will not face duplication of disciplinary functions.

Further clarification is also required with respect to PII arrangements and whether the view of the insurance industry has been sought upon the implications of dual-regulation for solicitor IP’s and whether this will have an impact upon premiums.

Similarly, further clarity is clearly also needed in relation to the Compensation Fund and whether it is right that the Compensation Fund still provide a safety net, if, in fact solicitor SP’s are no longer regulated for insolvency practice by the profession?

**Question 2: If you do not agree with the proposal, please explain why?**

Please see our answer to Question 1.

**Question 3: Do you have any views about our assessment of the impact of these changes and are there any impacts we have not considered?**

We agree with your assessment of the impact of these changes upon the insolvency market and upon the consumer. The impact on individual solicitor IP’s, albeit few, who may find these changes tip the fine balance of viable/non-viable practice against them, will, of course be great and sad for that individual but admittedly unlikely to impact the market.

Hilary Underwood January 2015
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP
TO THE SRA SMALL FIRMS DISCUSSION PAPER

Question 1: Do you have any comments on our definition of a small firm?

We appreciate that any definition is somewhat arbitrary and that boundaries and parameters have to be drawn somewhere.

We would consider your definition to be rather generous, however, in terms of the number of partners, members or directors. We would generally consider a small firm to be a sole practitioner, or a firm with no more than three partners, members or directors rather than four.

We are also conscious that your definition requires fulfilment of all three elements, whereas we are aware that there are some, albeit few, sole practitioners who do have an annual turnover that exceeds £200,000, dependent upon the type of work they undertake, yet their firm would still benefit from the SRA's approach to the proportionate regulation of small firms.

We would agree with the parameters being set at 10 PC holders, for the purposes of the SRA's engagement with small firms. Although a sole practitioner employing more than 10 PC holders would technically still be a member of SPG, the structure of such a firm is likely to have far more similarity and alignment with the running of a medium-sized firm than it would with a sole practitioner firm and is less likely to engage with the type of support and guidance that SPG offers. We would envisage the same to be true of the way in which the SRA is seeking to offer better support and guidance to small firms ie. that there is a greater alignment with medium-sized firms than small firms in those circumstances.

Question 2: Is the new small firms section of the website helpful? How can it be further improved?

The new small firms section of the website is enormously helpful. Any guidance for sole practitioners in complying with regulatory requirements is very much welcomed. It is correct that there has long been a perception (and indeed sadly the experience of many sole practitioners) that, at best, the SRA is indifferent to them and, at worst, that the SRA would prefer to do away with small firms altogether. It is incredibly refreshing and reassuring for our members to now see that this is not the case.

We are very pleased that there is a link to the SPG website and receive a significant number of telephone calls from potential new sole practitioners. SPG very much values its excellent working relationship with the SRA and is pleased that together, sole practitioners are receiving consistent and valuable guidance in complying with regulatory requirements, which can only be to the good of the profession and the public. We would welcome the opportunity to consider avenues for offering joint guidance on the key issues affecting sole practitioners.

One of our concerns was the danger of ‘lumping together’ sole practitioners with small firms, when in fact there are needs unique to sole practitioners that must be addressed. We raised this concern previously with the SRA and are pleased to see that there is a very good balance between guidance for small firms and guidance specifically for sole practitioners.

The guidance surrounding authorisation applications and the new firm starter pack are particularly helpful, as there has long been ambiguity for potential new sole practitioners who have felt they have been applying for authorisation ‘in the dark’.

The guidance on succession planning and closing down of the practice is also very welcome.

One improvement would be specific guidance upon the issue of Powers of Attorney. We receive regular requests for assistance in this area and guidance, as far as possible, with respect to standard clauses would also be useful.

Specific guidance on acquisition of a practice could also be of benefit, since some new sole practitioners may become sole practitioners by taking over an existing practice. Guidance upon the steps to take, risks to identify etc. would be practical and useful.

Likewise, guidance upon merger or sale of a firm, as part of the overall guidance in connection with succession planning – again, the steps to take, risks to consider etc.

In addition, this could include merger with/or formation of an ABS within the context of an exit strategy.
Question 3: What topics would you particularly like covered by webinars?

Potentially useful webinar topics could include:

- Data Protection and Security
- Bogus firms – protecting your identity and brand
- Protecting client money
- Succession planning
- Closing down a practice
- Acquisition of a practice
- Powers of Attorney
- Merging and selling a practice (including merger or formation of an ABS within the context of an exit strategy)
- Fulfilling the role of COLP and COFA

Question 4: Do you anticipate using or have you used the new small firms service on the helpline?

We have not, as yet, spoken to any of our members who have used the new small firms service on the helpline but would envisage this will be used significantly by sole practitioners. Momentum will increase as individuals experience the knowledge and input of SRA staff who do have knowledge of the unique needs of sole practitioners and how the regulations apply to them – in this way, word will spread and there will hopefully be an increase of confidence in this service.

It will be of key importance to ensure that those members of SRA staff who are servicing the helpline offer consistent advice to members. We have heard previous instances of different messages being conveyed by different members of staff.

One complaint we have received on numerous occasions from members has been the lack of understanding by SRA staff of the nuances of running a sole practice.

Therefore, consistency and expertise will be vital to the success of the helpline.

Question 5: Are there any other ways that supervision can better engage with small firms?

Again, we would say that consistency and expertise are vital on the part of those engaged in supervision of small firms. Difficulties have occurred in the past when inconsistent advice and guidance has been issued to different sole practitioners on the same issues. The sole practitioner community is such that information is often rapidly shared and inconsistency in guidance as generated confusion, at best and panic, at worst, dependent upon the issue concerned.

A quicker and more efficient resolution of supervisory issues would also be welcomed. Much worry and stress has been caused in the past by long-outstanding regulatory issues awaiting resolution and further guidance, which has left sole practitioners in ‘limbo’, unable to focus properly upon their fee-earning work whilst regulatory matters are hanging over them.

Question 6: Do you agree that deemed approval of COLP/COFAS would assist small firms?

We do agree that this would undoubtedly assist sole practitioners and no doubt most small firms. We note that a formal consultation on this proposal is likely to take place and shall respond further at that stage. We would say, however, that deemed approval should be subject to parameters in terms of the number of fee earners and the size of turnover, particularly in light of the rather extended definition of a small firm that the SRA is using, as per Question 1 above. The role of COLP/COFA looks very different in a sole practitioner firm (in its strictest sense – 1 solicitor/fee earner) to a firm with 10 PC holders and the risks with respect to the latter are obviously greater. Likewise, with respect to turnover (even in a sole practitioner firm), the larger the turnover, the greater the potential risk.

Deemed approval would, we presume, assist in speeding up the authorisation process. This would be very much welcomed, particularly given that many sole practitioner applicants awaiting authorisation may be in a position whereby they are unable to earn an income whilst awaiting the outcome of their application – if, for example, they have been made redundant by a former employer, or have left their previous employment in order to devote themselves to the application/new firm set-up process.
Question 7: Are there any other ways in which we can improve our authorisation process for small firms?

Please see our response to question 6 above with respect to the speed with which applications are dealt with.

We appreciate, however, that there is a balance to be struck between the need for the SRA to properly deal with applications and ensure that firms are being authorised only when they are able to satisfy the regulatory requirements, and the waiting time for the applicant. This balance could be better managed by a good level of regular communication between the SRA and the applicant, preferably by one specifically allocated member of staff, and also to ensure that applicants deal with one point of contact throughout the process.

This will assist in instilling confidence in the SRA’s systems and processes and engender a better understanding about time delays, if any, and the reasons for them. Solicitors are, in that sense, no different to the clients they serve. They all understand that their matter will take time but simply wish to be kept regularly informed of progress and the reasons for any delay.

Question 8: What other suggestions do you have for ways in which we can improve our communications with small firms and assist them to comply with regulation?

The small firms section on the website, email newsletters specifically for small firms, small firms helpline and virtual reference group are excellent foundations for building upon good communication with small firms.

It will be important to ensure that the website and emails continue to reflect the diversity that exists even as between small firms and as between small firms and sole practitioners, since even within the ‘small firms/sole practitioner’ arm of the profession, there are multiple business models and structures. If that distinction is lost, sole practitioners will be less likely to turn to these tools for support.

We would welcome the opportunity to explore ways in which we can join with the SRA in providing joint guidance to our members, perhaps through some jointly hosted regional seminars/local groups work (the SRA will be aware that SPG has a vast network of local groups which is growing all the time).

We shall certainly be encouraging our membership to participate in the virtual reference group, to ensure that thinking about how regulation affects sole practitioners is embedded into all of your operations and your regulatory reform programme.

Hilary Underwood February 2015
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP TO THE SRA CONSULTATION ON THE SEPARATE BUSINESS RULE

Question 1: Do you have any comments on our conclusions from the market analysis, and any additional information or data to supply to assist that analysis?

We have no additional to data to supply. We are, however, concerned at the high number of waivers to the SBR that have been granted to ABSs as opposed to recognised bodies and recognised sole practitioners (between March 2013 and 1 October 2014, the SRA granted 60 waivers of the SBR to ABS applicants). This may be because applications have not been made by the latter, but may also be indicative of the fact that smaller firms and sole practitioners (SPs) are less likely to benefit from any changes to the SBR than the larger firms and ABSs.

Nor is there any published policy about how the SRA determines whether a waiver is appropriate and how any conditions imposed are determined/the rationale behind them.

Question 2: Do you agree that we should replace the ban on links with separate businesses that provide non-reserved legal services with a rule containing outcomes that protect clients?

We would refer also to our response to the SRA Consultation on MDPs (dated 14th June 2014) which, to a large degree, captures our views too on these proposals.

These changes to the SBR are being considered in light of the LSB’s view of the rule as unnecessarily restrictive from a market perspective and limiting innovation. On the one hand, we can see the SBR is arbitrary and has allowed some legal service providers to operate within prohibited separate businesses, whilst others, including SPs have not. Therefore in one sense a ‘levelling of the playing field’ between traditional solicitors, ABSs and unregulated service providers sounds beneficial and fairer in theory.

However, the reality is that those who stand to gain the most from any changes are the larger firms, ABSs and the unregulated service providers. Working as they do on a larger scale within the legal landscape than the small firms and SPs, they have the resources and flexibility to diversify, invest in separate businesses and work across regulatory boundaries, to develop innovative, but untested, models of legal service delivery.

The increased competition that this change is also intended to create will also be of some threat to small firms and SPs who are not positioned financially to take advantage of these new opportunities, but who will find themselves having to compete with those who do.

It is said that this will ultimately benefit consumers by (according to the SRA Board) “providing greater competition in the provision of legal services, greater opportunities to access holistic services and potential reductions in cost”. It is noticeable that the word “quality” does not feature in this statement.

If these changes lead, conversely, even to a watering down of the brand and reputation of the traditional solicitor qualification, let alone a possible decline in the number of small regulated, highly qualified and expert service providers, the consumer may ultimately suffer from both reduced choice, reduced quality of legal services and reduced assurance that having work undertaken by a qualified person provides. Far from creating more sustainable regulated services, the very opposite could be true for smaller firms and SPs as prices are driven down further by increased competition from the de-regulated sector.

Whether the playing field is, indeed, levelled is open to question. There are other regulatory aspects of consideration for traditional law firms, not least of which is the issue of PII. For SPs, the PII premium can be the deciding factor in the financial viability of a firm. With Accountants able to offer legal services regulated by the ICAEW and their minimum level of PII cover at £500,000, we are still far from a level playing field. We have made our views with respect to the minimum level of PII cover very clear in our consultation responses on those issues and we do not seek or support a reduction in minimum levels for solicitors, to achieve a more level playing field. The risks of reducing minimum levels of cover are prohibitive to this. Nevertheless, it is unrealistic to present these proposed changes as a levelling of the playing field, when there are other significant dynamics within the traditional law firm that hinder this.

With that in mind, there may undoubtedly be some SPs, who are entrepreneurial and innovative by nature who may wish to invest in separate businesses within the scope of the proposed new rules. It would be wrong of us to say that there won’t. However, we expect them to be relatively few.
There must be appropriate checks and balances in place to protect consumers of legal services from the risks that such a change will also create – a risk that, on the basis of size alone and the numbers of consumers being serviced, is largely posed by the larger providers and ABSs.

There is a real risk of consumer confusion and perception about what is and isn't subject to legal service regulation. It is crucial for consumers to know the distinction between whether the work is being undertaken by a fee earner in a non-authorised part of the business and not be misled into thinking that they have the protection of an authorised practising lawyer (and the consequent regulatory protection of indemnity insurance, the compensation fund, the Ombudsman, legal professional privilege, qualification, training and staff skills that this brings) when they don't. This is a real risk where professional services are split into separate entities, where businesses may seek to be authorised by the SRA in order to gain the cachet of a professional title whereas in reality, little or none of its activities will be regulated. Clients must be clearly aware of what services they are buying and who regulates them. There is no doubt, in our mind, that unreserved legal work undertaken outside of the regulatory framework is likely to ultimately damage consumers. For example, firms that currently undertake will writing under regulation will be able to transfer such work into the unregulated environment and beyond the reach of indemnity insurance and Ombudsman protection. Some may even have no assets whatsoever within the jurisdiction.

There must be significant clarity as to redress and other remedies available to consumers.

However, such a flexible approach to separate business provisions that is focused on the consumer rather than on business structure or on a list of activities, whilst sounding positive in theory is messy in practice and only necessary to deal with the unfolding regulatory landscape resulting from the Legal Services Act 2007 reforms – reforms that we opposed and which have led to a significant growth in the commercial provision of non-reserved legal activities by unregulated providers.

Nor do we wish to see the cost of regulation and enforcement increased for the profession as a whole through a change that primarily benefits only the larger and ABS firms. Even with the SBR in place, there have been a number of serious cases before the SDT involving breaches. Many of these have involved vulnerable clients such as the frail, elderly and mentally impaired being led to make important decisions such as entrusting or investing money. How much more is there a risk when the rule is liberalised?

It is therefore important that any revised SBR enables the SRA to properly take appropriate protective, interventionist and deterrent action into the unregulated entity, by ensuring it is clear that the solicitors involvement in the other business is still of legitimate concern for the regulator.

Whilst the voluntary extension of the jurisdiction of the Legal Ombudsman beyond authorised persons is currently under consideration and consultation, it would seem that this should be extended to all legal services. However, this would require primary legislation and proper resourcing, all of which could take years – it would seem that neither the SRA nor the LSB are keen to hold back any changes to the SBR to await such a development.

This further demonstrates the haphazard and ‘patchwork quilt’ approach to the de-regulation of legal services taken by this Government which rather ironically flies in the face of the ‘holistic’ approach to legal services which it claims to promote.

There are also costs consequences to any extension to the role of the Legal Ombudsman and the begs the question, who will foot the bill? Ultimately, it will, of course, be the consumer.

In the meantime, what will the Legal Ombudsman’s view of what constitutes a legal service? This may differ significantly to the views of regulators, licensing authorities and the Legal Services Board.

Whilst we appreciate that the proposed new rule would forbid referrals in certain circumstances, the cost of policing this rule to ensure that authorised persons are not splitting matters involving reserved legal activities with an unregulated business to the detriment of clients, could be significant – and again, largely only of benefit to the larger firms.

Ultimately, these proposals arise from the regulatory mess that has been created by the implementation of the Legal Services Act. It has created a complex overall regulatory position, in terms of the number of different regulators and the lack of a proper review of whether the list of reserved legal activities is the appropriate one. The difficult issue of regulation by title and activity is being ignored i.e. what activities should be regulated by the SRA and which should not when that is surely key to ensuring that consumers are properly protected if the SBR is changed.

However, we accept with much disappointment and concern that significant change to the overall regulatory architecture or to the list of reserved legal activities now seems unlikely either in the short or medium term.
The regulatory fallout from this is of no surprise to us – we were sounding these warning bells loud and clear prior to the legislation receiving Royal Assent.

To a large degree, these proposed changes to the SBR, which can be said to have held traditional solicitors back, after the race has been running for some time only serves to demonstrate that the SRA was wrong to have ignored the concerns expressed by high street practitioners in the first place.

Question 3: Do you agree that solicitors should not be allowed to describe themselves as non-practising solicitors when providing services to clients or potential clients in a separate business?

Yes, we agree.

Question 4: Do you agree with our proposals to prohibit some specific referrals that split matters involving or related to reserved activity?

Yes, we agree.

Question 5: Should further specific bans on referrals be included or would a general outcome such as that described in paragraph 113 be more appropriate?

The specific referrals proposed deal with the most obvious risks to consumers. We would have thought that a specific ban in respect of referrals for all pre-litigation services, not merely those in respect of family disputes, since the same concerns as to a consumers choice to instruct a business that is regulated (and then finding that part of the service is delivered by an unregulated business will apply.

There should also be a general outcome that forbids an authorised person from dividing or allowing to be divided a clients matter between them and a separate business in a way that results in the client not having the regulatory protections available to an authorised person.

We are concerned that this raises yet further complicated issues surrounding referrals, the need for guidance, the uncertainty to the profession and fears of ‘getting it wrong’. This then raises questions as to how this will be managed by the SRA and the consequential costs, all again, ill-thought out by the passing of the Legal Services Act 2007.

One of the risks is cases moving back and forth between regulated and unregulated services in a way that prejudices the client. The duty of an authorised person to act in the client’s best interests may carry less weight with solicitors who will now have further profit with less regulatory risk in mind. It is difficult to see how a less sophisticated consumer (the average man or woman on the street, whom the LSA is intended to benefit) will understand what may be complicated divisions of work between a separate business and an authorised person.

Question 6: Do you have any other comments on draft Chapter 12 of the SRA Code of Conduct?

Further to our concerns above, we also have in mind the SRA’s supervisory role and risk-profiling of regulated firms. The liberalisation of the SBR will surely increase the SRA’s workload in terms of profiling risk in firms who choose to take advantage of these changes. What will be the indicators of a “cause for concern”? The ability to impose conditions and to take enforcement action when the outcomes are breached is all well and good but in the context of the SRA’s moves to reduce its regulatory burden and workload, these proposals would appear to be inconsistent.

Question 7: Do you have any comments on the case studies or any suggestions for further examples for inclusion?

We have no additional comments to make other than those above.
Question 8: Do you have any comments on our draft Impact Statement or any data or information to add?

The impact of these proposals upon SPs is threefold:

a) they are less likely to find themselves in a position to take advantage of the liberalisation of the SBR;

b) any increase in the costs of the regulatory burden imposed by these changes is likely to be felt more keenly within an SP firm;

c) in the event of these changes leading to significant growth in the market of the unregulated sector, SP firms are most at risk from loss of work and potential closure.

Question 9: Do you agree that recognised bodies and RSPs should be allowed to provide the additional services proposed?

Again, in principle, we welcome any move towards a more level playing field between traditional firms, ABSs and the unregulated sector.

However, again, we fear that the reality may well be quite the opposite.

We recognise that the SRA are proposing these changes in response to the damage caused by the Legal Services Act, in order to enable traditional solicitors to 'compete'. The reality is that, purely on the basis of economies of scale, RSPs are less likely to be able to offer the additional services proposed.

Further, the increased level of services that ABSs and larger unregulated providers may well begin to provide is likely to lead to them capturing a larger market-share for both regulated and unregulated work as consumers are encouraged to bring all of their needs "under one roof". Small firms and SPs are likely to suffer as a result. That will not contribute to encouraging an 'independent, strong and diverse legal profession' – indeed, quite the opposite.

We rather fear that the implications of the Legal Services Act 2007 are far wider-reaching than those concerned may have originally thought, and the regulatory reforms needed to deal with the fall-out are becoming something of a runaway train.

Question 10: Are there any other services that should be allowed, bearing in mind the restrictions in s9 (1A) AJA and the regulatory objectives?

We have no further suggested services to add at the present time.

Question 11: Do you consider that some activity carried out by recognised bodies and RSPs should be exempted from SRA regulated activity? If so, please specify the activity or activities and provide the reasons for your views.

We would say that it is unfair that all work carried out within a recognised body or an RSP is SRA regulated, whereas the MDP policy now allows non-reserved legal activity to be excluded from SRA regulated activity for an MDP. This is far from a level playing field and puts MDPs at a significant commercial advantage compared to solicitors’ firms. However, the alternative, of dual or even multiple regulation is by no means attractive and fraught with difficulties and again, the potential for confusion amongst clients, who will expect their work to be regulated to the same high standard of the profession, regardless of the individual within the firm who undertakes it.

We would be interested to know whether the view of the PI insurers been sought in relation to the issues raised by this consultation.

Hilary Underwood February 2015
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP
TO THE LSB CONSULTATION ON THE DRAFT STRATEGIC PLAN 2015-2018
AND BUSINESS PLAN 2015/2016

We recognise that the Legal Services Board (LSB) has an enormous task to fulfil in meeting the 8 regulatory objectives set by Section 1 of the Legal Services Act 2007 (LSA), which are each in themselves hugely distinct and challenging tasks. We set these out below since we refer to them throughout the remainder of our response:

- protect and promote the public interest
- support the constitutional principle of the rule of law
- improve access to justice
- protect and promote the interests of consumers
- promote competition in the provision of legal services
- encourage an independent, strong, diverse and effective legal profession
- increase public understanding of the citizen’s legal rights and duties
- promote and maintain adherence to the professional principles.

The latter, of course, is then further defined as:

- acting with independence and integrity
- maintaining proper standards of work
- acting in the best interests of clients
- complying with practitioners’ duty to the Court to act with independence in the interests of justice and
- keeping clients’ affairs confidential.

When one considers that the LSB is responsible for all of the above across eleven approved regulators (three of which are also licensing authorities), and which between them regulate directly approximately 166,800 lawyers and 398 alternative business structures operating throughout the jurisdiction, the regulatory minefield and sheer scale of the complexity of this task is staggering.

All members of the profession would agree that a vibrant and healthy legal profession, proper access to justice and a well-functioning justice system are indeed cornerstones of our civil society and must be preserved.

The LSB summarises its goal as “to reform and modernise the legal services marketplace across England and Wales, creating the conditions for competitive, innovative and accessible services that work better for all users and consumers of those services, while protecting broader consumer and public interests.”

We are, however, extremely concerned that the increasingly rapid pace of change in the legal marketplace, which seeks to open the gateway to new business models, growth and innovation in the way in which legal services are delivered, is creating regulatory challenges at such a fast pace and to such a large extent that the very regulatory objectives the LSA 2007 has set are in longer-term jeopardy.

Changes facing the legal sector which are described as a “springboard” to a better market for legal services may well be the very obstacle which causes it to trip and fall to its knees.

We rather fear that the implications of the Legal Services Act 2007 are far wider-reaching than those concerned may have originally thought, and the regulatory reforms needed to deal with the fall-out are becoming something of a runaway train.

‘Access’ to legal services is by no means access to good quality legal services and following the model of other sectors such as financial services is not necessarily a good thing, given the recent pitfalls evident in that sector.

There is a marked core difference between a ‘consumer’ and a ‘client’ and it is significant in terms of the changing legal landscape. The former suggests a somewhat cursory exchange of goods or services (even if this is repeated over many years – it is a discrete exchange) and the latter suggesting care, consideration and protectiveness (indeed a qualitative relationship) in which professional skills are offered (even if only on one occasion) that is missing from the former. It may seem a very subtle difference merely of terminology but this is deceptive. The emphasis of the draft strategic and business plans upon the
‘consumer’ is indicative of the slow but sure way in which the culture of consumerism (a sales-based culture) as opposed to client-care has been allowed to seep into a profession previously unique in its standards of integrity, quality and professionalism. This change in terminology of itself de-values the professional services that we provide.

Draft Strategic Plan 2015 – 2018

The LSA 2007 appears to us to have a complex overall regulatory position, in terms of the vast number of different regulators and the lack of a proper review of whether the list of reserved legal activities is the appropriate one. The difficult issue of regulation by title and activity has been ignored within this overall regulatory architecture when that is surely key to ensuring that consumers are properly protected? We would welcome the LSB’s consideration of the reservation of additional legal activities, bringing them within the protection of the regulated environment.

It is also a huge concern that the changes to the legal marketplace opened up by the LSA 2007 have gone full steam-ahead despite the paucity of data and research in many key areas of the legal services sector. It is absolutely vital that the LSB develop a sound evidence base for better-informed future decision and policy-making, not only on its own but in collaboration with other organisations.

The strategy document states, in setting out the strategic themes for the next three years that “whilst we have identified some key work packages to support them, we recognise the need to be flexible and to be prepared to re-prioritise and re-scene, should we need to respond to changes in circumstances over the next three years “. By implication, this need for flexibility is indicative of the fact that absolutely nobody has any idea what the legal landscape might look like over the next three years and, to our minds, the LSB is effectively “holding a tiger by the tail”.

Both Theme A (breaking down regulatory barriers to competition, growth and innovation) and Theme B (enabling need for legal services to be met more effectively) deal extensively with the affordability and ‘access gap’ between the need for legal services and what is currently supplied. Research has shown that over a three year period, half of all UK citizens experienced at least one legal problem, but one in three did not get the help that they needed. This is said to be an opportunity for innovative firms and professionals. Is it therefore being suggested that the innovations and growth in new business models made possible by the LSA 2007 may somehow plug the immense access gap left by the extensive reforms to legal aid?

It is absolutely certain that even the most innovative of legal providers will not provide legal services free of charge. It is acknowledged within the strategy document that “Some providers that are reliant on a declining flow of legal aid work may find it challenging to find alternative income streams “. This is, of course, true but the strategic plan then fails to address the most glaring ‘access gap’ of all.

We feel that it is absolutely incumbent upon the LSB, as part of its remit under the Act to protect and promote the public interest, support the constitutional principle of the rule of law, improve access to justice and protect and promote the interests of consumers, to impress upon the Government in the strongest of terms that all other efforts to achieve these objectives are incomplete without an effective system of legal aid that ensures these ‘objectives’ are not merely rhetoric but reality for the more vulnerable in society. We are of the view that the LSB is wrong in considering this falls outside of its remit. The LSB stands in a unique position. It has the ear of the Government, it is entirely neutral in as much as it is not a representative body, it does not stand in the corner of the profession but rather the consumer and it has the evidential research to back this up.

In the meantime, family law is the one of the most significant areas of law which should be a priority for the LSB in enabling demand for legal services to be met.

Theme B refers to enabling need for legal services to be met more effectively. We question what is meant by ‘more effectively’? Does this mean more quickly? More cheaply? More accurately? With a better standard of client care? A more positive ‘experience’ or ‘journey’ through the legal process? An effective legal service can meet a multitude of different things to different people and to say that the traditional models of legal service provision are less effective than the new, innovative business models is unhelpful without further expansion of what is meant by this.

There is a real risk of consumer confusion and perception about what is and isn’t subject to legal service regulation and issues of protection, quality and price. It is crucial for consumers to know the distinction between regulated work and unregulated work and not be misled into thinking that they have the protection of an authorised practising lawyer (and the consequent regulatory protection of indemnity insurance, the compensation fund, the Ombudsman, legal professional privilege, qualification, training and staff skills that this brings) when they don’t. This is a real risk where professional services are split into separate entities, where businesses may seek to be authorised by one of the regulators, in order to gain the cachet of a professional title whereas...
in reality, little or none of its activities will be regulated. Clients must be clearly aware of what services they are buying and who regulates them. We agree that one of the LSB’s priorities should indeed be ensuring that there is clear information available to the public to enable them to make informed choices when sourcing legal services.

There is no doubt, in our mind, that unreserved legal work undertaken outside of the regulatory framework is likely to ultimately damage consumers, putting it outside the reach of indemnity insurance and Ombudsman protection.

There must also be significant clarity as to redress and other remedies available to consumers.

We are keen to see a level playing field between the regulated and unregulated sector so that the regulated firms can compete fairly. Of course, the SRA’s current consideration of reforms to the Separate Business Rule are intended to have such an effect. However, the fact is that smaller firms and sole practitioners (SPs) are less likely to benefit from the changing legal landscape than the larger firms and ABSs. Those who stand to gain the most are the larger firms, ABSs and the unregulated service providers. Working as they do on a larger scale than the small firms and SPs, they can not only reduce costs, but also have the resources and flexibility to diversify, invest in separate businesses and technology and work across regulatory boundaries, to develop innovative, but untested, new models of legal service delivery, which perhaps incorporate a number of related services.

The increased competition that this change is also intended to create will also be of some threat to small firms and SPs who are not positioned financially to take advantage of these new opportunities, but who will find themselves having to compete with those who do. The increased level of services that ABSs and larger unregulated providers may well begin to provide is likely to lead to them capturing a larger market-share for both regulated and unregulated work as consumers are encouraged to bring all of their needs "under one roof". Small firms and SPs are likely to suffer as a result. That will not contribute to encouraging an ‘independent, strong and diverse legal profession ‘ – indeed, quite the opposite. It is also rather ironic, given the desire of the LSB to see the growth of small businesses – though perhaps not small legal businesses.

This threat should not be ignored by the LSB and discounted blandly as a natural consequence of innovation, termed in the strategy document as “ the exit of those who cannot adapt ” and the “ inevitable product of an increasingly competitive market place. ” The LSB states that it will continue to take into account the geographic diversity of legal needs across England and Wales and that it seeks to create “ diverse and ethical legal service providers…..that collectively support wider public interest objectives including the rule of law and access to justice for all. ” It cannot be ignored that SPs play a huge role in diverse legal service delivery in the high streets of towns and villages all over the UK, serving local communities and the vulnerable who may otherwise struggle to access legal advice from larger firms in bigger cities or online. It also cannot be ignored that a high proportion of BME solicitors are represented within the SP sector of the profession, which in turn means that there is a real threat to the ethnic diversity of legal service delivery in BME communities.

It is said that this will ultimately benefit consumers by providing greater competition in the provision of legal services, greater opportunities to access holistic services and potential reductions in cost. It is noticeable that the word “quality” rarely features.

If these changes lead to a watering down of the brand and reputation of the traditional solicitor qualification, let alone a possible decline in the number of small regulated, highly qualified and expert service providers, the consumer may ultimately suffer from both reduced choice, reduced quality of legal services and reduced assurance that having work undertaken by a qualified person provides. Far from creating more sustainable regulated services, the very opposite could be true for smaller firms and SPs as prices are driven down further by increased competition from the de-regulated sector.

Whether the playing field is, indeed, levelled is open to question.

It is unfair that all work carried out within a recognised body or an RSP is SRA regulated, whereas the MDP policy now allows non-reserved legal activity to be excluded from SRA regulated activity for an MDP. This is far from a level playing field and puts MDPs at a significant commercial advantage compared to solicitors firms. However, the alternative, of dual or even multiple regulation is by no means attractive and fraught with difficulties and again, the potential for confusion amongst clients, who will expect their work to be regulated to the same high standard of the profession, regardless of the individual within the firm who undertakes it.

There are other regulatory aspects of consideration for traditional law firms, not least of which is the issue of PII. For SPs, the PII premium can be the deciding factor in the financial viability of a firm. With Accountants able to offer legal services regulated by the ICAEW and their minimum level of PII cover at £500,000, we are still far from a level playing field. We have made our views with respect to the minimum level of PII cover very clear in our consultation responses on those issues and we do not seek or support a reduction in minimum levels for solicitors, to achieve a more level playing field. The risks of reducing minimum levels of cover are prohibitive to this. Nevertheless, it is unrealistic to suggest that the LSA 2007 creates a level playing field, when there are other significant dynamics within the traditional law firm that hinder this.

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What is the view of the PI insurers with respect to unbundling, mingled with self-help provisions? Similarly, the banks? Those are the institutions who ultimately decide whether a firm can operate or not. We would be interested to know whether any research has been undertaken of this nature in informing the LSB’s draft strategic plan and business plan?

Further, many of the regulatory changes for the traditional law firm are being addressed after the race has been running for some time, and the SRA have been behind the curve. This has set the sector back, particularly small firms and SPs, considerably. SPs, are often, by their very nature entrepreneurial and innovative and many of these, who provide very niche and specialist services will compete without difficulty in the changed legal market. However, there are many SPs who, for the reasons set out above, simply won’t.

The need for the regulators to consider its regulatory function in line with the objectives of the LSA 2007 is creating complexity and confusion. We attach our responses to the recent SRA consultations dealing with the Separate Business Rule, Consumer Credit Regulation and Insolvency Practice by way of example. These deal with the detailed implications of proposed de-regulation, for example the complexity surrounding referrals, if the proposed reforms to the SBR go ahead and the risk of cases moving back and forth between regulated and unregulated services, through unbundled services, and different providers dealing with different parts of the same case, in a way that prejudices the client. It is difficult to see how a less sophisticated consumer (the average man or woman on the street, whom the LSA is intended to benefit) will understand what may be complicated divisions of work between a separate business and an authorised person. The lines are further blurred when we introduced the concept of ‘self-service’ via online technology to the already-complex equation.

We are aware that both the LSB and the regulators are powerless to impose rules upon the unregulated providers who undertake one of the six reserved activities and are powerless to take protective interventionist and deterrent action in respect of them (unless they are also authorised persons). When one considers that in 2013, the unregulated sector accounted for a turnover of between £5.84 billion – £8.76 billion, this is a huge concern. All those consumers who created this turnover will have had no recourse to the Legal Ombudsman and the exposure of consumers in the area of will-writers to unfair sale tactics is well documented. Despite that being a clear lesson from which we should learn, we are widening the gateway even further.

This concern is heightened by the fact that the expansion of the unregulated sector is predicted to match, if not exceed, the expansion of the regulated sector, given that there are no barriers to entry and a non-existent regulatory cost base. One such example is the provision of on-line services. The unregulated sector have been able to offer this service for years. The regulated sector have not. Again, hardly a level playing field.

One consequence of the decline in legal aid is the continued rise in the number of litigants in person, vulnerable to rookie McKenzie Friends, who are neither qualified, regulated, nor insured and in respect of whom the consumer has no redress whatsoever, despite the fact that many McKenzie Friends are illegally charging for their services. Far more needs to be done in respect of this issue if the public is to be properly protected in accordance with the Section 1 objectives.

We note that the strategic plan will involve consideration of how section 163 of the Act (voluntary arrangements) might be used to ensure necessary safeguards are in place for consumers, for example, accrediting codes of practice/kitemarking for unregulated providers etc. in a similar manner to healthcare practitioners (eg. physiotherapists) The difficulty is that the poor providers are those would not invest in such voluntary arrangements and sign up to the codes of practice in any event. A further concern is the cost – in our view, such arrangements and codes of practice would have to be funded by the unregulated sector itself.

We are also concerned by the suggestion that the LSB may, in due course, encourage and facilitate the extension of quality assurance schemes and the development of new schemes for both regulated and unregulated providers. This is likely to be deeply unpopular with the regulated sector, given the number of such schemes to which they are already subject and the likely increased cost of these schemes. We accept these are likely to be necessary for the unregulated sector and should be modelled on those already in existence in the regulated sector. These should be funded by the unregulated sector.

Whilst we agree that it is necessary for the LSB, as part of its work over the next three years, to take into account both regulated and unregulated providers and to conduct research, engagement and intelligence gathering covering both regulated and unregulated services, we are frustrated and concerned that it will be only the regulated sector who foot the bill for this work, whilst the unregulated sector continue to earn their £8.76 billion. Again, this is a wider consequence of the LSA 2007 that is of much concern not merely to SPs but to the solicitor’s profession as a whole.

The extension of the jurisdiction of the Legal Ombudsman to all legal services, including unregulated legal services, will require primary legislation and proper resourcing, all of which could take years and the changes in the legal marketplace are not being held back until this in place, leaving clients vulnerable in the meantime. This demonstrates the haphazard and ‘patchwork quilt’
approach to the de-regulation of legal services taken by this Government which flies in the face of the regulatory objectives set out at Section 1. How will such an expansion be funded? Would it not be simpler to expand the scope of regulation by simply adding to the list of reserved activities, placing such work only in the hands of the regulated sector.

We are curious to know the Legal Ombudsman’s view of what constitutes a legal service? This may differ significantly to the views of regulators, licensing authorities and the Legal Services Board.

The cost of any extension of the role of the Legal Ombudsman is a further cause for concern.

A further concern is the likely increased focus on the international context, including foreign providers and investors increasing their activities in the UK, other jurisdictions developing their own liberalisation agendas, informed by the precedent set by the Act, more providers operating across jurisdictions or providing different services from different jurisdictions and continuing flows of students and lawyers, especially in the early years of their careers, into the UK. The risks, including funding of terrorist activities, maintaining consistent standards of competency and regulatory complexities of these trends must surely be obvious. How can the Government possibly think that the LSB, staffed by 30 people, will be capable of ensuring that the eleven regulatory and licensing bodies can consistently and properly regulate, intervene and protect consumers, whilst avoiding duplication within such a vast legal landscape and complex regulatory architecture?

The strategy document refers to the development of processes that make “doing it yourself” easier, along with unbundling and digital service delivery which, it is said, will “help many consumers resolve legal issues cheaply and conveniently.” Whether they do so correctly, obtaining the correct outcome, does not appear to be a consideration and we fail to see how the “success” of these new models can be properly researched and measured by the LSB or any organisation. We agree with the Legal Services Consumer Panel in as much as these developments have the potential for creating dangers for consumers such as web monopolies, ‘behavioural pricing’ (ie online prices that vary depending on data about which other websites have been visited and when) and greater scope for misuse of personal data. Again, these developments have been permitted by the Act without any data or research into the potential impact upon consumers. Many vulnerable consumers cannot access the internet and lack the capability to complete legal and administrative processes without significant levels of support, ironically those same consumers who can no longer access legal aid – hence the need for the LSB to feed such messages back to the Government.

We agree that the LSB should undertake some initial work in the first year of this strategic plan period to build on its existing knowledge and evidence base and to fill the gaps in understanding of how legal needs are met in the legal services market, and how consumers navigate through the market. It is important for the profession to gain an understanding of how consumers solve their legal problems, the choices and information available to them, recent trends in pricing and affordability and what the key barriers to meeting legal needs are. However, although it is relatively easy to gather statistics on ‘who went where’ for legal advice, it is far harder to measure the success of that legal advice in terms of the longer term outcome for the client, whether that outcome would have been better or worse if the legal work had been undertaken by a different provider, the client’s experience of that legal provider (in the absence of having a comparative).

The strategic plan focuses on exploring ways in which legal services can be delivered more efficiently, at lower price while retaining appropriate quality safeguards. This is a potentially dangerous approach. Legal aid fixed fees and subsequent cuts have surely shown that it is impossible to safeguard quality through lowering the price of a service – the consumer inevitably suffers as demonstrated by the numerous miscarriages of justice already prevalent throughout the criminal justice system as a result of ridiculously low fixed fees and the consequent two-tier system of publicly-funded – v – private funding defence that has developed.

Further, there is a huge risk that the LSA is encouraging a legal market of such competitiveness that providers are pricing under cost. This is a dangerous long-term strategy for producing a stable and sustainable legal marketplace. The impact of a large ABS provider suddenly going bust could have a hugely detrimental effect upon its clients and could leave huge gaps in supply that cannot be filled because smaller firms and SPs have been forced out of the market place by unrealistic price competition.

We agree that the strategic plan should explore better availability of information for consumers (ranging from guidance for consumers to the transparency of specific parameters such as price and quality to inform particular purchasing decisions) so that consumers can more easily navigate and make decisions about legal services, as well as carrying out broader work on public legal education. The LSB must ensure that the information provided to the public is accurate (we have particular concerns about comparison websites).

We would question whether there has been any research conducted amongst consumers themselves as to what they understand to be an adequate standard of protection? There is also a significant difference between an ‘adequate’ standard, which suggests a bare minimum/just good enough, as opposed to an ‘appropriate’ standard.
It should also be remembered that the risk to the consumer will vary dependent upon the nature of the consumer eg. a large organisation as opposed to a vulnerable old lady, and the type of legal work being undertaken.

We agree that the LSB’s performance, evaluation and oversight activities will continue to be vital in help it to understand the real-world challenges faced by the regulators and market realities. In particular, we would strongly urge the LSB to listen to the regulated sector as much as it seems to listen and be driven by the unregulated sector.

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We would welcome the proposed review of barriers to firms moving between legal regulators, in particular focusing upon the PII position and compensation requirements that exist between different regulators. Attention should also be given to run-off cover requirements and successor practice rules across different regulators. Information about the benefits and risks of firms moving between legal regulators would be helpful to the profession.

We would also welcome a review of regulatory restrictions on choice of insurer for different entities and the potential positive or negative cost of such restrictions and the impact of removing them.

Research should be undertaken into the different legal needs of different types of consumers including vulnerable consumers, how they choose to deal with their problems and the reasons why. This should be carried out in conjunction with stakeholders to carry out surveys of individual consumers and small businesses to ascertain how they respond to legal problems including whether or not they choose to seek advice and their choice of provider.

Research should also be undertaken into the impact of unbundled services on consumers, with an analysis of the findings.

We remain concerned that the LSB’s cross-cutting research (and we note the proposed on-line independent legal services research hub with independent editorial control) currently being explored with the SRA, the costs of which we again will fall to the regulated sector.

Hilary Underwood February 2015
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP
TO THE LEGAL OMBUDSMAN CONSULTATION ON THE DRAFT STRATEGY AND BUDGET 2015-2017

Question 1: Do you agree with our overall analysis of the broader context for our strategy? Are there other issues that you think we should take into account?

We agree that the strategy must be looked at within the wider context of the rapidly changing legal landscape introduced by the Legal Services Act 2007.

It is, in fact, somewhat frustrating and rather short-sighted on the part of the Government that the Legal Ombudsman service was created by Parliament as the independent, impartial ‘single point of entry’ Ombudsman scheme for complaints from consumers of regulated services, when the writing was clearly on the wall (and Parliament’s intention was) that a significant proportion of legal services would in the future fall to be provided to consumers by unregulated providers.

We agree that the Ombudsman scheme does, therefore, need to adapt in response to the dynamics of innovation and change. However, if the scheme is to remain as the ‘single point of entry’ scheme for complaints from consumers of legal services per se, and if the regulatory objectives of the LSA 2007 are to create a level playing-field, the scheme must be properly equipped to deal with complaints against both the regulated and the unregulated sector.

Though the voluntary extension of its remit is a starting point, and the only option for the Ombudsman scheme given its current legislative status, it is a poor second to a compulsory extension. It is the poor quality unregulated providers who pose the greatest risk to the consumer. It is precisely these providers who will not sign up voluntarily to the scheme and must be brought within its jurisdiction on a compulsory basis.

To achieve this now, however, will require cumbersome and time-consuming legislative and regulatory change – change that is now far behind the curve of developments currently taking place in the legal market.

Even should the Government now recognise the error and seek to put this right through further legislation, the growth of the Ombudsman scheme and its development of a model with a more flexible range of solutions will be costly – and no doubt more costly than it had it been correctly set up in the first instance.

We are concerned that costs of this extension of remit (both voluntary and compulsory) should not fall to the regulated sector, who currently fund the scheme. The unregulated sector must be required to fund that part of the scheme’s operation which services them and those costs must be proportionate. Therefore, should the Ombudsman find it is dealing with, for example, more complaints against the unregulated sector than the regulated sector, costs should be met by those sectors proportionately. Particularly since we note that part of the strategy will involve working with the providers within the new jurisdictions to assist them in understanding the role of the Scheme, and assisting them with first tier complaints handling. This work should not be funded by the regulated sector who, as a result of their regulatory status have already familiarised themselves with these aspects.

There are further difficulties in the extension of the remit of the Legal Ombudsman. We have responded to the LSB Consultation on its Draft Strategic Plan and Business Plan 2015-2018 and made our views with respect to the emerging complex regulatory architecture very clear.

One of the difficulties is the likelihood of legal services offered to consumers that cut across regulatory boundaries, with some work being undertaken by a lawyer, some by an accountant, some by an unregulated body - where should the lines then fall as to the most appropriate body to deal with complaints in relation to that service? Where should the lines fall as to consumer redress and PII claims? If there is to be a level playing field for the regulated legal sector, there must surely be an alignment of the wider environment of professional liability for poor service.

For example, whilst the Legal Ombudsman will now begin to accept complaints about accountants registered with the ICAEW relating to probate, there is a vast difference between the minimum level of PII cover for the regulated legal sector and the minimum cover for accountants of £500,000. We have made our views with respect to the minimum level of PII cover very clear in our consultation responses on those issues and we do not seek or support a reduction in minimum levels for solicitors, to achieve a more level playing field. The risks of reducing minimum levels of cover are prohibitive to this. However, the Legal Ombudsman as a means for the redress of consumer complaints should not be looked at in isolation from the wider redress landscape which must include PII.

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It would seem clear to us that the Legal Ombudsman will also need to be extremely clear in its definition of ‘what is a legal service?’ in order to address some of the possible confusion that may otherwise arise. What the Ombudsman may consider a legal service may differ from the view of the LSB.

A further question that arises from the broader strategy is the extent to which information about complaints against individual providers will be disseminated in the public arena. We are concerned that the increased use of ‘comparison tools’ for providers of legal services, suggested by the LSB, and the increased ‘consumerist’ approach to such services rather than the traditional ‘client’ relationship (the former suggesting a somewhat cursory exchange of goods or services even if this is repeated over many years – it is a discrete exchange, and the latter suggesting care, consideration and the protectiveness of a qualitative relationship even if only given on one occasion) has the potential for the publication online of inaccurate or incomplete information (possibly even information about the wrong provider) which could be potentially devastating to the reputation of a firm.

On a similar note, it would seem to us that it will be important for the Legal Ombudsman to work closely alongside the LSB in educating and informing the public about the distinctions between regulated and unregulated providers in respect of consumer redress (i.e. the distinction in PII cover) and disseminating any information gathered from the development of a voluntary scheme for unregulated providers, since this will inform the LSB in its role in providing guidance and information to members of the public.

**Question 2: Do you agree that we have identified the right priorities to focus on over the coming year? Are there other priorities that we should consider?**

We agree that you have identified the right priorities to focus on over the coming year.

We will be interested to receive statistics and analysis relating to the first full year of the new remit to resolve complaints about claims management companies and accountants and the outcome of any attempt to introduce a voluntary scheme for the unregulated sector.

At the very least, it will be interesting to ascertain at least some data on the type and number of complaints received about unregulated providers. Given the current position of the unregulated sector, we would imagine that data about the likely scale of complaints is, at present, quite scarce unless it has been collated by consumer bodies?

We would hope to see the Legal Ombudsman continuing to feedback to the sector as a whole with a view to improving best practice standards across both the regulated and unregulated sectors.

**Question 3: Do you agree that we should retain our four goals?**

Yes, we agree that you should retain the four goals set out.

**Question 4: Have we clearly identified what each of our goals mean?**

**Goal 1: To continue to improve your efficiency**

Yes – we are fully supportive of a more efficient Legal Ombudsman scheme, efficiency not only being about cost, but also the speed with which complaints are dealt with and resolved, without compromising on the quality of the service given to both consumers and providers.

We are particularly concerned about cost-efficiencies given the increased jurisdiction for CMC’s and accountants, the online complaints portal and the move of the Legal Ombudsman to new premises.

**Goal 2: To implement changes to your jurisdiction**

Yes – we are pleased to see your intention for costs to be apportioned and accounted for appropriately. Does this means as between i) the core jurisdiction of the regulated sector ii) the new jurisdiction for CMC’s and accountants and iii) any potential voluntary scheme for the unregulated sector?

**Goal 3: To help to create an improved legal complaints handling system**

Yes – the key aspect here is the creation of a coherent and level playing field. It is noted that this goal includes developing a range of relevant, tailored and appropriate services within the scope of the current ombudsman scheme and identifying opportunities to build on this to reflect the changing nature of the market place. We would not wish to see a system developed...
whereby the resolutions and penalties imposed on the unregulated sector do not mirror those applicable to the regulated sector. If consumers are to be fully protected, they must be assured that they will be offered the same manner of redress.

Goal 4: To disseminate what you have learned more widely

Yes – this is imperative and a very useful way for the sector as a whole to learn lessons and develop best practice.

Your analysis and insight generated, in particular, from cases within your new jurisdiction will be invaluable in helping the Government, LSB and the sector as whole better understand any risks imposed by the unregulated sector, the likely scale of potential complaints against the unregulated sector if this were to be brought within the compulsory jurisdiction.

This will in turn assist in ensuring that consumers are able to make better informed choices about their legal service provider, based upon evidence and data of which there is a paucity at the present time.

Question 5: Do you agree that the assumptions and risks we have taken into account in setting our proposed budget are sensible and appropriate?

Yes – we agree, as far as these go. We are pleased to see that the budgets for the core jurisdiction of legal complaints and the CMC complaints are financially ring-fenced, save for the ‘shared costs’ of the infrastructure, which may in fact mean that based upon economies of scale, there could be costs savings.

We agree that some of the risks identified, particularly the demand for CMC complaints is unquantifiable and could exceed the predicted levels accounted for within the budget.

Presumably, ICAEW work will fall within the core jurisdiction of legal complaints? How will the accountancy profession, save for the individual case-handling fees, be required to contribute to the shared infrastructure costs?

We cannot see any reference to the proposed voluntary scheme for the unregulated sector within the budget and appreciate this may be due to its uncertain status. However, if that scheme is developed, and if those cases fall into the core jurisdiction of legal complaints, how is it proposed (save for the individual case-handling fees) that the unregulated sector contribute to the shared infrastructure costs, and the costs directly attributable to the setting up and running of the scheme?

Question 6: Do you agree that the KPI’s we are proposing for 2015-2016 are the right ones?

Yes, we agree. We assume that these apply equally to both the core and CMC jurisdictions?

Those KPI’s may, however, be difficult to achieve if there is a significant take-up of the proposed voluntary scheme for unregulated providers. Both case resolution targets and unit cost targets may prove to be unrealistic in relation to the unregulated sector, where we would expect complaints resolution to be potentially less straightforward.

In light of the possible further extension of the jurisdiction (which ought to include the compulsory jurisdiction of the unregulated sector) we can see how the KPI’s are potentially unrealistic – such targets may not be achievable when dealing with complaints against unregulated legal providers, particularly given the complex delivery structures that these may involve, including internet-based services.

Whilst we can see, therefore, that an outcomes-focused approach and framework fits better with the wider jurisdiction, the spirit of the KPI’s should not be lost, particularly with respect to quality and timeliness. The way in which impact is measured should include:

- % of stakeholders who have confidence in our delivery against our mission
- % of users of legal services in the last two years who had heard of the Legal Ombudsman

It should also be measured, in the longer term against the impact of the service upon best practice and standards across both the regulated and unregulated sector, demonstrated over a period of time ultimately by a reduction in demand.

Hilary Underwood February 2015
On behalf of the Sole Practitioners Group
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP TO THE SRA CONSULTATION REGULATION OF CONSUMER CREDIT – THE SRA’S REGULATORY ARRANGEMENTS

Question 1: Do you agree that it is appropriate for the consumer credit activities set out above to be ‘prohibited’ from regulation by the SRA under Part 20 FSMA

SPG responded to the first consultation dealing with the regulation of consumer credit activities in October 2014. We were pleased that, as a result of listening to the views of the profession, the SRA altered its proposal to withdraw from the Part 20 regime and decided that there was benefit in remaining within this, so that the SRA would continue as a “Designated Professional Body” to offer exemption to firms from the requirement to be separately authorised by the FCA in order to carry out FSMA regulated activities.

Our concerns at that time were centred around the unnecessary cost (between £100 - £15,000) and extra regulation on firms required to be dual-regulated by both the SRA and the FCA. The present regime has enabled law firms to engage in regulated consumer credit activities without the additional burden and cost of an additional layer of regulation by a second regulator, which would be engendered by the need to apply to the FCA for authorisation. Any additional regulatory fees to be added to the cost of PC renewals, PII and the overall cost of regulatory compliance for one’s firm would be, at best, deeply unwelcome and at worst, prohibitive to practice.

We also highlighted at that time the areas of sole practice most likely to be affected by the SRA’s proposal to withdraw from the regime:

iv) firms undertaking debt recovery work as part of their day-to-day-work;
v) firms undertaking debt advice as part of their day-to-day work;
vi) The offering of a facility to clients to meet their legal costs by way of instalments – such proposals potentially exceeding a period of 12 months and exceeding a total of four repayments, but even if within those limitations, such agreements may include provision for interest, therefore falling outside of the exemption.

It is appreciated that the FCA’s regulatory framework as set out in the Consumer Credit Sourcebook (CONC), is designed primarily for financial institutions and imposing detailed obligations, is vastly different to the SRA’s approach, which focuses on developing and delivering regulation proportionate to the nature of an entity in an outcomes-focussed manner and with the removal of prescriptive rules.

However, we did not view those two approaches as irreconcilable. The FCA’s regulatory framework focuses on increasing protection for members of the public who obtain credit. As solicitors subject to a strict code of conduct who are already subject to considerable regulatory scrutiny, the FCA should surely recognise that the risks posed by the regulated legal sector are considerably less than those posed by the financial institutions. Therefore, whilst the FCA’s rulebook sets out detailed obligations on firms, and the SRA’s handbook is based on an outcome focussed system which is incompatible with this, the underlying principles set out in the FCA’s handbook are parallel to the core values of the profession under which solicitors are judged under the existing SRA regulatory regime i.e. integrity, honesty, openness and fairness.

We were also concerned about the FCA’s threshold criteria for qualification, in particular:

v) What would the FCA consider to be an effective level of firm supervision?
v) What would the FCA consider to be ‘appropriate financial resources’, ‘skills and experience of those managing the firm’s affair’?
vi) What would the FCA consider to be a suitable level of competence and ability of management?
vii) What would the FCA consider to be an acceptable ‘business model’ and ‘strategy for doing business’?

Whilst we accepted that the FCA have a two-tiered risk-based approach to authorisation, and would offer guidance on whether firms needed to apply for limited or full permission, we were concerned that it would be simply impractical and onerous to expect sole practitioners to have the time to invest in studying the guidance and completing the application, given the already enormous amounts of time that have to be spent in completing PC renewal forms, authorisation renewal form, PII forms and the list goes on.
We are therefore pleased that there is an acceptance on the part of the SRA and the FCA that given the natural synergy between the principles within the Solicitor’s Code of Conduct and the FCA rules, it is possible for the FCA and SRA to continue to work together in managing and monitoring the performance and integrity of those firms involved in consumer credit activities largely in the way it has done to date.

In particular, we are now satisfied that the proposals do not pose any risk to sole practitioners of being forced out of the market due to the cost of dual-regulation.

We also previously highlighted the distinction between consumer credit activity arising out of, or being complementary to other professional legal services provided to the client, as opposed to consumer credit activity, such as debt recovery or debt advice work, given in isolation to a client, outside of and not incidental to/complementary to a legal service such as advocacy or litigation services.

We therefore welcome the extension to the “contentious business” exclusion, which will cover work prior to issue of, and/or in contemplation of proceedings. This is an exclusion which will benefit many sole practitioners who provide debt recovery/collection and debt advice work as part of their day-to-day advocacy/litigation caseload.

We are also particularly delighted by the amendment to the exemption in article 60F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, to increase the number of instalments over which legal services/transactions can be financed, from just four instalments to twelve instalments, allowing greater flexibility in the ability of firms to make deferred payment arrangements with clients. As highlighted in our previous response, this was of huge concern to us, since many sole practitioners offer clients an option to make payments for their services by monthly repayments, in an age where many clients would otherwise struggle to pay for their legal advice. This is, in our view, a huge benefit to consumers as well as to firms.

We are, though, mindful that agreements will only be exempt where the total number of repayments is less than twelve, made over a period of twelve months or less and without interest or other charges. Any agreement outside of those terms would not be exempt and would still require the firm to comply with the amended Conduct of Business Rules, which do impose a potentially cumbersome requirement to assess the client’s creditworthiness, discussed further below. It does, however, represent a significant improvement. Even in those circumstances, firms could not apply a variable rate of interest, unless FCA authorised.

It seems to us entirely appropriate that firms who provide distinct and specialist consumer credit services to clients on a larger scale in proportion to other professional services provided, as a stand-alone service, (such as credit brokering, debt collecting) and not incidental to the provision of legal services nor arising out of, or complementary to that service, should expect to be separately and independently authorised by the FCA and exposed to its specialist financial services regulatory framework, rather than SRA regulation. One assumes that a larger proportion of its fee income arises directly from this source and as such, this is vastly different to a firm who merely offers a ‘pay your bill by instalments’ option to a client. Those firms, were it not for the fact that they may also offer legal services to other clients, essential mirror a financial institution and should, therefore, not expect to be exempt from the regulation that applies other financial institutions. It is within those firms offering distinct and specialist consumer credit services that the more complex regulatory issues are likely to arise, requiring the experience and expertise of a specialist financial services regulator, rather than a legal services regulator. In relation to these firms, we agree that the two regulatory frameworks of the FCA and the SRA are not necessarily reconcilable.

Since it would be a nonsense to force all firms to apply for FCA authorisation to accommodate these firms, when in fact only a much smaller and narrower number of firms need the specialism of a financial services regulator, we agree that the appropriate and proportionate solution is the prohibition of the consumer credit activities, as set out in the consultation documentation, from regulation by the SRA under the Part 20 regime and the restrictions to permitted consumer credit activities.

This approach also allows the SRA to focus upon a proportionate approach to the regulation of those activities that DO fall within the Part 20 regime, for the protection of consumers.

In our experience, it would be unusual for any firm undertaking any of the prohibited or restricted activities, without already conducting business, in any event, which requires FCA authorisation and so we do not expect there to be any significant regulatory impact of the prohibitions and restrictions, save with one possible exception.

It would seem that the entering into of a Sears Tooth Agreement (very common in family law cases) between the firm and the client would not be considered to fall within the current restrictions, unless the credit is secured on land by way of a legal or equitable charge. Whilst the number of such agreements is likely to be low, the requirement to be authorised by the FCA could adversely impact upon both firms and their clients. Since the loss of legal aid in family cases, such agreements have become a common way for a client to procure legal services.
Question 2: What is the likely impact of these prohibitions and restrictions for firms and consumers

We have, in part, dealt with this above. Save for the concern surrounding credit agreements in family cases, we do not anticipate any significant impact upon firms. We would envisage the regulatory framework for most firms will not change from the current position. Those firms already providing consumer credit services to clients ancillary and complementary to legal services will continue to do so, under the auspices of SRA regulation through the Part 20 regime. Those firms already undertaking the specialist and distinct consumer credit activities now helpfully and clearly listed, should already be FCA authorised and, if they are not, the clarification now proposed by the current proposals should ensure that they now attend to this immediately.

Consequently, and again save for the significant concern in family cases, we do not envisage any other detriment to consumers in terms of access to either legal services or consumer credit services.

Clients who benefit from consumer credit services ancillary to their legal problem will, no doubt, be completely unaware (and rightly so) of any distinction between a legal service and consumer credit service, and will simply experience a seamless end-to-end service from their solicitor. Those clients will therefore continue to have the protection afforded through the appropriate and proportionate regulation invoked by the Part 20 regime and the wider regulatory framework to which their solicitor is subject.

Clients who seek a specialist consumer credit service from their solicitor may, likewise, be unaware of which regulatory framework is governing the delivery of the service by his solicitor. What is crucial, of course, is that the client is given proper information at the outset about this and details of to whom he or she should complain in the event of poor service.

Question 3: Should any of the prohibited activities be allowed, or the prohibitions/restrictions be modified?

No, save for clarification surrounding credit agreements in family cases, as discussed above.

Question 4: If so, do you believe that any additional consumer protections should be put in place to address any specific risks that these activities present?

Given that a client must take independent legal advice before signing a Sears Tooth Agreement, we do not believe that these present any specific risk (even where credit is secured on land by legal or equitable mortgage) that are not adequately dealt with within the overall regulatory framework, high standards of professionalism, the duty to act in the client's best interests and other duties as set out in the Code of Conduct. However, if the SRA wished to provide additional consumer protection in those cases where security against land is involved in the credit arrangement, it could be a requirement for the solicitor to register all such agreements with the SRA immediately they are entered into, and notification to be given to the SRA once the security is satisfied.

Question 5: Do you have any comments on the requirements set out in our proposed amendments to the SRA Conduct of Business Rules?

It is not clear exactly what is meant by “appropriately assess clients’ creditworthiness” and when it may be necessary to approach credit reference agencies. Greater clarity and guidance will be needed so that firms know precisely what is expected of them, with illustrative examples of practices/behaviours that the SRA would consider a breach of the Principles or Outcomes, as they relate to consumer credit activities. We are concerned that this has the potential to become burdensome to sole practitioners, particularly where in the event of the parties subsequently agreeing to increase the amount of credit, the exercise and checks would need to be repeated.

It remains to be seen whether this requirement essentially still impinges significantly upon the ability of firms to allow their clients to make deferred payment arrangements. We are mindful that agreements will only be exempt where the total number of repayments is less than twelve, made over a period of twelve months or less and without interest or other charges. Any agreement outside of those terms would still require the firm to comply with the amended Conduct of Business Rules and therefore still undertake assessments of creditworthiness.

Other than this, the proposed amendments appear to be commensurate with the terminology and obligations otherwise imposed on financial institutions by the FCA and seem to be a proportionate approach to protecting consumers, within the wider setting of a profession regulated to high standards.
Question 6: Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in developing our impact assessment?

We are satisfied that the proposals no longer pose any risk to sole practitioners of being forced out of the market due to the cost of dual regulation, which is also positive from the wider access to justice concerns.

Question 7: Can you provide any specific examples of benefits or risks linked to our proposed approach and/or particular aspects of our proposed arrangements?

We have nothing additional to add here.

Hilary Underwood August 2015
On behalf of the Sole Practitioners Group

WHAT ON EARTH IS AN HONORARY SECRETARY ANYWAY?!

Janis Purdy, who had been previous Honorary Secretary for many years, suddenly stepped into the breach as Chairwoman and gave me 24 hours notice at the annual SPG Conference in Buxton that I was going to replace her as the SPG Honorary Secretary.

Firstly, the post appears to have no term date, unlike the Chairmanship which only lasts for one year. It does not even have a limitation period like a perpetuity period. Does it even extend to a life in being and 21 years and if so whose life?!

Thankfully, given the length of office, the duties are not too onerous especially now that Hilary is our employed full-time Co-ordinator and prepares the agenda and minutes of meetings as part of her role.

I think one can say that the main benefits that an Honorary Secretary can provide to the Group are to be a support to the individual chairmen and women who come fresh and enthusiastic to their work on each annual appointment, but are worried as to how their ideas fit the overall strategic position of the Group and how their ideas are affected by the constitution. A sort of chairman’s churchwarden; a continuity man; a crisis manager; a constitutional adviser; a one man House of Lords; even an umpire.

There. A job description for any aspiring candidates!

Clive Sutton

Clive Sutton is Honorary Secretary of SPG, a post he has held for 10 years

What on earth is an Honorary Secretary anyway?! I did not know myself until about 10 years ago when
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP
TO THE LEGAL OMBUDSMAN CONSULTATION ON
THE PROPOSED ADR SCHEME RULES

Question 1: Is the description of our approach, in section 1, to the application of the rule clear?

Yes, the description of your approach to the application of the rule is clear, in that:

a) the amendment to Rule 4.4 is very straightforward;
b) cases where sufficient evidence is available are very straightforward;
c) in cases when sufficient evidence was not available, we can see how you would need to consider “refusal to deal” either due to the passage of time, or under the new rule 5.7(d) because doing so would “seriously impair the effective operation of the Legal Ombudsman scheme.”

What is not so clear is how that rule might be applied on an individual case by case basis, specific to the facts of each case.

From a practitioner’s perspective, the time limits as per the current Scheme Rules provided a great deal of certainty and clarity as to when a complaint would or would not be accepted by the Legal Ombudsman. A practitioner’s view of whether or not dealing with a dispute outside of those time limits would be fair, practical and proportionate may well be very different to the Legal Ombudsman.

We accept, however, that the Legal Ombudsman does have considerable experience under the current Scheme Rules as to whether or not to accept complaints about acts or omissions that fall outside of the current time limits, depending on the date of awareness, and accepts that it has been doing so effectively. The case studies referred to within the consultation document illustrate this and this should provide practitioners with some comfort that a proportionate and sensible approach has been taken by the Legal Ombudsman to date.

There will, inevitably, be some fear amongst practitioners that the new rules will open the floodgates to historic complaints that would not otherwise have been accepted by the Legal Ombudsman. That is, of course, not the purpose of the new Scheme Rules and it is clear from your illustrative cases that they could not be used by a complainant as a means of raising an out-of-time complaint via the back door, nor an out-of-time negligence claim worth millions of pounds, which is statute-barred, since we understand that there is to be no change to the maximum award of £50,000 (plus costs).

The reality is that the ADR Directive and Regulations (which do not permit ADR entities to operate rules which allow them to refuse to deal with cases based on the timing of the act or omission) have now taken effect and providers of legal services are stuck with them, regardless of whether or the Legal Ombudsman becomes certified as the ADR entity for complaints about legal services or not.

We believe that our members, who now must comply with the ADR Directive and Regulations, would prefer to deal with just one body, rather than having to continue to signpost clients not only to the Legal Ombudsman scheme (as required by the Legal Services Act 2007) but also to a separate certified ADR entity. To have to do so would be an additional burden upon sole practitioners.

To respectfully coin the phrase “Better the devil you know” we believe that our members would prefer to deal with the familiar body of the Legal Ombudsman rather than a separate certified ADR entity, whose processes, resolutions and costing structures are an unknown quantity to the profession. Indeed, those separate entities are likely to be considerably less experienced in dealing with the often complex nature of disputes concerning the delivery of legal services and may be less capable of properly discerning when a complaint should be refused.

We would say that one of the key challenges for the Legal Ombudsman will be communicating this approach to the legal profession in order to allay misconceived fears and we have addressed this further below.
Question 2: Do you foresee any difficulties in applying the approach in section 1?

We wonder whether it may be difficult for the Legal Ombudsman to maintain consistency amongst caseworkers and investigators in applying the approach in section 1, given the breadth of interpretation open to the words “seriously impair the effective operation of the Legal Ombudsman scheme” in Rule 5.7(d). We would hope that appropriate training will be provided to Legal Ombudsman staff but there will always be the possibility, within a non-prescriptive system, for one individual caseworker to interpret the rule differently to the next.

Question 3: Should we explore specifying a period of time within b) i) beyond which the presumption should be that the investigation of the case would seriously impair the effective operation of the Scheme?

As indicated above, practitioners would no doubt prefer such a presumption to be put into place. This would provide practitioners with a greater degree of certainty, such as they have under the current scheme.

However, given that the ADR Regulations do not permit ADR entities to operate rules which allow them to refuse to deal with cases based on the timing of the act or omission, we query whether such a presumption would be permitted?

a) If so what should that period of time be?

If such a presumption were permitted, practitioners would naturally wish this to mirror the current Scheme Rules:

– Six years from the act/omission; or
– Three years from when the complainant should reasonably have known there was cause for complaint.

However, given the much wider approach of the ADR Regulations to cases, a period of:

– Eight years from the act/omission; or
– Four years from when the complainant should reasonably have known there was cause for complaint may be considered more appropriate.

Question 4: Or do you consider that no time period should be set because the issues would be case specific?

Practitioners would prefer the certainty of a set time period rather than a case specific approach. It is extremely unsettling for practitioners to know that a complaint could arise at any time, from any case they have dealt with at any time during the life of their firm.

Otherwise, it is feasible that the Legal Ombudsman may consider that sufficient evidence is available (from documents produced by the complainant) and proceed to accept the complaint, despite its historic nature. The ensuing investigation of that complaint may then prove to be extremely costly to the practitioner where, due to the passage of time, memory of the case has faded, fee earners may have left the practice, files may have been destroyed etc. A case specific approach is therefore far more risky and disadvantageous for a practitioner than a set time period beyond which the presumption would apply. This is, however, where the new rule 5.7(d) could potentially assist.

Question 5: Do you consider it would be reasonable to use the new rule 5.7(d) to refuse to deal with complaints about acts or omissions that took place so long ago that a fair practical and proportionate investigation can no longer be conducted and safe conclusions cannot be reached at all, or without unreasonable or disproportionate commitment of time or resources?

Yes, we consider that the new rule 5.7(d) should be used in this way.

a) If not how do you think we should deal with these complaints?

Question 6: Is the description of our proposed approach, in section 2, clear?

Yes.
Question 7: Do you foresee any difficulties in applying the approach in section 2?

The main difficulty that we can foresee is that the Legal Ombudsman will only have three weeks, from receipt of the complete complaint file, to decide whether to accept or refuse the complaint and notify the parties accordingly. This could be a real challenge for the Legal Ombudsman, particularly if the case is complex/historic.

Whilst we can see that, on the whole, the ADR Regulations fit into the existing Legal Ombudsman Scheme Rules, the reduction of the fourteen grounds for dismissal or discontinuance currently set out in the Scheme Rules down to just four grounds, contained in Rule 5.7 (a) – (d) does create one significant potential injustice for practitioners.

This is illustrated best by your Case Example 3 in the Consultation Document. This relates to the removal of Rule 5.7(c) Fair and Reasonable Redress, which is rather bizarrely not included in any shape or form in the ADR Regulations and so would not be permitted under the new Scheme Rules. It is bizarre that the ADR Regulations make provision for refusal to deal with a dispute if the complainant did not attempt to contact the trader concerned in order to discuss the complaint and seek to resolve this directly with the trader but DO NOT make provision for refusal to deal if the trader has already offered fair and reasonable redress in relation to the complaint and the offer is still open for acceptance.

We realise that this a shortfall in the ADR Regulations (which oddly appears to require consumers to approach the trader first, but not necessarily give serious consideration to any offer of redress and move full steam ahead to the ADR entity) and not a shortfall in the Legal Ombudsman Scheme Rules.

However, the reality will be that the Legal Ombudsman will no longer be able dismiss or discontinue a complaint where a practitioner has, in fact, already offered fair and reasonable redress to the client at first tier. Instead, all the Legal Ombudsman can do in those circumstances is accept the complaint and seek to encourage an informal resolution by explaining to the client that the remedy is fair and reasonable. Ultimately, if the client still does not accept the informal resolution, the Legal Ombudsman would have to investigate and make a formal ombudsman decision confirming the same offer.

Whilst the outcome for the client is the same and the end result (in terms of the redress) is the same, the process will have had a significant impact upon the practitioner which is grossly unfair. The practitioner will now have to declare this to his/her insurers and upon his/her PII application forms for many years to come. Not only this he or she will also have to declare this to the SRA on Form RF1 PC Renewal stage for many years to come, which could in turn impact upon the SRA’s risk/supervision assessment of the firm. This is a particular concern for sole practitioner and small firms.

It is crucially important that both the SRA and the PII industry understand this significant development, if the Legal Ombudsman does go on to become a certified ADR entity. It is vital that these types of cases be distinguished on the forms (which are currently simplistic tick-box formats and would not accommodate such a distinction in their current format) from those cases where the Legal Ombudsman has made a formal ombudsman decision because the firm did not offer appropriate redress at first tier.

Question 8: As set out above, the ADR Regulations allow ADR entities to refuse to deal with disputes that do not meet a pre-determined minimum and maximum monetary threshold. Should we explore having prescribed monetary thresholds for the value of claims?

A pre-determined minimum and maximum monetary threshold would further assist in bringing some clarity and certainty into this arena, which practitioners would appreciate. This may also assist in ensuring the efficient use of funds for investigation only of those complaints where the potential loss is of such significance as to justify the costs of the process.

It may be difficult, however, for the Legal Ombudsman to quickly assimilate those thresholds against a case which has no obvious monetary element to it and involves only a complaint, for example, of delay, poor service, poor communication – bearing in mind that the Legal Ombudsman will have only three weeks from receipt of the full complaint file to make the decision as to whether to refuse to deal with the case or not.

a) If so, what should the thresholds be?

Since we do not believe there is any proposal to increase the limitations on the Legal Ombudsman’s current maximum award, we would say that the maximum monetary threshold should be £100,000 (£50,000 being the maximum that can be awarded but bearing in mind that the detriment can be split between the solicitor and the barrister, with a £50,000 award made against each one).

The minimum monetary threshold should be £50.
b) How should we identify and verify the amount?

This is fraught with potential difficulties, as indicated above, particularly in a three week timescale. We would have thought that a matrix, based upon the Legal Ombudsman’s extensive experience of previous awards would be helpful, akin to a matrix of the quantum of personal injury damages similar to Kemp. Legal Ombudsman staff will need to be able to identify the amounts concerned quickly.

Early conversations with both complainant and practitioner will be essential in order to grasp and narrow down the issues but there will be no substitute for expertise and experience gained in the field of complaints handling to date.

Question 9: Do you have any other views on our proposed new sub section of chapter 4?

No – this would appear to be a sensible way of dealing with existing rules 5.7 (g,h,l) and m

Question 10: Are there any other grounds which you feel should be in the new subsection “complaints not covered”?

No, save for our answer to Question 7 above – is it not possible for rule 5.7 (c) to become part of the new subsection?

Question 11: Are the consequential amendments clear?

Yes

Question 12: Are there any further amendments you think we require?

No

Question 13: Do you have any comments or observations related to this consultation which you would like the OLC to consider?

We have assumed that the case fees payable by practitioners would not change under the new Scheme Rules but would be grateful for clarification of this.

We are extremely concerned about the rather ‘messy’ interim period between 1st October 2015 – 1st April 2016 during which practitioners will be required to signpost clients who make a complaint against the firm to both the Legal Ombudsman as well as to a separate certified ADR entity. We would be concerned about any delays in the application process to the LSB and would hope that 1st April 2016 would be the latest date by which the Legal Ombudsman scheme will be certified as the ADR entity for complaints about legal services.

It is crucially important that the views of the PII industry are sought, since the potential impact of the ADR Regulations could feasibly be a rise in complaints, some of which could be historic. This may in turn impact upon the risk processes and procedures that PI insurers would wish to see firms undertaking, particularly with respect to archived files etc.

SPG was also pleased to be able to contribute to the roundtable discussion held on 23rd September 2015, alongside other regulators, professionals and consumer groups. One of the points we raised at that discussion was the need for the Legal Ombudsman to communicate these changes more effectively, in order to dilute some of the inaccuracies in the legal press surrounding these Regulations, which has led to misguided fears amongst the profession. For example, the message that the limitation on awards has not been clear, nor the message that the processes of the Legal Ombudsman will not change. Similarly, that there is no change in the approach with respect to negligence claims. We suggested lunchtime webinars with Q & A sessions to be very effective (such as those hosted by the SRA), and offered the support of SPG in communicating your message to our membership through our SOLO Journal, email communications and local/regional events. We reiterate that offer again here.
RESPONSE OF THE SOLICITOR SOLE PRACTITIONERS GROUP TO THE LEGAL OMBUDSMAN CONSULTATION ON THE PROPOSED ADR SCHEME RULES

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What is not so clear is how that rule might be applied on an individual case by case basis, specific to the facts of each case.

From a practitioner’s perspective, the time limits as per the current Scheme Rules provided a great deal of certainty and clarity as to when a complaint would or would not be accepted by the Legal Ombudsman. A practitioner’s view of whether or not dealing with a dispute outside of those time limits would be fair, practical and proportionate may well be very different to the Legal Ombudsman.

We accept, however, that the Legal Ombudsman does have considerable experience under the current Scheme Rules as to whether or not to accept complaints about acts or omissions that fall outside of the current time limits, depending on the date of awareness, and accepts that it has been doing so effectively. The case studies referred to within the consultation document illustrate this and this should provide practitioners with some comfort that a proportionate and sensible approach has been taken by the Legal Ombudsman to date.

There will, inevitably, be some fear amongst practitioners that the new rules will open the floodgates to historic complaints that would not otherwise have been accepted by the Legal Ombudsman. That is, of course, not the purpose of the new Scheme Rules and it is clear from your illustrative cases that they could not be used by a complainant as a means of raising an out-of-time complaint via the back door, nor an out-of-time negligence claim worth millions of pounds, which is statute-barred, since we understand that there is to be no change to the maximum award of £50,000 (plus costs).

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It may be difficult, however, for the Legal Ombudsman to quickly assimilate those thresholds against a case which has no obvious monetary element to it and involves only a complaint, for example, of delay, poor service, poor communication – bearing in mind that the Legal Ombudsman will have only three weeks from receipt of the full complaint file to make the decision as to whether to refuse to deal with the case or not.

a) If so, what should the thresholds be?

Since we do not believe there is any proposal to increase the limitations on the Legal Ombudsman’s current maximum award, we would say that the maximum monetary threshold should be £100,000 (£50,000 being the maximum that can be awarded but bearing in mind that the detriment can be split between the solicitor and the barrister, with a £50,000 award made against each one).

The minimum monetary threshold should be £50.
b) How should we identify and verify the amount?

This is fraught with potential difficulties, as indicated above, particularly in a three week timescale. We would have thought that a matrix, based upon the Legal Ombudsman’s extensive experience of previous awards would be helpful, akin to a matrix of the quantum of personal injury damages similar to Kemp. Legal Ombudsman staff will need to be able to identify the amounts concerned quickly.

Early conversations with both complainant and practitioner will be essential in order to grasp and narrow down the issues but there will be no substitute for expertise and experience gained in the field of complaints handling to date.

Question 9: Do you have any other views on our proposed new sub section of chapter 4?

No – this would appear to be a sensible way of dealing with existing rules 5.7 (g,h,I, l and m)

Question 10: Are there any other grounds which you feel should be in the new subsection “complaints not covered”?

No, save for our answer to Question 7 above – is it not possible for rule 5.7 (c) to become part of the new subsection?

Question 11: Are the consequential amendments clear?

Yes

Question 12: Are there any further amendments you think we require?

No

Question 13: Do you have any comments or observations related to this consultation which you would like the OLC to consider?

We have assumed that the case fees payable by practitioners would not change under the new Scheme Rules but would be grateful for clarification of this.

We are extremely concerned about the rather ‘messy’ interim period between 1st October 2015 – 1st April 2016 during which practitioners will be required to signpost clients who make a complaint against the firm to both the Legal Ombudsman as well as to a separate certified ADR entity. We would be concerned about any delays in the application process to the LSB and would hope that 1st April 2016 would be the latest date by which the Legal Ombudsman scheme will be certified as the ADR entity for complaints about legal services.

It is crucially important that the views of the PII industry are sought, since the potential impact of the ADR Regulations could feasibly be a rise in complaints, some of which could be historic. This may in turn impact upon the risk processes and procedures that PII insurers would wish to see firms undertaking, particularly with respect to archived files etc.

SPG was also pleased to be able to contribute to the roundtable discussion held on 23rd September 2015, alongside other regulators, professionals and consumer groups. One of the points we raised at that discussion was the need for the Legal Ombudsman to communicate these changes more effectively, in order to dilute some of the inaccuracies in the legal press surrounding these Regulations, which has led to misguided fears amongst the profession. For example, the message that the limitation on awards has not been clear, nor the message that the processes of the Legal Ombudsman will not change. Similarly, that there is no change in the approach with respect to negligence claims. We suggested lunchtime webinars with Q & A sessions to be very effective (such as those hosted by the SRA), and offered the support of SPG in communicating your message to our membership through our SOLO Journal, email communications and local/regional events. We reiterate that offer again here.

Hilary Underwood
SPG Co-ordinator
On behalf of the Sole Practitioners Group
30th October 2015
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