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Solicitors offering legal services to the public from unregulated entities

11 September 2019

From 25 November 2019, the new SRA Standards and Regulations will allow solicitors to deliver non-reserved legal services to the public from within a business not regulated by a legal services regulator.

This practice note offers support to solicitors who work, or are considering working, in this environment and outlines the regulatory requirements.

[Legal status](#)

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This practice note is the Law Society's view of good practice in this area.

Practice notes are issued by the Law Society for the use and benefit of its members. They represent the Law Society's view of good practice in a particular area. They are not intended to be the only standard of good practice that solicitors can follow. You are not required to follow them, but doing so will make it easier to account to oversight bodies for your actions.

Practice notes are not legal advice, nor do they necessarily provide a defence to complaints of misconduct or of inadequate professional service. While care has been taken to ensure that they are accurate, up to date and useful, the Law Society will not accept any legal liability in relation to them.

For queries or comments on this practice note, contact the Law Society's [Practice Advice Service](#).

SRA Standards and Regulations

On 25 November 2019, the SRA will introduce the SRA Standards and Regulations 2019. These will replace the SRA Handbook 2011 which will remain in force until then.

References in this practice note are to the SRA Standards and Regulations 2019 as the rules relating to solicitors working for unregulated entities come into force alongside the SRA Standards and Regulations 2019.

Solicitors can access the forthcoming SRA Standards and Regulations 2019 materials and guidance on the [SRA's beta website](#). These materials are regularly being updated so you should check them frequently.

We are developing our own materials to support members with this new regime and our guidance is likely to evolve.

The SRA has also issued [non-mandatory ethics guidance](#) for solicitors working in unregulated entities.

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Terminology

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Must – A specific requirement in legislation or of a principle, rule, outcome or other mandatory provision in the SRA Standards and Regulations 2019. You have to comply, unless there are specific exemptions or defences provided for in relevant legislation or the SRA Standards and Regulations 2019.

Should – Outside of a regulatory context, good practice for most situations in the Law Society's view. These may not be the only means of complying with legislative or regulatory requirements and there may be situations where the suggested route is not the best possible route to meet the needs of your client. However, if you do not follow the suggested route, you should be able to justify to oversight bodies why the alternative approach you have taken is appropriate, either for your practice, or in the particular retainer.

May – A non-exhaustive list of options for meeting your obligations or running your practice. Which option you choose is determined by the profile of the individual practice, client or retainer. You may be required to justify why this was an appropriate option to oversight bodies.

SRA Code – SRA Code of Conduct for Solicitors, RELs and RFLs

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1 Introduction

1.1 Who should read this practice note?

This practice note should be read by solicitors who are employed, or considering being employed, by businesses that are not authorised by a legal services regulator and who are intending to provide legal services to the public.

It may also be helpful for unregulated entities who employ solicitors to provide services to the public and solicitors employed by SRA-regulated firms who may encounter a client matter on which another party is represented by a solicitor working for an unregulated entity.

1.2 What is the issue?

The SRA Standards and Regulations 2019, which will replace the SRA Handbook 2011, will allow solicitors to deliver non-reserved legal services to the public on behalf of a business that is not authorised by a legal services regulator.

The new rules will enable solicitors to provide non-reserved legal services to “the public or a section of the public” – meaning external clients outside of the organisation the solicitor is employed by (including commercial clients as well as individuals).

The SRA Standards and Regulations will come into force on 25 November 2019.

Solicitors are already employed by unregulated businesses in a variety of ways. For example, solicitors can work ‘in-house’ providing legal services to their employer. The SRA’s intention in introducing this new model is to expand the ways in which solicitors can work in unregulated entities to promote increased opportunities for innovation, greater competition and a raising of standards and protections in the unregulated sector.

This new model may be used in a number of ways. For example:

- an accountancy firm could expand its business to offer legal services to clients without having to be authorised by a legal services regulator as an Alternative Business Structure (ABS)
- a firm that offers HR services to businesses, using non-practising legal and/or HR professionals, may wish also to use solicitors (who are regulated and with the title of solicitor) to deliver these services to clients
- local authorities with in-house solicitors, could now use their in-house capability to provide legal advice to other local authorities. In this example, by extending its services beyond its own organisation, the local authority would be providing legal services to a section of the public
- a solicitors’ firm could open a separate division of its business that is not regulated and offers only non-reserved services

The SRA Standards and Regulations 2019 create separate codes of conduct for firms and individual solicitors.

Individual solicitors working for unregulated entities must comply with the SRA Code of Conduct for Solicitors (references in this practice note relate to this code), however, the organisation they work for will not be bound by the SRA Code of Conduct for Firms.

That is why it is important that if you are thinking of practising in this way you are fully aware of your regulatory obligations and you should discuss these with prospective employers before you start employment.

The opportunities and risks of this model are discussed in this practice note.

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2 General obligations

All solicitors are subject to the SRA Principles as follows:

“You act:

1. in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice
2. in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons
3. with independence
4. with honesty
5. with integrity
6. in a way that encourages equality, diversity and inclusion
7. in the best interests of each client”

All solicitors are also bound by the SRA Code of Conduct for Solicitors (the Code), which covers mandatory provisions in the areas of:

- maintaining trust and acting fairly
- dispute resolution and proceedings before courts, tribunals and inquiries
- service and competence
- client money and assets
- business requirements such as referrals, introductions and separate businesses
- conflict, confidentiality and disclosure
- client identification, complaint handling, client information and publicity

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3 Practice restrictions

Solicitors offering legal services to the public from unregulated businesses are subject to practice restrictions. You can provide any type of legal service except for:

- reserved legal services to the public or a section of the public
- immigration work – unless the business is separately authorised by the Office of the Immigration Services Commissioner
- claim management services – unless the business is separately authorised by the Financial Conduct Authority
- financial services or activities that are required to be authorised by the Financial Conduct Authority unless the solicitor is acting on behalf of the firm and the firm has the appropriate authorisation.

Under the Legal Services Act 2007, the six reserved legal activities are:

- the exercise of a right of audience
- the conduct of litigation
- reserved instrument activities
- probate activities
- notarial activities

- the administration of oaths

As a solicitor working for an unregulated entity, you will need to ensure that you do not accept any work where you will be required to undertake a reserved legal activity for the public or a section of the public.

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4 Holding money on behalf of clients

Under paragraph 4.3 of the Code, solicitors working in non-SRA regulated firms are prohibited from holding client money in their own name. This means that you are not permitted personally to hold client money on behalf of the business you are employed by.

‘Client money’ includes:

- money that clients pay you on account of your charges or third-party disbursement costs (such as fees for reports)
- any damages that your client receives as part of a settlement of a case
- the assets of an estate that is being administered by your firm
- any money that you are holding on your client’s behalf to complete a transaction or for investment purposes

This does not prevent you from being a signatory to a bank account held by your employer in its own name. However, you must be clear to your clients that it is your employer, and not you, that is holding their money.

There are other options you may wish to explore with your employer, which will allow you to comply with your obligations to protect your clients. For example, using an escrow account¹ will place funds under the control of a third party.

As discussed below at 5.2, you are not required to comply with the SRA’s minimum terms and conditions for professional indemnity insurance and your clients will have no access to the Compensation Fund.

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5 Communicating with clients

5.1 Regulatory requirements

The SRA Code places specific obligations on solicitors providing services to external clients.

Paragraph 8.6 requires you to give information to clients in a way that they can understand. You must ensure that clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them. This means you must be clear about who will be carrying out the work – whether you are handling the matter yourself, supervising the work, or delivering part of the work.

You will be responsible to the SRA for the work you supervise (paragraph 3.5) and you will need to ensure that the individuals you manage are competent to carry out their role (paragraph 3.6).

Where you are delivering work as part of a team, and it is not possible to differentiate the services provided by you or other authorised individuals, the client should be informed of this and you will be accountable to the SRA for the work as a whole. You may wish to keep detailed file notes in case of any future claim. If concerns are raised, the SRA will investigate your personal conduct and degree of responsibility in accordance with the [SRA Enforcement Strategy](#).

Paragraph 8.7 requires you to provide clients with the best possible information on how their matter will be priced and, at the time of engagement and when appropriate as their matter progresses, the likely overall cost

and any costs incurred. To comply, you need to ensure that your employer's policies and procedures enable you to meet this regulatory obligation.

The Code also sets out your obligations with regards to marketing practices. You must ensure that any marketing in relation to your work is accurate and not misleading (paragraph 8.8) and you must not make any unsolicited approaches to the public, except for clients, in order to advertise legal services provided by you or your employer (paragraph 8.9).

You should take steps to ensure that marketing practices conducted by your employer do not compromise you meeting your personal obligations with regards to the Code.

Paragraphs 8.10 and 8.11 place obligations on you to ensure that clients understand whether and how the services you provide are regulated, and the protections available to them. You must explain which services will be carried out by you (as an authorised person), which services are provided by others, and which services are regulated or not.

You must not represent your employer as being regulated by the SRA. You must explain to clients that while you are authorised and regulated to provide legal services, your employer is not.

This means that your clients are not entitled to regulatory protections such as access to the Compensation Fund or the SRA's minimum terms and conditions for professional indemnity insurance, and you should inform them of this (see 5.2 below). Other regulatory protections attached to the title of solicitor, such as legal professional privilege, may not apply either.

Communicating this information to clients before they instruct you will allow them to make informed choices about the services they choose.

5.2 Professional indemnity insurance and the SRA Compensation Fund

Solicitors offering legal services to the public from unregulated entities are not required to publish price and service information under the [SRA Transparency Rules](#). However, the Rules do require you to provide certain information to clients before they formally instruct you.

Under rule 4.3(a) of the Transparency Rules you must inform clients that you are not required to have professional indemnity insurance that meets the SRA's minimum terms and conditions (MTCs). This will involve explaining what the MTCs are and that these arrangements do not apply to you because your organisation is not regulated by the SRA.

If you are covered by professional indemnity insurance (likely to be arranged by your employer) you must specify that alternative arrangements are in place and, if requested, provide information about what this covers.

It may be helpful to make clear the differences between the MTCs and your organisation's insurance cover.

Rule 4.3(b) also requires you to inform all clients that they will not be eligible for a grant from the SRA Compensation Fund. You should explain that the Compensation Fund is a discretionary fund operated by the SRA to which all solicitors contribute. Its purpose is to make grants to people whose money has been stolen, misappropriated, or otherwise not properly accounted for; or those who have suffered a loss for which a regulated person should have been insured, but was not.

You may be held personally liable for losses as a result of your work if the organisation you work for is uninsured or is not adequately insured or if you have made personal guarantees. You should consider carefully the potential risks of working for an organisation that does not provide adequate and sufficient insurance cover for your work.

5.3 Referrals

In relation to referrals, under paragraph 5.1 of the Code, you must inform clients of any financial or other interest which you or your employer has in referring a client to another person, or which a person has in referring a client to you. You must also inform clients of any fee sharing arrangement that is relevant to their matter, and this arrangement must be in writing.

5.4 How to communicate information to clients

Clients may have a limited understanding of the various models of practice, and what this means for them. To meet your regulatory obligations, you will need to give clients detailed information so they can make an informed choice about the service they are purchasing.

The following may assist with how you present your information to make it more readable to clients:

- use simple, plain language where you can and avoid jargon if possible. For example, use ‘try’ instead of ‘endeavour’, or use ‘other costs payable to another organisation’ instead of ‘disbursements’
- provide clear explanations where appropriate. For example, you will need to make sure clients understand the distinct roles within the business and the consumer protections that apply
- make sure the information you are required to give clients is accessible and clients will not easily miss it

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6 Complaints procedure

6.1 Regulatory requirements

All complaints must be dealt with promptly, fairly and free of charge (paragraph 8.5 of the Code).

Under the Code solicitors have a duty to establish and maintain, or participate in, an adequate complaints handling procedure (paragraph 8.2). At the time of engagement, you must ensure clients are informed about (paragraph 8.3):

- their right to complain to you about your services and your charges
- how a complaint can be made and to whom
- any right they have to make a complaint to the Legal Ombudsman and when they can make any such complaint

If your employer does not have a complaints handling procedure, you will need to ensure one is set up in relation to your work and the work you supervise. You may wish to ensure the information detailed above is included in the client care information that your employer provides to clients.

You should make clear that clients have the right to complain to the Legal Ombudsman about the services you are providing and to the SRA about your professional conduct but they will have no right to complain about your employer or services provided by non-authorised persons (unless those individuals are supervised by an authorised person).

If a complaint is made and not resolved to the client’s satisfaction within eight weeks, you are required to provide the following information in writing (paragraph 8.4):

- the right to complain to the Legal Ombudsman (including relevant timeframes and contact information)
- if your complaints procedure has been exhausted you must state that you cannot settle the complaint, identify an alternative dispute resolution approved body that could deal with the complaint, and state whether you agree to use the scheme operated by that body

6.2 Adequate complaints procedures facilitated by business

Complaints handling procedure

If you receive a formal complaint, it is likely you will need to respond with a formal complaints handling process. For further information, see our [practice note on handling complaints](#).

The process should cover:

- acknowledging the complaint if it cannot be addressed immediately and giving the client details of the process (including that it is free of charge), likely timescales and contact information – ideally within two working days
- how the complaint will be investigated
- determining the outcome of the investigation:
 - if no poor service is found, providing a full explanation to the client for why you have come to this conclusion
 - if poor service is found, identifying appropriate remedies
- advising your client of their right to complain to the Legal Ombudsman (see below)

If your organisation has professional indemnity insurance arrangements in place, you may also wish to consider at which stage it is necessary to notify your insurer about the complaint and proposals for its remedy. An admission of liability to the client may have implications for your professional indemnity insurance.

Depending on the size of your organisation, you may require a complaints procedure which you can provide to clients to explain the process and an internal procedure which goes into more detail (for example outlining who needs to be notified of a complaint and guidelines on appropriate remedies).

If your complaints handling procedure has been exhausted

The Law Society has composed the [following text](#) which solicitors may wish to use in their correspondence to clients, once their complaints process has been concluded:

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 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].

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7 Ethical challenges

7.1 Competing interests – your employer

Solicitors are subject to the SRA Principles, including acting with independence, honesty, integrity and in the best interest of the client. However, these may not always align with your organisation's business interests. In a similar way to in-house solicitors, you may face particular ethical challenges working for an unregulated business. A situation may arise where your employer's commercial objectives compete with your professional obligations.

For example, there could be a conflict if you are required to process a high number of claims or undertake particularly complex work and you are not able to provide an adequate standard of service to clients; or if your employer wants a particular outcome or course of action that you consider not to be in the client's best interests.

It will be important for you to be in a position to identify when a conflict arises and you may wish to discuss with your employer appropriate training you can undertake.

Solicitors working in unregulated entities should set clear expectations with their employer and/or line manager concerning their own professional obligations; in particular the fact that these obligations cannot be overridden and must be maintained even when there is tension from other business demands. This is also important for the public reputation of the business to ensure that its solicitors are complying with their professional obligations.

While recognising that it may not always be possible, a clause could be inserted into your employment contract outlining that your overriding obligation is to comply with your duties as a solicitor and that your employer will not put you in conflict with this. Alternatively, it could be set out in an internal memorandum with your employer or line manager.

7.2 Conflict and confidentiality – clients

All solicitors are subject to requirements regarding managing conflicts of interest, confidentiality and disclosure.

You cannot act if there is an own interest conflict or a significant risk of one (paragraph 6.1 of the Code). You should not act in relation to a matter, or a particular aspect of it, if you have a conflict of interest or a significant risk of such a conflict, subject to certain specified exceptions (paragraph 6.2). You must keep the affairs of clients confidential unless disclosure is required, permitted or the client consents (paragraph 6.3).

You will need to ensure you have businesses processes in place to support you in meeting your obligations. For example, it is common to use automated conflict checks to identify clients (previous or current) and related names and entities. If such a system does not exist within your organisation, you will need to work with your employer to create an effective system.

You may wish to carefully consider which systems you use for client communications and work – free systems may not have sufficient protections to safeguard client information.

More detailed information on conflicts and confidentiality in a non-authorized business, including own interest conflicts and conflicts between two or more clients, has been [published by the SRA](#).

7.3 Legal professional privilege

It is not clear whether legal professional privilege would apply to advice given by solicitors providing legal services to the public from unregulated businesses. The SRA has advised that this is a matter of law and therefore it will not provide guidance on this issue. You will need to assess the level of protection your client has and advise them about whether this is appropriate. Data protection laws and confidentiality will apply to your work and to any advice provided to a client.

You have a duty to keep the affairs of your clients confidential (paragraph 6.3 of the Code). You should consider the difference between confidentiality and legal professional privilege. In brief terms, confidential information may be disclosed where it is appropriate to do so but privilege is absolute and privileged information cannot be disclosed.

Further information on legal professional privilege is contained in our [practice note](#).

7.4 Undertakings

A solicitor working for an unregulated entity may give an undertaking in the course of their business and it is a binding professional obligation as in any other form of legal practice. However, as a solicitor working for an unregulated entity you are not entitled to hold client funds and third party managed accounts are likely to require revised wording for undertakings. You should ensure you are in a position to comply with any undertakings you give.

7.5 Anti-money laundering obligations

Solicitors who undertake regulated activities have obligations under the UK anti-money laundering regime. Regulated activities include:

- advice about tax affairs
- real or financial property transactions
- opening or managing a bank account
- creating, operating or managing trusts, companies or similar structures

Under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2017, legal professionals who participate in certain regulated activities must perform a practice-wide risk assessment and carry out risk-based due diligence on their clients and report suspicious activity, among other obligations.

The SRA is currently considering whether solicitors working for unregulated entities will be subject to these anti-money laundering obligations.

7.6 Newly qualified/junior solicitors

There is no minimum practising experience required to work as a solicitor for an unregulated entity. Therefore, newly qualified solicitors are able to operate in this environment, and there may be circumstances in which they are not working alongside any other lawyers.

Junior solicitors may face particular pressures when dealing with the ethical challenges that arise in this environment, but will still be accountable to the SRA for any errors. In the types of circumstances described above, it will be essential for junior solicitors to be able to get support or advice for difficult areas of work.

You may want to work with your employer to ensure appropriate support networks are in place including access to training and advice from experienced solicitors. For example, if there is no one in the firm that can provide appropriate support, your employer may engage an external law firm to provide ad hoc support and advice on particularly complicated legal issues or engage an external experienced solicitor to mentor solicitors below three years post-qualification experience.

You have obligations in relation to maintaining your competence and professional knowledge (paragraph 3.3 of the Code). For more information see our [continuing competence guide](#). You may wish to discuss with your employer options for meeting these obligations (such as in-house or external training).

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8 Potential risks

8.1 Responsibility for the actions of your organisation

While your business is not regulated by the SRA, you are. Therefore, you will be responsible for ensuring that:

- the marketing regarding your legal services on behalf of the firm complies with the SRA Code (see paragraph 5.1 of this practice note)
- your organisation does not deliberately or inadvertently give the impression that it is regulated
- a sufficient complaint handling procedure is in place for legal services for which you are responsible

For example, your organisation may require training to prevent breaches of client confidentiality (such as naming a client on a social media post or staff discussing a matter outside of work).

You will want to ensure your employer is informed of your regulatory obligations and what is needed from the business to support you in complying. You may wish to provide them with a copy of this practice note and guidance produced by the SRA.

As detailed at section 7.1 of this practice note, a clause in your contract outlining your overriding obligation to comply with your duties as a solicitor may help strengthen any discussions you have with your employer.

8.2 Responsibility to the SRA

As well as your own work, you will be responsible to the SRA for the work you supervise or where you undertake work as a team, and it is not possible to differentiate the services provided by you or others. This means you may be responsible for work undertaken by non-regulated professionals within your organisation.

Given your responsibility for ensuring compliance with your regulatory obligations, you may want to put in place some measures to ensure you have sufficient oversight of work that you are responsible for, such as:

- pre-approval before work is sent to clients
- being copied into correspondence
- good record keeping

8.3 Client money

Unregulated businesses will not be subject to the same stringent rules for holding client money as solicitor firms. For example, issues may arise when a client payment is made into a general office account. In certain situations, for example if the office account is overdrawn, the bank may not permit the business to withdraw the money again if the client is due a partial or full refund. You may wish to discuss with your organisation how client money is to be sufficiently protected.

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9 Assistance

If you are concerned about the position you are placed in as a solicitor working for an unregulated entity and meeting your regulatory obligations, you may wish to contact the [Solicitors' Assistance Scheme](#). This offers free confidential help and advice from fellow practitioners for all solicitors in England and Wales, their families and employees on any problem, whether personal or professional.

Our [Practice Advice Service](#) offers free and confidential support and advice on legal practice and procedure. You can contact the service on 020 7320 5675.

For advice on ethical issues, you can call the SRA professional ethics helpline on 0370 606 2577.

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10 Feedback

We are interested in hearing about your experiences working within this new model of practice, and any particular benefits or challenges it presents. This will help us to develop more useful and relevant guidance for members, and understand the impact of the new SRA Standards and Regulations 2019.

You can send case studies of your experiences or other feedback to regulation@lawsociety.org.uk.

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¹Deposits paid into an escrow account are held by a third party as escrow agent on behalf of others, until it receives instructions or until a contractual contingency or obligation has been fulfilled.