

SRA BOARD
17 September 2014

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Annual Keeping of the Roll Exercise

Purpose

- 1 The purpose of this paper is to provide an analysis of responses to the recent consultation document on the proposal to stop carrying out the annual "keeping of the roll" exercise and ask the Board to approve the proposal and make changes to the relevant regulations.

Recommendations

- 2 The Board is asked to:
 - a) subject to the approval of the Legal Services Board, make the SRA Amendment to Regulatory Arrangements (Solicitors Keeping of the Roll) Rules 2014 set out in Annex 1. The effect of the amendments is to stop the annual "keeping of the roll" exercise and to reserve to the SRA the power to carry out the exercise at such times as it considers appropriate; and
 - b) approve the SRA's response to the consultation, attached at Annex 2.

If you have any questions about this paper please contact: Crispin Passmore, Executive Director, crispin.passmore@sra.org.uk; 0121 329 6687

SRA BOARD
17 September 2014

CLASSIFICATION – PUBLIC



Annual Keeping of the Roll Exercise

Background

- 3 The SRA is obliged by the Solicitors Act 1974 to "continue to keep" a list of solicitors called the "roll". Solicitors' names and other pertinent details are entered onto the roll when they are admitted. Individuals can be removed from the roll at their own request, or if struck off by the SDT.
- 4 Each year those solicitors who are on the roll but do not have a practising certificate (PC) are contacted and asked whether they wish to remain on the roll. Those who wish to remain on the roll must complete an application using the online system mySRA and pay a fee. Those who fail to respond and/or pay the fee have their names removed from the roll.
- 5 Solicitors with a PC remain on the roll.
- 6 It is proposed that we no longer carry out an annual keeping of the roll exercise and instead rely on other arrangements for updating the roll, while retaining the ability to conduct an exercise at such times it is considered to be appropriate.
- 7 Around 1,800 solicitors are exempt from holding practising certificates because of their employment. These are mainly solicitors working in Government departments. They have had to confirm their exempt status annually as part of the annual exercise to update the roll. Under the new proposals, they will no longer be required to do so. However, if they change their employment and lose their exempt status they will be under an obligation to update their details with the SRA and apply for a practising certificate.

Consultation and responses

- 8 In March, following a review of the current arrangements, we consulted on a proposal to cease carrying out an annual "keeping of the roll exercise", but to retain the power to do so from time to time.
- 9 The consultation closed on 26 May 2014. An analysis of the consultation responses and the proposed response of the SRA is set out at Annex 2.
- 10 There were a total of 138 responses, the overwhelming majority from individual solicitors supporting the proposal.
- 11 The Law Society was strongly opposed to the proposal and felt it should be suspended pending discussions with the SRA. This is dealt with further in paragraphs 7 to 11 of Annex 2. We have held productive discussions with the Law Society to assuage their fear that we will no longer keep the roll in good order. We have also discussed with them how they might develop their own

SRA BOARD
17 September 2014



CLASSIFICATION – PUBLIC

register of members for their commercial and representative purposes and how we might collaborate or support them in that endeavour.

- 12 The Law Society's response is at Annex 3.
- 13 The Information Commissioner's Office (ICO) raised concerns about the ongoing accuracy of data and preventing inappropriate disclosure of private information in the event that correspondence is sent to an out of date address. We have engaged with the ICO to address the concerns and this is dealt with at paragraphs 12 to 20 of Annex 2.
- 14 There were 4 responses from Local Law Societies; Tunbridge Wells, Tonbridge & District Law Society, The City of London Law Society, the City of Westminster and Holborn Law Society and Birmingham Law Society. All broadly supported the proposal. Birmingham Law Society supported the proposal without reservation. Additional issues raised are discussed in Annex 2.

Resources implications

- 15 The annual keeping of the roll enquiry exercise was carried out online for the first time in 2013. Many applicants appeared to experience difficulties with activating their mySRA accounts and this generated high volumes of calls to the Contact Centre. Overall, the process has run more smoothly in 2014 with both staff and solicitors becoming more familiar with the process.
- 16 In 2013, the annual exercise took 108 days to complete from start to finish, but in 2014 this has improved to 58 days. In 2014, the number of solicitors on the roll without practising certificates at the start of the exercise was 34171 (38268 in 2013) and 6394 names were removed from the roll (8203 in 2013).
- 17 Currently, the operational cost of carrying out the exercise matches the fees collected from solicitors for remaining on the roll. Ceasing the activity annually is likely to result in an Authorisation headcount saving of:

Grade B 8 month Full Time Equivalent (FTE)
Grade E 4 month FTE
Grade F 6 weeks FTE
- 18 The impact on the Contact Centre is likely to be positive, since it experiences high call volumes during the period for applications to stay on the roll and following notice being given of removal of names from the roll.
- 19 There will continue to be residual activity relating to keeping of the roll. For example, this will involve removing names from the roll on request or following notification of a death. Such activity is funded out of general income rather than fees.

SRA BOARD
17 September 2014

CLASSIFICATION – PUBLIC



Business/operational impact and risks -

- 20 The main aim of this proposal is to reduce an unnecessary regulatory burden rather than to save costs for the SRA. If the proposal is implemented, there will be a saving in both time and cost for the 30,000 individual solicitors who apply to stay on the roll.
- 21 There are operational consequences of this proposal. The current annual update is relatively efficient because staff are experienced and solicitors are familiar with the process. A less frequent exercise is likely to be more expensive, as staff and solicitors will be unfamiliar with the exercise and systems will need to be updated. So it is unlikely that if, for example, an update was carried out after five or ten years, the saving would amount to five or ten times the cost of the annual exercise.

Legal risk

- 22 There are issues in relation to compliance with the Data Protection Act 1998. The SRA has a duty to take reasonable steps to ensure the accuracy of personal data. Annex 2 explains in paragraphs 14 to 21 how we consider that we will fulfil that duty.

Impact on consumers

- 23 The proposal has no impact on consumers as it relates to non-practising solicitors and a small proportion of employed solicitors working in government.

SRA BOARD
17 September 2014

CLASSIFICATION – PUBLIC



Supporting information

Links to the Strategic Plan and / or Business Plan

- 24 The proposals directly links to Strategic Objective 3, to develop the SRA regulatory arrangements and tools to better meet the regulatory objectives and the principles of better regulation, and to mitigate emerging risks and anticipate changes in the external environment.

How the issues support the principles of better regulation

- 25 The proposal provides a more proportionate and targeted means of carrying out the SRA's duty to continue to keep the roll by reducing the need for solicitors on the roll and without PCs to make an application every year. A full update exercise will be carried out only when needed for data cleansing or other purposes.

What equality and diversity considerations relate to this issue

- 26 The proposal will have a positive impact on retired and non-practising solicitors by reducing the burden of making yearly applications.
- 27 2013 was the first year that the annual exercise was carried out online. At the start of the process there were some 38,000 individuals who could make applications. Over 11,000 had never activated their mySRA online accounts and needed to do this before they could apply to remain on the roll. 23.6% of those who had not activated their mySRA online accounts were over 65 years old. This compares with 15% of solicitors without PCs who were over 65 and compares with 5% of all solicitors on the roll who were over 65. There was therefore a greater relative impact in 2013 on solicitors over 65 as more of them needed to activate their mySRA account in order to remain on the roll.
- 28 Discontinuing the annual process would allow older non-practising solicitors to enjoy the benefits of being on the roll without having to make an annual online application and pay a fee every year.
- 29 The impact of the various options in terms of ethnicity or gender is neutral and so we cannot see any significant negative impact on any group. The Association of Women Solicitors felt that there would be a greater impact on women as they are more likely to take a career break, however this was not apparent from the analysis of those individuals taking part in the annual exercise. In any case, the impact on solicitors taking a career break is likely to be positive as they would no longer have to make an application every year to remain on the roll.

SRA BOARD
17 September 2014

CLASSIFICATION – PUBLIC



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Annexes

Annex 1 SRA Amendment to Regulatory Arrangements (Solicitors Keeping of the Roll) Rules 2014

Annex 2 Proposed analysis of consultation responses and SRA response

Annex 3 Response from the Law Society

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



SRA Amendment to Regulatory Arrangements (Solicitors Keeping of the Roll) Rules 2014

Preamble

Rules dated {date of approval by LSB} made by the Solicitors Regulation Authority Board, under sections 28, 79 and 80 of the Solicitors Act, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007

Rule 1

The SRA Solicitors Keeping of the Roll Regulations 2011 shall be amended as follows:

a) In regulation 5 , after , "it shall write", insert "either by letter or email" and after "last notified address" insert "or to the *solicitor's* last notified email address."

b) In regulation 6 replace "once a year" with "at such times as it decides appropriate".

Rule 2

These Rules shall come into force on 31 October 2014.

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



Annual keeping of the roll exercise

Summary of Responses

Introduction

1. On 31 March 2014 we issued a consultation paper proposing the removal of the annual requirement on solicitors who do not hold practising certificates (PCs) to complete an online application and pay a fee if they wish their name to remain on the roll of solicitors (the keeping of the roll exercise). We also proposed retaining the power to carry out the exercise at such time as may be considered appropriate in future.
2. The consultation closed on 27 May and this report summarises the key points arising from the responses and the SRA's position as a consequence.

Overview

3. The consultation proposed to change the SRA Handbook by removing the obligation on the SRA to ask every solicitor without a practising once a year whether the solicitor wishes his or her name to remain on the roll. Instead of making this enquiry annually, we proposed to retain a power to make the enquiry at such times as we deem appropriate.
4. There were 138 responses in total the majority from solicitors in private practice, employed solicitors and the majority from retired or non-practising solicitors. Other respondents included the Law Society, local law societies, representative groups and the Information Commissioner's Office (ICO).
5. The vast majority of these individual respondents supported the proposal to stop carrying out the annual enquiry as to whether solicitors without practising certificates wish to remain on the roll. Those who did not support the proposal felt the existing system works well enough and one expressed concern about the possibility of the name of deceased solicitors remaining on the roll. Another respondent was concerned that there should be an effective mechanism to ensure that anyone removed from the roll due to failures of communication could be re-instated without cost or other obstacles.
6. There were no alternative suggestions. Comments made included:
 - "This is a rational step to streamline regulation."
 - "The reasons given by the SRA in support of the proposal seem eminently sensible. For those of us not in practice it is a worry every year to remember to apply to keep our names on the Roll, and those of us who do not entirely trust the security of computers and the internet are uneasy about paying the annual fee with a credit or debit card online. The point made in the proposal, that the current system is more difficult for older solicitors to cope with, is a good one. Given the ongoing regulatory

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



powers of the SRA, which will not be lost if the proposal is implemented, it is difficult to see a downside to the proposal."

- "It is all a nuisance but most of us would not want to give up the 'non-practising solicitor' title which is why we go through this stuff every year!"
- "I have considered the various proposals and completely agree with the rationale for the favoured option. It is my view that the regulatory process for those of us who are non-practising is burdensome and not cost effective. Should such as I return to legal practice then the need to apply for a new PC satisfying any requirement as to CPD before it being granted ought to be sufficient safeguard for the public interest in having access to competent professional legal advice. The Roll should and quite properly be limited to a formal record of Admission until death, or removal by process whether voluntarily or by direction of a disciplinary body."

The Law Society (TLS)

7. TLS considered that the duty to keep the roll goes further than simply keeping a list of people who once qualified as a solicitor and have not asked to be removed from the list. It suggested that if this is truly a regulatory function then that implies that the roll needs to be as up to date and accurate as possible and the SRA needs to be able to contact those who are on it and therefore subject to SRA's jurisdiction. It said that, as a minimum the SRA should give certainty by setting renewal at less frequent but defined intervals.
8. TLS was concerned about the cost of regulating non-practising solicitors and how this would be met and whether the proposals would lead any real saving of costs to the SRA given that a less frequent updating exercise could be more costly than an annual one.

SRA response

9. The Solicitors Act (SA) is not explicit about what keeping the roll entails. There is no explicit requirement for it to be as up to date as possible. The Act does not direct the manner in which we should keep the roll. We have carried out some enquiries into other jurisdictions and it is interesting to note that neither the Law Society of Northern Ireland nor the Law Society of Ireland carry out regular exercises to update the roll of solicitors in their jurisdictions.
10. There are very few investigations or prosecutions of non-practising solicitors and the fee for remaining on the roll is only intended to cover the cost of administering the annual enquiry process. The SRA applies the "polluter pays" principle through the SRA Cost of Investigations Regulations 2011.
11. Whilst the cost of more occasional updating of the roll, may be higher, we believe it will be proportionate to the numbers involved and the fee for remaining on the roll can be adjusted to reflect any increased cost. The main aim of the proposals is to reduce the burden of regulation on the 30,000 or so individuals affected each year.

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



Information Commissioners Office (ICO)

12. The ICO raised concerns about the approach of carrying out updates to the roll on an open ended basis. It raised concerns about:

- **Accuracy of data:** The fourth data principle of the Data Protection Act 1998 is that "Personal data shall be accurate and, where necessary, kept up to date." The ICO was concerned that in ceasing regular updates of the roll, the information recorded will deteriorate in quality over time. This would be due both to out of date address details appearing on the roll and a failure to remove the names of solicitors who are deceased. As a data controller the SRA is required to take "reasonable steps" to ensure the accuracy of data it holds. In this context, the impact on individuals of holding inaccurate data is important.
- **Privacy of personal information:** If the quality of information recorded deteriorates, this gives rise to a potential for inappropriate disclosures should the SRA need to contact individuals using incorrect contact details.
- **The need for a privacy impact assessment -** The impact of the proposal on privacy needs to be explored and the ICO recommend that this is done through a privacy impact assessment. The ICO notes the positive factor that mySRA is available for individuals to update their details on an ad hoc basis.

SRA Response

13. We are grateful to the ICO for raising these important issues. We have spoken with a representative of the ICO who made it clear that the purpose of their response was to ensure that consideration was given to the accuracy of data and any impact on privacy. We feel we were able to satisfy them that we have fully considered these issues.
14. We have considered the guidance on the ICO web site, including the Code of Practice on Privacy Impact Assessments and do not consider that this is a project where a full privacy impact assessment is appropriate. We have reviewed the privacy impact assessment screening questions annexed to the Code of Practice (See Appendix 1) and can answer all the questions in the negative.
15. We consider that the availability of the SRA's online system, mySRA, to non-practising solicitors as a means of keeping their details up to date, serves to mitigate the possibility of data become inaccurate. The SRA makes reasonable adjustments for solicitors who have difficult accessing mySRA due to disability. For example such individuals may update their details through correspondence or by telephone.

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



16. To further mitigate the risk of deterioration of the information held on the roll, the SRA can include reminders to keep contact details up to date in standard communications sent to solicitors. For example we can target those solicitors who do not renew their Practising Certificates in the standard communications sent to them when their old Practising Certificate is revoked.
17. We have checked with the General Registrar's Office who confirmed that Registrars are obliged to notify the Law Society following the death of someone known to be a solicitor or former solicitor. This enables us to remove the names of deceased solicitors from the roll. In addition, relatives of deceased solicitors often contact the SRA to notify us of a death.
18. We believe that, taken together, these measures amount to reasonable steps to ensure the accuracy of data on the roll.
19. To determine when a full update of the roll is needed we will use indicators such as an increase in the number of solicitors on the roll without practising certificates which might suggest that some names should be removed. We will issue reminders to update details and monitor the extent of returned communications. We will also monitor the level of any complaints about misdirected communications.
20. We have considered the impact on privacy and believe this is limited as most correspondence from the SRA to non-practising solicitors is sent by email only which limits the possibility of inappropriate disclosure. No sensitive personal information is involved as communications are of a routine nature. Should an individual open a letter addressed to a non-practising solicitor, this is unlikely to indicate more than the fact that a named individual is a non-practising solicitor. This is information which is in the public domain as the roll is open to public inspection. In the rare cases where a solicitor without a PC is subject to investigation, we will introduce a procedure for supervisors to cross check addresses by reference to the electoral roll.

Other responses

21. The majority of responses supported the proposals.
22. The Tunbridge Wells and Tonbridge District Law Society felt there is a need for the roll to be maintained by updates at least every five years and favoured some certainty as to when the roll is to be updated.
23. Updating the roll at fixed intervals of five years was one of the options considered when the keeping of the roll was first reviewed. We feel that this approach is too rigid and inflexible and that is better for the SRA to have the ability to decide when updates are required in the light of circumstances at the time.
24. The City of London Law Society (CLLS) pointed out that non-practising solicitors remaining on the roll remain subject to SRA regulation and discipline and in

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



particular can be held responsible for undertakings "given as a solicitor". They went on to say that there is a lack of clarity as to the circumstances in which this regulation bites and that the opportunity should be taken to clarify this.

25. CLLS goes on to express concern that the SRA does not draw to the attention of non-practising solicitors to the fact that they remain subject to regulation and suggest the SRA should notify them of this when they first fail to renew their practising certificate.
26. CLLS also point out that solicitors without practising certificates are not required to notify the SRA of material changes to relevant information about them such as serious financial difficulty or action taken by another regulator. They feel that this absence of a disclosure obligation poses a reputational issue.
27. CLLS express concern that the proposal will lead to increased proportion of deceased solicitors' names on the roll and that this could provide a target for fraudsters seeking to pass themselves off as non-practising solicitors.
28. The current review is limited to considering how best to fulfil the SRA's obligation to continue to keep the roll whilst being proportionate in its requirements of non-practising solicitors. The proposals are limited to making limited changes to the SRA Keeping of the Roll Regulations 2011. The suggestions made by CLLS would involve changes to the SRA Code of Conduct 2011.
29. We have considered whether the current proposal increases the risk of fraud and feel that this is minimal since it is of greater advantage to a potential fraudster to impersonate a practising solicitor.
30. We agree that the integrity of the system is of great importance. To ensure this we intend to carry out regular data sampling to identify when we need to carry out further updates to the roll in future.
31. The City of Westminster and Holborn Law Society welcomed the initiative, suggesting that the process is burdensome for the solicitors involved and for the SRA. They drew attention to problems encountered with the SRA's IT system. They argued that a person qualified as a solicitor should be able to continue describing them as such for the rest of their life and expressed a concern that additional requirements may be imposed on those returning to practice after a career break.
32. The Association of Women Solicitors London (AWSL) agreed with the proposal, provided there is no change to the flexibility with which those who wish to come off the roll and then go back on again, can do so. They considered there was a greater impact on women solicitors, as women are more likely than men to take a career break. They went on to say that many solicitors returning to practice wish to undergo an initial induction period as an unqualified person under supervision and off the roll.

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



33. We welcome the support for the proposal and confirm that no change is proposed to the regulations governing solicitors being able to request removal of their name from the roll and, subsequently, to apply to have their name restored to the roll. We agree that there may be a greater impact on women solicitors taking a career break but feel that the impact of the proposals is a positive one as they will be able to stay on the roll without making annual applications. The rules and processes for applying to be restored to the roll remain unaffected.
34. The Solicitors Sole Practitioner Group (SSPG) supported the proposal, saying, "The proposal seem sensible and , provided power is retained to refuse removal if the individual concerned is subject to disciplinary proceedings or a complaint, appears to be an appropriate reduction in regulation that is unlikely to have any harmful results."
35. The Junior Lawyers Division of the Law Society (JLD) did not agree with the proposal. They suggested it went against the tradition of providing full and accurate information to the public about solicitors on the roll. They also felt it was left unclear what circumstances would trigger an update of the roll under the proposals. We have explained in paragraph 20 above the indicators we will have regard to when deciding whether an update of the roll is needed.
36. JLD said the roll is used regularly by members of the public and the profession to check that individuals purporting to give legal advice and guidance are in fact registered to do so. They should be entitled to rely on the accuracy of the roll. The annual update of the roll should continue for the protection of the profession and the public.
37. We note the JLD's concern that the public and the profession should be able to rely on the accuracy of the information contained in the roll. The change proposed to the annual updating of the roll applies only to less than 19% of solicitors on the roll. The majority of these are retired or otherwise non-practising solicitors, a small proportion are solicitors exempt from holding practising certificates, mainly those working in Government departments. The SRA will continue to carry out updating exercises when necessary to ensure that the roll remains reasonably accurate.
38. The solicitors that are likely to be the subject of searches of the roll for the protection of consumers are likely to be those who are practising. Their details will continue to be kept up to date annually through the annual practising certificate renewal exercise.

Conclusion

39. The proposal will be implemented, subject to the approval of the Legal Services Board.

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



Respondents

Information Commissioner's Office
Birmingham Law Society
The City of London Law Society
City of Westminster and Holborn Law Society
Tunbridge Wells, Tonbridge & District Law Society
Newcastle upon Tyne Law Society

Lawyers with Disabilities Division
Junior Lawyers Division of the Law Society of England and Wales
Association of Women Solicitors London
Solicitors Sole Practitioners Group

Responses from individuals (57)

Rosemary	Escott		solicitor in private practice
Mark	Harvey		solicitor in private practice
James	Harvey		employed solicitor
Joshua	Hunter		non-practising solicitor
Walter	Thomas		non-practising solicitor
Emma	Marsh		non-practising solicitor
David	Thomas		retired solicitor
Marguerite	Chisholm		retired solicitor
Mark	Tyler	Salutaris Legal	
Jane	Petrie		non-practising solicitor
Anna Louise	Pearson		
Christopher	Butterworth		
Otilie	Sefton		
Lydia	Srebernjak		
Charlotte			
Amelia	Sandilands		retired solicitor
Ravinder	Singh	Rashid & Co. Solicitors	
	Chumber		
William	Holmes		retired solicitor
Patricia	Witts		as a non-practising solicitor
George Trevor	Carney		
Michael			
Sandbrook	Howells		Retired solicitor
Heather			
Dianne	Barker		Retired solicitor
David	Miles		
			As a non-practicing solicitor
David	Short		currently on the roll (employed as a director but not as a legal professional)

SRA BOARD
Date 17 September 2014



CLASSIFICATION –PUBLIC

Siew Lai	Huang		non-practising solicitor
Henri	Spehar		
Anthony Rory	Coule		retired solicitor
Roger David	Hicks		Retired solicitor
Alan John	Squires		Non-practising solicitor
Richard			
Seymour	Champness		retired solicitor
Peter Alan	Youatt		retried solicitor
	Maddison-		
David John	Roberts		Non-Practising solicitor
Matthew	Hunt		
Richard Denys	Snow		retired solicitor
Sarah	Thorpe		non-practising solicitor
Robin			
Llewellyn	Arthur		retired lawyer
Peter Michael	Laverick		Retired Solicitor
David Elfed	Jones		Non-practising solicitor
John	Young		retired solicitor
Brian Malcolm	Gunn		non practising solicitor
David Rees	Goddard		Retired solicitor
Colin Robert	Humphrey		Retired Solicitor
Michael	Breton		Retired solicitor
Jennifer	Manning		solicitor on a career break
Paul	Bird		
Mary-			
Elizabeth			
Patricia	Flynn		non practising solicitor
Susan Willis	McFadden		non practising solicitor
Raymond			
Charles	Parkes		Non-practising Solicitor
Cheng Kang	Wong		Retired lawyer
Nial	Farrell		non practising solicitor
Peter	Jordan		Retired Solicitor
Lesley	Malpas	HM Land Registry	
Anthony	Brabury		None (retired)
Edward			
Richard	Austin		Enderley Consulting Limited
Martin			
Tanfield	Smith		Martin T Smith
David Ian	Thomas		Retired
Peter Harold			
Anthony	Austin		
Christopher			
James	Wark		Solicitor in private practice
Frank	Evans		Retired solicitor

70 respondents wished their responses to remain unattributed.

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



Appendix 1 -

Privacy impact assessment screening questions

These questions are intended to help you decide whether a PIA is necessary. Answering 'yes' to any of these questions is an indication that a PIA would be a useful exercise. You can expand on your answers as the project develops if you need to.

You can adapt these questions to develop a screening method that fits more closely with the types of project you are likely to assess.

Will the project involve the collection of new information about individuals?

Will the project compel individuals to provide information about themselves?

Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information?

Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?

Does the project involve you using new technology that might be perceived as being privacy intrusive? For example, the use of biometrics or facial recognition.

Will the project result in you making decisions or taking action against individuals in ways that can have a significant impact on them?

Is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For example, health records, criminal records or other information that people would consider to be private.

Will the project require you to contact individuals in ways that they may find intrusive?

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



Response from the Law Society

Introduction

The Law Society is deeply disappointed that this consultation has been issued with minimal contact with the Law Society on an issue which will directly affect the Society and its ability to communicate with its core constituency and membership.

In its "Our approach to consultation" statement on its website, the SRA states that:

We believe consultation activity must be much broader than simply publishing consultation papers, and we aim to involve our stakeholders in the early thinking that often leads to a decision to review or change something. Whenever possible, we also provide opportunities to talk face-to-face with people about specific issues.

This has not happened on this occasion and this is unacceptable given that the consultation paper itself recognises the particular interest that the Society has in this question. Irrespective of the final decision, we would urge that the work on this be suspended until the SRA and the Law Society have had a proper opportunity to discuss the practicalities of the question and explore all the options.

We are also concerned that, if these proposals are implemented, the SRA will find itself without the tools to manage its regulatory function properly.

The regulatory reasons for maintaining the current system

The consultation paper accepts that keeping the Roll is a regulatory function. We agree that this, at present, is correct. In addition to the benefits arising from membership of the Law Society, the solicitor obtains the continuing status of being a solicitor and, probably most importantly, the right to return to practice without undertaking the hurdles required of someone who had left the role.

The corollary of those benefits is that the solicitor (a) must continue to act with integrity and (b) is subject to the jurisdiction of the SRA in respect of his or her conduct.

Solicitors are not forced to remain on the Roll when they cease practice. The fact that a substantial number of solicitors choose to do so suggests that they see a value in the benefits and accept the jurisdiction. Given this, the simple requirement to confirm details and pay £20 does not seem to be a significant burden – indeed, it compares very favourably with a number of prominent membership organisations.

We do not consider that the duty to keep the Roll imposed on the Law Society is simply to keep a list of people who once qualified as a solicitor and have not notified the SRA that they wish to be taken off the Roll. If this is truly a regulatory function, then that requirement implies that (a) the Roll needs to be as up to date and accurate as possible and (b) the SRA needs to be able to contact them with information that

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



may be relevant. This suggests as a piece of basic housekeeping that the SRA needs to be confident that its list is as accurate as possible. We do not see how the current proposals, to do an update on *ad hoc* basis when sample tests indicate the data held is inaccurate, satisfy this requirement.

It is poor regulatory practice to implement data collection of this sort on an *ad hoc* basis. If the SRA can show that it fulfill its statutory and regulatory obligations by collecting the data less frequently, then it should set a renewal at less frequent but defined points. This will allow regulated individuals to plan for their renewal and provide certainty.

Costs

We are surprised that the SRA provides no analysis of the costs associated with the current renewal, how much more infrequent renewals will save and how the loss of the annual fee will affect other fees charged by the SRA e.g. the PC and the firm fee. We are also surprised no figures have been provided on the accuracy of the data currently held by the SRA and the numbers of solicitors on the Roll who fail to update their details within a year.

We would make the following points:

- While the cases are likely to be rare, there will be a cost in prosecuting non-practising solicitors who commit criminal offences or otherwise breach their duties. It is right in principle that this community should pay its share of the costs of prosecution in the same way as any other. Individuals should also pay towards the costs of administering their membership of the Roll.
- The accuracy of the information is likely to decay significantly over time, particularly if there is no incentive to update details, and the costs of the one-off exercises are likely to be considerable. It is hard to see why these should be borne by the rest of the regulated community.
- The fee for remaining on the Roll has remained unchanged for decades. The Society would support an increase in the fee to cover the regulatory costs, including regular updates of the records, of those solicitors who do not hold practising certificates.

Administration

We are aware that the annual update process creates an increase in call volume, particularly in relation the MySRA Login line. However, the fact that many solicitors have forgotten their login details indicates that solicitors are not routinely using MySRA to update their contact information outside of the annual process. A key part of the SRA's proposal is that individuals will continue to update their details as necessary and this does not give confidence that individuals will do so. We would urge the SRA to check other organisations' experience in this. Our understanding is that even those organisations, such as the DVLA, where there is a statutory

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



requirement for individuals to update their records, are aware of a high level of inaccuracy. This is likely to be even worse where there is no equivalent power and no incentive to keep details up to date.

It is not clear to us whether the high number of calls in relation to the MySRA Login line is because:

- It was a new system and it is inevitable that such systems will cause teething problems in their first year, which will be reduced in subsequent years;
- There were gremlins or other difficulties in the system which could be resolved – the concerns that the Law Society received, for example, tended to be about problems with incompatible software rather than inherent problems in the system; and
- Parts of the population are unused to dealing with online renewals and this is likely to be a feature for the immediate future.

In respect of the latter point, part of the equality impact assessment focuses on the issues faced by older solicitors who have struggled to use MySRA and complete the online application form. While the proposals will reduce the frequency by which they are expected to use the online system, the proposals do not do away with the system and, in fact, the SRA expect solicitors to use the system to update their contact details. If the SRA wishes to help those struggling with online applications and MySRA, it would be better to concentrate on providing more help and guidance rather than changing the frequency with which the problem arises.

In our view, the SRA should be looking to address the difficulties that people are facing and understand the reasons for them and address these, rather than seeking to avoid the question altogether.

Other options

The impression given by the paper is that the SRA considers that keeping the Roll is a regulatory function but, because some people on the Roll are perceived as being low risk and, at times, a nuisance to deal with, it wishes to stop undertaking even the most basic regulatory functions in respect of them.

We can understand the reasons why the SRA has rejected some of the options that it mentions (though it would have been helpful to have a more detailed assessment of those options). However, there are others that it might wish to look at.

- As we have suggested above, should the cost of remaining on the Roll be increased to cover the costs of maintaining the register appropriately?
- Should keeping of the Roll in respect of non-practising solicitors be a wholly regulatory exercise? There are some categories (people taking career breaks etc) where the SRA might well have an interest, but others (those who have become judges or retired) where the regulatory risk is almost non-existent

SRA BOARD
Date 17 September 2014

CLASSIFICATION –PUBLIC



and remaining on the Roll is akin to retaining membership of an organisation. Should the SRA and the Society consider statutory changes to create different categories?

- Could the function be transferred to the Law Society with appropriate service level agreements? While amendments might be needed to the Internal Governance Rules, this could be achieved without any breach of the Legal Services Act.

The Law Society has not yet had the opportunity to consider whether it wishes to take the latter ideas forward but we would welcome the opportunity to explore them with the SRA.

Conclusion

The SRA's proposals will mean that:

- the Roll becomes outdated and inaccurate;
- the SRA will not have adequate tools to undertake such regulatory tasks as communicating with part of its regulated community; and
- the cost of regulating this part of the community will be borne by the remainder.

None of these outcomes are appropriate for a regulator. The SRA should:

- establish what it needs to do to ensure that the Roll is as accurate and up to date as is practically feasible and look at the costs of undertaking the regulation of this part of the profession;
- consider increasing the cost of remaining on the Roll to take account of those costs;
- address the problems with MySRA for this group of the community; and
- maintain the existing position where an annual renewal is required.

Alternatively, the SRA should discuss with the Law Society alternative approaches to ensure that there is a proportionate means of achieving an accurate list.