



Legal Services Board decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Solicitors Regulation Authority (SRA) application for approval of amendments to the SRA Practice Framework Rules 2011

The Legal Services Board (LSB) has approved SRA amendments to its Practice Framework Rules 2011. The amendments provide for changes to Rule 4 of the Practice Framework Rules, in particular Rules 4.1, 4.12(a), and a related transitional provision, Rule 22.7(a). Rule 4 of the Practice Framework Rules covers the regulatory provisions for solicitors and individuals regulated by SRA who work in-house.

This decision notice sets out the basis for the LSB's approval and the decision taken and includes a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse alterations to the regulatory arrangements of the approved regulators. SRA is an approved regulator.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must grant the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Decision

5. Rule 4 of the Practice Framework Rules sets out the provisions for solicitors, and other SRA regulated individuals, working in an in-house capacity. The purpose of the rule is to restrict the provision of in-house services to the individual's employer. This requirement reflects the intentions of section 15 of the Act.
6. SRA proposed changes to parts of Rule 4 of its Practice Framework Rules and the related Rule 22.7(a). In summary:
 - Rule 4.1 will be clarified to require in-house solicitors to satisfy themselves that they have the necessary authorisation under the Act before conducting a reserved legal activity.
 - Rule 4.12(a) (which is not yet in effect) will be deleted. Rule 4.12(a) had provided that lawyers employed by associations may act for a member of that association provided that they do not undertake any reserved legal activities.
 - Rule 22.7(a) provided the transitional arrangement which would have brought Rule 4.12(a) into effect on 21 June 2012 and will therefore also be deleted.
7. In reaching its decision, the LSB considered, in particular, the issues set out in paragraphs 8 to 15 below.

Timetable and scope of the review of Rule 4

8. SRA has publically stated in its consultation paper (relating to this rule change) that it intends to undertake a wide review of in-house practice during 2012.
9. In order to better understand the context of this application, the LSB sought further information from SRA about the review. SRA has advised that while no firm timetable for the review of in-house practice or a plan for its scope is available at present, early planning work, stakeholder engagement and data collection has started.
10. The LSB would urge SRA to complete the review as soon as possible to provide conclusive clarity on the operation of Rule 4 and ensure its consistency with the Act. The LSB does not agree that the current arrangements established by Rule 4 are sustainable in the longer term. The detailed rules that follow Rule 4.1 are prescriptive, increasing the likelihood that they will have to be the subject of

subsequent revision as the nature of in-house practice changes and adapts to an evolving legal services market. They also appear at odds with the outcomes focused nature of the revised Rule 4.1 and do not sit well with the better regulation principles.

11. The LSB expects these points to be addressed in the SRA's review of in-house practice. In the LSB's view, the aim for the in-house review ought to be to deliver a set of high-level, outcomes focused rules that can be interpreted flexibly as and when new in-house situations arise. The LSB will therefore continue to monitor progress of the review of in-house practice carefully as part of our regulatory standards work.
12. The LSB has also been assured by SRA that points related to the general review which were raised in responses to the recent consultation about this specific application are being fed into the review.

Extension of transitional provisions

13. Given the planned review of in-house practice, and that responses to the consultation about the specific changes covered in this application raised wider concerns about the application of Rule 4, the LSB sought clarity from SRA as to what consideration it had given to extending the transitional provisions of Rule 22.7, until the wider review had been undertaken.
14. The LSB has accepted the SRA's assessment that making the immediate changes to Rule 4.12 and Rule 22.7, as well as to Rule 4.1, provides in-house practitioners with some clarity about the application of Rule 4 and its link to section 15 of the Act in the short to medium term. However, the LSB believes that the full review of in-house practice should be completed as soon as possible, to provide long-term clarity about the application of Rule 4.

Rule 22.7

15. The LSB notes that Rule 22.7(a) will be deleted. However, while the rest of Rule 22.7 also relates to a transitional period ending on 21 June 2012 (about those working for insurers) it will remain in the Handbook for the time being. SRA plans to retain the provision for transparency and remove it from a later edition. Given that as of 21 June 2012, Rule 22.7 will no longer be in effect, the LSB does not believe that it would be proportionate, or best regulatory practice, to be asked to consider an application about its removal.

Conclusion

16. The LSB is satisfied that, having considered SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, there is no reason to refuse this application; accordingly, the LSB grants this application.
17. The Annex to this decision notice contains the amendments to Rule 4 and Rule 22.7 of SRA's Practice Framework Rules 2011.

Chronology

- The LSB received the application from SRA on 16 May 2012 and confirmed receipt on 17 May 2012.
- The 28 day initial decision period for considering the application ends on 12 June 2012.
- This decision notice is being published on our website on 30 May 2012.

Chris Kenny, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

[Draft] SRA Practice Framework (Amendment) Rules [2012]

Rules dated [*date to be inserted 2012*]

made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985 and section 83 and Schedule 11 to the Legal Services Act 2007,

with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1 The SRA Practice Framework Rules 2011 shall be amended in accordance with the Schedule.

Rule 2 These amendment rules shall come into force on [21 June 2012 or the date of approval by the Legal Services Board, whichever is the later].

Schedule

SRA Practice Framework Rules 2011

Rule 4: In-house practice

4.1 If you are a ***solicitor, REL or RFL*** conducting ~~employed~~ ***in-house practice***:

(a) you must not act for ***clients*** other than your ***employer*** except in the following circumstances in 4.4 to 4.26 (all of which are subject to 4.1(b) and 4.2) and where you are able to act without compromising the ***Principles*** or your obligations under the ***SRA Code of Conduct***;

(b) nothing in this rule permits any ***person*** to conduct ***reserved legal activities*** in circumstances where to do so would require authorisation under the ***LSA*** and you must satisfy yourself that any such authorisation is in place before conducting any such activity.

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4.12 If you are employed by an association you may act for a member of that association provided:

(a) ~~you do not undertake any ***reserved legal activities***;~~

(b) (a) the membership of the association is limited to ***persons*** engaged or concerned in a particular trade, occupation or specialist activity or otherwise having a community of interest, such interest being a specialist interest;

- (e) (b) the association is one formed bona fide for the benefit of its members and not formed directly or indirectly for your benefit or primarily for securing assistance in legal proceedings;
- (d) (c) there is no charge to the member in non-contentious matters, and in contentious matters the association indemnifies the member in relation to your costs and disbursements insofar as they are not recoverable from any other source; and
- (e) (d) you act only in matters that relate to or arise out of the particular trade, occupation or specialist activity of the association or otherwise relate to the specialist community of interest, for which the association is formed.

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Rule 22: Transitional provisions and grace period

22.7 Until the 180th day after the date on which the **Society** is designated as a **licensing authority** under Part 1 of Schedule 10 to the *LSA*:

- (a) ~~Rule 4.12(a) shall have no effect~~ [Deleted];
- (b) Rule 4.13 (insurers) shall have no effect;
- (c) Rule 13.06 (insurers) of the Solicitors' Code of Conduct 2007 shall continue to have effect; and
- (d) references to Rule 4.13 shall be treated as references to Rule 13.06 of the Solicitors' Code of Conduct 2007.