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Red Tape Initiative  
c/o Claire Wightman  
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Dear Ms Wightman

### **Red Tape Initiative: Removing unnecessary regulations and simplifying processes**

ICAEW welcomes the opportunity to comment on the consultation paper *Red Tape Initiative: Removing unnecessary regulations and simplifying processes* published by the Solicitors Regulation Authority (SRA) on 14 December 2012, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

### **Outcomes Focused Regulation**

We congratulate the SRA on its continued development of outcomes focused, principles based, regulation which, properly implemented by firms and the SRA, will result in better regulatory results at a more proportionate expense to professional firms.

We have reviewed the specific proposals set out in the current consultation. They appear a sensible

and well-argued package of proposals which we would support. However, we have little specific experience of the measures that they are intended to reform, and therefore unable to provide detailed responses to the questions posed.

We also congratulate the SRA on their clear intention to further improve the cost effectiveness of their requirements and regulatory processes. Our suggestions in response to your invitation to suggest additional areas where your regulations could be curtailed or simplified, without damaging your ability to regulate in the public interest, are outlined below.

### CPD Regulations

The outcome identified as the objective of the CPD requirements set out in Section E.6B of the SRA Handbook is to “maintain competence through relevant ongoing training” but nowhere in the Basic CPD requirement is there any obligation for solicitors to consider their current professional responsibilities, the law and other factors that apply, any changes to either of these, and in consequence any training which is required in order to remain competent. Rather, there are a series of detailed hours based requirements, including a proportion of attendance at “accredited courses” which may add significantly to costs without necessarily better serving the training needs of solicitors.

In particular, we would make the following comments on the current requirements:

- Attendance at accredited courses is explicitly required – paying attention to the content is not;
- We have heard anecdotally that there is a high level of demand for accredited courses towards the end of the CPD year, regardless of the topic of the course. This does not suggest a great deal of attention to the relevance of the course chosen;
- Regulation 3.2 allows part-time workers to apply a pro-rata CPD regime, regardless of the complexity or nature of their practice. A part-time worker with a complex practice may need more CPD in order to maintain competence than a full-time worker with a simpler, less varied, practice. Further, fully retired solicitors may still take on voluntary work, where users of their work may rely on their professional competence. We do not think that any member of a profession still using those professional skills for the benefit of others should be wholly exempt from CPD requirements;
- In any specialist areas of the law there will tend to be some years where legislation and the environment within which it is provided are changing very rapidly, while at other times they are relatively stable. Yet the requirements make no allowance for the consequent varying need for solicitors to update their specialist knowledge.

Some years ago, ICAEW moved from an hours-based system of CPD requirements to a simpler assertion based system of CPD. Members have to formally confirm to ICAEW that they have considered their CPD needs and that they have undergone sufficient CPD to remain competent and up-to-date in those areas where they undertake professional activities. This is backed by a requirement to maintain CPD records, which must be produced for inspection by ICAEW when requested. We believe that this system is more effective in achieving continued professional competence, whether our members’ services are provided full or part time, on a semi-retired or voluntary basis. Our Regulations concerning CPD are available from [www.icaew.com/en/members/regulations-standards-and-guidance/training-and-education/continuing-professional-development-regulations](http://www.icaew.com/en/members/regulations-standards-and-guidance/training-and-education/continuing-professional-development-regulations). We suggest that it would be more appropriate for the SRA to adopt a similar scheme than maintaining the current inflexible and input focused scheme.

### Application of Code of Conduct and Restrictions on Practice

We unambiguously support the application of the SRA Principles, and believe that these should apply to all solicitors, whether in private practice or not, wherever they use their professional skills. Having said that, we note the extent and complexity of the practice rules which are currently in place, ostensibly to support the principles. In some instances these go much further than is necessary. As with

the CPD Rules, we consider that it is possible that the very complexity of the Rules leads solicitors to consider their detailed compliance requirements in priority to consideration of their purpose.

For example, the clients of solicitors should be able to rely on their integrity as solicitors, wherever they are working. This being so, we are unclear why paragraph 13.2 of the Application, Waivers and Interpretation chapter of the Code of Conduct completely exempts solicitors working in authorised non-SRA firms from chapters 1 to 9 and 11 of the Code. Many of the requirements, as well as the principles on which they are founded, relate primarily to the relationship between solicitors and their clients rather than to the overall management of the firm within which they work. We see no reason why these requirements should not apply to solicitors working in authorised non-SRA firms, or indeed in any other context, modified to accommodate those “whole-firm” functions which solicitors could not be expected to have under their control.

We make this point in full knowledge that Section 52 of the Legal Services Act provides that entity regulation prevails over an individual’s personal regulatory requirements. However, we do not believe in any way that that section should or does prevent individuals complying with their own regulator’s higher standards, in addition to their entity regulator’s lower standards in any circumstances where the two codes of practice differ but do not conflict. Given the statutory primacy of the professional principles set out in Section 1(3) of the Act, such conflicts would be rare for solicitors working in any firm authorised under the Legal Services Act. They would also be uncommon for a solicitor working in any professional firm with professional requirements for integrity as a core requirement. If they did occur then the most appropriate reaction for solicitors would be to withdraw from the engagement or area of work where the conflict arose, rather than ignoring their personal code of conduct.

We make these comments drawing on ICAEW’s long experience of regulating MDPs between different professionals working together. Our member firms have for many years included professionals other than chartered accountants among their owners and managers, including members of such well-established and reputable professions as actuaries and chartered surveyors. These arrangements are made to provide the highest level of expertise across very complex client needs for professional services. We would always expect such non-accountant professionals to comply with their own codes of conduct, as well as our own code as it applies to their firm as a whole. This is essential as a matter of integrity for each individual professional, and means that the client can expect the same regulatory environment as would apply if the professional were practising in any other context.

If the application of the Code of Conduct were widened to encompass professional services provided by solicitors practising other than through SRA regulated entities, it would result in an opportunity to relax some of the current practice rules which would be unnecessary were the SRA’s regulatory reach to extend to all solicitors. In particular, we suggest that the following rules would be not only unnecessary, but act against the best interests of clients, restricting their ability to choose the legal services provider which best serves their needs:

- SRA Practice Framework Rules, Rule 1 “Solicitors”. This rule prevents solicitors from practising in any context other than for a body authorised by the SRA or another approved regulator, regardless of any other professional or regulatory requirements that apply, or their ability to apply their own regulatory code to their own work. The firms regulated by us sometimes employ individuals who previously qualified as solicitors in client facing roles providing unreserved services such as legal advice. Because of this rule, such individuals are obliged to resign their position on the roll, though we would expect them to continue to comply with their (previous) regulatory requirements. The public interest is thereby served by the extension of the availability of legal services provided from an appropriately regulated professional services firm. We believe that the protection of clients would be further improved if such individuals were still under the regulatory oversight of the SRA.
- SRA Code of Conduct, Chapter 12: Separate Business Rule. This rule prevents a solicitor from being connected with any business (other than his own authorised firm) which provides prohibited separate business activities. These activities are defined to include:

“Providing legal advice ... which is one of the main services of the separate business”

This effectively prevents a law firm licensed by the SRA as an ABS from being owned or part owned by a member firm of the ICAEW, unless or until the ICAEW member firm is itself authorised under the Act, or a waiver is obtained. The provision of consultancy or advice concerning accounting, auditing, insolvency or taxation matters is a key component of our definition of accountancy services, they inevitably include advice on the legal requirements relating to these matters. They are provided by virtually all our member firms. Effectively, this means that it is easier for a non-professional entity to own an ABS than for a professional practice or similar business model which involves the giving of specialist legal and technical advice, since they do not require a waiver. Such a lay entity would be less likely to have as good an understanding of professional principles, their importance and application, than a professional firm which not only understands these matters, but also works within a regulatory framework which ensures they are respected.

## Waivers

The provisions on waivers set out in the last paragraph of chapter 13 of the SRA Code of Conduct restricts waivers to “a particular case or cases” and “in exceptional circumstances”. We understand that this is currently being interpreted as precluding general waivers from being granted for categories of cases but rather each case needs to be considered and authorised by the SRA Board separately. This is not a necessary interpretation of the rule, but if it is considered unclear, we suggest that the rule is redrafted to include provision for group waivers for classes of entity, where circumstances warrant it, such as inconsistency of a rule with the regulatory objectives in relation to the members of that class. We believe that this is currently the case for our member firms seeking to take an interest in an SRA regulated firm, as set out above.

## Current Practice Restrictions and the Regulatory Objectives

Because of ICAEW’s regulatory position that the clients of our member firms are entitled to expect professional services which conform not only with our own professional ethics but also those of the individual professions involved, both the Practice Framework Rule and the Separate Business Rule are unnecessary in relation solicitors practising within our member firms. This might be expected to result in a relatively speedy development of Alternative Business Structures (ABSs) involving both lawyers and chartered accountants, whether licensed by the SRA or the ICAEW. However, we understand that ICAEW member firms applying to the SRA for a license as an ABS are expected to undertake detailed discussions on the safeguards considered necessary on a case by case basis.

In the current rapidly changing market in legal services, with the advent of an increasingly wide range of ABSs, we know that the SRA will be particularly aware of their responsibilities in relation to promoting competition in the provision of legal services and encouraging a strong and diverse legal profession. The retention of unnecessary restrictions on any particular choice of (properly regulated) forms of practice does not conform well to these regulatory objectives, the public interest or the interests of consumers. Clearly consumer safeguards under the Legal Services Act are a primary concern of the SRA, but there also needs to be flexibility where those safeguards are maintained by regimes other than SRA entity regulation.

We have made these observations from the point of view of chartered accountancy firms, since that is our own area of expertise. However, similar considerations also apply to other types of professional firms which routinely provide legal advice as part of their professional practice. In particular, those professions which currently have been recognised by the Bar Council as being appropriately qualified for licensed access to the Bar are thereby recognised as being appropriately qualified in their own area of law to work closely with barristers in the provision of legal advice and other legal services.

If you would like to discuss these matters with us, please let us know.

Yours sincerely

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