



21 April 2008

Our ref: ICAEW Rep 49/08

Your ref:

Margaret Hope  
Solicitors Regulation Authority  
Berrington Close  
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By email: [LSA@SRA.org](mailto:LSA@SRA.org)

Dear Ms Hope

### **CONSULTATION PAPER 3: MISCELLANEOUS AMENDMENTS TO THE CODE OF CONDUCT**

The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the consultation paper *Miscellaneous amendments to the Code of Conduct* published by The Solicitors' Regulation Authority in February 2008.

The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

#### **General comments**

We recognise that the SRA is not keen to amend more widely than is necessary to implement the LDP provisions of the Legal Services Act. However we strongly believe that the amendments made now should as closely as is possible match the developments which will occur once Part 5 comes into force. Preparation and alignment undertaken now will not only save time for the SRA but will also minimise the cost implications for firms who may wish to embrace the new structures and who would undoubtedly welcome a reduction in the things they have to change when certain LDPs have to take ABS licences in due course.

## Specific questions in respect of which the ICAEW has comments

### 1. Have we overlooked any consequential amendment to the listed rules in paragraph 3.2 – i.e those rules we have identified as not appearing to need amendments?

We observe that the professional principle of confidentiality is not set out in the core duties. Although we also recognise that it is covered in detail at rule 4 we think its inclusion in the core duties would better reflect the section (1)(3) of the Act.

### 4. In relation to rule 5:

- do you agree with our proposal to allow all lawyers (including those regulated by other regulators such as licensed conveyancers, costs draftsmen etc) who have the relevant experience and training required by the rule to be “qualified to supervise”? (paragraph 3.3.6 and 3.3.7)

If the SRA retains the concept of “qualified to supervise” it would seem sensible to permit all lawyers whether regulated by the SRA or another regulator to be able to be “qualified to supervise”. However we would question the relevance of this role in its current form when applied to LDPs and ABS in future.

- what are your views on non-lawyer managers being allowed to be “qualified to supervise” – and should we devise a test which equates to that required of solicitors by 5.02 concerning practising experience? (paragraph 3.3.8)

The introductory text to rule 5 explains the role as existing to ensure high levels of management and compliance of a legal practice whether in the context of a pure law firm or an in-house practice. We support the SRA’s intentions to ensure that suitably qualified persons with appropriate experience are identified to manage risk and compliance within firms. However in our view this rule is not flexible enough to deal with the changing structures of law firms.

We think that time taken to adapt this rule to accommodate management of the wider structures of firms which will emerge in due course would be time well spent. We recommend aligning the management roles within a law firm as closely as possible with those which will be expected in full ABSs in due course. This will assist in reducing the administrative burden on firms and the SRA in the long run.

We believe that elements of the responsibilities identified in rule 5 which could easily be undertaken by a non-lawyer with suitable experience and knowledge (for example compliance with the money laundering regulations and identification of conflicts of interest).

- do you think that the requirement for firms to have someone “qualified to supervise is no longer necessary” (paragraph 3.3.9)

We are of the view that the requirement to identify at least one manager as “qualified to supervise” will be of limited relevance in a post Legal Services Act environment. In the interests of equivalence between LDPs (and in due course ABSs) and ‘standard’

legal firms we would recommend incorporating similar roles to “Head of Legal Practice” and “Head of Finance and Administration” as may be relevant and appropriate to the size of the firm.

**5. In relation to rule 7 we are proposing that all partnerships and sole practitioners must indicate on their letterheads their SRA recognised name and their unique SRA number. In the case of an LLP or company we propose that the corporate name and number must be included. Do you agree that this would be helpful to the public and not be too burdensome to the profession? (paragraph 3.3.12)**

We believe it is appropriate that consumers can identify the name of the legal entity with which they are contracting or from whom they are receiving services and where applicable be able to identify who the partners/directors/members are.

The Institute issues guidance to its practising firms as part of the members’ handbook. You can view our guidance at [www.icaew.com/membershandbook](http://www.icaew.com/membershandbook) (statement 9.3). In addition the Institute issues useful and informal guidance in the form of a helpsheet in this area covering trading names, misleading names, and the use of descriptors. If you would like a copy of that document please do not hesitate to ask.

It is a sensible that firms should to either trade under their recognised SRA name or to otherwise indicate the name that the SRA recognises on their letterhead. However if this becomes a requirement we can see no reason why that position should not be applied equally to all firms, irrespective of whether the firm is a sole practice, LLP, partnership or limited company. Clearly there are also legal requirements; in particular LLPs and limited companies are required to give the registered company or LLP name on their letterhead (amongst other forms of communication) and it may well be that the SRA recognised name and the registered name are one and the same.

Clarity in the rules or notes regarding the treatment of differences between the various names and trading styles would be useful. See also our response to your consultation paper 5 (*Changes to the Recognised Bodies Regulations*), our ref 51/08 particularly our comments on the use of a register

We are not clear as to how frequently firms alter their structures or whether a new number is issued at other points for example when an unincorporated entity incorporates. As firms’ names are often a significant part of their market reputation and identity it is less likely that name changes will be frequent. We are not clear what additional benefit would be gained from including the unique number or whether such benefit would outweigh the associated costs of reprinting stationery.

Specific comments on LLP and limited company proposals

We are unsure why the proposed amendments to 7.07(2) include a requirement for LLPs comprising 20 or fewer members to list the names of those members on the letterhead if the entity is operating under a name other than its corporate name. Or

why such a provision should be introduced for LLPs but not for companies. Unlike a partnership we are not aware of a legal requirement for this information to be shown.

We suggest that proposed 7.07 2(e) is deleted and if a requirement to show a trading name or similar is retained that 7.07 2(d), (f) and (g) are amended to reflect that position. For example: by including a subparagraph stating “where the recognised body is practising under a name other than its corporate [registered SRA] name that this is identified by use of the following legend “[name] is a trading name of [name LLP/Ltd]”.

It is important not to add requirements for additional details to be shown on letterheads unless there is a good regulatory reason as this burdens practices with costs for reprinting stationery stocks when circumstances change.

**6. Do you agree with the proposal in relation to rule 8 to allow fee sharing with the practices of lawyers which are authorised non-SRA firms? (paragraph 3.3.14)**

We support this relaxation in the types of business with whom solicitors can share fees.

**7. In rule 9 do you agree that the referral arrangement requirements should be disapplied to authorised non-SRA firms? (paragraph 3.3.15)**

We support this sensible measure to minimise unnecessary duplication of regulation for a firm.

**8. Are there any other points you would like to make with regard to the proposed consequential amendments? Please bear in mind that, as part of this exercise to amend the rules to allow legal disciplinary practices and entities regulation, we are not proposing to deal with any other issues which may indicate changes to any of the rules.**

There are no proposed amendments to the substance of rule 7.01 -7.03. We strongly suggest that thought should start to be given at the earliest opportunity, to relaxing the publicity rules. We note that as far back as 2001 the Law Society had indicated its intention to revise these restrictions.

The OFT in its report into competition in the professional in 2001 said at paragraph 40, *conduct*, bullet 1 “...the Law Society imposes some restrictions on fee advertising. Most notably it prohibits...cold calling...There is some indication that the Law Society may itself abolish these...restrictions”. Given that other professions who are likely to enter into business with lawyers have different approaches to advertising we recommend that review of this area at this stage is necessary. We suggest this would not give rise to significant additional work (as it appears thought has been given to this question some considerable time) but would save the SRA time in revisiting this area when Part 5 comes into force.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caron Bradshaw', with a stylized flourish at the end.

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