

## **SRA Corporate Strategy 2020-23 Consultation**

Law Society Response

January 2020



## Introduction

1. The Law Society welcomes the Solicitors Regulation Authority's (SRA) consultation on its strategy and is broadly supportive of the SRA's strategic aims. However, we would like to see the SRA strike an appropriate balance between each of the aims.
2. The strategy acknowledges the legal sector faces many uncertainties driven by Brexit, regulatory changes (the SRA Standards and Regulations (STARs), the new Money Laundering Directive, GDPR), and wider market transformation. The regulator has a critical role to play in mitigating against adverse impact of these changes on the profession, consumers and the public.
3. The SRA recognises that *"at a time of uncertainty, people need to be able to place their trust in the rule of law and the administration of justice. High professional standards for entry to the profession and throughout practice are fundamental to that trust and must remain a priority for us"*.<sup>1</sup> We agree that the public trust in the legal system is crucial, and the strategy presents an opportunity to build more trust between the regulator, the profession and the public. The SRA should therefore focus on its core regulatory function of ensuring high, professional standards of competence rather than diverting too high a proportion of its resource to other strands of work.
4. We welcome the SRA's emphasis on collaboration and engagement with representative bodies and regulated communities. Closer collaboration and more joined-up working are especially important in the course of implementation of significant recent and forthcoming regulatory reforms such as the new STARs, Solicitors Qualifying Exam (SQE) and other wider market regulations. We are keen to take a collaborative approach with the SRA on both the development of new regulations to ensure they are meeting their stated objectives and developing guidance and compliance tools to help practitioners to adhere to high professional standards.
5. We note the SRA proposes to promote access to justice across all its strategic objectives. While we agree that the SRA should challenge itself to look at ways to improve access to justice, many of the underlying factors behind unmet demand, such as legal aid cuts, court fee rises and low levels of legal literacy, cannot be addressed by regulatory changes. We encourage the SRA to engage with the wider policy debate on access to justice and be more vocal about other more significant factors, outside its regulatory remit, that prevent people from accessing justice.
6. We support the SRA's commitment to improving its operational services. The SRA should set itself clear and transparent performance criteria to measure the effectiveness of its work and conduct more robust impact assessments to demonstrate the extent to which its work and regulatory changes have delivered the regulatory objectives set out in the Legal Services Act 2007 (LSA). The Legal Services Board

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<sup>1</sup> The SRA Corporate Strategy Consultation 2020 - 2023, p. 8;  
<https://www.sra.org.uk/sra/consultations/consultation-listing/corporate-strategy-2020-2023/?s=o>

raised concerns with regulators about the poor quality of some rule change applications, with some lacking in supportive evidence and rationale.<sup>2</sup> More focus on evidence-based policy making and impact assessments should help the SRA to improve its regulatory performance.

7. We set out below detailed comments under each of the questions.

**Objective 1: Setting and maintaining high standards for the profession and the SRA**

8. The promotion of high professional standards should be at the core of the regulator's work since it builds public confidence in the profession, the rule of law and administration of justice. The maintenance of high standards is essential to protecting the public interest.
9. We welcome the SRA's intention to "*find the right balance between appropriately high standards and creating opportunity for competition and innovation*".<sup>3</sup> Such approach should help the SRA to deliver the regulatory objectives, set by the LSA, in a more balanced and proportional way. Striking the right balance between the competing objectives will be paramount to the SRA's success and to the success of the new STARS, the implementation of the SQE next year, and developing regulation in response to new emerging risks. Where trade-offs must be made, the SRA should ensure it maintains a focus on promoting the public interest and a strong, independent and diverse legal profession.
10. Under the strategy the SRA plans to conclude its long-term programme of reforms and refocus its work on ensuring that regulated communities meet high professional standards set by the regulator. Given the recent significant regulatory changes (STARS, transparency rules, new Money Laundering Directive), it will be important that the SRA clearly explains and communicates to the profession not only what the new standards are, but also the SRA's expectations and the behaviour required to meet those standards. This is particularly important since the SRA is moving away from rules-based regulation towards a more risk-based approach, with less prescriptive rules, which could lead to ambiguity and uncertainty. Firms may not be sufficiently clear about accepted behaviour, or the circumstances in which enforcement action may be triggered. We are concerned about the cumulative impact of these changes on the profession and clients, and in particular the potential for a disproportionate impact on small firms and sole practitioners, which do not have the compliance resources of big law firms.
11. It will be vital that the SRA ensures adequate guidance and assistance to practitioners and law firms, and sets out what good looks like, to support the profession in compliance. This will help to ensure appropriate conduct, protect the public, avoid misunderstanding or disputes with the regulator, and ensure that high standards are maintained.

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<sup>2</sup>The LSB draft Business Plan 2020/21 consultation, p. 10.

<sup>3</sup> The SRA Corporate Strategy Consultation 2020 - 2023, p. 10.

12. We are also pleased that the SRA intends to work with representative bodies and regulated communities in the course of delivering its strategy. Engaging more effectively with the profession in a constructive and positive manner will smooth the process of implementing the reforms, enable the SRA to get a better insight into potential gaps in guidance or support, and help to more effectively monitor the impact of the regulatory changes on the profession and clients.
13. The Law Society's committees have a breadth of expertise in regulatory issues, ethics and specialist areas of practice, and we are keen to continue to work closely with the SRA on identifying potential areas of risks, compliance gaps, as well as developing further support material for the profession. More joined up and collaborative ways of working can prevent work duplication and lead to reduction in the SRA's operational cost. This could also help to increase the trust of the profession in the regulator and deliver regulation fit for purpose.
14. We support the SRA's overall goal of improving diversity of the profession and monitoring diversity data. The Law Society is committed to the principles of the Equality Act and we believe equality and diversity will strengthen the profession and the wider legal sector. As such, it is important that the SRA ensures the impact on equality, diversity and inclusion (EDI) is considered in the process of embedding and monitoring outcomes of its STARS and forthcoming SQE reforms.
15. We have raised concerns with the SRA over potential EDI implications in relation to the introduction of the new SQE, such as issues around funding and accessibility of the assessments. We would also encourage the SRA to actively engage with Government to help make new professional loans available for aspiring solicitors. This will help the SQE to have a positive impact on diversity within the profession and ensure that all candidates have access to the funding they will need.
16. Similarly, the SRA needs to monitor the impact of STARS on BAME solicitors. There is a risk that constant regulatory change has an economic impact, especially on small firms and sole practitioners, with BAME solicitors disproportionately based in such practices. The SRA's impact assessment identified risks for BAME practitioners arising from the handbook reforms<sup>4</sup>. It is important the SRA is transparent and reports on the EDI impact in the assessments of its reforms. The SRA should also make clear how it intends to measure diversity, for example what type of practice (law firms, alternative legal service providers), and at what levels (senior partners, partners, associates or all areas of a business).
17. As for the SRA's commitment to deliver excellent operational service, we support any work that will result in improvements to the effectiveness, responsiveness and delivery of SRA regulatory functions.
18. With the new enforcement strategy in place, the SRA and the profession would benefit from a greater focus on the quality and consistency of decision making. This would

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<sup>4</sup> SRA Looking to the Future: Phase two of our Handbook reforms Impact assessment, June 2018, para 14, p. 19.

entail ensuring that the individuals making decisions on cases are appropriately trained and qualified.

19. In addition, we recommend the SRA publishes details on how it intends to measure the effectiveness and efficiency of its work. One of the measures should include the level of solicitor satisfaction with the SRA, which was used historically. Including this measure would help deliver greater transparency and accountability in relation to its work. In addition, the SRA should get insight from other renowned jurisdictions on how to drive improvements in performing the statutory duties of the regulator.

### **Objective 2: Technology and Innovation**

20. We broadly support this objective, but it is not entirely clear that all aspects of the proposed workstreams fit within the ambit of the regulator. We encourage the SRA to engage closely with the Law Society as it further develops this strand of work. The Law Society plays an active role in promoting technological innovation in the legal sector and the opportunities it can offer to enhance the way solicitors work and the service they provide to clients. It is important the SRA works in partnership with the Law Society to prevent duplication. For example, the SRA strategy needs to factor in the Law Society's ongoing work with the SRA and NESTA to support the Legal Access Challenge Fund.
21. There is also a need to better understand and communicate the impact of the SRA's Innovate program over the last few years, before continuing this strand of work.
22. The SRA has stated it must consider the different types of technological products being applied to the legal services sector, how they will be used by the sector and the practical and ethical implications for practitioners and consumers. It is positive the SRA plans to engage with the UK's LawTech ecosystem to ensure regulation is not placing unnecessary barriers on innovation. However, given the transnational nature of technology, it is important the SRA conducts comparative analysis to learn lessons from territories who lead in designing, deploying and regulating LawTech. For example, the International Bar Association (IBA) is currently leading work on regulatory approaches to unregulated legal services providers and we recommend the SRA takes account of its work when scoping future policies.<sup>5</sup>
23. Prior to understanding and analysing unmet legal needs and how technology can help to alleviate the problem, the SRA should engage with the profession to better define unmet needs as there is no sector-wide agreed definition.

### **Objective 3: Anticipating and responding to change**

24. It is not clear what tangible outcomes the SRA intends to achieve from this objective. As mentioned earlier, given the scale of recent regulatory changes, it is important that

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<sup>5</sup> International Bar Association consultation on unregulated providers of legal services, 2019.

the SRA should focus on its core regulatory function of ensuring high, professional standards of competence, including high standards for assuring continuing professional competence, rather than diverting resource to this strand of work. This will help ensure stability and certainty for the profession.

25. With more certainty now over the date when the UK will leave the European Union and pending further clarity on the future relationship between the UK and the EU, the SRA should ensure adequate resources are in place to review and, if appropriate, adapt its regulatory arrangements. The Law Society has been actively engaged in seeking to maintain the international competitiveness of the English and Welsh jurisdiction as well as seeking opportunities in trade in legal services with the EU and the rest of the world, and we would welcome the opportunity to work closely with the SRA on this issue.
26. Regarding the proposed work on *'keeping abreast of developments in regulation across the legal and other sectors'*<sup>6</sup>, resource will have to be carefully balanced with the need to monitor and evaluate outcomes of recent reforms, especially the cumulative impact of regulatory changes on practitioners and their clients. In addition, we recommend the SRA conducts horizon scanning of problems faced by the profession, including the inability for many to exit the profession and wider issues affecting the profession (e.g. cuts to legal aid), to better inform its future focus and any regulatory interventions.
27. Whilst we broadly agree with the SRA's proposal of deepening its understanding of consumer concerns and requirements, it is important that the definition of consumer should also encompass law firms, alternative legal services providers (ALSPs) and LawTech. The Law Society, in partnership with the LSB, will be publishing the Legal Needs survey in January, which will provide a rich source of data on clients' behaviour and experiences with the legal market. The survey should help the SRA gain a better understanding of barriers preventing people from accessing justice; for example, the level of consumer awareness of the legal nature of their problem, consumer preference in relation to handling strategies, or accessibility of advice routes. As such, the survey can support the SRA and other policy makers to develop more targeted regulatory interventions better tailored to specific consumer needs.
28. We support the SRA's workplans on raising public awareness of legal services and how they can be used. The Legal Needs survey we carried out with the LSB shows that there are many people who do not understand how and when they should take legal advice from a qualified solicitor or other regulated professional. Making people aware of how to recognise legal issues and from whom to seek help, could help people to address this. This could in turn increase people's access to justice and reduce unmet demand.

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<sup>6</sup> The SRA Corporate Strategy Consultation 2020 - 2023, p. 17;  
<https://www.sra.org.uk/sra/consultations/consultation-listing/corporate-strategy-2020-2023/?s=o>