

SRA Policy Statement

Multi-disciplinary practices

The regulation of non-reserved legal activity

A multi-disciplinary practice (MDP) is a licensed body that combines the delivery of reserved legal activities with other legal and other professional services. 'Reserved legal activity' and 'legal activity' have the meaning prescribed by s12 of the Legal Services Act 2007(LSA).

When licensing an MDP, our approach to whether we need to regulate non-reserved legal activity performed by non-legal professionals will be a flexible one - driven by the risks posed by the particular circumstances. However, we will exercise discretion having regard to the regulatory objectives and to the principles set out in this statement.

This is the context for us to agree that any particular non-reserved legal activity will be excluded from the activity that we regulate the MDP for:

- Reserved activity and immigration services will always be regulated by us.
- Any claims management activity engaged in by solicitors, registered European lawyers (REs) or registered foreign lawyers (RFLS) will be regulated by us unless the MDP is also authorised by the Claims Management Regulator.
- The MDP as a whole will be authorised and regulated by us. The MDP, those who own it, and those work within it will need to comply with the authorisation and practising requirements applicable to licensed bodies, their owners, their managers and their employees as set out in our regulatory scheme. For example, information from across the MDP will be disclosable to us in accordance with the provisions of s93 LSA and any misconduct of the firm or its members or employees in areas we do not regulate may be taken into account in relation to the firm's fitness to hold the licence, or compliance with conditions.
- Solicitors, REs and RFLS will continue to be subject to personal regulation by us. This will include the Code of Conduct for solicitors, REs and RFLs. Other authorised individuals will be subject to the relevant personal requirements of their own regulatorⁱ.
- However, an activity that falls outside of the services that we regulate the MDP for will not be subject to many of the other detailed provisions of our scheme – including the professional indemnity insurance and Compensation Fund provisions, the Accounts Rules, the SRA Principles or the SRA Code of Conduct for Firms (the 'Code for Firms').

Reserved legal activity and immigration legal activity will always be regulated by us, as will those activities that are integral to them. Linked to this requirement is the obligation to act in the client's best interests and not to 'case split' in a way that removes appropriate protections, or which will leave the client confused as to the regulatory positionⁱⁱ.

The following is a non-exclusive list of activity that we prescribe as integral to reserved legal activity or immigration activity and therefore regulated by us when carried out within the MDP:

- Claims management, when the MDP is instructed to conduct the litigation.
- Administering an estate when the MDP is acting on the grant of probate.
- Legal advice on liability or quantum when the MDP is instructed to conduct the litigation.

- Providing employment advice on a client's right to enter or remain in the UK when the MDP is acting for the client in relation to the visa application.
- 'Administering' a client's conveyancing matter whilst the MDP is instructed to draft the reserved instruments.

We are particularly concerned that cases involving the provision of reserved legal activities do not move between regulated and unregulated services in a way that causes detriment.

Subsidiary but necessary

Where the non-reserved legal activity is performed as a subsidiary but necessary part of the activity of a non-legal professional (whose main activity does not involve the provision of legal advice or services), then subject to any risks posed in that particular case, we will generally be prepared to agree to exclude this from the description of legal activity we regulate on the licence. Examples include an IT consultant whose work might from time to time involve 'legal activity' such as providing advice on installing a new IT system that includes compliance with data protection legislation, or a human resources consultant who designs new disciplinary systems for firms that need to include procedures that are compliant with equalities legislation.

The greater the amount of legal activity involved, and/or the closer it may be to reserved legal activity, the less likely we will be to exclude this activity from activity we regulate on this ground. So, for example, we are unlikely to exclude will writing, general legal advice, debt recovery, legal advice on debt or personal injury liability, or the work of a chartered accountant who regularly acts in disputed tax matters from our regulation under this heading (but the suitable external regulation exception may apply).

We think it important in the interests of certainty for providers and our effectiveness and transparency of supervision and enforcement that a description of the activities that are excluded from our regulation is contained on the terms of the licence.

Example 1

A firm of chartered surveyors wants to open a legal department to act in contested planning matters and applies to us for authorisation as a licensed body. The normal work of the surveyor might from time to time involve providing what is effectively legal activity in relation to planning requirements. We are satisfied that the applicant firm has to date successfully delivered this service outside of legal services regulation with no consumer protection issues and has in place appropriate arrangements to refer the client to the legal team (eg if the matter becomes contested or there is an issue of disputed law). We therefore agree to exclude this activity from activity we regulate. In this case, the relevant wording on the licence could read:

"The following will be activity regulated by the SRA:

- All reserved legal activity and immigration work
- All non-reserved legal activity except for any such activity carried out by a surveyor as a subsidiary but necessary part of the provision of surveying services".

Suitable external regulation

Where there might be a substantial overlap between legal activity provided by a non-legal professional and the kind of legal work that an authorised individualⁱⁱⁱ would also provide or would be expected to supervise, then we are likely to include the work as activity regulated

by us unless it is subject to suitable external regulation. Taxation advice is one such activity and providing legal advice on transactions or disputes in the role of a general consultant and legal advice on debt or insolvency are others. In those cases, where providing legal advice could be said to be the core part of the service, we consider that extra protections should be in place in an entity we regulate.

For us to accept that an external regulatory scheme would be suitable for these purposes, we will need to be satisfied that compliance with the scheme will ensure our principles will be complied with. These principles are set out below.

1. uphold the rule of law and the proper administration of justice
2. act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by **authorised persons**
3. act with independence
4. act with honesty
5. act with integrity
6. act in a way that encourages equality, diversity and inclusion
7. act in the best interests of each **client**

We would expect any regulatory scheme to provide for complaints, disciplinary procedures and enforcement. We would not consider external regulation to be suitable unless there are effective mechanisms to enforce the rules. If, for example, a member can escape liability by simply resigning their membership and yet continue in practice, this could not provide an effective remedy. We would also expect the regulator to maintain regular reporting requirements and to carry out assurance checks/visits on a risk basis.

We agree that we need to apply the text flexibly to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address what may be gaps in the external regulation.

We have already reviewed the schemes of the following regulators using these principles and are satisfied that they currently meet the test:

- Association of Chartered Certified Accountants
- Association of Taxation Technicians
- Chartered Institute of Taxation
- Financial Conduct Authority
- Insolvency Practitioners Association
- Institute of Chartered Accountants in England and Wales
- Royal Institution of Chartered Surveyors

Authorised individuals

Subject to the paragraph below, any legal activity carried out by authorised individuals or under their direction or supervision will remain activity we regulate. However, there will be circumstances where the non-reserved legal activity will be provided under suitable external regulation as part of a service that is not identified to clients as a legal service. For example, this could be legal advice on liability for tax in an accountancy engagement carried on by a mixed team of legal and non-legal professionals. In those circumstances, we might agree on the MDP licence that specified services engaged in or supervised by the authorised individual will not be activity we regulate. This will be provided that the authorised individual is not providing a reserved service in the same matter and that the regulatory position is made clear to consumers.

In these circumstances - although the work will not be activity we regulate within the Licensed Body - the SRA Principles and the provisions of the SRA Code of Conduct for Solicitors, RELs and RFLs (the 'Code for Solicitors') will apply to the involvement of any solicitor, REL or RFL.

In deciding whether to allow this exception, the factors we will consider will include the firm's arrangements for clear terms of engagement and for deciding when it will be in the client's interests for the matter to be under our regulation; as well as the nature of their client base. For example, are the clients principally corporate and professional clients who are likely to have experience of purchasing legal services and other professional services?

The MDP should ensure that the activity is carried out at the direction and under the supervision of an authorised individual when it is in the client's interests to do so. For example, when it is important for the work to attract legal professional privilege.

Example 2

An accountancy firm is regulated overall by the Institute of Chartered Accountants in England and Wales (ICAEW). All of its activities are subject to the ICAEW Code of Ethics, professional indemnity insurance provisions, and (if the activity forms a significant part of turnover) the inspection regime. As well as providing accountancy services (including taxation advice and assistance in taxation disputes), the firm provides general consultancy services that are likely to include legal activities which would fall into the normal range of what a lawyer would deliver. We agree that a suitable external exception is appropriate.

If the firm is authorised, the description on the licence could read:

"The following will be activity regulated by the SRA:

- All reserved legal activity and immigration work
- All legal activity prescribed by the SRA as integral to reserved activity
- All other non- reserved legal activity performed by or under the supervision of an authorised individual (except where: (a) the service in the matter falls into the categories of accountancy services or management consultant advice overall and is identified as such to consumers and (b) the authorised individual is not providing a reserved service in the same matter."

The background to this decision will be that the rest of the firm's non-reserved 'legal activity' will be regulated by ICAEW. We would place a condition on the licence that the MDP has a duty to notify us if their regulatory position changes or there is disciplinary action taken against them by another regulator.^{iv}

In this example, the rules on conflict of interests would apply to the MDP as follows:

- (a) Two SRA-regulated matters – section 6 of the Code for Firms will apply
- (b) Two non SRA-regulated matters – the ICAEW Code of Ethics will apply
- (c) One SRA-regulated matter and one non-SRA regulated matter there will be a conflict of interests but not an SRA-regulated conflict of interests so the ICAEW Code of Ethics will apply.

Where solicitors or RELs or RFLs are involved in scenarios (a) to (c) they will be subject to the duties regarding conflicts of interest set out in Standards 6.1 and 6.2 of the Code for Solicitors in relation to their personal involvement. So, they cannot act if there is an own-interest conflict and cannot personally act for both clients together unless the safeguards in Standard 6.2 are met.

Clients, complaints and the Legal Ombudsman

Any MDP must have procedures in place to ensure that clients are aware of their regulatory position – and which activity is regulated by us and which is not in their particular case.^v The exclusion of work from activity we regulate does not impact on the right of a client to take a complaint to the Legal Ombudsman in relation to the legal activities of any individual authorised person or of the MDP itself as an authorised person. Clients will therefore need access to a suitable complaints procedure and to be informed of their rights to pursue a complaint to the Legal Ombudsman even where the work is not activity we regulate.

The Compensation Fund

The Compensation Fund will only cover defaulting licensed bodies where losses are incurred in the course of performance of an activity that we regulate. Therefore, defaults will not be covered if they fall outside of activity we regulate.

Professional Indemnity Insurance

We would prefer the same insurer across the MDP to avoid consumers being prejudiced by disputes over which policy covers a particular situation. We would expect that all legal activity whether regulated by us or within the external regulation exception should be covered by a policy that meets our minimum terms and conditions. However, we will consider requests for waivers on a case-by-case basis where acceptable alternative arrangements might be in place.

Turnover

Appendix 3 to [our fee determination for licensed bodies](#) defines turnover for the purposes of our periodical fees as “a firm’s total estimated gross fees arising from regulated activities undertaken from offices in England and Wales...”

Non-reserved legal activities that fall out of activity we regulate will therefore not be included in turnover for calculating periodical fees.

ⁱ Note that S52 LSA provides that in any conflict between the rules of the Approved Regulator (an entity requirement) and the rules of another regulator (an individual requirement) the entity requirement prevails

ⁱⁱ See SRA Principle 7 and Standard 4.2 of the SRA Code for Firms

ⁱⁱⁱ An individual referred to in s18(1)(a) LSA who is authorised to provide one or more reserved legal activities

^{iv} Note the firm may well have additional regulators, for example the FCA for investment advice

^v See Standard 7.1 (c) in the Code for Firms incorporating Standard 8.10 of the Code for Solicitors, RELs and RFLs