



Solicitors Regulation Authority:
Regulatory Reform Programme:
Improving Regulation: proportionate and targeted measures

Response from the Motor Accident Solicitors Society

June 2015

Introduction

This response is prepared on behalf of the Motor Accident Solicitors Society (MASS) and submitted by the Chairman, Susan Brown.

MASS is a Society of solicitors acting for the victims of motor accidents, including those involving personal injury (PI). MASS has 130 solicitor firm Members, representing over 2000 claims handlers. We estimate that member firms conduct upwards of 500,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom.

The objective of the Society is to promote the best interests of the motor accident victim. This is central, and core to our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust, and best placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident claimant work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

Contact:

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Simplifying compliance officer approval for small firms (1-4 managers)

CQ 1: Do you agree with the SRA's proposal to introduce deemed approval for the COLP / COFA roles for sole practitioners and 1-4 manager firms?

Yes – MASS agrees with the proposal.

CQ 2: Do you believe that deemed approval of COLPs / COFAs should be limited to certain types of firms? If so, which firms and why?

No, save for what is outlined above. All Solicitors are subject to strict professional standards, and subject to there not being any reduction in these standards, the same should be sufficient regulation.

CQ 3: Do you believe there are certain criteria of characteristics in a prospective COLP / COFA which should require us to assess their application nonetheless? If so, which criteria or characteristics and why?

MASS believes that the rules which apply to a Solicitor COLP/COFA should also apply to whomever the prospective person might be. I.e. they should undergo criminal records check, debt orders, money only judgments etc.

Simplifying candidate declaration and notification processes

CQ 4: Do you have any views on the SRA's proposal to simplify candidate declaration and notification processes?

MASS has no specific views on this proposal.

Remove the requirement for firms to carry out reserved legal activities

CQ 5: Do you agree with our proposal to simplify authorisation by removing the requirement for firms to carry out reserved legal activities?

MASS agrees with this proposal as it would seem to be a sensible approach.

This proposal could however be viewed as being a step towards the diminution of the qualification of "solicitor" and MASS would not wish to see the evolution of "law firms" which do not in fact employ anyone with a formal legal qualification.

ABS Authorisation – operational changes and improvements

CQ 6: Do you agree with our proposals to simplify the authorization process for ABSs by:

- a) removing the requirement for approval of managers in ABS corporate owners;

MASS believes that a level playing field for all must be retained. Solicitors are already heavily regulated and vetted and therefore the same standards should be applied to non-solicitor ABS corporate owners. MASS does however agree with simplification but only insofar that regulatory and other necessary checks are not diluted.

b) removing the 7 day notification requirement for authorised manager or owner of an ABS

MASS agrees with this proposal.

c) revising the rules relating to reserved legal activity?

MASS agrees with this proposal.

CQ 7: Do you have any specific concerns regarding the SRA's proposals to simplify the authorisation process for ABSs? If so, please specify what these are.

MASS has no other specific concerns apart from the point expressed in 6 (a)

CQ 8: Do you have any specific suggestions for the further simplification or streamlining of ABS authorisation?

MASS has no other suggestions at this point.

Changes to insolvency rules

CQ 9: Do you agree with our proposal to adjust the regulations to cover the event of partnerships entering administration?

MASS agrees with this proposal.

Alternatives to client accounts

CQ 10: Should the SRA approve third party managed accounts?

MASS agrees with this proposal.

CQ 11: If so, should these be assessed and considered by the SRA on a case by case basis, or should the SRA identify a minimum set of safeguards that should apply to all third party managed accounts?

MASS believes that the SRA should identify a minimum set of safeguards that should apply to all third party managed accounts as are appropriate to those accounts.

CQ 12: Are there any additional safeguards, not set out in Annex A that you think we should consider in authorizing the use of third party accounts?

MASS has no other suggestions at this point.

Guidance on recording of non-material breaches

CQ 13: Does the SRA's additional guidance on recording of non-material breaches provide further clarity on this requirement?

Whilst the additional guidance does provide further clarity, MASS feels that the overall position still remains unclear and would therefore welcome further definitive explanation and clarity.

CQ 14: Should the SRA also give consideration to removing the requirement for non-ABS firms to record such breaches? If so, why?

MASS does not believe it would be appropriate for the SRA to consider this.

Clarification on the outsourcing of legal and operational functions

CQ 15: Does the current rule in relation to outsourcing present unforeseen difficulties to firms wishing to take advantage of cloud computing options?

MASS believes that it does, mainly because Outcome 7.10 (b) of the SRA Code of Conduct is aimed, primarily at more “traditional” outsourcing options, and whilst Cloud is outsourcing by another name, it is virtual outsourcing. Rule 7.10 is predicated on outsourcing being undertaken in a physical place, which can be entered, documents and systems inspected and viewed etc.

Cloud is underpinned by technology and is all about what a virtualized data centre (public or private) and what that centre can deliver. Arguments for the ability to utilize Cloud, as no doubt have been put forward by a number of stakeholders, is that it helps make business more flexible and agile, providing cost effective ways of “outsourcing”, making use of such services at will.

Currently Outcome 7.10 in its present format would prohibit the use of Cloud, and means such technologies, which are cost effective and flexible are not open to law firms.

Security risks surrounding Cloud remain its biggest issue, but are unlikely to be long term issues if this new, emerging industry wishes to expand.

CQ 16: Does the addition of a guidance notes on Outcome 7.10 provide sufficient clarity, or should the SRA make changes to this Outcome to provide further guidance to firms?

MASS feel that the SRA should provide further guidance on Outcome 7.10 and propose that Option 2 is the most appropriate.

Recording and reporting of diversity data

CQ 17: Do you have any comments on the SRA’s proposal to clarify the current requirements for the recording and reporting of diversity data?

MASS has no other comments at this time.

Update on Apprenticeship Route to qualification

CQ 18: Do you agree with our proposal to enable qualification as a solicitor through an apprenticeship route?

MASS agrees with the proposal but would emphasise the importance of ensuring that the training plans drafted result in the apprentice qualifying as a “Lawyer” as opposed to a “practitioner”.

Fee sharing and referrals

CQ 19: Do you consider that Outcome 9.6 should be retained or removed? Please give your reasons why.

MASS believes that Outcome 9.6 should be retained, for the same reason why referral fees are prohibited in other areas of the law, such as Personal Injury, which is primarily that payment of such fees encouraged people to make claims for minor injuries or create fictitious injuries/accidents which are extremely difficult to dispute.

MASS would question if the payment of referral fees in criminal cases would encourage criminal activity and whether removing the ban gives more scope to practitioners in this area? In addition we would suggest that the payment of referral fees might result in a reduction in the level of expertise or the amount of work carried out on a case, as there will be less profit to be made if a referral fee has been paid.

Impact Assessment

CQ 20: Annex B sets out the SRA’s initial assessment of the impact of the measures set out in the review. Is there any information, data or evidence that you can provide or direct us towards, that will assist us in finalizing our impact assessment? Do you agree with our assessment of impacts for each proposal?

MASS is unable to provide any specific data or evidence to assist the SRA. However MASS does agree with the SRA’s assessment of impacts for each proposal undertaken to date.