

## **Legal Services Act: New forms of practice and regulation**

### **Consultation paper 8**

- 1. We believe that two annual renewal processes should be required – one process for individual practising certificates and one process for firm recognition. Do you agree? Please explain your answer.**

We strongly disagree (see explanation in answer to question 3).

- 2. We believe it makes sense for the two renewal processes – the process for individual practising certificates and the process for firm recognition – to take place at the same time each year (paragraphs 13-16). We believe it makes sense for individuals, for firms and for the SRA. Do you agree? Please explain your answer.**

See answer to question 3.

- 3. We propose to introduce a simple online process that will allow each solicitor to renew his or her practising certificate (paragraphs 18-19, 24). The system will associate solicitors with the firms that employ them. Employers will be able to make a single payment for all practising certificates, as they do currently, and they will be able to confirm that the solicitors they employ have renewed.**

**In this context, and considering the question from the firm's viewpoint, do you agree that each solicitor should be responsible for renewing his or her practising certificate? Please explain your answer.**

**In the same context, but considering the question from the individual solicitor's viewpoint, do you agree that each solicitor should be responsible for renewing his or her practising certificate? Please explain your answer.**

We are against the proposal that the process for applying for individual practising certificates should require each solicitor to make an application. As we mentioned in our response to your strategic paper of November, we are against the proposal because it will impose a disproportionate administrative burden on solicitors, law firms and the SRA. That burden will translate into additional costs for solicitors' firms which will ultimately be borne by the consumers of legal services.

The administrative burden that we refer to includes:

(a) tens of thousands of solicitors taking time to fill in on-line forms instead of hundreds of forms being filled in by firms;

(b) administrative staff at firms spending time chasing recalcitrants - firms will feel obliged

to do the chasing because of the impact of employing a solicitor who does not hold a practising certificate. We believe that the work of the central administrative staff in law firms will not be reduced by the proposal;

(c) staff at the SRA looking at each form and dealing with the applicants whose answers to the tick-box questions depart from the one required for the form to be processed without human intervention, including input mistakes;

(d) staff at the SRA instituting disciplinary proceedings for failure to hold a practising certificate where that failure occurs through oversight which would have been avoided through bulk renewal; and

(e) firms/individual solicitors having to deal with those disciplinary proceedings.

On point (e) above, where solicitors are obliged to perform any task of an administrative or quasi-administrative nature not related to client service, the practical reality is that through oversight or for other reasons (e.g. secondment abroad, return from working in employment where a practising certificate is not required, illness, etc.) a percentage of staff will fail to perform the task on time. This contrasts with the position where it is the job of an administrative member of staff to ensure that a task, such as bulk application for practising certificates, is carried out. The upshot will be many failures to renew on time, with a consequent increase in disciplinary activities on the part of the SRA. Our experience is that the SRA devotes a significant amount of time to disciplinary action where, through oversight, a solicitor does not hold a practising certificate. (We suggest that you check the time currently spent by the SRA on each failure to renew through oversight and calculate what different levels of failure to renew under the proposed regime would mean from a resource perspective for the SRA).

We are of the view that the additional burden is disproportionate for three principal reasons. The first is that the purpose of the renewal process is to check who wishes to hold a practising certificate. The most efficient process for renewal is, without doubt, bulk renewal by the employer firm providing a list of their partners and employees and an individual renewal process could not be justified where the purpose of the renewal is limited to the above, as is currently the case.

Secondly, we do not think that the renewal process is an appropriate mechanism to use to achieve the “advantage in each solicitor being more aware of what information is important to their regulator” nor for “helping to encourage a culture of professional responsibility and ensuring a greater understanding of required conduct”. There are other ways of achieving these goals, some in existence and no doubt, others could be created, but such aspirations could and should be dealt with elsewhere. The renewal process should not be made significantly more burdensome to meet objectives entirely unconnected with the basic purpose of renewal. We consider that the process of renewal is simply that, and it should not be viewed as a possible instrument of cultural change.

Thirdly, we are sceptical that a tick-box on-line form for renewal will go a meaningful way

towards achieving the goals you mention. The SRA's "opinion" that there is an advantage in solicitors being aware of what information is important to their regulator (with no evidence that solicitors are unaware or otherwise what that opinion is based on) and that the individual renewal process "may help" achieve the other goals is insufficient justification for imposing the proposed burden.

We believe that firms' internal checking processes and the conduct rules themselves address the goals you mention and for the additional burden you seek to impose, no material advantage can be shown, rather than merely hoped for. We would be happy to discuss other means of achieving the goals. We would ask you to reconsider the conceptual basis for requiring individual solicitors to fill in a form online to renew.

From an individual solicitor's perspective, each solicitor should not be responsible for renewing his or her practising certificate. The renewal process will, no matter how many questions might be asked on-line, be regarded as an administrative matter and, no matter how important, will be regarded as having lower priority than servicing the consumers of solicitors' services. The main problem from the individual's perspective is that the renewal might not be made on time. This might occur because the individual is ill, away from the office on holiday, away from the office on secondment to a client or another law firm abroad, or working in a foreign office, etc. The disciplinary approach that the SRA appears to be taking towards failure to renew underlines the importance of not leaving it to the individual to ensure that renewal has taken place.

We would add that the existing system works reasonably well and so any change would have to be regarded as offering a significant improvement in terms of burden on the SRA and on solicitors and firms in order to be worth considering.

**We are keenly interested in anything you can tell us about the practicality of the operating processes we propose (paragraph 24). We will take your comments into account in our process design work.**

For the reasons given in the response to question 3, we are of the view that this work should be halted. The SRA is overburdened at present and we strongly suggest that no further work be done on this idea which will add to the burdens on the SRA without necessarily achieving any measurable advantage or benefit. We would be happy to participate in a review of the current system to see whether it would be feasible and advantageous to move to an online system.

- 4. It is clear that we need to have online capability to deliver an efficient service. We believe we should make online applications/renewals the norm by charging an additional amount to those who request a paper process (paragraph 9). Do you agree? Please explain your answer.**

We believe that it would be better if a rebate were made to those who file online. This

would help drive efficiencies at the SRA where the extra costs of paper processing are likely to be incurred. If an additional payment were to be made for online filing, this would simply increase the income of the SRA and enable it to provide more resource to deal with the inefficiency of paper filing which would be no incentive for the SRA to make the system more efficient.

## **General**

You will be aware that individual renewals were required up until, we recall, the early 1990s. We believe that it would repay investigation into why the change from individual to firm renewal was made at that time. It would seem a retrograde step to go back to a system that was done away with, presumably for good reason, almost 20 years ago.

Finally, we understand from a member firm with offices in Scotland that the system proposed by the SRA requiring individual solicitors to fill in a form is similar to the Scottish system (albeit that the forms there are in hard copy) and that the forms are collated by each firm and sent in to the Law Society of Scotland with a single payment. The system in Scotland is described by our member as an administrative “nightmare” and confirms that many of the concerns set out above have been realised in practice.