

Our approach to consultation

Reviewed 25 November 2019

Purpose

This document sets out our approach to consultation in relation to policy development and changes to the SRA regulatory framework. By consultation we mean early and informal discussion (This includes pre-consultation - the phase of engagement before proposals are fully formed.) as well as formal written consultations on proposals for change or reform.

It is intended to provide stakeholders with an understanding of how they can expect to engage with us when we make any change to our regulatory arrangements.

Why we consult

We are committed to developing policy in a clear and transparent way and in accordance with best practice principles. The Legal Services Act 2007 requires us to ensure that our regulatory interventions are transparent, accountable, proportionate, consistent and targeted; and to ensure that best regulatory practice is adopted.

Open and effective consultation is a critical part of policy development. That includes early consultation through informal discussion as well as formal written consultations. Our work impacts on a number of individuals and organisations, including the regulated community, consumers and other government and regulatory bodies. We therefore place great importance on engaging with all of our stakeholders. Effective consultation offers the best means of identifying any potential unintended effects and of hearing alternative suggestions and perspectives on our proposals. By inviting a broad range of views, we are able to test and develop our ideas to reach the best possible policy outcome.

Our approach

Consultation is not just a process to follow because we are expected to, either by our stakeholders or by Government guidance. To the contrary, our desire for effective and meaningful consultation requires us to think not only in terms of process but in terms of the outcome and its impact on our policy development. We need to consider the kind of input we are getting from stakeholders; the quality of responses and the extent to

which they have informed our approach; and whether there may be groups that are not engaging with us.

We believe a flexible approach to consultation is needed whereby we consider which approach will yield the best response in each set of circumstances. Formal written consultation is just one tool for inviting stakeholder views and while extremely valuable, may not necessarily always be the most appropriate or only method of consultation. Stakeholders can therefore expect us to take a broad view of what constitutes consultation and for it to become part of our ongoing policy development. For instance, other forms of consultation such as face-to-face discussions or correspondence with key stakeholders may provide an effective way to gather views and collect evidence. We expect this to be particularly likely at the earlier stages of policy development or as we refine the final details in discussion with those directly affected. Early discussion with stakeholders might include consumer groups, representative bodies and those most directly affected by change.

A flexible approach whereby the nature and format of consultation can be tailored to each set of circumstances is likely to take account of a range of factors:

a. The nature and scale of the proposed change

How much of a change will it be for the regulated community and/or consumers of SRA regulated legal services? Is new regulation being imposed or are regulatory burdens being removed?

b. Who will be affected by the proposed change

Will all of the regulated community be affected? What will be the impact on consumers? Are there any impacts in relation to other professions or regulatory frameworks?

c. Timing

What is the timetable for the changes as there may be external drivers beyond our control that we need to be in a position to respond to? How long will those affected have to prepare for the change? Will it be a single consultation or multiple? What else might we be consulting on at the same time?

d. Nature and extent of any previous consultation

Is this the first time we have consulted on the issue? Have we undertaken 'informal' consultation by meeting with those affected or setting out the direction for future changes in speeches or other public documents?

e. Recognition of major holiday periods

Does our proposed consultation fall over a major holiday period and does the length of the consultation still allow for proper consideration?

While we consider that formal written consultation in itself may not always necessarily be the best way of generating meaningful responses or gathering evidence, it will continue to play a very important role. Publication of written consultation documents is familiar, transparent and easily shareable across the wider stakeholder community. This is particularly important where there may be unintended or unforeseen impacts.

We therefore consider that formal written consultation will continue to be a central element of our approach in the majority of areas. However to ensure the most effective engagement, we will consider whether to undertake more targeted forms of consultation alongside and ahead of this. In assessing the right length of consultation we will consider the whole approach rather than a narrow focus on the written consultation period.

In considering the length of the consultation period, we will take account of the criteria set out above. This takes account of Cabinet Office guidance requiring timeframes for consultation to be "proportionate and realistic" and dependent on the "nature and impact of the proposal". We note that the guidance anticipates the length of time for written consultation to typically vary between 2 and 12 weeks. We are required by the Legal Services Act to follow best regulatory practice, and just as we take account of the Regulators Code issued by Government through this mechanism, so we should with Government advice on best practice in consultation.

All written consultations will be made available on our website, they are also likely to be featured on our Twitter feed and circulated formally to relevant stakeholders. We will also make clear the length of the consultation period and any other means by which stakeholders can engage with us.

As part of our commitment to equality, diversity and inclusion we will consider the impacts of proposals as they are developed. We are particularly concerned to support the SRA strategy in this area, developed in response to the Independent Comparative Case Review report. We are also conscious that the equality, diversity and inclusion agenda has even more significant impacts on consumers.