Guidance

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How we make our decision to authorise a firm

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Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

Who is this guidance for?

Those applying to us to authorise their business as an SRA regulated recognised sole practice, recognised body or licensed body.

You should first read our associated Firm Authorisation guidance [https://referral.sra.org.uk/solicitors/guidance/firm-authorisation/] to check whether your business needs to be authorised and whether it is eligible to be authorised. That guidance also gives key information about the different types of authorised body, their composition and the work they can do.

Purpose of this guidance

This guidance is about how we satisfy ourselves that your business is suitable to be authorised to provide reserved legal activities. What constitutes a reserved legal activity, and which ones we can regulate, are detailed in the associated Firm Authorisation guidance [https://referral.sra.org.uk/solicitors/guidance/firm-authorisation/].

This guidance should be read in the context of decision making at the SRA and other guidance documents listed at the end of this document. It is a living document and we will update it from time to time.

General

As part of applying for authorisation of your firm, you will also need to ensure you seek approval of all role holders that require it. Full details

about the role holders we need to approve, eligibility, and how we make our decision to approve them can be found in our separate guidance, Approval of Role Holders. [https://referral.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/]

Services

Our decision to authorise a firm, and the information we take into account, may depend on the type of body, the work it undertakes and the type of regulation it is seeking.

As a minimum, every firm we authorise must intend to provide legal services. We may agree to authorise a recognised body which provides no such services if there is a public interest reason to do so.

Authorisation as a recognised sole practice or a recognised body

Recognised sole practices and recognised bodies are only permitted to provide professional services of the sort provided by individuals practising as solicitors and/or lawyers of other jurisdictions (rule 6.1(a) of the Authorisation of Firms Rules) and the other services detailed in Annex 2 to those rules.

Licensed bodies

Licensed bodies can provide a mix of services. They can solely provide legal services, or they can provide a mixture of legal and non-legal services. Where they provide a mixture, while we regulate the whole firm, we only regulate the legal work.

Multi-disciplinary practices

Where a licensed body offers other professional services in addition to legal services, the other professional services may necessarily include some legal element.

While the non-legal work is not caught by our regulation, legal elements within that work may be. As a result, we can also exercise our discretion to exclude, through a term on the firm’s licence, certain non-reserved legal work from our regulation. We call licensed bodies that use this option 'multi-disciplinary practices' (MDPs).

In MDPs, any legal work that we consider integral to the provision of a reserved legal activity will always come under our regulation. The extent of what we may agree to exclude will depend on the circumstances.

For example, if the non-reserved work is regulated by another regulator (for example, tax advice provided by accountants and regulated by the Institute of Chartered Accountants in England and Wales (ICAEW)) then,

bearing in mind the comparability of that regulator's regime, we would not seek also to apply our Codes of Conduct to that work. This approach helps to facilitate the safe and effective practice of MDPs and to meet the regulatory objectives of improving access to justice, promoting competition and encouraging a diverse and effective legal profession.

Example 1

A large accountancy firm is regulated by the ICAEW. The services it offers its clients will sometimes lead to reserved legal activity, such as court proceedings. Previously, it would have referred that work to a suitably authorised law firm. However, the client may prefer the accountancy firm to handle the whole matter from beginning to end.

If we decide to apply our MDP policy to the firm, through a term on its licence, non-reserved legal advice given by non-lawyers can remain only under ICAEW regulation. This would not otherwise be the case. SRA regulation will continue to apply to solicitors, RELs and RFLs in an individual capacity within the firm.

It is important for accountancy firms, and their clients, that legal advice they could previously give under ICAEW regulation (such as tax advice) is not unnecessarily impacted by their SRA regulation. The public interest is not harmed as we have assessed that compliance by the firm with ICAEW regulation is equivalent to complying with the Standards and Regulation .

How we reach our decision to authorise a firm

Basic information and initial screening

You must ensure your firm is eligible to be authorised (see our associated Firm Authorisation guidance [https://referral.sra.org.uk/solicitors/guidance/firm-authorisation/]). If your firm is not eligible and/or your application is incomplete, we will reject it (rule 1.1 of the Application, Notice, Review and Appeal Rules).

A complete application is one where we have received all:

- forms
- supporting documents
- any additional information requested by us
- payment (where required – see our firm application fees page [https://referral.sra.org.uk/solicitors/firm-based-authorisation/authorisation-recognition/] for more information).

Until the application is complete, the timeline for reaching a decision does not start (rule 1.2 of the Application, Notice, Review and Appeal Rules). During the decision period, we may still require information as part of our consideration of the application. As we must make a decision

before the end of the decision period (rules 1.5 and 1.6 of the Application, Notice, Review and Appeal Rules), if you do not provide requested information, or it is insufficient, then we may refuse your application.

Although in some circumstances the law will deem authorisation to be granted if it is not decided within the decision period (regulations 19(5) and (6) of the Provision of Services Regulations 2009), our rules put in place different arrangements. If a decision is not made before the end of the decision period, then you will be able to appeal against our failure to do so (rule 1.7 of the Application, Notice, Review and Appeal Rules).

Other requirements

In addition to the eligibility requirements detailed, we can only grant an application for authorisation (rule 2.2 of the Authorisation of Firms Rules) if we are satisfied that:

- the firm's managers, interest holders or management and governance arrangements are suitable to operate or control a business providing regulated legal services
- you will comply with our requirements and regulatory arrangements, and
- it is not against the public interest or incompatible with the regulatory objectives (section 1 of the Legal Services Act 2007) to grant the application.

As part of being satisfied that you will comply with our requirements and regulatory arrangements, you will need to have someone to supervise the work undertaken by firm. That can be a manager, employee, or other person you have procured the services of, who is a lawyer and has practised for a minimum of three years (rule 9.4 of the Authorisation of Firms Rules).

Investigating areas of risk

Once we have considered whether the basic requirements have been met, we will go on to assess if your firm, its governance or business model, pose a risk that we think requires further investigation.

In particular, we will decide to refuse an application if we cannot be satisfied it meets the requirements detailed above [#AuthReqs].

What we look at when considering these requirements is discussed below.

Management and governance arrangements

As part of our consideration of the overall suitability of your firm, we consider the governance of the firm globally, as well as the suitability of individuals to take on specific roles. We will also consider any risk posed by any person that may have influence over the way in which a role holder will exercise their role, and therefore how the business of the firm will be conducted (rule 2.3 of the Authorisation of Firms Rules). That influence may come through their relationship, affiliation or other agreement to act together.

When authorising your firm, we will consider the suitability of the managers 'as a group' to fulfil the management role. We will consider any past experience as a manager and any information in the application (for example, business plans) which demonstrates awareness and understanding of the role of a manager and the obligations attached to that role.

We will consider that in the context of the business model itself, and the nature of the arrangements that need to be put in place to ensure safe and effective practice and compliance with our requirements. For example:

- the size of your firm, the volume of business and amount of turnover it generates/client money the firm holds
- the work areas to be undertaken (for example, whether this covers a niche area with corporate clients, or a wide variety of areas with a large proportion of individual or vulnerable clients)
- connected separate businesses or referral arrangements
- confidentiality risks (for example, whether there will be shared premises or staff, and will there be information sharing with other persons, such as other group companies)
- linked insolvency events (for example, where the authorisation is of a new firm to take over from another firm in, or going into, administration).

We will also consider any relevant regulatory history of the owners and managers.

If none of the proposed managers has experience and the evidence does not satisfy us that the managers understand their role, we may ask for further documentary evidence that they are aware of their responsibilities. This evidence may include:

- copies of core policies the firm should keep, for example, complaints procedure, compliance officer reporting procedure
- copies of key documents, such as client care letters.

In particular, we will want to assure ourselves that they have a good understanding of our regulatory arrangements including our Principles and Codes of Conduct.

Sometimes, the body seeking authorisation may simply be the result of an existing firm deciding to change its legal entity. For example, where a partnership becomes a limited company. We will only need to re-assess the suitability of the management as a group in such firms if there is a significant change which potentially affects the ability of the managers to comply with their obligations.

Example 2

Firm A is a two-person partnership comprising of one experienced solicitor and one newly qualified solicitor. We authorise the firm on the basis that one of them has management experience and knowledge. Shortly afterwards, they wish for the firm to become a limited company and submit an application for us to authorise that company.

If both partners will be directors of the new company, we will not reassess whether they can competently manage a firm unless something specific has happened since the original authorisation to suggest they potentially cannot (for example, an investigation into the firm's operations). However, if the experienced partner is leaving and the firm will have only the newly qualified solicitor as a manager, we will check that individual has sufficient knowledge to adequately manage the firm alone.

Compliance with our requirements and regulatory arrangements

Various factors may lead us to be concerned about whether your firm can comply with its obligation to meet our regulatory requirements. Examples of such factors include:

- evidence that the firm or a key individual within it has been practising without authorisation prior to making their application
- responses to our enquiries that indicate the managers of the firm do not understand our requirements, or why a risk or issue exists or needs to be mitigated (see example 3)
- evidence that information or an event should have been disclosed to us and has not been
- an ongoing investigation into the conduct of a firm or a role holder connected to the current application
- regulatory history of the firm's owners, managers or any predecessor business.

Example 3

The managers of a firm that has entered administration wish to buy that firm under a 'pre pack' administration arrangement. If the collapse of the former firm was a one-off and due to market conditions, we will probably authorise the firm under that management. However, our decision may

be different if there have been prior administrations, or the evidence suggests poor decisions have been made by the managers and these led to the collapse. We will expect to see evidence of what the new ownership is now doing to prevent repetition of the failure. If we are not satisfied this is unlikely, we may decide that, as a group, they are unsuitable to be managers of the new firm. That does not mean each individual is prevented from being a manager in a different firm, but together, in this situation, we consider the public interest risk is too great.

How we decide the outcome of your firm's application

We can decide to authorise your firm unconditionally, with conditions, or refuse authorisation altogether, although this last one is rare. We will only refuse if we decide there is no suitable alternative, such as imposing conditions on the way the firm can practise, to manage the risks we have identified through the authorisation process.

Authorisation

We will authorise your firm if we are satisfied that all the requirements set out above [#AuthReqs] are met and no factors exist which require a refusal or suggest that there is a risk that needs to be managed by imposing conditions.

Authorisation with conditions

All firms we regulate are subject to general conditions of practice (rules 6 to 12 of the Authorisation of Firms Rules).

However, there will be occasions where a firm meets the minimum requirements to be authorised but where we consider that extra conditions are needed to mitigate a risk we have identified during the authorisation process.

Our rules (rules 3.1 to 3.2 of the Authorisation of Firms Rules) provide that we can impose conditions if it is appropriate in the public interest to do so, and we are satisfied that the firm, or a manager, compliance officer, employee, owner, or interest holder of that firm:

a. is unsuitable to undertake certain activities or engage in certain business or practising arrangements
b. is putting or is likely to put at risk the interests of clients, third parties or the public
c. will not comply with our regulatory arrangements, or requires monitoring of compliance with our regulatory arrangements, or
d. should take specified steps conducive to the regulatory objectives.

Conditions can be imposed on initial authorisation, or at any time a risk emerges that requires it. Conditions may specify certain steps to be taken or requirements to be met, or restrict or prohibit certain steps or activities (rule 3.3 of the Authorisation of Firms Rules).

Example 4

A solicitor (the applicant) applies for authorisation of a new limited company as a recognised body. She will be the sole owner and manager as well as the proposed COLP and COFA. She is setting the firm up because her former partnership is being wound down following the departure of the only other partner. The solicitor applicant has no regulatory history of concern.

However, at the time of the application, we were investigating her former firm which has money missing from client account. The solicitor applicant tells us that all the accounts were overseen by her former partner, who was also the COFA.

We note the solicitor applicant personally replaced the missing money within three months of it being identified by us. The applicant solicitor says she relied on her partner, the COFA, to deal with all accounting issues. She says she did not benefit from the shortage. Finally, the solicitor applicant demonstrates she has been proactive in undertaking courses to improve her knowledge of her regulatory obligations, in particular the accounts rules. Although this reduces the risk posed by the new firm until the outcome of the investigation is known, we cannot have be sure of the extent to which the solicitor applicant was personally responsible for the breaches.

We therefore decide to impose a condition on the authorisation requiring the firm to report to us quarterly on the client account and provide reconciliation statements to allow us to monitor the firm and quickly become aware if there were any issues in the new firm. The solicitor applicant agrees to the condition and the firm is authorised on that basis.

Refusal of authorisation

If we are not satisfied your firm and/or its role holders can meet the management / governance, regulatory and public interest requirements [#AuthReqs] , we will always consider whether conditions can address the risk posed. However, if no conditions are available which are adequate to address the risks posed by the firm and/or its role holders, we will refuse the application.

Example 5

A solicitor applies for authorisation of an existing limited company he owns to provide litigation and probate services. He is the sole manager

and owner.

As part of the application, the solicitor provides details about his past work. It appears from this information that he may have been providing reserved legal services to the public and other firms under the name of his non-authorised company.

Concerns are raised with the solicitor about this. The solicitor says he sees nothing wrong in his arrangements to date and considers his own authorisation as a practising solicitor allows him to offer the services he does. Checks verify he has no sole practitioner authorisation and is not employed by any other authorised firm. When asked why he now seeks authorisation of the firm, if he considers what he is currently doing is permitted, he cannot provide an answer.

The solicitor refuses to respond to our questions as to the basis for his view or evidence to support it. The evidence he provides only highlights that services have been provided under the name of the company.

We are satisfied the solicitor had been practising from a non-authorised entity, with reserved legal services being offered in the name of that entity.

Had the solicitor accepted he was not complying with the regulations but was seeking to rectify that, we may have been able to consider authorisation with conditions.

However, as he either cannot identify a problem or is not prepared to admit it, grounds for refusal are met. We decide there is no condition that can adequately mitigate the risk that he either did not understand the law and the regulations, or that he was not concerned with compliance with them. We therefore refuse the application.

Our concerns about the solicitor practising from a non-authorised firm were referred for further investigation.

Review

A right of review exists where authorisation is refused or granted subject to a condition (rule 3.2, Annex 1 3,1 and Annex 1 3,2 of the Application, Notice, Review and Appeal Rules).

Publication

We keep a register of all authorised firms which contains specific information relating to a firm's authorisation, such as trading names, practising address, and details of its managers (regulations 3.1 and 3.2 of the Roll, Registers and Publication Regulations). We also publish details of any conditions imposed on the authorisation.

Temporary Emergency Authorisation (TEA) of a firm

Change which brings into being a new unauthorised body or practice

We may grant TEA to a new partnership or a new sole practitioner firm that is formed following certain events. Those are most likely to be where a partnership ceases due to the death of the only other partner, or where there is a partnership split creating one or more new partnerships or sole practitioner firms. The application must be made within seven days of the event (rule 15.1(a) of the Authorisation of Firms Rules).

Where we agree to grant this authorisation, it will run from the date of the event giving rise to the application.

We will only grant TEA if you meet strict criteria being (rule 15.3 of the Authorisation of Firms Rules):

- you could not reasonably have commenced a substantive application for authorisation in advance of the events giving rise to the application, and
- the body meets the eligibility requirements under rule 1.1 of the Authorisation of Firms Rules and will comply with our regulatory arrangements as they apply to authorised bodies.

Where we grant TEA, it is for an initial period of 28 days from the date of the event giving rise to your application. By the end of that period, you must either have ceased to practise or submitted a substantive application for authorisation.

Where we receive a substantive application before the initial 28 days expires, the TEA will be extended to the date of determination of that application.

Due to the temporary and emergency nature of such an authorisation, our checks will necessarily be limited. Any decision to grant TEA will not prejudice our ability to refuse, or impose conditions in respect of, your substantive application for authorisation.

We may grant TEA free from conditions or subject to conditions. If we do impose conditions, it will be on the same grounds as we would for any new firm authorisation as set out above [#Conditions] .

Death or incapacity of a sole practitioner

Where a sole practitioner dies or is incapacitated, we may grant TEA for the recognised sole practice to another solicitor or REL who is:

- the sole practitioner's executor, personal representative, attorney under a lasting power of attorney, or Court of Protection deputy (as appropriate)
- a practice manager appointed by the sole practitioner's executor, personal representative, attorney under a lasting power of attorney, or Court of Protection deputy (as appropriate), or
- an employee of the practice.

To be eligible for TEA in these circumstances, you must inform us of the death or incapacity within seven days, and your application must be made within 28 days.

If TEA is granted, it will run from the date of death or incapacity and will cease on the earlier of:

- the winding up of the estate, or
- 12 months from the date of death or incapacity.

Further help

If you require further assistance, please contact the Professional Ethics helpline [https://referral.sra.org.uk/contactus/] .