

Submission to the Solicitors Regulation Authority 2020-23 Corporate Strategy Consultation

Introduction

LawWorks is pleased to respond to the Solicitors Regulation Authority's (SRA) Corporate Strategy consultation which sets out what the SRA wants to achieve between now and 2023. As the draft Strategy identifies, the legal market will continue to evolve through uncertain economic challenges, taking account of the opportunities provided by technology and new ways of working.

LawWorks welcomes the focus in the strategy on standards, innovation and technology, and the SRA's capacity to anticipate and respond to change, including changes in the wider public policy and regulatory landscape. However, we also think that the strategy should place greater emphasis on responsiveness to changing legal needs, rooted in the core values of the profession, recognising and addressing the challenges of access to justice.

In this response we therefore urge the SRA to use this strategy review to expressly acknowledge, and treat as a priority, unmet needs and the barriers that many people face in accessing legal services – and therefore in accessing justice. In encouraging this approach, we look to the SRA to support and encourage a strong pro bono culture for solicitors within law firms and other organisations throughout England and Wales, and to become an active agent, for change and innovation in the legal services sector and policy to address the underlying issues of legal exclusion. We are clear that pro bono is not, and should not be seen as, an alternative to legal aid, nor to the funding of advice agencies and law centres. However, we believe that more can be done to enable and support pro bono's contribution in enabling access to justice and that the SRA can have a role in encouraging that.

About LawWorks

LawWorks (the Solicitors Pro Bono Group) promotes, supports and facilitates pro bono legal services that extend access to the law for individuals and communities in need and the organisations that support them. We champion pro bono because of the positive contribution and difference it makes for individuals, communities and society. We work (in England and Wales) with the solicitors' profession and with our members, the Law Society, law schools and law students, law centres, advice agencies and others to develop and support pro bono legal services, and to promote access to justice for all.

Our key programmes include:

- **Clinics** - we support a network of 280 independent pro bono legal advice clinics across England and Wales, providing training, resources and guidance, and professional indemnity insurance;
- **Not-for Profits-programme** - we broker pro bono advice for smaller charities and social enterprises on a broad range of legal matters;

- **Bespoke casework and representation** ('secondary specialisation') - our in-house solicitors triage and supervise cases, including social security tribunal appeals, unpaid wages cases and support for the parents and carers of children with life-limiting conditions;
- **Free Legal Answers** - currently at pilot stage, a new online platform to enable the public to seek initial legal advice directly from pro bono lawyers;
- Supporting **Pro Bono Connect**, a project which connects barristers and solicitors working together on pro bono cases.

In addition, LawWorks promotes, supports and facilitates pro bono by providing training, knowledge sharing events, our pro bono awards, and our constructive policy voice – engaging with the regulators, Government and stakeholders to encourage a favourable environment for pro bono within a strong access to justice infrastructure. LawWorks has been able to facilitate pro bono by working with the SRA on the application of practice rules to in-house pro bono, and volunteering with not for profit bodies. For example, in response to LawWorks highlighting an issue about the practicing status of volunteer solicitors, the SRA published a helpful position statement stating that solicitors could provide pro bono without becoming an employee of a not-for-profit organisation.ⁱ

Consultation Questions

One general point we would make in answering these questions is the importance of linking the Strategy to the overarching policy objectives of the Legal Services Act. This is important for the SRA and other relevant regulators both in terms of their statutory duties, and as a benchmark for performance and success as a regulator.

1. Do you have any comments on the key factors in the legal services market and wider environment that we have identified in the Corporate Strategy? Are there any additional factors we should consider?

The SRA identifies the following factors impacting the legal services market and its wider context:

- Changing domestic politics and international relationships impacting on public policy and trade, affecting the priorities for public expenditure and the issues people face;
- Economic changes that will create opportunities for some and challenges for others, impacting on access to justice;
- Social changes as people consume services in different ways, communities become more diverse and public and professional expectations of each other and service provision change;
- Technology and data-driven innovation disrupting the way that legal services are delivered and how the legal system operates;
- Environmental change demanding different ways of living and working, increasingly affecting the economy, international politics and social tensions.ⁱⁱ

We welcome that the SRA has included access to justice, consumer expectations, and the wider public policy environment. It is important, however, that there is also a clear reference to legal needs, and specifically to unmet needs and those needs and

groups which our system does not serve so well, such as welfare rights, housing, employment, and family law issues.

The Ministry of Justice's '*Legal Problem and Resolution Survey*' found that "around a third of the population experienced legal problems, with certain groups more likely to experience problems than others, particularly those vulnerable to social exclusion (such as individuals on benefits, lone parents, those with a disability, those with low incomes). Around half of problems led to adverse consequences such as stress-related illnesses, physical ill-health, or loss of confidence. Some individuals reported experiencing multiple problems, with certain problem types clustering together, such as those relating to a relationship breakdown, or economic problems."ⁱⁱⁱ

Whilst there is no magic bullet to addressing unmet legal needs, encouraging innovation, pro bono, public legal education, and supporting sustainably funded models for social welfare law practice must all have a role to play in making legal services more inclusive. We would therefore like to see the SRA develop a corporate strategy that adopts a pro-active role in shaping a more inclusive legal services market, and ensuring that the regulatory environment supports access to justice, consistent with the Legal Services Act's regulatory objectives.

2. Do you agree with our proposed new strategic objectives? If not, what should our key priorities be over the next three years?

Proposed SRA objectives 2020-2023

- 1) maintain high professional standards for the profession;
- 2) actively support the adoption of legal technology and other innovation that helps to meet the needs of the public, business community, regulated entities and the economy;
- 3) build our understanding of emerging opportunities and challenges for the legal sector and our role in effectively regulating.

Whilst these are appropriate objectives for the SRA, they are quite broad - the intended scope of, and outcomes from, the objectives are not therefore immediately apparent. It is important that they are not progressed in a way that is disconnected from their context, and the regulatory objectives of the Legal Services Act. For example, the consultation document helpfully develops the first objective on standards within the context of people needing to be able to "place their trust in the rule of law and the administration of justice", the reputation of the profession, and public confidence in access to justice.^{iv}

In respect of the second objective, given the rapid growth of the legaltech sector over recent years (and notably legaltech did not feature significantly in the SRA's previous strategy), we understand why the SRA is making this a priority. However, unquestioning assumptions that legaltech will find solutions to fully "meet the needs of the public" should be avoided. Those with some of the greatest needs can also experience digital exclusion, and may be least able to benefit from legaltech solutions. As a recent report from the Law Society has found, the use of legal tech to improve access to justice has huge potential but is beset by "confusion, variation and Response to the SRA's Strategy Consultation

fragmentation.”^v The Law Society’s report also called for greater clarity on the role of government, regulators, professional bodies and innovation funders in supporting access to justice tech solutions.

New legaltech products in the sector need to work and be fit for purpose; so whilst we support innovation and products that can help people to access legal services, they need to be fit for the way that pro bono providers and users work, in order to make an impactful contribution to access to justice. For example over the past year we have been developing “Free Legal Answers”, a platform for delivery of one off pro bono advice.

3. Do you have any comments on our proposed way of achieving each objective (as set out under each objective in “How we will achieve our aims”)?

The SRA intends that the Solicitors Qualifying Examination (SQE), combined with the recently introduced “Standards and Regulations” to replace the previous Handbook, will work to drive up standards. However, it is important that these changes are monitored and assumptions are tested. In respect of the SQE there are ongoing concerns that the knowledge components and overall qualification framework pay insufficient regard to the social context of law and are quite tailored to commercial practice. A welcome development though in the SQE framework will be the ability to undertake “qualifying work experience” (QWE) through pro bono work in clinics, but it is important that the SRA works with key stakeholders to ensure that this early engagement in pro bono and accreditation for QWE works appropriately for clinics. (See LawWorks’ Briefing on the SQE).^{vi}

We note that under objective 3, the SRA intends to develop as an “authoritative commentator on and a valued voice in policy debate.”^{vii} We would welcome, for example, the SRA taking a clear and robust policy position on the importance of legal aid and also funding for law centres and advice agencies, as this would be entirely consistent with the Legal Services Act regulatory objective of “improving access to justice.” We do respect that the SRA may be limited in the extent that it can take proactive policy positions and effect policy change on politically contested issues of public funding, but nevertheless there are things the SRA can do as a regulator to give effect to the regulatory objective around access to justice. Such measures might include:

- encouraging pro bono work as part of social corporate responsibility;
- adapting the regulatory environment so that individuals and entities providing social welfare law services can thrive – for example, UCL’s Integrated Legal Advice Clinic (UCLiLAC), in addition to innovations such as operating in healthcare settings, is also now able to deliver legal aid in the categories of housing law and community care law;
- providing clear and well targeted guidance on areas of regulation that are sometimes seen as a barrier to solicitors undertaking pro bono (for example, we have raised issues concerning the clarity of the SRA’s guidance on matters relating to section 15 of the Legal Services Act);
- challenging the sector over market gaps and promoting greater transparency for consumers;
- developing tools, policies and programmes directed at early resolution and intervention, public legal education and information, and improving legal

- capability – in much the same way that the Financial Conduct Authority, and its predecessor body, has taken on on financial inclusion and capability;
- using its role as the primary accreditor of the system of qualifications and legal education, training and assessment to ‘design in’ social welfare law capabilities into solicitor competencies - the SQE provides an opportunity to do this.

4. What specific areas of focus would you like to see us develop under each objective?

All three objectives are pertinent to access to justice, but we would like to see this focus developed, along the lines we suggest above. The SRA’s proposed objectives do not specifically reference support for pro bono, although we believe this to be relevant to the objectives, and also implied in the LSA regulatory objectives.

We have highlighted in other submissions that there are both real and perceived regulatory barriers to solicitors undertaking pro bono work. In our work on the SRA Standards and Regulations reforms we have stressed the importance of taking a proportionate, ‘risk based’ approach to pro bono work (and the ‘entities’ that host or work with pro bono solicitors and projects), as sometimes regulatory costs and compliance can have a chilling effect in respect of solicitors getting involved in new pro bono initiatives. So, for example, in recent consultations we have particularly raised issues concerning:

- the prohibition on in-house solicitors from undertaking "reserved activities" where those services are "part of [their] employer's business" and the interpretation of the primary legislation 15.4 LSA) – we have called for a review and repeal of this provision;
- the difficulties in obtaining waivers, for example in respect of regulatory requirements that may be unsuited to pro bono models of delivery – we flagged some issues in our consultation response on “A new approach to waivers”;^{viii}
- the multiplicity of regulatory requirements around immigration, consumer and debt advice – all areas where there is a pro bono need – and the absence of appropriate passporting arrangements with the SRA;
- clarity over “special bodies” and transitional protection arrangements.

We hope to continue being able to work constructively with the SRA on pro bono practice issues, and to find constructive solutions to these issues.

5. Have we missed anything significant or included anything that we shouldn't be focusing on?

It is noticeable that the consultation only makes two mentions of the Legal Services Act, and indeed the consultation appears to question its relevance – stating, on page 9, that “the rate of change makes it increasingly difficult for the regulatory framework laid down by the Legal Services Act to remain relevant.”

As an “approved regulator” the SRA is specifically mandated under the Legal Services Act to:-

- improve access to justice;
- increase public understanding of citizens’ legal rights and duties;
- protect and promote the public interest, and
- support the constitutional principle of the rule of law

As we have indicated in this response, the SRA can influence this in a number of ways, such as promoting pro bono work as part of the core business of being a lawyer and law firms' corporate social responsibility, and encouraging market entry and development of new models (for example in social welfare law) for delivering services to those with unmet needs or experiencing legal exclusion.

We note also that the Legal Services Board (LSB) in its recent business plan has adopted a five year policy objective to be "at the forefront of enhancing public legal education" (PLE), partly to advance the arguably much neglected Legal Services Act objective to "increase public understanding of citizens' legal rights and duties." It might therefore be appropriate to consider framing a fourth objective around PLE. We believe that the underlying policy objectives of the Legal Services Act remain sound and relevant, although the framework may need to evolve – for example, the growth of solicitors working in-house, should flag that issues around section 15 of the Act may need to be revisited. Professor Mayson's review of the LSA framework may also be informative for the future development of legal services regulation.^{ix}

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Endnotes

ⁱ <https://www.sra.org.uk/solicitors/guidance/waivers/waiver-employment-status-pro-bono-work/>

ⁱⁱ Corporate Strategy 2020-2023: Consultation, page 8

ⁱⁱⁱ *Ministry of Justice research report 2017*

^{iv} Corporate Strategy 2020-2023: Consultation, page 8

^v <https://www.lawsociety.org.uk/support-services/research-trends/technology-access-to-justice-rule-of-law-report/>

^{vi} <https://www.lawworks.org.uk/sites/default/files/LWBriefing-A-new-route-to-qualification-for-solicitors.pdf>

^{vii} Corporate Strategy 2020-2023: Consultation, page 16

^{viii} <https://www.lawworks.org.uk/sites/default/files/SRA%20Response%20-%20Waivers%20April%202017.pdf>

^{ix} <https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation>