

Susanna Heley
explains the SRA's tough
authorisation process

Historically, there was little regulatory formality in setting up a law firm. Solicitors with more than three years PQE could obtain indemnity insurance, register the contact details with the Law Society and be up and running in no time. Firm authorisation is a relatively new concept for solicitors. Introduced to fill regulatory gaps created by the advent of legal disciplinary practices, its importance has been elevated in the new handbook and it is probably the most significant development of the regulatory regime.

There are two ways in which the SRA can grant a firm permission to practice. 'Traditional' firms ('legal services bodies') i.e. those with solicitor owner/managers will have to apply for 'recognition'. Alternative business structures ('licensable bodies') will apply for 'authorisation'. The two regimes are the same in all but name in pursuit of that ever-elusive level playing field.

Superficially, an application for authorisation appears innocuous. Firms applying for authorisation will have to demonstrate that, if authorisation is granted, they will be in compliance with solicitors' indemnity provisions and will have a COLP and COFA in place. This is all standard stuff. More intrusively, firms will have to disclose business plans to the SRA along with detailed information designed to create a risk profile. Compliance plans and reporting structures may be investigated by the SRA; capital adequacy may come into question; key individuals may not make it through screening.

Down to business

The SRA has made it clear that authorisation will not be an exercise in rubber stamping. It is a key plank in the SRA's new risk management strategy. According to the SRA, applicants will not be given the benefit of any doubt. If the SRA is not convinced that the firm will be viable and compliant moving forward, authorisation will not be granted.

In practice, very few people would seek



"Those planning to set up ABSs will need to persuade banks, investors and non-legal managers that their business plans are achievable"

to set up in practice without a business plan. Those planning to set up ABSs will need to persuade banks/lenders, investors and non-legal owners/managers that their business plans are achievable; it is hoped that persuading the SRA should not be too problematic. Of course, the SRA has never had to consider business plans before. It has ample experience at the sharp end of failed business strategies – the classic example is conveyancing for £99, resulting in the collapse and intervention of the firm.

The success of legal practices varies for all sorts of reasons and can often vary between regions and industry sectors. A viable proposal in one region or sector may not work in another. How will the SRA judge? What about untested business models? If the SRA is to take a conservative approach to authorisation and factor in financial viability, what assurance does the profession have that the SRA has the relevant expertise?

Timing issues

Timing may also be an issue for those seeking to set up new firms. Technically, the SRA will have a standard six-month period to decide an application for authorisation. Firms can't trade in the meantime but they should have an indemnity insurer on board – at least in principle – before making the application. Similarly proposed COLPs and COFAs, owners and managers will be subject to the suitability test and will have to provide detailed personal information. Any false or misleading information is likely to result in refusal of authorisation; incomplete information will, at best, lead to delay and, at worst, lead to refusal.

The SRA has the power to extend the six-month decision period if necessary.

While it is hoped that most applications will be dealt with swiftly, some may be left waiting for months.

The nuts and bolts of authorisation are likely to increase start-up costs for those looking to set up new practices, and not being able to provide a definite start date until authorisation is granted may throw up practical problems.

Problems abound also where firms experiencing difficulties split or merge or there is a significant change in the partnership. Demerging firms may find that inability to confirm a date for a demerger to clients, suppliers, landlords and colleagues is problematic. The unintended effect of the SRA's rules may be to force partners in dispute to work together for longer or cease practice until a new firm can be formed.

Susanna Heley is a solicitor at Radcliffes LeBrasseur