

# Consultation on enhanced investigatory powers

## Consultation questionnaire form

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### Question 1

Do you think that the purpose of our policy statement on the use of enhanced investigatory powers is clear and that the statement is able to be understood by non-lawyers?

Yes

No

### Comments

#### Comments on Consultation Document

Paragraph 2: It would be helpful if paragraph 2 could explain why serious misconduct... can only be properly investigated by strong statutory powers.

Paragraph 4: It would be helpful if the document could specify exactly who is covered by section 44B - is this restricted solely to staff working for a solicitor's practice?

Paragraph 5(iii): The exercise of these powers by the defined group of SRA staff should be approved by someone independent of them. If the persons mentioned in paragraph 9 are independent of this group then OK - otherwise, other authorisations may be appropriate. This approval should last for a defined period of time and be renewed if necessary.

Paragraph 5(iv): The rules governing the conduct of the meeting seem fine in themselves from the SRA perspective. However, they should include guidance on what the interviewees can expect - for example, courtesy, questioning in a firm but not aggressive manner etc and importantly an explanation of what will happen next and what will be done with the information that has been collected. The guidelines as they stand seem too one-sided in favour of the SRA.

Paragraph 5(iv); Agree that an individual has a right to be accompanied and that appropriate breaks should be provided. Furthermore, provided that the information or documents referred to in paragraph 5(i) would be sufficient for the individual to properly prepare for the interview, then it seems appropriate for questions not to be

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given to the interviewee prior to the interview.

Paragraph 6: The need for a court order to obtain information needed in serious misconduct cases places an appropriate level of control over s44B applications. However, from the wording of paragraph 6(ii) it is not clear exactly what additional advantage the new power offers.

Comments on the Policy Statement:

The Policy statement should define and explain what is a 'regulated person'. It also sometimes uses the term 'solicitor' while at other times it refers to 'regulated person'. Is this deliberate and should it not always use the term 'regulated person'?

Paragraphs 12 and 16 should clarify whether there is any right not to incriminate oneself or whether the evidence may be used in any subsequent criminal proceedings.

Paragraph 12(e) should clarify whether the role of the person accompanying the 'regulated person' is there for support only or as an advisor/representative. Questions sometimes imply they are only there to 'accompany' and at other times to 'represent'. It is important to be clear.

## Question 2

Do you agree that a notice to attend interview should only be authorised by the Head of Legal, Legal Director or Chief Executive as proposed in the policy statement?

Yes

No

## Comments

It is difficult to an outsider to know how many cases you would have. But it raises the question whether this effectively means that the powers would be rarely used. Would those people currently proposed have adequate time to review the evidence/information sufficiently to have an understanding of whether an interview is required or will it effectively be a rubber stamping exercise in which case the person who knows and understands the case is in a better position to make such a decision.

Investigators should be properly trained and be given the authority to require the regulated person to attend an interview. Assurance should be given that the Legal Department will bring proceedings against any persons who fail to attend.

If it is decided that authorisation is necessary then we agree that the above are appropriate persons to provide authorisations under section 44BA if they are independent of the defined group who will be exercising these powers (paragraph

5(iii) of the main document refers). Otherwise, other authorising persons may be needed.

### Question 3(a)

Do you consider that it would be helpful, necessary or not necessary for an SRA lawyer to be present at the investigation meeting?

Helpful

Necessary

Not necessary

### Comments

The presence of an SRA lawyer might "intimide" interviewees and mean that they may not be as forthcoming as they might have been had the lawyer not been present. Their presence may be seen by the subject of the investigation as "escalating" the interview - which may be unhelpful to all.

It is worth noting that the Police and other law enforcement officers do not have lawyers present when conducting pre and post caution interviews - and it is unclear why the SRA feel that one should be provided. Instead, the Police have a CPS lawyer present at their station that they can consult should this become necessary; and, such a call off arrangement might be more effective for section 44BA interviews.

It is likely to be more important to maintain a separation of duties between investigators and the Legal Department. The SRA solicitor who is present would not be seen as impartial. Moreover, if the interview is not conducted poorly or in manner likely to lead to complaint, the SRA's legal department will be less able to view the contents of the interview impartially if they were party to the conduct of the interview.

There may also be resourcing issues here. Will the SRA be able to field a lawyer for each and every interview and particularly where the issues are relatively minor? Furthermore, would it be a good use of their time for issues regarding, for example, breach of the Solicitors Accounting rules. It might be better for the SRA to reserve their position and arrange for a lawyer to be present only where complex legal issues are likely to arise.

### Question 3(b)

If SRA lawyers attend investigation meetings, what do you think their function should be?

Exactly as outlined in paragraph 12(d) of the Annex to your paper.

### Question 4

Do you agree that a person attending for interview should have the right to be accompanied?

Yes

No

### Question 5

Do you agree that the SRA lawyer should be able to exclude representatives who obstruct the meeting or otherwise act unreasonably?

Yes

No

## Comments

We are not convinced that SRA lawyers should attend every interview for the reasons given in 3(a) above. There should be an interview chairperson who controls the interview and the events that flow from it. This should be the lead investigator.

Excluding representatives who behave unreasonably should be a last resort. This is because it could leave the SRA open to accusations of bias and not providing the individual concerned with the opportunity to be properly represented. Where this is necessary the interview should be adjourned to allow the regulated person to find another person to accompany them.

A further difficulty in this environment is different perceptions of what constitute unreasonable and obstructive behavior. Thus, if the SRA conclude that such a right should be maintained they should define what constitute unreasonable and obstructive behaviour.

## Question 6

Please use the box below to add any further comments about the proposed powers in general.

It would be helpful if the guidelines explained:

1. What information, if any, gathered through these powers might the LSC have sight of? and,
2. Would the LSC be empowered to make specific requests for information (to be made by the SRA) through these powers?

It is not always easy to get information from the SRA when a firm is intervened; and particularly in cases of alleged dishonesty or breaches of solicitor accounts rules.

In this context, an intervention is defined as "closing down a solicitors practice and taking possession of all papers and monies held by the firm in the interests of their clients and the wider profession".

In such cases, it is important to understand quickly the potential risk to clients / fund and thus the provision of relevant information would be a great help in this respect. The intervening agency, in our experience, when going through the files, do not spend much time looking at the legal aid aspects of the file and therefore it is difficult to assess, from discussions with them, whether the LSC is a potential victim. Indeed, in the infamous Turkoniak case some years ago, relevant information was only gathered through police involvement.

Generally, however, the use of these powers has been well thought through and is well controlled. The LSC very much agree with the use of powers "proportionately" and welcome the use of internal authorisations prior to use.

The document as presented, and particularly the section on investigation meetings (Annex A paragraph 12) is too heavily weighted in favour of the SRA and needs to be balanced with the rights of those under investigation - for example by a statement of what the interviewee can expect from the SRA.

The section on equality considerations may need expanding - for example, special arrangements may need to be made for interviewing persons with special needs, specific beliefs and codes of conduct.

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Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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