

6th October 2011 – the key date for change

This article is relevant to all individuals and firms regulated by the SRA, including solicitors practising in-house and considers: The new Code; SRA Accounts Rules [2011]; Compliance Officers for Legal Practice and for Finance and Administration; the Compliance Plan; Managing Risk and ensuring Compliance and key dates.

From 6th October 2011, you will no longer be regulated under the Solicitors' Code of Conduct 2007 but, in accordance with the new Code (located in the new Handbook). The new Handbook and Code can be found on the Solicitors Regulation Authority's (SRA) website <http://www.sra.org.uk/handbook/>. This is not the only change; you will no longer have to comply with the Solicitors' Accounts Rules 1998 (as amended) but with the SRA Accounts Rules [2011] (contained within the new Handbook). You will, at some point, have to act in accordance with the provisions contained within the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011] (in the new Handbook). The timing of your compliance with the Authorisation Rules depends upon the structure of your firm; whether a recognised body or an ABS, for example. The following is a link to an implementation timetable for the various structures – www.sra.org.uk/documents/SRA/consultations/handbook/implementation-timeline.pdf.

The question to be asked is are you ready for the changes? If not, keep reading to find out the key points you need to know:-

- The new Code - this is based on outcomes-focused regulation, rather than the previous specific rule-based approach to regulation. Individuals and firms must, at all times, comply with 10 Principles, which are similar to those found in Rule 1 of the current Code of Conduct. Thereafter, it is mandatory for firms to achieve the specified "outcomes" with (if required) the assistance of the non-mandatory indicative behaviours, which reflect good practice.

Firms and individuals have a degree of flexibility in how to achieve the mandatory outcomes and what systems and processes they need to implement, depending upon their client and business model. Taking client care as an example, outcome O(1.12) states that you must ensure "clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them". The outcome, unlike Rule 2 of the current Code of Conduct, does not specify what, exactly, the client should be told and the onus is upon the firm to decide how they can best achieve this outcome, taking into account their clients' specific requirements. Non-compliance will be less important if there has been no material impact on the defined outcome or principle. However, this may not always be the case and the SRA will look to the firm or individual to demonstrate

that it can and will act in a principled manner (if necessary) to achieve the desired outcomes for clients.

Key steps to take: -

1. When looking through the new Code consider: (1) is the outcome relevant to your practice (some do not apply to overseas practices or to in-house solicitors), (2) how the outcome can be best achieved; taking into account the nature of your firm and the particular needs of your clients and (3) do your current systems and processes satisfy the outcome requirements.
2. If you choose not to follow the indicative behaviours, you should make a note of the reason in the event that the SRA wishes you to demonstrate how you have achieved a particular outcome.
3. You need to ensure that all employees (even if non-qualified and non-fee earning) receive appropriate training on the new requirements of the Code and Accounts Rules, but only to the extent that they require it for the role they play at the firm.

A table published by the SRA comparing the old and new approaches to key aspects of the Code

Issue	Old approach – 2007 Code	New approach – new Code
Client care	Rule 2 - sets out a detailed and prescriptive list of the type of information that you must give to clients	Chapter 1 - general outcomes ensure clients are in a position to make informed decisions about their matter. Indicative behaviours set out how you might go about this e.g. agreeing an appropriate level of service with the client. Allows greater flexibility, according to the needs of the client and the type of work you do. There is a greater emphasis on the needs of the individual client, particularly those who are vulnerable.
Equality and diversity	Rule 6 reflects legal requirements. A written policy is mandatory.	The outcomes in the Code are focused on creating a culture in which equality of opportunity and respect for diversity are encouraged. Indicative Behaviours encourage a written policy.
Conflict of interests	Detailed rules, particularly in respect of conveyancing.	Greater emphasis on identifying and dealing with conflicts in all types of matters, and having systems and

		controls to enable you to do so.
Managing your business	Rule 5 provides detailed rules for effective management of your firm in limited areas	Outcomes focus on the identification of risks and having effective systems and controls for mitigating the risks
Reporting requirements	Rule 20 contains reporting requirements on limited areas	New Principle on co-operating with regulators and ombudsmen. Outcomes on reporting require you to engage with the SRA in an open and constructive manner to enable the SRA to respond proportionately

- SRA Accounts Rules [2011] are largely based on the current Solicitors' Accounts Rules. Although they remain prescriptive, due to the need to keep client money safe, the rules incorporate a set of principles and outcomes. One principle which reflects the requirement for firms and individuals to adopt a "business approach" (which is a common theme in the Handbook) to the running of their firms, and the need to place more emphasis on risk and financial management, is the requirement to "Run your business and carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles". This principle reflects outcome O(7.4) in the new Code, which requires, first and foremost, managers to maintain systems and controls for monitoring the financial stability of their firm and risks to money and assets entrusted to the firm by clients and others and ensure that steps are taken to address any issues identified. Similarly, with Chapter 9 of the new Code, which address referrals and fee-sharing arrangements.

The main changes brought about by the SRA Accounts Rules [2011] can be found in the new Rules, at Rules: 23 (signing on a client account); 24 (accounting for interest); 32(6A) (electronic accounting practices and reporting); 15 (reducing the risk to client money); 32(7) (reconciliations); new Part G (overseas provisions- currently being reviewed by the SRA); 2(k) and (s) (expansion of the meaning of "disbursement") and 2(p) (meaning of "office account").

Key steps to be taken:-

1. Familiarise yourself with the changes to the accounts rules and take the steps necessary to respond to and incorporate the changes;

2. Review your systems and procedures to ensure they allow for the effective monitoring of the financial stability of the firm and whether or not your clients' money and assets are being handled in accordance with the Rules and procedures in the Handbook.
 3. All employees receive training which is appropriate to their role and position in the firm.
- Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA) – Rule 8.5 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011] contains a requirement that, ultimately, all firms authorised by the SRA (but not in house legal teams) will need to appoint a COLP and a COFA. The positions can be held by the same person or two different people. Those holding the positions must be of sufficient seniority and in a position of sufficient power and responsibility to be able to implement systems and procedures, have access to all management systems and arrangements and all other relevant information – including client files and business information.

When do you need to have your COLP and COFA in place by?

The time limits depend upon your firm's structure. The time limits are:-

1. Existing recognised body (including a sole practitioner, as these will become recognised bodies on 31st March 2012) not planning to convert to an ABS – your COLP and COFA must be nominated for approval by 31st March 2012 (together with details of your managers and owners). They will be authorised from 31st October 2012 and must immediately start to fulfil their obligations;
2. New recognised body will apply from 28th February 2012 under the new Authorisation Rules and will need to nominate a COLP and COFA for approval as part of the authorisation process – the COLP and COFA will be authorised from 31st October 2012 and must immediately start to fulfil their obligations;
3. LDPs with non-lawyer managers are ABSs and can elect to be passported at anytime from 6th October 2011 (they are required to have a license by 31st October 2012 but, if they want to wait, they will need to designate a COLP

and COFA by 31st March 2012). Early passporting requires them to apply for approval of their designated COLP and COFA, which can be done from 10th August 2011; and

4. New ABSs can submit an application to be a licensed body from 10th August 2011 – in this application details must be provided of who will be the firm's COLP and COFA and the SRA's approval sought.

Questions you need to consider:-

1. who are you going to appoint at the first instance and who will be the "back-up" in situations of long term illness or absence;
 2. How will the COLP/COFA operate within your business structure;
 3. Are you aware of their responsibilities and have you considered the systems needed to support their roles;
 4. Do you need to change your governance and reporting lines to empower the COLP and COFA; and
 5. How will management review the effectiveness of the COLP and COFA?
- A Compliance Plan – Rule 8.2 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011] deals with the need for firms to have suitable arrangements for compliance (this is also relevant to Chapter 7 of the new Code (Management of your business)). To satisfy this requirement the new Code suggests a compliance plan. The type of plan you need will depend on the size and nature of your firm; its work and its areas of risk. *Firms will need to analyse the effectiveness of their compliance arrangements before applying for authorisation and they will need to monitor the effectiveness of their compliance arrangements on an on-going basis once authorised.* The common areas to consider in your plan are: appropriate accounting procedures; appropriate checks on new staff and contractors and having a system for ensuring that undertakings are given only when intended, and compliance with them is monitored and enforced.
 - Managing Risk and ensuring Compliance – as identified in the paragraphs above, the onus is upon you to identify, manage and mitigate risks to the best of your ability to meet the requirements of the Handbook. You need to be able to identify "emerging risks, for example, risks associated with changes in the legal services market and the economic climate" and internal risks which will prevent you from complying with the

Handbook. Examples of internal risks are: a failure by fee-earners to notify clients of their right to complain; a failure to undertake appropriate checks on a new non-lawyer manager or a failure to ensure that money is not left in client account before the matter is closed. The SRA will concentrate on those who can't or don't manage risks and have referred to this as their "targeted, risk-based approach". Therefore, theoretically, firms who are well managed, with good risk management procedures and systems and who provide a good service will not be involved with the SRA.

- Key dates, for recognised bodies (including sole practitioners), you should be aware of:-
 1. 31st October 2011 – renew all recognised bodies and recognised sole practitioners;
 2. January 2012 – Recognised bodies and recognised sole practitioners confirm the suitability of managers/owners and nominate COLP/COFA by 31st March 2012;
 3. 28th February 2012 – Applications by new recognised bodies will be dealt with under authorisation rules;
 4. Beginning March 2012 – Authorisation Rules come into effect for recognised bodies and recognised sole practitioners;
 5. End March 2012 – Recognised Sole Practitioners passport to Recognised Body;
 6. End March 2012 – All Recognised Bodies switch to lifetime licences – existing managers/owners deemed approved;
 7. End October 2012 – First annual information gathering for Recognised Bodies; and
 8. End October 2012 – SRA approves COLP/COFAs for Recognised Bodies.; and

Recognised Bodies have a grace period until 31st October 2012 for COLPs/COFAs of Recognised Bodies to be approved and assume responsibilities – must have been nominated by 31st March 2012.

For information on the key dates for ABS firms and non-lawyer LDPs please refer to the timetable at:-

www.sra.org.uk/documents/SRA/consultations/handbook/implementation-timeline.pdf

This article was written by Claire Larbey (former Practice Standards Adviser with the SRA), now a Director of Quality Legal Services Ltd (regulation and compliance specialists) – for more information, please contact claire@qlsrv.co.uk

*At the time the article was written, the provisions in the Handbook were still in draft form and were awaiting approval by the Legal Services Board.