

SRA BOARD
10 September 2019

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This paper will be published

Implementing our new Standards and Regulations

Purpose

- 1 This paper updates the Board on our work to prepare the organisation, the profession and the public for the introduction of the new Standards and Regulations on 25 November 2019. It sets out the work that has been done to date, work currently underway, and plans for future work.

Recommendation

- 2 The Board is asked to note the update.

If you have any questions about this paper please contact: Chris Handford, Director of Regulatory Policy, chris.handford@sra.org.uk

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
We included published impact assessments as part of our consultation and post-consultation responses. Paragraphs 7, 8 and 9 set out some examples of our consultation and campaign work, which included reaching out to the public and solicitors from a range of backgrounds and communities.	Para 7, 8, 9
We recognise that unnecessary or lengthy disciplinary processes can be stressful for both the complainant and the respondent. Paragraph 19 sets out the steps we are taking to speed our processes up and engage earlier and more effectively with those involved.	Para 19
We have trained our staff to engage better with our customers, including the vulnerable and distressed, and reviewed our provision of reasonable adjustments.	Para 20
Accessible guides for the public are in development and we are working with sector and issue specific charities, as well as consumer representative and advocacy groups, to explore how they can best share information with their constituencies.	Para 27
The implementation of the new Standards and Regulations should bring benefits for consumers, particularly those who do not currently access legal services. Assessing the EDI impacts of the reforms will be a key plank of our post-implementation evaluation.	Para 33

Implementing our new Standards and Regulations

Background

- 3 The Legal Services Board agreed the necessary rules to implement our new Standards and Regulations on 5 November 2018. Introducing the new Standards and Regulations in place of our current Handbook in November marks the culmination of a journey we have been on for five years. We first set out our plans for our new regulatory approach in our 2014/2015 policy statement¹. We said that we wanted to make:
- our rules focus on what matters – high professional standards
 - it easier for the public to access legal services
 - it easier for solicitors and firms to do business.
- 4 Our reform programme has been designed to achieve these outcomes by removing restrictions we cannot justify and by allowing more freedom for those we regulate to innovate and provide services to meet consumers' needs. We have placed a sharp focus on the professional standards that have to be at the heart of every solicitor's practice, simplified our rules and removed unnecessary prescription, trusting the judgment of those that we regulate more.
- 5 We have also recognised that those we regulate will only be empowered to use their judgment more if they do not have to second guess our decisions. Our new Standards and Regulations are therefore underpinned by our new Enforcement Strategy and supporting guidance, as well as a focus on service for those we regulate. The Strategy makes clear what we expect of those we regulate and what we will (and will not) take seriously.
- 6 Our preparations so far for the introduction of the Standards and Regulations have been extensive (and far exceed those we made when we introduced the 2011 Handbook). Some of the more significant work programmes are highlighted below.

Consultation

- 7 We have engaged with 35,000 stakeholders during our five-year reform programme, using a range of media and including four major consultations. For example, we have held and participated in large scale conferences, visited local law societies across England and Wales, undertaken surveys with the public and the profession, including small firms and contributed in compliance roundtables. We have delivered webinars, posted videos and undertaken social media campaigns.
- 8 Our work to improve our decision-making and our approach to enforcement started with our 2015 Question of Trust campaign. This campaign asked members of the public from a range of backgrounds, including vulnerable people for example the elderly, the profession our staff and our Board what types of concerns they thought we

¹ Approach to regulation and its reform, May 2014, updated November 2015, available at: <https://www.sra.org.uk/sra/policy/regulation-reform.page>.

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should take seriously, involving them in the development of our approach to enforcement from the very beginning.

- 9 We have also held targeted, sector specific discussions and roundtables on particular themes with, for example:
- in-house lawyer groups about independence and professional isolation
 - the Sole Practitioners Group and small firms on practising as a ‘freelancer’
 - the City of London Law Society about the conflict rules
 - firms within our Regulatory Management function about our reporting obligations
 - accountants that audit law firms on our new Accounts Rules
 - multi-disciplinary practices, listed firms and the insurance sector on how the changes impact them
 - focus groups with the public around new ways to access solicitors and the information that will help them make the right choice.
- 10 We have reviewed and refined the Standards and Regulations and made important changes to our approach to reflect feedback we received. For example, following consultation, we amended the requirements about what types of money must be held in client account as opposed to office account.

Support for the profession

- 11 A key benefit of our new Standards and Regulations is that they are shorter and presented in a more logical way than our existing Handbook. This means they are easier for users to navigate. This is reflected in the user experience for our new online platform for the Standards and Regulations. We have spent the past two years developing the online platform to ensure that it reflects the needs of our users. We launched a test ‘beta’ site in March to allow us to gather feedback from staff and the profession and review and refine our digital offering before the new Standards and Regulations go-live. The new user friendly website, with improved search functionality, reflects what the profession has asked us for.
- 12 The new website also allows us to show guidance alongside all relevant rules, creating a seamless experience for users of the rules on our website. To create a more personalised experience for users, we have ‘tagged’ guidance by solicitor type, rule and content so that users will be able to search for the content that is most relevant to them. We are exploring the possibility of a personalised log in for users in the future, which would allow them to save notes online against our rules and guidance. We have also reviewed all of the existing guidance and compliance information on our website and are updating it to reflect the new Standards and Regulations or removing it if it is no longer relevant – as well as developing new guidance and case studies, in many cases together with the profession.
- 13 We have held workshops with law firms on new case studies on reporting concerns, to ensure that they capture key issues and are useful in helping solicitors and firms to understand their rights and obligations. Most of the case studies supporting our new rules and guidance are based on real examples (for example, our case studies on integrity show the development of this fast-moving area by drawing on real cases

which have appeared at the Solicitors Disciplinary Tribunal). We have also developed checklists to help solicitors and others within firms use their judgement in specific circumstances. The check lists set out questions that people should ask themselves in reaching a decision without limiting them to one right answer.

The new Enforcement Strategy

- 14 We consulted on the Enforcement Strategy alongside the draft Standards and Regulations in September 2017. The Strategy and the new disciplinary rules set out in the Standards and Regulations present a streamlined and transparent disciplinary process, harmonised across all types of regulatory decisions.
- 15 We started training all of our decision-making staff on the Strategy and how to conduct targeted investigations soon after this. The training used a variety of case studies built around real scenarios.
- 16 Since then, the Strategy has been used as a guide for making decisions. We have embedded the new approach through case direction surgeries, team discussions, updated decision-making guidance and enforcement topic guides developed to address grey areas identified by staff². This builds the capability and capacity in teams and ensures that learning is captured and shared.
- 17 The Strategy was finalised following feedback from the profession, the public and staff and was published in February 2019, alongside the first topic guides. Since introducing the new Strategy, together with our programme of training and support, we have already seen our focus shift away from pursuing minor and technical breaches. This is reflected in a positive drop in the number of cases receiving internal sanctions for less serious matters. For example, the number of letters of advice has reduced from 240 in the period October 2016 to November 2017 to 145 in the same period in 2017/18 and fines have reduced from 55 cases to 38 . We have, at the same time, continued to see similar levels of outcomes at the more serious end of our work – with 170 cases referred to the SDT in 2018, a similar level to referrals in 2016 and 2017. This is positive as it allows us to focus resources where it matters, keeps costs down and securing compliance in better ways than taking enforcement action.

Assessment and early resolution

- 18 We have introduced a new approach to assessing concerns reported to us, applying threshold judgments aligned to the Enforcement Strategy at the very start of the investigation process. This represents a move away from our previous “risk scoring” arrangement, which resulted in a high number of lower level technical breach cases going forward for investigation.
- 19 Our new Assessment and Early Resolution Team includes experienced ethics advisers and investigation staff who engage with complainants and solicitors, to understand and resolve matters at an earlier stage. An initial pilot of this approach has proved

² Topic guides we have published so far cover areas such as ‘Criminal offences outside practice’ and ‘Use of social media and offensive communications’. We are also working with firms to develop further topic guides covering areas such as reporting concerns.

successful and we are now rolling the new assessment and early resolution approach out across the full case load.

- 20 This work builds on earlier changes we made to how we respond to complainants, increasing engagement throughout our processes. We continue to train our staff on engaging constructively and positively with customers, including those who are vulnerable or distressed. Our reasonable adjustments policy has been reviewed and we are monitoring its implementation, so that we can make sure all our customers get the support they need.

Embedding the Standards and Regulations

- 21 We have already delivered a comprehensive training programme for our staff. The next phase of our work, which will take us beyond the 25 November 2019 implementation date, will focus embedding an ongoing approach to developing our staff and our support for the profession.
- 22 Our training programme has been designed to ensure that training on the new Standards and Regulations will be ongoing for staff through for example, support from subject matter experts in teams, regularly updated training videos, new induction materials, coaching and line management objective setting.
- 23 We recognise that implementing and embedding these changes requires considerable cultural change for the organisation and its staff. We have made good progress on implementing that change and early feedback is positive, but we know there is always more to do. This area will continue to a priority for us over the months to come.
- 24 We will keep our information for the profession up to date, for example refreshing 'Frequently Asked Questions' on our website in response to any feedback and developing further topic guides as and when appropriate. We have established a regular review cycle for guidance on our website and will provide additional up to date and topical case studies.
- 25 More broadly, as part of our commitment to openness and transparency, we have published a range of information about how we conduct investigations and how we decide whether, and what sort of, regulatory action is needed. For example, we have published:
- Our Enforcement Strategy and topic guides.
 - All our internal decision-making guidance.
 - Our Upholding Professional Standards report, which details our investigation and supervision and legal enforcement work over the year.

Consumer choice

- 26 A key aim of our reform programme is to provide the public with more choice in how they access legal services. To realise the full benefits of our new Standards and Regulations, people need the right information to understand the full range of choices available to them. Through our Better Information reforms, we are ensuring that

members of the public and small businesses can find the information they need about firms, the services they offer, the prices they charge and the protections they have in place. We have already implemented requirements for firms to publish price information and a description of services for certain legal services as well as information about how to complain.

- 27 We are also developing a public awareness campaign that will explain the benefits and opportunities of the reforms for consumers. In response to feedback from consumer representative and advocacy groups, we will produce accessible consumer guides about using a solicitor. We are testing these materials with the public as they are being developed. We are exploring options with sector and issue specific charities and advice services for them to disseminate information directly to their customers. We are also working with the joint regulators to develop the Legal Choices website, which provides objective and authoritative information on the legal landscape and how best to tackle a legal problem.

The new digital register

- 28 Solicitors working as ‘freelancers’ or outside of regulated practices are required to provide information to potential clients about their status and the protections that they will have e.g. insurance cover and whether or not they could be eligible to make a claim to the Compensation Fund.
- 29 We are also developing a new digital register to help people understand how solicitors are regulated and the protections available to them when they visit a solicitor. When someone looks at our register, they will be able to identify quickly and easily:
- whether we regulate an individual or firm, and all of the regulated individuals at a firm that we regulate
 - where the individual or firm is based
 - what type of practice the firm is or whether the individual is a freelancer or provides unreserved legal services only.
- 30 Consumers will also be able to see what regulatory protections are available to them when they use an individual or firm we regulate, as well as whether there are any regulatory findings against the individual or firm. Our experience with our current Law Firm Search (which allows people to confirm that a firm is valid and is regulated by us) and Check a Solicitor (which gives access to solicitors’ disciplinary records) services indicates that solicitors and law firms will also be regular users of our new register.
- 31 We have developed the digital register in response to consumer research, including a survey of over 2,000 members of the public which asked what features they feel are important when checking a solicitor’s record. We are continuing to test the digital register with consumers and the profession as we develop it. The initial register will be launched in Autumn and we will develop further over time.



The clickable logo

- 32 Displayed on the websites of regulated firms, clicking on this logo confirms that the firm is authorised and regulated by us. It also provides information about the protections that you get from a regulated law firm. Our clickable logo is already being used widely on a voluntary basis and will become mandatory with the introduction of the Standards and Regulations.

Evaluation

- 33 We are developing a comprehensive evaluation programme for the Standards and Regulations. This is designed to help us understand the impact that our reforms are having externally on consumers and those we regulate, and internally on our people, business processes, systems and decisions. We will formally review each of the key elements of our reform programme, as well as the Equality, Diversity and Inclusion impacts of the reforms at one, three and five years post-implementation.
- 34 We have appointed Economic Insight to develop the framework for evaluating each aspect of our evaluation programme, including evaluating what would have happened in the absence of the reform. The evaluation models will track the reform inputs, objectives and risks through to the outputs and outcomes. Economic Insight is also helping us establish a monitoring process for tracking any unintended consequences that we may wish to act quickly on to resolve. This work will develop and expand upon the evaluation framework that we published as part of the Standards and Regulations consultation.

Recommendation: the Board is asked to note the update.

Supporting information

Links to the Corporate Strategy and/or Business Plan

- 35 Delivery of the Standards and Regulations directly aligns with delivering against three of the five strategic aims/objectives outlined in the SRA Corporate Strategy 2017 to 2020:
- We will set and apply consistently high professional standards for the individuals and firms we regulate and make sure they are appropriate to meet the challenges of today and the future.
 - We will make sure our regulatory requirements are proportionate, providing solicitors and firms the flexibility to innovate and better meet the needs of members of the public and businesses, while maintaining appropriate levels of public protection.
 - We will increase the availability of relevant and timely information to help people make informed choices in the legal services market.

How the issues support the regulatory objectives and best regulatory practice

- 36 The Standards and Regulations support the regulatory objectives and best regulatory practice as it will mean that we are addressing issues that we know exist in the legal services market. These include:
- Removing unnecessary regulatory barriers and restrictions and enabling increased competition, innovation and growth to better service the consumers of legal services.
 - Reducing unnecessary regulatory burdens and cost on regulated firms.
 - Ensuring that regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses.
 - The supporting workstreams will also increase transparency and consistency, in line with the better regulation principles.

Public/Consumer impact

- 37 We will assess the impact of our reforms on consumers as part of our ongoing monitoring and reporting work and as part of our more formal evaluation work (see sections above).

What engagement approach has been used to inform the work and what further communication and engagement is needed

- 38 Our approach to engagement and communications is detailed throughout the paper.

What equality and diversity considerations relate to this issue

- 39 We included published impact assessments as part of our consultation and post-consultation responses. Paragraphs 7, 8 and 9 set out some examples of our consultation and campaign work, which included reaching out to the public and solicitors from a range of backgrounds and communities.

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- 40 We recognise that unnecessary or lengthy disciplinary processes can be stressful for both the complainant and the respondent. Paragraph 19 sets out the steps we are taking to speed our processes up and engage earlier and more effectively with those involved. We have also trained our staff to engage better with our customers, including the vulnerable and distressed, and reviewed our provision of reasonable adjustments. Accessible guides for the public are in development and we are working with sector and issue specific charities, as well as consumer representative and advocacy groups, to explore how they can best share information with their constituencies.
- 41 The implementation of the new Standards and Regulations should bring benefits for consumers, particularly those who do not currently access legal services. Assessing the EDI impacts of the reforms will be a key plank of our post-implementation evaluation.

How the work will be evaluated

- 42 The sections above set out how we will monitor and evaluate the impact of the new Standards and Regulations

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