

SRA BOARD
23 January 2019



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This paper will be published

Reporting concerns

Purpose

- 1 This paper summarises our position following our August 2018 consultation on reporting concerns and proposes updates to the reporting obligation.

Recommendations

- 2 The Board is asked to:
 - a) approve our post consultation position paper for publication in February 2019 (annex 1)
 - b) make the SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules [2019] (annex 2).

If you have any questions about this paper please contact: Juliet Oliver, General Counsel and Executive Director Case Direction, juliet.oliver@sra.org.uk 0207 621 3987

This paper is marked official because it contains developing policy

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
All EDI considerations relating to the redrafting of the Codes have been included in the wider Looking to the Future project and are set out in the impact assessments prepared for Phase 1 and Phase 2 of the main reform project.	Not applicable
Clarity in the drafting of the reporting obligation may in time have a positive impact in equality, diversity or inclusion: if compliance officers and other law firm employees are confident in reporting their concerns to the SRA, and do so promptly and in a consistent manner, then our ability to reach timely, fair, proportionate, and transparent outcomes, which operate in the public interest, will be enhanced.	4
We plan to update our guidance on whistleblowing to provide greater support to individuals, who are often vulnerable, concerned about making a report to us, and to raise awareness of the ongoing support we provide for witnesses and others involved in our disciplinary procedures.	15

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Background

- 3 In August 2018, we consulted on a range of options for proposed new obligations for those we regulate to report concerns to us, to ensure that they are clear, consistently applied and allow us to take early action to protect the public.
- 4 This short, focused consultation aimed to update the obligation we place on compliance officers, solicitors and firms to report serious breaches of our regulatory requirements, and to provide greater clarity and support for them when making practical judgments about whether and when to make a report to us.
- 5 We place an obligation on those we regulate to report wrongdoing either by themselves or others. They must use their judgment to consider what to report to us, and when, namely:
 - What, if proven, could give rise to regulatory action
 - What evidence or information is sufficient for them to report a matter
 - At what stage in any investigation process they should inform us.
- 6 The question of what kind of issues constitute a serious breach that requires reporting are already addressed in our Enforcement Strategy. The consultation did not therefore revisit this issue.
- 7 Instead, the consultation focused on providing clarity around the practical judgments that compliance officers, solicitors and firms must make when deciding when to report a matter and what evidence or information is sufficient in order to do so.
- 8 Our post-consultation position paper is attached at annex 1. It sets out an overview of the responses to the consultation and the new reporting obligation that we have proposed as a result. The new wording is set out in the amendment order at annex 2.

Updated reporting obligation

- 9 We received 29 responses from a variety of stakeholders including firms, individuals, local law societies, representative bodies, the public interest body Protect¹ and a risk management firm.
- 10 The responses demonstrated a range of views which helped us to think through the issues. A summary of the responses to the consultation is set out at paragraphs 39 to 85 of **Reporting concerns: Our post-consultation position**, attached at annex 1 to this paper. We considered these responses

¹ Leading experts in whistleblowing

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very carefully and have set out our analysis at paragraphs 23 to 36 of that document.

- 11 As a result, we recommend introducing the following updated reporting obligation.

1. You must promptly report to the **SRA**, or another **approved regulator**, as appropriate, any facts or matters that you reasonably believe are capable of amounting to a serious breach of their **regulatory arrangements** by any **person** regulated by them (including you).
2. Notwithstanding, you must promptly inform the **SRA** of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its **regulatory arrangements** has occurred or otherwise exercise its regulatory powers.
3. You must not subject any **person** making or proposing to make a report or proving or proposing to provide information based on a reasonably held belief under [cross reference to the relevant paragraphs of the Codes of Conduct] to detrimental treatment for doing so, irrespective of whether the **SRA** or another **approved regulator** subsequently investigates or takes any action in relation to the facts or matters in question.

- 12 If the Board is happy to approve the post consultation report at annex 1, we propose to publish this in the usual way, after the meeting, in February 2019. The amendment order at annex 2 introduces the updated obligation by substituting this for the current reporting obligations for individuals and firms that we regulate as well as for compliance officers. This amends the relevant sections of the Codes for Individuals and for Firms, as made by the Board as part of the new set of Standards and Regulations in September 2018.

Recommendations: the Board is asked to:

- a) **approve our post consultation position paper for publication in February 2019 (annex 1)**
- b) **make the SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules 2019 (annex 2).**

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Next steps

- 13 If the Board is content to agree the recommendations above we will submit an application to the Legal Services Board for approval of the changes to the reporting obligations in the Codes of Conduct introduced through the amendment order. The aim is for these changes to be approved before the new Standards and Regulations come into force in Spring/Summer 2019.
- 14 In the meantime, we will develop case studies to be published on our website to help bring the Enforcement Strategy and reporting obligation to life and provide further guidance on what and when to report. These will highlight specific tricky scenarios raised with us by compliance officers during the consultation process. We are also seeking further examples by inviting firms to contribute material to us in confidence – particularly relating to matters that have not, for one reason or another, been referred to us.
- 15 We will also proceed with our plans to update our guidance on whistleblowing to provide greater support to individuals concerned about making a report to us, and to raise awareness of the ongoing support we provide for witnesses and others involved in our disciplinary procedures.

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Supporting information

Links to the Corporate Strategy and/or Business Plan

16 This change relates principally to strategic objective 1:

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.

17 Our new SRA Standards and Regulations set out our new approach, replacing the current Handbook in 2018/19 and We will also publish supporting information to make sure that people using legal services know what to expect from solicitors and what our standards mean. The reporting obligation is important in enabling us to safeguard high professional standards and public confidence in our regulatory approach.

How the issues support the regulatory objectives and best regulatory practice

18 The updated reporting obligation is a narrow, focussed change, designed to improve transparency. It is proportionate to the issue in question, and supports the approach we have taken throughout our review of the regulatory arrangements - which is to have simple and transparent rules that can be clearly understood.

Public/Consumer impact

19 We anticipate that the additional clarification will help compliance officers and others who wish to make a report. The revised wording will place a clear emphasis on our role in determining whether a breach or breaches have taken place, and the need to report to us promptly.

20 We believe that this will help to make sure that all – and only - relevant issues are reported to us promptly, better enabling us to take action to protect consumers and the public interest.

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

21 The consultation ran for eight weeks and was supported by targeted stakeholder engagement. Our wider informal and digital engagement on this issue included over 58,000 social media impressions, over 1,800 web page views and over 2,700 Twitter poll impressions (with 60 people who completed the polls), as well as 11 items of media coverage.

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What equality and diversity considerations relate to this issue

- 22 All EDI considerations relating to the redrafting of the Codes have been included in the wider Looking to the Future project and are set out in the impact assessments prepared for Phase 1 and Phase 2 of the main reform project.
- 23 Clarity in the drafting of the reporting obligation may in time have a positive impact in equality, diversity or inclusion: if compliance officers and other law firm employees are confident in reporting their concerns to the SRA, and do so promptly and in a consistent manner, then our ability to reach timely, fair, proportionate, and transparent outcomes, which operate in the public interest, will be enhanced.
- 24 We plan to update our guidance on whistleblowing to provide greater support to individuals, who are often vulnerable, concerned about making a report to us, and to raise awareness of the ongoing support we provide for witnesses and others involved in our disciplinary procedures.

How the work will be evaluated

- 25 If approved by the Legal Services Board, the changes to wording will form part of the new SRA Standards and Regulations. We have committed to evaluating the entirety of those reforms over a five-year period – and an improved understanding of our reporting requirements will form one (small) element of that evaluation.

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Annexes

Annex 1: Reporting concerns: Our post-consultation position

Annex 2: SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules [2019]