



Solicitors  
Regulation  
Authority

# Attitudes to regulation and compliance in legal services

Executive Summary of 2011 Research Findings

## Introduction

On 6 October 2011, the Solicitors' Regulation Authority (SRA) began regulating solicitors and firms in a new way; moving from a more prescriptive and reactive approach to regulation to a more pro-active, risk-based outcomes-focused approach (OFR). The SRA is keen to build an understanding of the impact of this reform and for this purpose has formed a 'baseline' of firm attitudes towards compliance against which to measure the impact of OFR over time. This work has also provided us with an insight into the drivers of regulatory compliance and non-compliance by firms which will aid our supervisory activities. In particular, it will help us to understand what helps and motivates individuals and firms to comply with our regulatory requirements.

This attitudinal study uses social and behavioural science approaches to shed light on the factors that influence compliance behaviour. The SRA has incorporated the findings from this study into our regulatory approach, particularly into how we supervise firms.

This is an executive summary of the research findings. We have also prepared a full report on the methodology, analysis and detailed findings. The full report will be available on our website.

## Purpose of the research

Assessing effectiveness is a key component to any change in regulatory regime. In the SRA's April 2010<sup>1</sup> consultation, we stated that;

*“We expect to undertake an initial baseline assessment of the delivery of the required outcomes later in 2010. We will use a random and representative sample of firms to establish a benchmark picture of the extent to which the required outcomes are being achieved, followed by a subsequent assessment, 12 or 24 months later to measure progress.”*

We envisaged benchmarking to be focused on the delivery of outcomes. We took a broad approach to this and wanted to explore what particular factors motivate compliance or inhibit it and therefore affect the delivery of good outcomes to consumers.

We set out two high level objectives for the ‘base lining’ research:

- *Gathering data on firms' attitudes towards compliance and regulation, to understand enablers and barriers to compliance. Analysis of the data acts as a baseline against which we can monitor how attitudes are changing over time and to inform our regulatory approach.*
- *A compliance benchmarking exercise to capture a snapshot of firms' compliance with our Code of Conduct before the move to OFR.*

To explore firms' attitudes toward compliance and regulation, we used a compliance metric known as the Table of Eleven (T11). T11 was developed by the Dutch Ministry of Justice and is recognised by the Organisation for Economic Co-operation and Development (OECD). The Hampton Review of 2005, *Reducing administrative burdens: effective inspection and enforcement*, recommended use of the T11 as a framework for delivering better regulation through effective use of resources<sup>2</sup>. T11 helps a regulator to map the potential strong and weak points of compliance.

There are 11 ‘dimensions’ of compliance within T11. Each dimension provides criteria from which a regulator can assess whether those particular factors motivate compliance or not. The eleven dimensions are split into two groups, *spontaneous compliance dimension group* and *the enforcement dimension group*. The *spontaneous group* focus on attitudes toward compliance generally, including knowledge of the rules and attitudes towards authority. The *enforcement group* concentrates on

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<sup>1</sup> *Outcomes-focused regulation - transforming the SRA's regulation of legal services* – SRA, April 2010. This consultation has now closed, deadline for submissions was 28 July 2010.

<sup>2</sup> Hampton, Philip – *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, 2005.

attitudes towards regulatory or enforcement activity, so examines attitudes to visits and likelihood of sanctions.

By looking at a sample of firms in the regulated population, it is possible to explore which of the T11 dimensions will be most effective for motivating increased compliance and delivery of good outcomes for consumers.

## Evidence collection

- We visited 200 SRA regulated firms (prior to the move to OFR) to explore their attitudes towards compliance and regulation and to carry out a compliance benchmarking exercise using file reviews.
- Each firm gave responses to approximately 100 questions based on an established behavioural science framework. Answers were given on a six point scale to allow statistical analysis.
- Firms also provided us with open text explanations on the reasons for their responses to provide insight into the reasons for their scoring.
- We used various statistical and qualitative analytical techniques to explore attitudes to compliance.
- We then explored how the findings could be used to support the SRA's development of effective regulatory strategies.
- We acknowledge in undertaking this research, that 'regulator bias' is a feature of the methodology and therefore have taken this into account when interpreting the findings. For this study, we were seeking to pilot a methodological approach and we also saw benefit in using SRA staff to embed an understanding of OFR. As a regulator, we are aware that those we regulate may 'tell us what we want to hear' during interview, or not feel comfortable discussing their own possible non-compliance or poor performance. We took a number of steps to control for this including assuring firms they had been randomly selected and using a range of questions about both the individual firm and firms in general. In addition, allowing firms to provide an explanation around the scores they gave helped to ensure that ratings were not given out of context and we assured firms that their answers were not being used to assess the firm but to explore motivators for compliance. Nonetheless, we recognise that despite these steps, regulator bias remains a feature of this research. When we undertake a second wave of visits in early 2013, to compare the results against the 2011 base line, we will attempt to further reduce regulator bias based on the lessons learnt from this study. We are exploring ways in which we

might do this including using an independent third party to collect the data and /or submission of information online.

## **External consultants**

This research was undertaken with the help of:

- **Paul Domjan**, Director of John Howell and Company Ltd
- **Daniel Read**, Professor of Behavioural Science at Warwick Business School

## Summary

We have set out the key points arising from each of the T11 dimensions below together with a summary of the results of the compliance benchmarking exercise.

### 1. Knowledge of the rules

Knowledge and understanding of the rules and regulatory requirements are key contributors to firms being compliant as unfamiliarity may result in unintentional non-compliance. It is reassuring, therefore, that when assessed on *Dimension 1 – Knowledge of the rules*, the firms within our sample group feel that they, and other firms, know and understand the rules well. Of the 200 firms the SRA spoke to, 170 rated their firm as a 4, 5 or 6 on a scale of 1 -6 with 1 being very unaware of the regulatory requirements, and 6 being fully aware.

The importance of this dimension is that unfamiliarity with the rules can result in unintentional non-compliance with a resulting impact upon the regulator's resources. It was also reassuring to note that many firms were aware of their own ability to be inadvertently non-compliant. This dimension will be a key comparison point when we carry out further research in 2013. In the sample group, firms were evaluating their knowledge of the rules against the 2007 Code and associated requirements. It will be of interest to compare their attitude to and perception of 'knowledge of the rules' using the 2011 Code in the second study.

Our findings provide us with useful feedback on how we could further support good compliance by firms and individuals. The use of Frequently Asked Questions in the early days of OFR to support and influence firms would be useful, as would be highlighting the issue of unintentional non-compliance through the use of case studies, media articles, web articles and other channels. We know the areas of most common breach of the Code of Conduct are around information provision, so the first case studies could focus on this area. Firms can currently subscribe to *SRA Update*<sup>3</sup>, to receive 4 or 5 e-newsletters per year on regulatory issues, including any updates to the Handbook. Handbook updates also appear on the SRA website in 'track changes' form. The SRA should continue to promote these various means of keeping up to date.

### 2. Costs and benefits of obeying the rules

Is it more cost effective to break the rules and run the risk of sanction than it is to comply? We sought to test attitudes to this (the 'violation threshold') within *Dimension 2 – Costs and benefits of obeying the*

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<sup>3</sup> Subscription requires regulated individuals providing the SRA with a valid contact email address.

*rules*. Costs may include both direct financial costs but also less tangible ones, such as effect on reputation.

Statistical analysis showed that firms felt the benefits of complying did outweigh the costs indicating that this is a core dimension of compliance. Only 6 firms out of 200 felt that their firm never derived benefits or advantages from complying with regulatory requirements, beyond avoiding regulatory action. The text responses added additional context around this and we saw aspects of segmentation within the sample firms. Whilst the majority within the sample group considered that the benefits of complying outweighed the costs, smaller firms and those in sole practice were very aware of ‘capacity’ issues regarding compliance and would like more support around this. Other firms had greater capacity to comply but felt that the costs associated with compliance could be reduced. Whilst motivation to comply can be strong, perceived resources could act as a barrier to compliance and have a resulting effect on motivation levels.

Within this Dimension and linked to effect on reputation, we also see the theme of ‘professional pride’ start to emerge – this is evident across a number of dimensions including *Dimension 3 – Acceptance of Regulation* where analysis of the individual answers indicated that firms see the regulatory requirements as positively reflecting the ethics of the profession.

The research demonstrates that we should keep under constant review the perceived regulatory burden across different types of firms. We are exploring areas in which we need to take this into account such as our approach to annual reporting. We may consider ways in which we can reduce the regulatory burden on firms showing a good propensity to comply.

### **3. Acceptance of regulation**

This explores firms’ acceptance of the rationale behind regulation. A low level of acceptance can result in intermittent compliance.

The statistical testing and the qualitative data indicate that many firms accept compliance as ‘the right thing to do’, rather than something imposed on them, indicating that they have strong ethical motivations to comply. This was reflected in the fact that 3 out of 4 firms (150 out of 200) scored 5 or 6 when asked if they thought the regulatory requirements positively reflected the ethics of the profession (on a scale of 1=wholly negative to 6=wholly positive). Many firms stated that they accept regulation because of their pride in being part of the solicitors’ profession, and the role of regulation in upholding the standards of the profession. This relates to both upholding standards by removing any ‘rogue’ element (a common theme in responses), and contributing to public perception of solicitors as having high standards.

This is one area where we will review our range of questions for the next study. In using very broad questions, we received a wide range of responses which indicated that perceptions of 'regulation' ranged from looking at the whole regime, to experiences of visits, to views on enforcement. Notwithstanding this, some of the text responses indicated that firms are more accepting of the rationale behind the regulatory requirements than they are of the way that the SRA implements the regulatory objectives. We can incorporate these findings into how we provide information about the way we regulate to ensure that we are clear and transparent about the way in which we implement our regulatory policy.

#### **4. Respect for authority**

This dimension tests the general approach of the target group to authority. Due to 'regulator bias', it was difficult to devise questions which would explore this dimension with objectivity. In addition, we appreciate that regulator bias may have affected the responses we received to those questions. The text responses concentrated on a general fear of enforcement rather than commenting on 'authority', so we recognise that our findings for this area are less robust than others. However, we felt it was important to include this dimension in order to explore how we could collect useful data on respect for authority. We may need to consider using restructured questions and external interviewers to further explore this dimension, in order to overcome regulator bias.

#### **5. Non-official/social control**

Non-official/social control explores attitudes about the consequences of detection of non-compliance other than SRA sanctions. Reputational damage could be said here to act as a social control.

The findings suggest that firms perceive that there are clear consequences for them when non-compliance is detected, other than SRA sanctions. Reputational damage as a result of detection of non-compliance was a concern for firms in the sample. Responses indicate that this included the views of their peers at other firms, as well as consumers and clients. 84 out of 200 firms also stated that the strongest driver of compliance at their firm was professional pride/adherence to professional principles.

#### **6. Risk of being reported**

Dimension 6 looks at how firms perceive the likelihood of someone other than the SRA detecting non-compliance and reporting it. This links with dimension 5 above regarding the consequences of being reported. So what are firms' perceptions of whether other firms and consumers can detect non-

compliance? The individual text responses to questions relating to dimension 5 and 6 provided insight into this.

The findings indicate that firms have a low awareness of the levels of compliance within other firms. For example, 130 out of 200 firms scored their firm a 1, 2 or 3 when asked how aware they were of non-compliance at other firms (on a scale of 1=no awareness, to 6=high awareness). This has an effect with regard to perceived social control and the perceived risk of reputational damage. Some of the text responses indicated that firms may only report other firms in question to the SRA as a 'last resort' and their attitude was that the level of non-compliance would have to be high to do so.

Firms also considered that consumers' had low levels of awareness regarding non-compliance within firms. This highlights the often significant perception of asymmetry of information between law firms and those they deal with.

There are a number of ways in which we could seek to influence these dimensions and therefore affect the approach to the reporting of non-compliance. We could assess whether increasing information available to consumers around what happens in a law firm - what they should expect of a compliant firm, what can go wrong and how to fix it, would help mitigate the risk of some firms taking advantage of clients' lack of knowledge around compliance. Exploring the use of whistle blowing policies and providing examples of how reporting information can assist us in dealing with non-compliance are two examples of how a regulator can help to encourage the reporting of non-compliance. In summary we need to examine the needs of, and support to, the consumer and individuals and firms to encourage reporting.

## **7. Risk of inspection**

Risk of inspection measures firms' perceptions of the risk of a visit by the SRA. The 'actual' risk of a visit (as opposed to the perceived risk) will be affected the visit density set by the regulator and regulatory risk methodology. This is another area where we will review our methodological approach due to 'regulator bias'. The fact that we were gathering data on a visit to the firm is highly likely to distort the results so we have taken that into account in the way in which we interpret the data.

Many firms commented that they have a fear of visits – many reported a visit as a worrying prospect and perceived a visit as meaning that they had done something wrong. Firms also feel that visits are likely; when asked to rate the percentage likelihood of an SRA visit to their firm, the average score across the 200 firms was 78 per cent.

Some firms commented that visits had been a positive experience for their firm. Some firms reported that visits had helped them to pick up on areas of non-compliance and had offered a chance to discuss different approaches to improvement within their firm. We acknowledge that visits are a useful tool in encouraging and supporting good compliance and regulatory behaviour.

Visits to firms are a critical component of our supervisory approach. This approach should encompass visits to firms for a range of different reasons – covering thematic risks, undertaking investigations (where necessary) and also random visits. Random visits assist in maintaining the unpredictability of visits and help to prevent firms trying to balance the objective and subjective risk of inspection. Ensuring that our ‘visit density’ is at the appropriate level will also be important.

## **8. Risk of detection**

This dimension traditionally refers to the likelihood of a breach being detected via an inspection of or visit to the firm. Based upon our supervisory approach, we widened the scope of our questioning in this dimension to include questions about the perception of both desk based and visit based activity. Again, we are mindful of the effect of regulator bias in the analysis of the data.

Whilst the statistical testing indicated that firms felt that the SRA is very good at detecting non-compliance, many responses from firms indicated that they felt non-compliance was more likely to be detected on visits than through desk based supervision. This may reflect the fact that desk based supervision is a new approach that firms are less familiar with. Some firms, however, considered that desk based supervision would allow better use of resources. Whilst many firms mentioned a fear of visits some firms also referred to finding visits both positive and constructive.

This dimension is especially important to the SRA in our approach to the supervision of individuals and firms. Whilst we recognise the stress and anxiety that a regulatory visit can cause (always ensuring our staff work effectively on site to minimise the burden on firms), the perception of our ability to detect non-compliance on a visit can also motivate firms to comply. We should consider providing information about our detection and resolution of non-compliance. We also recognise that visits are a useful tool in encouraging and supporting good compliance in our regulated firms.

## **9. Selectivity**

Selectivity measures whether the sample group considers that the SRA concentrates resources (including visits) on firms likely to be non-compliant, rather than those who are compliant .

Overall, the analysis of the data indicated that firms were more confident of the SRA's selectivity of visits than the overall approach to allocating resources to potentially non-compliant firms. The term 'resources', however, is very general and it is possible that firms did not understand how we were using the term. We consider that we could reframe our questions concerning this dimension for future studies. We could be more explicit about the term 'resources' and break the term down into areas of resource allocation within the SRA based on regulatory functions.

The SRA's approach to outcomes-focused, risk based regulation is outlined on our website. A risk based approach to regulation includes our allocation of resources, and we will continue to be transparent about risk based use of resources at the SRA, including through our external publications. We will continue to explore what additional information we could include on the way in which we use our resources. We will also be continuing to use cost benefit analysis to assess the proportionality of our regulatory approach.

## **10. Risk of sanction**

This dimension explores the perceived risk of receiving a sanction, should non-compliance with the rules or regulatory requirements be detected.

The fear of reputational damage and a denting of 'professional pride' appeared to be of greater significance amongst the sample group than risk of receiving a sanction. The reputational and business impact of detection was often seen as a 'sanction' in itself. Some firms saw visits as a form of sanction, in that they could have reputational impact, regardless of whether any non-compliance was detected. Those that had not received a visit from us expected that sanctions would flow from any detection of non-compliance. Responses from firms indicated that some were aware that the SRA would work with firms to correct issues and not go straight to the imposition of a sanction.

Firms were worried about unintentional non-compliance and the effect this could have both in its being detected and the publicity surrounding this. This links back to our findings on knowledge of the rules.

## **11. Severity of sanction**

This dimension explores the perceived severity and nature of the sanctions imposed by the regulator following detection of non-compliance.

Awareness of sanctions was high amongst the sample group. Firms had different ideas about whether they were too severe, not severe enough or about right. 130 out of 200 firms felt SRA sanctions were neither too severe nor severe enough. The perceived reputational impact of the SRA detecting non-compliance affected firms' attitudes to compliance to a greater extent than the severity of any sanction imposed as a result of the detection.

Clearly our approach to enforcement following detection of non-compliance will have an impact upon whether the regulated community view enforcement as a 'credible deterrent'. The SRA will continue to implement a proportionate, robust approach to enforcement, and a considered approach to publicity around enforcement action.

## **Compliance Benchmarking**

As part of the visits to the 200 firms, we carried out a compliance benchmarking exercise to capture a snapshot of firms' compliance before the move to OFR. Data was gathered using a sample of client files and the files were assessed using the Solicitors' Code of Conduct 2007. We then carried out a mapping exercise to compare the areas of non-compliance found under the 2007 Code with the Solicitors' Code of Conduct 2011. The purpose of this was to highlight any potential areas of non-compliance with regard to the 2011 Code. We acknowledge that the 'mapping' between the two Codes is approximate as the two Codes differ in approach.

Across the sample firms, less than 1 in 10 firms were found to have no areas of non-compliance within the client file sample. Most firms in the sample had 4 or 5 incidences of non-compliance. The main area of non-compliance was around provision of information to consumers (costs, services, regulation and how to complain

## **Conclusions**

Exploration of firms' attitudes to regulation and compliance can help shed light on the motivating factors of compliance with the regulatory requirements. In the SRA's initial study using the T11, we have highlighted a number of areas where we could seek to influence compliance by influencing some of the T11 factors.

Analysis of our results indicates that for our sample group, most non-compliance is likely to be unintended, whether consciously (such as not having the capacity to comply with a rule), or unconsciously (such as not knowing that they are breaking a rule). Firms accept the rationale behind regulation but a strong motivator for compliance is 'professional pride'. In particular, it was a strong element of responses around *Dimension 3 – Acceptance of regulation*. Many firms accept regulation because of their pride in being part of the solicitor's profession, and the role of regulation in upholding standards. Analysis of the individual answers indicated that firms see the regulatory requirements as positively reflecting the ethics of the profession.

Firms generally feel that they and other firms are willing and able to comply and are generally compliant. The majority of firms were assessed as giving an accurate assessment of their own compliance (SRA staff reviewed firm files to assess compliance).

The majority of firms feel that the profession, including their own firm, is concerned about SRA visits. Firms were less concerned about desk based supervision, which is not surprising given that the SRA has only recently started to implement this type of supervisory approach. A number of firms expressed interest in understanding more about what it entails.

Alongside the T11 , the Dutch Ministry of Justice devised a compliance estimate, looking at all eleven dimensions and mapping them through a flow diagram to create a range of 'attitude types'. This research has allowed the SRA to prepare its own 'compliance estimate', mapping the factors that may contribute to compliant and non-compliant behaviour. Whilst this will need revision over time and by subsequent research, it provides a tool for consideration for what factors influence compliance.

SRA compliance estimate

