Solicitors Regulation Authority

Consultations

Outcomes-focused regulation - transforming the SRA's regulation of legal services

Annex C - "Achieving the Right Outcomes": Our responses to the main questions from the profession

30 April 2010

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- Consultation paper [https://www.sra.org.uk/sra/consultations/consultation-listing/ofr-consultation-april/]
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The cost to the profession of maintaining the SRA is already high. Will OFR costs attributable to certain areas of the SRA be matched by savings elsewhere?

Using our resources to proactively assess and address risks will make us a more efficient regulator, helping to keep costs down and ensuring we provide value for money as a regulator. We have already been able to reduce administrative costs and our ultimate aim is to deliver much better value for money by delivering "more for less" in "unit cost" terms. However, it needs to be remembered that cost-effective regulation is also a partnership between us and the profession; good compliance means the SRA spends less.

Can you guarantee that the change to OFR will not result in increased costs to firms, excessive administrative burdens and a lack of clarity?

OFR will give firms greater flexibility in how they achieve the right outcomes for consumers which over time should increase the potential gains and reduce administrative burdens on firms for firms choosing to make use of these greater freedoms. There will be guidance to help firms consider how to deliver the require outcomes, we will make it easy for firms to submit information to us, and in the vast majority of cases, we

will be happy for good firms to continue to practise in much the way they do at present.

There will also be a role for representative bodies in helping their members with the introduction of OFR and we will welcome discussions with these bodies on this point.

Will information be published in relation to cost-benefit analysis and what will be the cost of introduce the profession?

In the next few months we will undertake a cost-benefit analysis of the approach we are taking to implementing OFR, including working with a cross-section of our stakeholders to understand the impact on particular types of firms. This will be published in October 2010.

Are you confident that you can meet the deadline for the implementation of OFR and ABSs?

We are confident that on 6 October 2011 we will be in a position to license and regulate ABSs, supervise and, where necessary, enforce the new Handbook. However, we have choices that can be made for example on whether there are aspects of the new Handbook (such as reporting requirements) that are best phased in over a slightly longer period of time. Our decisions need to be informed by a practical analysis of what is realistic not just in terms of our own readiness, but firms' readiness also, including an understanding of any direct and time costs for smaller firms in particular.

Over the next few months we will be considering our approach to an up to three-year phasing period, working also with stakeholders, and will report on our decisions in October this year.

Will the SRA have made the necessary changes to its people culture and systems organisation in time for the move to OFR?

The SRA culture needs to reflect the expectations of the regulated community and other stakeholders and we recognise the sizeable challenges involved in preparing our people, culture and systems for the new regulatory approach. Successful cultural transition will require new attitudes and behaviours from our staff alongside the development of technical competencies to regulate in the new way.

Our primary focus will be to bring about an outcome-focused approach in everything we do, valuing skills such as an inquisitive mindset, a desire to work across functions with colleagues, sharing information, and keeping consumer and public interest at the heart of everything we do.

There are considerable implications for our technical skill set. For example we need to expand our capacity to analyse less standardised information and proactively assess risk. Commercial awareness will become more important as business structures become more varied, and we will need to bring credibility to our work alongside the profession as partners in protecting the public.

Our systems also need considerable updating and benefits from planned development include

- a significant reduction in requirements for paper-based interaction between ourselves and firms and individuals by moving to online submission of material such as applications and annual returns,
- tools to support the systematic assessment and management of risk, and the management of our relationship with firms.

The SRA has launched a programme of organisational reform for this work and we are being very ambitious in the approach we are taking. Nevertheless, this type of transformation cannot happen instantly and stakeholders will experience an evolution to the new approach rather than a "Big Bang".

Will the introduction of OFR be seen as a relaxation of standards to accommodate the arrival of ABS into the legal services marketplace?

Our approach to OFR does not herald a relaxation of standards or "light touch" regulation. Indeed, a measure of success of our new risk-based approach will be the extent to which it has increased our ability to identify the firms and individuals that cannot and will not deliver good outcomes for clients and to then deal with them appropriately.

How will you regulate multi-disciplinary practices?

The SRA's approach to regulation of multi-disciplinary practices will be covered in the May consultation.

Will guidance be provided to the profession to explain how the move to OFR will affect them?

"Freedom in Practice – Better outcomes for Consumers", our most far reaching consultation programme to date, was launched on Thursday 25 March. This programme acknowledges the importance of engaging with all of our stakeholders, firms, individual lawyers and consumers, in a myriad of ways. This engagement will include guidance, starting in October 2010 as part of the policy statement to this consultation, on what firms need to do and when in order to be ready for OFR.

As well as providing information via workshops and speeches, will the SRA ensure information is published in a consistent and easily accessible form?

We acknowledge that we need to employ as many different methods as we can to reach the profession and other stakeholders and have a programme of engagement which includes roadshows and workshops. We will make sure that all relevant material is published and easily available on our website.

The ability to have "adult" conversations about regulation with the SRA is important for both the regulator and the regulated. Will you be putting in place a system of sharing information about the good practice that evolves as a result of those discussions?

It is important that examples of good practice are shared across the profession. We will be looking at various formal and informal ways of supporting this activity and welcome ideas. One approach, where we observe good practice that might be applied widely, is to add it to the body of the guidance in the Handbook. We also think there will be a role for representative bodies to work with their members to draw examples of good practice to our attention and would welcome views on how this might work.

Will the SRA focus on the provision of support, open consultation and guidance so that potential issues are addressed before they become problems?

A key win from our move to OFR is to be more proactive in reviewing and addressing risks. An important vehicle for addressing emerging risks will be to tackle them thematically before the risks significantly crystallise, rather than reactively firm by firm. Themes may include the use of a suite of "softer" regulatory tools such as "Dear Managing Partner" letters, and consulting on and issuing guidance. However, where the risks are potentially serious we will take stronger preventative action. For example, if we think a group of firms is in danger of financial failure we will get intensively involved at an early stage to ensure effective management including orderly wind-down if necessary.

We also plan to make our broad risk assessments available to our stakeholders and will publish an annual outlook of emerging risks and key areas of focus for firms.

How will the SRA decide which rules it will keep, which will be amended and which will be abolished?

Our objective is to deliver a clear focus on the key principles and outcomes which must be achieved and to remove and rationalise much of the detail contained in the current Code. However, some rules, such as the Accounts Rules, will remain much the same, reflecting our judgement of what is necessary to manage risks to clients. However, where possible these will be drafted in a more outcomes-focused way.

The SRA's proposed detailed approach to the new Handbook of regulatory requirements will be set out in the May consultation, and we shall listen carefully to the views of all stakeholders before finalising the Handbook.

Will the type of supervision firms experience be related to the risk they pose rather than a one-size-fits-all approach and will SRA have different teams offering different types of supervision to different types of firms?

The type of supervision a firm receives will be linked to the nature and type of the risks they pose to the regulatory objectives. A "one size fits all" is not efficient or effective regulation. Further detail on our new approach to supervision is set out in the main body of this consultation paper.

At what level of detail will discussions on the "effectiveness of the firm's risk management systems" take place?

The degree of intensity will depend upon the issue at hand and the attitude and approach the firm is taking to its engagement with us. Ultimately, we will drill down to whatever level of detail is necessary for us to be satisfied that a firm's approach to managing a particular risk is likely to be effective.

Will SRA enforcement sanctions be targeted at senior managers in firms as well as individual practitioners responsible for breaches?

We will focus on compliance by firms and enforcement action may often be against the firm. Individual misconduct will be subject to enforcement action where appropriate in accordance with published guidance. Investigations will often have to consider the position of both the firm and individuals for a proper decision to be made as to who may be subjected consequential action. We have already published the criteria we apply in deciding whether to take action against a firm or an individual.

Will there be a transition or a moratorium period where enforcement action will not be taken against firms that are not in a position to demonstrate how they achieve the desired outcomes but are technically compliant with the rules contained in the current Code?

It is certainly not our intention to "catch" good firms out and as outlined above we will be making decisions on the best way to introduce the new regime on the basis of a number of considerations, including the time and support firms will need to adapt to the new approach.

Will the SRA ensure that equality and diversity principles are incorporated into the design of OFR?

We have highlighted some of the equality issues that we will be considering as we continue to progress our equality impact work in relation to the various work areas that will be changing through this transformation process. We will continue with this work and plan to publish the findings of our full equality impact assessment for key areas with our policy statement in October. To help us with this work, we are particularly keen to hear from our stakeholders with any particular concerns or comments about the potential impact of our new approach for all equality groups. Our new approach will require us to work much more collaboratively with firms and individuals and this will require a high level of trust and confidence from all sections of the profession. We want to be sure that equality and diversity are embedded in our outcome-focused approach from the very outset.

Will the SRA provide a specific definition of risk to firms?

The SRA is concerned about the following types of risk:

- Risks to the regulatory objectives, including risks that might arise from the wider economic environment, such as an economic down turn;
- The risk that firms' actions and that of individuals will be inconsistent with the 10 overarching regulatory principles in the Handbook; and
- The risk that firms will not comply with the outcomes and other binding regulatory commitments in the Handbook.

We will publish our view of emerging risks and key areas of focus for firms from time to time, and at least annually.

Will the SRA defend the principle of independence which to date has underpinned the regulation of professional conduct?

The Legal Services Act 2007 sets "encouraging an independent, strong, diverse, and effective legal profession" as one of our statutory objectives. The principle of independence is preserved within this and will continue to be a foundation of our regulatory approach.