

# Regulation Report

## Compliance Top Ten for 2018



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**With an entirely new Handbook scheduled for the end of 2018, the issues below look at what it has in store for us together with other new and perennial issues that are likely to trouble firms in the coming year.**

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law firm compliance advice and training

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### Handbook and related issues:

#### 1. Two Codes of Conduct

The SRA is pressing ahead with its proposals for two Codes – one for the individual, which focuses on the regulated individual's conduct and behavioural standards, and one for the firm, which looks more at business controls for delivering the required standards. Inevitably, there is considerable overlap between the two with both covering, for example, conflicts of interest, confidentiality and undertakings. In both Codes, outcomes are to be replaced by standards – although the distinction appears to be of form rather than substance – and the indicative behaviours will go in their entirety. Some of the standards replicate the current outcomes but others are more high level as the SRA strips detail to try and give firms greater flexibility for service delivery. The good news is that there are no changes of substance but COLPs should start familiarising themselves with the content of the new Codes.

#### 2. Accounts Rules

These are also shortened by the removal of detail to give greater flexibility to firms in how they manage their client and office money. The emphasis remains on keeping client money safe and separate from office money. The SRA's proposal to enable firms to treat money on account of costs as office money has been dropped. Again, these rules do not require firms to make any changes to their procedures but COFAs need to digest where the flexibility lies. Prescriptive timetables, for example, to make certain transfers within 14 days, are replaced by requirements to do so within a reasonable time. There is also no longer a need to have a policy on interest, just a requirement to pay a fair sum or have some other written agreement. Finally, you should note that the rule on using client account as a banking facility is to be amended in the new Rules to "legal and other professional services" as opposed to "an underlying legal transaction".

#### 3. The Principles

The Principles have been reduced in number from ten to six largely because of one of the SRA's stated aims to reduce duplication in the Handbook. Those removed are Principles 5 (proper standard of service), 7 (dealings with regulators), 8 (proper governance and risk principles), and 10 (protecting client money and assets). All are dealt with to a greater or lesser extent elsewhere in the Handbook, mostly in the Code and the Accounts Rules. The remaining Principles have been tweaked slightly. For example, the new Principle 4 (previously 2) will

now require individuals to act with "honesty and integrity" rather than just "integrity". However, firms need to be aware that the SRA is already using the Principles very widely in framing allegations of misconduct and this is likely to increase when further significant detail is removed from the rules. Difficult ethical decisions should always be made with proper regard for the Principles – possibly with a written note to show how they were applied.

#### 4. Separate businesses

The new Handbook's most significant change will be to allow firms to offer non-reserved legal services through a separate business and to employ solicitors in those separate businesses to provide those legal services. Rule 4 of the Practice Framework Rules, which currently prohibits solicitors providing services to the public through an entity which is not regulated by a legal services regulator, is to be repealed in its entirety. This opens up significant business development opportunities for firms. Costs for running non-reserved legal services through an unregulated business will be lower but will require very careful signposting for clients who must be informed of the risks through websites and other information. Any move to take advantage of this relaxation should not be undertaken lightly and must, above all, be made in the light of client expectations and what is important to them. Expect more guidance from the SRA on this next year.

#### 5. Freelance unregulated sole practitioners

This proposal arrived unheralded in the SRA's second Handbook consultation this autumn. For those solicitors thinking of going freelance who want to provide reserved, as well as unreserved, legal services there will be the opportunity to do so without the need to become recognised sole practitioners. Conditions will apply. Those proposed are that the solicitor must be self-employed, take instructions direct from the client, have no employees, have adequate insurance and not hold client money except on account of costs.

#### 6. SRA Register, Roll and Information Regulations

A consultation ends in December on proposals to introduce this new set of Regulations. They will lay the ground work for the SRA to require firms to publish much more information about their services and charges. Their effect is likely to have a greater impact on firms than all the other Handbook changes. They follow on the heels of a report by the Competition and Markets Authority which is critical of the level of information provided by firms about legal services and pricing which inhibits prospective clients from making informed choices. Expect the SRA initially to push ahead with plans to require firms to publish on their websites much more detailed descriptions of the services they provide, the costs of those services, information on the Legal Ombudsman and