

Regulation Update

A new SRA Handbook for 2017?

Just when you thought you were familiar with the 2011 Handbook, the SRA has published a position paper setting out plans for further change to the Handbook on what looks like an epic scale. The only good news is that most of it seems to be de-regulatory. The SRA is promising simplification not complication in an attempt to reduce the compliance burden. It is also promising on-line resources such as case studies and toolkits in its attempt to support firms.

Why further change?

It seems that the Legal Services Board and the SRA are of the view that the Handbook in its current form is preventing innovative business development. This means it is preventing the SRA from meeting the Legal Services Act's regulatory objectives of, in particular, improving access to justice, promoting the interests of consumers and promoting competition. The SRA has singled out as an example the small businesses market as one which is not having its needs met because legal costs are too high.

What changes are anticipated?

The position paper does not go into much detail but does say that there will be a complete review of the Handbook. One of the proposed changes that has been identified concerns Rule 4 of the Practice Framework Rules. This deals with in-house solicitors and who they can provide their services to. With some exceptions, it restricts them to doing work for their employer and prevents them from providing legal services to the employer's own customers.

You might wonder why this is of interest to private practice. However, since the separate business rule was relaxed in November 2015 and firms can now provide all their non-reserved legal services through an unregulated separate business, the SRA has realised that rule 4 prevents solicitors being employed by these businesses. The consequence of this is that those best qualified to provide legal services to the public through a separate business are excluded from doing so.

To deal with this anomaly, the SRA is proposing that solicitors should be able to be employed by unregulated businesses to provide legal services to the public. The employing entity will not be regulated but the solicitors providing the services will be regulated as individuals. This carries through the assumption arising from the LSA, that the only legal services which need to be provided through a regulated entity should be those that are reserved. Just how this will work in practice will no doubt be explained in the consultation papers that we are told to expect in 2016. For example, will a solicitor in a separate business be responsible for supervising those working in his or her team? Or will he or she be expected to be responsible, and to what extent, for legal services that they are not directly supervising which are provided by the business?

Other changes that are proposed include reviewing the SRA Principles, stripping the indicative behaviours from the Code and removing some of the detail in the outcomes, and making the Accounts Rules more Principles based. Targeted guidance and toolkits are planned to cover the more difficult areas of interpretation in the Code and to replace the indicative behaviours.

Protecting the public?

If, under these proposals, individual solicitors are permitted to deliver non-reserved services to the public through unauthorised organisations, there is scope for even more confusion on the part of the public as to who is regulated, by whom and for what. The SRA is hoping to provide certain protections for clients such as



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access to the Legal Ombudsman; restrictions on holding client money; imposing personal responsibility in relation to professional indemnity insurance and limited access to the SRA Compensation Fund. It will be the responsibility of individual solicitors to ensure that these protections are in place. How the SRA can expect a junior employee in a large commercial organisation to introduce such protections and then ensure their continued operation remains to be seen.

When will all this change happen?

The SRA intends to set out its proposals this Spring. Look forward to a consultation covering the Principles, the Code, the Accounts Rules and the Practice Framework Rules. Following the consultation, draft rules will be published in the autumn and the plan is that they will be effective in the spring of 2017. Quite a tight timetable!

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