

Regulation Report

New SRA Handbook – what to expect and when



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Last year, the SRA consulted on proposals to change the Principles, the Code of Conduct and the Accounts Rules. The consultation also contained a radical proposal to allow solicitors as individuals to provide non-reserved legal services to the public through entities not regulated by any legal services regulator.

This proposal is proceeding and the necessary associated rule changes will appear in another consultation this autumn on the rest of the Handbook which will look in detail at the Authorisation and Practice Framework Rules. The end result, a new Handbook, will not be effective before the autumn of 2018.

The results of the first consultation were published in June along with drafts for new Principles, Codes and Accounts Rules. This column will provide an overview of the main changes proposed to the Principles and Codes. Next month's column will look at the changes to the Accounts Rules.

In summary, the Principles are to be reduced in number from 10 to 6 and the Code is to be reincarnated as two Codes – one for the regulated individual and the other for the regulated firm.

The Principles have been reduced largely because of one of the SRA's stated aims i.e. 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.

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" and new Principle 2 (previously 6) talks about upholding "public trust" and "public confidence" in the solicitors' profession and the provision of legal services provided by authorised persons. It is unclear exactly what adding "public confidence" to the Principle means but as many who have found themselves subject to disciplinary proceedings have discovered, the Principles can be stretched to cover many unanticipated situations.

There is perhaps here nothing too new but the proposed changes do provide evidence of the SRA's increasingly minimalist approach to regulation - something also in evidence with the new draft Codes. Whilst on the face of it this makes easy reading, the lack of detail means that it can be difficult to see how regulation applies to the many complicated situations that practitioners are faced with.

More fundamentally, there will now be two Codes, one for firms and one for individuals. Although there is overlap between the two, the Code for firms focuses more on management issues governing how the firm should be run and the need for

policies, systems and procedures.

The next obvious change is that the Codes have been pared back and become much more high level. The Code for individuals has been reduced to seven pages and the Code for firms, to six pages.

The Code for individuals is broken down into the following sections:

1. Maintaining trust and acting fairly
2. Dispute resolution and proceedings before courts, tribunals and inquiries
3. Service and competence
4. Client money and assets
5. Referrals, introductions and separate businesses
6. Conflict, confidentiality and disclosure
7. Cooperation and accountability
8. Providing services to the public or a section of the public, covering
 - a. Client identification
 - b. Complaints handling

The standards in section 8 have been singled out to make it clear that they do not apply to in-house solicitors who provide services for their employer and related bodies. They will, on the other hand, apply in future to employed solicitors providing non-reserved legal work to the public who work for entities that are not regulated law firms.

The Code for firms incorporates most of the above sections in identical or modified form and adds a section on "Compliance and business systems", a section making managers jointly and severally responsible for compliance with the Code and a section on the COLP and COFA compliance officer responsibilities which has been largely lifted from rule 8.5 of the Authorisation Rules.

A casualty of the paring back process is the indicative behaviours which have gone in their entirety. In their place, we are promised toolkits and guidance to deal with specific issues. What these will cover is not yet clear but the SRA does concede that firms have asked for guidance on "real and complex issues" such as conflicts and the use of information barriers.

Another change is that the term "outcomes" has been dropped and replaced with "standards" to describe the obligations. It seems that the SRA wants to make clear that the obligations in the new Codes are a little more hard-edged than outcomes.

By far the most controversial proposal in the SRA's

consultation is to permit solicitors employed by non-regulated entities to provide non-reserved legal services to the public.

There are many public protection issues raised by the relaxation. The SRA acknowledges that there will need to be a huge public information exercise to try and explain the protections that will be available to the public and those that they will lose – such as legal professional privilege, access to the Compensation Fund and indemnity insurance cover that meets the requirements of the Indemnity Rules. There are also many issues around the possibility of unscrupulous employers taking on solicitors, possibly newly qualified, who have been finding it hard to get work and using them to give a veneer of respectability to an unethical business.

The relaxation will also undoubtedly increase competition for firms and the decision for many will be whether to set up a separate business which is not SRA regulated through which to provide non-reserved legal services.

We can be fairly sure that the draft Principles, Codes and Accounts Rules now on the table are unlikely to change significantly before being implemented. The SRA has indicated that they may be fine-tuned as a result of the next major consultation on the remainder of the Handbook which will be issued this autumn, but, generally, no further significant changes are anticipated.

Firms have, however, until at least the autumn of 2018 to become familiar and can take consolation from the fact that the changes do not appear on the whole to impose new or different obligations. The difficulty for some may be in working out what compliance now looks like when the rules are pared back to such a high level of generality. We have been promised toolkits and more guidance but do not yet know what these will cover and how helpful they will be. Perhaps the best advice is to hang on to the current Handbook – if not the 2007 Code of Conduct and the 1999 Guide as well!

Let us hope that there are sufficient rules left standing for practitioners to be able to judge what is, and what is not, professional conduct and that this does not become the sole prerogative of the SRA.

The President's Charity

My BLS Presidential charity of the year is The Guide Dogs for the Blind. I am hoping we will be able to raise enough money to fund a guide dog for all or part of its working life or a mobile classroom that will help children to better understand about blindness and the challenges faced by blind and partially sighted people.

Amongst other things, I will be attempting for the first time in living memory to complete the "Tour de Law Societies"! This epic feat will involve me pushing my creaking and unfit body on a bicycle between the main legal centres in England, namely London, Bristol, Leeds, Manchester, Liverpool and Birmingham. That will amount to approximately 500 miles which I hope to complete in 5 days. I would be most grateful for any support that you can offer this worthy cause and encourage me to push on as the miles click by.



**Andrew Beedham
President**

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