



The new SRA Standards and Regulations 2019

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Agenda

01. The Principles

02. Main Changes to the Codes

03. Main Changes to the Accounts Rules

04. The Guidance

05. Staff Training

06. Outstanding Questions

The New SRA Standards and Regulations

In force 25th November 2019

New approach to regulation to enable innovation and increased competition on the market, leading to better service for clients.

- Reduced the handbook
- Removed the outcomes and indicative behaviours
- Reduced the Principles
- The SRA believe we don't need a lot of detailed rules to know how to do the right thing. Don't want to be seen to be micromanaging businesses
- <https://www.sra.org.uk/solicitors/standards-regulations/>

Principles

You act:

1. in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.
2. in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
3. with independence.
4. **with honesty.**
5. with integrity.

“We believe that honesty is one of the most fundamental tenets of the solicitors’ profession and should be reflected in the new Principle 4. We are comfortable that the terms “honesty” and “integrity” may overlap, but that action can be taken if someone fails to demonstrate one or another.

6. in a way that encourages equality, diversity and inclusion.
7. in the best interests of each client.

Principles – what's missing

These have moved into the Codes themselves

- Provide a proper standard of service
- Protect client money and assets
- Comply with regulations and co-operate with regulators
- Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles

Two codes of conduct

- Code for Firms
- Code for Solicitors
- Watch out – there is some overlap

7.1 (COCF) The following paragraphs in the SRA Code of Conduct for Solicitors, RELs and RFLs apply to you in their entirety as though references to "you" were references to you as a firm:

dispute resolution and proceedings before courts, tribunals and inquiries (2.1 to 2.7);

referrals, introductions and separate businesses (5.1 to 5.3); and

standards which apply when providing services to the public or a section of the public, namely client identification (8.1), complaints handling (8.2 to 8.5), and client information and publicity (8.6 to 8.11).

Two codes of conduct

- What about non-qualified staff?

“Our approach to regulation has two elements: firm-based requirements and individual requirements. It focuses on the practices of regulated entities as well as the conduct and competence of regulated individuals. This approach allows us to take regulatory action against firms or individuals, or both, in appropriate cases. This could include action against anyone in the firm including **non-lawyer owners, managers and employees**. We exercise our regulatory powers in a proportionate manner, focusing on risk and outcomes for clients.”

- Make sure you are familiar with the SRA’s enforcement strategy

Focus on Systems and Controls

Focus on Systems

2.1 (COCF) You have effective governance structures, arrangements, systems and controls in place that ensure:

- (a) you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you;
- (b) your managers and employees comply with the SRA's regulatory arrangements which apply to them;
- (c) your managers and interest holders and those you employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements by you or your managers or employees;
- (d) your compliance officers are able to discharge their duties under paragraphs 9.1 and 9.2 below.

2.2 You keep and maintain records to demonstrate compliance with your obligations under the SRA's regulatory arrangements.

2.3 You remain accountable for compliance with the SRA's regulatory arrangements where your work is carried out through others, including your managers and those you employ or contract with.

2.4 You actively monitor your financial stability and business viability. Once you are aware that you will cease to operate, you effect the orderly wind-down of your activities.

Code of Conduct for Firms

- Maintaining Trust and Acting Fairly
 - Don't discriminate, don't abuse your position, perform undertakings, don't mislead clients or others, report diversity data
- Compliance and Business Systems
- Cooperation and Accountability
 - 3.5 (COCF) You are honest and open with clients if things go wrong, and if a client suffers loss or harm as a result you put matters right (if possible) and explain fully and promptly what has happened and the likely impact. If requested to do so by the SRA you investigate whether anyone may have a claim against you, provide the SRA with a report on the outcome of your investigation, and notify relevant persons that they may have such a claim, accordingly.
- Service and Competence
 - takes account of your client's attributes, needs and circumstances
 - ensure competence
 - effective system of supervising matters

Code of Conduct for Firms

- Client Money and Assets
 - Accounting to clients
- Conflict of Interests
 - Fixing things Howell Jones case
 - Where competing for the same interests – “all the clients have given informed consent, given or evidenced in writing, to you acting”;
- Confidentiality and Disclosure
 - Former clients
 - Evidenced in writing
- Applicable Standards in the Code for Solicitors
- Managers in SRA Regulated Firms
 - If you are a manager, you are responsible for compliance by your firm with this Code.

Compliance Officers

9.1 (COCF) If you are a COLP you must take all reasonable steps to:

- (a) ensure compliance with the terms and conditions of your firm's authorisation;
- (b) ensure compliance by your firm and its managers, employees or interest holders with the SRA's regulatory arrangements which apply to them;
- (c) ensure that your firm's managers and interest holders and those they employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements;
- (d) ensure that a prompt report is made to the SRA of any facts or matters that you reasonably believe are capable of amounting to a serious breach of the terms and conditions of your firm's authorisation, or the SRA's regulatory arrangements which apply to your firm, managers or employees;
- (e) notwithstanding sub-paragraph (d), you ensure that the SRA is informed promptly of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers,

save in relation to the matters which are the responsibility of the COFA as set out in paragraph 9.2 below.

Compliance Officers

9.2 (COCF) If you are a COFA you must take all reasonable steps to:

- (a) ensure that your firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules;
- (b) ensure that a prompt report is made to the SRA of any facts or matters that you reasonably believe are capable of amounting to a serious breach of the SRA Accounts Rules which apply to them;
- (c) notwithstanding sub-paragraph (b), you ensure that the SRA is informed promptly of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers.

3.6 (COCF) You notify the SRA promptly:

- (a) of any indicators of serious financial difficulty relating to you;

Code of Conduct for Solicitors

- Maintaining trust and acting fairly
- Dispute resolution and proceedings before courts, tribunals and inquiries
- Service and competence
 - 3.4 (COCS) **You consider** and take account of your client's attributes, needs and circumstances.
- Client money and assets
- Referrals, introductions and separate businesses
- Other business requirements
 - Outside a regulated body

Code of Conduct for Solicitors

- Conflict of interests
- Confidentiality and disclosure
- Cooperation and accountability
- Client identification
- Complaints Handling
 - 8 weeks
- Client information and publicity

Reporting serious breaches

3.9 (COCF) You report promptly to the SRA, or another approved regulator, as appropriate, any facts or matters that you reasonably believe are capable of amounting to a **serious breach** of their regulatory arrangements by any person regulated by them (including you) of which you are aware. If requested to do so by the SRA, you investigate whether there have been any serious breaches that should be reported to the SRA.

- “We do not want to receive reports or allegations which are without merit, frivolous or of breaches that are minor or technical in nature.”
- “We will always take seriously allegations of abuse of trust, taking unfair advantage of clients or others, and the misuse of client money, as we will sexual and violent misconduct, dishonest and criminal behaviour.”
- Cyber will be serious (even if not your fault)
- Serious may be dependent on the intention behind it.
- “Human and system error is inevitable and we will generally take no action where a poor outcome is solely as a result of a genuine mistake, but will take action where it is a result of lack of knowledge which they should have known, or demonstrates a lack of judgement.”
- Will consider whether it was planned or premeditated, persistent and repeated. An attempt to conceal a problem
- Consider harm and impact. Financial loss, physical, mental harm, personal autonomy and dignity, privacy.
- Harm that could be reasonably anticipated so even if there is not actual loss, e.g. a false document not relied on by the Court.
- Can be serious if a pattern.

Reporting serious breaches

- 3.10 (COCF) Notwithstanding paragraph 3.9, you inform the SRA promptly of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers.
- 3.11 (COCF) You do not attempt to prevent anyone from providing information to the SRA or any other body exercising regulatory, supervisory, investigatory or prosecutory functions in the public interest.
- 3.12 (COCF) You do not subject any person to detrimental treatment for making or proposing to make a report or providing, or proposing to provide, information based on a reasonably held belief under paragraph 3.9 or 3.10 above or 9.1(d) or (e) or 9.2(b) or (c) below, or under paragraph 7.7 or 7.8 of the SRA Code of Conduct for Solicitors, RELs and RFLs, irrespective of whether the SRA or another approved regulator subsequently investigates or takes any action in relation to the facts or matters in question. Early reporting - Circumstances capable of amounting to a serious breach
- High profile case of Emily Scott
- 7.12 (COCS) Any obligation under this section or otherwise to notify, or provide information to, the SRA will be satisfied if you provide information to your firm's COLP or COFA, as and where appropriate, on the understanding that they will do so.

SRA Accounts Rules

The definition of client money has changed (see new Rule 2.1).

Rule 2.2 provides an option for firms to hold limited types of client money outside of client account, provided that the only client money they hold is for billed fees and disbursements for expenses incurred on their client's behalf and the client is informed in advance.

Rule 2.3(b) exempts payments from the Legal Aid Agency from being held in client account.

Rule 4.3(a) requires a bill of costs or written notification to be given to a client before payment for fees is taken from client account money.

Rule 11.1 introduces a new right to use a third party managed account as an alternative to a client account, subject to the firm satisfying certain criteria (including keeping the client informed of arrangements) – we anticipate firms will adopt a “wait and see” approach on this, to watch how this is applied in practice.

Rule 3.3 makes it clear firms must not provide banking facilities via their client account – a hot topic for the SRA.

Guidance

<https://www.sra.org.uk/solicitors/guidance/guidance/>

- Representing people who lack mental capacity
- Operating a client's own account
- Adequate and appropriate indemnity insurance
- Client care letters
- Acting with integrity
- Approach to Equality, Diversity and Inclusion
- Do I need to operate a client account
- Joint accounts and record keeping
- Third party managed accounts
- Publishing Complaints Procedure
- Transparency Rules

Training Staff

“Firms will need to ensure that all employees (even if non-qualified and non-fee earners) receive appropriate training on the requirements in the Handbook, but only to the extent necessary for the role they undertake in the firm. For example, all staff will need to understand that they should keep clients' affairs confidential and behave with integrity; however it is likely that only those in fee-earning roles need be aware of the procedures required for checking for conflicts of interests and giving undertakings.”

- Reporting obligation and procedure
- Client care
- Competence
- Conflicts
- Confidentiality
- Dealing with others
- Banking Facilities and accounting to clients

Outstanding Questions

- Acting on both sides of conveyancing
- Putting things right
- Accounting to clients
- Charging for overheads

Lockton philosophies

- Be committed to the highest standards of excellence in everything we do
- Practice the Golden Rule, and sustain a highly ethical, moral and caring culture
- Recognise our associates as our most valuable assets
- Provide the opportunity and support that allows associates to grow, improve and achieve their ultimate potential
- Recognise and substantially reward exemplary associate performance
- Respect, value and nurture each client and carrier relationship



Thank you

