Consultation feedback on information gathering for risk-assessment

7 August 2008

Executive summary

This paper provides feedback on the results of the SRA's consultation paper dealing with proposed information requirements from firms in the context of a risk-based approach to regulation, which was published on the SRA website on 20 February 2008.

The consultation sought views on various proposals for collecting additional information from firms regulated by the SRA to develop a clear picture of the possible risks to clients and to the public interest generally. To achieve this we plan to collect and evaluate various categories of information, and to use this to develop a matrix of possible risk factors. Against this, we will be able to gauge whether particular factors or combinations of factors appear to give rise to a higher or lower risk of default within firms. The consultation also asked for views on various practical issues such as how frequently information might be collected, and the likely impact on business practices and equality and diversity issues.

We received 37 responses and, although this was a relatively low response rate, we were pleased to receive input from a wide variety of respondents. This paper looks at the main themes and issues that emerged from the consultation. It also provides a statistical analysis of the responses from a general perspective, as well as focussing on the profession's views.

In brief, we found broad agreement on the benefits of a risk-based approach, along with concerns about a heavier regulatory burden. It was also apparent that there are concerns about how the information will be used. By and large, we will be looking for indicators of risk. It is also important that we have a baseline of information that shows the current state of the profession. It is as important for us to monitor changes in the profession overall, so that we can anticipate risk, as it is to look at the detail of individual firms.

The consultation was a first step in the process of developing a risk analysis model, and the responses will feed into further work now being undertaken. This will include further consultation on the detail of the information to be sought, to help us to gather the most appropriate information from firms, in the most practical manner.

I Introduction

This paper provides feedback on the results of the SRA's consultation paper dealing with proposed information requirements from firms in the context of a risk-based approach to regulation. The consultation was published on the SRA's website on 20 February 2008. At the same time, an email alert was sent to approximately 1,800 subscribers to our email consultation alerts. It was also publicised in the April edition of ***SRA Update***, which is sent to approximately 120,000 regulated individuals, and to several hundred voluntary subscribers, including compliance specialists.

The consultation period closed on 30 April. We received 37 responses, which break down as follows. For details of who responded, see Appendix 1.

- solicitors in private practice - 13
- solicitors in employed practice - 2
- Law Society Regulatory Affairs Board - 1
- representative groups - 2
- local law societies - 4
- legal regulators - 5
- other professional regulators - 3
- other legal professionals - 1
- compliance officers - 1
- students - 1
- other bodies - 3
- commercial companies - 1

This consultation is a first step in the process of developing a risk-analysis model. Although the response rate was relatively low, we were pleased to receive input received from a wide variety of respondents. We will consult again on the detail of the information to be sought, to help us gather the most appropriate information from firms, in the most practical manner, and would be grateful for further input at that stage.

II Purpose of the report

This paper looks at the main themes and issues that emerged from the consultation, summarises the responses question by question and gives some quotes for illustrative purposes. It also provides a statistical analysis of the responses at Appendix 2.

The consultation proposed collecting a range of information types from firms to help us build a risk-analysis model. Most respondents considered some or all of the suggested information categories. A number added, or limited their responses to, general comments on the concept of developing broader information gathering, and details of these general comments are summarised below.

III General comments and issues

Confidentiality

A number of respondents assumed that the information collected would be accessible generally. In particular, some solicitors had concerns about disclosure of the information outside the SRA. Although it is important to report on the results of consultations, the information we intend to gather for risk-assessment purposes will be treated confidentially and used only internally within the SRA, subject to any statutory or public interest gateways. There is certainly no intention to publish any of the details we receive.

The Law Society and a number of solicitors also expressed concerns at the possibility of inadvertent disclosure of confidential information. This is a risk that all organisations holding information must guard against and data security is a high priority in our internal business systems. The SRA is very aware of its obligation, as set out in the Law Society's Information security policy and Data protection policy, to protect information against loss or compromise; and of the legal requirements under the Data Protection Act 1998 to store and process personal data securely and to keep data no longer than is necessary.

Regulatory necessity

A number of responses emphasised the need for the SRA to be fair, proportionate and reasonable in its approach. The City of London Law Society (CLLS) expressed a “general but very significant concern that the SRA is asking for large quantities of information from firms without a clear indication of why the information is necessary”. The Association of Personal Injury Lawyers (APIL) commented that “the level of intrusion into and control over law firms is not justified and could serve as a deterrent to legitimate and desirable business enterprise”.

Nevertheless, there was broad acceptance of the regulatory benefits in being more risk-aware. The Law Society agreed the underlying principle that regulation should be risk-based but cautioned that regulatory restrictions should only be imposed in response to genuine and quantifiable risks. The Legal Services Ombudsman’s (LSO) view was that “the SRA needs to build a clear picture of potential risks to clients and others affected by the work of solicitors. In order to do this it is important that the SRA gather a wide variety of information”.

In addition to information currently collected by the SRA, we suggested ten additional information categories in the consultation. Despite the concerns expressed, in all but two instances (where views were equally split), a majority of respondents supported these proposals – although that was not always the case with solicitor respondents (see Appendix 2).

Light touch regulation

As well as concerns about the need to be proportionate, a number of solicitors raised the issue of the "considerable administrative burden for regulated firms" and questioned how the proposals fit in with the development of "light touch" regulation.

One solicitor respondent felt that "the lighter of regulatory touches is more effective at maintaining proper standards, which are an attitude of mind, than the more bureaucratic approach……The dishonest will not be caught by your questions – those who are honest but struggling should not be battered by bureaucratic pressure – they should be helped".

The CLLS felt strongly that, at a time when the SRA is seeking help from large City firms in developing appropriate protocols for a light touch approach to monitoring of large firms, the proposals are "both heavy handed and excessive, and would render the initiative largely pointless." In a similar vein, a number of other respondents suggested that monitoring is a preferable means of gauging the "compliance-health" of the profession.

IV What types of information should we collect initially?

We want to develop a clear picture of potential risks to clients and the public interest generally to enable us to be proactive in risk management. To achieve this we plan to collect and collate various categories of information, to assess and weight them, and develop a matrix of possible risk factors. Against this we will be able to gauge whether particular factors, or combinations of factors, appear to give rise to a higher, or lower, risk of default within firms and therefore to clients. Currently we have information gleaned from complaints and disciplinary cases, but wish to collect information from all firms, so that our analysis is properly representative.

The consultation proposed that we ask firms to provide new types of information. Respondents were asked to indicate whether they agreed, disagreed or did not know whether we should collect the information, and to provide comments to explain their views. Helpful feedback was received although in the majority of cases explanatory comments were not provided.

The information we suggested collecting is set out below. With each proposed information category, there is an indication of the majority view and some detail of the feedback that we received. We have also given a separate indication of the views of solicitors as a particular grouping because they have the dual perspective of having regard for the need to ensure high standards and effective regulation of firms, as well as having to bear any additional burden that may result. (Note that in this category we have included solicitors in practice, the Law Society, and other representative groups such as local law societies.)

We suggested collecting the following types of information for the reasons stated.

Ownership

Details of ownership and voting rights would indicate the control within firms and compliance with legal requirements in the Legal Services Act.

There were strong feelings for and against this proposal, but a clear majority of respondents, including the practising profession, agreed with the suggestion to seek details of individuals' control of their practices.

A number acknowledged that this would benefit our risk-assessment by providing a clearer picture of how firms are controlled, but some felt that it should be sufficient to disclose the identity and status of managers, rather than the actual level of control. Where there was disagreement with the proposal, it was commonly because this level of detail was felt to be excessive and disproportionate, and to provide no clear regulatory benefit.

The Law Society was concerned that the requirement could prove extremely complex and time-consuming, because of difficulties over delineating the precise scope of ownership and voting rights, and suggested that this might lead to the need for firms to submit partnership agreements. The proposal is not, however, intended to glean information about the value of interests in firms but to help us understand their governance, and we would only expect to request documents evidencing ownership in exceptional cases.

Comments

"It is important for the purposes of integrity that all parties know who controls or has interests in firms." [SSPG]

"The information should be limited to identity and professional status of managers. Firms may regard matters such as voting rights as a private internal matter. If the SRA requires further information concerning non-solicitor involvement, the questions should be directed to this specific issue." [East Anglian Regional Law Societies]

"The acquisition of such information is beyond the scope of regulation. The SRA should only need to know that an entity's structure is legal. If independent confirmation is required of this it may be sought from the accountant's report." [Solicitor]

Turnover

Patterns of risk may be identifiable by comparing levels of fees to size of firm, work types and so on, or from significant fluctuations in fee levels over time. This could also be useful in formulating a future fee-structure.

A majority of respondents were in support of collecting details of turnover. In contrast to the general responses, approximately a tenth of respondents from the practising profession were uncertain whilst the remainder were split equally between believing that we should and should not gather such details. Those not in favour questioned the regulatory benefit and had concerns about the private nature of the information as well as the possibility of disclosure outside of the SRA. One respondent argued that some firms choose not to incorporate purely to avoid having such information published, but, as indicated, we do not intend to disclose the information collected.

The Law Society acknowledged that information on turnover should be readily available in firms, but questions its regulatory value.

The East Anglian Regional Law Societies, which felt that firms might regard this as intrusive, argued that insurers will have the information and have assessed the firm's risk, so on its own this information adds little. Additionally, one firm expressed the view that there should be a mechanism for the insurers to share information with the SRA to avoid unnecessary additional bureaucracy for firms.

Comments

"This information is already provided to insurers for risk assessment purposes and will be a useful tool for the same reason for regulatory purposes. The above reflects the view of 2/3 in support and 1/3 against. Those against feel that the firm's turnover should remain confidential." [Solicitor Sole Practitioners Group (SSPG)]

"Gross fees in themselves are not a risk indicator…however gross fees linked to other information, for example, category of work could be." [In-house solicitor]

"ILEX recognises the need for information about a firm's turnover when the ABS structure is fully implemented. For the purposes of LDPs, however, ILEX is of the view that the information in respect of an LDP's turnover may be disproportionate to the risk posed." [Institute of Legal Executives (ILEX)]

Work types

Patterns of risk may be identified with different areas of work, either alone or in combination with other factors.

Although a third of respondents demurred, a clear majority of all respondents agreed that we should collect information on the work carried out by firms. It was acknowledged as commonplace to declare this in insurance proposals, so it should not prove difficult for firms to provide work-type details. Requests were made that there should be consistency with categorisations used by the insurers, and for clarity of definitions to avoid inconsistency between firms.

Again, the Law Society acknowledged that information on work types should be readily available, but questioned how this would be used to mitigate risks.

The Office of Fair Trading (OFT) confirmed that Group Licence holders (of which the SRA is one) must now provide a Fitness and Compliance Plan giving background information on the membership of the Group, including a description of its business activities.

Comments

"If there are particular types of work that are considered to be higher (or indeed lower) risk and such distinction is in turn relevant to the way in which firms are to be regulated, we can see the relevance of this information. However, we would like further information on how such work types are to be defined. Different firms may well define similar types of work differently and there is scope for inconsistency." [CLLS]

"There might be some merit in identifying firms which are heavily dependent on one type of work, such as legal aid, or only a few major clients. However, identifying major clients raises confidentiality issues." [East Anglian Regional Law Societies]

"It is hard to see why some firms doing a particular type of work considered more "risky" should be penalised." [Solicitor]

Associations

Details of associations/connections/relationships with solicitor and non-solicitor businesses or firms such as a referral or fee-sharing arrangement.

There is support both within and outside the legal profession for gathering information on any associations and connections that firms have. A majority overall agreed with this proposal, whilst only half of solicitor respondents agreed. A number of responses highlighted the risk of possible confusion and the need, therefore, for clarity in the relationships and connections that would be disclosable.

Currently we request information on referral arrangements only, and some felt this is sufficient and should not be expanded. Others felt that, because this information is commercially sensitive, details should be sought only in the event of allegations of misconduct or fraudulent activities. In contrast, there was comment that it is important to broaden the scope of our understanding of firms' relationships in the field and we should also, therefore, include details of arrangements with claims managers and ATE insurers.

Comments

"It is important for the purposes of integrity that all parties know who controls or has interests in the firms." [SSPG]

"Nothing really new here. The risk assessment would be suspect without this information." [Solicitor]

"We appreciate that information on these areas may be relevant to assessing risk, taking into account, for example, the need to ensure that appropriate referral arrangements are being followed and that any moves towards future ABS models are kept within the boundaries of existing rules. We would, however, urge the SRA to keep in mind the need for any requirements in this area to be proportionate, having regard to the fact that existing firms already have a variety of business associations and connections (within existing regulatory constraints) which in most cases do not point to any increased risk." [The Law Society]

External influence

Details of outside involvement or influence can help identify whether the properly regulated owners of firms control and run them.

The suggestion of asking for details of anyone who may exercise some otherwise unseen control over firms brought forth a range of views. Overall, half of respondents agreed with collecting the information, whilst a small majority of solicitors were in support.

Views were expressed that not only is this intrusive but it goes beyond the regulator's role, and that it may be difficult to frame a meaningful question on what is an "unscientific" concept. There was also speculation that such enquiries would provide limited regulatory benefit because of the risk that firms might not be entirely open in declaring such interests.

On the other hand, there was support for the idea that the information is necessary to ascertain actual control within firms and that it would help to identify "pre-emptive alternative business structures" which may be created before a proper regulatory framework is in place. Although the purpose of collecting additional information generally is to develop a risk-assessment model, if a particular response from a firm identified a potential issue such as improper control of the firm (for example, control not permitted by law) the SRA would be able to act on this.

Comments

"The gathering of this information may be problematic in the sense that it will be difficult to establish the influence or the extent of influence someone has in the firm which is not evident from the details of ownership." [ILEX]

""Are you under the influence of any person or institution that might lead you to unprofessional behaviour?" This would be insulting." [Solicitor]

"While this level of monitoring may be appropriate in the case of ABS firms, given the relative complexity and unfamiliarity of externally owned structures, and the need to ensure professional independence in this context, we do not think it is appropriate to impose requirements of this nature on existing firms, which give rise to no such issues, and are already (even in the case of LDPs) subject to numerous regulatory restrictions on ownership/control". [The Law Society]

"This type of information is important to try and establish whether there are any improper influences within the firm.....there should be some form of statutory declaration to ensure the supplier of the information takes responsibility for its accuracy." [Anonymous]

Negligence claims

The number or type of claims might be shown to bear some relation to regulatory risk.

This suggestion also saw a split in responses – overall, respondents were in favour but amongst solicitor respondents, a majority disagreed with the suggestion that information on negligence claims would help our risk assessment work.

The suggestion aroused considerable concern amongst solicitors and their representative groups about the possibility of the SRA disclosing such information, because of the reputational damage this could cause.

Where respondents expressed a view on how we might approach this, a number felt that all claims, including notified claims and (with more limited support) all civil claims, should be disclosed. However, the majority view was that we should ask only for details of successful negligence claims. Perhaps understandably, some solicitors feel that the number of claims should not of itself be "used against" firms and they should not be penalised for unwarranted claims, highlighting that this can reflect a

"claims culture" in some areas. One respondent was concerned that the requirement may discourage firms from reporting claims to their insurers, and another asked that firms should be able to provide explanatory comments to the SRA if information on claims is sought.

From a practical perspective, there were suggestions that the information should be obtained from insurers, either on an annual reporting basis or through a more ad hoc system of disclosure where the insurer feels there may be concerns about a firm, although this may be a burden that insurers do not wish to assume.

Comments

"I have never had one but I think our insurers can be left to deal with this and as we all know many cases without any merit are settled by insurers against the preference of the lawyers so it is not at all fair to disclose the claims or base things on the claims." [Solicitor]

"Both asserted and "successful" claims should be gathered (separately).

In terms of risk assessment, the former will be more valuable. The numbers of claims in the two categories may be insufficient and some detail about the nature of the claim may be necessary." [In-house solicitors]

"Insurers do it and firms should do it BUT pure statistics for a single year are relatively worthless. What is needed is a five (preferably ten) year snapshot of notifications and outcomes. The responsible firm will have all of this information at its fingertips." [Solicitor]

"If such information is sought, firms should have the opportunity to provide appropriate comments. Any system should not affect the way in which firms will deal with claims, and so settled claims should be reported also." [East Anglian Regional Law Societies]

"We do not think the number of claims alone will serve any useful purpose. Many claims are settled and we think that information should remain confidential to the firm. Moreover, the information given by firms to professional indemnity insurers is highly confidential and any leak could prove very damaging to a firm and its insurers." [CLLS]

Manager/employee dismissal

To help "track" whether some individuals may be associated with problems in firms

Again, the suggestion of seeking information on the reasons why managers and possibly other members of firms have left the firm produced a split in responses – on the whole respondents were in favour but amongst solicitor respondents, almost two thirds disagreed with the suggestion. In fact, this proposal attracted the least support from solicitors.

Whilst there was acceptance of the benefit of collecting this, it was clear that there were strong feelings amongst members of the profession that this is private, "internal" information and does not bear on regulatory matters. Many felt that the current requirement to report serious misconduct is sufficient and expanding this would

provide information from which it would be difficult to draw reliable regulatory conclusions. There was also considerable concern that, if released, such information would prejudice individuals, possibly because of events arising merely out of "personal incompatibility".

Comments

"Firms are already obliged to report dismissal of employees on misconduct grounds. We think that a requirement to state full reasons for dismissal in every case would not be welcomed by firms. This could result in evasive responses from which it would be difficult for the SRA to draw any genuine risk-based conclusions." [The Law Society]

"Any information under this heading is likely to be so tied up in the legalities (Human Rights, Employment Protection, Defamation, Confidentiality, You Name It) that it will be useless, at least for the purpose of forming a strategy or a policy." [Solicitor]

"This information may provide evidence in relation to the competence of the Group Licence member to carry out credit activities and any potential risk of consumer detriment." [OFT]

Other roles of managers

Managers' involvement in another business or occupation might interfere with the running of a firm.

Other than a small number who were undecided, there was an even split between respondents on whether they thought there would be benefit in collecting details of roles or occupations that managers may have outside of the firm. However, only a third of solicitor respondents were in support, whilst half did not agree with the suggestion.

There were a number of concerns that this information is private and confidential, and that its value in regulatory terms is not obvious. However, there was acknowledgement from a number of quarters that some information may be of value. Examples put forward included details of roles that are identified with risk; external roles of non-lawyers; roles in other regulated entities providing legal services; and a high-level indication that managers have other roles without provision of detail. A practical issue raised was the need to limit the extent of information required, as some managers will have large numbers of executive positions, trusteeships and so on.

Comments

"The information collected should be limited to identifiable roles outside the firm which increase risk. Anything else is not, bluntly, the SRA's concern." [Solicitor]

"Outside involvement by managers should be disclosed in case of conflicting interest." [Solicitor]

"A register of such interests may be useful in the context of potential conflicts of interest, however what occupations or interests are to be disclosed? There is a differing view that outside involvements by managers should be disclosed in case of conflicting interest." [SSPG]

"A sensible question if it is coupled with an indication of time (per month/year) involved." [Solicitor]

"As with some of the other suggested requirements above, we can see that it might be appropriate to seek some detail on this at a very general level, but that to require detailed information on the nature of managers' other business involvement as a matter of course would be unnecessarily intrusive and involve gathering a large amount of often irrelevant detail." [The Law Society]

Financial stability

A lack of financial stability might indicate a risk to clients' money.

This proved inconclusive, with an equal number of respondents in favour of and against the suggestion that we enquire about firms' financial stability. Amongst solicitors, a majority were against the suggestion.

The Law Society indicated that it appreciates the intention behind seeking assurance of financial stability, but, along with a number of other respondents, raised the difficulty of how to judge or to define financial stability. The difficulty, highlighted in a response from in-house solicitors, is posing the right question to prompt a useful reply.

Another respondent felt that confidential internal financial information about the way that a practice is run is often critical in evaluation of regulatory risk, commenting also that refusal to provide relevant financial or confidential information can mask an area of regulatory breach.

Again, there are clearly concerns about disclosure of "personal and private" details and for this reason, as well as to lessen administrative input, some indicated a preference for self-certification of solvency. Amongst those agreeing to the proposal, there was support for the idea that reporting accountants should confirm the position or, alternatively, that they should be required to whistle-blow where there appears to be problems. The Institute of Chartered Accountants in England and Wales (ICAEW) did not support this proposed approach, expressing concerns as to the practicalities and costs involved. See full comment below.

Comments

"It is suggested that "[the SRA] believe…that there would be benefit in having information about financial stability. [The SRA] recognise that identifying the relevant detail will be difficult and may only give a snapshot at a single point in time."

Although this is a high-level suggestion at this stage, we discourage the SRA from introducing a requirement for such an opinion. An opinion on the financial stability or a firm is necessarily difficult as the future is inherently uncertain. Any report on such matters would include such serious caveats that its utility would be in question and the cost of producing it is likely to outweigh any benefit that may accrue to the SRA.

It is possible in certain situations for accountants to provide statements on working capital forecasts. However, this is a very complex area and even where it might be possible to do this, the costs and risks of doing so are likely to be so great as to lead accountants to conclude that they should not provide such a report. It would also

require firms of solicitors to install systems to provide the data to produce such forecasts and this would be another cost.

We would also discourage the SRA from increasing the remit of the Solicitors' Accounts Rules without full consultation with the reporting accountants who will be called upon to undertake the work. It is also important to note that

- Not all firms will hold clients' money and therefore the role of the reporting accountant will be limited

- Not all firms will have auditors

- Where both a reporting accountant and auditor are appointed the two positions will not always be occupied by the same individuals or the same firm." [ICAEW]

General duty to disclose

To establish a general requirement for firms to deal openly with the SRA and to disclose appropriately anything relating to the firm

The responses to this suggestion show the greatest discrepancy between the views of respondents generally and those of solicitors, with almost two thirds of all respondents in favour of a general requirement for disclosure of relevant information, whilst almost two thirds of solicitor respondents disagreed. The imposition of such an obligation was clearly felt by the profession to be an unreasonable requirement, and was described by one respondent to be "draconian".

Although strong feelings were expressed, there were few specific concerns raised. These concentrated mainly on the difficulty of defining the area of disclosure and the fear that firms will be uncertain of their obligations. Subject to careful wording and clear definition, there was support for the view that this is a sensible approach to modern regulation, where complexity can cause difficulty in specifying all relevant issues.

Comments

"Strongly disagree with the SRA's proposal. The definition of "appropriate" is unclear and therefore promotes a risk of confusion and lack of proportionate approach." [Solicitor]

"Today this makes sense." [Solicitor]

"The required information should be specified clearly, and any obligation should be limited to new firms created during the year. It would be onerous to create a further disciplinary offence of failing to notify information, particularly when the list of matters to be notified is non-exhaustive." [East Anglian Regional Law Societies]

"ILEX is of the view that it is in the public interest to impose a general requirement of disclosure. This is consistent with the insurance industry and the doctrine of 'utmost good faith'. Moreover, it would encourage firms to deal openly with the SRA." [ILEX]

"The SRA should start by collating basic information and then add to it as necessary." [CLLS]

"SRA should give examples of what is appropriate (Speeding tickets - no? Disqualification as a director - yes?). There are others who are of the view that this is too widely drawn and nosey and would be contrary to the rules of natural justice and possibly human rights legislation." [SSPG]

"This will enable the SRA and ultimately the Law Society to have the most accurate and up to date information on its members and their activities……The OFT expects Group Licence holders to maintain an up to date register of those members covered by the Group Licence. In addition the Fitness and Compliance plan must [include] information on the requirements of members of the Group Licence to notify the Group Licence holder of relevant changes in details of membership." [OFT]

V Should we collect more in future?

As well as the suggestions above, we asked for views on a number of other categories of information that we think might be useful in developing our risk assessment work in future. There were 32 responses to this part of the consultation. Specifically, respondents were asked whether they would be opposed to our collecting this information on the following:

- equality and diversity - 56% against
- internal complaints - 56% against
- conduct compliance - 44% against
- competence - 38% against
- training - 41% against
- other legal claims - 56% against
- staff details - 50% against
- other income - 47% against
- bank details - 47% against
- citizenship status - 56% against

Most respondents indicated agreement or disagreement with the suggestions but only a minority of respondents offered reasons for their preferences. Where views were expressed, most commonly respondents felt that we should not collect these additional categories of information because of the heavy administrative burden for firms, with no obvious regulatory benefit to be gained. However, one solicitor respondent commented that "a responsible firm should have no trouble in providing all this information (if it is really necessary)".

Although some respondents supported the proposals (the OFT for example felt that it would assist the SRA having a better understanding of its firms), concerns were raised. The CLLS felt that it might be difficult, particularly for large firms, to provide unqualified assurances, such as confirmation of competence or compliance with all

conduct requirements. Some also questioned the value of this type of self-certification.

In more detail, the additional areas of information we suggested might be useful were:

Equality and diversity

To help get a clearer picture of the make up of firms

The Office of the Legal Services Complaints Commissioner (OLSCC) felt that it is essential to collect information on equality and diversity, and the ILEX supported the idea of encouraging firms to have effective policies in this area. Solicitors generally felt that, unless there is a statutory requirement for this, collecting it would be intrusive and unnecessary.

Internal complaints

To gain a better picture of how effectively complaints are dealt with in house

Again, the OLSCC felt that it is essential to collect information on complaints against firms.

Comments from other respondents included that firms must have the opportunity to provide an explanation as complaints may have been unjustified; it is difficult to make any proper comparison between firms on this information because of size of firm, nature of work and so on; and it would be difficult to provide accurate information.

Although there was no clear preference, suggestions for the type of information to collect included information on the number, type and method of resolution of complaints; only those referred to the LCS; and only complaints that are upheld.

Conduct compliance

To obtain specific confirmation of compliance with a range of the conduct rules

The regulatory benefit of this was questioned. There was also scepticism as to whether firms can realistically certify that there has been compliance in every case. One respondent's view was that firms are unlikely to disclose known non-compliance and that it would be better to issue guidance and provide assistance in complying. The Office of the Immigration Services Commissioner (OISC) commented that confirmations of compliance may remind solicitors of their obligations, but acknowledged that they are likely to appear bureaucratic if not used sparingly.

Competence

To monitor firms' competence in providing their services

There appears to be a relatively high degree of support for the SRA collecting information on competence, although some questioned the benefit of this to the

public interest and for risk assessment. The OFT welcomed the possibility that this could provide evidence of knowledge of relevant consumer law.

A number supported relying on continuing professional development obligations.

Training

Details of training in legal and conduct issues to ensure a proper professional service

One respondent commented, “A firm that is badly organised or which carries inadequately qualified staff for the kind of work it is taking on also represents an unacceptable regulatory risk”. However, although there was overall support for the idea of seeking information about the training received by members of firms, the comments received were mainly in support of maintaining the status quo and monitoring training, as necessary, through visits to appropriate practices.

Other legal claims

Details of all legal claims against firms to gain a picture of their well-being

Again a majority felt that it would be excessive and without benefit in risk-avoidance to collect information on a broader range of legal claims than just negligence cases. There was comment that, if we collect this information, it should be restricted to information on claims relevant to risk, such as debt matters.

Staff details

To help monitor effectiveness of staff with fee-earning and supervisory responsibility

There was an equal response for and against the suggestion to ask about qualifications of staff and supervision arrangements. Likewise, the comments we received were evenly split. Some queried how this would be beneficial in regulatory terms but there was also support for the view that it would be helpful for us to have details, in particular, of members of firms in fee-earning and supervisory roles. This was felt by one respondent to be especially so, as greater flexibility is introduced into legal business structures.

Other income

To monitor the effect of other sources of income, such as commissions received

There was acknowledgment from more than one local law society that details of other sources of income for firms and their members would have regulatory use, albeit the request would feel intrusive.

In particular, the issue of commissions was raised by some. Respondents varied in their views from those who believe this information should be collected, as they do not support firms retaining commissions, and others who feel that firms rarely retain commissions so the question would not produce any useful information.

Bank details

To help ensure that client money is properly protected and easily accessible

Views expressed on the collection of details of firms' client accounts, ranged from a belief that this must be critical for the regulator to ensure ready access to client money if problems occur, to considerable concern that there may be a security risk of the information being disclosed more widely than intended.

Citizenship status

Certification of satisfaction of citizenship status of members of the firm

Although a reasonably significant proportion of respondents (44 per cent) agreed that it would be helpful to ask firms to certify satisfaction of the citizenship status of firm members, the comments received were almost entirely against the proposal on the basis that this is a legal responsibility of firms, and not a matter for regulation.

VI Other questions in the consultation

In the consultation, we asked for views on some additional matters to help us to try to assess the likely impact of our proposals.

Frequency of collection

Should information be collected less frequently than annually? And if so, what types of information and how often?

A majority of respondents agreed that collecting risk assessment information annually is appropriate, although a minority of solicitors supported this.

Many acknowledged the sense in tapping into existing annual processes such as renewal of indemnity insurance and practising certificates. A number asked that, for ease, the information requested should reflect that required by insurers and be collected at a similar time.

Those not in favour of an annual process suggested a number of alternatives, including three, five and ten-yearly collections, with an obligation to update on an ad hoc basis if material changes occur. Reluctance for an annual collection mainly arose from concerns about the additional administration this would cause, and the belief that information is unlikely to change a great deal year by year so that an adequate "snapshot" of the profession can be taken less frequently.

Suggestions for information to be collected less frequently than annually included details of complaints, competence and equality and diversity.

Comments

"We believe that all required information should be collected annually. The more information is obtained about regulated firms, and the more frequently it is obtained, the more accurate the risk assessments made from them will be. While collecting such volume of information may initially appear onerous, the savings to be made

from well-targeted regulation are far more compelling. In addition, it should become progressively easier for regulated firms to meet the new requirements." [OISC]

"The need to call for information from every firm every year should be balanced with the use to which it will be put. It may be that it would be sufficient to undertake periodic surveys to establish and track changes in the overall population of firms. For example, information on diversity is unlikely to change year on year and a smaller sample of some firms on a periodic basis may be a more efficient way to deal with this." [ICAEW]

Other information

Are there other types of information we might gather to help us in risk assessment?

Of 32 responses to this question, 25 respondents felt that there is no need for further information to be collected. However, suggestions that were made included collecting information on:

- names of individual solicitors and firms including changes to names [Law Society]
- intended mergers/acquisitions [solicitor]
- planned expansion outside the UK [solicitor]
- changes to ownership [solicitor]
- ongoing criminal proceedings, charges or convictions [legal regulator]
- information on any investigation which might impact on the regulated person's integrity [legal regulator]
- information about files, papers, arrangements for clients and client account on closure or split of a firm [legal regulator]
- status of legal aid contract [Legal Services Commission]
- systems for checking qualifications, references and criminal records of staff [legal regulator]
- policies in firms for dealing with medical issues affecting competence and fitness to practise [legal regulator]
- working conditions that could negatively impact on competence and fitness [legal regulator]
- systems for ensuring competence and fitness to practise [legal regulator]
- conflicts of duty and between clients [QC]

It is likely that some at least of these suggestions would be controversial. In any event, it is appreciated that firms may find it difficult to provide accurate information that is to some extent speculative, such as future possible plans.

Ease

Are there particular types of information that it is easy to provide? Or a particular approach to requesting the information that would make it easier for firms?

A relatively small number of respondents offered suggestions of the types of information that would present little difficulty to produce. Possibilities for consideration included:

- financial information [compliance officer]
- staff details, highlighting fee-earners [solicitor]
- complaints [compliance officer]
- training records [compliance officer]
- expansion/merger/acquisition intentions [compliance officer]
- work types and percentage of business [compliance officer]
- for corporate bodies, information required in the Annual Return and Annual Report [CLLS]
- financial details of other interests [solicitor]
- information given on the indemnity insurance proposal [solicitor; compliance officer; and legal regulator]
- information about predecessor partnerships [compliance officer]

On ease of provision of information to the SRA, there was significant, but not universal, support for online returns. However, there are concerns that this provides greater issues of security and confidentiality, so manual submission should always be an option. There was considerable support for forms being pre-populated with information provided previously.

The LSO suggested that, rather than producing all information, firms retain some in-house but keep it available for inspection by the SRA, for example employment records.

The point was also made that initially firms may not be able to produce the information requested, and time will need to be built into the process so that firms can develop systems to capture the details requested.

Consistency

Should we collect extra information from some firms and, if so, what information and from what types of firm?

A narrow majority agreed that we should collect the same information from all firms, at least initially. There was comment that a "one size fits all" approach might not be suitable, but respondents also expressed caution and the need to be fair and even-handed across firms.

Where respondents felt there should be a distinction, suggestions were made that more information should be sought from firms with bad compliance records or working in perceived risk areas, such as large, complex firms; those undertaking high risk work or holding large amounts of clients' money; or firms with a low ratio of lawyers to unqualified staff. Alternatively, collection of some information could be "triggered" by certain events, such as a late accountant's report or practising certificate application. The Bar Standards Board suggested there could be justification for treating non-limited liability partnerships with a lighter touch than limited liability vehicles.

The CLLS raised particular concerns that information would be needed not only for the UK offices of international firms but also for their overseas branches.

Business impact

Can you foresee any potential impact on your own business practices?

This question was addressed to solicitors and a very high percentage anticipated that information gathering would impact on their businesses. The most commonly expected effects, which were clearly matters of concern, were increased time and costs, including the possibility of higher accountants' fees and increased costs of the SRA, which would be borne by firms. The SSPG flagged up that the proposals are likely to place an unfair burden on small firms which tend to be less well resourced than larger practices.

There was also strong resentment at the intrusion into what were regarded as firms' personal affairs, as well as concern at the possible risk to client confidentiality if required disclosures of information involve client details.

Equality and diversity

Can you foresee any potential adverse impact on equality and diversity?

A majority expected that there would be no adverse impact on equality and diversity arising from the proposals, although the margin was narrow. However, there were few comments as to what the perceived impact might be. The main issue, which was raised by a number of respondents, was that the requirements would have greater impact on small firms, and therefore on members of minority groups, particularly black and ethnic minority groups, who are more likely to practise through smaller vehicles. Both firms and their clients may be affected – one respondent commented that "there are significant numbers of small firms, dealing with clients on low or fixed incomes, which are led by solicitors from ethnic minority [groups]".

Another response highlighted the need to ensure that facilities for submission of information to us by disabled persons are addressed.

VII Conclusion

It has been helpful to receive a wide range of views both on the philosophy of our proposals and on the anticipated impact of these on firms.

There is widespread agreement that a risk-based approach is beneficial, although there are clear concerns amongst solicitors that this will result in an increase in regulatory requirements. In particular, there are feelings that this is inappropriate against a backdrop of our aim to develop a more “light touch” approach, and at a time when other major changes are affecting the profession. We take this on board and are committed to ensuring that our regulation is proportionate, and properly targeted to enhance public confidence in the profession and sustain high standards.

In moving forward from the consultation, the decisions taken on the steps needed to improve our approach to risk-avoidance will take account of the input from respondents. We believe that we have to be innovative in our approach, although understand the concerns to ensure regulatory necessity. At this stage, we are not able to provide specific guarantees of the value of each type of information collected. On the other hand, the proposals are not random, they are based on earlier research and benchmarking. We feel that to be too cautious in taking this work forward will negate the benefits to be gained for clients, for firms that present a low risk, and for the reputation of both the profession and its regulator.

Some respondents suggest that we should maintain an awareness of the current compliance-health and trends in the profession through monitoring visits. This is something we already do for a range of reasons and it is an effective tool in feeding into our overall picture of the profession, as well as providing information on particular areas of interest or concern. Because practicalities preclude us visiting all firms on a regular basis, we aim to target resources through broader information collection to give a fuller picture. In light of the responses to the consultation and the fact that it will take a number of years to develop a sufficient database to provide a meaningful range of information to draw on, it is likely that we will collect information on an annual basis and, initially at least, seek the same information from all firms.

There were some useful points on the possibility of collecting different information from different types of firm but there was no overall disagreement to our taking the same approach to all firms initially. In practical terms, collecting a range of information from all is likely to enable a more realistic judgement to be reached on whether it might be sensible in future to apply different approaches to different types of firm.

We are aware that the proposals would impact on firms’ compliance work. Views were expressed in the consultation that any information requested should coincide in both content and timing with that already sought from firms, for example, by the professional indemnity insurers. To lessen the burden our hope is, as far as possible, to use our existing information requirements as a base for development, as well as those of the insurers. For reasons of administrative efficiency, it is likely that the timing of requests will coincide with the annual practising certificate renewal process, which in future will also coincide with renewal of firms’ recognised body status.

We appreciate concerns about the additional burden for firms where we seek new types of data, and the need therefore to tailor questions to make it as straightforward as possible to assemble and provide the information. We intend to consult again on the detail of proposed questions so that firms, in particular, can contribute to our approach.

[Susan Perry]

Appendix 1 – Respondents to the consultation (not confidential)

This list includes only those who agreed to their names appearing in a list of respondents for publication

- The Law Society Regulatory Affairs Board
- Solicitors Sole Practitioners Group
- Association of Personal Injury Lawyers
- East Anglian Regional Law Societies
- The City of London Law Society
- City of Westminster and Holborn Law Society
- Legal Services Ombudsman
- Bar Standards Board
- Institute of Legal Executives
- Office of the Legal Services Complaints Commissioner
- Office of the Immigration Services Commissioner
- Office of Fair Trading
- The Insolvency Service
- Legal Services Commissioner
- The Institute of Chartered Accountants in England and Wales
- Royal Institution of Chartered Surveyors
- Matthew Taylor, solicitor, Matalan
- ES Singleton, solicitor, Singletons
- Chris Evans, solicitor, ebw solicitors
- Rob Pearson, solicitor, Curwens
- Parr & Co Solicitors
- Jeremy Basil Canter Simmonds, retired solicitor/consultant
- Peter Fairley, solicitor, C.C. Bell & Son

- DLA Piper UK LLP
- Irwin Mitchell Solicitors
- Tim Dutton, QC
- Allianz Legal Protection

Appendix 2 – Statistical breakdown of responses

Proposed information collection – a statistical analysis of responses

Note

- Figures in brackets indicate the number of solicitor respondents (in this category we have included solicitors in practice, representative groups such as local law societies, and the Law Society).
- Figures in bold indicate the highest response in that category.

Re section IV - What types of information should we collect initially?

Ownership

	Count	% of total responses	% of solicitors' responses
Should gather	22	**67**	**58**
Should not gather	9	27	32
Don't know	2	6	10
Total	33(19)		

Turnover

	Count	% of total responses	% of solicitors' responses
Should gather	14	**48**	**44.5**
Should not gather	10	35	**44.5**
Don't know	5	17	11
Total	29(18)		

Work types

	Count	% of total responses	% of solicitors' responses
Should gather	18	**60**	**56**
Should not gather	10	33	39
Don't know	2	7	5
Total	30(18)		

Associations

	Count	% of total responses	% of solicitors' responses
Should gather	19	**63**	**50**
Should not gather	8	27	39
Don't know	3	10	11
Total	30(18)		

External influence

	Count	% of total responses	% of solicitors' responses
Should gather	15	**50**	**55.5**
Should not gather	9	30	39
Don't know	6	20	5.5
Total	30(18)		

Negligence claims

	Count	% of total responses	% of solicitors' responses
Should gather	16	**54**	37
Should not gather	12	39	**58**
Don't know	2	7	5
Total	30(19)		

Manager/employee dismissal

	Count	% of total responses	% of solicitors' responses
Should gather	15	**48**	22
Should not gather	12	38	**61**
Don't know	4	14	17
Total	31(18)		

Other roles of managers

	Count	% of total responses	% of solicitors' responses
Should gather	14	**44**	33
Should not gather	14	**44**	**50**
Don't know	4	12	17
Total	32(18)		

Financial stability

	Count	% total responses	% solicitors' responses
Should gather	13	**42**	37
Should not gather	13	**42**	**58**
Don't know	5	16	5
Total	31(19)		

General duty to disclose

	Count	% of total responses	% of solicitors' responses
Should gather	18	**58**	35
Should not gather	12	39	**59**
Don't know	1	3	6
Total	31(17)		

Re section V - Should we collect more in future?

Information for future collection?

There were 32 responses, which dealt with some or all of the suggestions in this section.

Information type	SRA should **not** collect this	% of total respondents
Equality and diversity	18	56
Internal complaints	18	56
Conduct compliance	14	44
Competence	12	38
Training	13	41
Other legal claims	18	56
Staff details	16	50
Other income	15	47
Bank details	15	47
Citizenship status	18	56

Re section VI - Other questions in the consultation

Frequency of collection?

	Count	% of total responses	% of solicitors' responses
Should we gather annually	18	**60**	41
Should gather less frequently than annually	12	40	**59**
Total	30(17)		

Other information?

Would other types of information help in risk-assessment?	Count	% of total responses	% of solicitors' responses
Yes	5	18	11
No	23	**82**	**89**
Total	28(18)		

Ease?

Are some types of information easier to provide?	Count	%		Is there an easier way to provide information?	Count	%
Yes	9	38		Yes	10	**56**
No	13	**62**		No	7	44
Total	22			Total	17	

Consistency?

	Count	%
Same information from all firms	14	**54**
More information from some firms	12	46
Total	26	

Business impact? (this question was addressed to solicitors)

	Count	%
Foresee impact on business practices	15	**83**
Do not foresee impact on business practices	3	17
Total	18	

Equality and diversity?

	Count	%
Foresee adverse impact on equality and diversity	11	44
Do not foresee adverse impact on equality and diversity	14	**56**
Total	25	