

Outcomes-focused regulation

Transforming the SRA's regulation of legal services

Second consultation paper

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Executive summary

The SRA is transforming its approach to regulation for the benefit of consumers. We recognise that significant reform of our traditional approach is necessary if we are to be a "fit for purpose" regulator fit for the new legal landscape brought in by the Legal Services Act 2007.

In particular, we recognise that

- our current rule book is detailed and prescriptive. It tends to lead to the use of resources which could better be deployed on higher-risk areas and doesn't help us to get the best out of our relationship with the profession. Even in the current marketplace it becomes increasingly difficult for detailed rules to keep pace with change. This will be even more so with the liberalised legal landscape starting in October 2011. A rule book needs to be fit for purpose;
- our regulatory approach needs to be more effective, proportionate and targeted so we can consistently regulate a greater range of legal service providers with a targeted, risk-based approach.

Consequently, the SRA will move to a system of outcomes-focused regulation (OFR) which will offer

- a better focus on making sure firms offer good standards of service to consumers; and
- good firms more flexibility in how they operate their businesses.

This transformation will involve

- changing the way the SRA delivers its regulatory objectives,
- changing the relationship legal service providers have with the SRA, and
- further development of SRA staff skills and competencies.

How will we deliver OFR in practice? Our approach will include

- working with firms to focus on acting in a principled manner to deliver good standards of service to clients, rather than compliance with detailed rules;
- a sophisticated desk-based research and analysis capacity to assess potential risks to the regulatory outcomes and support the delivery of targeted proactive regulatory action;
- an approach to authorisation that is risk and evidence based, making sure that legal services are delivered by principled and competent firms and individuals;

- an approach to supervision which encourages firms and individuals to tackle the risks themselves, allowing us to concentrate on those who can't, or won't put things right;
- an approach to enforcement which creates a credible deterrent and is effective, fair and proportionate; and
- concentrating our resources on dealing with those firms who pose a serious risk to our regulatory objectives, such as protecting and promoting the interests of consumers.

We want to foster a flexible and innovative market for legal services, combining improved access to justice with assured standards. For that reason, our plans for OFR will be introduced at the same time as the framework permitting alternative business structures (ABSs) in October 2011.

Flexibility, not lower standards, is the keynote of the new regime. Firms will be able to show compliance in ways best suited to consumers and their businesses. The SRA will act flexibly in its regulatory dealings, improving effectiveness and efficiency.

The risk-based approach will focus on the things which really matter to consumers and legal service providers. OFR is not light-touch regulation, it is effective regulation. It turns the page to a new chapter in the relationship between consumers and the law.

The purpose of this document is to set out our approach to this transformation and seek your views to influence and shape our thinking.

I. Introduction

1. The SRA is transforming its approach to regulation and how we relate to and work with providers of legal services. Against a background of significant and welcome modernisation of the legal framework for the delivery of legal services, we will deliver a risk-based approach to regulation, focused on supporting delivery by providers of legal services of good outcomes for consumers and the public interest.

2. In particular, we recognise that significant reform of our traditional approach is necessary if we are to be a "fit for purpose" regulator in the new legal landscape brought in by the Legal Services Act 2007.

- Our current rule book is too detailed and prescriptive and doesn't help either the profession or ourselves to get the best regulatory outcomes or develop a relationship based on trust and confidence. It needs to support and not hinder innovation for the benefit of consumers and encourage a much stronger focus by firms and by us on the overall quality of legal services.
- Our regulatory approach needs to be more effective, proportionate and targeted. Historically, we have spent too much time dealing with low-level issues, making it harder to focus on what is really important. We need to significantly improve our capacity to identify and deal with high-risk issues.

3. Our new approach will have far-reaching implications for all the firms and individuals we currently regulate, the ABSs we plan to regulate from 6 October 2011, and for consumers of legal services. The purpose of this document is to set out our approach to this transformation and seek your views to influence and shape our thinking.

II. Background

Legal Services Act (2007)

4. The Legal Services Act 2007 (the "Act") sets out a new regulatory framework for regulators and the ownership of legal service providers. It created the Legal Services Board (the "LSB") which is responsible for overseeing legal regulators, including the SRA.

5. The Act enables new forms of legal practice to develop

- legal disciplinary practices ("LDPs") which are firms involving different kinds of lawyers, and up to 25 per cent non-lawyers, but still providing traditional legal services, and
- ABSs which will allow external ownership of legal businesses, multidisciplinary practices (providing legal and other services) and many variants.

6. On 31 March 2009, the SRA implemented a package of amendments to its rules and regulations to support LDPs and firm-based regulation.

7. The SRA will apply to the LSB to become a designated competent licensing authority ("LA") in order to be able to license and regulate ABSs. We intend to make our application early in 2011, with a view to licensing our first ABS on 6 October 2011.

SRA's January 2010 Strategy Paper: "Achieving the Right Outcomes"

8. "[Achieving the Right Outcomes](#)" set out our intention to move to OFR and sought initial views of consumer groups, the profession and all those with an interest in legal services. We received 23 responses to the strategy paper. These were from law firms, consumer groups, trade associations and third parties. The overwhelming majority of those who responded were in favour of our move to OFR. The benefits of the approach were seen to include:

- "This is the best way of putting the client's interest foremost in the minds of those who practise law."
- "It represents a move away from the current box ticking micro regulatory approach."
- "It avoids unnecessary rules, improves the effectiveness of the regulator for more proportionate supervision".

9. However, there were cautionary comments:

- " The SRA must send a clear signal that OFR does not mean lax regulation"
- "A proper balance must be struck between consumer protection and unnecessary intervention into the way firms manage their affairs."
- "The new approach may result in increased costs, excessive administration burdens and lack of clarity".

10. There were specific comments about the SRA's capacity to move to the new approach:

- " SRA needs to maintain sufficient resources to investigate and bring enforcement proceedings against those firms and individuals who commit serious breaches".
- "This new approach may require more and more sophisticated resources within the SRA".

11. Comments also covered the following issues:

- the need for enforcement sanctions to bite on senior managers in firms as well as the individuals involved,
- the importance of the independence of the legal profession,
- mechanisms the SRA might use to assess risk,
- the need for the SRA to build a capacity for early intervention in those firms not taking prompt and necessary remedial action.

12. The responses to "Achieving the Right Outcomes" have reinforced our decision to pursue an OFR strategy, and have helped to inform the development of our new approach to regulation. Many of the issues raised are covered in this consultation paper. A summary of our responses to the feedback we received is set out in Annex C.

III. A new approach to regulation

13. The SRA is moving from being a rules-based regulator, primarily responding reactively to individual rule breaches, to an outcomes-focused, risk-based regulator. By 6 October 2011 we expect to have achieved important first milestones, including

- introduction of a new outcomes-focused Code of Conduct as part of a new Handbook of all of our regulatory requirements,
- using an explicit risk-based and outcomes-focused approach to our authorisation, supervision and enforcement activities; and
- licensing our first ABS.

14. This transformation will involve

- changing the way the SRA delivers its regulatory objectives,

- changing the relationship the profession and the providers of legal services have with the SRA,
- further development of SRA staff to ensure we have the necessary skills and competencies to deliver the new approach.

15. Our goal is to use our resources cost-effectively to maximise our delivery of the regulatory objectives set out in the Legal Services Act 2007, namely

- protecting and promoting the public interest,
- supporting the constitutional principle of the rule of law,
- improving access to justice,
- protecting and promoting the interests of consumers,
- promoting competition in the provision of services,
- encouraging an independent, strong, diverse and effective legal profession,
- increasing public understanding of the citizen's legal rights and duties,
- promoting and maintaining adherence to the professional principles.

16. We believe we can best achieve this goal through using our resources to

- support and encourage good, professional and ethical legal services delivered with integrity;
- focus on the important regulatory outcomes that must be achieved, rather than the means of achieving them, allowing the providers of legal services the flexibility they need to compete and innovate, particularly in the new legal services environment; and
- proactively identify and mitigate important emerging risks rather than simply reacting to risks which have already crystallised.

17. Our approach includes

- ensuring that the requirements on firms are more focused on acting in a principled manner to deliver desired outcomes, rather than compliance with over detailed rules. We will do this by lifting the binding regulatory requirements ("rules") to the level of principles, stating the clear outcomes to be achieved where possible;
- a sophisticated desk-based research and analysis capacity to assess potential risks to the regulatory outcomes and support the delivery of targeted proactive regulatory action;
- an approach to authorisation that is risk and evidence based, making sure that legal services are delivered by principled and competent firms and individuals;

- (d) an approach to supervision which encourages firms and individuals to be open and honest in their dealings with us, that helps and encourages them to tackle the risks themselves wherever possible, allowing us to concentrate on those who can't, or won't put things right;
- (e) an approach to enforcement that is effective, fair, proportionate and creates a credible deterrent;
- (f) the delivery of consistent regulatory protection across the profession to ensure that no entity or individual delivering legal services is at an unnecessary comparative disadvantage as a result of our regulation;
- (g) concentrating our resources on dealing with those firms who pose a serious risk to our regulatory objectives, such as protecting and promoting the interests of consumers. This means we will make decisions not to address matters we judge to be of low risk and impact, and will accept the risk that entails; and
- (h) delivering better value for money. Concentrating our resources on the greatest areas of risk, will make us more cost effective.

Questions

1. Do you have any comments on our goals and vision for OFR?
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IV. The new regulatory experience for consumers

18. Consumers of legal services will be key beneficiaries of the new approach with its central focus on consumer protection, the quality of consumers' experience of legal services and enabling consumers to understand what they should expect from their legal service providers.

19. The most recent [stakeholder report \(2009\)](#) shows that we assessed 11,100 reports or other items of intelligence from consumers and third parties in 2009. These ranged from issues unlikely to be misconduct, but nevertheless prompted a complaint, through to serious reports of fraud. These volumes indicate that regardless of the veracity of these reports, there are many people who do not believe they are getting the outcomes they expect from their experience of the legal services sector.

20. The Legal Services Act 2007 provides consumers with two strong pillars of protection. Individual complaints handling and redress will sit with the Legal Ombudsman (LeO) and broader regulation to create an environment to minimise the need for redress is the job of regulators, including the SRA. This means that we will refer redress or restitution for consumers and other third parties for wrong doing by a firm or individual to the LeO. We will maintain a strong relationship with the LeO and use our resources to extract relevant regulatory information from complaints to help inform our understanding and judgement about emerging risks. We will use individual complaints and information as evidence in our analysis of risks on a broader level.

21. This means that, while all individual complaints may be pursued through the LeO, there will be many such complaints which will not be pursued by the SRA because, of themselves, they do not justify regulatory action (though some may, in conjunction with other complaints, give rise to such action). While this approach is clearly justified in the public interest, it can give rise to a perception amongst complainants that the SRA "isn't interested" in their concerns. It will be important for us to work with the LeO, with the LSB's Consumer Panel, and with other consumer organisations to ensure that we explain our approach to consumers of legal services.

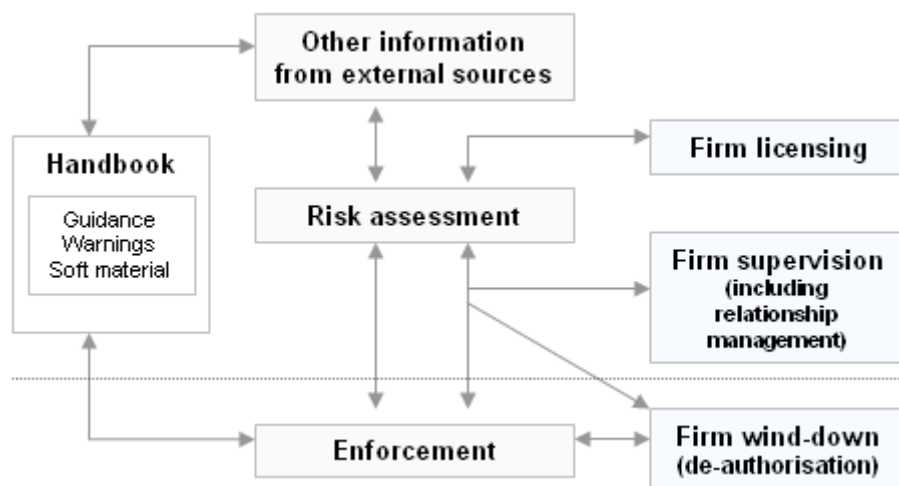
Questions

2. Are there particular things we should consider to ensure that consumer protection and the public interest remains central to our regulatory approach?
3. How do you think we should work with consumers to help them to understand our role as a regulator for the wider benefit of consumers as distinct from the LeO's role in facilitating individual redress where appropriate?

V. The new regulatory experience for firms

22. Firms will experience a different relationship with the SRA. With more efficient risk management based on information collected from a number of sources, including firms, the emphasis will be on proactive engagement throughout the lifetime of a firm. Table 1 sets out the overall approach.

Table 1



23. The SRA's successful move to OFR will require the majority of firms and individuals to take responsibility for identifying and managing the risk of not delivering the required principles and outcomes, acting ethically and professionally, exercising judgement on how to deliver good outcomes and engaging positively with us when difficult issues emerge. Firms that can do this will then be allowed to get on with running their businesses, leaving us free to focus our resources on the small minority of firms and individuals that cannot or will not comply.

24. We realise this entails a high degree of confidence between us and the firms and individuals we regulate and we recognise that we have much to do to build this confidence. Good firms and individuals will need to be confident that we will not seek "to catch them out", taking enforcement action either on reasonable decisions made in good faith or in respect of a firm or individual that has run into problems but shows the willingness and capability to work with us to put things right. Good firms will also want to be confident that we take decisive action against those who make bad decisions or represent risk to the public.

25. As a first step to building this confidence we have set out our proposed approach to constructive engagement and enforcement in Annex A and welcome comments on this strategy as a part of this consultation.

26. Other new developments for firms include

- "rules" that specify principles and outcomes rather than prescribing the approach that should be taken to how those outcomes should be delivered—although rules may still be necessary in high-risk areas;
- significant shift of supervisory emphasis towards assessing whether firms' risk management and controls are likely to exacerbate or mitigate risk. Firms with good systems are likely to experience a less intrusive relationship with the SRA;
- more supervisory analysis of whether firms are achieving the specified outcomes and much less emphasis on the detailed approach firms take;
- SRA supervisors and investigators who understand particular firms' business models and know what good risk management and good outcomes for clients look like;
- new regular reporting and notification requirements on firms as part of the authorisation process and continuing monitoring in order to assess risk;
- The annual renewal process for current firms (recognised bodies and recognised sole practitioners) will be replaced by a requirement for all authorised bodies to pay an annual fee and to provide an annual information report. This will sit alongside the annual renewal of practising certificates and registered European lawyers/registered foreign lawyers registrations which remain unchanged;
- less supervisory attention to areas of a firm's business we consider to be low risk and more intensive attention to high-risk areas. Going forward, SRA visits are likely to be focused on key matters rather than broad-ranging reviews;
- new requirements to ensure that those managing a firm have clear lines of responsibility for compliance with the SRA's principles and outcomes, and for competent running of the firm's business. These requirements will be outlined in the consultation on the new Handbook of regulatory requirements that will be published in May.

Information from firms

27. A risk-based regulator needs information from many sources in order to assess risk. This includes the broader economic environment, market-specific information and information from those it regulates.

28. At present, the SRA collects little data from firms. We have already begun to consider our information needs in relation to our interest in the financial stability of firms. Our findings on this matter are reported in more detail in Annex B. Over the next few months, we will enhance this analysis with an assessment of the overall information needs for risk-based regulation with a view to consulting on reporting and notification requirements in October (some high-level reporting and notification requirements will be consulted on in May). We will be engaging with stakeholders in our approach to this issue, which will also be informed by an impact assessment, an understanding of the risk of collecting too much information, our own readiness to capture and analyse information, and the need to minimise the burden on firms.

Questions

4. Do you have any comments on the key implications for firms set out above?
 5. Are there other implications we need to consider?
 6. Do you have any comments on how the SRA and firms can work together to build the necessary degree of trust and confidence for the move to OFR?
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VI. A new Handbook of regulatory requirements

29. Our intention is to bring all of our regulatory requirements (the Code, Accounts Rules, Licensing Rules, special bodies etc.) into one online Handbook which will be a single source for all those we regulate. The new Handbook will be finalised and published in April 2011 and implemented on 6 October 2011.

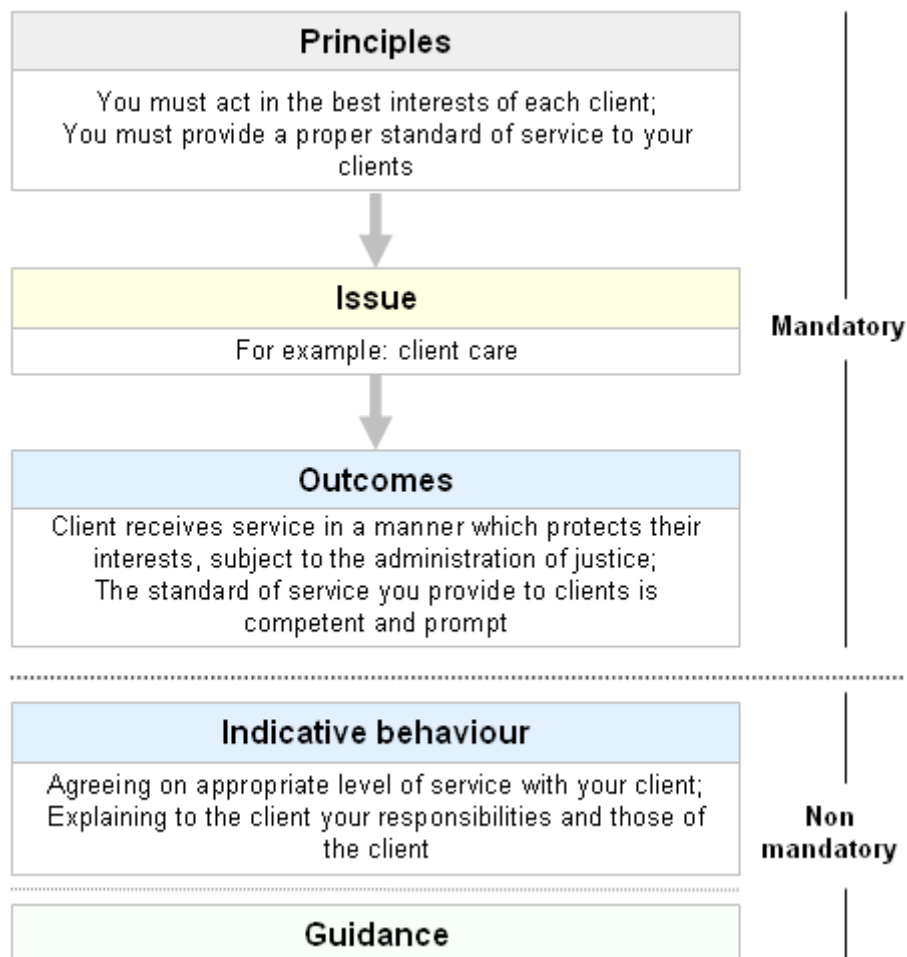
30. The first consultation on the new Handbook will take place in May followed by a second consultation in October this year. The May consultation will include, amongst other things, the new Code of Conduct, the new licensing rules and changes to the accounts rules. There will still be "rules" in the Handbook (such as the Accounts Rules and the Licensing Rules). However our aim is to remove as much unnecessary detail and prescription as possible.

31. In particular, a redrafted Code of Conduct is central to our implementation of OFR. It concentrates on providing positive "outcomes" which are standards of service that all involved in the provision of legal services will wish to deliver in order benefit consumers of legal services and the public.

32. The new Code of Conduct will set out the key principles and outcomes which must be achieved and the objective is to remove or rationalise much of the detail contained in the current Code. The core of the Accounts Rules is likely to remain much the same, reflecting our judgement of what is necessary to manage risks to client money. However, these are being re-drafted in a more outcomes-focused way

and the guidance in these rules will not be mandatory—see Table 2 below by way of example.

Table 2



33. **Principles**, which will be mandatory, will govern all of the activities of firms and individuals and will apply across the entire Handbook. We will be consulting on the ten principles in May.

34. In the new Code we will define the **outcomes** we expect firms to achieve. These will also take the form of binding regulatory commitments.

35. Principles and outcomes will be supported by two types of non-mandatory material: **indicative behaviour** and **guidance**.

36. We will use indicative behaviour provisions where we have a strong view of some of the behaviours we would and would not expect to observe in firms complying with the outcomes. Firms will not be obliged to follow these provisions and while in the absence of the indicative behaviours SRA supervisors will start from the presumption that there is a risk to the firm's delivery of the outcomes, a firm will still be free to demonstrate that it is using effective alternative methods of compliance.

37. By contrast, guidance provisions are intended to be purely helpful material, setting out one way but not the only way firms might deliver the outcomes. The SRA

will make no assumptions about a firm that does or does not take account of the guidance we issue, although this might be relevant as part of the overall context of a firm's behaviour.

38. We will consult on the principles, outcomes and indicative behaviours in May and the guidance in October and will be using the consultation period following the publication of the May paper to work with firms on the type of guidance we should include in the final Handbook.

39. We are interested in hearing views on whether representative bodies or others see a role for themselves as providers of guidance under the new approach. We would like to explore this point with our stakeholders including a consideration of such questions as whether and in what circumstances the SRA might provide some sort of recognition of such guidance, and whether we might include the guidance in our Handbook or links to this guidance.

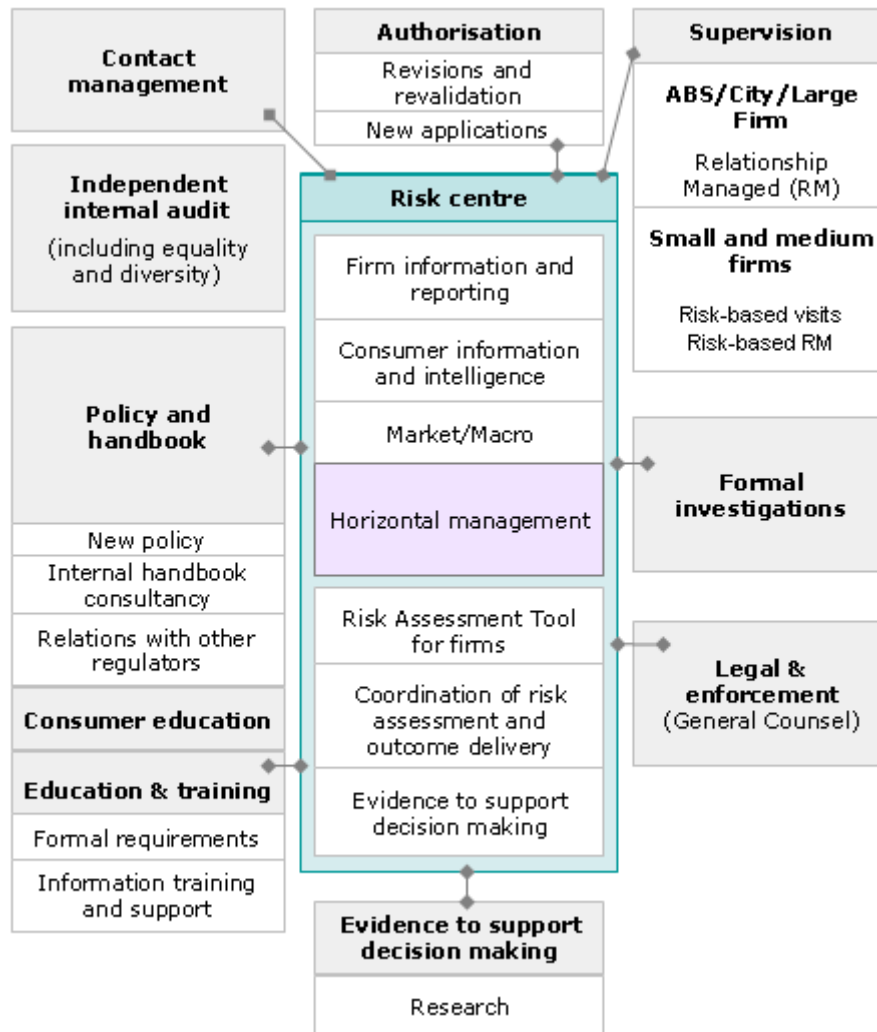
VII. OFR in operation

40. We are undertaking a review of all of our regulatory operations with a view to assessing the changes we need to make to become an OFR risk-based regulator. In particular, we need a framework which underpins a strategy of using our resources to identify and address the major emerging risks. The core components of our OFR framework are set out in Table 3. Our high-level thinking on each component part of the framework is set out in the remainder of this section.

41. This will build on the work that we have been doing over the last two years, namely:

- in February 2008, decision-making guidelines were agreed and published, followed by 11 principles of regulatory decision making in 2009;
- a new risk assessment process was fully implemented in early 2008 through the creation of a Risk Assessment and Designation Centre (RADC) for all non-confidential reports of possible misconduct; and the upgrading of assessment processes applied to all confidential reports by Fraud Confidential Intelligence Bureau;
- engaging with various practitioners groups—such as the Solicitors Sole Practitioners Group and black and minority ethnic groups such as the Black Solicitor Network, through roadshows, focus groups and consultations, to develop our understanding of the impact of regulation.

Table 3



The Risk Centre

42. Our priority is to address the following types of risk:

- risks to the regulatory objectives, including risks that might arise from the wider economic environment, such as an economic down turn;
- the risk that firms' actions and that of individuals will be inconsistent with the 10 overarching regulatory principles in the Handbook; and
- the risk that firms will not comply with the outcomes and other binding regulatory commitments in the Handbook.

43. We are particularly concerned to address risks that may

- impact on a significant number of consumers and/or third parties in a way that they cannot reasonably foresee or protect themselves from, where this impact may lead to a loss of their money, justice, or social or economic wellbeing; and

- significantly impact on the public good that arises from the provision of competent and ethical legal services that also serve the higher public interest in the rule of law.

44. We need to devote our resources to the most important of these risks, and to explicitly take the necessary decisions to not address less important issues.

45. The Risk Centre will be at the heart of delivering and coordinating the proactive assessment of risk necessary to support these decisions. The objective will be to obtain, analyse and deploy information from a range of sources in order to understand the changing legal marketplace and to understand the risk to our objectives which may come from

- the behaviour of firms we regulate,
- our own internal operations,
- broader economic and sector developments.

46. We will continue to make our broad risk assessments available to our stakeholders. In addition we will publish an annual outlook of emerging risks and key areas of focus for firms.

47. As part of assessing firm and individual risk, we will use information from a wide range of sources including

- the firm or individual (as requested/collected by the SRA),
- from consumers (by means of complaint/information),
- from third parties,
- from sources of intelligence including intelligence on unauthorised activity and criminal behaviour,
- market research.

48. As discussed in Section V, we will need additional information from firms in order to risk assess more effectively. We will ensure we will make efficient use of the information we collect, that the information is necessary for our risk assessment function, and that we do not place an undue burden on firms by gathering information which we do not use.

49. We may collect information from firms in the following ways:

- as part of the authorisation process (e.g. compliance and business plans),
- on an annual/periodic basis,
- ad-hoc requests for information arising from thematic risk work,
- event-driven reporting.

50. Some information requirements will be consulted on as a part of the May consultation, but the main consultation on reporting and notification requirements is scheduled for October this year.

51. Assessment of market and macro-economic risk will set firm and individual risk in context and will help us to assess emerging systematic risks. We will analyse political, economic, social and technological risks as part of this approach, and use these assessments to build a capacity for scenario mapping and stress testing.

52. We will develop further risk assessment tools to support our delivery of targeted, proportionate, consistent supervision that varies according to different factors such as size of firm, risk profile and sophistication of the firm's own internal management systems.

53. An example of one way the Risk Centre will work relates to the very useful intelligence we receive and wish to continue to receive on how the legal services market is working and where potential problems might arise—see tables below.

SRA current activities

We receive a report of a single firm operating a misleading website regarding fees charged for conveyancing.

A caseworker allocated to look at the issues will check the firm's website to assess the allegation which has been made about potentially misleading information.

The caseworker concludes that the information is indeed misleading and contacts the firm.

The firm complies with requests to make changes to its website and a follow-up check confirms the appropriate changes remain in place.

The firm has responded positively and no enforcement action is necessary.

SRA OFR activities

The risk unit within the SRA runs an issues profile.

Web searches are carried out looking for other firms who may have similarly misleading publicity. This profile determines that other action is required.

The SRA published guidance on its website and contacts the other firms involved to discuss compliance issues with them.

Other firm-based action may be required depending upon the attitude and approach of other firms to compliance.

Questions

7. Do you have any comments on the central role of the Risk Centre in our move to OFR?
 8. Do you have any other suggestions for the activities the Risk Centre will undertake?
 9. Will firms understand our need to receive information from them in order to undertake high quality risk assessment?
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Authorisation

54. Authorisation is the process by which the SRA recognises and licenses an individual or firm to practise law. Authorisation and reauthorisation are important gateways for risk-based regulation. The objective is to allow only those firms and individuals who are capable and willing to act ethically and deliver good outcomes for clients, to deliver legal services.

55. We will take a risk-based approach to authorisation and the process will become more rigorous and evidence based than at present, including a greater use by us of due diligence checks on individuals and firms.

56. Under the provisions of the LSA, we will authorise ABSs on an activity basis. This will help us to manage risk by enabling a more bespoke approach to authorisation. It will also help firms to practise who might be able to provide some good legal services but are not suitable providers across the piece. This approach raises a more fundamental question of whether over time we should move to authorise non-ABS firms and solicitors and their firms on an activity basis. We will be considering this question and seeking comments at a later date.

Operation of authorisation

57. When an application is made by a new firm, we will analyse the information we receive about the proposed structure, governance and systems for compliance within the firm's business model. We may request additional information and undertake further investigations in order to form a view on whether or not authorisation should be granted.

58. We may consider at the application stage whether conditions on an authorisation are necessary to mitigate any perceived risk to consumers and our regulatory objectives. This could arise in any number of ways including

- concerns about the extent of external influence,
- risk issues emerging from a business model, and
- risk issues arising from proposed arrangements to obtain business.

59. We will retain the ability to revise any conditions placed on authorisations, either to remove them or add to them. This would be done ideally in close cooperation with the firm and would cover circumstances such as

- an ABS wishing to amend its permitted activities;
- the SRA judging it necessary to amend an ABS's permitted activities.

60. At the level of individual solicitors, we will strengthen and develop the critical link between minimum education and training requirements for entry into the profession and maintaining good standards thereafter, for example use of compulsory reauthorisation. In addition we will undertake risk-based checking of individuals applying for Practising Certificates (PC) and will develop an approach to ongoing risk-based vetting of individuals at the point of PC renewal, including periodic CRB checks.

61. Finally, our intention is to move away from an annual renewal process for firms, to be replaced by a requirement for all authorised bodies to pay an annual fee and to provide an annual information report. This will sit alongside the annual renewal of practising certificates and registered European lawyers/registered foreign lawyers registrations which remain unchanged.

Questions

10. Do you have any comments on our proposed approach to authorisation?

Our supervisory approach

62. Supervision is the risk-based oversight of the entire regulated community. The aim of our supervisory activity will be to continue to help firms improve standards, reduce risk for consumers and enhance the reputation of legal services providers.

63. One focus will be on the quality assurance of the firm's own risk management systems and assessing whether or not firms are delivering the principles and achieving the right outcomes, rather than the detailed processes for delivering outcomes. Where warranted through risk assessment we will undertake more intensive analysis of particular activities including a firm's approach to exercising judgement on how to deliver particular principles and outcomes. Firms will also be assessed on whether their systems produce good outcomes: simply having a system will not be sufficient.

64. Our prime point of contact with a firm will be through a nominated individual and more detail on this point will be provided in the May consultation.

65. Supervision will be tailored, taking into account such factors as

- the risk posed by the firm,
- size of the firm,
- the firm's approach to risk management.

66. We will also take account of

- positive engagement with the SRA,
- compliance history, and
- the firm's ability and willingness to put things right.

67. As a risk-based regulator with finite resources, we will need to make choices on how to supervise, using a range of approaches including

- permanent relationship management,
- temporary relationship management,
- contact management, and
- other regulatory tools.

Permanent relationship management

68. Large and/or complex commercial firms, including those that are ABSs are likely to have dedicated supervisory staff/teams who have regular contact by means of face-to-face meetings or telephone contact. The ongoing dialogue between supervisors and the firm would concentrate on the firm's internal systems, periodic assessments of whether or not the firm is delivering the required outcomes, and exercise of judgement.

69. In developing our thinking about relationship management we have embarked on a programme of pre-pilot visits to a small number of commercial firms in the City, which will be widened to include a greater range of commercial firms who have established internal systems and governance structures. Two particular questions for the pilot programme to address are whether it is ever proportionate to provide any firms with dedicated staff/teams and whether the proportionality arises as a result of the risk posed, the size and complexity of the firm or a combination of both. The danger of "regulatory capture" must also be addressed, ensuring independence is maintained in regulatory oversight.

Temporary relationship management

70. Permanent relationship management is resource intensive and not practical or proportionate for all the firms we regulate. However, the approach may be suitable on a temporary basis for a wider range of firms, for example new firms and those in the Assigned Risks Pool. Our use of this approach will be evidence and risk based.

71. **Example** - the SRA becomes aware that a number of firms have become involved in a niche area of practice. The SRA has also received a number of complaints from consumers stating that they are unhappy with the legal service they have received in this area of work. We receive intelligence that some firms involved have employed additional staff specifically to undertake this work who may not be sufficiently experienced. As a result of information we have collected from firms, we are aware that there may be approximately 20 firms dealing with this type of work. Initial risk-based visits have informed us that the compliance issues we find may be more widespread. We decide to relationship manage these 20 firms and allocate

dedicated supervisory staff to them. The supervisory staff have continuous regulatory oversight of the firm for an appropriate period of time, and work with firms to mitigate the risk. Regular assessments are made to ensure that the appropriate outcomes are being achieved.

Risk-based visits

72. Building on our current process, firms who are not relationship managed are likely to be visited by us on the basis of a proactive or reactive assessment of risk. This might mean that some firms never receive a visit from us, although we are still considering whether all firms should be visited by us at least once over a period of time, such as five years and would welcome views on this. At the very least, we will have a team of supervisors dedicated to visiting newly created firms and we are already building a team to undertake this work.

73. Even where visits take place, it follows that less supervisory attention will be paid to areas of a firm's business we consider to be low risk and more intensive attention to high risk areas. SRA visits are likely to focus on a few matters, rather than an audit of all areas of a firm's compliance with the principles and outcomes.

74. The only exception to this approach will be any studies we undertake involving random sampling, base lining and monitoring of the delivery of the required outcomes across all of our regulated firms.

75. On this, we expect to undertake an initial baseline assessment of the delivery of the required outcomes later in 2010. We will use a random and representative sample of firms to establish a benchmark picture of the extent to which the required outcomes are being achieved, followed by a subsequent assessment, 12 or 24 months later to measure progress.

"Safe harbours"

76. A key element of our supervisory approach will be on assessing firms' own management and decision-making systems, not making firms' decisions for them or "signing off" particular approaches to delivering outcomes. With over 10,000 firms to regulate we cannot possibly hold ourselves out as able to provide this function, even if we were able to manage the regulatory risk implications. The exercise of judgement and responsibility for achieving the outcomes will remain with the firm. However, where we do observe good practice, we may choose to use this to offer broader guidance to all firms.

The transition between supervision and formal investigation

77. Our regulatory regime will need to manage the transition between intensive supervision, formal investigation and enforcement. Formal investigation will reflect a decision that a serious breach of principles and/or outcomes may have occurred requiring formal action to gather evidence and assess if enforcement is required. At this point, we will take an explicit decision, based on the circumstances, on whether it is appropriate for the relevant supervisors to be involved in the investigation. Our concern will be to deliver an objective assessment, managing the risk either that those supervisors have become too close to the firm or that their views are pre-set.

Low-level, endemic non-compliance

78. It is implicit in the discussion in this paper and some of the examples provided that we anticipate a need to identify and deal with endemic non-compliance that may

go undetected and unaddressed by us (apart from possibly as a result of redress through the Legal Ombudsman) if it were to occur in only a few firms and therefore not attract a sufficiently high-risk weighting.

79. We wish to make it clear that we will be using information, such as consumer complaints, to identify where there may be systematic non-compliance and will deal with it appropriately through guidance, supervisory activity or through taking firm enforcement action to deliver a change of behaviour by all relevant firms and individuals.

Example

The Risk Centre's analysis of the data on consumer complaints picks up an increasing number of complaints about firms' failure to notify clients of their policy on paying interest on client money. The SRA is concerned to tackle this behaviour and prevent it from undermining the outcome that firms must ensure their clients are in a position to understand the basis upon which they are receiving legal services. The SRA visits a sample of firms, discovers a high percentage of poor practice and decides to address this through a combination of softer regulatory tools across the types of firm being most complained about (for example, "Dear Managing Partner" letters, and mystery shopping) and exemplary enforcement activity directed at firms and individuals who do not demonstrate a willingness or ability to improve practice. Follow-up analysis of complaints is then used to determine whether or not the SRA has successfully changed behaviour and improved standards on this matter.

Regulatory tools

80. Overall, our approach will be to work with conscientious firms to put things right using a range of regulatory tools which we will add to as we develop our experience as an OFR regulator.

81. In addition to the approaches set out above, our initial tools may include

- "Dear Managing Partner" letters to alert senior management in firms to our views on specific matters and our expectations of firms in relation to those matters;
- roadshows on particular themes;
- remedial plans for individual firms to support their improvement of standards;
- mystery shopping to identify firms who may not be delivering good standards;
- unannounced visits or visits with little notice; and
- where a firm is in financial difficulties, overseeing the management and resolution of those difficulties, including an orderly wind-down if necessary.

Contact management

82. The majority of firms and individuals regulated by the SRA will approach the SRA through a central contact management function, such as that currently provided by

our contact centre and Ethics helpline. Contact management as a function will take on increasing importance in the move to OFR. In particular, good management of the substance of contact will

- help us to understand the needs of firms and potential sources of emerging risk, and
- provide firms with appropriate information and support in their delivery of the required outcomes.

Questions

11. Do you have any comments on our proposed approach to supervision?

12. What might be the particular issues for smaller firms and how might we address them?

13. Are there other regulatory tools we could consider?

14. Is there a role for representative bodies in supporting their members' compliance with the principles and outcomes in the Handbook?

Formal Investigations, Legal and Enforcement

83. Our proposed approach to formal investigation and enforcement is set out in Annex A to this paper. In summary, stakeholders should understand that our objective is to ensure that serious breaches of the principles and outcomes are detected and rigorously enforced, including taking appropriate action against individuals, with the purpose of creating a credible deterrent to others. Our policy on sanctions will drive that credibility and we will publish a paper in due course on our approach to applying penalties, sanctions and other enforcement tools.

84. We will continue to have a Legal and Enforcement function to provide legal advice to the SRA, advise on proposed enforcement action, particularly financial penalties, and to authorise and prosecute Solicitors Disciplinary Tribunal (SDT) cases. We intend this function to provide an internal check and balance function for high profile decision making and support industry learning from enforcement actions. In particular it will

- function separately from the formal investigations (i.e. investigations to establish whether principles and/or outcomes have been breached),
- provide an objective evaluation of enforcement proposals,
- take forward action that is proportionate,
- set overall enforcement policy and strategy,
- publicise enforcement action on priority issues to improve standards.

Questions

15. Do you agree with our approach to formal investigations?

16. If not, please explain why.

17. Do you have any comments or feedback on our draft enforcement strategy?

Policy and Handbook

85. The SRA will continuously review the content of the Handbook, and provide advice internally and externally on the intention of and policy behind Handbook provisions. Where necessary, the Handbook will be supplemented and edited in order to maintain its currency and relevance. We will consult with our stakeholders on all changes to the Handbook.

86. The objective of any new Handbook provisions will be to

- keep up to date with the evolving nature of legal services,
 - ensure that firms have clarity on what we expect,
 - address emerging risks where these are best addressed new Handbook provisions,
 - review and remove outdated provisions.
-

Questions

18. Do you have any comments on our proposed approach to making new Handbook provisions?

Consumer education

87. Consumer understanding of their legal rights and duties is one of the regulatory objectives for regulators set out in the LSA 2007. We plan to develop strategies, working with our fellow regulators and the Legal Services Board Consumers Panel and others, aimed at increasing consumers' understanding of what they should expect from the provision of legal services and how they can play their part in ensuring that they get the right outcomes.

Education and training

88. Formal pre- and post-qualification requirements have long played an important role in trying to make sure only suitable individuals are allowed to practise as solicitors and continue to be well qualified. We will need to look at what the appropriate balance is between firm-based and individual requirements as well as pre- and post-qualification requirements. We have already taken steps to review

aspects of our pre-qualification framework to move away from detailed prescription about process towards flexible achievement of outcomes.

89. We will assess whether our current systems places sufficient emphasis on principles, ethics and financial management at the pre-qualification stage, and whether there is sufficient risk-based targeting of post-qualification training and reauthorisation. For example, we may consider the targeted use of compulsory Continuing Professional Development (CPD) courses.

90. In addition, we plan to expand our use of less formal education and training opportunities such as workshops and roadshows to support our supervision activity.

Questions

19. Do you have any comments on our proposed approach to consumer education? Are there particular initiatives we should consider?

20. Do you have any comments on the SRA's current approach to formal education and training for the profession? Are there additional approaches we could take to improving pre- and post-qualification training?

Evidence-based decision making and research

91. We will build a significant capacity to expand our analysis and research radically, using it to support and inform all of our regulatory activities. This investment reflects our view that if we are to focus our resources on the greatest risk, we need analysis and evidence to support forming an accurate view of risk. Our particular objectives will be to

- undertake a problem-identification analysis before commencing work on new policy to ensure we are informed by an objective assessment of the risks to our regulatory objectives arising from the issue at hand;
- understand the economic impact, including the impact on competition, of new regulatory policy;
- understand the impact on firms of new regulatory policy, including direct, indirect, one-off and ongoing costs;
- ensure our decision making is informed by a good awareness of the direct and indirect costs and benefits of the available policy options;
- publish our analyses and the reasons for our decisions to our stakeholders;
- develop and publish measures of our success as a regulator that focus on the extent to which our regulatory activities are improving firms' delivery of the principles and outcomes.

92. In the next few months we will undertake a cost-benefit analysis of the approach we are taking to implementing OFR, including working with a cross-section of our

stakeholders to understand the impact on particular types of firms. This will be published in October 2010.

93. We have been conducting a programme of initial equality impact assessments in relation to various aspects of our current regulatory activity. For each area of work that will be affected by the transformation to outcomes-focused regulation, we will be using this work as a starting point and will develop full equality impact assessments for each of the relevant areas. We are gathering the relevant data and our work will be informed by the response to this consultation document and our engagement with stakeholders. We will be using our recently updated equality impact assessment tool which will also help us to assess any implications that there might be for human rights.

Governance, coordination and decision making

94. Delivering good risk-based cost-effective regulation that directs regulatory attention to the areas of greatest need will require us to develop strong, flexible mechanisms for the management and coordination of our resources. Over the next few months, we will be considering this and reporting back in October on how our structure, internal communications and approach to decision making will support

- a robust governance structure for the coordination of regulatory responses across the SRA;
- appropriate delegation of and support for quality decision-making at all levels of the SRA;
- OFR functions, including importantly risk assessment, that operate effectively and efficiently, supported by strong horizontal management;
- a quality audit system and systems for internal validation that provides positive challenge to the way we function and the decisions we make;
- our existing formal [decision-making criteria](#) will also be reviewed.

SRA – people, culture and systems

95. The SRA culture needs to reflect the expectations of consumers, the regulated community and other stakeholders. We recognise the sizeable challenges involved in preparing our people, culture and systems for the new regulatory approach. Successful cultural transition will require new attitudes and behaviours from our staff alongside the development of technical competencies to regulate in the new way.

96. Our primary focus will be to bring about an outcome-focused approach in everything we do, valuing skills such as an inquisitive mindset, a desire to work across functions with colleagues, sharing information, and keeping consumer and public interest at the heart of everything we do.

97. There are considerable implications for our technical skill set. For example we need to expand our capacity to analyse less standardised information and proactively assess risk. Commercial awareness will become more important as business structures become more varied, and we will need to bring credibility to our work alongside the profession as partners in protecting the public.

98. Our systems also need considerable updating and benefits from planned development include

- a significant reduction in requirements for paper-based interaction between ourselves and firms and individuals by moving to online submission of material such as applications and annual returns;
- tools to support the systematic assessment and management of risk, and the management of our relationship with firms;
- to eliminate artificial hand offs internally to improve the service we provide and ensure that we deal with matters at the earliest opportunity in the most effective way.

99. The SRA has launched a programme of organisational reform for this work and we are being very ambitious in the approach we are taking. Nevertheless, this type of transformation cannot happen instantly and stakeholders will experience an evolution to the new approach rather than a "Big Bang".

VIII. Transition

A phased approach to OFR

100. More generally, we are considering the question of what is the best way to transition to the new regulatory approach. On 6 October 2011, we must be in a position to license and regulate ABSs, supervise and where necessary enforce the new Handbook. However, we have choices that can be made for example on whether there are aspects of the new Handbook (such as reporting requirements and lifetime licences for all firms) that are best phased in over a slightly longer period. Our decisions need to be informed by a practical analysis of what is realistic not just in terms of our own readiness, but firms' readiness also, including an understanding of any direct and time costs for smaller firms in particular.

101. Over the next few months we will be considering what our approach to phasing over the next three years should be, working also with stakeholders and will report on our decisions in October this year.

Working with our stakeholders

102. " Freedom in Practice – Better outcomes for Consumers", our most far-reaching consultation programme to date, was launched on 25 March 2010. This programme acknowledges the importance of engaging with all of our stakeholders, firms, individual lawyers and consumers, in a myriad of ways. We do not plan to sit back and wait for written responses to this and the May consultation paper.

103. During May and June 2010 the SRA will hold a series of roadshow events for the profession—see Table 5 below. Specific events will also be held for consumers and diversity groups within the profession.

Table 5 - Freedom in Practice: Better Outcomes for Consumers schedule of roadshows

May 25

London

May 27	Bristol
June 8	Leeds
June 9	Manchester
June 10	Liverpool
June 15	Birmingham
June 16	Cambridge
June 22	Exeter
June 24	Newcastle
June 28	Cardiff

Full details of the events, including contact and booking details can be found at www.sra.org.uk/roadshows.

104. In addition to the initial series of roadshows, senior SRA staff and Board members are also undertaking a programme of speaking engagements working with The Law Society and other groups to maximise our engagement. We will also run workshops and focus groups to understand what guidance will be helpful in the new Handbook, and the costs, benefits and impact of the new regulatory approach.

105. The SRA roadshow programme will be supported by a [microsite](#) that links to the SRA's main website. People wishing to attend roadshow events can use the microsite to register their interest and to learn more about the move to outcomes-focused regulation.

Questions

21. Are there other ways we can engage with our stakeholders on our move to OFR?

Equality impact assessment

106. In the paper at Annex D, we have highlighted some of the equality issues that we will be considering. We will continue with this work and plan to publish the findings of our full equality impact assessment for key areas with our policy statement in October. To help us with this work, we will be seeking meetings with equality groups to understand the issues and find solutions. Our new approach will require us to work much more collaboratively with firms and individuals and this will require a high level of trust and confidence from all sections of the profession. We want to be

sure that equality and diversity are embedded in our outcome-focused approach from the very start.

Questions

22. Do you have any comments on any aspect of our approach and how it may affect equality in relation to gender, ethnicity, disability, age, and religion or belief? Are there any additional equality issues that we need to consider at this early stage?

IX. Next steps

Table 6 below sets out the timetable of key milestones up until 6 October 2011.

Table 6

Timetable: April 2010 to 6 October 2011

Date	Action
April 2010 onwards	Engagement with the profession, consumers and other stakeholders
28 May 2010	Publish first consultation paper on the Handbook.
27 July 2010	Closing date for written responses to "Outcomes-focused regulation: Transforming the SRA's Regulation of Legal Services"
20 August 2010	First Handbook Consultation closes.
October 2010	Publish second consultation on the Handbook.
October 2010	Policy Statement on "Outcomes-focused regulation: Transforming the SRA's Regulation of Legal Services" with the timetable setting out the transition to OFR, the full cost-benefit analysis and equality impact assessment (the equality impact assessment is an ongoing piece of work taking pace alongside the development of outcomes-focused regulation—we will share with you our work at the key stages of development).
January 2011	Second Handbook consultation closes.
March/April	Publication of final Handbook

2011

June/July 2011 Anticipated designation as a Licensing Authority for ABSs

6 October 2011 First ABSs licensed and Implementation of new Handbook.

How to respond

Download and complete an electronic form

Download a **Consultation questionnaire** form and an **About you** form, which can be completed offline, at your convenience, using MS Word.

1. Download a Consultation questionnaire form and an About you form.
2. Save the files locally—before and after completing them.
3. Return your completed forms as email attachments to freedominpractice@sra.org.uk.

[Download the forms](#)

Download and submit a printed form

If you wish to submit your response by post, please follow steps 1 and 2 above. Then, print your completed forms and send them to

Denise Collis
Ipsley Court
Berrington Close
Redditch
Worcs B98 0TD

or

Denise Collis
Solicitors Regulation Authority
DX 19114 Redditch

Send us an email or letter

If you prefer not to use our form, simply detail your comments or concerns in an email or letter. Send your email to freedominpractice@sra.org.uk, or post your letter to the address provided above.

Please ensure that, in your email or letter, you

- identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- identify the consultation you are responding to, and

- if you wish us to treat any part or aspect of your response as confidential, state this clearly.

Deadline for receipt of responses

The deadline for receipt of responses is **27 July 2010**.

Confidentiality

We may publish a list of respondents with a report on responses. Partial attributed responses may be published.

If you prefer any part or aspect of your response to be treated as confidential, please ensure that you advise us accordingly. Our form include a question that asks you to state your preference with respect to confidentiality.

Complete list of questions

1. Do you have any comments on our goals and vision for OFR?
2. Are there particular things we should consider to ensure that consumer protection remains central to our regulatory approach?
3. How do you think we should work with consumers to help them to understand our role as a regulator for the wider benefit of consumers as distinct from the LeO's role in facilitating individual redress where appropriate?
4. Do you have any comments on the key implications for firms set out above?
5. Are there other implications we need to consider?
6. Do you have any comments on how the SRA and firms can work together to build the necessary degree of trust and confidence for the move to OFR?
7. Do you have any comments on the central role of the risk centre in our move to OFR?
8. Do you have any other suggestions for the activities the risk centre will undertake?
9. Will firms understand our need to receive information from them in order to undertake high quality risk assessment?
10. Do you have any comments on our proposed approach to authorisation?
11. Do you have any comments on our proposed approach to supervision?
12. What might be the particular issues for smaller firms and how might we address them?
13. Are there other regulatory tools we could consider?
14. Is there a role for representative bodies in supporting their members' compliance with the principles and outcomes in the Handbook?

15. Do you agree with our approach to formal investigations?
16. If not, please explain why.
17. Do you have any comments or feedback on our draft enforcement strategy?
18. Do you have any comments on our proposed approach to making new Handbook provisions?
19. Do you have any comments on our proposed approach to consumer education? Are there particular initiatives we should consider?
20. Do you have any comments on the SRA's current approach to formal education and training for the profession? Are there additional approaches we could take to improving pre- and post-qualification training?
21. Are there other ways we can engage with our stakeholders on our move to OFR?
22. Do you have any comments on any aspect of our approach and its implications for equality issues? For example how might our approach impact on black and minority ethnic solicitors, women solicitors, disabled solicitors, and older and younger solicitors?

Questions on Annex B

23. Do you have any comments about the risks arising from the current financial management of firms?
 24. Do you have any comments regarding the SRA's responsibilities for addressing the financial stability of firms and its proposed desired outcomes?
 25. To what extent do you consider the proposed response outlined in this section meets the objectives of outcomes-focused regulation?
 26. Do you have any suggestions regarding what information may be requested of firms and how frequently it may be requested?
-

Annex A - SRA enforcement strategy

Constructive engagement and credible deterrence

1. The SRA's effective and proportionate use of its enforcement powers plays an important role in the pursuit of the regulatory objectives and professional principles in the Legal Services Act 2007. These are reflected in the core principles in the SRA's draft new Handbook.

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each client;
5. provide a proper standard of service to your clients;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner;
8. run your business/carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run your business/carry out your role in the business in a way that promotes equality and diversity and not discriminate unlawfully in connection with the provision of legal services;
10. protect client money and assets.

2. The outcomes we seek to achieve by enforcement include

- (a) credible deterrence of behaviours that breach the core principles,
- (b) the encouragement and facilitation of compliance with the core principles and other regulatory requirements,
- (c) control of firms¹ that represent a risk to the public or the core principles,
- (d) removal of those who represent a serious risk to the public.

¹ When we refer to "firms" in this strategy that includes all people and organisations we regulate or against whom we can exercise regulatory powers.

3. Proportionate and targeted enforcement contributes to the achievement of these outcomes. For example:

- robust and publicised enforcement action on priority issues improves standards and deters lack of integrity,
- a settlement with a firm may be a more effective and quicker outcome than prolonged formal proceedings,
- advice and guidance may be more effective ways to raise a firm's standards than a formal sanction,
- identifying low priority areas where the regulatory outcomes are not at risk can release resources to deal with higher priorities.

4. We will seek to exercise our enforcement powers transparently, proportionately, fairly and in the public interest.

Constructive engagement

5. Our methods of constructive engagement will be flexible and develop over time but are likely to include

- relationship management,
- supervision,
- advice and firm-specific guidance,
- agreed compliance plans, and
- regulatory settlement agreements.

6. Unless we consider that a firm is a serious risk to the objectives and outcomes set out in this strategy, we will aim to encourage compliance, change the firm's behaviour where appropriate, and to deter future non-compliance. We will expect firms to correct harm caused by their non-compliance. If a firm represents a serious or persistent risk, we will seek to remove it from practice or control its form of and ability to operate.

Relationship management

7. Dedicated supervisory staff will have regular contact with the firm including face to face or by telephone. Continuing dialogue between the SRA and the firm will concentrate on the firm's internal systems and its exercise of judgement. There may be periodic assessment of the firm's processes to achieve required outcomes. The form and scale of relationship management will depend on the risk posed by the firm. We may use permanent relationship for some and others may be in relationship management for a period of time.

Supervision

8. Supervision will involve both supportive and robust challenge and will include, where necessary collaborative and intensive supervision. Supervision will involve a variety of methods, such as desk-based supervision based primarily on

documentation and correspondence, meetings and visits, assessments, telephone and written contact. The form and scale of supervision engagement will vary for each firm based on the risk that they pose.

Advice and firm-specific guidance

9. Where we find issues, we may choose to address these via "Dear Managing Partner" letters that go out to an individual firm or, where appropriate, a number of firms who may be affected by a specific issue. We may also choose to provide specific guidance to firms that are or have been engaged in relationship management or the supervision process.

Agreed compliance plans

10. When we identify specific issues within a firm that requires corrective action, we will consider whether agreeing a compliance plan with the firm provides proportionate outcome. This would not prevent further action being taken in some cases where necessary, but may often enable firms to engage constructively with us, limit the impact of the non-compliance, and satisfy us that they are committed to compliance with the core principles.

11. We are aware of the risks of "regulatory capture" and engagement with firms will always be on the basis that ultimately we will act in the public interest.

Enforcement action

12. Enforcement is only one of our regulatory tools. As a risk-based regulator with limited resources, we must target resources at areas which we think pose the main threats to the public. While we will take a proportionate approach, we recognise that it is also important to avoid minimal compliance and assumptions that detailed obligations do not matter. They do matter - and where necessary they will be subject to enforcement action or will be noted for future action if necessary.

13. When a firm has failed to comply with its regulatory duties, we may be able to deal with it without formal enforcement action. Properly received guidance, supervision and monitoring of firms, coupled with an open, cooperative and constructive approach by firms, may lead us to decide against taking formal action. In those cases, we will expect the firm to take prompt remedial action, agreed with us where necessary. The firm must also demonstrate an understanding and acceptance of applicable principles and the outcomes we seek. If the firm does not do this, we may at any time take disciplinary or other enforcement action in respect of the original behaviours. Failure to take prompt remedial action will be an aggravating factor.

14. While we will offer support and guidance when appropriate, we do not expect firms to try to argue that such support provides them with some sort of amnesty. Supportive and constructive engagement is of a different nature to detailed factual investigation and we are sure that firms would prefer that constructive engagements are frank and open rather than defensive on either side.

Factors to be taken into account

15. In deciding on an appropriate outcome after the identification of possible misconduct, all the circumstances will be taken into account. Examples of relevant factors include:

- 15.1 The number of clients or others affected and the impact on them;
- 15.2 The impact or risk to public confidence in the administration of justice arising from the firm's conduct;
- 15.3 Whether the firm accepts promptly and genuinely that it has acted incorrectly, including whether it has reported the circumstances to us itself;
- 15.4 Whether the firm genuinely accepts the underlying principles applicable to its behaviour and that it will apply them in future in other, perhaps factually different, situations;
- 15.5 What the firm has done and is going to do to correct the situation;
- 15.6 Whether the behaviour:
 - 15.6.1 formed or forms part of a pattern of, or repeated, misconduct or other regulatory failure;
 - 15.6.2 continued for an unreasonable period taking into account its seriousness;
 - 15.6.3 persisted after the regulated person realised or should have realised that it was improper;
 - 15.6.4 affected or had the potential to affect a vulnerable person or child;
 - 15.6.5 affected or had the potential to affect a substantial, high-value or high-profile matter;
- 15.7 The usual factors relevant to regulatory decisions - such as previous regulatory history, evidence of deliberate intent, recklessness or dishonesty, and personal mitigation.

16. We also publish more specific guidance about, for example, the tests to be applied in deciding whether to prosecute at the SDT or to impose practising controls.

Regulatory settlement agreements

17. We have published our approach to reaching agreements with firms. Agreements are not commercial settlements but an agreed regulatory outcome in the public interest. Discussions about possible agreements can be held "without prejudice".

Case selection

18. Case selection is primarily based on the facts of the individual case but we will also use enforcement action to address priorities.

19. What we consider to be a priority at any particular time may influence how we allocate enforcement resource. Our priorities will also influence the use of resources in our non-enforcement work. That will make it more likely that we will identify possible breaches in such priority areas and take formal action to deal with them.

20. We may focus on priority areas by thematic work. Themes are likely to be selected because there appears to be a particular risk that we need to understand better or to tackle directly. Thematic work will not start with the presumption that it will lead to enforcement outcomes, but it clearly might. Also, the fact that thematic work is likely to relate to areas that are of concern to us means that they are proportionately more likely to result in enforcement action than issues in lower priority areas.

21. This does not mean that we will only take enforcement action in priority areas. There will always be cases where enforcement is necessary by application of the factors set out above or cases that we consider are necessary to achieve credible deterrence or public protection.

22. The combination of the priority given to certain types of misconduct over others and our risk-based approach to enforcement means that some cases will be subject to enforcement and others not, even when they may be similar in nature or impact. Our choice as to the use of enforcement is therefore a question of how we use our resources effectively and efficiently and how we ensure that the public is protected.

23. Before we proceed with an investigation, we will satisfy ourselves that we have proper power and justifiable grounds to investigate under criteria that will be published from time to time. To assist these decisions, we have developed a set of assessment criteria. The [current criteria](#) are framed as a matrix. They take account of our conception of risk to the public. Not all of the criteria will be relevant to every case and there may be other considerations which are not mentioned in the list but which are relevant to a particular case. Our assessment will include considering whether using alternative tools is more appropriate taking into account the overall circumstances of the firm and the wider context.

Who will be investigated?

24. We will focus on compliance by firms and enforcement action may often be against the firm. Individual misconduct will be subject to enforcement action where appropriate in accordance with published guidance. Investigations will often have to consider the position of both the firm and individuals for a proper decision to be made as to who may be subjected consequential action. We have published the criteria we apply in deciding whether to take action against a firm or an individual.

Informants, witnesses and others with a legitimate interest in a case

25. People other than the firm may have a legitimate interest in information such as the progress or outcome of an investigation or our supervisory work. We aim to be as transparent as possible and will disclose information when it is appropriate to do so. We have published details of how we will decide to disclose information.

Annex B - Why the SRA is considering the financial stability of firms

1. Financial instability can be caused by a range of factors some of which are in the control of firms and some which may not be. External factors that may affect a firm's financial strength and capability may include

- poor trading conditions locally nationally or internationally,
- interdependency with other sectors in difficulty,
- availability of credit and economic conditions generally,
- changes in social behaviour or legislation, and
- new or increased competition.

2. Factors more closely controllable by firms that may impact financial strength and capability may include

- ineffective financial management and controls,
- poor partner and staff retention and management,
- over-dependence on single market, client or contract, and
- poor business planning.

3. It is clear that any one factor or a combination can put a firm at risk of insolvency. However, if the internal factors are well managed, it is likely that a firm should be better placed to address the external factors.

4. Furthermore, financial instability can create pressures upon individuals within firms that can lead to dishonest behaviour. For example, a conveyancing firm may be reliant upon the state of the economy and the housing market in particular; cash-flow pressures due to fewer transactions might lead to a partner dipping into the client account fully expecting to pay it back the following month, only for the following month's figures to be as bad or worse. In this instance the state of the economy has had a major impact on a firm with insufficient controls to prevent a fraud.

5. The impact upon consumers of either insolvency or fraud can be significant. For individuals, many are engaging with firms at a time of personal stress such as while moving house, getting a divorce or following the death of a family member. For commercial clients the disruption can have additional financial ramifications and cost.

6. Additionally, there are wider considerations about the impact of these instances upon access to justice. In some areas, the loss of legal firms may leave communities with limited access to local legal advice with further impacts on consumers.

7. The work done in preparing for these changes has involved extensive engagement with firms of many sizes and other interested stakeholder groups. Further, the SRA has worked closely with peer regulators in other sectors to understand what can be learnt (for example, the SRA gathers less information on its regulated entities than most, if not all, of its peers).

8. However, for the avoidance of doubt, the SRA has no responsibility to prevent firms from failing but where possible it believes that the orderly wind-up of firms is preferable.

Outcomes related to financial stability

9. The SRA has had to intervene in failing firms more frequently, especially since 2007, which suggests that more consumers are being impacted by this, and more firms are in getting into difficulty. This also results in greater cost to the regulator (and therefore the profession). Unfortunately the SRA is often made aware of the problems too late to either promote the orderly wind-up of a firm (transferring clients to other firms etc.) or, better still, the survival of the firm.

10. The outcomes the SRA is seeking, therefore, are

- risk-based regulation which is targeted and proportionate,
- better financial management within firms,
- more orderly winding-up of firms where necessary, and
- reduced opportunities for fraudulent behaviour.

Means of achieving the desired outcomes

11. Primarily, the SRA acknowledges that it needs to take a more proactive approach to both the assessment of risk and engagement with firms on financial management but that any measures should be appropriate and proportionate.

12. At present firms are required to retain reporting accountants to produce an annual report on compliance with the Accounts Rules which is then provided to the SRA. Otherwise, it is only upon authorisation or renewal, if complaints are received, or on notification of closure of the practice that the SRA receives information on firms and this is insufficient to effectively assess the potential risks firms face.

13. Therefore, the SRA has identified circumstances in the lifecycle of firms when either the regulator could request information or firms might be expected to notify the SRA—most often through self-reporting but supported by the potential for firm visits and audited reports where appropriate.

Point in lifecycle	Potential risks	Potential notification and reporting requirements
Authorisation of the firm	Poor business planning "Phoenix" firms*	Business plans Partner and senior staff CVs including experience, qualifications and training Six-monthly self-reporting for first 24 months

Established and operational (+two years onwards)	General risks to client money through poor management or dishonesty	Accountant's Report Data on annual turnover Self-certified reporting on management information Firm visits by the SRA
Significant changes to the firm: e.g. entry into new market/acquisition of another firm; material proportion of partners/employees leaving	Poor business planning Overextension/inadequate funding Loss of significant clients Loss of confidence of some partners/ staff	Firm to notify SRA of changes
Sector and sub-sector risks identified e.g. changes to economy, new legislation etc.	Increased exposure to difficult market conditions	SRA may request additional data from firms operating in higher risk sectors
Firm in financial difficulties	Increased risk of fraud and loss of client money Risk of insolvency	Firm to notify SRA when it considers itself in difficulties –e.g. requires significant borrowing in order to remain a going concern More frequent self-reporting
Firm in distress	Increased risk of fraud and loss of client money Increased risk of insolvency Potential intervention	Firm to notify SRA when it considers itself in distress e.g. breaks bank covenants, cannot obtain finance More frequent reporting
Firm wound-up	Disorderly wind-down and intervention Clients stranded	Firm to notify SRA in advance

(A "Phoenix" practice is one that has been wound up and restarted, usually under a different name. This is often to avoid creditors. Consumers are considered likely to be at greater risk from a serial phoenix firm.)

14. The SRA is responsible for the regulation of firms of all sizes and across many legal services—a "one size fits" all approach would be inappropriate. As such, the risk-based approach will consider the frequency, depth and breadth of information required to focus efforts and support where it is most needed.

15. The means of information sharing between the SRA and firms can be broadly summarised in the following categories:

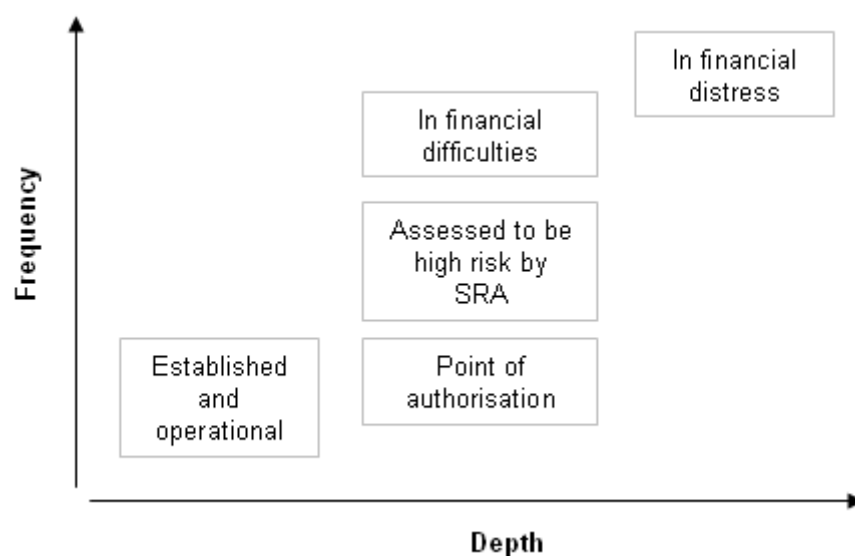
Third party reporting – e.g. the Accountant's Report – currently on an annual basis

Self-reporting/certification – e.g. providing information on turnover, business plans etc. – currently minimal

Event driven notification by firms – e.g. at present upon closure

Regulator visits to firms – e.g. Practice Standards Unit (PSU) visits.

16. The frequency and depth of information gathering will need to be a pragmatic response. The diagram below suggests a means of assessing what may be appropriate.



17. The value in gathering data will clearly be largely dependent upon how effectively it is applied and analysed by the SRA. However, it should be recognised that the framework for notification and reporting in and of itself sets expectations of firms and sends a message to stakeholders more widely about what standards of financial management the SRA expects of firms.

18. The SRA is concerned that this increase in data requested by the SRA should not become an onerous and unreasonable burden and notes that much of what will be requested is currently provided by firms to banks and insurers. Also it is considered

essential that the appropriate internal controls are in place within the SRA to respect the confidentiality of information provided.

19. Upon receiving applications for authorisation, the SRA will carry out a risk assessment based upon the data provided. Its options will be to grant the application, grant the application with additional licence conditions, or reject the application. The licence conditions set may include specific requirements for more frequent reporting or the reporting of specific data.

20. Upon receiving the Accountant's Report and additional information from firms the SRA will be in a position to revise its risk assessment, request further information, point firms in the direction of advice and/or provide advice about the risks they face and potential means of mitigating these risks.

21. It is evident that taking this revised approach will result not only in significant change but will require effective communication and setting of appropriate expectations with consumers, additional support for firms, not to mention new skills and resources for the SRA.

22. This is a dynamic process so firms will see their relationship with the SRA in terms of the requesting and sharing of information change over time.

23. Fundamentally, it is hoped that by requiring the right and proportionate level of information from firms, supported by fair and reasonable analysis, firms may be encouraged to manage their businesses more effectively to the benefit the firms, the profession, the SRA and, most importantly, clients.

24. The exact nature of the reporting and notification framework is still at an early stage of development. The SRA is currently developing more detailed proposals to be presented for consultation in October 2010. In advance of this, the SRA will be holding further informal stakeholder consultation.

Questions

1. Do you have any comments about the risks arising from the current financial management of firms?
2. Do you have any comments regarding the SRA's responsibilities for addressing the financial stability of firms and its proposed desired outcomes?
3. To what extent do you consider the proposed response outlined in this section meets the objectives of outcomes-focused regulation?
4. Do you have any suggestions regarding what information may be requested of firms and how frequently it may be requested?

Annex C - "Achieving the Right Outcomes": Our responses to the main questions from the profession

The cost to the profession of maintaining the SRA is already high. Will OFR costs attributable to certain areas of the SRA be matched by savings elsewhere?

Using our resources to proactively assess and address risks will make us a more efficient regulator, helping to keep costs down and ensuring we provide value for money as a regulator. We have already been able to reduce administrative costs and our ultimate aim is to deliver much better value for money by delivering "more for less" in "unit cost" terms. However, it needs to be remembered that cost-effective regulation is also a partnership between us and the profession; good compliance means the SRA spends less.

Can you guarantee that the change to OFR will not result in increased costs to firms, excessive administrative burdens and a lack of clarity?

OFR will give firms greater flexibility in how they achieve the right outcomes for consumers which over time should increase the potential gains and reduce administrative burdens on firms for firms choosing to make use of these greater freedoms. There will be guidance to help firms consider how to deliver the required outcomes, we will make it easy for firms to submit information to us, and in the vast majority of cases, we will be happy for good firms to continue to practise in much the way they do at present.

There will also be a role for representative bodies in helping their members with the introduction of OFR and we will welcome discussions with these bodies on this point.

Will information be published in relation to cost-benefit analysis and what will be the cost of introducing the profession?

In the next few months we will undertake a cost-benefit analysis of the approach we are taking to implementing OFR, including working with a cross-section of our stakeholders to understand the impact on particular types of firms. This will be published in October 2010.

Are you confident that you can meet the deadline for the implementation of OFR and ABSs?

We are confident that on 6 October 2011 we will be in a position to license and regulate ABSs, supervise and, where necessary, enforce the new Handbook. However, we have choices that can be made for example on whether there are aspects of the new Handbook (such as reporting requirements) that are best phased in over a slightly longer period of time. Our decisions need to be informed by a practical analysis of what is realistic not just in terms of our own readiness, but firms' readiness also, including an understanding of any direct and time costs for smaller firms in particular.

Over the next few months we will be considering our approach to an up to three-year phasing period, working also with stakeholders, and will report on our decisions in October this year.

Will the SRA have made the necessary changes to its people culture and systems organisation in time for the move to OFR?

The SRA culture needs to reflect the expectations of the regulated community and other stakeholders and we recognise the sizeable challenges involved in preparing our people, culture and systems for the new regulatory approach. Successful cultural transition will require new attitudes and behaviours from our staff alongside the development of technical competencies to regulate in the new way.

Our primary focus will be to bring about an outcome-focused approach in everything we do, valuing skills such as an inquisitive mindset, a desire to work across functions with colleagues, sharing information, and keeping consumer and public interest at the heart of everything we do.

There are considerable implications for our technical skill set. For example we need to expand our capacity to analyse less standardised information and proactively assess risk. Commercial awareness will become more important as business structures become more varied, and we will need to bring credibility to our work alongside the profession as partners in protecting the public.

Our systems also need considerable updating and benefits from planned development include

- a significant reduction in requirements for paper-based interaction between ourselves and firms and individuals by moving to online submission of material such as applications and annual returns,
- tools to support the systematic assessment and management of risk, and the management of our relationship with firms.

The SRA has launched a programme of organisational reform for this work and we are being very ambitious in the approach we are taking. Nevertheless, this type of transformation cannot happen instantly and stakeholders will experience an evolution to the new approach rather than a "Big Bang".

Will the introduction of OFR be seen as a relaxation of standards to accommodate the arrival of ABS into the legal services marketplace?

Our approach to OFR does not herald a relaxation of standards or "light touch" regulation. Indeed, a measure of success of our new risk-based approach will be the extent to which it has increased our ability to identify the firms and individuals that cannot and will not deliver good outcomes for clients and to then deal with them appropriately.

How will you regulate multi-disciplinary practices?

The SRA's approach to regulation of multi-disciplinary practices will be covered in the May consultation.

Will guidance be provided to the profession to explain how the move to OFR will affect them?

"Freedom in Practice – Better outcomes for Consumers", our most far reaching consultation programme to date, was launched on Thursday 25 March. This programme acknowledges the importance of engaging with all of our stakeholders, firms, individual lawyers and consumers, in a myriad of ways. This engagement will

include guidance, starting in October 2010 as part of the policy statement to this consultation, on what firms need to do and when in order to be ready for OFR.

As well as providing information via workshops and speeches, will the SRA ensure information is published in a consistent and easily accessible form?

We acknowledge that we need to employ as many different methods as we can to reach the profession and other stakeholders and have a programme of engagement which includes roadshows and workshops. We will make sure that all relevant material is published and easily available on our website.

The ability to have "adult" conversations about regulation with the SRA is important for both the regulator and the regulated. Will you be putting in place a system of sharing information about the good practice that evolves as a result of those discussions?

It is important that examples of good practice are shared across the profession. We will be looking at various formal and informal ways of supporting this activity and welcome ideas. One approach, where we observe good practice that might be applied widely, is to add it to the body of the guidance in the Handbook. We also think there will be a role for representative bodies to work with their members to draw examples of good practice to our attention and would welcome views on how this might work.

Will the SRA focus on the provision of support, open consultation and guidance so that potential issues are addressed before they become problems?

A key win from our move to OFR is to be more proactive in reviewing and addressing risks. An important vehicle for addressing emerging risks will be to tackle them thematically before the risks significantly crystallise, rather than reactively firm by firm. Themes may include the use of a suite of "softer" regulatory tools such as "Dear Managing Partner" letters, and consulting on and issuing guidance. However, where the risks are potentially serious we will take stronger preventative action. For example, if we think a group of firms is in danger of financial failure we will get intensively involved at an early stage to ensure effective management including orderly wind-down if necessary.

We also plan to make our broad risk assessments available to our stakeholders and will publish an annual outlook of emerging risks and key areas of focus for firms.

How will the SRA decide which rules it will keep, which will be amended and which will be abolished?

Our objective is to deliver a clear focus on the key principles and outcomes which must be achieved and to remove and rationalise much of the detail contained in the current Code. However, some rules, such as the Accounts Rules, will remain much the same, reflecting our judgement of what is necessary to manage risks to clients. However, where possible these will be drafted in a more outcomes-focused way.

The SRA's proposed detailed approach to the new Handbook of regulatory requirements will be set out in the May consultation, and we shall listen carefully to the views of all stakeholders before finalising the Handbook.

Will the type of supervision firms experience be related to the risk they pose rather than a one-size-fits-all approach and will SRA have different teams offering different types of supervision to different types of firms?

The type of supervision a firm receives will be linked to the nature and type of the risks they pose to the regulatory objectives. A "one size fits all" is not efficient or effective regulation. Further detail on our new approach to supervision is set out in the main body of this consultation paper.

At what level of detail will discussions on the "effectiveness of the firm's risk management systems" take place?

The degree of intensity will depend upon the issue at hand and the attitude and approach the firm is taking to its engagement with us. Ultimately, we will drill down to whatever level of detail is necessary for us to be satisfied that a firm's approach to managing a particular risk is likely to be effective.

Will SRA enforcement sanctions be targeted at senior managers in firms as well as individual practitioners responsible for breaches?

We will focus on compliance by firms and enforcement action may often be against the firm. Individual misconduct will be subject to enforcement action where appropriate in accordance with published guidance. Investigations will often have to consider the position of both the firm and individuals for a proper decision to be made as to who may be subjected consequential action. We have already published the criteria we apply in deciding whether to take action against a firm or an individual.

Will there be a transition or a moratorium period where enforcement action will not be taken against firms that are not in a position to demonstrate how they achieve the desired outcomes but are technically compliant with the rules contained in the current Code?

It is certainly not our intention to "catch" good firms out and as outlined above we will be making decisions on the best way to introduce the new regime on the basis of a number of considerations, including the time and support firms will need to adapt to the new approach.

Will the SRA ensure that equality and diversity principles are incorporated into the design of OFR?

We have highlighted some of the equality issues that we will be considering as we continue to progress our equality impact work in relation to the various work areas that will be changing through this transformation process. We will continue with this work and plan to publish the findings of our full equality impact assessment for key areas with our policy statement in October. To help us with this work, we are particularly keen to hear from our stakeholders with any particular concerns or comments about the potential impact of our new approach for all equality groups. Our new approach will require us to work much more collaboratively with firms and individuals and this will require a high level of trust and confidence from all sections of the profession. We want to be sure that equality and diversity are embedded in our outcome-focused approach from the very outset.

Will the SRA provide a specific definition of risk to firms?

The SRA is concerned about the following types of risk:

- Risks to the regulatory objectives, including risks that might arise from the wider economic environment, such as an economic down turn;
- The risk that firms' actions and that of individuals will be inconsistent with the 10 overarching regulatory principles in the Handbook; and
- The risk that firms will not comply with the outcomes and other binding regulatory commitments in the Handbook.

We will publish our view of emerging risks and key areas of focus for firms from time to time, and at least annually.

Will the SRA defend the principle of independence which to date has underpinned the regulation of professional conduct?

The Legal Services Act 2007 sets "encouraging an independent, strong, diverse, and effective legal profession" as one of our statutory objectives. The principle of independence is preserved within this and will continue to be a foundation of our regulatory approach.

Annex D - Discussion paper on the equality implications of outcomes-focused regulation

Introduction

The SRA is transforming its approach to regulation, moving to a new outcome-focused approach which will deliver more effective, proportionate and targeted regulation that improves delivery of our regulatory objectives. This new approach will have far-reaching implications for all the firms and individuals we currently regulate, for consumers of legal services, and the Alternative Business Structures (ABSs) we plan to regulate from 6 October 2011.

We are committed to demonstrating that we are a fair and proportionate regulator. We also want to ensure that we are, and are seen as an inclusive and accessible organisation. We have made significant progress through the implementation of our [equality and diversity strategy](#) in achieving our vision for equality and diversity. We want to continue to improve on our performance in this area and do not underestimate the challenge a new regulatory approach may present. We are seeking to embed equality and diversity in the transformation to outcomes-focused regulation at the earliest opportunity.

We will be carrying out a full assessment of the impact that our proposed new approach to regulation will have on equality. This discussion document is based on our early thinking about the potential equality issues that we will need to consider as we work through the full equality impact assessment for all of the affected work areas.

We have been carrying out a programme of impact assessments in relation to many areas of our regulatory work over the past few years and much of the data that we have gathered will be useful for us in assessing the equality implications that may emerge out of the outcomes-focused regulation approach.

We will be carefully considering the feedback provided to us in response to our early consultation document and engagement with our stakeholders. We will be working very closely with representative groups within the profession, including equality groups, and with consumers and consumer groups to help us make a thorough assessment of impact and to identify actions we could take to minimise any adverse impact and promote equality.

We would encourage and welcome all feedback and views which we will use to inform the full equality impact assessment which we intend to complete and present with our second consultation in the Autumn when we will have much more detailed proposals about the transformation.

Overview of the aims and objectives of our proposals

We are at an early stage in our thinking about how the outcome-focused approach will work in practice and have set out our vision in a consultation document to provide you with an opportunity to inform and contribute to our thinking.

Our approach includes:

- (i) ensuring that the requirements on firms are more focused on acting in a principled manner to deliver desired outcomes, rather than compliance with over detailed rules. We will do this by lifting the

binding regulatory requirements ("rules") to the level of principles and stating the clear outcomes to be achieved where possible;

(ii) a sophisticated desk-based research and analysis capacity to assess potential risks to the regulatory outcomes and support the delivery of targeted proactive regulatory action;

(iii) an approach to authorisation that is risk and evidence based, making sure that legal services are delivered by principled and competent firms and individuals;

(iv) an approach to supervision which encourages firms and individuals to be open and honest in their dealings with us that helps and encourages them to tackle the risks themselves wherever possible, allowing us to concentrate on those who can't, or won't put things right;

(v) an approach to enforcement which creates a credible deterrent and is effective, fair and proportionate;

(vi) the delivery of consistent regulatory protection across the profession to ensure that no entity or individual delivering legal services is at an unnecessary comparative disadvantage as a result of our regulation;

(vii) concentrating our resources on dealing with those firms who pose a serious risk to our regulatory objectives, such as protecting and promoting the interests of consumers. This means we will make decisions not to address matters we judge to be of low risk and impact, and will accept the risk that entails; and

(viii) delivering better value for money. Concentrating our resources on the greatest areas of risk will make us more cost-effective.

Who will be affected by the proposals?

The key stakeholders who will be affected by our transformation to outcomes-focused regulation are

- the profession and other suppliers of legal services,
- consumers of legal services,
- the Legal Services Board,
- the Legal Ombudsman,
- SRA staff,
- the Law Society,
- other regulators.

The outcomes of our current approach to regulation

We have been working hard to understand the impact that our regulatory activities have on different equality groups within the profession. In particular we have been concerned about the disproportionate outcomes for black and ethnic minority (BME) solicitors, highlighted in Lord Ouseley's independent review published in July 2008. Although we have made considerable progress across a number of areas since then, which is reflected in [Lord Ouseley's interim review](#) published in June 2009, we are continuing to monitor our regulatory activities and outcomes and have commissioned research to help us understand the reasons for this continuing disproportionality. The research findings will help inform our full equality impact assessment of outcomes-focused regulation policy and practice.

Our most recent monitoring [report](#) provides statistical data about key aspects of our regulatory activities for the calendar year 2008 and the profile of the profession broken down by ethnicity, gender and age.

Although this data relates to our current approach to regulation, the data is nevertheless a starting point for our equality impact assessment work on the proposed new approach.

The equality implications to be addressed as we move to outcomes-focused regulation

Outcomes-focused regulation will significantly change the way the SRA regulates the profession. As explained in the consultation document, the transformation will involve changing almost all aspects of our regulatory work. The principles of outcomes-focused regulation are fair and non-discriminatory, but the practical changes we will need to make to our regulatory practices could have positive or negative effects for equality. As we develop our proposals, we shall need to identify these impacts, and ensure that any negative impact is minimised.

As the new approach will involve moving away from the application of prescriptive rules, some in the profession and other legal services providers may be uncomfortable with the uncertainty that comes with this. To help with this, we will be providing the profession with clear guidance about our expectations and describing the indicative behaviours which we will be looking for. We would hope that the move to broad principles and outcomes will be seen as an opportunity for the profession and other legal services providers as the new approach provides much more flexibility in terms of how a firm chooses to practise.

We have set out below some early thoughts about the equality implications that we will need to consider in relation to each of the key proposals described in the consultation document:

- A new Handbook of regulatory requirements
- Authorisation
- The Risk Centre
- Supervision
- Formal investigation, legal and enforcement

- Policy and Handbook
- Evidence-based decision making and research
- Governance, coordination and decision making
- People, culture and systems
- Transition.

This work will develop as we engage with the profession and consumers and gather further evidence.

New Handbook of regulatory requirements

Aims/Objective: to ensure that all of our regulatory requirements are brought together into a single online Handbook, including the Code of Conduct, Accounts Rules, Licensing Rules, special bodies etc. A redrafted Code of Conduct is central to our implementation of outcomes-focused regulation, concentrating on key principles and outcomes which must be achieved and to remove and rationalise much of the detail contained in the current Code and other regulations.

In considering the impact for all equality groups we have recognised that there are some high-level generic themes such as:

- A less prescriptive approach can mean uncertainty
Action: we will be working with the profession to promote clear understanding of our requirements and the approaches that can be used to meet them.

The potential positive impacts are:

- There will be greater flexibility in using different methods to achieve the required outcomes.
- Clear outcomes will help consumers to better understand what they can expect from legal services.

The Risk Centre

Aims/Objective: to obtain, analyse and deploy information from a range of sources in order to understand the changing legal marketplace and to understand the risk to our objectives which may come from:

- the behaviour of firms we regulate,
- our own internal operations,
- broader economic and sector developments.

In considering the impact of how we approach risk assessment for all equality groups we have recognised that there are some high-level generic themes such as

- how we assess risk may target particular parts of the profession which could have an indirect impact on equality;. Action: we will assess the risk criteria and mitigate any adverse impact by implementing a transparent risk-assessment process and quality assure our decisions;
- we need to be aware of the source of information that we act on and be cautious about subjective or potentially biased sources; Action: our assessment of the information received will take into account any concerns about its source and our staff will be provided with the necessary skills and confidence to make an assessment that is fair and objective.

We also recognise that there are positives outcomes for each of the equality groups in how we propose to assess risk such as

- getting a more informed picture of the risk posed will enable us to deploy the right level of supervision/action to that risk,
- being able to assess emerging risks will enable firms to put things right at an early stage and help to protect consumers and third parties,
- identifying recurring themes of risks affecting particular groups and considering preventative measures such as holding educational workshops/seminars.

Authorisation

Aims/Objectives: to ensure that we allow only those firms and individuals to deliver legal services, who are capable and willing to act ethically and deliver good outcomes for clients. This will operate for new applications and for ongoing revisions or revalidations.

This work will involve all firms and individuals as well as the new arrangements for Alternative Business Structures.

In considering the impact of how we approach risk assessment for all equality groups we have recognised that there are some high-level generic themes such as:

- Ensuring that individuals seeking to practise have the appropriate education and training requirements and that we promote wider access to the profession to increase its diversity
- Ensuring that lawyers from overseas who are seeking to practise in England and Wales are properly prepared and assessed
- Ensuring that solicitors are able to provide legal services in a variety of ways to promote diversity in the profession and access to justice for consumers.

Our supervisory approach

Aims/Objective: to develop risk-based oversight of the regulated community focusing on how a firm's own internal systems are working to deliver the required outcomes.

Supervision from the SRA will be tailored to meet the risk posed, the firm's size, and the firm's approach to risk management. It will include a range of measures from permanent relationship management, for example with large commercial firms, to temporary measures such as visits to firms or groups of firms.

In considering the impact on all equality groups of our new approach to supervision, we have recognised that there are some high-level generic themes such as:

- The requirement for robust and effective self regulation may place an additional burden on smaller firms;
Action: We will take a more collaborative approach to regulation and support a firm where appropriate to enable them to put the necessary improvements in place. We will encourage the Law Society and other professional groups to provide additional support. We hope the profession will cooperate and work with us on what will be a distinct change in the way we regulate.

We also recognise that there are positive outcomes for the profession and consumers groups in how we propose to approach supervision, such as:

- Introducing a more collaborative approach to ensuring that the right outcomes are achieved for the consumer
- A tailored approach to supervision may mean more support for firms that are currently disproportionality represented in regulatory outcomes
- An additional opportunity for more engagement and contact between the SRA and the profession
- An opportunity for firms to be proactive in taking steps to put things right
- Consumers may be reassured by the fact that we are making unannounced visits or using mystery shopping as a method of initial enquiry.

Formal investigations, legal and enforcement

Aims/Objective: to ensure that serious breaches of the principles are detected, investigated and rigorously enforced, including through prosecution at the Solicitors Disciplinary Tribunal on the basis of sound legal advice.

In considering the impact of how we approach formal investigations and enforcement on all equality groups we have recognised that there are some high-level generic themes, such as:

- We will need to put in place systems and processes to demonstrate a fair and proportionate use of our investigatory and enforcement powers
Action: We will take into account the work that we are already doing in relation to the disproportionality in regulatory outcomes;
- Uncertainty about when the SRA will take enforcement action against an individual or firm
Action: We would hope that we will have to use less of our enforcement powers under an outcomes-focused regulation regime, as firms will have an opportunity to engage at an early stage with the SRA should a concern be raised;
- The risk of losing the confidence of consumers and others if the approach is seen as taking too much of a "light touch";
Action: we will use our enforcement powers if a firm fails to meet its obligations and does not cooperate with the SRA to try and rectify any failings.

We also recognise that there are positives for equality groups in how we propose to conduct formal investigations and enforcement, such as:

- Robust and proportionate enforcement will raise consumer confidence in the SRA and legal services
- Agreed compliance plans and settlement agreements are an opportunity for solicitors and other providers to put things right and continue to practise
- Our approach to enforcement will be fair and proportionate taking into consideration factors such as size of firm, number of clients affected etc.—taking a flexible approach rather than a "one size fits all" approach
- Our enforcement strategy will ensure that our approach is transparent.

Policy and Handbook

Aims/Objective: to provide advice internally and externally on the intention of and policy behind Handbook provisions.

Explaining the policy behind the Handbook will benefit both the profession and consumers by:

- Helping the profession and consumers to understand the required outcomes
- In developing the policy behind the handbook, we will be assessing and monitoring the equality impact of each policy area.

Evidence-based decision making and research

Aims/Objective: to undertake analysis and research, using it to support and inform all of our regulatory activities so that we develop and maintain an accurate understanding of risk.

We will use the evidence gathered from research into the impact of outcomes-focused regulation to identify equality impact that we may not have considered. We see evidence-based research as being valuable in providing the evidence to help us target our resources and make decisions more effectively.

Governance, coordination and decision making

Aims/Objective: to deliver good risk-based cost-effective regulation that directs regulatory attention to the areas of greatest need will require us to develop strong, flexible mechanisms for the management and coordination of our resources.

We have introduced and published clear criteria for decision making supported by a system of internal audit. We will build on this work in the context of our new approach to ensure that we are better and more consistent in our approach to decision making.

We will continue to monitor the outcomes of our decision making and build on our quality assurance system to ensure that our decision making stands up to internal and external scrutiny.

People, culture and systems

Aims/Objective: to ensure that we develop attitudes and behaviours from our staff alongside the development of technical competencies so we are fit and ready to regulate in the new way.

We are undertaking a training needs analysis to address the skills requirements and will be implementing a new and improved IT system to enable us to work more efficiently and effectively.

We recognise that there are positives for all equality groups in how we prepare our staff and systems to work in an outcome-focused way, such as:

- Ensuring our staff have the right skills, competencies and attitudes to ensure fair and proportionate regulation of a diverse profession in accordance with the new approach
- A new IT system will help us improve how we hold, process and assess data
- We will be better able to monitor our regulatory activity and this data will be available for use in our ongoing equality impact assessment work.

Transition

Aims/Objective: to ensure that there is a clear programme of transition for the implementation of outcomes-focused regulation.

We recognise that there are positives for all equality groups in how we propose to handle the transition to outcomes-focused regulation, such as:

- Improved information for the profession and consumers
- A variety of engagement activities with consumer groups, the profession and others to seek views on our proposals at an early stage so as to be able to influence our thinking and help us to fully assess equality impact
- There will be time for firms to understand the SRA's direction of travel from an early stage and think about changes they may need to make to be ready for outcomes-focused regulation
- There will be time to provide support and guidance for those most likely to be adversely affected by the new approach.

Conclusions

It is clear that many aspects of our proposed move to outcomes-focused regulation are highly relevant to equality. We will be considering each aspect of the transformation in detail, relying on the initial equality impact assessment work that has been completed or is continuing across the organisation. We will be publishing the findings of our full equality impact assessment of outcomes-focused regulation with our next consultation in October.

The attached action plan sets out the work that we will be doing in the interim.

Action plan

Objective	Action	Target date
1. Gather data and information that may be required to inform the full equality impact assessment	Gather information already available from our existing initial equality impact assessment work	July 2010
	Identify any further data required to complete the full impact assessment	
	Obtain feedback from the profession and representative groups, including equality groups through the consultation process and additional engagement	
	Obtain feedback through consultation and engagement activities with consumers and consumer groups	
2. Make an assessment of the equality impact of our move to outcomes-focused regulation	Analyse the available data, information and feedback on the equality impact of the new approach to regulation	August 2010
3. Eliminate any potential	Consider possible alternative options	September

adverse impact or unlawful discrimination	to the approaches if there is an adverse impact and/or if there is any unlawful discrimination Consider and put in place measures/provisions to address adverse impact (or justify adverse impact)	2010
4. Continuing engagement with profession and consumers	Inform and consult equality stakeholders on the assessment made and outcomes as a result of the equality impact assessment Ongoing dialogue on the developments of outcomes-focused regulation to inform the equality impact assessments	October 2010
5. Outline out monitoring and review arrangements on our approach to outcomes-focused regulation and further developments	Publish this information in our full equality impact assessment	October 2010