

# **Referral Fee Forum Supervision & Enforcement Workshop**

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# Outcomes-focused regulation

- OFR and Supervision is about constructive engagement with all regulated firms to encourage firms to address risks to help improve standards and to provide the right outcome for consumers
- A more constructive relationship with firms, where firms are willing to engage with the SRA
- Firms must take responsibility for compliance with the Legal Aid, Sentencing of Offenders Act 2012 (LASPO) and for achieving the right outcomes for consumers, and are willing to engage with the SRA

# OFR and risk-based regulation



- Outcomes-focused regulation means much more emphasis on a proactive, rather than a reactive, approach
- Risk based, targeted and proportionate regulation
- The assessment of risk enables us to :
  - put our resources where the greatest risks are
  - determine the approach to supervision of all firms
  - determine the intensity of supervision
  - assess events and intelligence which suggest arrangements are not compliant
  - identify trends which require greater regulatory scrutiny

# Firm based risk

- The regulated community is changing and evolving in light of the ban on referral fees, so Supervision needs to be responsive
- Our supervisory approach to firms also needs to be responsive and tailored to take account of:
  - the risk a firm and its arrangements pose
  - its own management and mitigation of risk ensuring compliance with LASPO and the SRA Code of Conduct
  - its approach to, and history of, compliance
  - the level of constructive engagement with the SRA

# Supervision's approach to risk

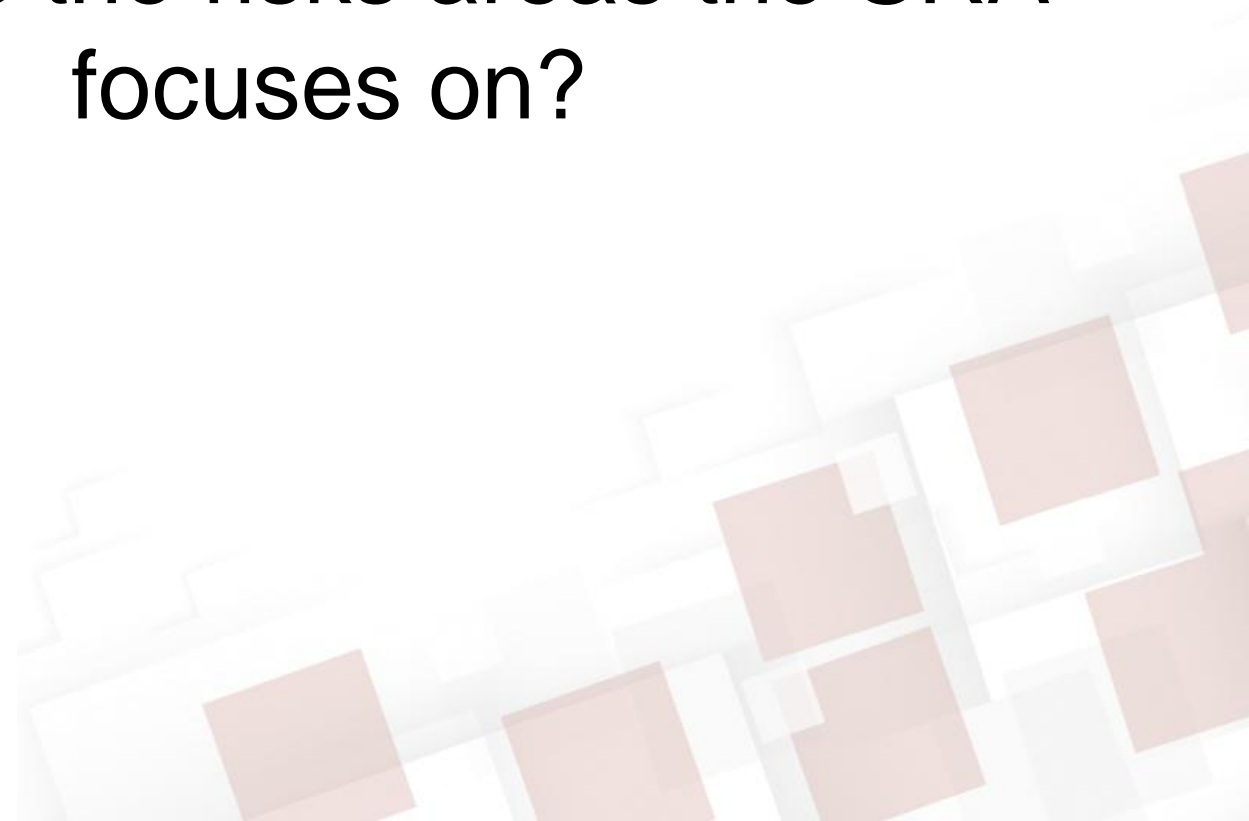
- Risk determines the approach that Supervision will take, including:
  - Profiling and general oversight
  - Relationship management (Large and City firms)
  - Desk based supervision including telephone engagement with firms
  - Visit based supervision
  - Thematic based supervision including guidance on our website, correspondence to firms and thematic visits
  - Formal investigation

# Key message

- Whatever category the firm falls within (high, medium or low impact)
- Whatever form of supervision is in operation

**All firms should be thinking about their compliance with Legal Aid, Sentencing of Offenders Act 2012 (LASPO) and the SRA Handbook**

What are the risks areas the SRA focuses on?



# SRA's risk areas





# Our focus includes...



- Business Model
- General Governance and Risk Management
- Conflict and Confidentiality
- Client Engagement and Service Delivery
- Outsourcing
- Internal Controls/Supervision
- Financial Assurance

# Financial Assurance includes....

- Governance and Financial Controls
- Management Information
- Financial reporting and decision making
- Budgeting process/budget review
- COFA role and meeting regulatory requirements
- Issues from the Accounts
- Management Accounts
- Business Model and Future Strategy
- Market risks and strategy

# Supervision strategy

- New outcomes - mandatory
- New indicative behaviours supported by guidance
- Onus on the firm to demonstrate compliance
- Is the payment prohibited? “or appears to be”
- We will look beyond what the arrangements are labelled as... ‘joint marketing’, ‘joint ventures’
- What is happening in practice?

# Issues to be aware of...

- Sustainability of the business
  - Wind down?
  - Diversification?
- Marketing
  - Pooled arrangements
  - Payments for services
  - Annual fees
  - Vetting claims and other services
- Mergers and Acquisitions

# Issues to be aware of...

- undesirable business models
- allowing your independence and integrity to be compromised

# Enforcement

- Not all breaches will result in enforcement action
- Focus will be on those arrangements where fees are being paid/received and which pose a real risk to the public interest
- Enforcement action:
  - Fair
  - Targeted
  - Proportionate
  - Transparent

# How will we enforce?

- Based on our published enforcement strategy
- Encourages constructive engagement with those who work with us to put things right but strong action where firms do not co-operate or where serious issues arise
- Engagement is important even where disciplinary action taken
- At heart: risk-based protection of public interest and credible deterrence

# When?

- Action most likely when firms:
  - Material breaches of our rules
  - Fail to engage with us
- Regulatory outcome will depend on the seriousness of the misconduct and if harm has been caused



## **Factors which will determine enforcement action:**

- significant detriment to the client
- a failure to assess whether payments are prohibited
- failure to remedy breaches
- the passing of unnecessary costs to clients or third parties
- repeated contraventions of the ban

## Factors which will determine enforcement action: (cont.)

- taking steps to disguise or hide payments – this maybe evidence of dishonesty
- intentional or reckless contravention of the LASPO provisions

# In summary

- OFR is all about protection of clients and the wider public –  
**firms should know whether they are paying for referrals**
- Serious breaches of our rules and ignoring the provisions of LASPO will result in action
- Co-operation with the SRA is key - the sooner the better but never too late!

**Any questions?**

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