Freedom in Practice

Preparing for the new approach to regulation

Roadshow Recap Webinar
Welcome

Antony Townsend
SRA Chief Executive
Setting the scene

Legal services reforms and the advent of alternative business structures have transformed the legal landscape.
Key changes

• COLPs and COFAs
• Conflicts
• Compensation fund rules and Accounts rules
• Notification and reporting requirements
Planning for change

What you need to do

• COLP and COFA appointments
• systems and procedures
• governance and reporting lines
• management review
Tools to help you

• Online Handbook
• OFR at a glance
• SRA webinars
The new Principles

Six familiar principles:
• Uphold the rule of law and proper administration of justice
• Act with integrity
• Do not allow your independence to be compromised
• Act in the best interests of each client
• Provide a proper standard of service to clients
• Behave in a way that maintains the trust the public places in you and in the provision of legal services
The new Principles

Four new principles:

• Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner

• Run your business and carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles

• Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity

• Protect client money and assets
What else has changed

• Outcomes

• Indicative behaviours
Risk management and compliance

- Constructive Engagement
- COLPs & COFAs
- Suitability Test
Alternative Business Structures

- Risk management
- Level playing field
- Compensation fund provisions
- Restrictions on signing on client account
The new SRA

The SRA is being transformed to enable it to introduce OFR:

• Increased cost-effectiveness
• New structure
• Core functions: Authorisation, Supervision and Enforcement
Roadshow Recap
Webinar

Following sessions in this webinar:
• The Handbook - practical examples of the changes. Role of COLP/COFAs
• Authorisation - how to set up a new firm; setting up an ABS
• Supervision - what will change in my relationship with the SRA
Nicky Taylor
Solicitor
Ethics Policy
Executive
Summary of session on the Handbook

- What’s different?
- Navigation
- Principles
- The new OFR mindset
- COLPs and COFAs
- Updates and examples
Handbook – what’s different (1)

• Applies to all individuals and firms regulated by the SRA – including ABS

• All regulatory requirements in one place
SRA Handbook “goes live” in time for it to apply to both traditional forms of practice and ABSs, so that clients of all types of legal practice regulated by the SRA receive the same level of protection.

(Note that timing is subject to Parliamentary timetable.)
Handbook – what’s different (3)

• Web version
• Free!
• “Outcomes-focused regulation at a glance – Your quick guide to getting started with OFR and the new Handbook”
• Webinars
• Ethics Helpline available to give guidance
Handbook – navigation

• Principles
• Code of Conduct
• Accounts Rules
• Authorisation and Practising Requirements
• Client Protection
• Discipline and Costs Recovery
• Specialist Services
• Glossary
Ten Principles (1)

Six familiar principles

You must:

1. uphold the rule of law and proper administration of justice
2. act with integrity
3. not allow your independence to be compromised

cont’d...
Ten Principles (2)

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 cont’d...
Ten Principles (3)

Four “new” principles:
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner
8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles cont’d...
Ten Principles (4)

9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity

10. protect client money and assets
A different way of thinking

Reporting requirements:

• **Old approach** - rule 20 of the 2007 Code of Conduct contains reporting requirements on limited areas

• **Handbook approach** - new Principle 7 on co-operating with regulators and ombudsmen. Outcomes on reporting require you to engage with the SRA in an open and constructive manner to enable the SRA to respond proportionately
A different way of operating

- Managing risk and ensuring compliance
- Effective compliance arrangements
- Identifying and managing risks
Identifying and managing risk
COLPs and COFAs: key issues

- What do they do?
- Who can be appointed?
- Can the same person fulfil both roles?
- Will the COLP and COFA have sole responsibility for compliance with the Handbook requirements?
- Will the COLP and COFA have responsibility for systems and controls?
Planning for COLPs and COFAs

Decisions to be made:

• who are you going to appoint?
• how will the COLP and COFA operate within your business structure?
• what systems are needed to support those roles?
• do you need to change your governance and reporting lines to empower the COLP and COFA?
• how will management review the effectiveness of the COLP and COFA?
Key notification and information requirements

You can find them in the Handbook:

- SRA Authorisation Rules – rules 3, 8, 18, 23, 24 and 25
- SRA Practice Framework Rules – rule 18
- SRA Practising Regulations - regs. 1.2, 4.3, 4.5 and 14
- SRA Code of Conduct – Chapter 10
- SRA Accounts Rules – rules 23 and 32
The Handbook – key updates (1)

• Acting for a buyer and seller of land (no specific outcomes)
• Acting for lender and borrower (Principle 4)
• Referral arrangements (chapter 9 - fee sharing and referrals - sets out the outcomes you must achieve)
The Handbook – key updates (2)

• **Client care** - Principles 4 and 5: chapter 1 of the Code of Conduct

• **Complaints handling** - Principles 2, 4, 5 and 7; and chapter 1 of the Code: clients to be given information about their right to complain to the firm and to LeO

• **Outsourcing** - outsourcing is not defined in the Handbook, but see chapter 7 “Management of your business”, Outcomes 7.9 and 7.10 and chapter 12 on “Separate businesses”
Examples of the OFR approach (1)

Case study: COFA’s duties

You are the COFA for a small, 3-partner firm. You are an employee and not a manager of the firm. The cashier tells you that invoices are unpaid because the firm has exceeded its overdraft limit. You learn that the overdraft facility has been extended on a number of occasions. The bank is now refusing to extend it again.

Your managing partner tells you that this is a temporary cash-flow problem and there is no necessity to report the matter to the SRA.
Examples of the OFR approach (2) - factors to consider

The COFA should consider:

• how prolonged is this issue?
• how severe is the problem?
• are clients’ interests at risk?
• is there a risk to client money?
• can you still say that you are being open with the SRA if you keep this information to yourself?
• is the firm trying to prevent you from reporting it to the SRA, or is this a difference of opinion that can be resolved?
Examples of the OFR approach (3)
Case study: co-defendants

You act for two co-defendants charged with assault. To begin with, their stories are consistent.

However, one of the defendants is concerned he might receive a custodial sentence (he has past convictions). He changes his story to blame his co-defendant. This co-defendant is a long-standing client of your firm.

Can you continue to represent both or either of these clients?
Examples of the OFR approach (4)
- factors to consider

You should consider:
• can you act in the best interests of both clients?
• can you continue to act for either of them, (bear in mind confidentiality and the duty of disclosure)?
- in the light of the outcomes you must achieve:
  • no prejudice to either client’s interests;
  • each client’s confidentiality is protected;
  • you’re able to disclose material information;
  • the court isn’t misled;
  • your independence isn’t prejudiced by looking to your own commercial interests.
The new Handbook - getting started

Polling question:

Do you find “OFR at a Glance” on our website helpful?
Tools to help you

• “OFR at a Glance” – sra.org.uk/quickguide
• SRA online Handbook – sra.org.uk/handbook
• SRA webinars – sra.org.uk/webinars
• SRA Ethics Helpline
• SRA Update e-newsletter
• mySRA – sra.org.uk/mySRA
Authorisation
You have already heard why the SRA is changing, and why the Authorisation function in the SRA is an important part of that process.
What is Authorisation?

- We will protect the public by:
  - Delivering a transparent, risk and evidence based decision making function
  - Ensuring that only those able to demonstrate that they meet the required standards are authorised to provide legal services

- Authorisation is the function that will consider applications from:
  - Individuals and organisations
What are the required standards?

- SRA Suitability Test 2011
  - Why is the test needed?
  - Who will use the test?
Online applications

- First application launched February 2011
- The first phase has been successful
- Second phase commencing in July 2011
- You will be able to update and maintain your own data
What are we aiming for from our IT investment?

- All applications can be completed online by September 2011
- PC certificates and registration confirmation will be available online
- Tracking capability
- Secure online payments
- Significantly reducing processing time
Benefits

- Secure facility
- Online payment facility
- Improvements in efficiency
- Supports efforts to reduce the cost of regulation
- Improved method of updating your details (mySRA)
ABS Background – the Legal Services Act

2001 - “Competition in the Professions” published, resulting in the Clements review
2004 - Clementi Report recommended introducing multidisciplinary practices and commercial ownership of legal practices – basis for the Legal Services Act 2007
2008 – the Legal Services Board (LSB) was formed
April/May 2009 – the LSB published its business plan and ABS discussion paper
June 2009 - the SRA published an ABS discussion paper
September 2010 - the SRA’s ABS Team was created and now forms part of the Authorisation function
23 March 2011 – the SRA’s application to become a Licensing Authority for ABS was approved by the Law Society Council
17 March 2011 – the SRA submitted the application to become a Licensing Authority to the LSB (awaiting approval)
6 April 2011 – SRA Handbook published (awaiting LSB approval)
Who needs to be authorised?

Any entity proposing to offer one or more of the reserved legal activities will need to be licensed by an approved regulator

... with two exceptions

1. Special Bodies
2. Legal Services Bodies
What are the requirements for a Licensable Body?

- At least one lawyer manager
- At least one non-authorised manager or interest holder; and
- Providing reserved legal activities
How can I prepare to become an ABS?

Before applying to become a Licensed Body you should consider:
- Becoming familiar with the Principles and Code
- The reserved legal activities the firm will provide
  - Business plans, forecasts of turnover
  - Governance and management structures
  - Identifying the owners, managers, COLP and COFA
  - Professional Indemnity Insurance
  - Client money / the SRA Accounts Rules
  - Employee details
What are responsibilities of Compliance Officers?

The COLP must:

Be a manager or an employee
Be of sufficient seniority and in a position of sufficient responsibility
Be designated and approved by the SRA
Take all reasonable steps to ensure compliance with the terms and conditions of the body’s authorisation (except any obligations imposed under the SRA Accounts Rules) and report to the SRA any material failure to comply
Be a lawyer of England and Wales and an authorised person in relation to one or more of the reserved legal activities which the body is authorised to carry on
Compliance Officers’ responsibilities cont’d

The COFA must:

- Be a manager or an employee
- Be of sufficient seniority and in a position of sufficient responsibility
- Be designated and approved by the SRA
- Take all reasonable steps to ensure that the body and its employees and managers comply with any obligations imposed upon them under the SRA Accounts Rules and report to the SRA any material failure to comply
- Not be disqualified from acting as a Head of Finance and Administration of a body licensed by the SRA or any other approved regulator
What steps can you take now?

- Discuss options with potential business partners
- Explore non-binding arrangements with potential business partners
- Register company names, acquire domain names
- Agree to enter into exclusive negotiations with a potential business partner
- A Recognised Body can currently apply for approval of a non-lawyer manager provided at all times the body has at least 75% lawyer managers
Guide for LDPs

LDPs with non-lawyer managers may:

• Elect from August 2011 to become licensed as an ABS
• Wait until 31 October 2012 to be passported to become licensed as an ABS
• All firms (LDPs and traditional law firms) must apply for approval of the designated COLP/ COFA by 31 March 2012
Risk, Supervision and Enforcement
Introduction

• Three short presentations about the work of
  – Risk
  – Supervision
  – Enforcement
• How this will work in practice
What is risk-based regulation?

“a systemised decision-making framework and procedures to prioritise regulatory activities and deploy resources, principally relating to inspection and enforcement, based on an assessment of the risks that regulated firms pose to the regulator’s objective” (Julia Black)
Key concepts

- Protect our regulatory objectives
- Firm/thematic/operational
- Sharing our analysis to help you
- Start simple then evolve
How we use risk

- Risk = impact (on our objectives) x probability (of the issues arising)
- Informs supervisory approach
- Includes operational risks
Thematic risks

- Groups of firms or whole sectors
- Proactive analysis by the Risk Centre
- Cross-SRA working
- Thematic work will be addressed by multi-disciplinary teams of specialists
Event-driven assessment

Events matter!
- Individual events will still sometimes be high risk, and will demand immediate action
- Concentrations or patterns of low risk events may also trigger thematic action
- Building on current capabilities
What is Supervision under OFR?

• Supervision is driven by risk and aims to reduce and mitigate that risk
• Supervisory resource is targeted in accordance with risk levels
• Variety of supervisory tools to address different risks
So ... what does good regulation look like?

- Should be based on risks posed by firm to regulator’s objectives (Hampton Review 2005)
- Should include an element of ‘random inspection’ (Hampton & Black J 2010)
- Firms supervised by professional people who understand the firm’s business model.
The SRA’s way of supervising

- Encourage firms to identify and tackle risks
- Help firms improve standards
- Ensure firms provide the right outcomes
How supervision will operate - different approaches

• Relationship Management
• Desk-based supervision
• Visits to firms
High impact

- Relationship Management Pilot
- 19 firms – variety of sizes and risk impacts
- Focused towards high impact and specialist business models
- Engagement with firms on risk and risk mitigation
Medium impact

• Pilot activity from Jan – Sept 2011
• Desk-based supervision and on-site visits
• Driven by ‘events’ but will also include thematic work and proactive oversight
• Events and themes eg orderly wind-down, first-tier complaints, financial stability
Low impact

- Firms part of current pilot work
- Desk-based supervision and on-site visits
- Looking at events and themes
The key principles of OFR enforcement

- Not light touch regulation
- Deterrence and protection of public interest
- Effective, proportionate and fair
- Transparent
- Accountability – SDT, internal and external appeals
Enforcement strategy

• Published enforcement strategy which is being progressively implemented
  www.sra.org.uk/enforce
• Constructive engagement
• Strong action where firms will not work with us or where serious issues arise
• Protection of public interest and credible deterrence
Enforcement tools

Our key enforcement tools include:

- Obtaining documents and information
- PC, ownership and authorisation conditions
- Regulatory Settlement Agreements
- Disciplinary sanctions
- Intervention
Enforcement against firms

- Aim: a consistent and fair approach – traditional law firms and ABS
- Fines – financial penalty criteria
- Disqualification
- Control of ownership for ABS
- Includes action against individuals
Example

- You are the Senior Partner in a ten-partner firm. The cashier comes to tell you he has uncovered substantial unexplained withdrawals from the client account by one of the junior partners of the firm.
- You begin an investigation which reveals that the junior partner has been making round sum transfers to his personal account and disguising them by creating and submitting false bills.
- You suspend the partner, report the matter to the SRA and the police.
The Risk Centre has assessed the firm as low impact and the event as high risk.
Supervision is told about the event and decides that a visit is appropriate.
Supervision establishes that the firm has suspended the partner, investigated the matter and replaced the monies in full.
However, the Supervisor also notes that the firm does not carry out any file audits or checks on monies withdrawn from client account.
Example continued

- The Supervisor works with the firm to introduce a system of file audits and financial checks which the firm agrees to as part of a Compliance Plan.
- The junior partner’s conduct is referred to Enforcement.
- Disciplinary proceedings are taken against him at the SDT where he is found to have acted dishonestly and is struck off.
How to ask a text question
• Please use the on-screen Q&A box.

How to ask a question by telephone
• Dial (0)20 3159 9716 and enter the following PIN code when prompted: 241377#
• THEN, type your name and “I want to ask a telephone question” in the on-screen Q&A box.
Thank you.

CPD authorisation code

APF/COMM