

Guide to the **New SRA**
Standards and Regulations



Welcome to this Teal Compliance guide to the new SRA Standards and Regulations which come into force later this month on the 25th November 2019.

The SRA commenced a programme of review of regulatory requirements back in May 2014 and since then have carried out a number of public consultations regarding reforms, driven by a need that they saw to ensure that the way in which they regulate meets the needs of a changing legal profession and which provides flexibility for new ways of delivering legal services.

There is no real substitute for reading the Standards and Regulations yourself, and indeed the Regulator expects that you do, but we've tried to summarise the main headlines and points to take note of in each section.

HEADLINES

Key points to note include the following:

- **Fewer Principles**

The new Principles are reduced to 7 and focus on ethical standards. Those principles dealing with professional standards and behaviours are now found in a new form in the Codes, as follows:

- **Principle 5:** now rule COCS 3.2 and COCF 4.2 - You must provide a proper standard of service to your clients.
- **Principle 7:** now rule COCS 7.3&7.4 and COCF 3.2&3.3 - You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner.
- **Principle 10:** now rule COCS 4.2 & COCF5.2 - You protect client money and assets.

- **Two separate Codes of Conduct:** From 25 November there will be two new separate codes of conduct; one for solicitors and one for firms - setting out the standards of professionalism that the SRA and the public expect of individuals authorised by the SRA to provide legal services (i.e. solicitors, registered European lawyers and registered foreign lawyers) and the other setting out the standards and business controls expected of firms, including sole practices authorised by the SRA to provide legal services. Those running law firms (managers and compliance officers) are accountable for compliance with the SRA's regulatory arrangements. Where a firm has more than one manager responsibility is joint and several – so you won't be able to argue "it wasn't me" or "it was the firm's decision not mine".

Whilst each Code contains rules specific to solicitors or firms (as appropriate), the Code for solicitors also contains provisions applying several rules equally to firms (see paragraph 7.1 of the Code for Firms, which applies rules 2.1 to 2.7; 5.1 to 5.3; and 8.1 to 8.11 of the COCS equally to firms).

- **New principle of honesty:** We still await the SRA's guidance on new core Principle 4 (act with honesty) but it's worth noting that the SRA has already clarified in its guidance on Principle 5 (act with integrity) that it regards the concept of integrity as wider than just acting dishonestly, and it is possible to behave without integrity without necessarily being dishonest. This reflects the view of the courts, the most recent cases where the meaning of integrity was considered was that of *Wingate and another v SRA*, and *Malins v SRA*, considered together by the Court of Appeal in 2018.

- **Reporting Obligations:** Now found under the heading "Cooperation and Accountability", reporting obligations now contain more detail than before (see rule 3 for firms and rule 7 for individuals). Of particular note is the prohibition on victimisation in rules 3.12 (COCS) and 7.9 (COCF) which make it absolutely clear that the SRA will not tolerate individuals who report or propose to report potential misconduct being subject to detrimental treatment.
- **Serious not material - what is serious:** The new Codes (see rules 9.1(d) and 9.2(b) COCF) state that both the COLP and COFA must promptly report all circumstances capable of amounting to 'serious' breaches to the SRA. The word 'serious' is not defined, whereas in the current Handbook all 'material' breaches are reportable and this word is clearly defined. We recommend that compliance officers should continue to report breaches that indicate a systematic issue or those that put client money at risk, consistent with current guidance.
- **Need to meet the needs of the client:** In addition to taking into account your client's needs and circumstances (per Chapter 1 of the current Handbook), both Codes now require you to go further and consider your client's "attributes" (see rules 3.4 (COCS) and 4.2 (COCF)). You should consider all of your client's characteristics including mental capacity. The SRA has issued useful new guidance (15 October 2019) on "Representing people who lack mental capacity". In the guidance, the SRA discusses dealing with people with dementia (850,000 people in the UK currently suffer from some form of this condition); depending on the severity of the condition their needs will differ - some people will be able to instruct you directly whilst others may struggle to understand your advice and have difficulties in communicating with you. It is important that you are able to identify people who may have reduced mental capacity when you are discussing the matter with them - approaching this sensitively from the outset will benefit both parties so that you can agree any necessary adjustments in the way you work (such as visiting the client at home).
- **Evidencing your chosen of action:** As an individual you are personally accountable for compliance with the new Code, as well as any other regulatory requirements that apply to you and must always be prepared and able to justify your decisions and actions. If not already doing so, you should keep records of all decisions taken so that you can evidence your thought process and how you exercised your professional judgement in relation to any relevant matter or situation. This applies equally to firms, managers and compliance officers – you must always be prepared to justify your decisions and actions. Remember to make a detailed file note of your discussions and any agreed actions and place it on the relevant file.

- **Focus on policies and procedures:** If you have not already done so, you will need to review your existing policies, controls and procedures to ensure that they will enable you to comply with the revised Codes and other changes when they come into force later this month.
- **The SRA's Enforcement Strategy:** The SRA's approach to enforcement continues to be guided by its public interest purpose and is one of constructive engagement. It focuses action on the most serious issues, i.e. breaches which are serious, either in isolation or because they demonstrate a persistent failure to comply or a concerning pattern of behaviour. This includes matters that are considered "serious misconduct" or conduct that is improper and falls short of ethical standards, as well as other serious breaches of SRA standards or requirements (such as failures of a firm's systems and controls). The SRA do, however, acknowledge that human and system error will occur.

Not all investigations will lead to sanctions and all circumstances will be taken into account, including any aggravating and mitigating factors (which may indicate reduced or low future risk, such as an apology, regret, remorse and no evidence of repetition of the misconduct, or a pattern of misconduct), while ensuring that the wider public interest is upheld. If there is no underlying concern as regards public interest, the matter will be closed without further investigation. Alternatively, the SRA may close a case with advice, which may include a warning that further breaches may lead to greater sanctions being imposed in future.

Firms and individuals that take an open, cooperative and constructive approach when working with the SRA when issues arise, coupled with guidance, supervision and monitoring by the SRA, will find that the SRA may decide against taking formal action.

BRIEF OVERVIEW OF THE NEW CODES

The rules within each new Code of Conduct are now grouped under the following headings, broadly the same in each Code with some additional requirements to reflect the different business structures. Below we have tried to identify any key changes within each section. Note the section numbering differs slightly between Codes:

Section in Code	Code of Conduct for Solicitors ("COCS"), etc.	Code of Conduct for Firms ("COCF")
Maintaining trust and acting fairly	Obligations here remain unchanged, but you will see the obligation to perform undertakings now sits within this section.	As for COCS.
Other business requirements	Rule 5.6 details the insurance requirements for solicitors.	N/A
Compliance & Business Requirements	N/A	Obligations essentially the same but note Rule 2.1 (d) requiring you to have effective governance structures, arrangements, systems and controls in place that ensure your compliance officers can discharge their duties under the Code, and Rule 2.5 - you identify, monitor and manage all material risks to your business – rather than risk to compliance with the regulations (per Outcome 7.3).
Dispute resolution and proceedings before the court	Again, obligations essentially the same. Rule 2.6 introduces a new obligation that you do not waste the court's time.	New Rule 7.1 applies this section equally to firms.
Service and Competence	Requirements essentially as before. Note Rule 3.1 sets out detailed provisions regarding acting on your client's instructions and expands on previous requirements. Supervisors and managers to note Rule 3.5(a) which provides that where you supervise or manage others providing legal services, you remain accountable for the work carried out through them.	Essentially the same for firms.
Client money and assets	The "old" Principle 10 (protect client money and assets) now sits within this section of the Code. Note Rule 4.3 which places restrictions on freelance solicitors holding client money.	Same for firms. N/A
Referrals, introductions and separate business	Requirements essentially as before. Note new Rule 5.2 which provides that where it appears to the SRA that you have made or received a referral fee, the payment will be treated as a referral fee unless you show that the payment was not made as such – so the onus is on you to demonstrate otherwise.	New Rule 7.1 applies this section equally to firms.

Section in Code	Code of Conduct for Solicitors ("COCS"), etc.	Code of Conduct for Firms ("COCF")
Conflict, confidentiality and disclosure	Requirements essentially the same but note the additional obligation in Rule 6.4 (b) where you need your client to give, or evidence in writing, their informed consent to information material to their matter of which you have knowledge not being disclosed to them	Same as for COCS.
Cooperation and Accountability	<p>Previously implied, rule 7.1 now expressly requires that you keep up to date with and follow the law and regulation governing the way you work.</p> <p>As mentioned above, reporting obligations are now set out in more detail. Note new Rule 7.9 which make it absolutely clear that the SRA will not tolerate individuals who report or propose to report potential misconduct being subject to detrimental treatment.</p>	Essentially the same as for COCS – text differs slightly to reflect business structure (see Rule 3).
Client Identification	New Rule 8.1 requires that you identify who you are acting for in relation to any matter.	New Rule 7.1 applies this section equally to firms.
Complaints handling	Requirements essentially remain unchanged, although you will see an express reference to the eight week period after which clients may complain to the Legal Ombudsman if their complaint has not been satisfactorily resolved now within the rules. Previously you were required to inform clients of time limits but limits were not stated.	New Rule 7.1 applies this section equally to firms.
Client information and publicity	Old outcome 8.5 disappears (requiring letterhead, website and e-mails, etc, to disclose certain information regarding your regulatory status). We presume that this is because it is both dealt with in the Transparency Rules and also under new Rule 8.10 requiring you to ensure that clients understand whether and how services are regulated.	New Rule 7.1 applies this section equally to firms.
Managers in SRA Authorised Firms	N/A	Rule 8.1 provides that if you a manager, you are responsible for compliance by your firm with the Code. Where management is shared, responsibility is joint and several.
Compliance Officers	N/A	Rules 9.1 & 9.2 set out COLP and COFA responsibilities.

THE NEW ACCOUNTS RULES

Whilst there is a considerable change in the size of the Accounts Rules (13 rules now versus 52 previously), the general consensus seems to be that the SRA doesn't expect firms to fundamentally change what they are doing. If a firm is satisfied that it is complying with the current Accounts Rules, it is highly likely that it will feel the same under the new rules. In reality, the changes allow firms to decide for themselves how they best protect client monies using the key principles in the new rules as a framework. Some key points worth noting are:

- **Guidance Notes:** all of the old guidance notes to the rules have been removed. The SRA has, however, now started issuing guidance on the new rules.
- **Revised definition of client money:** the changes to the definition of client money allow firms to hold what was traditionally client money, in the form of fees and unpaid disbursements not yet billed, in the office account. However, this only applies where this is the only type of client money received by a firm so does not apply to firms receiving money from clients or third parties (e.g. house deposits, land tax, stamp duty, etc.) – so we expect most firms will not be able to take advantage of this provision.
- **Issuing written notification of costs:** The current rules allow for a client to office transfer for reimbursement of disbursements incurred by the law firm without having to first issue a bill. The new Rules will require a written notification of such costs before such a transfer can be processed.
- **Third party managed accounts:** The new rules allow firms to outsource the management of client money. In reality, we believe it will only be the very small law firms that take advantage of this provision.
- **Agreed fees:** The concept of agreed fees has been removed. Currently, money received for agreed fees can be placed in office account even if no bill has been issued and work is only part complete. Going forward money received in respect of agreed fees will be treated like all other funds i.e. need to be placed in a client account if costs have not yet been incurred and the bill has not yet been issued (unless a firm is taking advantage of the new exemption referred to above where a client account is not required)]

- **Client's own accounts:** At present these are subject to just a few of the Accounts Rules, mainly in relation to record keeping and obtaining bank statements. In future, firms that operate client's own accounts will need to reconcile them every five weeks (although until guidance is issued, it is not entirely clear what firms are supposed to reconcile the balances to).
- **COFA Responsibilities:** New rule 8.3 formally requires the firm's COFA or a manager to review and sign off the client account reconciliations.
- **No reference to "office money":** No reference is made to office money in the new rules. Instead reference is made to funds belong to the "business" or "authorised body" and emphasis is placed on repaying residual balances to the client at the end of a matter and, by only using client monies for its intended purpose, ensuring firms don't act as bankers – a hot topic for the SRA.
- **Removal of 14 day rule for earmarked funds:** The 14 day rule on removal of funds from client account to cover funds earmarked has been removed. You could consider that for best practice a 14-day policy (or less) should be kept in place under internal policy to prevent office money from remaining in client accounts for longer than necessary.



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