



06 August 2010

Our ref: ICAEW Rep 75/10

Your ref:

Ms Denise Collis  
Solicitors Regulation Authority  
Ipsley Court  
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B98 0TD

Dear Ms Collis

### **Outcomes Focused Regulation – transforming the SRA's regulation of legal services**

The ICAEW welcomes the opportunity to comment on the consultation paper Outcomes Focused Regulation – transforming the SRA's regulation of legal services published by Solicitor's Regulatory Authority.

The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely

David Furst

Past President, ICAEW

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## **RESPONSES TO SPECIFIC QUESTIONS**

### **Q1: Do you have any comments on our goals and vision for OFR?**

1. We endorse the principle of a “targeted risk based approach”. Success will be judged by way of good outcomes, as demonstrated by enhanced financial stability with flexibility and innovation in service delivery. However in so doing, it is important that the SRA does not diverge inadvertently from its aim to serve the public interest.

### **Q2 : Are there particular things we should consider to ensure that consumer protection and the public interest remains central to our regulatory approach?**

2. Unlike traditional law firms and LDPs, ABS will deliver legal and “other services”. Accordingly, close liaison with non law regulators and their service consumers [does this mean the SRA is to talk to the firm’s clients?] is essential to help ensure effective service delivery and consumer protection.
3. The ICAEW has done much work on financial literacy which is relevant to this debate and we are happy to volunteer this research and any other assistance that may be required. Law firm accountants will also have useful input and we assume the SRA will be in continued dialogue with the Solicitors Group at the ICAEW.

### **Q3 :How do you think we should work with consumers to help them 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. At a simple level, one important issue is the perceived management of the complaints process through a complicated structure. This could be helped by such steps such as;
  - Stress testing the process with a hypothetical complaint and assessing the ease of the process. For example the current SRA website deals with complaints ( actually about the SRA) but only contains a short sentence at the bottom of the page redirecting a reader for complaints about solicitors to the Legal Complaints Service.
  - Wording could be included on future LeO correspondence stating that the complaint will also be passed to the relevant regulator to find out whether individual disciplinary action is needed

### **Q4 Do you have any comments on the key implications for firms as set out above?**

5. The key imperative is to ensure that law firms consider their future relationship with the SRA to be a positive process. Firms may have had an experience of the SRA based on a complaints led basis and therefore future contact from the SRA may have been perceived as threatening and time consuming. Our further thoughts are contained in our responses to questions 5 and 6.

### **Q5 Are there any other implications we need to consider?**

6. The nature and quality of two way communication between the SRA and its regulated firms will be key.
7. The accountancy profession has also developed a model of random visits which are not perceived as threatening by its regulated profession. This could be used to underpin the new SRA framework.

**Q6 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?**

8. One simple measure is for a firm to have a named point of contact with the SRA and vice versa, ensuring communication lines are clearly established and developed.
9. Many firms, particularly those at the medium and smaller end of the profession will have or can develop close relations with training providers. The SRA could work closely with these bodies to ensure key messages can be relayed through to firms to develop confidence in the system.

**Q7 Do you have any comments on the central role of the Risk Centre in our move to OFR?**

10. The success of the Risk Centre will depend on;

- the quality of the information it receives
- the quality of the people analysing the data
- how the analysis is utilised

Only time will tell whether the resources required to implement it will be justified by the results.

11. We have seen nothing so far to identify the actual (or proposed) skills qualification and experience of those who will be involved in the Risk Centre. Early publication of this information would engender confidence in the regulated population and an understanding of what the Risk centre is intended to achieve.

**Q8 Do you have any other suggestions for the activities the Risk Centre will undertake?**

12. Without knowledge of the likely personnel and more detail on the planned operational activities of the Risk Centre it is difficult to assist further at this stage. It is assumed that personnel skilled in risk analysis will be employed, as well as those with legal practice and management experience

**Q9 Will firms understand the need to receive information from them in order to undertake high quality risk assessment?**

13. This will depend on how requests are made and what is requested, however the SRA must be prepared to justify the nature and extent of requests.

14. Certainly in times of economic and professional turmoil, a firm is more likely to have a closer and more direct relationship with its funding bank, PI insurers and accountants, than the SRA. It may be beneficial for the SRA to establish closer relationships with other entities that provide funding and professional services to law firms, and in particular to take such entities through the proposed changes to legal practice regulation. These entities may develop more confidence in and understanding of the regulatory changes, and may be able to positively encourage firms in difficulty to work more closely with the SRA at an earlier stage than might otherwise be the case.

**Q10 Do you have any comments on our proposed approach to authorisation?**

15. The authorisation process must not burden unfairly MDPs and non law dominated ABS who may practise in other fields. We assume there will be full liaison with other professional regulators concerning the imposition or removal of any conditions pertinent to the practice of such work.

16. We assume the SRA is also looking at the issue of authorisation of solicitors practising as a member of an ABS licensed by another non law regulator (as distinct from working in house, or in a law firm) and will consult on plans to introduce such arrangements. Failure to do so will call into question the SRA's commitment to freedom and diversity.
17. It is important that the approach to CPD is not treated as a box ticking exercise only as it can be used to actively support firms through the interplay of training and enhanced competence. Firms where good services can be delivered (but perhaps financial management and prudence is less strong) can be positively supported through a re-authorisation process that is conditional upon completing relevant training.

**Q11 Do you have any comments on our proposed approach to supervision?**

18. The key here will be the mutual confidence and respect engendered between the primary contacts established between the firm and the SRA. The need for supervision by a firm, and the perceived success of such supervision, inevitably varies depending on the size and skills of the firms concerned and the calibre of people involved. Success will depend hugely on the calibre of the SRA personnel.

**Q12 What might be the particular issues for smaller firms and how might we address them?**

19. Smaller firms may see enhanced involvement with the SRA as a threat. Only the skilful creation and marketing of the "new" relationship will change entrenched views and encourage firms to see enhanced SRA involvement as a benefit.

**Q13 Are there any other regulatory tools we could consider?**

20. Random visits could be considered as suggested earlier, particularly where there is considered to be a higher level of risk or fraud.
21. The identification of high risk firms is key. Self reporting is unlikely to be enough, particularly to identify firms in (or likely to fall into) financial difficulty. We have made some further comments on this point in our comments on Annex B.

**Q14 Is there a role for representative bodies in supporting their members compliance with the principles and outcome in the Handbook.**

22. Yes there is a key role for such bodies, particularly at the smaller end of the profession where the involvement of such organisations is more immediate and perceived as less threatening.

**Q15 Do you agree with our approach to formal investigations?**

23. Yes, although we do note persistent breaches are not mentioned in paragraph 83 but in the cumulative may be just as dangerous as serious breaches and/ or indicative of underlying problems. We assume that monitoring of persistent breaches will also form part of the regulatory process.

**Q16 If not please explain why**

**Q17 Do you have any comments or feedback on our draft enforcement strategy?**

24. The ICAEW puts all disciplinary and regulatory admonishments on the public record as it considers that;

- the embarrassment of disclosure can operate as a deterrent mechanism and as a warning to others
- it demonstrates to consumers and the wider public that complaints are treated seriously.

This could be considered by the SRA as part of a revamped strategy.

**Q18 Do you have any comments on our proposed approach to making new Handbook provisions?**

25. No, assuming the Handbook remains easily accessible to readers and proposed changes are clearly identified. The key is ensuring the Handbook is up to date in high risk areas and prudently circulated.

**Q19 Do you have any comments on our proposed approach to consumer education ? Are there any particular initiatives we should consider?**

26. Until the strategic research is done it is difficult to comment in detail. We have already volunteered the results of our financial literacy work which will assist. We assume this new research will include work with other non law regulators whose members and service consumers could be involved in an ABS, together with business organisations who are legal services consumers.

**Q20 Do you have any comments in the SRAs current approach to formal education and training for the profession? Are there additional approaches we could take to improving pre and post qualification training?**

27. We have no further comments at this stage but are happy to comment if the results of the assessments and the proposed changes to training are made known.

**Q21 Are there other ways we can engage with our stakeholders in our move to OFR?**

28. We have offered our assistance and research where already indicated above.

**Q22 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 other issues that we need to consider at this stage?**

29. We have already identified issues in the authorisation process for MDPs and non law dominated ABS. Unless proportionality is maintained for such entities then this may have an impact on equality.

## Annex A

30. No questions asked and we have no comment

## Annex B

### 1 Do you have any comments about the risks arising from the current financial management of firms?

The risks have been comprehensively identified. The challenge is finding effective strategies to manage them.

### 2 Do you have any comments regarding the SRA's responsibilities for addressing the financial stability of firms and its proposed desired outcomes?

The SRA has identified a synthesis of internal and external factors which affect financial stability. Some external factors are beyond the direct control of firms, however more focussed education and training could achieve improvements in areas within direct control.

### 3 To what extent do you consider the proposed response outlined in this section meets the objectives of outcomes focused regulation?

We suspect only time will tell, and that any measures introduced actually result in a quantifiable reduction in insolvency and frauds.

Self reporting is a good concept in principle but has its limitations:

- Inefficient firms that do not carry out client account reconciliations properly or promptly may not self report, as they may fail to realise client accounts are overdrawn.
- The greatest risk lies with firms that use client money knowingly (driven not by fraudulent intent but financial circumstances), who are not going to self report at all
- Who in the firm is responsible for self reporting? The CoLP or the CoFA?
- The SRA must ensure the tests do not prove to be a burden to increased entry and competition. In particular MDPs and non law dominated ABS firms who are registered with the SRA must not find their regulatory and compliance burden increased by additional SRA imposed conditions or interference in their non reserved activities. Close liaison is required with other regulators. The SRA will need to ensure it has the relevant skills to deal proportionately with such firms on this point

### 4 Do you have any suggestions regarding what information may be requested of firms and how frequently it may be requested?

One constructive method of information gathering for the SRA could be a more stringent use of SAR reports.

SAR reports are prepared independently by external accountants. A reduction of the 6 month time limit might identify breaches and potential problems at a much earlier stage. The SRA could follow up swiftly on any client account breaches by

- Visiting to ensure procedure have been implemented and breaches are no longer occurring
- Delegating this responsibility to the reporting accountant at the SRA's request

We have more detailed comments on the Accounts Rules that may assist in this debate. These will be provided in our response to the SRA consultation on the Architecture of Change and Annex E in particular.

We assume you will be liaising with the Solicitors Group of the ICAEW specifically on this point as they are best placed to offer skilled advice.

#### **Annex C and Annex D**

No questions asked and we have no comment.

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