

Feel the force

Watch out, the SRA's powers have increased more than you might think, says **Stuart Bushell** as he takes a closer look at its enforcement strategy for conveyancing

Some solicitors may be disappointed that the much-anticipated move to ABS is not happening as planned on 6 October, but may find that they have more than enough on their plates in putting into place the new processes and systems they will need to ensure their compliance with the handbook and code of conduct. There appears to be widespread ignorance as to what, in SRA enforcement terms, is about to happen. To quote the first words spoken by Al Jolson with the advent of 'talkie' films in the 1920s: "You ain't heard nothing yet."

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With the profession's focus, in the context of outcomes-focused regulation, on the changes to the code of conduct and the new annual authorisation procedures, many have missed the fact that the SRA is engaged in parallel change to the way it enforces its handbook and the enhanced enforcement tools available to it.

In January 2011 the SRA published its enforcement strategy, advocating "proportionate and targeted enforcement", to put its desired outcomes into effect. Further, it advocated the view that "robust and publicised enforcement action on priority issues improves standards and deters lack of integrity" – which seems reasonable enough. Then in April the SRA published a draft supervision and enforcement strategy for conveyancing, which details some of the specific structural requirements. Proposed COLPs and COFAs may be relieved to note that much of the responsibility for systems and controls falls on firms' management rather than on them individually.

Question of risk

The conveyancing strategy is due to lose its 'draft' status in October and to be followed by further strategies for each major area

of law. The main body of the document lists a number of risks which firms face in the conveyancing arena and raises a set of questions, relevant to each, which firms should ask themselves and for which they should have answers. Some of these questions are generic, such as those relating to the provision of training on risk, and some are specific to conveyancing, such as that relating to whether firms are too financially dependent on one introducer. In all there are six types of risk to consider, with a total of 29 'questions to assist', to

which the SRA will expect answers when it contacts firms.

Given the experience of financial advisers under the FSA's 'treating customers fairly' regime, which is the template for OFR, solicitors need to start putting in place without delay the processes and systems which will be required to demonstrate compliance: business plans, risk strategies, new client procedures, client file reviews, minuted management team and staff meetings and many more. All of these are examples of what the FSA expects to see in place when it calls.

Some Lexcel-accredited firms seem to assume that adherence to the practice management standard will satisfy the requirements of the SRA code of conduct. Unfortunately there is no reason to suggest this is true. The current version of Lexcel is not written with OFR in its contemplation. Some of its methodology is the same (client file review checklists for instance), but there is no read-across and the two issues need to be viewed separately.

The SRA has also spelt out which regulatory enforcement tools it intends to deploy in addressing the conveyancing-based risks which firms face. Following the FSA precedent, these include desk-

based reviews, onsite visits, use of formal investigative powers, obtaining information from third parties, mystery shopping and thematic visits.

New powers

Solicitors should be aware that one little-known facet of the Legal Services Act is an increase in the enforcement powers available to the SRA. The authority can now issue formal requests for information and documentation; it can also insist that individuals attend formal interviews. However, the new power which may cause the most immediate problems for some firms is that relating to outsourcing. Outcome 7.10 requires that, where any operational functions are outsourced, and these are critical to the delivery of legal activities, the contract between firm and third party must include arrangements which enable the SRA to "obtain information from, inspect the records (including electronic records) of, or enter the premises of, the third party". It seems that only a very small number of firms have thus far taken this on board. Given the growth in outsourcing arrangements this could apply to a number of services, particularly IT.

The SRA's draft enforcement strategy for conveyancing is a more tangible indication than the code of conduct of the SRA's new style of regulation, and solicitors should take note of the issues it raises.



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