



## **The 2019 SRA Standards & Regulations:**

### **what's new, what's the same and what should we be getting ready for?**

By Paul Parker

#### **The StaRs: an overview**

- 1 Trends change. Rule-based regulation by the SRA (and its predecessors) was replaced in 2011 by outcome-based regulation. The SRA Handbook grew bigger and bigger. The SRA and the SDT became busier and busier. Rule-based regulation is back.
  
- 2 It is interesting to make comparisons:
  - 2.1 Under the 2007 Code of Conduct there were six Core Duties – justice and the rule of law, integrity, independence, best interests of clients, standard of service, and public confidence – and about 24 or so “rules” following;
  
  - 2.2 Under the 2011 Code of Conduct the “Core Duties” had mutated into “Principles”, of which there were now ten – justice and the rule of law, integrity, independence, best interests of clients, standard of service, public trust, regulatory compliance, proper governance and sound business management, equality and diversity, and protection of client money – followed by 15 “chapters” containing “outcomes” and “indicative behaviours”;
  
  - and now, in a radical overhaul,
  
  - 2.3 Under the 2019 SRA Codes of Conduct there are seven Principles – justice and the rule of law, public trust and confidence, independence, honesty, integrity, equality diversity and inclusion, and best interests of clients – followed by some 17 rules

separated between two Codes of Conduct: one for [Firms](#) and the other for [Solicitors, RELs and RFLs](#).

- 3 Or is this déjà vu, all over again (*pace* Yogi Berra)?
- 4 The introduction of honesty as an overarching principle is perhaps obvious, but is the result of the now well-known case, [SRA v Wingate & Evans](#), which laid to rest the heresy propounded most recently by Mostyn J that honesty and integrity were synonymous in law. The departures of regulatory compliance and proper governance etc are not seriously to be mourned. Anyway, the former is a rule (rule 3 (Firms); rule 7 (Solicitors)) and the latter is likewise a rule (rule 2 (Firms)). The departures of standard of service and protection of client money are more of a surprise – doing a good job and safeguarding his/her client’s assets might be thought to be at the very heart of what a solicitor is expected to do – but the former reappears as a rule (rule 4 (Firms); rule 3 (Solicitors)), as does the latter (rule 5.2 Firms); rule 4.2 (Solicitors)). It is irksome that some corresponding rules in the two separate codes are numbered differently.
- 5 As for the rules in the Codes themselves, their brevity is somewhat offset by the host of [SRA Guidance publications](#), some 58 or so in number, together with accompanying [Topic Guides](#), [Case Studies](#), and a lengthy [Enforcement Strategy](#) document, which all have the effect of padding out the rules nicely.
- 6 On closer inspection, though, the new rules do not significantly alter what is expected of practitioners:
  - 6.1 They must maintain trust and act fairly (rule 1, Firms and Solicitors);
  - 6.2 They must provide a competent service (rule 4 (Firms); rule 3 (Solicitors));
  - 6.3 They must safeguard client money and assets (rule 5 (Firms); rule 4 (Solicitors));
  - 6.4 They must not act in own interest conflicts, they can only act in informed consent situations of client conflicts, and they must keep their clients’ affairs confidential (rule 6, Firms and Solicitors);
  - 6.5 They must cooperate with the SRA (rule 3 (Firms); rule 7 (Solicitors));
  - 6.6 Firms must have

- Efficient governance structures (rule 2);
- Managerial responsibility for compliance with the code (rule 8);
- A COLP (rule 9);

6.7 Solicitors must

- Behave in court (rule 2);
- Comply with rules relating to referrals and publicity (rule 5);
- Have a proper complaints handling department (rules 8.2-8.5) and provide all proper and full information to clients (rule 8.6-8.11).

7 Where there are any changes of substance, they are confined to the structure of the profession itself and the targets for regulation.

7.1 Extensively redrafted Authorisations of Individuals Regulations now permit

- solicitors providing non-reserved legal services to do so without SRA authorisation;
- freelance solicitors to provide reserved legal services.

7.2 New Regulatory and Disciplinary Procedure Rules now, by way of effective catch-all, extend the regulatory and disciplinary regime over

- Firms and solicitors guilty of misconduct;
- Managers and employees (not necessarily being solicitors) in breach of the regulatory obligations;
- Non-solicitors convicted of an offence or purporting to provide reserved legal services.

7.3 And there a few new rules inserted into the Codes:

- Rule 2.2 (firms): maintain proper records to show compliance with the Codes;
- Rule 2.6 (solicitors): do not waste the court's time;

- Rule 3.5 (solicitors): a supervising solicitor or manager is now vicariously responsible to the SRA for the acts and omissions of their staff;
- Rule 5.2 (solicitors): the burden of disproving that a referral fee is a referral fee now lies squarely on the solicitor;
- Rule 7.12 (solicitors): a solicitor can now delegate his duty to report another solicitor for breach of the Codes, or to self-report, to the COLP or COFA: this reverses the 2011 prohibition against delegation of the duty;
- Rule 8.1 (solicitors): identify your client properly at the outset of the retainer; identity theft is rife.

### **The regulator's reach into one's private life**

8 The twin starting-points are:

8.1 SRA Principle 2: "You act ... in a way that upholds public trust and confidence in the solicitors' profession"

8.2 *Bolton v Law Society* [1994] 1 WLR 512, 518F-519B (emphases added):

"It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. *The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.* To

maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. ... *A profession's most valuable asset is its collective reputation and the confidence which that inspires.*"

9 Properly understood, *Bolton* tells you everything you need to know about the reach of the SRA into a solicitor's personal life. If you are involved in anything unfortunate, or unsavoury, in your personal life, then you may expect the SRA to come knocking at your door IF the view is taken that the reasonable member of the public would not want to be represented by someone who had been so involved. While [SRA Guidance on Public Trust and Confidence](#) concedes that "We do not expect everyone to conform to a perfect ideal of behaviour outside of practice" it lists (apart from crimes and matters such as promoting high risk investment schemes) the following as examples of breaches of SRA principle 2 – sexist or sexually explicit communications and offensive social media posts – and SDT cases such as

- [SRA v Lewis](#) (2018) (profanity and death threats in offensive social media posts; £2,500 fine (reduced from £7,500 on grounds of means));
- [SRA v Reeves](#) (2019) (drunk driving; £2,000 fine);
- *SRA v Sheldrake* (2019) (drunk driving; £16,000 fine);
- [SRA v Main](#) (2017) (sexual assault; racially-aggravated physical assault; criminal convictions; 4 year suspension)
- [SRA v Scott](#) (2019) (grossly inappropriate touching and offensive texting; police caution; stress and alcohol; 18 month suspension)
- [SRA v Beckwith](#) (2019) (sexual activity with intoxicated colleague whose purported consent was thus vitiated; £35,000 fine)

make clear the types of conduct which will be sanctioned, and sanctioned severely. The case of *SRA v Senior* (alleged unwanted attempted kissing of junior colleague in a hotel room) is in progress and expected to end in April 2020.

10 There is more. SRA Principle 6 – "You act ... in a way that encourages, diversity and inclusion" – is also a route into one's private life. [Guidance on the SRA's approach to equality, diversity and inclusion](#) provides that (emphasis added)

“You are responsible for upholding the reputation of the profession in your professional *and personal life* and for treating people fairly and with dignity and respect. You are responsible for making sure your personal views are not imposed on and do not have a negative impact on others. This includes expressing extreme personal, moral or political opinions on social media platforms.”

While there is an clear overlap between SRA Principles 2 and 6 when it comes to the use of social media, that overlap has been found, for instance (by way of a regulatory settlement agreement), in the recent case of *Dhennin* to extend to the respondent solicitor’s discriminatory treatment of his children’s pregnant nanny for which he was rebuked (having previously been ordered to pay damages and other compensation in an employment tribunal).

- 11 No one knows what goes on behind closed doors. But if news of the activity indulged in behind those closed doors begins to emerge, it seems tolerably clear that one’s regulator will nowadays show an interest beyond the merely prurient.

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