
Conflicts & Confidentiality under the SRA Code of Conduct

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Introduction to Outcomes Focused Regulation

- The historical regulation of legal professionals and solicitors.
- Main changes brought about by the Legal Services Act 2007.
- Impact of Entity Regulation.
- Risk based regulation.

Why is this relevant to LA teams?

- Blurring of distinction between in house and external service.
- LA legal teams starting to broaden client base:
 - Employer LA
 - Other LAs in forms of shared services
 - Other local organisations eg Academies
 - External clients through ABSs

Recent cases suggest more scrutiny of in house teams

- News International
- Banks and other lenders seeking to recover debts
- Other examples

What is OFR?

- Theory
- Principles, Outcomes, Indicative Behaviours
- What rules still exist?
- Authorisation, Supervision and Enforcement

SRA Principles

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SRA Principles: A Recent History 1990 - 2014

Solicitors Practice Rules 1990: Practice rule 1 (basic principles)

“ A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:

- the solicitor’s independence or integrity;
- a person’s freedom to instruct a solicitor of his or her choice;

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- the solicitor's duty to act in the best interests of the client;
 - the good repute of the solicitor or of the solicitors' profession;
 - the solicitor's proper standard of work;
 - the solicitor's duty to the Court.

Solicitors' Code of Conduct 2007: Rule 1 Core Duties

- you must uphold the rule of law and the proper administration of justice
- you must act with integrity
- you must not allow your independence to be compromised
- you must act in the best interests of each client
- you must provide a good standard of service to your clients

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- you must not behave in a way that is likely to diminish the trust the public places in you or the profession

SRA Code of Conduct 2011 (version 10, July 2014)

You must:

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

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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;

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9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and
 10. protect client money and assets.

SRA Outcomes – Client Care

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Chapter 1: Client Care

You need to take account of “the individual needs and circumstances of each client. This includes providing clients with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost. This will enable you and your client to understand each other’s expectations and responsibilities.....Your relationship with your client is a contractual one which carries with it legal, as well as conduct, obligations.” *The SRA Code, Chapter 1*

Contd

You must achieve these outcomes:

1. you treat you clients fairly;
2. you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice;
3. when deciding whether to act, or terminate your instructions, you comply with the law and the Code;
4. you have the resources, skills and procedures to carry out your clients' instructions;

Contd

5. the service you provide to clients is competent, delivered in a timely manner and takes account of your clients' needs and circumstances;
6. [you only enter into fee agreements with your clients that are legal, and which you consider are suitable for the client's needs and take account of the client's best interests;] *in house practices: this only applies where you act for someone other than your employer;*

Contd

7. you inform clients whether and how the services you provided are regulated and how this affects the protections available to the client;
8. [clients have the benefit of your compulsory professional indemnity insurance and you do not exclude or attempt to exclude liability below the minimum level of cover required by the SRA Indemnity Rules] *in house practices must comply with the SRA Practice Framework Rules in relation to professional indemnity insurance;*

Contd

9. [clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made;] *in house practices: this only applies where you act for someone other than your employer;*

Contd

10. [clients are informed in writing, both at the time of engagement and at the conclusion of your complaints procedure, of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman;] *in house practices: this only applies where you act for someone other than your employer;*

Contd

11. [clients' complaints are dealt with promptly, fairly, openly and effectively;] *in house practices: this only applies where you act for someone other than your employer;*
12. [clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;] *in house practices: this only applies where you act for someone other than your employer;*

Contd

13. [clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter;] *in house practices: this only applies where you act for someone other than your employer;*
14. [clients are informed of their right to challenge or complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill;] *in house practices: this only applies where you act for someone other than your employer;*

Contd

15. you properly account to clients for any financial benefit you receive as a result of your instructions;
16. you inform current clients if you discover any act or omission which could give rise to a claim by them against you.

Client Care: what you must tell your client

- in writing
 - the right to complain and how to do it (relevant for “external” clients)
 - for consumer clients (“external”), their rights under the Consumer Contract Regulations 2013
- not necessarily in writing
 - who you are regulated by
 - details of indemnity insurance provider
 - for “external” clients, costs information
 - details of how to access our rules in the SRA Code of Conduct

Client Care: what you should tell your client

- service levels: eg the type and frequency of communication and timescales
- contact details
- fees
- limit of liability to a level above SRA minimum level (£3m)

Client Care: what is good practice on a new instruction

- communicate in a clear and straightforward manner
- highlight key information early on
- use plain language
- use a clear font, no smaller than 11pt

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- have terms of business which should include:
 - PII provider details
 - Data protection compliance
 - File storage details
 - Details of any outsourced services
 - Details of if you have your files vetted by an external auditor
 - Any limit of liability
 - Processes for terminating the retainer
 - Anti money laundering obligations
 - A statement of your policy on the payment of interest on money held in client account
 - How you will receive funds from clients and make payments to them

Client Care: further reading

Law Society Practice Notes

(www.lawsociety.org/advice/practice-notes):

- In House Practice: Regulatory Requirements
- Client Care Information
- Provision of Services Regulations 2009
- Consumer Contracts Regulations 2013
- Anti Money Laundering
- Data Protection

SRA Outcomes – Conflicts and Confidentiality

Conflicts and Confidentiality

- Need to distinguish pure conflict and possession of confidential information. Separate analysis needed.
- The origin of the principles are: common law, fiduciary duties and SRA Code. All are relevant.

Conflicts

- Two important and helpful limitations on pure conflict:
 - Needs to be existing not in the past;
 - Has to relate to the same or related matter. However, keep in mind “soft” or “commercial” conflicts.

Conflicts

- Need to think through issues, and not just limit yourself to a name check:
 - Is there another way that I may have a conflict.
Eg: Two matters for different clients but about the same property?

Conflicts

- Real practical difficulty in relation to conflicts involving the LA's other activities.
- How do you keep up to date on other activities of LA?
- Issue becomes more acute the further you get away from the pure LA employee work.

Confidentiality

- This relates to both former and current clients
- Information needs to be relevant but again be aware of the soft or commercial issues.
- The core issues are the obligation to disclose relevant information to clients and the obligation to keep a client's interests confidential

Conflicts and Confidentiality

- Possible ways to deal with issue (but caution needed):
 - Limiting retainer
 - Information barrier
 - Common interest
 - Competing for the same objective

Practical Issues

- Need to have systems in place to identify conflicts (see Outcomes 3.1 to 3.3)
- What do you do if you discover a conflict?
- The dangers of trying to “get comfortable” with a conflict.

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