

**Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of changes to regulatory arrangements in respect of proposed SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules 2019**

**A. Summary**

1. A new SRA Code of Conduct for Solicitors, RELs and RFLs and a new SRA Code of Conduct for Firms (“the Codes”) were included in our application for regulatory change approved by the Legal Services Board on 5 November 2018.
2. The Codes, which are not yet in force, include obligations to report serious breaches of regulatory arrangements. We seek approval for changes to the Codes, to clarify when such reports need to be made.
3. This application therefore seeks the Legal Services Board’s approval of the SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules 2019, attached at Annex 1.

**B. Details of the SRA’s current regulatory arrangements**

**B1. Regulatory arrangements currently in force**

4. The current reporting obligation is set out in the SRA Code of Conduct 2011. It states:

“Outcome 10.3: you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook.

Outcome 10.4: you report to the SRA promptly serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client).”

**B2. Regulatory arrangements under the new not yet in force Codes**

5. Engagement with stakeholders revealed that their understanding of the situations that trigger the duty in the 2011 Code of Conduct differ. In particular, we identified that some consider that they should not report concerns to us until

they have conclusively determined both the relevant facts and that these comprise serious misconduct. Others refer issues to us at an early stage.

6. With this in mind, we decided to revisit the reporting obligation in the new Codes that were approved by the Legal Services Board. The reporting obligation in that version of the rule was set out at 3.9 of the Code of Conduct for Firms, and 7.7 of the SRA Code of Conduct for Solicitors, RELs and RFLs, as follows

“You ensure that a prompt report is made to the **SRA**, or another **approved regulator**, as appropriate, of any serious breach of their regulatory arrangements by any **person** regulated by them (including you) of which you are aware. If requested to do so by the **SRA**, you investigate whether there have been any serious breaches that should be reported to the **SRA**.”

7. Although this drafting of the Codes clarified what should be reported (in terms of the language “serious breach”), it does not provide full clarity on when a report should be made. We want to make sure that all solicitors and firms have a clear and consistent view as to what we expect of them and of what, and when, they should report. We therefore consulted on our approach in this area.

### **C. Nature and effect of the proposed alterations to the SRA’s regulatory arrangements**

8. Our proposed Rules to amend the Codes are set out in Annex 1. The amendments are at 7.7-7.10 of the SRA Code of Conduct for Solicitors, RELs and RFLs and 3.9-3.12 and 9.1-9.2 of the Code of Conduct for Firms. The proposed new obligation is as follows.

“You must promptly report to the **SRA**, or another **approved regulator**, as appropriate, any facts or matters that you reasonably believe are capable of amounting to a serious breach of their **regulatory arrangements** by any **person** regulated by them (including you).”

“Notwithstanding, you must promptly inform the **SRA** of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its **regulatory arrangements** has occurred or otherwise exercise its regulatory powers.”

“You must not subject any **person** making or proposing to make a report or proving or proposing to provide information based on a reasonably held belief under [cross reference to the relevant paragraphs of the Codes of Conduct] to detrimental treatment for doing so, irrespective of whether the **SRA** or another **approved regulator** subsequently investigates or takes any action in relation to the facts or matters in question.”

### **D. Rationale for amendment**

9. In Summer/Autumn 2018 we consulted on the need for change to the drafting in the Codes. We sought stakeholders’ views on the following questions.

- Do you agree that a person should report facts of matters that are capable of resulting in a finding by the SRA, rather than decide whether a breach has occurred?
  - Where do you think the evidential threshold for reporting should lie?
  - Do you think that an objective element – such as “reasonable belief” or “reasonable grounds” would assist decision makers, or unnecessarily hamper their discretion?
  - Do you have a preferred drafting option from among our suggestions? - stakeholders were also welcome to submit their own drafting suggestions.
  - What else can the SRA do to help those we regulate to report matters in a way that allows us to act appropriately in the public interest?
10. Based on the views and responses received to the consultation, and following further internal discussion and analysis, we put the proposed drafting set out at paragraph 8 to the SRA Board, who approved the drafting on 23 January 2019, and made the Rules attached at Annex 1.
11. In summary, the new drafting ensures:
- That we receive reports of facts or matters which could comprise a serious breach, rather than allegations identifying specific and conclusively determined breaches.
  - The obligation applies the same threshold as that which we apply when deciding to open an investigation (that the concerns, if proven, are capable of amounting to a serious breach).
  - The test combines a subjective element (what the person making a report believes) with an objective element – as supported by the majority of respondents - (that this belief was reasonable bearing in mind the circumstances, information and evidence available to the decision-maker). This serves to avoid the reporting of mere allegations or suspicions and provides a balance on the spectrum between this on the one hand, and fully investigated findings on the other. We believe this also provides support for appropriate reflection, investigation and professional judgment.
  - Early reports are made where we might need to use our powers to investigate or take urgent action to protect the public.
  - Those making reports are supported in making these, sometimes difficult, decisions and that those we regulate are clear that they should not subject anyone making, or intending to make, a report to detrimental treatment for doing so.

#### **E. Statement in respect of the Regulatory Objectives**

12. The proposed change will have a positive impact on some of the regulatory objectives, as follows.

##### **E1. Protecting and promoting the public interest**

13. The proposed change will enhance public confidence in the solicitor profession and regulated firms. They will also help to ensure prompt reporting of potential breaches of regulatory arrangements, enabling us to investigate these fully and to take timely action to protect the public where appropriate.

**E2. Protecting and promoting the interests of consumers**

14. The proposed change will support better protection for consumers as above, by helping to ensure timely, prompt reporting of breaches of regulatory arrangements.

**E3. Supporting the constitutional principle of the rule of law**

15. The proposals will enable us to take action as above where issues are raised with us relating to breaches of the principle to uphold the rule of law and the administration of justice. The clear wording prohibiting detrimental treatment for making a report will support cooperation and engagement by solicitors and compliance officers with regulatory procedures and investigations.

**E4. Promoting competition in the provision of services**

16. The proposals will have a neutral impact on promoting competition in the provision of services.

**E5. Improving access to justice**

17. The proposals will have a neutral impact on access to justice.

**E6. Encouraging an independent, strong, diverse and effective legal profession**

18. The proposals will support public confidence in the legal profession, as above, and ensure that principles of independence, equality, diversity and inclusion are able effectively to be enforced.

**E7. Increasing public understanding of the citizen's legal rights and duties**

19. The proposals will have a neutral impact on the public understanding of the citizen's legal rights and duties.

**E8. Promoting and maintaining adherence to the professional principles**

20. The proposed change will assist adherence to the professional principles, by helping solicitors and firms know when they should make a report in fulfilment of their obligations under the SRA Code of Conduct for Solicitors, RELs and RFLs and the SRA Code of Conduct for Firms.

**F. Statement in respect of the Better Regulation Principles**

21. The proposed change will help us regulate better, as follows.

**F1. Transparent**

22. By setting out more clearly our expectations of when a report should be made as well as what should be reported, the proposed change makes it clear how to fulfil obligations under the Codes.

**F2. Accountable**

23. The clarification of reporting obligations in the Codes supports responsible, accountable reporting, and timely, appropriate investigation by us.

**F3. Proportionate**

24. The proposed changes are proportionate to the need for clarity of reporting obligations among solicitors and firms.

**F4. Consistent**

25. The proposed changes will support reporting to us on a consistent basis.

**F5. Targeted at cases where action is needed**

26. The requirement for reporting of facts or matters that a solicitor or firm reasonably believes indicate that a serious breach may have occurred, will help avoid the reporting of mere allegations or unsupported suspicions, helping better targeting of reporting and SRA investigation. However, it also ensures that all serious matters are raised with us which we need to investigate.

**G. Statement in relation to desired outcomes**

27. The revised reporting obligation will support timely, consistent and appropriate reporting, enabling us to better protect the public. We will provide guidance and support to those we regulate, and we will monitor and evaluate the changes.

**G1. Guidance and support**

28. We will develop a range of supporting materials through dialogue with the profession, as follows.
- We are in dialogue with the City of London Law Society regarding how the proposed changes can help reporting and support the roles of compliance officers.
  - Our Regulatory Management team works closely with larger firms and we will also be engaging with these firms through a series of round table events. As well as discussing the changes with them, we will also invite them to contribute anonymised case studies, including matters that have not, for one reason or another, been referred to us.
  - We will be updating our guidance on whistleblowing to provide greater support to individuals concerned about making a report to us, and to raise awareness of the ongoing support we provide for witnesses and others involved in our disciplinary procedures.

**G2. Monitoring and evaluation**

29. The proposed changes will take their place as part of our Looking to the Future reformed regulatory framework of the new SRA Standards and Regulations, and the implementation of our Enforcement Strategy. We will monitor the reporting to us as part of our wider monitoring of reporting and investigation and will use this information to help evaluate the proposals within this wider context.

30. As set out in our main application document for the Looking to the Future changes to our regulatory arrangements ([https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2018/SRA\\_application\\_to\\_LSB\\_Aug18.pdf](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2018/SRA_application_to_LSB_Aug18.pdf) , at pp.110-111) we have developed a comprehensive approach to evaluating the impact of our new Standards and Regulations, and this will include the changes to the Codes of Conduct proposed in this application. In June 2017, we published an impact evaluation framework developed for us by the Centre for Strategy and Evaluation Services (<https://www.sra.org.uk/documents/SRA/consultations/ltfcses.pdf>), including metrics to support this assessment. We will evaluate the impact of our work drawing on the evaluation framework in a post-implementation review and will seek to review and refine our approach based on our post-implementation work.
31. We intend to carry out evaluations at one year, three years, and five years after implementation, although this timeframe is flexible and will depend on the reform being evaluated. We will ensure proper governance of the evaluations and any next steps through our Policy Committee and Board.

#### **H. Stakeholder engagement**

32. Our consultation ran for eight weeks and was supported by targeted stakeholder engagement. Our wider informal and digital engagement on this issue included over 58,000 social media impressions, over 1,800 web page views and over 2,700 Twitter poll impressions (with 60 people who completed the polls), as well as 11 items of media coverage. We also discussed our approach in a session at our December Compliance Conference, attended by more than 1,200 solicitors.
33. We received 29 responses from a variety of stakeholders including City and high street law firms, individuals, local law societies, representative bodies, a risk management firm and Protect, the leading public interest body on whistleblowing.
34. In general responses to our consultation were mixed, with differing views on the questions we asked and the preferred option to take.
35. We have listened and responded to feedback. For instance, we agree with the range of respondents who set out their view that when to make a report is a professional judgment for the decision maker. And we have responded to concerns around victimisation of individuals for properly reporting. We have made crystal clear in our updated rule that somebody proposing to make, or making, a report should not face detrimental treatment for doing so.

#### **I. Statement in relation to impact on other Approved Regulators**

36. Our proposals do not give rise to any conflict between any of the Approved Regulators.

#### **J. Implementation timetable**

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February 2019	Application to the LSB for approval of SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules 2019
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February / March 2019	Decision by the LSB
March 2019	If approved by LSB, publication of amended Codes as part of wider website update for new Standards and Regulations web pages
February – Summer 2019	Development of supporting guidance and case studies
Summer 2019	Implementation of the new Standards and Regulations, including the amended Codes

#### **K. SRA contact for matters relating to this application**

38. If the Legal Services Board has any queries in relation to this application, please contact:

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**Annex 1** SRA Regulatory Arrangements (Reporting Concerns) (Amendment) Rules 2019

**Annex 2** Reporting concerns: our post-consultation position