

# Solicitors' Compliance Masterclass

In accordance with The Sheffield & District Law Society

Thursday 29 September 2011  
Leeds

ArmstrongWatson<sup>TM</sup>  
*...we're with you.*

# Solicitors' Compliance Masterclass

9.30am-12.30pm      Solicitors' Accounts Rules Update  
Andy Poole, Legal Sector Director  
Armstrong Watson

12.30pm-1.30pm      Lunch

1.30pm-4.30pm      The New Regulatory Regime  
Simon Bray, Director  
Web4Law

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Solicitors' Accounts Rules Update

Andy Poole

Legal Sector Director

Armstrong Watson

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# AW Legal

## Specialist Accountants for the Legal Profession

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Solicitors' Accounts Rules

## Introduction

- Breaches?
- Clean Reports?

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Solicitors' Accounts Rules

## Introduction

- SRA view:
  - One third of reports contain breaches
  - Shockingly low
  - Breaches do not lead to visits
  - Don't like clean reports
    - Can't be that good
    - Doubt on accountant

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Solicitors' Accounts Rules

## Introduction

- Our view:
  - Not here to snoop on you!
  - Help firms to improve

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Solicitors' Accounts Rules

## Content

- SAR 2011 overview
- Quiz
- Changes to the rules
- Common breaches
- Questions
- Interactive
- Course material
- Timing

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



# SRA Accounts Rules 2011

- 53 rules – additional rules and re-numbering
- SRA guidelines – accounting procedures and systems

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 1 - Principles

- Keep client money safe
- Keep client money separate
- Maintain proper accounting records

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 2 - Interpretation

- “Disbursements”
- “Without delay”
- “Manager”
- “COFA”

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

- Rule 3 – Geographical scope
- Rule 4 – Persons governed
- Rule 5 – Persons exempt
- Rule 6 – Principals' responsibility (+COFA)
- Rule 7 – Duty to remedy breaches

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

**Rule 8 – Liquidators and trustees in bankruptcy**

**Rule 9 – Joint accounts**

**Rule 10 – Operation of a client's own account  
(not client money)**

**Rule 11 – Firm's rights**



**Inform accounts department**



**Appendix 1 and 2**

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Quiz 1 (1 to 11)

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 12 – Categories of money

- Office money
- Client money
- Out of Scope money
  - MDP non-regulated activity

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 12 - Examples

- Disbursements
- Client money
  - Payments on account
  - SDLT
  - TT Fees
  - Land registry registration fees
  - Commissions/financial benefit?

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



# Rule 12 - Examples

- Office money
  - interest on general client accounts
  - payments for fees
  - agreed fees
  - amounts earmarked for costs
  - LSC regular payments
  - solicitors' own matters

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 13 – Client accounts

- General
- Separate designated
- Bank/building society branch in England / Wales
- “Client” must be in the title
- Name of firm must be in the title
- Instantly accessible – unless client instructs
- Written agreement 13(6)

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 14 – Use of a client account

- Receipts paid in without delay
- Only client money and trust money unless:
  - To open/maintain an account
  - Advances from the solicitor
  - Money to replace amounts withdrawn in breach of the rules
  - Sums in lieu of interest
- Wood and Burdett (case 8669/2002)

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 15 – Client money withheld from client account on client instructions

- Payment on account of costs?
- No blanket agreement
- In writing

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 16 – Other client money withheld from client account

- Received and paid on without delay
- Unpaid professional disbursements
- SRA authorisation
- Trust – Trustees' powers

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Quiz 2 (12 to 16)

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 17 – Receipt and transfer of costs

- Place office money in office account  
Place client money in client account  
Place out of scope money in office account  
Follow Rule 18 for mixed receipts
- Receipt of office money plus unpaid professional disbursement
  - place in office account and pay disbursements within two working days

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

## Rule 17 – Receipt and transfer of costs (cont.)

- Place entire sum in client account and transfer any office money out within 14 days
- Issue bill before transferring amounts for fees from client to office
- Once a bill has been issued, monies earmarked for costs must be transferred within 14 days

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



# Rule 18 – Mixed receipts

- Pay into client account without delay and transfer any office money out within 14 days

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 19 – Payments to Legal Aid Practitioners

1. Non regular payments
  - Pay into client unless:
    - costs plus unpaid professional disbursements
    - may pay into office and pay disbursement or transfer its amount into client within 14 days
    - advance costs may be paid to office if confirmed by LSC in writing

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 19 – Payments to Legal Aid Practitioners (cont.)

## 2. Regular payments

- Must now be paid to office
- Within 28 days of submitting report to LSC:
  - pay any unpaid professional disbursements
  - transfer that amount to client account

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 19 – Payments to Legal Aid Practitioners (cont.)

## 3. Payments from a third party

- Third party payment into client
- Sum representing LSC payments into client
- Balance to solicitor into office within 14 days of report to LSC
- Keep balance to LSC in client until notified by LSC then transfer within 14 days to office

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 20 – Withdrawals from a client account

## Client Money

- Properly required
- Paid into the account in breach of the rules
- Authorised by the SRA
  - all necessary steps taken
  - reporting accountant
  - pay to charity and obtain indemnity

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Revised Rule 20 – 14 July 2008

- Self certification
- Residual balances <£50
- Reasonable attempts to identify the owner
- Adequate attempts to return it, unless costs of doing so are excessive
- Pay the amounts to a charity
  - Obtain an indemnity?
- Record the steps taken
- Central register

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

## Revised Rule 20 – 14 July 2008 (cont.)

- Residual balances >£50
- Apply to SRA as before

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Revised Rule 14 – 14 July 2008

- Self certification: additional controls
- Client money must now be returned to the client promptly
- Inform client in writing if holding client money after conclusion of the matter
- Write to client every 12 months

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



# Rule 20 – Withdrawals from a client account (cont.)

## Office money

- Amounts paid in to open the account
- Payment of costs Rules 17 and 18

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 20 – Withdrawals from a client account (cont.)

## Overdrawn client accounts

- 20(6) – withdrawals not to exceed amount held in a general client account for the client
- 20(7) – except if sufficient funds held in a separate designated account and a transfer is made immediately
- 20(8) – money held for a client in a separate designated client account can only be used for that client

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 20 – Withdrawals from a client account (cont.)

## Overdrawn client accounts (cont.)

- 20(9) – a client bank account must not be overdrawn except:
  - Trustee makes necessary payments before assets are realised
  - Sole practitioner dies and accounts are frozen
- 20 note (v) – use discretion in drawing a cheque against uncleared funds

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Quiz 3 (17 to 20)

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Rule 21 – Authority for client account withdrawals

## Authorised and signed by:

- ~~Qualified solicitor~~
- ~~Fellow of the Institute of Legal Executives~~
- ~~Registered foreign lawyer “manager”~~
- ~~“Manager”~~
  
- An appropriate person in accordance with the firm’s procedures
- Not:
  - Non-manager owner
  - Non-employee owner
- Can authorise electronically subject to appropriate safeguards

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 22 – Interest

- Written policy and agreement
- No distinction between separate, designated and general
- No guidance on amounts and durations
- In practice...

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

## Rule 23 – Amount of interest to pay

- Unlikely to be as high as that obtainable by the client depositing those funds
- “Fair and reasonable”

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

Rule 24 – Interest on stakeholder money

Rule 25 – Contracting out

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



Rule 26 – SRA guidelines for accounting procedures and systems

Rule 27 – Transfers between clients

Rule 28 - Executor, trustee or nominee companies

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 29 – Accounting records which must be kept

- 29(1) – Accounting records properly written up at all times to show:
  - client money held, received or paid
  - office money relating to any client
- 29(2) – Separate client ledger for each client

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 29 – Accounting records which must be kept (cont.)

- 29(9) – The current balance on each client ledger must be readily ascertainable
- 29(12) – Reconciliations to be made at every month end
  - bank statements to cash book
  - cash book to total on client ledger
  - prepare a reconciliation statement
  - hard copy or saved electronic copy statements

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Rule 29 – Accounting records which must be kept (cont.)

- 29(15) – Central record or file copies of all bills raised
  - distinguish between fees, disbursements not yet paid and paid disbursements
- 29(17) – Retain all records for at least six years from the date of last entry

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

## Rule 29 – Accounting records which must be kept (cont.)

- 29(18) – Paid cheques to be retained for at least two years
  - original form
  - digital image of front and back

Or:

- written arrangement with the bank that they will retain the cheques in compliance with this rule

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

Rule 30 – Client's own accounts

Rule 31 – Production of records

Rule 32 – Accountant's reports

Rule 33 – Accounting periods

Rule 34 – Who can make accountant's reports

Rule 35 – Accountant's duties

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

Rule 36 – Change of accountant

Rule 37 – Place of examination

Rule 38 – Provision of details of bank accounts

Rule 39 – Test procedures

Rule 40 – Departures from the guidelines

Rule 41 – Matters outside the accountant's reports

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

Rule 42 – Privileged documents

Rule 43 – Checklist

Rule 44 – Accountant's reports

Rule 45 – More than one office

Rule 46 – Waivers

Rule 47 to 52 – Overseas practices

Rule 53 – Transitional provisions

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



# Quiz 4 (21 to 53)

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Recent rule changes

## 2008 - 2009

- 14 July 2008
  - Residual balances
    - Rules 22 and 15 (now 20 and 14)
- 31 March 2009
  - Controlled trusts
    - Rules 8 and 18 repealed
  - LDPs/Managers
    - Rule 23 (no longer relevant)
  - Interest certificates
    - Rule 28 repealed

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Current rule changes

- 6 October 2011
  - Interest
    - Rules 22 and 23
  - Electronic signatures
    - Rule 21
  - Electronic statements
    - Rule 29(12)
  - COFA
    - Rule 6
  - Overseas practice rules
    - Rules 47 to 52

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

# Common breaches

- 12(7) (b) - bank interest credited to a general client account
- 12(2) (c) - money held in an office account for unpaid professional disbursements
- 13(3) – client money paid into a bank account that does not contain the word “client” in the title

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

## Common breaches (cont.)

- 14(1) – receipts not banked without delay
- 14(3) – not returning client money promptly
- 17(3) - money earmarked for costs not transferred from client to office within 14 days

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

## Common breaches (cont.)

- 20(2) – improperly clearing old client ledger balances
- 20(6) or (7) – overdrawn client accounts
- Rule 21 – inappropriate authority for electronic transfers from client accounts

**ArmstrongWatson**<sup>TM</sup>  
*...we're with you.*

## Common breaches (cont.)

- 29(12) – not all client accounts included in reconciliations
- 29(15) – no split of paid and unpaid disbursements on bills
- 29(18) – missing paid cheques and no written agreement

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# Quiz 5 (Summary)

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*



**Andy Poole**

**Legal Sector Director**

**Leeds office:  
Central House  
47 St Paul's Street  
LEEDS  
LS1 2TE**

**T: 0113 2211 300**

**F: 0113 2211 301**

**M: 07828 857830**

**E: [andy.poole@armstrongwatson.co.uk](mailto:andy.poole@armstrongwatson.co.uk)**

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

# The New SRA Code of Conduct Out – Glass Half Full?

Simon Bray

Web4Law Ltd

[simon@web4law.co.uk](mailto:simon@web4law.co.uk)

[www.web4law.co.uk](http://www.web4law.co.uk)

# The New Compliance Landscape – Two Opposing Views

- Glass Half Full
  - The insistence of the SRA on technical compliance, versus meeting the interest of the client, should be swept aside by OFR
  - Greater flexibility in meeting professional obligation will be the order of the day
  - Current obsession with detail will be replaced with a targeted approach to regulation
- Glass Half Empty
  - Firms will be left uncertain, and unclear as to their regulatory obligations
  - The SRA's cultural approach will not change sufficiently to deliver the new regime

# What Does the SRA Mean to Achieve?

- The SRA's mission is to “protect the public by ensuring that solicitors meet high standards and by acting when risks to this objective are identified”
- The SRA's remit and objectives
  - Legal Services Act
  - Introduction of Alternative Business Structures (ABS's) generates three options:
    - SRA “won't play”, or
    - Establish separate regime for ABSs and traditional practices, or
    - Seek to establish a level regulatory playing field
  - Is a level playing field possible?

“... clients of traditional law firms and ABSs should enjoy the same level of protection ...”

# The Timetable

- 13 January 2011
  - was the closing date for written responses to October consultation
- 6 April 2011
  - saw the publication of the final Handbook
  - with significant amendments from final draft
- August 2011
  - was the anticipated designation date of the SRA as a Licensing Authority for ABSs
- 6 October 2011
  - new Handbook takes effect
  - was the anticipated date for first ABSs to be licensed
- 31 March 2012
  - all recognised bodies become subject to the Authorisation Rules
  - COLPs and COFAs must be notified to the SRA

# What Does Outcomes Focused Regulation Actually Mean?

- A radically new approach by the SRA
  - Core Duties replaced with high level professional standards – the ‘Principles’
  - Detailed Rules replaced by a range of mandatory ‘Outcomes’
  - Prescriptive Guidance replaced non-mandatory, broadly drafted Indicative Behaviours (IBs)
- Concentration of regulatory focus on firms which pose a risk to clients, or the profession
  - Where risk is identified, help to be provided, but
  - Severe sanctions to be visited on firms that can’t or won’t respond

# What Does Outcomes Focused Regulation Actually Mean?

- Firms coming to the SRA's attention – above the event horizon – may expect more intervention
- Greater transparency within the regulatory environment – in both directions
  - More disclosure
  - More cooperative approach
  - More support
  - More openness
- “A move away from investigating rule breaches as an end in itself ...”

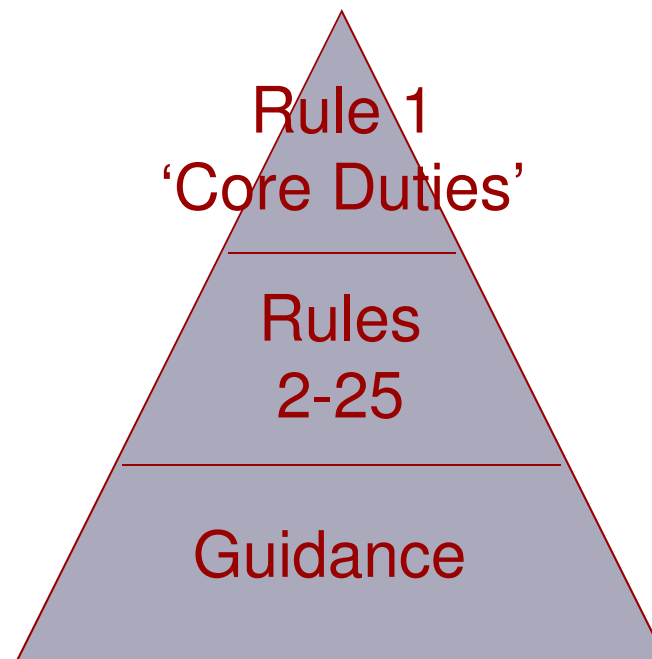
# Some Practical Implications of the Introduction of OFR

- Heavier concentration on risk by the SRA
- A greater emphasis by the SRA on collection and assessment of data
  - Financial strength
  - Business model
  - Risk exposure
- Requirement for regulated bodies to self assess:
  - via authorisation process
  - via self-certification
  - via self reporting – welcome to the:
    - COLP (Compliance Officer for Legal Practice)
    - COFA (Compliance Officer for Finance and Administration)



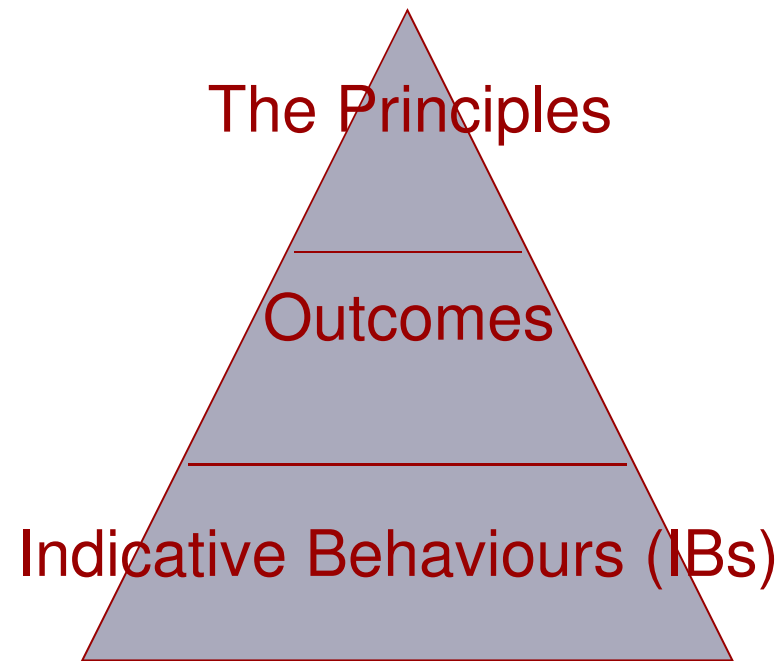
# The Structure of the Present Regime

Under the existing Code of Conduct 2007:



# The Structure of the New Regime

With the introduction of OFR:



# Interpretation

- Expanded IBs
- SRAs promised culture of support
  - FAQs
  - The planned 'Risk Outlook' publication
  - Professional Ethics
  - Published interpretation

# Code of Conduct 2007 – Core Duties

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 good standard of service to your clients
6. not behave in a way that is likely to diminish the trust the public places in you or the legal profession

# The SRA Principles

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

# Outcomes vs. Indicative Behaviours

- Outcomes

- Mandatory
- May be achieved in a variety of ways
- At the heart of OFR compliance
- To benefit users of legal services

“ ... what firms and individuals are expected to achieve in order to comply with the relevant Principles ...”

- Indicative Behaviours

- Not mandatory
- Not exhaustive
- Non compliance with IBs will not, of itself, constitute grounds for disciplinary action

# The SRA Code of Conduct

- Five sections (split into subsidiary Chapters)
  - You and Your Client
  - You and Your Business
  - You and Your Regulator
  - You and Others
  - Application, Waivers and Interpretation

# Section 1 – You and Your Client

- Chapter 1 Client care
- Chapter 2 Equality and diversity
- Chapter 3 Conflicts of interests
- Chapter 4 Confidentiality and disclosure
- Chapter 5 Your client and the court
- Chapter 6 Your client and introductions to third parties



## **Section 2 – You and Your Business**

**Chapter 7    Management of your business**

**Chapter 8    Publicity**

**Chapter 9    Fee sharing and referrals**

## **Section 3 - You and Your Regulator**



Chapter 10 You and your regulator

## **Section 4 - You and Others**



Chapter 11 Relations with third parties

Chapter 12 Separate businesses

## **Section 5 - Application, Waivers and Interpretation**

- Chapter 13 Application and waivers provisions
- Chapter 14 Interpretation
- Chapter 15 Transitional provisions

# Comparative Approaches

## Solicitors Code of Conduct 2007 – Rule 2.03 (1) Information about the cost

- (1) You must give your client the best information possible about the likely overall cost of a matter both at the outset and, when appropriate, as the matter progresses. In particular you must:
- a) advise the client of the basis and terms of your charges;
  - b) advise the client if charging rates are to be increased;
  - c) advise the client of likely payments which you or your client may need to make to others;
  - d) discuss with the client how the client will pay, in particular:
    - (i) whether the client may be eligible and should apply for public funding; and
    - (ii) whether the client's own costs are covered by insurance or may be paid by someone else such as an employer or trade union;
  - e) advise the client that there are circumstances where you may be entitled to exercise a lien for unpaid costs;
  - f) advise the client of their potential liability for any other party's costs; and
  - g) discuss with the client whether their liability for another party's costs may be covered by existing insurance or whether specially purchased insurance may be obtained.

## Draft SRA Code of Conduct – Chapter 1 - Costs Information

You must achieve these outcomes:

- O(1.13) Clients receive the best possible information, both at the time of engagement ~~at the outset~~ and when appropriate as their matter progresses, about the likely overall cost of their matter
- Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:
- IB(1.14) Clearly explaining your fees and if and when they are likely to change;
  - IB(1.15) Warning about any other payments for which the client may be responsible;
  - IB(1.16) Discussing how the client will pay, including whether public funding may be available, whether the client has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union;

# Implications of the New Regime - Chapter 10 – You and Your Regulator

You must achieve these outcomes:

- O(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
- O(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)

# Implications of the New Regime - Chapter 10 – You and Your Regulator

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

- IB(10.2) actively monitoring your financial stability and viability in order to identify and mitigate any risks to the public
- IB(10.3) notifying the SRA promptly of any indicators of serious financial difficulty, such as inability to pay your professional indemnity insurance premium, or rent or salaries, or breach of bank covenants
- IB(10.4) notifying the SRA promptly when you become aware that your business may not be financially viable to continue trading as a going concern, for example because of difficult trading conditions, poor cash flow, increasing overheads, loss of managers or employees and/or loss of sources of revenue
- IB(10.5) notifying the SRA of any serious issues identified as a result of monitoring, and producing a plan for remedying issues that have been identified
- IB(10.6) responding appropriately to any serious issues identified concerning competence and fitness and propriety of your employees, managers and owners

# Implications of the New Regime – Creation of COLP and COFA

- COLP = Compliance Officer for Legal Practice
  - To ensure compliance with
    - Terms and conditions of the authorised body's authorisation (excepting the SARs)
    - Any statutory obligations
- COFA = Compliance Officer for Finance and Administration
  - To ensure compliance with
    - Obligations under the SARs



## Implications of the New Regime – Functions of COLP and COFA

- When considering suitability of candidates for COLP/COFA, the SRA will take the criteria of the ‘Suitability Test’ into account – and any other relevant information
- Can be employees (but note COLP must be a solicitor)
- Must be of “sufficient seniority, and in position of sufficient seniority” to fulfil the role
- Must report failures of compliance ‘as soon as reasonably practicable’

# The Suitability Test

- All managers, owners, COLPs and COFAs will be subject to the Suitability Test
- Solicitors
  - Anyone holding a PC will be deemed to be suitable to be a manager or owner of an authorised body (having been passported through the Suitability Test), but ...
  - ... a solicitor will be required to undertake the Suitability Test if he/she wishes to fulfil the role of COLP or COFA, and ...
  - ... the SRA may impose conditions
- Managers
  - There will also be passporting arrangements for managers/owners in existing firms, but ...
  - ... newly appointed managers/owners will need to satisfy the criteria of the Suitability Test, and ...
  - ... the test applied is the same for non-solicitors “as they will be working within the profession”

# Implications of the Suitability Test

- The Suitability Test
  - Rebuttable presumption of dishonesty, where issues are not disclosed which call into question an individual's suitability (to be admitted)
  - Mental health or addiction issues will not of themselves be grounds for failure – but “will be taken into account”
  - Candidates must adhere to the Principles

# Requirements of the Suitability Test – Part 1 (All Applicants)

- Criminal Offences
- Failure to disclose material information
- Behaviour not compatible
  - Dishonesty
  - Violence
  - Discrimination
- Misuse of position
  - Pecuniary advantage
  - Of trust in relation to vulnerable clients
- Assessment Offences
- Financial Behaviour
  - Unmanageable debt
  - Recklessness
  - Incompetence
  - Dishonesty
- Regulatory History

# Requirements of the Suitability Test – Part 2 (Authorised Role Holders)

## Additional requirements to become authorised under Authorisation Rules

- Removed from office of trustee of charity
- Removed/disqualified as company director
- Associated with winding up, administrative order or administrative receivership
- Previous spent conviction re bankruptcy, IVAs, or insolvency
- Other matters that call fitness/propriety into question
- Offence under Companies Act 2006
- SRA has evidence reflecting on honesty/integrity of relative or affiliated person where that person has influence

# Implications of the New Regime – Supervision (a first line of support)

- Future practice supervision will:
  - Be focused
  - Be risk-derived
  - Assess whether outcomes are being achieved
- Risk factors
  - Nature of firm
  - Size
  - Approach to risk management
- Compliance history
  - Intel
- Audits (or circumstances) may lead to:
  - Permanent Relationship Management
  - Temporary Relationship Management
  - One-off, specific responses

# Implications of the New Regime – Enforcement (if supervision fails)

- Future OFR-based enforcement is intended to be:
  - Effective
  - Proportionate
  - Fair
- Firms that react positively can expect a less intrusive response
- Regulatory Settlement Agreements
- Costs of investigations to be borne by those found to have committed acts of misconduct

# Implications of the New Regime – Your Response to Risk

- Areas of risk for you to consider:
  - Your firm's work
  - Your firm's management and culture
  - Your firm's infrastructure
  - Your firm's staff (and partners)
  - Your firm's policies
  - Your firm's monitoring and reporting arrangements
- A Risk Register or Review?



# OFR – Mandatory Requirements

## Chapter 1 – Client Care (Slide A)

You must achieve these outcomes:

- O(1.1) you treat your clients fairly;
- O(1.2) you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice;
- O(1.3) when deciding whether to act, or terminate your instructions, you comply with the law and the Code;
- O(1.4) you have the resources, skills and procedures to carry out your clients' instructions;
- O(1.5) the service you provide to clients is competent, delivered in a timely manner and takes account of your clients' needs and circumstances;
- O(1.6) 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;
- O(1.7) you inform clients whether and how the services you provide are regulated and how this affects the protections available to the client;
- O(1.8) 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 Insurance Rules;

# OFR – Mandatory Requirements

## Chapter 1 – Client Care (Slide B)

- O(1.9) clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made;
- O(1.10) 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;
- O(1.11) clients' complaints are dealt with promptly, fairly, openly and effectively;
- O(1.12) 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;
- O(1.13) 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;
- O(1.14) 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;
- O(1.15) you properly account to clients for any financial benefit you receive as a result of your instructions;
- O(1.16) you inform clients if you discover any act or omission which could give rise to a claim by them against you.

# Chapter 1 - Points to note

- 'Fairness' is central – O(1.1) and O(1.2)
- 'Best interest' is central – O(1.2), O(1.5) and O(1.6)
- 'Protection' is central – O(1.2) and O(1.7)
- IB's
  - Flexibility in, but necessity of, providing:
    - Full costs information
    - Information on other payments, and
    - Full access to complaints mechanism and LeO
  - Supervision arrangements
  - Client objectives
- Negative Indicative Behaviours
  - Acting where instructed by another, or by only one client under joint instructions
  - Ceasing to act without good reason and without reasonable notice
  - Unlawful fee arrangements
  - Duress or undue influence, and insufficient precautions taken

# OFR – Mandatory Requirements

## Chapter 2 – Equality & Diversity

Everyone needs to contribute to compliance with these requirements, for example by treating each other, and clients, fairly and with respect, by embedding such values in the workplace and by challenging inappropriate behaviour and processes. Your role in embedding these values will vary depending on your role.

You must achieve these outcomes:

- O(2.1) you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings;
- O(2.2) you provide services to clients in a way that respects diversity;
- O(2.3) you make reasonable adjustments to ensure that disabled clients, employees or managers are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled clients, employees or managers;
- O(2.4) your approach to recruitment and employment encourages equality of opportunity and respect for diversity;
- O(2.5) complaints of discrimination are dealt with promptly, fairly, openly, and effectively.

## Chapter 2 - Points to note

- Elevation of Rule 6 to a 'Principle' – see Principle 9
- Move away from the need for a 'policy' to a greater focus on practical delivery
  - Services to be provided 'in a way that respects diversity'
  - Provision of reasonable adjustments
  - Internal processes that 'encourages equality of opportunity and respect for diversity'
- IBs
  - Policy
  - Training
  - Monitoring and updating

# OFR – Mandatory Requirements

## Chapter 3 – Conflict of Interest (Slide A)

Conflicts of interests can arise between (a) you and current clients ("own interest conflict"); and (b) two or more current clients ("client conflict").

You can never act where there is a conflict, or a significant risk of conflict, between you and your client.

If there is a conflict, or a significant risk of a conflict, between two or more current clients, you must not act for all or both of them unless the matter falls within the scope of the limited exceptions set out at Outcomes 3.6 and 3.7. In deciding whether to act in these limited circumstances, the overriding consideration will be the best interests of each of the clients concerned and, in particular, whether the benefits to the clients of you acting for all or both of the clients outweigh the risks.

You must achieve these outcomes:

### Systems

- O(3.1) you have effective systems and controls in place to enable you to identify and assess potential conflicts of interests;
- O(3.2) your systems and controls for identifying own interest conflicts are appropriate to the size and complexity of the firm and the nature of the work undertaken, and enable you to assess all the relevant circumstances, including whether your ability as an individual, or that of anyone within your firm, to act in the best interests of the client(s), is impaired by:
- any financial interest;
  - a personal relationship;
  - the appointment of you, or a member of your firm or family, to public office;
  - commercial relationships; or
  - your employment;
- O(3.3) your systems and controls for identifying client conflicts are appropriate to the size and complexity of the firm and the nature of the work undertaken, and enable you to assess all relevant circumstances, including whether:
- the clients' interests are different
  - your ability to give independent advice to the clients may be fettered;
  - there is a need to negotiate between the clients;
  - there is an imbalance in bargaining power between the clients; or
  - any client is vulnerable;

# OFR – Mandatory Requirements

## Chapter 3 – Conflict of Interest (Slide B)

### Prohibition on acting in conflict situations

- O(3.4) you do not act if there is an own interest conflict or a significant risk of an own interest conflict;
- O(3.5) you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 and 3.7 apply;

### Exceptions where you may act, with appropriate safeguards, where there is a client conflict

- O(3.6) where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:
- a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
  - b) all the clients have given informed consent in writing to you acting;
  - c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and
  - d) you are satisfied that the benefits to the clients of you doing so outweigh the risks;
- O(3.7) where there is a client conflict and the clients are competing for the same objective, you only act if:
- a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
  - b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective;
  - c) there is no other client conflict in relation to that matter;
  - d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and
  - e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks.

# Chapter 3 - Points to note

- Relevance of '... or a significant risk of conflict' throughout the Chapter
- Differential between 'own interest' and 'client' conflicts (must NEVER act in 'own interest conflicts')
- Greater emphasis on appropriate systems and controls
- More disguised 'guidance' within O(3.2) and O(3.3)
- We have lost the complex elements of the old Rule 3 relating to conveyancing conflict:
  - replaced with the 'benefits outweighing the risks' form of words
- So what IS the position on acting for both sides in a conveyancing transaction?
  - The Principles
  - Keeping records
  - Chapter 4 (Confidentiality)
  - Acting for lender and borrower
- IBs
  - Training
  - Procedure for declining to act?
- Negative IBs
  - Acting for competing buyers
  - Acting under an exception where there are inequalities of bargaining power



# OFR – Mandatory Requirements

## Chapter 4 – Confidentiality & Disclosure

You must achieve these outcomes:

- O(4.1) you keep the affairs of clients confidential unless disclosure is required or permitted by law or the client consents;
- O(4.2) any individual who is advising a client makes that client aware of all information material to that retainer of which the individual has personal knowledge;
- O(4.3) you ensure that where your duty of confidentiality to one client comes into conflict with your duty of disclosure to another client, your duty of confidentiality takes precedence;
- O(4.4) you do not act for A in a matter where A has an interest adverse to B, and B is a client for whom you hold confidential information which is material to A in that matter, unless the confidential information can be protected by the use of safeguards, and:
  - a) you reasonably believe that A is aware of, and understands, the relevant issues and gives informed consent;
  - b) either:
    - (i) B gives informed consent and you agree with B the safeguards to protect B's information; or
    - (ii) where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and
  - c) it is reasonable in all the circumstances to act for A with such safeguards in place;
- O(4.5) you have effective systems and controls in place to enable you to identify risks to client confidentiality and to mitigate those risks.

## Chapter 4 - Points to note

- IBs
  - Systems and controls appropriate to firm
  - Outsourcing and confidentiality
  - ‘you’ = acting or supervising a client’s matter
- Negative IBs
  - Disclosing contents of will without consent
  - Disclosing client data to 3<sup>rd</sup> parties without consent

# Chapter 7 - Points to note

- Elevation of Rule 5 to a 'Principle' – see Principle 8
- Importance of systems and controls emphasised - O (7.2)
- You identify, monitor and manage risks - O (7.3)
- Legislative and professional obligation
  - AML
  - Data Protection
  - Direction/supervision of reserved work and immigration
- Supervision arrangements
  - to include the regular checking of the quality of work by suitably competent and experienced people - O (7.8)
- Outsourcing
  - Only to an authorised person
  - Under your obligations under the Handbook
- IB's
  - Safekeeping of documents and assets
  - Controlling budgets, expenditure and cashflow
  - Identifying and monitoring risks
  - Making arrangements for business continuity

# OFR – Mandatory Requirements

## Chapter 8 - Publicity

The overriding concern is that publicity is not misleading and is sufficiently informative to ensure that clients and others can make informed choices.

In your publicity, you must comply with statutory requirements and have regard to voluntary codes.

You must achieve these outcomes:

- O(8.1) your publicity in relation to your firm or in-house practice or for any other business is accurate and not misleading, and is not likely to diminish the trust the public places in you and in the provision of legal services;
- O(8.2) your publicity relating to charges is clearly expressed and identifies whether VAT and disbursements are included;
- O(8.3) you do not make unsolicited approaches in person or by telephone to members of the public in order to publicise your firm or in-house practice or another business;
- O(8.4) clients and the public have appropriate information about you, your firm and how you are regulated;
- O(8.5) your letterhead, website and e-mails show the words "authorised and regulated by the Solicitors Regulation Authority" and either the firm's registered name and number if it is an LLP or company or, if the firm is a partnership or sole practitioner, the name under which it is licensed/authorised by the SRA and the number allocated to it by the SRA.

# OFR – Mandatory Requirements

## Chapter 9 - Fee sharing and referrals

This chapter is about protecting clients' interests where you have arrangements with third parties who introduce business to you and/or with whom you share your fees. The relationship between clients and firms should be built on trust, and any such arrangement should not jeopardise that trust by, for example, compromising your independence or professional judgement.

You must achieve these outcomes:

- O(9.1) your independence and your professional judgement are not prejudiced by virtue of any arrangement with another person;
- O(9.2) your clients' interests are protected regardless of the interests of an introducer or fee sharer or your interest in receiving referrals;
- O(9.3) clients are in a position to make informed decisions about how to pursue their matter;
- O(9.4) clients are informed of any financial or other interest which an introducer has in referring the client to you;
- O(9.5) clients are informed of any fee sharing arrangement that is relevant to their matter;
- O(9.6) you do not make payments to an introducer in respect of clients who are the subject of criminal proceedings or who have the benefit of public funding;
- O(9.7) where you enter into a financial arrangement with an introducer you ensure that the agreement is in writing.

# Chapter 9 - Points to note

- Protection of client interest is paramount
- Key issue – providing data to allow clients to reach informed decisions – in an appropriate form
- A resolution of the controversy over the application of Rule 9 – ‘financial arrangements’ alone, or reciprocity also covered? - O(9.4)?
- IBs
  - Reputable third parties
  - Advising clients where an arrangement is not in their best interests
  - Terminating non-compliant referral arrangements
  - Making clients aware of payments made
- Negative IBs
  - Allowing an arrangement to influence your advice (Principles 2, 3 and 4)
  - Accepting referrals where clients pressured or misled

# OFR – Mandatory Requirements

## Chapter 11 - Relations with third parties

This chapter is about ensuring you do not take unfair advantage of those you deal with and that you act in a manner which promotes the proper operation of the legal system.

This includes your conduct in relation to undertakings. There is no obligation to give or receive an undertaking on behalf of a client but, if you do, you must ensure that you achieve the outcomes listed in this chapter.

The conduct requirements in this area extend beyond professional and business matters. They apply in any circumstances in which you may use your professional title to advance your personal interests.

You must achieve these outcomes:

- O(1) you do not take unfair advantage of third parties in either your professional or personal capacity;
- O(2) you perform all undertakings given by you within an agreed timescale or within a reasonable amount of time;
- O(3) where you act for a seller of land, you inform all buyers immediately of the seller's intention to deal with more than one buyer;
- O(4) you properly administer oaths, affirmations or declarations where you are authorised to do so.

# Management Preparation for OFR

In the context of the required Outcomes, and the likely disclosure regime:

- Review Risk procedures and controls:
  - Are they effective?
  - Are they being complied with?
  - Are we ticking boxes?
  - Should we create a Risk Register?
- Begin preparing for Authorisation:
  - Plan the allocation of COLP and COFA roles – train where appropriate
  - Collate risk data
  - Collate financial data
  - Review business planning – and model
- Ensure internal Supervision is effective
- Ensure Case Management procedures are being followed
- Review Client Care arrangements and documentation





**Simon Bray**

**Web4Law**

**Coach House Farm**

**Long Street, Foston**

**Grantham NG32 2LD**

**Tel: 01400 283915**

**Mob: 07768 614440**

**Email: [simon@web4law.co.uk](mailto:simon@web4law.co.uk)**

**WEB4LAW**



# AW Legal

Specialist Accountants for the Legal Profession

[www.armstrongwatson.co.uk/awlegal](http://www.armstrongwatson.co.uk/awlegal)

[www.armstrongwatson.co.uk/industry/legal-sector](http://www.armstrongwatson.co.uk/industry/legal-sector)

[andy.poole@armstrongwatson.co.uk](mailto:andy.poole@armstrongwatson.co.uk)

**ArmstrongWatson<sup>TM</sup>**  
*...we're with you.*

we're with you... we're with you...  
we're with you... we're with you...  
we're with you... we're with you...  
we're with you... we're with you...

ArmstrongWatson<sup>TM</sup>  
...we're with you.