

Outcomes-Focused Regulation: Compliance in Practice

3rd edition



TRACEY CALVERT AND BRONWEN STILL

Outcomes-Focused Regulation: Compliance in Practice 3rd edition



TRACEY CALVERT AND BRONWEN STILL

Head of events and books

Leah Darbyshire

Commissioning editor

Laura Slater

Editorial assistant

Edward Bowes

Published by ARK Group:

UK, Europe and Asia office
6–14 Underwood Street
London, N1 7JQ
United Kingdom
Tel: +44(0) 207 566 5792
publishing@ark-group.com

North America office
4408 N. Rockwood Drive, Suite 150
Peoria IL 61614
United States
Tel: +1 (309) 495 2853
publishingna@ark-group.com

www.ark-group.com

Printed by Canon (UK) Ltd, Cockshot Hill, Reigate, RH2 8BF, United Kingdom

ISBN: 978-1-78358-246-4

A catalogue record for this book is available from the British Library

© 2016 ARK Group

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, except in accordance with the provisions of the Copyright, Designs and Patents Act 1988 or under terms of a licence issued by the Copyright Licencing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material, including permission to reproduce extracts in other published works, should be made in writing to the publishers. Full acknowledgement of author, publisher, and source must be given.

DISCLAIMER

This publication is intended as a general guide only. The information and opinions it contains are not intended to provide legal advice. The publishers bear no responsibility for any errors or omissions contained herein.

ARK Group is a division of Wilmington plc. The company is registered in England & Wales with company number 2931372 GB. Registered office: 6–14 Underwood Street, London N1 7JQ. VAT Number: GB 899 3725 51.

Contents

Executive summary.....	vii
About the authors.....	xi
Chapter 1: ‘Constant change in the legal services market’	3
The LSA – The essentials	3
‘Regulatory objectives’ and ‘professional principles’ – How regulators must exercise their powers.....	6
Chapter 2: The opening up of the legal services market.....	11
ABSs, LDPs, and MDPs.....	11
Chapter 3: The SRA’s response to the LSA.....	15
The SRA’s new approach.....	15
Outcomes-focused regulation – What is it and what benefits does it bring?.....	16
Risk-based regulation.....	17
Entities-based regulation.....	18
Chapter 4: The SRA Handbook.....	19
An overview of the Handbook’s contents.....	19
The use of different regulatory provisions.....	20
Areas of essential reading of the Handbook.....	20
The Principles and their significance	21
Chapter 5: How the SRA evaluates and deals with law firm risk.....	29
Setting the standards.....	29
The SRA’s approach to risk.....	30
The SRA’s structure for firms’ risk evaluation	33
Entities-based regulation – Whole firm compliance	34

Chapter 6: Authorisation Rules and how they affect all firms	37
Outcomes.....	37
The introduction of the Authorisation Rules	38
What the Authorisation Rules require – At a glance.....	39
The importance of the conditions	39
Chapter 7: An analysis of the COLP and COFA roles	43
The need for compliance officers – Rule 8.5.....	43
How the COLP and COFA are chosen	44
The COLP’s and COFA’s reporting role	47
Chapter 8: Other requirements for authorised firms	55
Having suitable owners, managers, compliance officers, and employees – Rule 8.6.....	55
Payment of periodical fees – Rule 8.3.....	56
Authorised activities – Rule 8.4.....	57
Information requirements – Rule 8.7.....	57
Additional conditions for recognised bodies and licensed bodies – Rules 8.8–8.10.....	58
Chapter 9: The SRA’s powers over firms	59
Further imposition of conditions – Rule 9.....	59
Revocation and suspension of authorisation – Rule 22.....	60
Notifying third parties of SRA decisions – Rule 20.....	60
Reconsideration and appeals – Rules 29–32	60
Chapter 10: How new firms become authorised	61
The application process.....	61
Particular issues for ABS applicants	64
The decision-making process.....	65
Chapter 11: The SRA Code of Conduct 2011 and the practical application of OFR	71
Introduction to the SRA Code of Conduct 2011.....	71
The SRA Code of Conduct 2011 made easier	72
Outcomes and indicative behaviours	73
Chapter 12: Client care	75
Introduction.....	75
What does it mean to treat clients fairly?	78

Flexibility – The client care letter.....	85
How can client care compliance be demonstrated?.....	86
Client care planning suggestions.....	87
Compliance planning discussions.....	88
Ongoing monitoring.....	89
How is success measured?.....	90
Chapter 13: Conflicts of interests.....	95
Introduction.....	95
Conveyancing – Managing the risk of conflict.....	99
Other high-risk areas of conflict.....	101
Who can use the exceptions?.....	102
Compliance planning suggestions.....	105
Ongoing monitoring.....	106
Chapter 14: The duty of confidentiality and disclosure.....	109
Introduction.....	109
Defined terms.....	110
The application of information barriers in practice.....	112
Compliance planning suggestions.....	114
Ongoing monitoring.....	115
Chapter 15: Fee sharing and referrals.....	119
Introduction.....	119
How can compliance be demonstrated?.....	121
Referral arrangements – Planning suggestions.....	121
Ongoing monitoring.....	123
How is success measured?.....	124
Changes in 2013 – The SRA’s response to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.....	125
Chapter 16: Separate businesses.....	129
Introduction.....	129
The changes.....	130
How should firms react to the new outcomes?.....	131
Chapter 17: Outsourcing.....	135
Introduction.....	135
The outcomes which must be achieved.....	137
Interaction with other outcomes in the Code, authorisation conditions, and other Handbook compliance requirements.....	138

The reputation of the third party..... 139

Jurisdictional issues..... 139

Chapter 18: Compliance with the rest of the SRA Code of Conduct

2011..... 143

 Introduction..... 143

 Duty to the court..... 146

 Whistleblowing..... 148

Chapter 19: SRA Overseas Rules 2013..... 151

 The Overseas Principles..... 155

 The Overseas Accounts Rules..... 157

Chapter 20: SRA Accounts Rules 2011 – The compliance requirements and the role of the COFA..... 161

 Introduction..... 161

 The changes – Operational flexibility..... 166

 Accommodating the regulation of ABSs..... 167

 Other points of note..... 168

 Application to overseas practice..... 169

 Further changes to the SRA Accounts Rules 2011..... 169

Chapter 21: Other significant aspects of the SRA Handbook..... 171

Chapter 22: Compliance planning..... 177

 Key notification, reporting, and information requirements in other parts of the Handbook 182