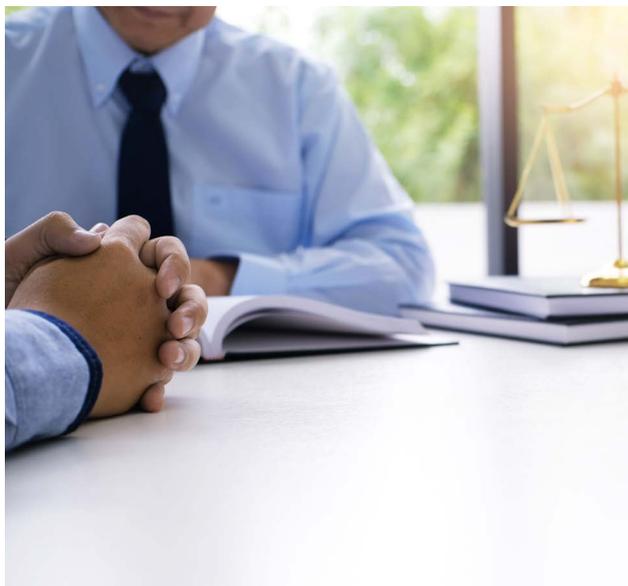


## Solicitors' Regulation: Are the New STaRs a Supernova or Black Hole?

The Solicitors Regulation Authority's (SRA's) Standards and Regulations (StaRs) were designed to offer solicitors greater flexibility when they came into force on 25 November 2019. However, this flexibility may come at a cost, which has arguably been underestimated.

According to a recent study commissioned by Marsh, 44% of firms expect internal costs to only increase by £250,000 or less because of the changes. Just over a third (36%) of firms do not expect the regulatory changes to increase their annual internal costs at all.

These results are surprising. Although firms have greater latitude in how they meet the regulator's requirements, the changes bring increased accountability and a lower threshold for regulatory involvement. Firms may be underestimating the long-term cost impact that arises from the combination of record keeping, the exposure, and managing overall risk within the new framework.



Aside from the significant additional costs of basic training and re-writing policies/procedures introduced by StaRs, firms face increased risk of regulatory interaction and consequential cost implications:

### Increased accountability

- New accountability provisions at 2.3 of the SRA Code of Conduct for Firms 2019 (the Firm Code) allow the regulator to hold firms vicariously liable for the breaches of their managers, employees, and contractors, while carrying out the firm's work. This vicarious liability tenet stretches to individual supervisors who remain accountable for legal work carried out by individuals they "supervise or manage" at 3.5 of the SRA Code of Conduct for Solicitors, RELs and RFLs (the Solicitor Code).
- Supervisors and firms must also ensure that individuals are competent in meeting their ethical obligations (3.6 of the Solicitor Code and 4.3 of the Firm Code). This leaves aside the question of whether ethics can be taught, which has been debated since the time of Socrates.

### Record keeping

- Firms must maintain records of how they comply with the new requirements (2.2 of the Firm Code), and individuals must be able to justify their judgement in applying standards (introduction to the Solicitor Code).



## New rules and enforcement strategy

- New regulatory and disciplinary rules, in tandem with the SRA's enforcement strategy, increase the likelihood of future misconduct cases. Such cases (for example, SRA v Beckwith 11887-2018) can cause firms significant reputational damage, as well as the tangible costs of dealing with a SRA investigation.
- The new enforcement strategy also highlights the importance of erring on the side of caution when deciding whether to report an issue. This is likely to result in more reports and consequential investigations – leading to the potential for increased costs and fines for firms. Even where professional indemnity policies respond to certain regulatory investigations (even then an excess may apply or the cover may be limited), this could possibly lead to higher premiums at firms' next renewal.

## Lower reporting threshold and standard of proof

- The new rules reduce the reporting threshold. The previous reporting requirements required a prompt report to the SRA when satisfied that there had been actual serious misconduct. Now the individual or firm must report "any facts or matters they reasonably believe are capable of amounting to a serious breach", and inform the SRA promptly of any facts or matters they reasonably believe should be brought to its attention in order that the SRA may investigate (7.7 and 7.8 of the Solicitor Code, and 3.9 and 3.10 of the Firm Code).
- A new (lower) civil standard of proof will likely increase the number of cases brought by the SRA to the Solicitors Disciplinary Tribunal, which could lead to more penalties and costs.

In light of these changes, firms should review their insurance cover and how it may or may not respond. They should also carefully assess whether they are budgeting sufficient resources to properly implement the new regulations, and whether their contingency funds are adequate to cover the costs of potential investigations and fines.

## Supervision to ensure record keeping standards are met

This article was written before COVID-19's impact developed. In light of increased homeworking, it is important to highlight that "supervision" is multi-faceted. Significant elements of supervision include setting standards and demonstrating compliance, i.e., by audit, with questioning, and normally by working in close physical proximity and giving feedback.

To deliver supervision in light of current extensive remote-working, firms could consider increasing the utilisation of capabilities in case management software to monitor how frequently advisory notes and records are created. Systems that enable creation of such management information can help demonstrate robust supervisory review.

Firms without such capabilities in their case management system could consider auditing more matters post 25 November 2019 as a priority, in order to ensure requirements are understood and embedded. Demonstrating that audit templates have been modified for the new rules and are in use is, of course, a clear step towards demonstrating a compliant culture.

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