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Response to SRA Consultation on Client Money in legal services: Notifying the SRA of changes to help identify and act on risks

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Response of the Professional Regulation Committee of the Birmingham Law Society to SRA Consultation: Client Money in legal services: Notifying the SRA of changes to help identify and act on risks

This response has been prepared by the Professional Regulation Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Professional Regulation Committee whose members include specialists practising in all aspects of professional regulation and compliance for the legal profession.

Question 1
Do you agree with our proposal to create a specific rule that firms must notify us of 'prescribed events' and our approach to prescribing events?

No.

We think the current rules are sufficient. Rule 3.8 includes a duty to notify the SRA promptly of any material changes to information previously provided to the SRA about you, your managers, owners or compliance officers.

The SRA should provide guidance as to what it considers to be 'material changes' and what information the regulator requires in those circumstances. These 'material changes' could include the information described as 'prescribed notifiable events' in the proposal. The advantage here is that the regulator can amend guidance as and when required without the need for changes to the rules.

We note that the consultation document said, "*In practice, we are often not told of changes that we may consider material in the context of protecting client money at the time that they happen*". The SRA should look at enforcement of this rule rather than seeking to expand it data collection activities. The consultation highlights that data gathered by the SRA has historically not been used for understanding risk patterns. The failings of the SRA to not use data in its possession should not result in further regulatory burdens for the profession.

Any change in ownership of an authorised body will be a material change that requires reporting, but this is already catered for in the authorisation process.

Question 2
Do you agree that it is appropriate to have the option of applying the fixed financial penalties regime in the first instance where a firm does not comply with our notification requirements?

No.

The SRA Enforcement Strategy says, "Our mission is to drive confidence and trust in legal services. Consumers are at the heart of this work – we want to protect consumers from harm, be responsive to emerging areas of consumer concern, and support consumers by enabling them to access information to help inform decisions".

We do not consider that the introduction of fixed penalties contributes to the improvement of trust and confidence in legal services. We think that consumers could be harmed by these proposals as they are likely to lead to an increase in the cost of legal services.

The Enforcement Strategy says that the SRA will focus action on the most serious issues. We do not consider that fixed penalties for administrative breaches is consistent with the SRA's stated approach.

Question 3
Do you agree with our proposal to prescribe as a notifiable event a merger or acquisition that is in contemplation and that has reached the Heads of Term or equivalent stage?

No.

As set out in our response to Question 1 we point out that Rule 3.8 of the Code of Conduct for Firms includes a duty to notify the SRA promptly of any material changes to information previously provided to the SRA about you, your managers, owners or compliance officers.

It is our view that mergers and acquisitions are material changes that require notification under rule 3.8. We consider that most mergers and acquisitions are already notified to the SRA as they result in a change of Business Owners, Officers and Managers (BOOMs) that require specific authorisation by the SRA's Authorisation team. We do think that there is value in requiring the surviving entity to report certain information to the SRA.

The concept of prior notification of information to the SRA is impractical. As the SRA acknowledges sometimes this changes happen quickly particularly if there is an insolvency event. We suggest that the surviving entity is required to submit information within 28 days of the change event.

Question 4
Do you have any comments about whether it would be beneficial to be notified of a merger or acquisition at least 30 days prior to the merger and acquisition

completing and how this might be achieved, given that completion is an uncertain event?
As mentioned in the response to question 3 above we consider that prior notification of merger or acquisition is impractical. In our experience few mergers or acquisitions have a 30 day period of calm before completion. More often it is the case that nothing is agreed until everything is agreed and it is not unusual for this to be in the final hours before scheduled completion. Post execution the firm will need to notify the SRA of changes in accordance with rule 3.8.

Question 5
Do you have any views on whether different arrangements are needed for requiring notification of mergers and acquisitions that will proceed and complete very quickly? Do you have any suggestions for a more appropriate arrangement in these circumstances?

As mentioned in the response to question 3 we consider that any prior notification of merger or acquisition is impractical. We think a more appropriate measure is to ensure that the regulator is notified of the event promptly after execution in accordance with the requirements of rule 3.8.

Question 6
Do you agree with the specific information that firms will be required to provide in notifying us of the prescribed event?

No.

As mentioned in the responses to preceding questions we consider the notion of prior notification to be flawed. We do think that prompt post execution notification is required to comply with rule 3.8. We consider that the specific information mentioned in the proposal will either be included in the authorisation submission or in the possession of the SRA in any case – e.g. the number of acquisitions by the acquiring and target firm.

Question 7
Do you agree with our proposal around holding client money as a notifiable event?

No.

We consider that the proposal is disproportionate to the risk. Notification of an intent to hold client money does not add value to the determination of risk.

SRA regulated firms that hold client money are required to submit an accountant's report on an annual basis. We consider that these reports are a key protection for client money and provide a clearer picture of the risk profile of the firm in dealing with client money.

Question 8
Do you agree with our proposal that firms should notify us of the prescribed event within 28 days of starting to receive or hold client money?

No.

We think that the current arrangements in rule 3.8 of the Code of Conduct for Firms and the requirements in the Accounts Rules relating to the submission of accountant's reports are sufficient to provide the necessary regulatory protections.

Question 9
Do you agree with our proposal to require that the firm:

- informs us of the date that it began to receive or hold client money
- informs us of the amount that is is holding at the point of notification and
- confirms that it is operating a client account as required in compliance with our Accounts Rules?

No.

We think that the current arrangements in rule 3.8 of the Code of Conduct for Firms and the requirements in the Accounts Rules relating to the submission of accountants' reports are sufficient to provide the necessary regulatory protections.