



Regulatory Developments

STATUS

1. The report is open but the appendices are considered confidential and certain sensitive paragraphs are also redacted in yellow.

EXECUTIVE SUMMARY

2. This paper highlights recent news stories and other developments in professional services regulation that may be of interest to the board. There is a summary of consultations and consultation feedback in the appendix, however the main body of this report outlines particular items of topical interest.
3. This document discusses the following in more detail;
 - a) Changes proposed to SRA codes of conduct for wellbeing at work
 - b) SRA sexual misconduct guidance
 - c) SRA proposal for income-linked fines
 - d) SRA comments and other mentions of a single legal regulator
 - e) CLC plans to freeze practicing fees
 - f) CLC consultation on CPD
 - g) LSB Performance Assessment Framework
 - h) FRC Public Interest principles
 - i) New HMRC Standard for Agents

RECOMMENDATIONS

4. The board are asked to provide comments on the topical items where these could be of relevance to ICAEW's own regulatory activities. The appendix is for note, but the board may ask questions of staff where further information is required.
5. The board are asked to approve the classification of the paper as open and identify where redaction may be appropriate, as has been highlighted in yellow. Also agree to the non-disclosure of the appendices.

HORIZON SCANNING

Recent news stories / developments from other regulators

6. We have identified a number of topical developments that may be of interest to the board. These are set out below, with links to the full document or story where available.

The Solicitors Regulation Authority

7. Notable activity by the SRA has included the following:

Wellbeing at work

[SRA | Rule changes on health and wellbeing at work | Solicitors Regulation Authority](#)

8. In Spring 2022, the SRA consulted on health and wellbeing at work, with proposals that included adding new requirements to their Codes of Conduct for solicitors and firms. The requirements are that solicitors must “treat colleagues fairly and with respect...not bully or harass them, or discriminate unfairly against them...”. There is also a requirement for solicitors to challenge behaviour that does not meet this standard. These proposals were highlighted to the board in the April regulatory update report.
9. We understand that the SRA intend to proceed with introducing these new requirements, subject to a restriction in scope of the requirement to challenge behaviour; this is to be limited to more senior members of staff in acknowledgement that it is difficult for junior staff to challenge the conduct of more senior colleagues.
10. The SRA codes of conduct apply internally within firms, rather than to interactions with clients and other third parties, as the SRA considers that these relationships are covered by other provisions in their Principles and Codes of Conduct.
11. The origin of the SRA consultation has been the findings of the LawCare survey which found that more 20% of respondents had been subject to bullying, harassment or discrimination in their workplace, and 69% experiencing mental health issues.
12. ICAEW Council debated the question of the current ambit of the Professional Behaviour fundamental principle in the Code of Ethics at its conference in July and thought that a review should be carried out. The new Head of Regulatory Affairs and Policy has started that review and this may encompass aspects of behaviour which are in focus in these changes made by the SRA.

Sexual misconduct guidance

[SRA | Sexual misconduct guidance | Solicitors Regulation Authority](#)

13. The SRA have recently issued guidance on sexual misconduct, setting out the principles they will consider in determining the seriousness of the conduct and whether it is within their regulatory remit. The guidance has been issued on the back of the [Beckwith case](#) that related to the conduct of a solicitor and a junior colleague.
14. The guidance reiterates the SRA’s view that the High Court has endorsed the regulation of professionals in the public interest by reference to private conduct. In particular, the closer any behaviour or alleged wrongdoing touches realistically upon the individual’s practice or reflects

how a solicitor might behave in a professional context, the more likely it is that the conduct may impact on the individual's integrity or trust in the profession.

15. The legal position on where the line should be drawn for a regulator is at the same time moving around and becoming ever more blurred. The most recent High Court judgment in the case of *Farquharson v Bar Standards Board* has departed from the bright line between professional and private life indicated in the *Beckwith* case and indicates that all cases need to be considered on their own facts with there being 'no bright line'. It considered that the BSB had jurisdiction to impose disciplinary sanctions on Mr Farquharson in respect of his conduct on a chambers' night out and that his behaviour could be said to have brought disrepute on the profession rather than just damage to his personal reputation.

Plans for income-linked fines

[SRA plans for income-linked fines 'excessive and unjustified' | News | Law Gazette](#)

16. The SRA are looking at changing the basis for regulatory fines for firms and individuals to link them to income. The Law Gazette reports that the Law Society are against such changes, believing them to be neither fair nor reliable. In particular, the proposal to fine a firm up to 5% of its turnover would be both "excessive and unjustified" amid concerns that turnover is not a reliable indicator of profitability or available cash. The Law Society also criticised the proposal to take into account individual's incomes saying it took no account of financial responsibilities.
17. This is of particular interest given our review of the guidance on sanctions and considering how fines should be calculated for our members and firms. Emily Healy-Howell (who is leading our work on this are) has attended SRA roundtable events on this topic and noted any relevant points.

Comments on single regulator for legal services

[Single legal regulator a 'live conversation' at Westminster | News | Law Gazette](#)

18. The chair of the SRA made comments at the annual compliance officer's conference that moving to a single legal regulator is a live conversation in Whitehall and at Westminster, and that "there is an appetite to try and move more in that direction". These comments follow the approach to the SRA by the Chartered Institute of Legal Executives who want the SRA to take over as regulator from CILEx Regulation.
19. Also, at a recent meeting of legal regulators, the Chief Executive of the Cost Lawyers Standards Board flagged concerns about a recent LSB enquiry on how they would cope if they suffered a major loss of computer systems or significant loss of personnel. CLSB are concerned that this may have implied that the LSB may want to transfer the CLSB's regulatory activity to another regulator. It was noted that none of the other legal regulators present have received similar contact from the LSB.

The Council for Licensed Conveyancers

[CPD-Consultation-2022-Final-version-20220930.pdf \(clc-uk.org\)](#)

20. The CLC are consulting on their CPD regime, and the proposals to make the requirements more specific, and increase the levels of mandatory evidence that members must hold. This will include the LC mandating certain elements of CPD activity that must be undertaken for prescribed groups, including ethics, professional standards and consumer protections.

Interestingly they propose to move away from an hours-based approach and towards an activity and outcome-based approach

Legal Services Board

[For the public, empowering regulators: LSB publishes new regulatory performance framework - The Legal Services Board](#)

21. The Legal Services Board has published a new regulatory performance framework that will be used to assess legal service regulators, including ICAEW. The framework is focussed on encouraging regulators to demonstrate that they are well-led and have an effective approach to regulating in the public interest. The new framework will be used for assessments from Summer 2023.

Financial Reporting Council

[News | Financial Reporting Council \(frc.org.uk\)](#)

22. The FRC have published a set of principles that they will take into account when determining if an issue is of sufficient public interest that they should get involved, even if it is outside of their normal regulatory remit. These principles do not seek to assess what the public interest is, just whether there is justification for the FRC to intervene, in light of the BEIS white paper on Restoring Trust in Audit and Corporate Governance, and the proposed establishment of the Audit and Governance Reporting Authority.

23. The principles are:

- (a) Is there a need to take regulatory action to maintain justifiable public confidence in:
 - The regulated professions and activities (i.e. accountancy, audit or actuarial)
 - Corporate reporting as a whole and/or
 - Corporate governance as a whole?
- (b) Does the nature, extent, scale and gravity of the matter give rise to a serious public concern and does it currently or potentially:
 - Concern a body of systemic importance or one whose shares are traded publicly; or
 - Affect a significant number of people;
 - Cause (or have the potential to cause) significant financial loss or other harm; and/or
 - Relate to criminal, illegal, fraudulent or unethical behaviour?
- (c) Is it proportionate to undertake the action or activity, and has consideration been given to whether relevant regulatory action is being taken by another regulator?

24. The FRC comment that none of the principles can be considered in isolation, and different principles may have different weighting depending on the circumstances, plus there may be additional considerations for specific activities. The FRC go on to say that they will also have regard to the principles of good regulation contained in the Regulator's Code and consider whether the actions taken are consistent with their strategic objectives and their economic growth objective.

Other regulators / relevant organisations

HMRC to issue new Standard for Agents

25. HMRC is due to publish a new Standard for Agents, their equivalent to Professional Conduct in Relation to Taxation, that they require all tax agents to comply with, whether affiliated to a professional body or not. Historically, the Standard for Agents has been seen as a 'PCRT lite' and therefore HMRC have considered that if our members comply with PCRT then they by default are in compliance with the Standard for Agents.
26. Recent meetings with HMRC about the draft revised Standard caused some alarm when they highlighted a proposal to change the wording of their equivalent Standards for Tax Planning. Our Standards within PCRT include that a member must not create, encourage or promote tax planning arrangements or structures that are **highly** contrived or **highly** artificial and seek to exploit shortcomings within the relevant legislation. HMRC had proposed to remove the word "highly" from the equivalent content in the Standard for Agents.
27. This was presented as an inconsequential change, but this ignores the extensive analysis and discussion that took place at the time the PCRT changes were devised, and the relevance of "highly" in setting the bar for unacceptable tax avoidance at the appropriate level. These concerns were conveyed to HMRC by ICAEW and other PCRT member bodies. HMRC have now confirmed they will not be removing the term "highly" from their Standard for Agents – for the time being at least.
28. Another aspect of the revised Standard for Agents is that it now includes material on how a tax agent should conduct their engagement with a client including matters relating to fees and complaints, plus considering the needs of vulnerable customers etc. This is new ground for HMRC and indicates a change in mindset from that of a tax authority to a wider regulatory viewpoint on the market. We expect the new Standard for Agents to be published in December 2022

APPENDICES

	Appendix Name	For consideration or for reference	No of pages
Appendix A	Review of consultations and feedback November	Reference	3
Appendix B	Review of consultations and feedback September and prior	Reference	5

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