Fully revised and updated, the third edition of *Outcomes-Focused Regulation: Compliance in Practice* brings practitioners up to date with recent and upcoming changes to the SRA Handbook and evolving regulation. Covering all the main requirements of the Handbook, the drivers behind them, and essential steps to remain compliant, it also provides practical tools to help firms formulate a compliance plan. Also included are real-life case studies from leading practitioners, giving critical insight into practical issues faced by compliance officers, and best-practice advice on good governance and compliance planning.
Outcomes-Focused Regulation: Compliance in Practice
3rd edition

TRACEY CALVERT AND BRONWEN STILL
## 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
<table>
<thead>
<tr>
<th>Chapter 13: Conflicts of interests</th>
<th>95</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>95</td>
</tr>
<tr>
<td>Conveyancing – Managing the risk of conflict</td>
<td>99</td>
</tr>
<tr>
<td>Other high-risk areas of conflict</td>
<td>101</td>
</tr>
<tr>
<td>Who can use the exceptions?</td>
<td>102</td>
</tr>
<tr>
<td>Compliance planning suggestions</td>
<td>105</td>
</tr>
<tr>
<td>Ongoing monitoring</td>
<td>106</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 14: The duty of confidentiality and disclosure</th>
<th>109</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>109</td>
</tr>
<tr>
<td>Defined terms</td>
<td>110</td>
</tr>
<tr>
<td>The application of information barriers in practice</td>
<td>112</td>
</tr>
<tr>
<td>Compliance planning suggestions</td>
<td>114</td>
</tr>
<tr>
<td>Ongoing monitoring</td>
<td>115</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 15: Fee sharing and referrals</th>
<th>119</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>119</td>
</tr>
<tr>
<td>How can compliance be demonstrated?</td>
<td>121</td>
</tr>
<tr>
<td>Referral arrangements – Planning suggestions</td>
<td>121</td>
</tr>
<tr>
<td>Ongoing monitoring</td>
<td>123</td>
</tr>
<tr>
<td>How is success measured?</td>
<td>124</td>
</tr>
<tr>
<td>Changes in 2013 – The SRA’s response to the Legal Aid, Sentencing and Punishment of Offenders Act 2012</td>
<td>125</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 16: Separate businesses</th>
<th>129</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>129</td>
</tr>
<tr>
<td>The changes</td>
<td>130</td>
</tr>
<tr>
<td>How should firms react to the new outcomes?</td>
<td>131</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 17: Outsourcing</th>
<th>135</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>135</td>
</tr>
<tr>
<td>The outcomes which must be achieved</td>
<td>137</td>
</tr>
<tr>
<td>Interaction with other outcomes in the Code, authorisation conditions, and other Handbook compliance requirements</td>
<td>138</td>
</tr>
</tbody>
</table>
Contents

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
Executive summary

The Legal Services Act 2007 (the LSA) introduced sweeping changes to the way in which legal services were to be regulated and to the business models through which they could be offered. We are now seeing the full impact of these changes.

In 2011, they led to the introduction of the SRA Handbook (the Handbook) and to a new risk-based approach to regulation by the Solicitors Regulation Authority (SRA). The SRA continues to develop and refine its risk-based approach to all aspects of its activities. Many changes have already been made to the Handbook and a further fundamental review is underway, which will lead to more changes towards the end of 2017.

The third edition of this book provides a substantial update, incorporating the many changes that have taken place to the Handbook in the last five years. The Handbook, as of 1 April 2016, is in its 16th version. For some, the changes have signalled new opportunities; for others, an increasing struggle to remain competitive and to understand their regulatory obligations. Firms have had to adapt by being much more risk conscious, and by putting in place the necessary policies, systems, and procedures to meet the SRA’s expectations with regard to the management of their firms. The COLP and COFA roles have also become embedded in all firms. Nonetheless, it is evident from SRA risk warnings that many firms have failed to keep pace with the regulatory changes and do not understand, for example, the risk factors for personal injury work, money laundering, or for protecting confidential information.

In 2011, when the SRA Handbook was first published, the SRA introduced outcomes-focused regulation (OFR) which gave more flexibility to the way in which it regulates individuals and firms. This approach relies on a regulatory system that focuses on high-level principles and a requirement to achieve the best outcomes for clients and the public at large. It enables firms to use appropriate methods of achieving outcomes which suit their business, their types of client, and their workplace, without having to follow prescriptive rules. Initially, there was scepticism from some practitioners about OFR, the concern being that by using
Executive summary

broad outcomes the SRA was increasing uncertainty and setting traps for the unwary. Firms now seem relatively comfortable with OFR, but they do need to be able to demonstrate how the outcomes are being met, and this book will provide necessary and constructive advice on this.

The significance of the changes brought by the LSA, how they have affected the development of the Handbook, and the SRA’s approach to regulation are all described in the opening chapters of this book (which has been updated to reflect developments since 2011 and to highlight changes which are likely to occur in the coming months).

The book then covers all of the main requirements of the Handbook, the drivers behind them, and what firms need to do to be compliant. In particular, it looks at the use of outcomes and how firms should approach the flexibility they bring. It also examines what firms need to focus on in relation to their governance and risk management arrangements to ensure compliance with all of the Handbook’s requirements. It sets out the SRA’s risk-based approach to regulation, including the SRA’s Regulatory Risk Framework, and explains how firms need to respond to ensure that their risk rating and, consequently, the attention they receive from the SRA, is as low as possible.

Although there are many different sets of rules and regulations in the Handbook, the focus of this book is on the ‘Principles’, the Code of Conduct, the ‘Authorisation Rules’, and the ‘Accounts Rules’. These have application to all firms. They are dealt with in detail in this book, with the emphasis being on practical guidance to aid compliance. The other rules are reviewed briefly to highlight any change.

The book concludes by drawing together all the requirements for systems and procedures from the different sources within the Handbook to help formulate a compliance plan.

Key features of this fully revised and updated book include:

- Information on the effects of the LSA and the changes it has brought;
- An overview of the 16th version of the SRA Handbook;
- The SRA Principles;
- The SRA’s approach to authorisation and its views on risk, including information from the Regulatory Risk Framework;
- The SRA Code of Conduct and an explanation of its compliance requirements and risk management strategies in key areas such as client care, conflicts of interests, and confidentiality, referrals, outsourcing, separate businesses, and overseas practice;
• An indicator of changes on the horizon and how the SRA is likely to respond;
• The SRA’s approach to supervision, including a reference to the indicators in the various supervision and enforcement strategies published by the SRA; and
• Advice on compliance planning.

Case studies and practitioners’ perspectives are also included, covering:

• The compliance officer for legal practice (COLP) and the compliance officer for finance and administration (COFA) – Examples from practice are included to show how the appointments were made and to outline the practical issues associated with the roles (such as how the officers will ensure that they have all the information they need, and how they will reconcile their new roles with their existing duties);
• Treating clients fairly (TCF) – How this works in firms regulated by the Financial Services Authority (FSA);
• Good governance and how a whistleblowing policy will work;
• Governance and risk management – Why this is elevated to Principle status;
• How the Solicitors Disciplinary Tribunal is interpreting the Principles; and
• The controls which the SRA might use in relation to non-compliant firms.

This book is designed to assist firms to develop and strengthen their governance arrangements and risk management strategies as they become more familiar with outcomes-focused regulation. It also flags up new business opportunities available to firms through external investment and the use of separate businesses. It will be useful for:

• Partners, directors, or members;
• Compliance officers for legal practice and finance and administration;
• Department heads;
• Practice managers;
Executive summary

- Finance directors; and
- Anyone else with compliance responsibilities within the firm.

It should be noted that the third edition of this book was written in May 2016 and takes into account version 16 of the SRA Handbook which was published on 1 April 2016. Information from the SRA’s Strategic Plan covering the period up until 2017 and the SRA’s Regulatory Risk Framework have also been included, together with various policy proposals put forward by the SRA.

Changes on the horizon which will be relevant to readers include the review of the Handbook during 2016/17. The SRA’s intention is to embed further the principles-based approach to regulation, and to strip more detail from the Code and the Accounts Rules. This will place even more emphasis on the Principles. The SRA plans to support this with guidance targeted at specific issues which are identified as causing risk to firms’ ability to achieve compliance. Some changes that the SRA has said it wants to make have been flagged up in this book in outline, although all will be subject to consultation. Firms are advised to check the SRA’s website for any updates on Handbook changes which occur after the publication of this book.
Bronwen Still is a solicitor (now non-practising) who worked in high-street practice doing mainly crime, matrimonial, and conveyancing work before joining the Law Society in 1980. She worked in many capacities for the Law Society (and subsequently the SRA), initially handling complaints, dealing with interventions, and prosecuting cases before the Solicitors Disciplinary Tribunal (SDT).

In 1989 she was appointed head of the newly formed ‘Professional Ethics’ guidance team and was responsible for developing the work of that team – which provides confidential advice to the profession on all matters of professional conduct. In 1999 Bronwen was appointed head of the Professional Ethics policy team and, as such, led the team which drafted the Solicitors’ Code of Conduct 2007. She is the author of several published articles on the Code of Conduct.

Bronwen played a significant role in the early drafting of the SRA Handbook and was one of the authors of the consultation and draft rules which were published in May 2010, setting out the SRA’s new outcomes-focused regulatory approach. She also undertook many workshops on the new regulatory approach as part of the SRA’s series of roadshows in 2010.

Bronwen has also worked internationally – in Moscow, Lebanon, Jordan, Egypt and, most recently, advising the Vietnamese Government and legal profession on the drafting of their first national ethical code. Bronwen is currently a director of Infolegal Limited, which is a company that provides regulatory and compliance advice and support to law firms. She specialises in helping firms, including ABSs, achieve authorisation.

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Tracey Calvert is a lawyer who has worked in the law since 1985. She initially worked in a niche shipping law practice in the City of London, specialising in non-contentious work, and was then employed by a local authority in Worcestershire before joining the Law Society in 1997.

Tracey was recruited as an ethics adviser in the Professional Ethics guidance team and became a senior ethics adviser in 2003. Her responsibilities in this role included the training and quality assurance of this highly popular and successful team, which provided confidential guidance to members of the profession on all aspects of conduct.

Tracey has also accepted secondments to the Law Society/SRA professional indemnity team and as a manager of the casework and operational policy team, dealing with admission, character, and suitability issues. In 2009, she took up her final role within the SRA, joining the policy team. She was a member of a very small team which drafted the SRA Handbook and her particular responsibilities were in respect of the new SRA Code of Conduct and the rules in the ‘Specialist Services’ section of the Handbook.

Tracey’s particular interests are conduct, equality and diversity development, financial services, and anti-money laundering policy. During her time at the SRA she has drafted many rules, guidance, and articles, and has engaged in many stakeholder activities, both generally and in respect of the SRA Handbook.

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