

This email reflects the personal views of Committee Member Klearchos Kyriakides

COPY OF EMAIL SENT BY KK TO THE SRA ON 20 DECEMBER 2017

By email to: handbookreform@sra.org.uk and consultation@sra.org.uk

Date: 20 December 2017

Dear Sir/Madam

Re: SRA Consultation – ‘Looking to the future: phase two of our Handbook reforms’

I refer to the Solicitors Regulation Authority (‘SRA’) Consultation mentioned above.

At points 1 to 4 below, I offer some personal comments and recommendations relating to the said Consultation. However, at the outset of this submission, I declare an interest. I am an Assistant Professor in the School of Law of the Cyprus Campus of the University of Central Lancashire. I have held this role since September 2015. I currently teach on a variety of undergraduate LLB Degree modules, including three modules devoted to Lawyers’ Skills. In all three modules, I teach my students about the principles of ethics and professionalism, as embodied in classic books, such as *Nicomachean Ethics* by Aristotle, in relevant legislation, in the SRA’s *Code of Conduct* (2011), as amended, and in case law.

From 2004 until 2015, I was a Senior Lecturer in the School of Law of the University of Hertfordshire where I taught on various undergraduate and postgraduate modules. These included an undergraduate module

partly devoted to Ethics; these also included the postgraduate Legal Practice Course module devoted to Professional Conduct and Regulation.

From 2003 until 2007, I practised as a solicitor in private practice in London. Since 2007, I have been a non-practising solicitor and I have also served on the Executive Committee of the West London Law Society; from 2010 until 2011, I was honoured to serve as its elected President and I remain a Committee member to this day.

In the light of the above, I have composed this submission with the aim of giving the SRA some insights from somebody who has more than 10 years of experience of teaching ethics and professional conduct 'at the coalface' of both the LLB and the LPC.

All that being said, I emphasise that the comments which follow are purely personal. Accordingly, they should not be interpreted as the views of any organisation which I have - or have had - any relationship. My comments are mine and mine alone.

1. Introductory comments

It is disquieting that the SRA is minded to embark upon yet another radical overhaul of the regulatory regime governing the solicitors' branch of the legal profession.

Within the space of a mere ten years, the following has taken place: (i) in 2007, the Law Society's *Guide to the Professional Conduct of Solicitors* (1999) was replaced by the SRA's *Solicitors' Code of Conduct* (2007); (ii) in 2011, the SRA's *Solicitors' Code of Conduct* (2007) was replaced by the SRA's *Code of Conduct* (2011); and (iii) in 2017, the SRA has proposed replacing its *Code of Conduct* (2011), as amended, with a new regulatory regime.

It is one thing for the SRA to amend or update an existing code of conduct, as it has done from time to time since 2011; that is entirely understandable and reasonable. However, it is quite another thing for the SRA to engage in yet another radical regulatory overhaul.

As I am sure the SRA is aware, dangers may arise if any organisation regularly overhauls its policies or procedures, especially if the overhaul takes place from the top down and when there is scepticism from the bottom up. Each such overhaul is inherently capable of causing concern, confusion, disruption and, in the solicitors' branch of the legal profession, potentially adverse consequences for solicitors and their clients, not to mention law lecturers and their law students.

As a matter of principle, I would encourage the SRA to rethink its whole approach. As the future unfolds, I would also encourage the SRA to refrain from embarking upon any future radical overhauls of regulation unless any specific changes are reasonably necessary for one specific reason or another.

Put simply, there are virtues in stability and small 'c' conservatism.

2. The SRA's proposed removal of the 'qualified to supervise' rule

To put it mildly, I am deeply disturbed that the SRA is minded to remove the long-standing 'qualified to supervise' rule. Any self-regarding professional body must have a rule of this nature built into its regulatory framework and its associated regulatory culture.

I agree with the concerns raised by the Law Society of England and Wales, as expressed in its own published response to the above

Consultation, dated December 2017. That said, I set out below some personal insights of my own.

It is of the utmost importance that every trainee solicitor must learn under an experienced and suitably qualified supervisor who, in turn, has himself or herself learnt under an experienced and suitably qualified supervisor. Without an experienced and qualified supervisor and without a 'qualified to supervise' rule to guarantee the existence of such a supervisor, how is a trainee solicitor going to learn properly the art and the skills of being an effective solicitor?

As a law lecturer who has devoted much of his professional career to helping law students to bridge the wide gap between law school and legal practice, I have always worked on the assumption that all aspiring trainee solicitors will end up training in a professional legal environment where they will be supervised by and where they will learn from at least one experienced solicitor who is qualified to supervise. I am unsettled by the thought of teaching law students, some of whom may find themselves working as trainee solicitors under the wings of persons who are not subject to the existing 'qualified to supervise' rule.

If the SRA has its way and if the 'qualified to supervise' rule is removed, this may have adverse consequences for trainee solicitors and also for legal education, the mindset of law lecturers and the mindset of law students.

I invite the SRA to clarify whether it has carried out any risks assessments in relation to the proposed removal of the 'qualified to supervise' rule. If so, I will be grateful if these risk assessments may be placed into the public domain (unless they are already there in which case I will be pleased to find out where they are). I will also be pleased to receive clarification as to whether any such risk assessments covered the various issues arising from the potential impact of the removal of the 'qualified to supervise' rule upon undergraduate and postgraduate legal education.

In the meantime, I urge the SRA to reconsider its position and refrain from doing away with the existing 'qualified to supervise' rule.

3. The SRA's proposed replacement of the ten existing 'Mandatory Principles' with six new 'Principles'

Whereas SRA's *Solicitors' Code of Conduct* (2007) was built upon six 'Core Duties', the SRA's *Code of Conduct* (2011), as amended, has been built on ten 'Mandatory Principles'. By contrast, I understand from the draft documentation published by the SRA that the SRA proposes to replace the ten existing 'Mandatory Principles' with six new 'Principles'. (See Annex 1, 'SRA Principles' at www.sra.org.uk/sra/consultations/code-conduct-consultation.page#download)

Every organisation, especially a professional body, must be built upon ethical values which are reasonably clear, credible, concise and comprehensive. In addition, each such value ought to be, as a general rule, durable and otherwise timeless. With that in mind, I invite the SRA to clarify why, within the space of only ten years or so, it has not only switched from six 'Core Duties' (in 2007) to ten 'Mandatory Principles' (in 2011) but it is now (in 2017) proposing to switch to six 'Principles'. What message is such a pattern of switching going to send to solicitors, their clients and the wider world?

As it happens, my personal view is that the ten existing Mandatory Principles are generally excellent and, subject to the comments and recommendations set out below, they ought to be retained. The ten existing Mandatory Principles provide an ethical, intellectual and regulatory framework which enables law students, trainee solicitors, qualified solicitors and others to absorb and to digest the main values and responsibilities of individual solicitors and of others who are intimately involved in the solicitors' branch of the legal profession.

The ten Mandatory Principles also provide a solid and robust foundation upon which the main body of the *Code of Conduct* (2011) has been built. Each of the existing chapters therein neatly inter-relates with one or more of the ten existing Mandatory Principles.

To quote the wording of the six proposed new 'Principles', as published by the SRA (at www.sra.org.uk/documents/sra/consultations/litf-annex-1-principles.doc):

'You [must]:

- '1. uphold the rule of law and the proper administration of justice
- '2. act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons
- '3. act with independence
- '4. act with honesty and with integrity
5. act in a way that encourages equality, diversity and inclusion
- '6. act in the best interests of each client'.

I endorse the addition of honesty alongside integrity. However, I am concerned that the principle relating to integrity has been relegated from Mandatory Principle 2 (where it currently stands) to proposed new Principle 4. This sends out the wrong message. The principle of integrity is of such enormous importance that it ought to be second or third in any list of professional principles, i.e. behind the principle or principles relating to the rule of law and the proper administration of justice.

I am likewise concerned that the six proposed 'Principles' do not include or reflect existing Mandatory Principles 5, 7, 8 and 10. Each of these existing Mandatory Principles is reproduced below and, as you will see, each relates to a major area of law or a major principle of

professionalism which, in my submission, ought to figure prominently in any short-list or pre-eminent regulatory principles. To quote four Mandatory Principles (as they currently appear at www.sra.org.uk/solicitors/handbook/code/content.page) which the SRA proposes to omit from the six new 'Principles':

'You must: ...

'5. provide a proper standard of service to your clients;

'7 comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

'8 run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

'10 protect client money and assets.'

Back in 2011, Mandatory Principles 5, 7, 8 and 10 were no doubt originally included in the *SRA Code of Conduct* (2011) in the light of the then recent financial crash. From my standpoint as a law lecturer, I was pleased to see them included in 2011 as they collectively gave the ten Mandatory Principles a thematic scope and an intellectual depth missing from the six 'Core Duties' introduced in 2007.

The omission of Mandatory Principles 5, 7, 8 and 10 from the six new proposed 'Principles' has collectively rendered those 'Principles' thematically narrow and intellectually shallow.

Accordingly, I invite the SRA to reconsider its position.

4. A proposed new list of 12 Mandatory Principles

As indicated above, I have come to appreciate the ten Mandatory Principles in the *SRA Code of Conduct* (2011), as amended. They encapsulate many of the chief characteristics of ethics and professionalism. That said, I agree that some of the existing Mandatory Principles are open to refinement. I also hold to the view that a couple of important matters are conspicuous by their absence from the ten 'Mandatory Principles' as they currently exist.

One of these matters relates to the critical role of each solicitor as an officer of the court. This role ought to be highlighted, especially in view of the observations of Mr Justice Wilkie and of the Lord Chief Justice in the judgment of the High Court in *Brett v The Solicitors Regulation Authority* [2014] EWHC 2974 (Admin).

The second matter relates to the general duty of confidentiality which is subject to other duties under *inter alia* anti-money laundering law. These duties are of the utmost importance. Yet, they are not expressly reflected in any of the ten existing Mandatory Principles. In my submission, they ought to be.

In the light of the above, I set out below a suggested list of 12 Mandatory Principles which I have composed. Each of these retains, builds upon or adds to the ten existing Mandatory Principles. I invite the SRA to consider them.

'You must:

'**1.** uphold the rule of law;

'2. uphold the proper administration of justice and, if you are a solicitor, you must also act in a manner commensurate with your professional status as an officer of the court;

'3. act ethically and, thus, with honesty and with integrity;

'4. act in a way that upholds public trust and confidence in the solicitors' branch of the legal profession and in legal services provided by authorised persons;

'5. act with independence;

'6. act in the best interests of each client;

'7. keep the affairs of each client confidential and protect personal data unless disclosure is required or permitted by law or if the client consents;

'8. provide a proper standard of service to each of your clients;

'9. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

'10. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

'11. run your business or carry out your role in the business in a way that encourages equality of opportunity, inclusion and respect for diversity; and

'12. protect client money and assets.'

Closing thoughts

I hope that the above personal comments give you an insight into what I consider to be the defects, deficiencies and dangers which are inherent in the SRA's proposed overhaul of regulation. I also hope my comments offer the SRA some food for thought as the future unfolds.

Needless to say, should the SRA require any clarification or further details, please let me know, preferably by email.

Finally, I take this opportunity to wish the staff at the SRA a Merry Christmas and a Happy New Year.

Yours faithfully

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