



The Law Society

2011 Regulatory performance survey findings

June 2011

supporting
solicitors

Table of contents

Regulatory performance of the SRA

Executive summary	4
1.0 Introduction.....	8
2.0 SRA performance - an overview	11
2.1 SRA performance against objectives	11
2.1 Views of the SRA's principles of regulation.....	13
2.3 Effectiveness of the SRA	15
2.3.1 Code of Conduct.....	15
2.3.2 The enforcement procedure.....	16
2.3.3 Views on the general effectiveness of the SRA.....	18
Chapter Two highlights	18
3.0 Experiences of regulation.....	21
3.1 Relationship with the SRA	21
3.1.1 Overall satisfaction with the relationship.....	21
3.1.2 Satisfaction with the ease of dealing with the SRA	22
3.2 The Ethics Helpline	23
3.3 Practice Standards Unit	26
3.4 Experiences of disciplinary investigation	28
Chapter Three highlights	29
4.0 The cost and impact of compliance.....	30
4.1 Evaluation of costs.....	30
4.2 The impact of compliance costs and obligations	33
Chapter Four highlights	36
5.0 Outcomes Focused Regulation (OFR).....	37
5.1 Awareness of OFR	37
5.2 Firms' views on OFR	38
5.3 Preparing for OFR	40
5.4 Perceived impact of OFR	42
5.4.1 Perceptions of OFR	43

Chapter Five highlights	52
6.0 Conclusion.....	53

Regulatory Performance of the SRA

Executive Summary

Senior representatives from 1,000 firms were surveyed during April and May 2011 for their views and firms' experiences of regulation. This is the third biennial survey on the regulatory performance of the Solicitors Regulation Authority (SRA). The analysis of the data presented seeks to provide the following.

- i. The views of senior decision makers within firms on how the profession is regulated
- ii. Firms' views on the operational efficiency of the regulator
- iii. Information on the effect of regulation on firms
- iv. A measure of how prepared firms are for the change to outcomes focused regulation
- v. A benchmark from which to measure any change in firms' experience of regulation after the introduction of outcomes focused regulation (OFR)
- vi. A basis upon which to track and compare the effectiveness of regulation over time.

Overview of SRA performance

- Average ratings for SRA's performance against its four objectives were between 6.0 and 6.5 out of ten, representing an improvement on 2009 scores. The largest improvements in proportion of 'good' ratings was seen in relation to the SRA upholding the rule of law and providing the right degree of protection for consumers.
- Over two-thirds of firms (70%) considered the SRA's visits to firms as a proportionate way of protecting the profession's reputation. Firms were less positive in their views of the current regulatory system in terms of the burden placed on firms and whether or not the SRA operates fairly with firms. Seventy-six percent of firms agreed the burden on law firms was too great and just half (54%) of firms thought the SRA operated fairly in its contact with firms. Firms in 2011 were more indifferent in their views compared to their 2007 and 2009 counterparts; a much higher proportion of firms in 2011 gave neutral responses compared to previous years.
- Firms' satisfaction with how the SRA handles enforcement was again neutral although average scores did represent an improvement on 2009 ratings. The proportion of firms giving either a positive or negative rating dropped, whilst the proportion giving neutral responses increased from 45% in 2009 to 60% in 2011.
- Firms' views were more positive than negative in relation to
 - the SRA to placing reasonable responsibilities on firms' senior representatives

- providing regulatory remedies appropriate to the risks posed.
- However, firms were more negative than positive in their perceptions of the SRA
 - knowing and understanding the risks posed by their business,
 - showing understanding of the diversity amongst firms,
 - listening to firms when developing regulatory policy and procedures; and
 - giving value for money against regulatory fees.

Experiences of regulation

- Average satisfaction with firms' relationship with the SRA was neutral (5.9 out of ten). For the main (80%), this relationship had stayed the same over the previous two years and for similar proportions, it had either improved (11%) or deteriorated (8%).
- Average satisfaction with ease of dealing with the SRA was again neutral (5.8 out of ten), representing a significant improvement on average ratings in 2009 (5.6). Around three-quarters of firms (76%) reported the ease of dealing with the SRA had remained the same, whilst 12% thought it had got easier and 9% that dealing with the SRA had got more difficult.
- Average satisfaction scores for the service provided by the Ethics Helpline (7.2 out of ten) and for the advice and guidance provided (6.9) were both higher than overall satisfaction with the SRA. Views on staff were also positive, with a high proportion of representatives agreeing that prompt advice was given (89%); however, over half of firms agreed that staff referred callers back to the rules without the desired application to the problem (55%).
- A smaller proportion of firms had received a monitoring visit in 2011 compared to 2009, 19% compared to 26% in 2009¹. The utility of the feedback from these visits was rated highly, 7 out of ten. Views on the approach taken for the visits and the staff were also very positive.
- Experiences of investigation were more varied. Investigated firms were more positive than negative in relation to
 - the investigation being fair;
 - proportionate;
 - staff being willing to discuss compliance issues¹; and
 - justifying decisions.

Firms held mixed views of

- whether or not the investigation was completed in a reasonable time; and
- whether or not staff were willing to discuss the findings of the investigation.

¹ The PSU function was being wound down during the period 2009-2011.

- A significantly higher proportion of firms in 2011 than in 2009 had been notified of the reasons prompting the investigation, 87% compared to 65% in 2009.

Costs and impacts

- Around one-third of firms considered the individual PC fee (37%) and the firm charge (35%) to be value for money. Just 34% of firms thought the costs to the SRA of regulating the profession were made transparent.
- Almost half of firms with trainees reported the benefits of taking on trainees outweighed the costs (46%).
- The most common perception of compliance costs is that they are excessive but this is by no means a view held by the majority. The internal financial costs of compliance (costs of compliance staff, fee-earner time spent on compliance, IT systems, documentation, CPD and staff training) were viewed excessive by around two-fifths of firms, as 'high but not excessive' by one-third of firms and 'reasonable' by one-quarter of firms.
- Half of firms agreed that the current cost of compliance was harmful to their business. Over two-thirds of firms (69%) reported an increasing administrative burden on fee earners. Firms were less likely than their 2009 counterparts to indicate they would reduce the range of services provided or turn clients away purely because of the associated administration, but twice as likely to be planning to close down or merge as a result of compliance obligations (9% compared to 4% respectively).

Outcomes Focused Regulation

- The majority of firms (88%) were aware of the forthcoming move to outcomes focused regulation in October 2011.
- OFR was an approach welcomed by 56% of firms. However a similar proportion (53%) were concerned that the new style of regulation would leave them open to retrospective regulation (regulatory action being taken against firms for actions not at the time considered in breach) by the SRA.
- Around half of senior representatives (53%) reported their firm had gained a better understanding of the OFR requirements through reading SRA documentation, attending road shows or participating in online seminars. Almost one-quarter of firms indicated this was something they planned to do in the future (24%).
- One-fifth of firms reported they had done nothing to prepare for the move to OFR. Of these, over half thought the SRA had not yet made it clear how OFR

would work in practice, suggesting firms' lack of action was a result of not knowing what actions were required, rather than a belief that existing practices would suffice.

- Firms were almost equally split in their views on the impact of OFR, with one-quarter of firms perceiving OFR to be advantageous to firms and a similar proportion reporting OFR was likely to be disadvantageous (28%). Just under one-quarter (23%) thought OFR would have no impact on firms and about one-quarter (24%) did not know what the impact of OFR would be.
- Firms perceiving OFR to be advantageous thought the new regime would
 - put the emphasis of regulation where it belonged, on the client;
 - be more flexible, enabling firms to decide for themselves how best to manage risk;
 - be more practical and easier to use;
 - improve client satisfaction, decrease the administrative burden; and
 - lead to higher levels of compliance and a more collaborative way of working with the SRA.
- Firms considering OFR to be disadvantageous were concerned that
 - the flexibility introduced uncertainty, firms were not sure what needed to be done in order to comply, how principles would be interpreted or measured or how they would be regulated by the SRA;
 - firms would be open to retrospective regulatory action by the SRA and that additional work would be required in order to demonstrate compliance;
 - OFR would favour larger practices and ABSs; and
 - would not necessarily protect clients.

1.0 Introduction

This report presents the findings of the Law Society's third biennial survey on the regulatory performance of the SRA.

Telephone interviews were conducted with senior representatives from 1,000 firms between April and May 2011 to capture the views and experiences of regulation.

The analysis of the data presented in this report seeks to provide the following

- i. The views of senior decision makers within firms on how the profession is regulated
- ii. Firms' views on the operational efficiency of the regulator
- iii. Information on the effect of regulation on firms
- iv. A measure of how prepared firms are for the change to outcomes focused regulation
- v. A benchmark from which to measure any change in firms' experience of regulation after the introduction of outcomes focused regulation.
- vi. A basis upon which to track and compare the effectiveness of regulation over time.

A random, stratified (by size of firm) sampling strategy was employed to ensure that sufficient numbers of larger firms were canvassed in order to improve precision of estimates for this smaller group of firms. Responses were weighted back to the profile of all firms using partner count.

The response rate for this survey was 69% of the contacted sample and 50% of the entire sample (i.e. those issued with a notification letter and with correct telephone numbers).

Firms in the 2011 research will be contacted again in Autumn 2012, one year after the implementation of outcomes focused regulation (OFR) to explore if and how their experiences of regulation change under the new regime.

Group comparisons

Throughout the report comparisons were made between the following different groupings of firms in order to establish whether or not views varied by certain traits. Groupings were consistent with those in the 2009 report.

- Type of firm: firms describing themselves as 'high street' compared with 'non high street' firms. The 'non high street' firms combined the lower incidence groups of those describing themselves as 'City' or 'Large Provincial' firms with

the more common 'Niche' firm as well as 'Other' types of firm (for example 'office at home', 'medium size provincial', 'small city firm')

- Size of firm: as in 2009, small (1-5 solicitor) firms were compared to a combined group of medium (6-40 solicitors) and large (41 solicitors or more) to facilitate robust statistical analysis.
- Type of clients served: comparisons were made between firms which did and did not work for the following client types, with the exception of 'other British clients and Overseas clients (where valid counts were too low), firms with differing levels of reliance on these client types, expressed as a proportion of the firm's gross fee income derived from the client group (0%, 1-49% and 50%+)

Private clients

Legal aid clients

Private sector clients

Public sector clients

Other British clients

Overseas clients

- Firms having contact with the SRA (within the past month) and firms with less recent contact.
- Firms whose decision makers had read key SRA documentation available on the SRA's website ('readers') and those who had not ('non-readers') for ease of reference. This provided a proxy for how informed the participant was about the SRA's strategy. The key documents given as examples in the interviews were: the SRA's Strategic Plan 2010-2013, Business Plan 2010, Annual Report 2008 and the Summary of Performance Measures and Statistics 2010.
- Firms who had either been investigated in the last two years or had experienced contact with the Forensic Investigations Unit were compared to firms that had not.

About the analysis

Headline figures throughout the report include those who answered 'don't know' or those who could not provide an answer, since these can also be revealing. When comparing groups however, only those cases providing answers were included in order to facilitate the process of statistical calculation².

² Only statistically significant differences (95% confidence that the difference is not due to chance alone) between groups are highlighted in the report.².

Where possible and/or appropriate, findings have been compared with the survey conducted in 2009 and to a lesser extent, the survey conducted in 2007³.

Report outline

The report is divided into chapters covering the five main topics of the questionnaire.

- An overview of firms' views of SRA performance is provided in chapter two, including: perceptions of SRA performance against objectives; views on the principles of regulation; general effectiveness of the SRA- including opinions on the code of conduct; and attitudes towards enforcement.
- Firms' experiences of regulation are described in chapter three including: overall satisfaction with the regulatory relationship; and those with experience of the main areas of targeted regulatory activity such as the ethics helpline, PSU monitoring visits and investigation.
- Chapter four outlines firms' views of the costs and impact of compliance.
- Chapter five reports on firms' awareness and perceptions of OFR and what firms have done to prepare themselves for the new style of regulation.

³ A question by question comparison between 2009 and 2011 was possible as questions and scales remained the same. New questions are referenced as such in footnote form. Comparisons to 2007 are limited to key benchmarking questions due to the changes to the survey occurring during the 2007-2009 sweeps.

2.0 SRA performance - an overview

Senior representatives were asked a series of questions around the SRA's performance against its objectives, their views on the principles of regulation and on the general effectiveness of the SRA.

2.1 SRA performance against purpose

The SRA sets out strategic objectives on its website and in key documents available on the site. As in 2009, the regulatory performance survey attempted to measure the views of firms' decision makers about the SRA's performance against the SRA's stated purpose.

'The SRA is committed to setting, promoting and securing in the public interest standards of behaviour and professional performance necessary to ensure that consumers receive a good standard of service and that the rule of law is upheld'⁴.

The objectives measured and their mean ratings on a scale on one to ten, were:

- Setting standards of behaviour and professional performance (6.34)
- Securing the right degree of protection for consumers (6.29)
- Upholding the rule of law (6.27)
- Promoting and securing standards of behaviour (6.1)

Firms in 2011 were more positive in their views of the SRA's performance against its objectives compared to 2009. A higher proportion of firms in 2011 gave the SRA a 'good' rating (7-10) for each objective compared to firms in 2009 and this is also reflected in the slight increase⁵ in average ratings in 2011. The proportion of firms providing a response to each objective had also improved.

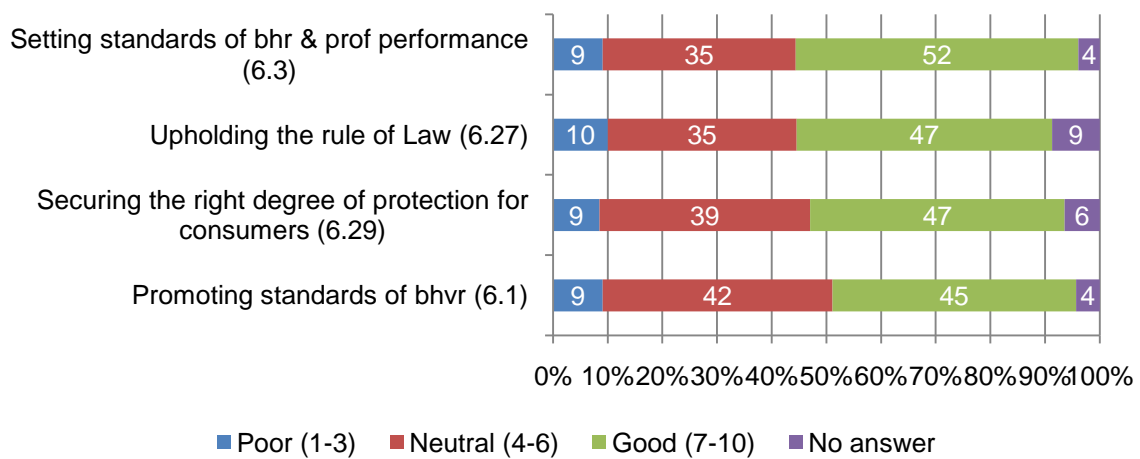
	Mean score (1-10)		
	2009	2011	Point difference
Setting standards of behaviour	6.10	6.34	+ 0.24
Securing the right degree of protection for the consumer	5.96	6.29	+ 0.33
Upholding the rule of law	5.99	6.27	+ 0.28
Promoting and securing standards of behaviour	5.81	6.10	+ 0.29

⁴ <http://www.sra.org.uk/strategy/>

⁵ Differences were statistically significant, although the size of the effect was small.

For each objective 'poor' ratings (1-3) were very much a minority view. Just over half of firms gave a 'good' rating for the SRA setting standards of behaviour and professional performance (52%). Just under half gave a 'good' rating to the SRA upholding the rule of law (47%) and securing the right degree of protection for consumers (47%). Views were more divided in relation to promoting standards of behaviour with a similar proportion giving a 'good' (45%) or 'neutral' (4-6) response (42%).

Chart 2.1 Satisfaction with SRA Performance against objectives



Firms describing themselves as high street firms were more positive about the SRA's performance against two objectives than non-high street firms. The proportion giving a 'good' response for these two objectives were:

- Securing the right degree of protection for consumers (54% and 45% respectively)
- Upholding the rule of law (54% against 45%).

Not surprisingly, firms which had been subject to SRA investigation were more negative about the SRA's performance. Investigated firms were twice as likely as non investigated firms to gave a 'poor' rating (1-3) for each of the four objectives.

- Setting standards of behaviour (15% and 8% respectively)
- Securing the right degree of protection for consumers (16% against 8%) and
- Upholding the rule of law (18% compared to 10% respectively).
- Promoting standards of behaviour (16% and 8%).

As in 2009, firms deriving a proportion of their gross fee income from business clients were more likely to be negative about the SRA's performance than those not serving this client type at all. In 2011 firms deriving less than half of their gross fee income from business clients were more likely to give a negative ratings to the SRA setting standards of behaviour and promoting standards of behaviour, compared to firms

either not serving this client type at all or those deriving 50% or more of GFI from this client type.

A higher proportion of firms deriving 50% or more of GFI from private clients were positive in relation to the SRA setting standards of behaviour (57%) compared to firms either not serving (48%) or less reliant on this client type (49%).

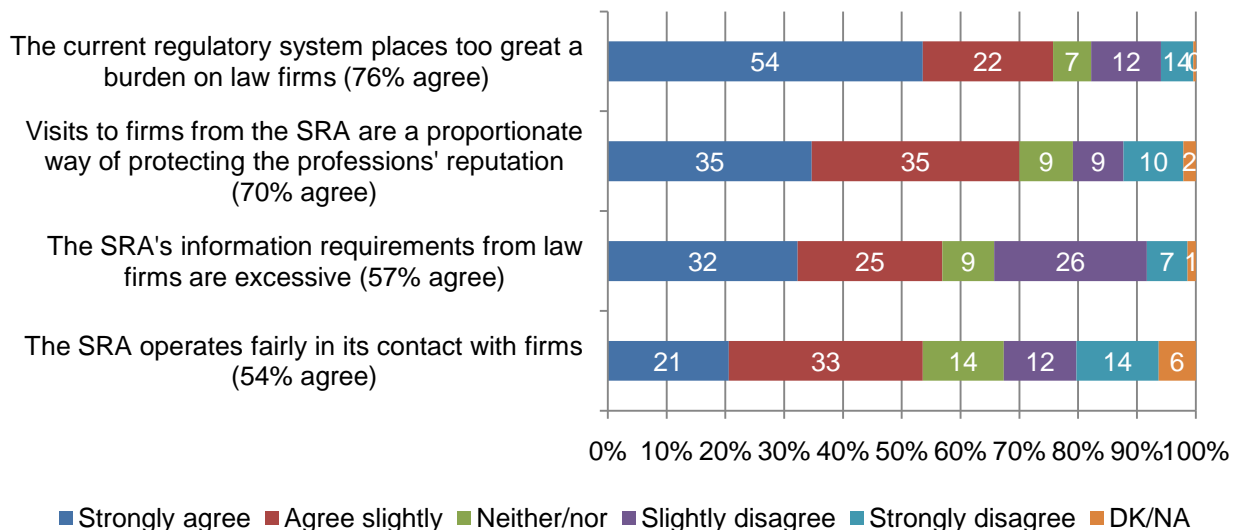
2.2 Views of the SRA's principles of regulation

Questions were posed to explore firms' views of:

- the way in which the regulatory system is implemented;
- the extent to which the system is perceived to be a burden.

Around three-quarters of respondents reported that the current regulatory system places too great a burden on law firms (76%). Over two-thirds of firms viewed SRA visits to firms as a proportionate way of protecting the professions' reputation (70%). Findings for the three original statements⁶ were significantly different from 2009 figures - for each statement, the proportion of firms agreeing remained static, those disagreeing was smaller than in 2009 and the proportion giving a neutral, 'neither agree or disagree' rating larger.

Chart 2.2: Views on the principles of regulation



Just over half of firms (54%) believed the regulator operated fairly in its contact with firms. As might be expected, firms which had been investigated were more negative

⁶ 'The SRA's information requirements from law firms are excessive' is a new statement introduced to the 2011 survey.

that those who had not been subject to investigation. Investigated firms were more likely to disagree - 43% compared to 25% of firms which had not been investigated.

Over two-thirds of firms reported that visits to firms from the SRA are a proportionate way of protecting the professions' reputation (70%). Investigated firms were more likely to disagree (28% of investigated firms disagreed compared to 18% of non-investigated firms).

In 2009, respondents with the most recent contact with the SRA were the most likely to have stronger negative feelings about the SRA's fairness in its contact with firms - with 48% of those having recent contact within the past month disagreeing compared to 17% of those having contact within the previous year. In 2011, those with recent contact with the SRA were again more likely to disagree, however variances were largest between those who had contact within the past year and those for whom contact with the SRA had been over a year ago.

Table 2.1 - timing of contact and views of fairness of operation

	Contact within the past month (n=219) %	Contact 2-12 months ago (n=452) %	Contact over one year ago (n=263) %
SRA operates fairly in its contract with firms			
Agree	55	55	63
Neither/nor	11	15	17
Disagree	34	30	20

As in 2009, around three-quarters of firms (76%) reported the current system of regulation places too great a burden on law firms (2009, 78%). High street firms were more likely to agree (82%) compared to non-high street firms (71%). A similar proportion of investigated and non-investigated firms agreed the current system places too great a burden on law firms and that information requirements are excessive.

Those firms with mainly private clients were more likely to agree that the rules based system is too great a burden to firms; 63% of firms serving no private clients agreed compared to 72% of firms deriving 1-49% of their gross fee income from private clients and 79% of those deriving 50% or more of their GFI from this type of client.

Almost two-thirds of firms agreed that the SRA's information requirements from law firms are excessive (57%). High street firms were more likely to agree (63%) compared to 52% of non-high street firms. Small firms were more likely to agree (63%) compared to 52% of medium/large firms.

2.3 Effectiveness of the SRA

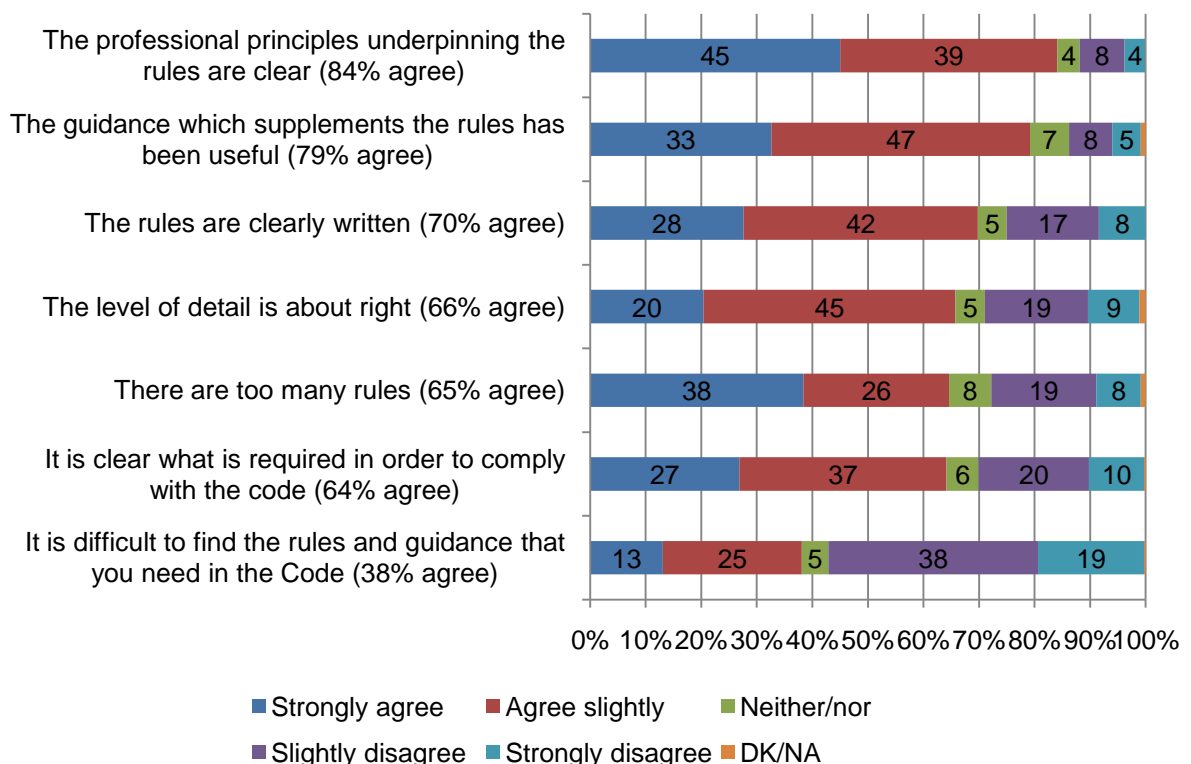
The effectiveness of the SRA was considered with regard to particular undertakings such as the Code of Conduct and enforcement as well as more generally.

2.3.1 The code of conduct

Two-thirds of firm representatives had consulted the Code of Conduct within the last month, and the majority (91%) had referred to it within the past six months. As in 2009, feedback was overall very positive⁷. Over three-quarters of firms considered the professional principles underpinning the rules to be clear (84%) and the guidance supplementing the rules useful (79%). Around two-thirds of firm representatives agreed that:

- The rules are clearly written (70%);
- The level of detail is about right (66%);
- There are too many rules (65%);
- It is clear what is required in order to comply with the code (64%)⁸; and
- 57% disagreed with the negatively phrased statement 'it is difficult to find the rules and guidance you need in the Code'.

Chart 2.3 Views on the Code of Conduct



⁷ With the exception of the statement 'there are too many rules' and the new statement for 2011 'It is clear what is required in order to comply with the code', the proportion of firms giving neutral responses were higher compared to 2009 ratings, the proportion disagreeing, generally lower and the proportion agreeing were similar across the two surveys.

⁸ New to 2011

The views of some groups of firms differed in relation to some aspects of the Code of Conduct.

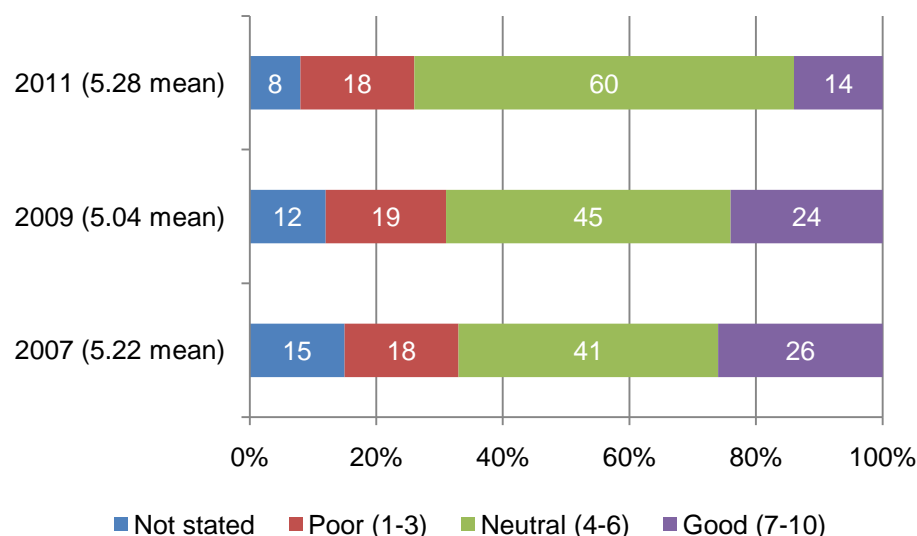
- Investigated firms' views only differed in the reported difficulty in finding the rules and guidance; 44% of investigated firms found it difficult compared to 37% of non investigated firms.
- Small firms were more likely to agree that there are too many rules (69%) compared to 57% of firms with six or more solicitors. Representatives who had read key SRA documentation were less likely to agree with the same statement (61%) compared to non-readers (68%).

2.3.2 Opinions on enforcement

All firm representatives were asked for their opinions about the SRA's approach to enforcement, on the basis of what they had seen or heard and as distinct from judgements based on experience (which are described in chapter three).

Average satisfaction ratings for how the SRA handles enforcement were significantly higher in 2011 compared to 2009 (2011:5.28, 2009:5.04). In 2011, however, a greater proportion of representatives gave a 'neutral' score (60% compared to around 40% in previous years) and a smaller proportion of firms in 2011 gave the SRA's enforcement a 'good' score (14%) compared to around one quarter of firms in 2007 and 2009.

Chart 2.4 Satisfaction with how the SRA handles enforcement



Two-fifths of investigated firms (38%) rated the SRA's approach to enforcement as 'poor' compared to just under one-fifth (16%) of firms non-investigated firms.

Firms with no private sector clients were more likely to be impressed with the SRA's approach to enforcement (21%) compared to 12% of those deriving some gross fee income from this client type.

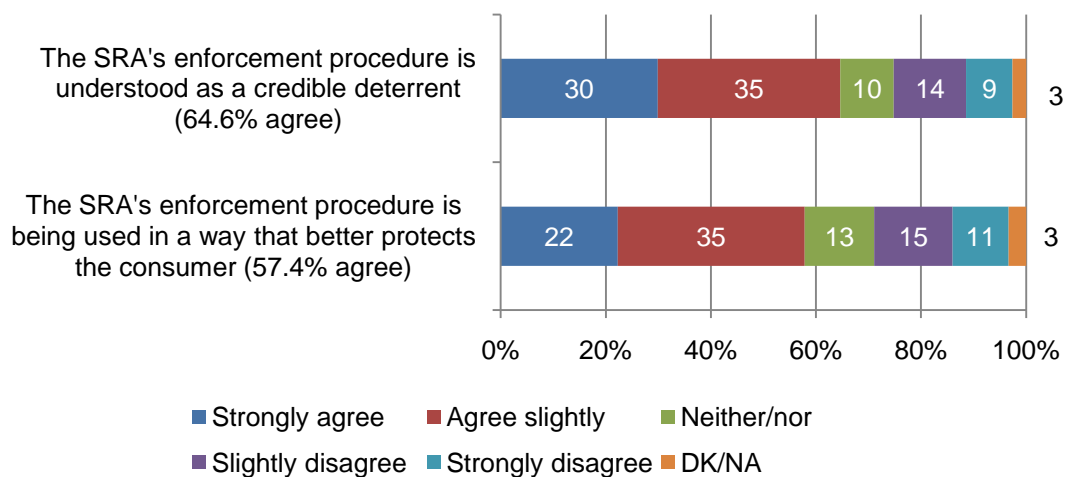
The enforcement procedure

In addition to general satisfaction with the SRA's approach to enforcement, firms were asked for their views on two aspects of the enforcement procedure.

- Its effect as a deterrent
- Its protection of consumers

Around two-thirds of firms (65%) agreed that the enforcement procedure is understood by the industry as a credible deterrent. A smaller proportion agreed that the procedure was being used in a way that better protects the consumer (57%). Satisfaction ratings in 2011 varied significantly from the 2009 survey, with the proportion of respondents agreeing with the statements dipping (from 68% and 63% respectively in 2009) and the proportion of firms giving a neutral response being around three times larger.

Chart 2.5 Opinions on the enforcement procedure



Group comparisons revealed a small number of differences.

- High street firms were more likely to agree that the SRA's enforcement procedure is understood as a credible deterrent (71%) and that the procedure is being used in a way that better protects the consumer (64%) compared to non-high street firms (62% and 56% respectively).
- Investigated firms were more likely to disagree that the enforcement procedure is being used to better protect the consumer compared to non-investigated firms (36% and 25% respectively)

2.4 Views on the general effectiveness of the SRA

Views were more varied on a range of performance issues than those in preceding sections. Firms were generally more positive than negative in relation to the SRA's effectiveness in;

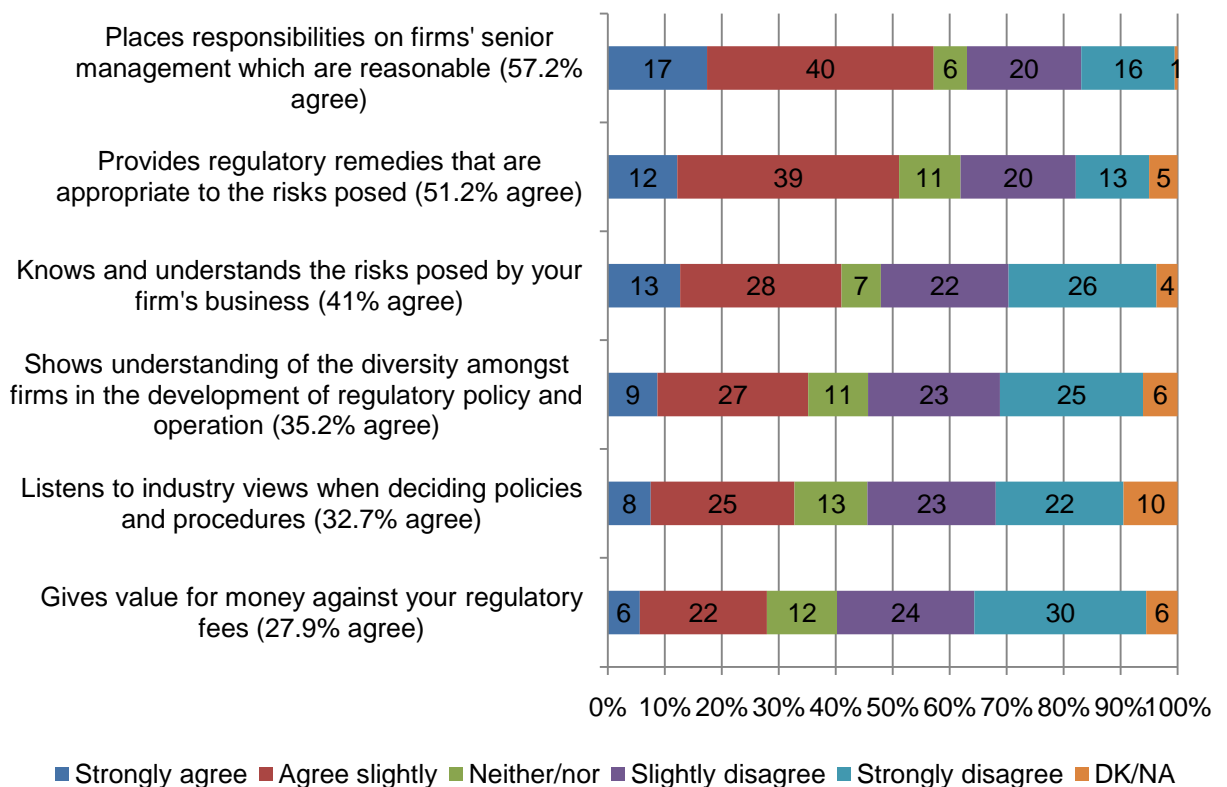
- Placing responsibilities on firms' senior representatives which are reasonable;
- Providing regulatory remedies that are appropriate to the risks posed;

And more negative than positive in their views in relation to the SRA,

- knowing and understanding the risks posed by firms business.
- showing understanding of the diversity amongst firms in the development of regulatory policy;
- listening to industry views when deciding policies and procedures; and
- giving value for money against regulatory fees.

Ratings in 2011 varied significantly from 2009 scores across all six statements. The proportion giving a 'neutral' ('neither agree nor disagree') response increased, the proportion agreeing with each statement, generally remained static and the proportion disagreeing dipped.

Chart 2.6 Views on the general effectiveness of the SRA



Group comparisons revealed a number of differences.

Places reasonable responsibility on firms senior representatives

- Non-high street firms were more likely to agree to the SRA placing reasonable responsibility on firms' senior representatives compared to high street firms (60% contrasted to 52% respectively).

Provides regulatory remedies that are appropriate to the risks posed

- A higher proportion of non-investigated firms (55%) agreed that the SRA provides regulatory remedies that are appropriate to risks posed compared to investigated firms (42%).
- Firms with no private sector clients were more likely to agree (60%) compared to firms either deriving 1-49% of their GFI from private clients (49%) and those who were more heavily reliant on this client type (51%).

Knows and understands the risks posed by firms' business

- High street firms were more likely to agree the SRA knows and understands the risks posed by firms businesses compare to non-high street firms (47% and 39% respectively).

Chapter Two highlights

- Average ratings for SRA's performance against its four objectives were between 6.0 and 6.5 out of ten, representing an improvement on 2009 scores. The largest improvements in proportion of 'good' ratings were seen in relation to the SRA upholding the rule of law and providing the right degree of protection for consumers.
- Almost three-quarters of firms considered the SRA's visits to firms as a proportionate way of protecting the profession's reputation. Firms were less sanguine in their views of the current regulation system in terms of the burden placed on firms and whether or not the SRA operates fairly with firms. Seventy percent of firms agreed the burden on law firms was too great and just over half (54%) of firms thought the SRA operated fairly in its contact with firms. Firms in 2011 were more indifferent in their views compared to their 2007 and 2009 counterparts; a much higher proportion of firms in 2011 gave neutral responses compared to previous years.
- Firms' satisfaction with how the SRA handles enforcement was again neutral although average scores did represent a small improvement on 2009 ratings. The proportion of firms giving either a positive or negative rating dropped, whilst the proportion giving a neutral response increased from 55% in 2009 to 60% in 2011.

- Views on the general effectiveness of the SRA in relation to placing reasonable responsibilities on firms' senior representatives and providing regulatory remedies appropriate to the risks posed were more positive than negative. Firms were more negative than positive in their perceptions of the SRA knowing and understanding the risks posed by their business, showing understanding of the diversity amongst firms, listening to firms when developing regulatory policy and procedures and giving value for money against regulatory fees.

3.0 Experiences of regulation

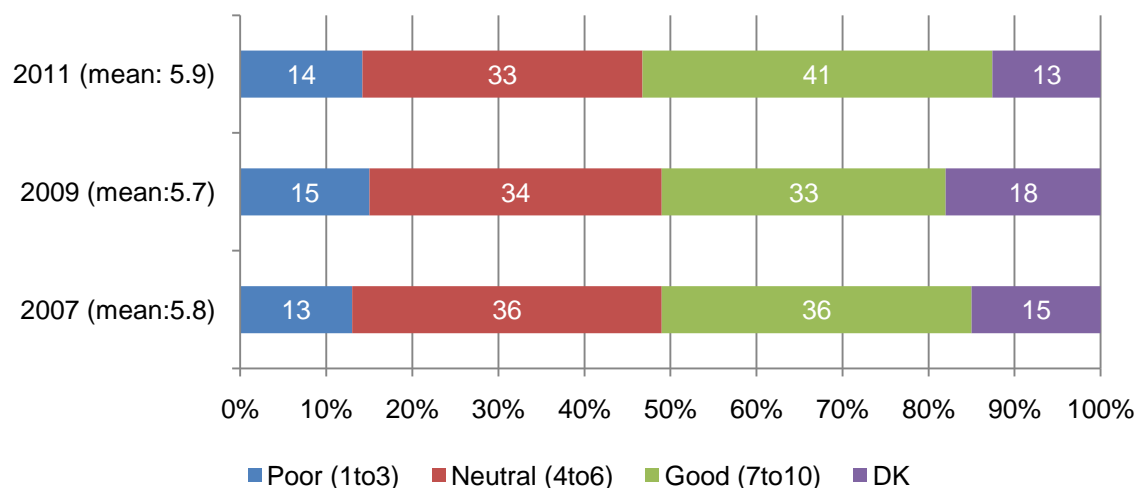
Experiences of regulation were explored by capturing firms' ratings of their satisfaction with their relationship with the SRA, and their views of key services, the Ethics Helpline and monitoring visits from the Practice Standards Unit.

3.1 Relationship with the SRA

3.1.1 Overall satisfaction with the relationship

Overall satisfaction with the SRA (taking into account all dealings with the SRA over the last two years) remained similar to previous years: that is, mainly neutral. In 2007 the mean score rating was 5.8 out of 10, in 2009 it was 5.7 and in 2011 it was 5.9.

Chart 3.1 Overall satisfaction with the SRA



As in 2009, ratings of satisfaction with the relationship between firms and the SRA were higher amongst smaller firms with almost one half of small firms rating the relationship as 'good' (49%) compared to 41% of medium/large firms.

Investigated firms were almost three times more likely to give a 'poor' rating compared to firms which had not been subject to investigation (35% and 13% respectively).

Eighty percent of representatives who had had contact with the SRA in the past two years reported the firm's relationship with the SRA had remained the same over the this time, 11% indicated the relationship had improved, 8% thought the relationship had deteriorated and 1% could not say.

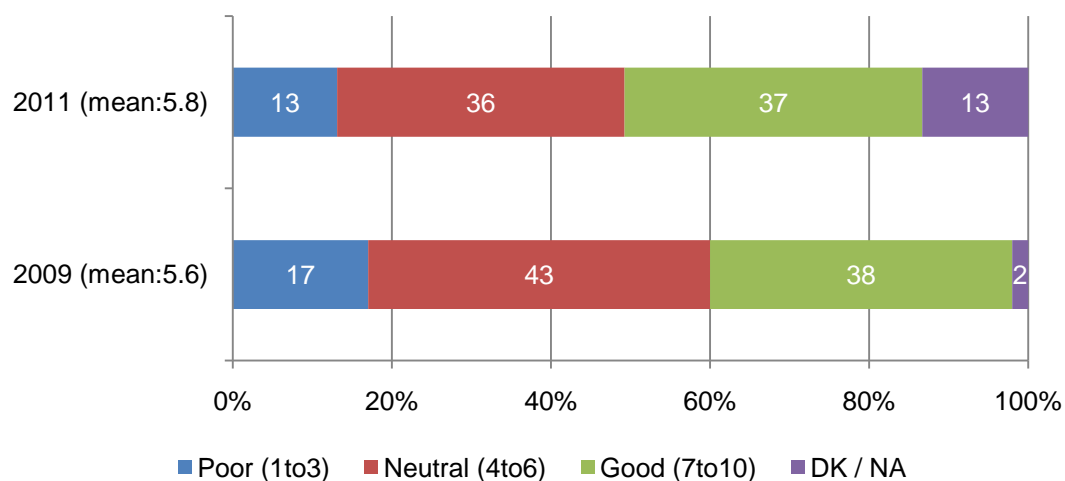
The only group difference found was between investigated and non-investigated firms, with the former being less likely to hold neutral views. Sixteen percent of investigated firms had reported the relationship had improved, just over one fifth (19%) that the relationship had deteriorated. This compares to 10% of non-investigated firms reporting an improvement in the relationship and 6% a decline.

	Investigated firms %	Non- investigated firms %
Improved	16	10
Stayed the same	65	84
Deteriorated	19	6

3.1.2 Satisfaction with the ease of dealing with the SRA

The average satisfaction score for ease of dealing with the SRA was again, neutral at 5.8, representing a statistically significant increase on the 2009 mean score of 5.6. In 2011, a higher proportion of representatives was unable or unwilling to provide a response, 13% compared to just 2% in 2009.

Chart 3.2 Ease of dealing with the SRA



As in 2009, around three-quarters of representatives reported the ease of contacting the SRA had remained the same over past two years (76%), 12% indicated that it had improved and 9% thought contacting the SRA had got more difficult. Three percent were unable to respond.

Investigated firms were more mixed in their views of the change in the ease of contacting the SRA compared to non-investigated firms. Around two-thirds of investigated firms reported the ease of contact had remained the same compared to four-fifths of non investigated firms.

	Investigated firms %	Non- investigated firms %
Improved	17	12
Stayed the same	64	80
Deteriorated	19	7

3.2 The Ethics Helpline

Almost two-fifths of respondents had contacted the Ethics Helpline (65%). Over one-quarter of those had last contacted the helpline within the last month and around two-thirds had made contact within the past six months (67%).

Last contact	% of those who have contacted
Within the last week	8.6
Within the last month	19.3
Within the last 6 months	39.6
6 to 12 months ago	19.3
1 to 2 years ago	12.6
Don't know	0.6
Total	100

The mean score for satisfaction with the service provided by the Helpline was better than for overall satisfaction with the SRA, at 7.2 out of ten, representing a significant increase on the 2009 mean score of 6.7. Seventy percent of users of the ethics helpline gave a 'good' rating, 22% gave a 'neutral' rating whilst 8% gave a 'poor' rating.

Around three-quarters of small firms (73%) using the Ethics Helpline rated the service they had received from the Helpline as being 'good' compared to just under two-thirds of firms with six or more solicitors (64%).

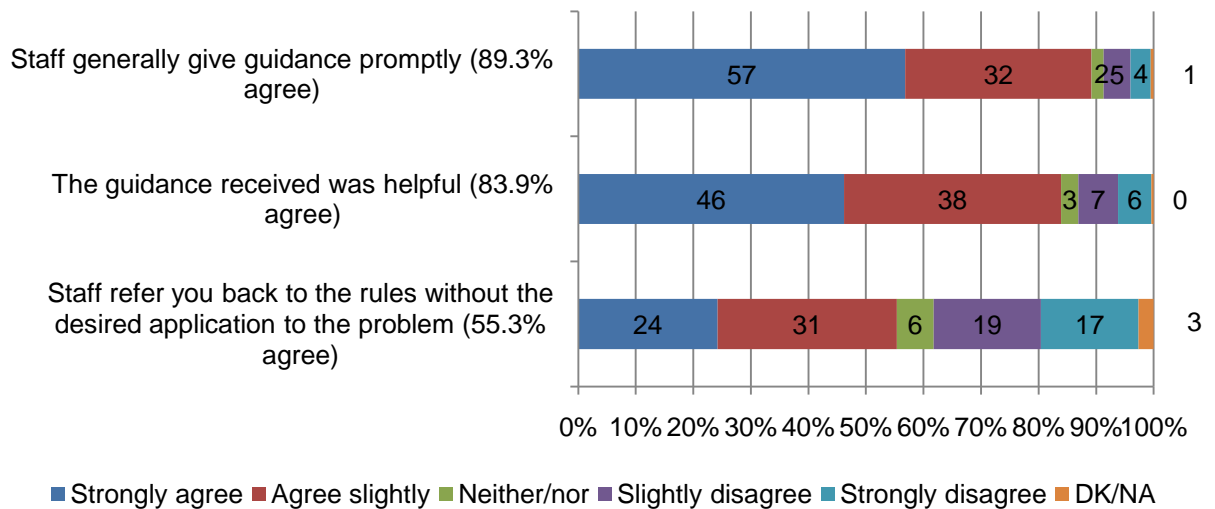
The mean score for satisfaction that the firm is getting the advice and assistance it needs from the helpline was 6.9. (2009: 6.7) Almost two-thirds of users gave a 'good' rating (65%), around one-quarter (27%) gave a 'neutral' rating and 8% gave a 'poor' rating.

Non-high street firms were three times more likely than high street firms to give the advice and guidance received from the Helpline a 'poor' rating (12% compared to 4%). Sixty-seven percent of high street firms rated the advice and guidance highly with scores between 7 and 10 compared to 63% of non-high street firms.

Overall, views about the Ethics Helpline staff were positive, the majority of users (89%) agreed that the guidance was prompt and a similar proportion agreed that the guidance received was helpful (83%). Views were more varied in relation to how staff applied the advice to the caller's problem. Over half of users (55%) agreed with the negatively phrased statement 'staff refer you back to the rules without the desired application to the problem, 36% disagreed, 6% gave a 'neither/nor' response and 3% did not give an answer.

Views on Ethics Helpline staff in 2011 were more positive compared to the views held by respondents in the 2009 survey. A higher proportion of representatives in 2011 agreed that the advice was helpful (84% compared to 80%) and a smaller proportion of firms agreed with the negatively phrased statement about being referred to the rules without application to the problem compared to representatives in 2009 (57% contrasted to 63%).

Chart 3.3 Views on the Ethics Helpline staff



Other significant variances were found in relation to the type of firm and client type served.

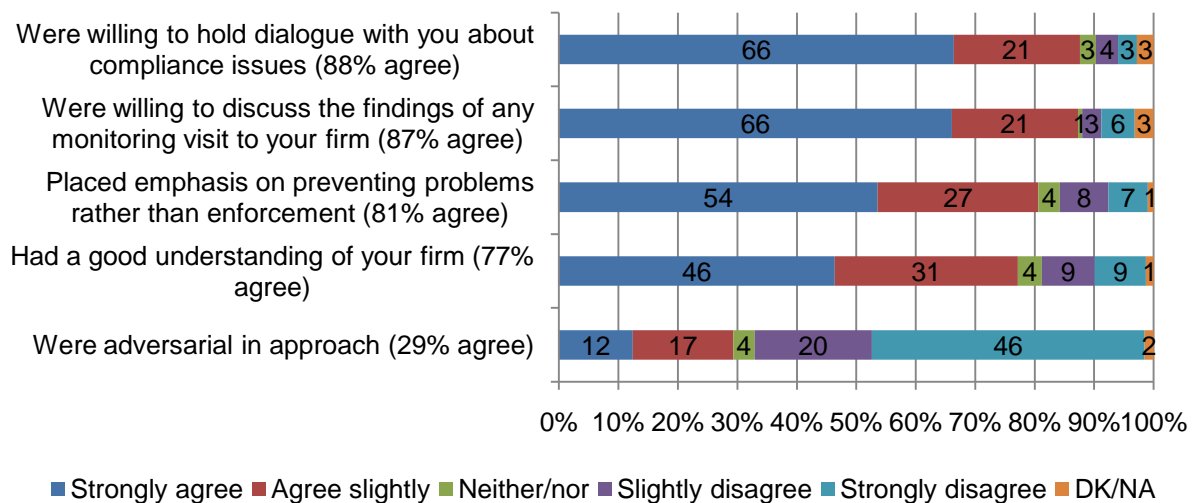
- High street firms were more likely to be positive about the advice being prompt and helpful, but more less positive in their ratings as to how the advice was applied to their problem. Almost two-thirds (62%) agreed the helpline staff referred them back to the rules without the desired application to the problem (compared to 51% if non-high street firms).
- Firms with legally-aided clients were less likely to disagree that the helpline provided prompt advice compared to firms not offering services to this client type (5% compared to 10%).
- Firms serving private clients were more positive in relation to the SRA offering helpful guidance - 85% agreed the guidance was helpful compared to 73% of firms with no private clients.
- Firms with private sector clients were slightly more negative than firms not serving this client type, 15% disagreed compared to 10% of firms deriving no gross fee income from this client type.

3.3 Practice Standards Unit

Just under one-fifth of firms (19%) had received a monitoring visit from the Practice Standards Unit during the past two years. This is a dip from the 26% reporting a visit in 2009. Almost two-thirds of firms (64%) rated usefulness of the feedback from the visit with 'good' scores; around one quarter (24%) of firms gave a 'neutral' score, 9% rated the feedback poorly and 2% were unable to answer. The mean rating for utility of feedback was 7, a similar rating to the 6.9 out of 10 given by representatives in 2009.

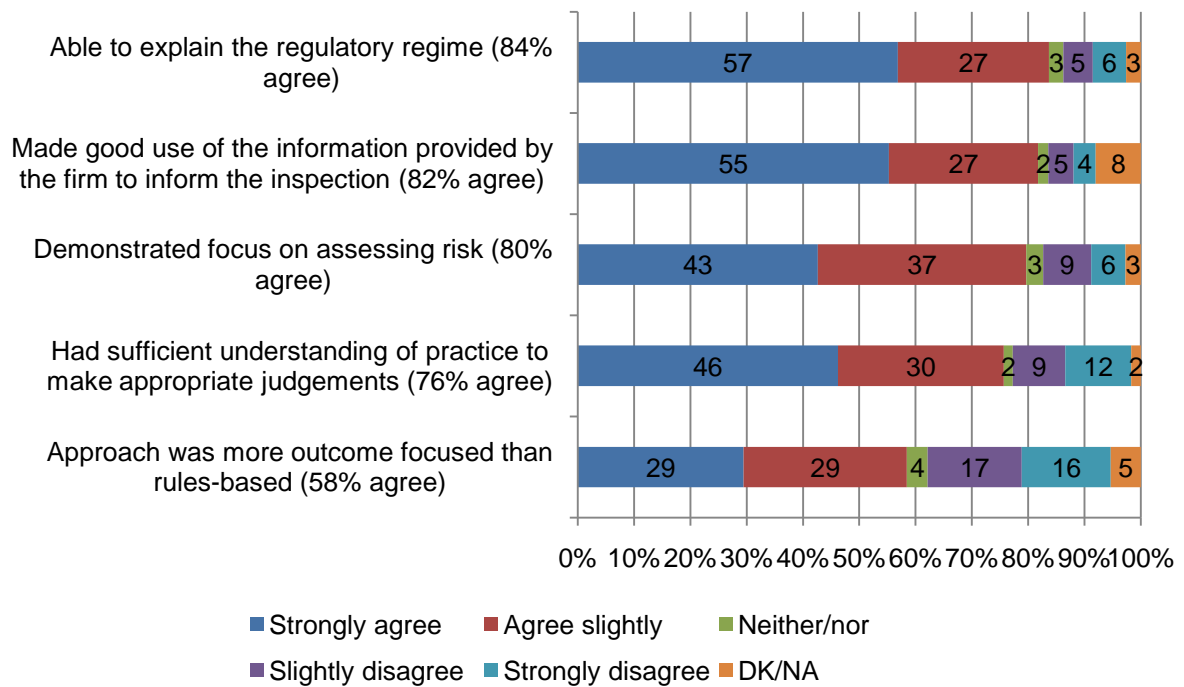
Experiences of the approach of monitoring visits, as in 2009, were very largely positive, with almost 90% of firms finding staff willing to hold dialogue with them about compliance issues (88%) and the findings of the visit (87%). Over three-quarters of firms thought the PSU had a good understanding of their firm (77%) and had emphasised prevention rather than enforcement (81%). For just over one-quarter of firms (29%) the experience was of an adversarial approach having been taken by staff. No significant differences in views were identified between respondents in 2009 and 2011.

Chart 3.4 The SRA's approach to monitoring visits



As in 2009, views of PSU staff were also very positive. Views were the most varied in relation to staff taking an approach that was more outcome focused than rule based. One-third of firms disagreed that the approach taken by staff was more outcomes focussed than rules based, 58% agreed, 4% gave 'neither agree nor disagree' response and 5% did not know or did not provide a response.

Chart 3.5 Experiences of PSU staff⁹



⁹ The statement 'Approach was more outcome focused than rules-based' was new to the 2011 survey.

3.4 Experiences of disciplinary investigation

Fourteen percent of firms had had some experience of a disciplinary investigation in the last two years, a significant dip on the 15% reported in the 2009 research.

Firms were more positive than negative in relation to

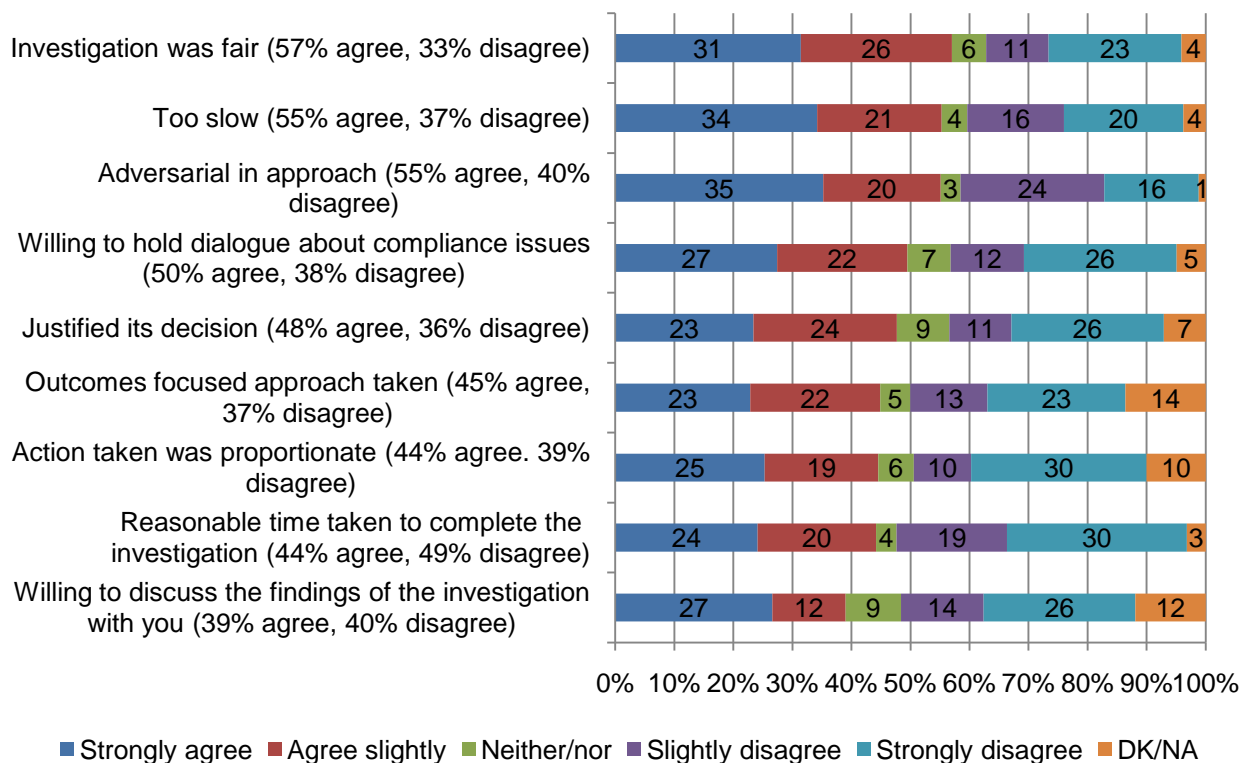
- The investigation being fair;
- Willingness to hold dialogue about compliance issues;
- Justifying its decision;
- Taking an outcomes focused approach

and more evenly split with regard to

- Taking proportionate action;
- Taking reasonable time to complete the investigation; and
- Willing to discuss the findings of the investigation

Firms were most negative towards the process - over half of firms (55%) agreed the investigation was too slow. Firms' reported experiences of disciplinary investigation did not differ significantly from their counterparts in 2009.

Chart 3.6 Experiences of investigations



Of the firms investigated, 87% reported that the reasons prompting the investigation had been made clear to the firm. This represents a significantly higher proportion of firms compared to findings in 2009, where 65% of firms reporting that they knew why there were being investigated.

Chapter Three highlights

- Average satisfaction with firms' relationship with the SRA was neutral (5.9 out of ten). For the main (70%), this relationship had stayed the same over the previous two years and for similar proportions it had either improved (11%) or deteriorated (8%).
- Average satisfaction with ease of dealing with the SRA was again neutral (5.8 out of ten), representing an improvement on average ratings in 2009 (5.6). Around three-quarters of firms (76%) reported the ease of dealing the SRA had remained the same, whilst 12% thought it had got easier and 9% that dealing with the SRA had got more difficult.
- Average satisfaction scores for the service provided by the Ethics Helpline (7.9 out of ten) and for the advice and guidance provided (6.9) were both higher than overall satisfaction with the SRA. Views on staff were also positive, with a high proportion of representatives agreeing that prompt advice was given (89%). Over half of firms however, agreed that staff referred firms back to the rules without the desired application to the problem (55%).
- A smaller proportion of firms had received a monitoring visit in 2011 compared to 2009, 19% compared to 26% in 2009. The utility of the feedback from these visits was rated highly, 7 out of ten. Views on the approach taken for the visits and the staff were very positive.
- Experiences of investigated firms were more varied. Investigated firms were more positive than negative in relation to the investigation
 - being fair;
 - proportionate;
 - staff being willing to discuss compliance issues;
 - staff justifying decisions.Investigated firms were more likely to hold mixed views on;
 - whether or not the investigation was completed in a reasonable time; and
 - whether staff were willing to discuss the findings of the investigation.
- A significantly higher proportion of firms in 2011 than in 2009 had been made aware of the reasons prompting the investigation, 87% compared to 65% in 2009.

4.0 Costs and the impacts of compliance

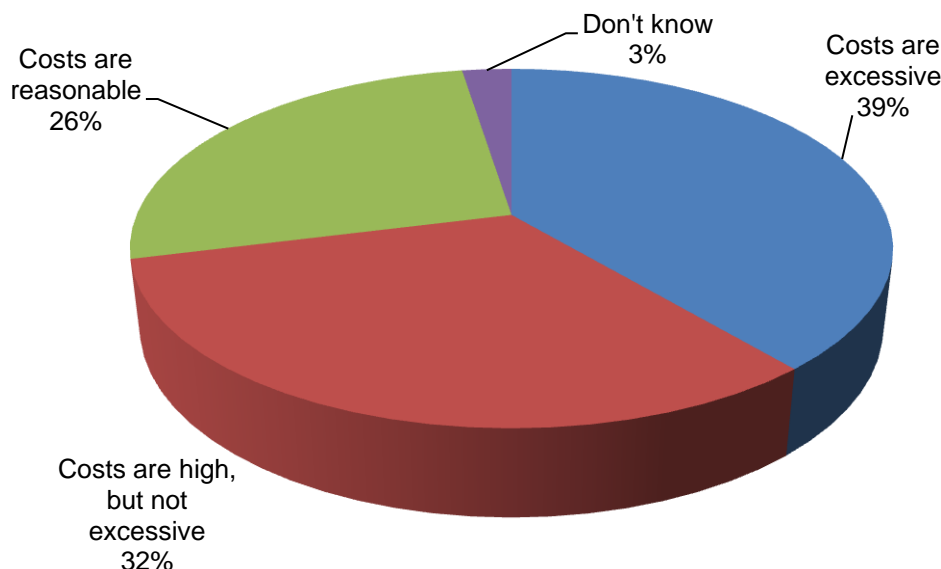
4.1 Evaluation of costs

Firms' views on the cost of compliance were examined by asking representatives for their views on;

- whether or not the internal costs of compliance were viewed as excessive;
- the extent to which the Practising Certificate (PC) fee represents value for money;
- the extent to which the firm charge represents value for money; and
- whether the costs to the SRA of regulating firms are made transparent.

Just over-one quarter of firms (26%) considered the internal cost of compliance¹⁰ to their firm to be reasonable (given the size and nature of their businesses and their level of risk). Almost two-fifths considered the costs excessive (39%), around one-third (32%) felt the costs were high but not excessive, and three percent of firms did not know. Views did not vary significantly from 2009.

Chart 4.1 Evaluation of compliance costs



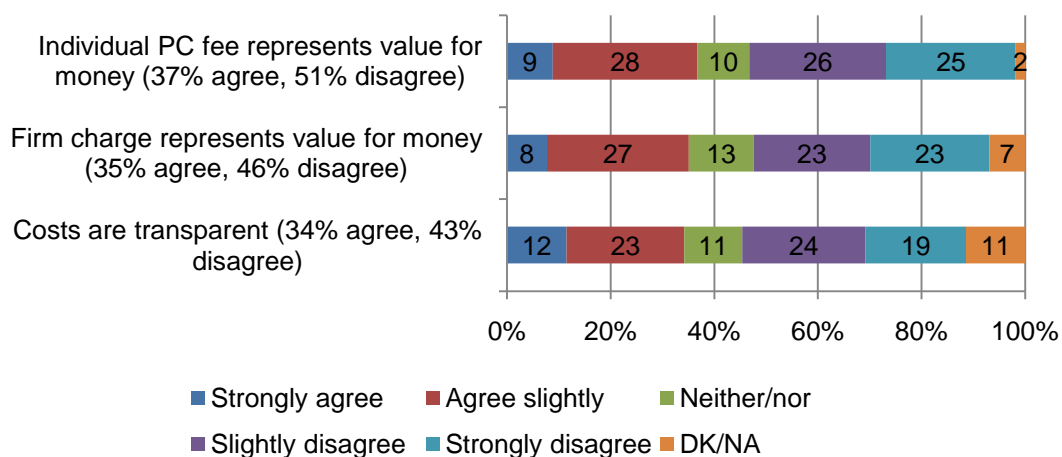
A similar proportion of high street and non-high street firms considered compliance costs to be excessive (39%, 40%). High street firms were less likely than non-high

¹⁰ Compliance costs here were costs excluding contributions to the Compensation Fund, professional indemnity insurance and PC fees. Internal costs would include the cost of compliance staff, fee-earner time spent on compliance, IT systems, documentation, CPD and staff training on compliance issues).

street firms to consider compliance costs as reasonable, 23% contrasted to 31% respectively.

A higher proportion of firms disagreed than agreed that the PC fee and firm charge represented value for money and that the costs to the SRA of regulating are made transparent. Firms in 2011 were more likely to give a neutral response in relation to the SRA's costs being transparent, compared to 2009 (13%, 4%). A smaller proportion agreed that costs were transparent in 2011 (39%) compared to 2009 (49%). The proportion of firms considering that the PC fee represents value for money remained static, whilst firms were three times more likely in 2011 to give a neutral response compared to 2009. The proportion disagreeing dipped from 60% in 2009 to 52% in 2011.

Chart 4.2 Compliance costs and value for money



Only a few differences were found between groupings -

- High street firms were more likely to consider the firm fee as representing value for money compared to non-high street firms (42% compared to 34%).
- 58% of firms with recent contact with the SRA disagreed with the statement 'the costs to the SRA of regulating the profession are transparent' compared to 46% of firms for whom contact had been over one month ago.
- Readers of key SRA documentation were more positive in their responses to the individual PC fee representing value for money compared to non-readers (42% and 34% respectively).

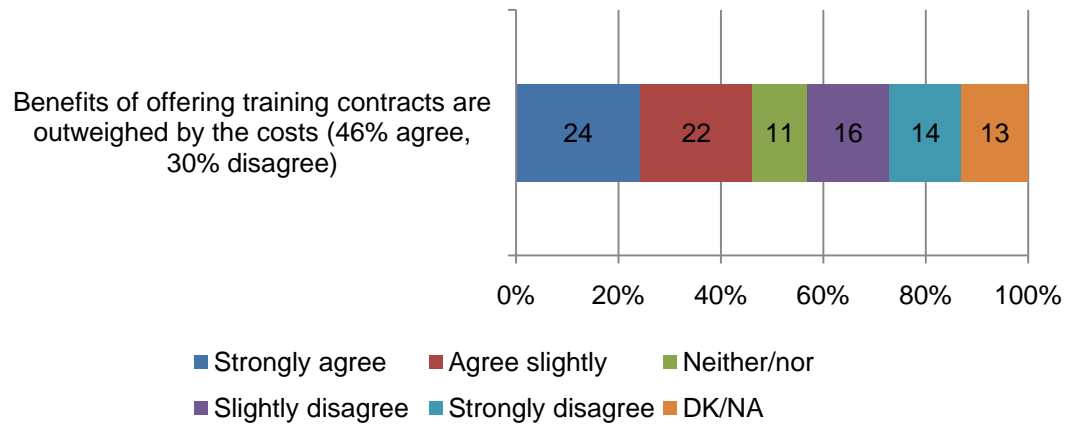
Training contract costs¹¹

Just under half of representatives (46%) indicated their firm took on trainee solicitors. These individuals were asked for their views on the extent to which the benefits of taking on trainees outweighed the costs. Overall, firms were more positive than negative in their views; just under half of training firms (46%) considered the benefits

¹¹ New to 2011.

to outweigh the costs, almost one- third (30%) of training firms reported the costs exceeding the benefits.

Chart 4.4 Benefits and costs of offering traineeships

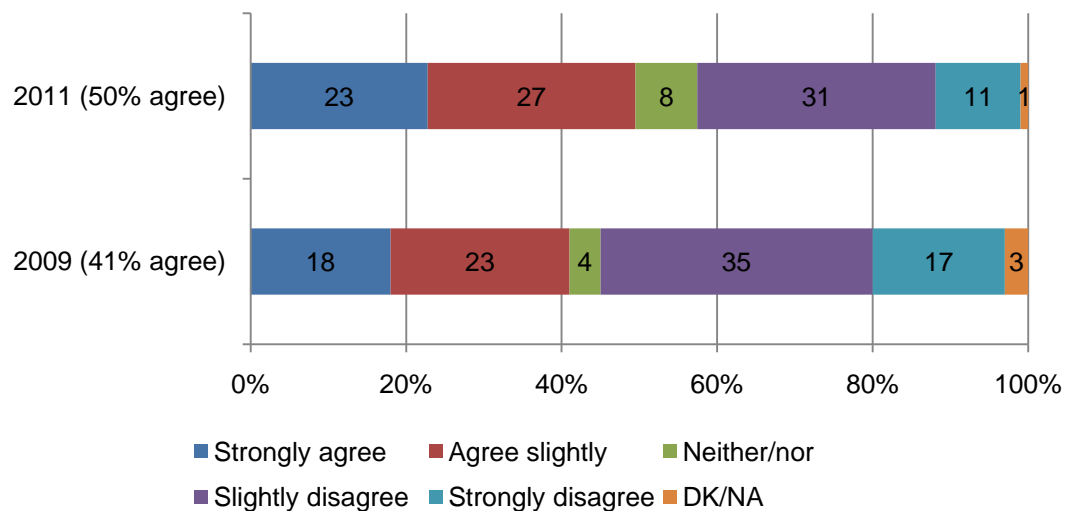


4.2 The impact of compliance costs and obligations

Harmfulness of compliance costs

Half of firms agreed that compliance costs were harmful to their business, just over two-fifths (42%) disagreed, 8% remained neutral whilst 1% were unable to answer. A higher proportion of firms in 2011 agreed that compliance costs were harmful compared to 2009 (50% and 41% respectively). The proportion of firms disagreeing that compliance costs were harmful was less in 2011 than in 2009 (42% compared to 53%).

Chart 4.5 Harmfulness of compliance costs



- High street firms were more likely to consider compliance costs harmful (56%) compared to non-high street firms (45%).
- Once again, investigated firms were more negative than non-investigated firms, with 62% reporting compliance costs as harmful, compared to 50% of the latter group.
- Perceptions varied only with one client type - firms deriving some of their gross fee income (1-49%) from legally aided clients were more likely to report compliance costs being damaging (60%) compared to firms not undertaking work for this type of client (48%) and firms dealing mainly (50%+) with legally funded clients (46%).

Harmfulness of compliance costs - legal aid clients

	No legally aided clients (n=261) %	1-49% of GFI from legally aided clients (n=70) %	50%+ GFI from legally aided clients (n=60) %
Compliance costs are harmful to business			
Agree	48	61	46
Neither/nor	8	6	10
Disagree	44	34	44
Total	100	100	100

Impact of compliance costs and obligations

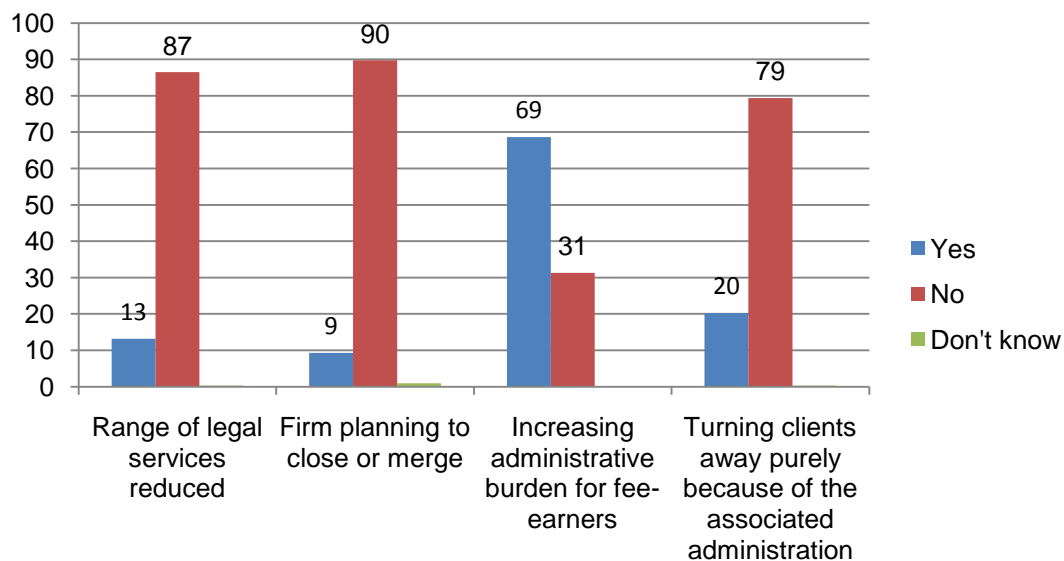
Just over two-thirds of firms (69%) reported that in the previous year compliance obligations had resulted in an increase in the administrative burden for its fee-earners. One-fifth of firms reported turning away clients purely because of the associated administration.

Fewer firms in 2011 than in 2009 planned to

- reduce the range of legal services provided (13% contrasted to 18%)
- turn clients away purely because of the associated administration (20% compared to 27%).

Firms in 2011 were less likely to report an increasing administrative burden on fee earners compared to firms in 2009 (69% and 74% respectively). Firms in 2011 were twice as likely to be planning to close or merge compared to their counterparts in the 2009 survey (9% compared to 4%).

Chart 4.6 Impact of compliance costs



As noted above, high street firms were the more likely to consider compliance costs to be damaging to their businesses. Eleven percent of high street firms indicated they had considered closing or merging with another firm as a direct result of compliance costs compared to 7% of non-high street firms. Three-quarters of high street firms reported an increase in administration for their fee earners as a result of compliance requirements, compared to just under two-thirds of non-high street firms (62%).

A higher proportion of small firms planned to merge or close down (11%) compared to medium and large firms (5%). Investigated firms were almost twice as likely to report planning to close or merge, 16% compared to 9% of non-investigated firms.

Increased administration was associated with firms offering services to private clients, legally aided clients and public sector clients. Seventy-three percent of firms deriving 50% or more of their gross fee income from private clients reported increases in administration compared to 63% of firms not as reliant on this client type. A slightly different pattern was found with legally aided clients, with a higher proportion of firms deriving 1-49% of their gross fee income reporting an increasing administrative burden compared to those either not undertaking work for that client type or firms mainly serving the client type.

Percentage of firm-type with experience of increased administration		
No Privately funded individuals (n=55)	<50% of GFI from Privately funded individuals (n=310)	>50%+ GFI from Privately funded individuals (n=582)
58	63	73

Percentage of firm-type with experience of increased administration		
No Legally aided individuals (n=596)	<50% of GFI from legally aided clients (n=216)	>50%+ GFI from Legally aided clients (n=134)
68	78	60

Staff dedicated to compliance

Sole practices and firms with less than ten partners had spent on average 27 days (mean or 10 days using the median) dedicated to compliance issues. The duration spent on compliance ranged from zero days to 365. Just over one-fifth (23%) of the smaller firms did not know how much time was spent on compliance issues.

Firms with over ten partners had on average four (mean, median two) members of staff (or full time equivalents) dedicated to compliance issues. The number of dedicated compliance staff ranged from no staff to a team of 50. Just over one-tenth of larger firms 11% did not know the size of their compliance workforce.

Chapter Four highlights

- Around one-third of firms considered the individual PC fee (37%) and the firm charge (35%) to be value for money. Just 34% of firms thought the costs to the SRA of regulation the profession were made transparent.
- Almost half of firms with trainees reported the benefits of taking on trainees outweighed the costs.
- The internal costs of compliance were viewed as excessive by 39% of firms, as high, but not excessive by 32% of firms and reasonable by 26% of firms.
- Half of firms agreed the cost of compliance was harmful to their business. Over two-thirds of firms (69%) reported an increasing administrative burden on fee earners. Firms were less likely than their 2009 counterparts to indicate they would reduce the range of services provided, turn clients away purely because of the associated administration, but twice as likely to be planning to close down or merge as a result of compliance obligations (9% compared to 4% respectively).

5.0 Outcomes Focused Regulation

5.1 Awareness of outcomes focused regulation

The majority (88%) of senior representatives were aware of the changes to regulation being introduced by the SRA in October 2011. Twelve percent were not aware and less than one percent did not know. Awareness varied with a number of groupings, medium/large practices were more likely to be aware than firms with five or fewer solicitors (92% compared to 86%). A higher proportion of firms having had some verbal contact with the SRA and/or had read key SRA documentation were more likely to be aware of the changes compared to firms with no such experience.

Awareness varied with two client types. Firms either serving no legally aided clients or deriving less than 50% of their GFI from this client type were more likely to be aware of the change to OFR (89%,90%) compared to firms for whom legally aided clients were main source of income. Firms serving mainly private clients were more likely to be aware of the change than other firms either less reliant on this type of client or not serving this client type at all.

Percentage of firm type with knowledge		
No Legally aided individuals (n=595)	<50% of GFI from legally aided clients (n=215)	>50%+ GFI from legally aided clients (n=134)
89	90	80

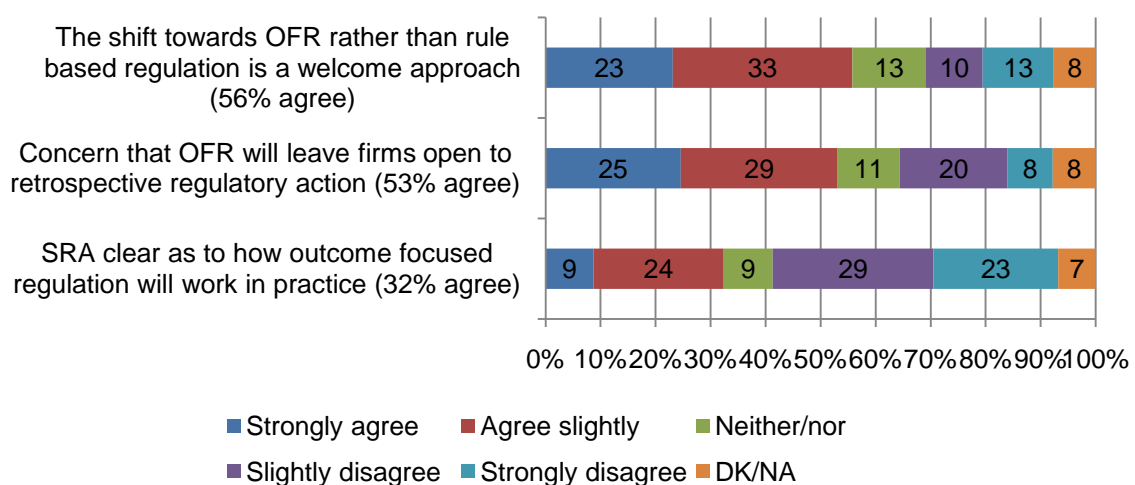
Percentage of firm type with knowledge		
No privately funded individuals (n=53)	<50% of GFI from privately funded individuals (n=310)	>50%+ GFI from privately funded individuals (n=580)
78	87	90

Just under two-thirds of firms (63%) aware of the changes had either read SRA documentation, attended road shows or had participated in online seminars specifically in relation to OFR. Over one-third of firms were aware of the changes but had not familiarised themselves with OFR through the mechanisms above.

5.2 Firms' views on outcomes focused regulation

Representatives aware of the regulatory change were asked for their views of OFR. Despite the shift towards OFR from a rules based approach being welcome by 56% of firms, many were concerned that OFR would leave firms open to retrospective regulation (53%). Just over half of firms thought the SRA had not yet made it clear how the OFR would work in practice (52%).

Chart 5.1 Firms' views on OFR



Responses varied by some groupings.

- A higher proportion of smaller firms welcomed the new form of regulation compared to medium/large firms (63% contrasted to 54%).
- Firms serving legally aided clients were less likely to welcome OFR compared to those not serving this client type.

	% of firm type		
	No legally aided clients (n=495)	<50% of GFI from legally aided clients (n=183)	>50% of GFI from legally aided clients (n=97)
Welcome approach			
Agree	65	53	50
Neither/nor	14	12	23
Disagree	22	35	28
Total	100	100	100

- A higher proportion of high street firms were concerned that OFR would leave them open in future to retrospective regulatory action compared to non-high street firms (66% compared to 49% respectively).
- A higher proportion of firms serving privately funded individuals held this concern (58%) compared to firms not serving this client type (40%).
- Firms serving legal aid clients were more likely to be concerned with retrospective regulatory action compared to those not serving this client type. Firms deriving less than half of their GFI from this type of client were the most likely to express concern.

Concerns of retrospective regulatory action	% of firm type		
	No legally aided clients	<50% of GFI from legally aided clients	>50% of GFI from legally aided clients
	(n=488) %	(N=186) %	(n=96) %
Agree	52	70	66
Neither/nor	14	9	11
Disagree	35	21	23
Total	100	100	100

- Medium/large firms appeared more negative in their views of the SRA's having made it clear how OFR will operate in practice, almost two-thirds (65%) disagreed with the statement 'The SRA has made it clear how OFR will work in practice' compared to around half of small firms (51%).
- Firms serving private sector clients were less likely to think the SRA had been clear in telling the profession how OFR will work compared to firms not serving this client type.

SRA clear on how OFR will work in practice	No private sector clients	<50% of GFI from private sector clients	>50% of GFI from private sector clients
	(n=275)	(n=366)	(n=138)
	%	%	%
Agree	40	30	35
Neither/nor	12	10	4
Disagree	48	60	61
Total	100	100	100

- Investigated firms were more negative in their views compared to non-investigated firms; 70% of investigated firms disagreed that SRA advice had been clear compared to 54% of non-investigated firms.

5.3 Preparing for outcomes focused regulation

Representatives were asked what their firm had done to prepare for the introduction of OFR in October 2011 and what their firm needed still to do in order to be ready. Around half of firms had gained a better understanding of OFR requirements through reading key SRA documentation, attending road shows or participating in online seminars.

All firms reporting having done nothing in preparation for the introduction of OFR were aware of the forthcoming change. This group was evenly made up from high street and non-high street practices. Around three-quarters were small firms (77%). Over two-thirds of those who had done nothing thought the SRA had not made it clear how OFR would work in practice, perhaps suggesting the lack of action was a result of not knowing what actions were required rather than a belief that existing practices would suffice. Only 3% of all firms reported both not having undertaken any preparations and no having plans to do so in the future.

Table 5.1 - Actions to prepare for the introduction of OFR

Action	% of all firms	
	Have done	Still to do
Gained / (gain) a better understanding of requirements	53	24
Implemented / (implement) a new training systems	24	18
Written / (write) a compliance plan or procedure	25	16
Implemented / (implement) regular client survey	28	6
Introduced / (introduce) new risk management systems	34	9
Appointed / (appoint) consultants	9	7
Reviewed / (review) business processes	0	5
Nothing	20	20
Other	2	7
Don't know	*	10

* = less than 1%

'Other' activities already undertaken were

Appointing staff - COLP, COFA, risk compliance officers, risk managers (10)
 Lexcel Accreditation - gained or in the process of gaining Lexcel (8) or non-specified quality mark (1)
 Merged (2)
 Redistributed staff (1)
 Searched web for organisations which could help (1)
 Preparing for ABSs (linking with independent financial advisors (1)
 Internal research (1).

Several differences were found in the reported actions by different groups of firms.

- Medium/large firms appeared to be more prepared than their smaller counterparts. A higher proportion of medium/large firms had taken steps to gain an understanding of OFR requirements (68%), to have undertaken training and to have written a compliance plan (34%) and have implemented a new client survey (36%) compared to small firms (55%, 23%, 25% and 28% respectively).
- A higher proportion of investigated firms had implemented new training systems (39%) and/or established a new client survey (43%) compared to non-investigated firms (25% and 30%).
- Representatives who had read key SRA documentation were more likely to state their firm had undertaken training (36%), written a compliance plan (38%), implemented a client survey (35%) and introduced a new risk management system (45%) compared to those who had not (20%, 20%, 29% and 33% respectively).
- Differences were greater still for those who had read key documentation / attended road shows or participated in online seminars specifically on OFR relative to those who had not.
 - 70% had gained a better understanding of what will happen in practice (contrasted to 41%)
 - 31% had undertaken / implemented new training compared to 19%
 - 33% had written a compliance procedure (20%)
 - 44% had introduced a new risk management system (29%)
 - Non-readers were almost three times more likely to report having done nothing (38%) compared to 13% of those who had read key OFR documentation etc).
 - Whether or not key OFR literature had been read did not significantly impact on the proportion of firms who had implemented a client survey or appointed consultants.

'Other' activities firms planned to do in preparation included:

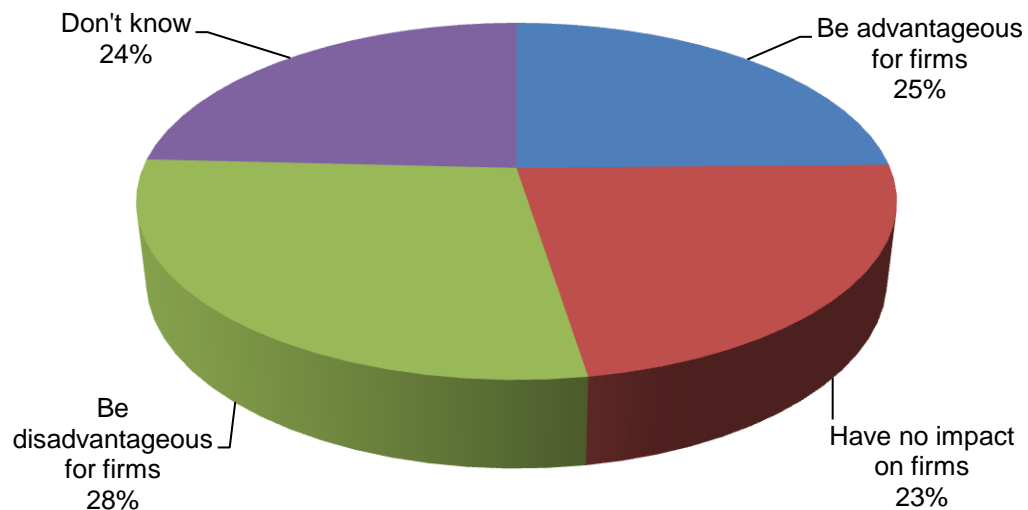
- Update or refine existing procedures / activities (23)
- Appointing new staff- finance officer, complaints officer, regulations officer, COPA, COSA, COLP, legal practice officer (21)
- Gain Lexcel accreditation (11) or QCS (1)
- Ensure compliance (8)

- Spend time internally discussing what needs to be done (7)
- Ensure all staff have a copy of the new handbook (3)
- Wait for what's recommended from Lexcel (Existing Lexcel members) (3)
- Other responses included (13) - *'example firm visits anonymously', 'change the culture of the organisation', 'do less work and be more aware of the liability', 'do more marketing', 'decide on future as LLP', 'receive better guidance from the SRA', 'close down', 'have an open mind and be flexible - see what happens', 'we need to be convinced that there's not going to be anymore changes'.*

5.4 Perceived impact of outcomes focussed regulation

Views on the possible impact of OFR on law firms were mixed, 25% of firms considered the introduction of OFR to be advantageous and 28% predicted OFR will be disadvantageous to firms. Just over one-fifth (23%) of firms thought OFR would have no impact, whilst just under one-quarter did not know what the impact on firms would be (24%).

Chart 5.2 Firms' views on the impact of OFR



- A higher proportion of non-high street firms had a positive perception of the likely impact of OFR compared to high street firms, with 38% believing that OFR would be advantageous for firms compared to 27% of high street firms.

	High street firm	Non-high street firm
Impact on firms	%	%
Be advantageous for firms	27	38
Have no impact on firms	30	30
Be disadvantageous for firms	43	32

- Firms serving legally-aided clients were more negative in their views compared to firms not serving this type of client (44%, 33%). Firms deriving 1-49% of their GFI from publicly funded clients were the most likely to consider OFR disadvantageous (47%) compared to firms either not serving legally aided clients (33%) or those firms for whom legal aid clients were their main source of income (40%).

	No legally aided clients	<50% of GFI from legally aided clients	>50% of GFI from legally aided clients
Impact on firms	%	%	%
Be advantageous for firms	36	25	26
Have no impact on firms	30	28	34
Be disadvantageous for firms	33	47	40

5.4.1 Perceptions of OFR

Four hundred and seventy eight representatives commented on how OFR would effect firms. Comments focused on the theory and approach of the new regime, its application and the perceived consequences for firms.

Theory and approach

The most commonly identified advantages of OFR were about its approach. Three main advantages of this approach were identified. The new regime -

- (i) being outcomes rather than rule-based;
- (ii) providing firms with greater flexibility; and
- (iii) being more up to date / forward looking.

(i) Advantages of being outcome focused rather than rule based

Many firms saw the benefit of OFR over the old rules-based approach as being a 'simpler', 'fairer' and 'easier to use' method of regulation. The simplified system was thought to put emphasis 'where it belongs', focusing on 'what everyone wants to achieve rather than the technicalities', 'the effects of actions or inactions rather than rules for rules sake'.

OFR was viewed as more practical and less rigid than the prescriptive rule based system. Rules, firms argued, do not tell the whole story; tick boxes and forms do not adequately reflect the actual job done for the client. One respondent noted the new system would protect firms from complaints, providing evidence that clients had received good service. Complaints as a result, would be dealt with quicker and more cheaply.

The subjectivity of the approach was also thought to be an advantage, allowing senior representatives to use their judgement rather than adopt 'a strict adherence to the rules which may not suit the circumstances of the individual matter'. One hoped the system

'will enable firms to implement a common sense and proportionate approach to risk rather than one which mandated purely by rules which takes no account of the actual risk profile of the individual firms circumstances'.

The ethical requirements of the profession were thought to be maintained through OFR. The profession should work on a value-based system (value principles).

'As a profession run on principles, it should be regulated by principles'.

However, the necessity to change from the rules-based approach was not understood by all firms. The prescriptive rule based approach was valued, making it clear 'what firms could or couldn't do' and these rules have been 'understood by all those it effects'. Representatives noted

'I thought the existing regulatory regime was sufficient to protect the client and ensure compliance by the firm'.

'I would have thought that the public would expect the profession to be rule regulated. And as a PR point may not understand what outcome focussed regulation is'.

'I think there is a terrible modern habit of taking something old and effective and turning it into something new, expensive and unnecessary.'

(ii) More flexible - taking into account firm differences

The greater flexibility and discretion that firms assumed would be given to them to self-regulate was considered one of the main advantages of OFR. Firms valued the prospect of being able to decide for themselves what systems and processes should be implemented to manage risks particular to their firm, rather than having to comply with a system imposed on them. Being able to take into account the 'wider picture', the individual firm's characteristics and its clients, rather than adopting the 'one size fits all' - 'tick box' approach was a valued approach.

'I think that having rules is too prescriptive for all types of firms. Because rules such as those for sole practitioners will not be suitable for a large firm of various partners. So I think that OFR gives flexibility to allow firms to create its own framework of rules'.

'Because it seems more flexible and will treat firms as individual firms rather than pigeon holing them. As a sole practitioner I'm hopeful the new regime will be better for me'.

Being able to adapt ways of compliance in a way that was suitable for firms' business was seen as valuable, allowing firms 'to operate on a more commercial basis'. This was perceived to be of particular value given the economic climate and changing market.

'Law firms like any other business have to survive in this economic down turn and over regulation by the SAR is making that very difficult'.

'The legal industry is changing and regulation needs to change with it. There's a need to open the doors'.

The alternative view was that such flexibility would lead to a lack of clarity and uncertainty as to what was required. A lack of precision in:

- What firms needed to do in order to comply;
- How OFR would be interpreted and measured; and
- How firms would be regulated by the new regime by the SRA.

Compliance was considered easier under the rules-based system as 'rules are clear and lawyers are used to using rules and working within them'. Fixed rules meant that both the public and firms knew 'where they stood'. The new regime was described as 'uncertain', 'wishy-washy', 'vague', 'foggy' and 'woolly'. One respondent commented

'I understand that there are a set of principles and indicative behaviours but I don't know how to express that on every file and if I have to and for example I must always act in the best interests of my client, but my opinion on how I do that maybe different to some else'.

Without a prescribed set of rules, firms felt there was greater scope for disagreement as rules would be open to different interpretations. The new regime was thought to introduce subjectivity and discretion into regulation - the latter, a factor which one representative noted was not consistent with 'the rule of law'.

Firms would have the discretion over how to interpret the regulatory requirements, have to decide whether to 'over manage or to take risks'. The latter, it was feared, would lead to 'poor publicity for the profession'. The SRA would also, firms noted, have discretion in its interpretation of the regulations. Firms commented on the risk of being at the mercy of 'whoever is in charge of the investigation'.

'It means that whoever is in charge of the investigation or complaint will have a completely free hand to decide what is a breach or not so it becomes completely subjective and therefore open to abuse'.

Firms commented that clients would be setting the standards as opposed to there being an objective standard to follow and that this would result in there being a 'constant shifting standard which [solicitors] will have to comply with'. There was concern expressed that outcomes would be hard to measure as 'a good outcome for one client may not be good for another'. Clients' evaluations of the outcome were liable to reflect the end result and not the quality of service they had received. This could, one representative noted, result in 'malicious ex post facto complaints which are based upon the outcome of the case, not the validity of the complaint'.

The retrospective nature of OFR was a theme commented on; firms expressed concern that they might inadvertently act in a non-compliant way and only become aware of the breach, when they are told after the event. In order to avoid circumstances that firms could not anticipate, compliance was said to require a 'crystal ball on the desk' or 'twenty-twenty hindsight'. One firm noted that by focussing only on the end result and not the process the SRA might 'act unfairly against firms who seek to do the right thing, but don't achieve that, despite doing everything right'. Actions which may have seemed reasonable at the time, may be called in to account by the SRA using hindsight. The regulator, it was argued 'would neither know nor understand the pressures which existed at the time of the decision'.

(iii) OFR is up to date and forward looking

Respondents noted OFR would keep both firms and the profession generally up to date. For firms, OFR would encourage the raising of standards, of client care in particular, and would ensure that firms were kept updated and operating modern

procedures. One firm noted that self-regulation meant firms would be relying on their own systems and would not become complacent. OFR was thought to bring the solicitor profession into line with other similar professionals.

'I think we have to move with the times and if we are to provide a service that the public want at cost they like, we must be in line with any organisations giving a like services. It's going to open things up. We've been like old school ties, which now needs to go'

Application

Advantages in the practical application of the new regime were identified as:

OFR being -

- (i) a realistic and practical approach; and
- (ii) simple and easy to use.

(i) A realistic and practical approach

OFR was seen as a more practical, 'down to earth' way of dealing with complaints, 'putting pressure on the owners of firms to do things properly' and making it easier for firms to resolve issues in a more constructive way.

(ii) Simple and easy to use

Perceived benefits of the new handbook included;

- being simpler to follow than the complex set of rules that had developed;
- facilitating a better understanding of what is required, and
- providing clarity in terms of how the rules are to be applied..

The resulting transparency was valued by one firm.

'it will make it more transparent. It means any simple file will be picked up immediately and looked at to find the risk and decide on the outcomes. it is always an advantage to have an easy review of client files'.

The minority view as expressed through the comments¹², was that the regulations were still unclear and that firms did not understand what was required of them.

¹² Although, around half of senior representatives (52%) disagreed with the statement 'The SRA has made it clear how outcomes focused regulation will work in practice'.

Consequences / impact of OFR

Senior representatives predicted the consequences of OFR for firms, the likely positive impacts included,

- (i) improved client satisfaction;
- (ii) decrease in the regulatory burden;
- (iii) an increase in levels of compliance; and
- (iv) a more collaborative approach with the SRA.

(i) Improved client satisfaction

'The key to success is client satisfaction' one senior representative noted. OFR was valued as concentrating on what is important to the client and knowing what individual clients wanted from their solicitor rather than assuming. OFR was viewed as a system which focused on the effect on the consumer, the quality of service and advice given to clients rather than lots of administration and 'a procedural tick boxes'.

'Outcomes are more client focused and we're here to serve the clients. Because I think there will be more clarity between solicitors and clients in relation to possible outcomes of matters and the relationship between solicitors and clients'.

The public perception of the profession may also be improved through the introduction of OFR.

"Because I think that under this new regime we would be able to provide a better service to clients and to others that we deal with . We think that its good for us and the profession. The public will have more confidence in us'.

'Because clients will get better service which means they can trust their lawyers more. They will know the profession is looking into itself to improve the standards'.

Concern was expressed that OFR would devalue the profession, making it more profit orientated rather than a profession that looks after its clients first and foremost. One firm noted the new system did not 'in any way reflect any reality of legal practice' and the tick box approach would have 'no relevance to the protection of the public'.

Another argument was that OFR would favour the client, making law firms 'an easy target for complaints and claims', especially from 'the small number of consumers who are professional or persistent complainers'.

'I think it creates a public expectation of something that solicitors cannot deliver and will result in increased complaints and dissatisfaction. I think many clients will look for any excuse to avoid paying for the services they get from solicitors'.

A number of firms highlighted that the profession is not always in a position to deliver a satisfactory outcome, even when giving a first class service.

(ii) OFR will decrease the regulatory burden

Some representatives perceived OFR as being less onerous, with fewer rules, 'a shorter code', 'less of it', which would mean that less time and administration would be spent on compliance. Firms which had good practice management systems in place would not be faced with 'endless further regulation'.

'I think we will spend less time having to interpret the rules and more time looking at the commercial approach'.

Some respondents commented the new regime would result in increased paperwork, red tape and excessive bureaucracy. Firms were concerned the profession was being unnecessarily regulated, 'over regulated' without any benefit and even, representatives noted, to the detriment of the profession.

'I think the burden gets ever heavier on solicitors, it's just an ever increasing burden, competition abroad, for example India, will not be burdened in the same way'.

'Because its more regulations of things that don't need to be regulated. For instance equality and diversity, we are subject to the same law as others so the SRA do not have to be obsessed by them as its not their problem'.

Respondents considering OFR to be disadvantageous most commonly cited the burden to firms that this new style of regulation would bring. Comments incorporated the time and cost burden as the perception that there is too much regulation. Firms reported the new regime would require additional work; extra time and resource would be required to learn the new principles, review and rewrite existing procedures, to put into place new procedures and ensure the new regime is followed.

'I think it will become burdensome, administratively. It will require excessive record keeping to demonstrate compliance and in particular demonstrating risk management compliance.'

'Because of the huge amount of extra work that is going to be involved in setting up a system that will demonstrate compliance with all the outcomes. We are a niche firm and most of our clients are foreign based and trying to adapt to the procedures, which we have to do to meet the outcomes is going to be extremely time consuming.'

'Because it's going to take up our time when we should be working and it's going to mean that we are constantly having to write everything down and justify everything we are doing [in case we are] judged in hindsight. I think its giving the client too much power to complain about anything'.

One firm commented on the cost of investigations, noting there should be a screening process before firms are put to the considerable effort of an investigation. The additional costs were viewed by many as being without any practical benefit for firms and by some as being disproportionate.

'.. and more importantly the on-going job of monitoring and moving the systems which are wholly disproportionate to the size of our business, the number of staff we employ, the type of work that we undertake and our local client base'.

Time spent on compliance would reduce the time fee-earners spent with clients. The cost of compliance, one firm warned, would be ultimately be passed on to clients through increased fees. The burden was predicted to be felt more by small high street firms, such firms were unlikely to have dedicated compliance departments nor the 'time, money or expertise to fully apply the broad meanings to all situations'.

Small firms would be bound by the same regulatory requirements as large international practices. The 'blanket', the 'one-size fits all' approach it was felt would discriminate against smaller firms. Sole practices it was thought, were likely to go out of business, unable to meet the compliance criteria. There were concerns that the new regime would make it more difficult for small firms to obtain professional indemnity insurance, regardless of their history.

Larger firms and ABSs were perceived as being more likely to benefit from the new approach. The introduction of alternative business structures was perceived by some to be the driver behind the change to OFR rather being introduced to benefit solicitors. An outcomes focussed regime was thought to be better for big businesses planning to enter the market place.

'I am very concerned to ensure that there is a levelled playing field for all providers of legal services and that those with the deepest pockets might benefit in the market place from a less prescriptive code of conduct, and to qualify that, my main concern relates to the details associated with the referral fee and referral arrangements'.

'The whole trend of regulation is not regulating a profession, it's regulating a provider of legal services and therefore the competition with other providers like ABS increases the burden on the professional practice and those who wish to be and act as solicitors'.

(iii) OFR will improve the levels of compliance

Firms hoped OFR would reduce the number of non-compliant firms, allowing the SRA to focus resources on firms requiring 'more stringent regulation'.

'Many firms comply and do not need regulatory visits and therefore resources are better targeted on those firms that do require more attention from the regulators'.

The consistency of compliance was questioned, OFR could result in some firms doing nothing whilst others doing either much more than they needed to or ticking the necessary boxes to demonstrate compliance without applying the necessary consideration.

'The reporting is excessive, the poor firms won't report, good firms will report a lot'.

'[the new system] requires a much greater need for internal monitoring systems to demonstrate compliance as opposed to actual compliance'

(iv) A more collaborative approach with the SRA

The success of OFR was perceived as being dependent on how it was implemented by the SRA. Some firms were more confident in the SRA's ability to deliver than others.

'I am hoping it [OFR] will be advantageous to the profession, I don't yet have faith that it will be [...] I don't have faith in the ability of the SRA during the monitoring to make good judgements as to whether clients have had a good outcome or not'.

'It will be advantageous if the SRA actually adopt the attitude they are expounding. My fear is that they will not change their current confrontational attitude'.

Senior representatives mentioned the relationship firms had with the SRA may improve moving to a 'partnership approach'. One representative hoped the system

would result in 'less direct supervision', which would allow firms to work more effectively.

'I think it will help firms work with the SRA to instil clear practice and procedure and help with the understanding of the regulation as opposed to simply being penalised for a breach of the rules'.

Chapter Five highlights

- The vast majority of firms were aware of the forthcoming move to outcomes focused regulation in October 2011.
- OFR was an approach welcomed by 56% of firms. However a similar proportion (52%) were concerned that the new style of regulation would leave them open to retrospective regulation by the SRA.
- Around half of senior representatives (53%) reported their firm had gained a better understanding of the OFR requirements through reading SRA documentation, attending road shows or participating in online seminars. Almost one quarter of firms indicated this was something they planned to do in the future.
- One-fifth of firms reported they had done nothing to prepare for the move to OFR. Of these, over half thought the SRA had not yet made it clear how OFR would work in practice, perhaps suggesting that the lack of action was as a result of not knowing what actions were required rather than a belief that existing practices would suffice.
- Firms were almost equally split in their views on the impact of OFR, with one-quarter of firms perceiving OFR to be advantageous to firms and a similar proportion reporting OFR was likely to be disadvantageous (28%). Just under one-quarter (23%) thought OFR would have no impact on firms and about one-quarter did not know what the impact of OFR would be.
- Firms perceiving OFR as advantageous thought the new regime
 - put the emphasis where it belonged, on the client,
 - was more flexible, enabling them to decide for themselves how best to manage risk,
 - was more practical and easier to use,
 - would improve client satisfaction, decrease the administrative burden; and
 - lead to higher levels of compliance and a more collaborative way of working with the SRA.
- Firms considering OFR to be disadvantageous were concerned that
 - the flexibility introduced uncertainty, firms were not sure what need needed to be done in order to comply, how principles would be interpreted or measured or how they would be regulated by the SRA.
 - firms would be open to retrospective regulatory action by the SRA and that additional work would be required in order to demonstrate compliance.
 - the administrative burden would increase;
 - OFR would favour larger practices and ABS's
 - would not necessarily protect clients.

6.0 Conclusion

The regulatory performance survey sought to capture firms' views and experiences of the SRA and regulation with six main objectives in mind.

- i. To provide an overview of the perceptions of senior decision makers within firms on how the profession is regulated
- ii. To gain insight through firms' views on the operational efficiency of the regulator
- iii. To identify the effect of regulation on firms
- iv. To measure of how prepared firms are for the change to outcomes focused regulation
- v. To provide a benchmark from which to measure any change in firms' experience of regulation after the introduction of outcomes focused regulation.
- vi. To provide a basis upon which to track and compare the effectiveness of regulation over time.

An overview of perceptions of senior decision makers

A higher proportion of senior representatives expressed a view about the SRA's performance against its objectives compared to 2009. Firms were again, mainly positive in their views on the SRA's performance against its objectives, with a higher proportion of firms giving the SRA a 'good' rating on each of its four objectives compared to 2009. This was also reflected in significantly higher average scores. Firms were also positive in their evaluation of visits to firms being a proportionate way for the SRA to protect the profession's reputation (70% agreed) and albeit not to the same extent, that the enforcement procedure was perceived as a credible deterrent and was being used in a way that better protects the consumer (57%).

However, on more practical statements, the profession was far from positive. Around three-quarters of firms agreed the current regulatory system places too great a burden on law firms (76%) and three-fifths of firms (57%) believed the SRA's information requirements to be excessive. Only half of senior representatives thought the SRA operated fairly in its contact with firms. Views were more negative than positive in relation to the SRA knowing and understanding risk, showing an understanding of the diversity amongst firms, listening to industry views when deciding policies and procedures and giving value for money against regulatory fees. Increases in the proportion of firms giving a neutral response suggests firms were more indifferent in their views compared to 2009.

The operational efficiency of the SRA

Firms' overall satisfaction with the SRA remained neutral (5.9 out of ten), eighty percent of firms reported the relationship had remained the same over the previous two years. An improvement was identified in the ease of dealing with the SRA, average scores increasing from 5.6 in 2009 to 5.8 in 2011. As in 2009, firms' experiences of the SRA at a personal level, through the Ethics Helpline or through visits from the Practice Standards Unit were largely positive, although the proportion of respondents reporting Ethics Helpline staff referred callers back to the rules without the desired application to the problem remained high. Firms were more equivocal about their experiences of disciplinary investigations particularly in relation to the SRA's action being proportionate, the time taken to complete the investigation and staff's willingness to discuss the findings of the investigation. A higher proportion of firms in 2011 had been made aware of the reasons prompting the investigation compared to 2009.

The effect of regulation

As noted above, a high proportion of firms agreed that the current rules based regime places too great a burden on law firms (76% agreed) and that the information requirements were considered excessive (57% agreed). The costs of compliance, the cost of compliance staff, fee earner time spent on compliance, IT systems, documentation, CPD and staff training for example, were seen as excessive by 39% of firms, high - but not excessive by 32% and reasonable by just 26% of firms. Firms were more negative than positive in relation to the firm fee and individual PC fee representing value for money. The cost to the SRA of regulating the profession was seen as transparent by just one third of firms (34%). Half of firms agreed that compliance costs were harmful to their business, a higher proportion than found in 2009. Firms in 2011 were less likely to be planning to reduce the range of legal services provided or turning away clients purely because of the associated paperwork, but twice as likely to be planning to close down or merge compared to their counterparts in 2009.

Preparation for Outcomes Focused Regulation

The vast majority of representatives (88%) reported awareness of the SRA's plan to move to OFR in October 2011. Just twelve percent of firms were unaware of the change. The shift towards OFR from a rule based approach was welcomed by over half of firms (56%). Over half of firms were concerned, however, that the new regime would leave them open to retrospective regulatory action and a similar proportion of firms thought the SRA had not made it clear how OFR would work in practice. Half of firms had already gained a better understanding of the requirements of OFR through reading key SRA documentation, attending road shows or participating in online seminars (53%) and about one quarter of firms still planned on doing the same (24%). The next most frequently cited action taken by firms to prepare was to introduce new risk management systems (34%), this was followed by firms implementing regular client surveys (28%).

Views of Outcomes Focused Regulation

Views on the likely impact of OFR on law firms were almost equally mixed - with one-quarter perceiving OFR to be advantageous for firms, 28% that OFR is likely to be disadvantageous, 23% predicting no impact and 24% not knowing what the impact might be. The flexibility of the new approach was seen by some as advantage, enabling firms to decide themselves what systems to put in place in order to manage risk. For others, it was a disadvantage, introducing uncertainty into regulation, with firms not knowing what they needed to do in order to comply, how OFR would be interpreted and measured and how firms would be regulated under the new regime. Firms commented on how the regime would be applied, some considered OFR to be a more realistic, practical and easy to use approach, others considered it burdensome and difficult to understand. Proponents of OFR predicted the new approach would lead to improved client satisfaction, a decrease in the regulatory burden, increased levels of compliance and a better working relationship with the SRA. For those perceiving the move to OFR as a disadvantage, the likely results were an increased regulatory burden and benefits for large firms and ABSs at the cost of small, high street practices and clients.

Change

Compared to previous sweeps of the regulatory performance survey, firms in 2011 appeared to be more indifferent towards the SRA. Average ratings for the main remained static or where there was change, if such was mostly a result of a larger proportion of firms giving a neutral score (rather than 'don't know') and a decline in negative scores as opposed to an increase in the proportion giving the SRA a positive rating.