



The Law Society

Regulatory performance survey Winter 2012-13



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Regulatory Performance of the SRA

Executive Summary

Since 2007 the Law Society has conducted a biennial survey on the regulatory performance of the Solicitors Regulation Authority (SRA). In anticipation of the introduction of Outcomes-focused Regulation (OFR) in October 2011, the 2011 survey measured the profession's views of regulation under the existing rules based approach and invited firms to participate in a further survey, a year after the new regime had been in operation, in order to identify change, if any, in firms' experiences and views of regulation. The survey in winter 2012-13 was completed by 1,001 firms, 712 firms from the 2011 survey and 289 randomly selected firms.

As in previous survey sweeps, the overall aims of the survey were to gather

- 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 benchmark from which to measure firms' views and experience of OFR
- v. 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 lower than in 2011, ranging between 5.4 (for administering the regulatory process) and 6.2 out of ten (for upholding the rule of law), representing significant decreases on 2011 scores. The largest increases in the proportions of firms giving the SRA a 'good' (7-10 point) rating were found in relation to the SRA's performance in setting standards of behaviour and providing the right degree of protection for consumers.
- Firms' views on the enforcement procedure were more positive under OFR compared to the rules-based regime. A higher proportion of firms in 2012 than in 2011 agreed that the SRA's enforcement procedure is understood by the industry as credible deterrent and that it is being used in a way that serves to better protect the consumer.
- The vast majority of senior representatives in 2012 (86%) agreed that the current regulatory system (OFR) places too great a burden on law firms, a significant increase on the 77% in 2011 under the rules-based regime. Correspondingly, the proportion of firms agreeing that the responsibilities of firms' senior management are reasonable dropped from 56% in 2011 to 44% in 2012.
- Firms' satisfaction with how the SRA handles enforcement remained neutral in 2012 although average scores represented a small (but not statistically significant) decrease on 2011 ratings. The proportion of firms rating the SRA's performance in handling enforcement as 'poor' was the lowest it had been since the survey began, however, almost half (48%) of firms gave a 'neutral' response and 13% did not answer the question.

- Firms in 2012 were significantly less likely than firms in 2011 to agree that the SRA places responsibilities on firms' senior representatives which are reasonable and that the SRA listens to industry views when deciding policy and procedures.

Experiences of regulation

- Average satisfaction with firms' relationship with the SRA was neutral (5.3 out of ten), a small decline on the 5.9 ratings in the 2011 survey. For the main (75%), this relationship had stayed the same since October 2011, for 9% the relationship had improved and 14% reported that the relationship had deteriorated.
- Average satisfaction with ease of dealing with the SRA was again neutral (5.0 out of ten), representing a decline on average ratings in 2011 (5.9). The majority of firms (63%) stated that the ease of dealing with the SRA had remained the same since the introduction of OFR. One-fifth of respondents noted that the ease of dealing with the regulator had deteriorated, and 15% reported that dealing with the SRA had improved.
- Average satisfaction scores for the service provided by the Ethics Helpline (6.8 out of ten) and for the advice and guidance provided (6.7) were both higher than overall satisfaction with the SRA, but were down on helpline ratings in 2011.
- The views of investigated firms were more positive than negative in relation to the investigation
 - being fair;
 - staff being willing to discuss compliance issues;
 - staff justifying decisions.
 - Taking an outcomes focused approach
 Investigated firms were more likely to hold mixed views on;
 - the SRA taking proportionate action;
 - staff being willing to discuss the findings of the investigation.
- Investigated firms in 2012 were most negative about the time taken to complete the investigation, with just one-third agreeing that the time taken had been reasonable.
- A smaller proportion of investigated firms in 2012 than in 2011 had been made aware of the reasons prompting the investigation, 70% compared to 85% in 2011.

Costs and impacts

- Almost half of firms (47%) in 2012 considered the internal costs of compliance to be excessive, an increase on the 39% of firms in 2011. The Practising Certificate (PC) fee and Firm Charge were considered as being value for money by less than two-fifths of firms (39% and 30% respectively).
- In 2012, less than two-fifths of firms (38%) thought the costs to the SRA of regulating the profession were made transparent.

- In 2012, 40% of firms took on trainees, a proportion that had remained stable since 2009. Around three-fifths of firms agreed that the benefits of offering training contracts are outweighed by the costs.
- The proportion of firms agreeing that the costs of compliance are harmful to their business increased from 42% in 2009 to 58% in 2012.
- The majority of firms (81%) reported that compliance obligations over the previous year have resulted in an increasing administrative burden for fee-earners, a significant increase on both 2011 and 2009 figures. The proportion of firms reporting that they were turning away clients, reducing the range of legal services or planning to close down or merge remained stable since 2009.

Outcomes-focused Regulation

- Around two-thirds of firms in 2012 reported that under OFR
 - compliance costs were higher
 - compliance was more difficult than under the old rules based regime.
- Around half of firms reported having the same approach to risk under the new regime as under the rules based approach. 47% of firms had a more cautious approach to risk. 90% of all firms had a formal risk management policy.
- A year after the introduction of OFR firms were far less welcoming of the approach. Prior to October 2011, 56% had welcomed the approach, compared to 35% of firms after a year of it being in operation.
- The proportion of firms concerned that the new approach would leave them open to retrospective regulation from the SRA remained stable, just over half of firms in both 2011 and 2012 surveys expressed this concern.
- Almost three-fifths of firms (58%) reported that the SRA had not made it clear how OFR works in practice, up on the 51% of firms in 2011. Firms which did not think the SRA had made it clear how OFR works in practice were more likely to be concerned that OFR leaves them open to retrospective regulation. This may suggest that once firms are aware of how OFR works in practice (the relationship between supervision and enforcement) and not just about what the requirements from firms are, such concerns may be alleviated.
- Firms' views of the impact of the new regime on their own business had been equally mixed in 2011, around a quarter of firms reported OFR to be advantageous (25%), have no impact (23%), be disadvantageous (28%) or didn't know (24%) what the impact would be. A year after its introduction views were more varied. Two-fifths of firms in 2012 considered the new approach to be disadvantageous contrasted to 28% in 2011. The proportion of firms reporting the new regulations would have the same impact on firms increased from 23% in 2011 to 32% in 2012.
- The comments of firms considering the new regime to be disadvantageous predominately related to the uncertainty of the new approach. The most

frequently cited concern was that the principles could be open to different interpretations which would be judged retrospectively by the regulator. The approach was considered to be more burdensome in terms of the amount of extra administration required and the time and costs of compliance.

- Firms considering the new approach to be advantageous said that it had made firms more aware and focused on regulation and risk, at firm and at individual solicitor level. That focus on clients' needs had improved under the new regime with firms able to be more flexible in choosing how they comply, taking into account the sophistication of client.
- Panel firms were generally less likely to have given 'neutral' responses compared to non-panel firms, suggesting that participation in the 2011 survey may have influenced views.

1.0 Introduction

Since the Solicitors Regulation Authority (SRA) was formally established in 2007, the Law Society, has monitored the views of the profession on the effectiveness of its regulator. A panel survey was designed to measure views before the introduction of Outcomes-focused Regulation (OFR) and then 18 months later, with the same firms. A panel approach was adopted to ensure that any differences, (if found), could be confidently associated with changes to the regulatory regime, rather than to differences in the firms taking part.

This report presents the findings of survey on regulatory performance conducted during Winter 2012-13, and is based on responses from 712 firms surveyed in 2011 and 289 firms randomly selected to replace non-responders from the 2011 panel.

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 benchmark from which to measure firms' views and experience of OFR.
- v. A basis upon which to track and compare the effectiveness of regulation over time.

About the new regulatory regime

The objectives of OFR are to deliver:

- Flexibility by avoiding prescriptive rules – whilst making it clear what it is that firms must achieve for their clients
- An approach that encourages firms to achieve the right outcomes for their clients and encourages firms to be open and honest in their dealings with the SRA
- Regulation that is targeted at potential risks to consumers, the public and the regulatory objectives
- Enforcement action that is prompt, proportionate and creates a credible deterrent¹.

Rather than having to comply with a set of prescriptive rules (as under the previous rules-based approach), under OFR firms are required to comply with the Code of Conduct, (now in its sixth iteration), which has been written in the form of mandatory outcomes and non-mandatory indicative behaviours. Firms have to identify, manage and mitigate risks to their ability to meeting the requirements of the Handbook.

Context

Firms' views on regulation in 2012 are based on a regulatory regime in its early stages of implementation. The introduction and embedding of a number of functions and activities are likely to have an impact on how firms experience OFR in the future. For example:

- The roles of Compliance Officers for Legal Practices (COLPs) and Compliance Officers for Finance and Administration (COFAs) are unlikely to

¹ Solicitors Regulation Authority, *Measuring the impact of Outcomes-focused Regulation (OFR) on firms* (February 2013)

have been embedded across all firms, suggesting that current responsibility for day-to-day compliance is primarily with senior members of the firm².

- The 'Information Capture Form', a fundamental component of the SRA's approach to risk management, which was to be the principle way in which the SRA was to collect and record intelligence about the regulated community had not as yet, been rolled out due to recruitment difficulties and IT delays. This might have an impact on the nature, complexity and volume of information required from firms by the SRA in the future.
- The implementation of 'r-view', the SRAs new risk assessment system by the Risk Centre had not been communicated to the profession. Once operational this will further assist the Risk Centre in identifying specific trends through the examination of relevant evidence which is used to determine supervisory policy. How this is or will be translated into enforcement is unclear at present³. Future communication with the profession about how risks are to be identified and dealt with in practice may assist in addressing concerns that the OFR brings uncertainty.

About the analysis

Comparisons were made between the following different groupings of firms in order to establish whether or not views varied by certain traits. Only statistically significant differences⁴ between groups are highlighted in the 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, those describing themselves as 'City', 'Large Provincial' firms or 'Niche' firms as well as 'Other' types of firm (for example 'office at home', 'medium size provincial', 'small city firm').
- Size of firm: as in 2011, 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.

Significant differences in the responses by panel firms compared to other firms are also highlighted in the report. Panel firms were generally less likely than other firms to have given a neutral response, suggesting that participation in the 2011 may have influenced views.

Where possible figures for all respondents in the 2011 and 2012 surveys are reported to present the views of a representative sample of firms at each respective point in time. Where question wording has been consistent between questionnaires (key benchmarking questions), data from the 2009 and 2007 sweeps are also reported. Slight differences between figures reported here and those published previously are the result of more advanced software being applied to weighted samples.

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

² Future sweeps of the regulatory performance survey may need to be addressed to COLPs, as it is this role which will have the most frequent and detailed interaction with the regulator.

³ Legal Standards Board, *Developing Regulatory Standards, An assessment of the Solicitors Regulation Authority*, (February 2013) p17

⁴ Statistically significant differences are those which we can be sure are not due to chance alone. Confidence intervals for statements across the whole sample in this survey are +/- 2.94% at the 95% confidence level.

comparing groups however, only those cases providing answers were included in order to facilitate the process of statistical calculation.

Report outline

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

- An overview of firms' views of SRA performance is provided in section 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 section 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 and investigations.
- Section four outlines firms' views of the costs and impact of compliance with regulation.
- Section five reports on firms' views and experiences of OFR in particular.

2.0 SRA performance - an overview

Senior representatives were asked a series of questions around the SRA's performance against its objectives (as reported in 2011⁵), their views on the principles of regulation and on the general effectiveness of the SRA.

2.1 SRA performance against purpose

As in the previous sweeps the regulatory performance survey attempted to measure the views of firms' decision makers about the SRA's performance against its stated purposes, as stated in 2011.

'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'.

Objectives relating to these purposes were measured a scale on one to ten, with one being the most negative and ten being the most positive⁶. Scores across all statements in 2012 remained neutral. Having been slightly more positive toward the SRA on all objectives in 2011 compared to 2009, firms' ratings of the SRA's performance in 2012 returned to 2009 levels in relation to promoting and securing standards and securing the right degree of protection for consumers.

With the exception of upholding the rule of law, mean average scores for 2012 were significantly lower than 2011 ratings.

Table 2.1: Average ratings for SRA Objectives

	Mean score (1-10)		
	2009 (n=1,000)	2011 (n=1,001)	2012 (n=1,001)
Upholding the rule of law	5.99	6.30	6.18
Securing the right degree of protection for the consumer	5.95	6.31	5.84
Setting standards of behaviour	6.07	6.35	5.81
Promoting and securing standards of behaviour	5.81	6.10	5.77
Administering the regulatory process	N/A	N/A	5.42

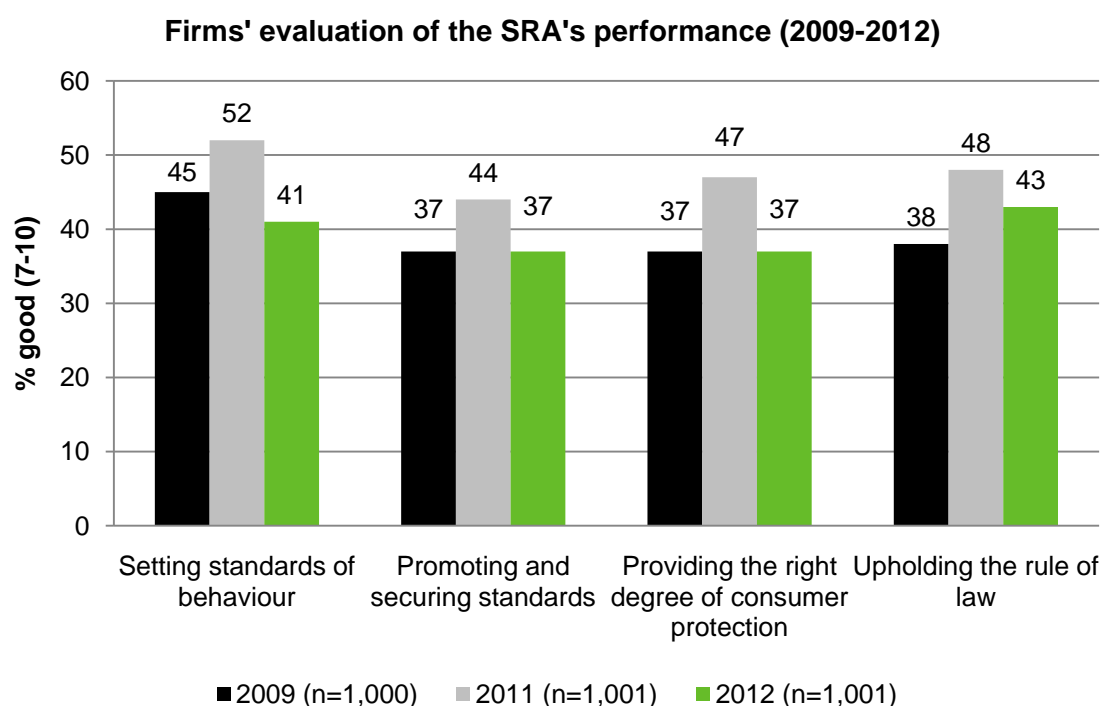
⁵ Since 2011 the SRA have outlined a more detailed list of objectives, which can be found at <http://www.sra.org.uk/strategy/>

⁶ The 1-10 scores have been categorised into three, scores 1-3 are 'poor', 4-6 are 'neutral' and 7-10 are 'good'.

As Chart 2.1 illustrates, less than half of firms in 2012 rated the SRA's performance as being 'good' (a 7-10 rating) in the case of each objective. The largest changes between responses in 2011 and 2012 were in relation to scores for the SRA's performance in setting standards of behaviour (9 percentage point decrease) and in providing the right degree of protection for the consumer (a 10 percentage point decrease on 2011 figures).

For each objective 'poor' ratings (a 1-3 rating) remained very much a minority view with around ten percent giving a low rating for each statement, however across all statements a larger proportion of firms gave a 'poor' rating in 2012 compared to firms in 2011.

Chart 2.1



Weighted by size of firm

Panel perspective

Panel member's responses only differed to those of non-panel member firms in relation to the SRA setting standards of behaviour, with a higher proportion of panel firms giving a 'poor' rating (17%) compared to non-panel members (11%) and a smaller proportion giving a 'good' rating, 40% compared to 49% of non-panel members.

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.

The vast majority of respondents reported that the current regulatory regime (OFR) places too great a burden on law firms (86%) a significant increase on the 76% of respondents evaluating the burden of the rules based approach in 2011. Reducing the burden of regulation on firms was viewed as the most important issue for the SRA to address as the regulator of law firms.

'I think the most important issue is the over burden of regulation and administration and it's increasing the overhead and it's not serving a useful purpose'.

(5-10 partner firm, high street)

'Continually making of rules and new roles within firms which takes [us away] from practising law'.

(2-4 partner firm, high street)

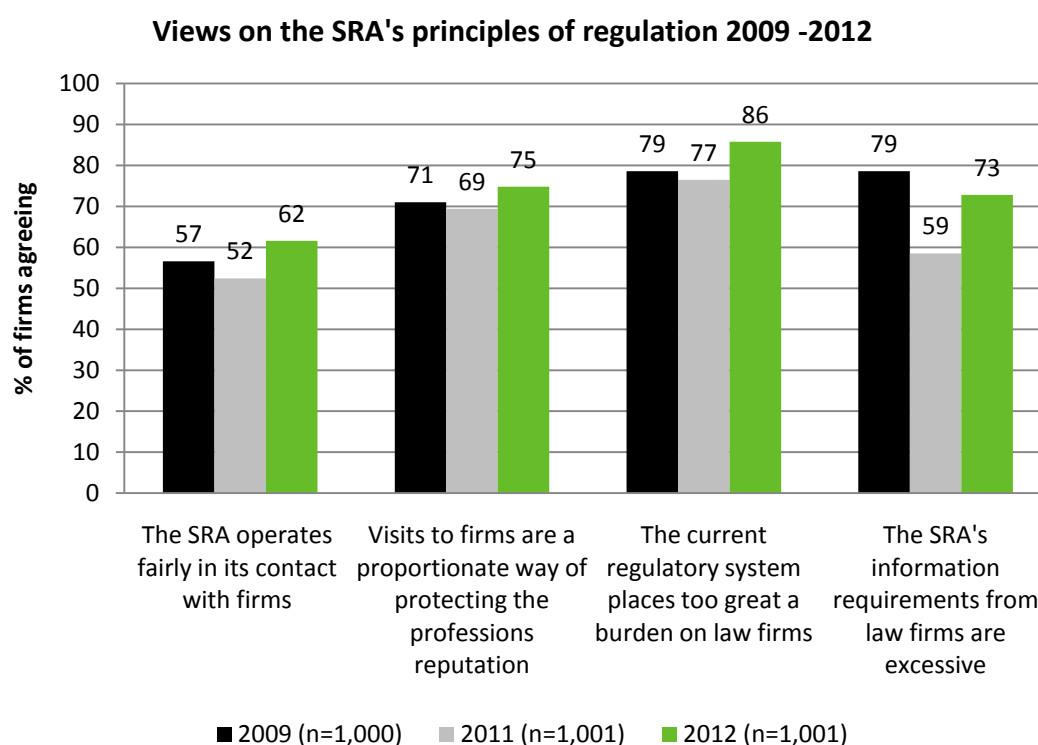
'That law firms are businesses and unless we are able to make money then there is no business. The SRA need to remove all the red tapes that are in the way that is a hindrance there. If we do not make money and do not have a business then they do not have a business either'.

(2-4 partners, high street)

Around three-quarters of respondents (73%) in 2012 considered the SRA's information requirements to be excessive, representing a notable increase on the 59% of respondents prior to the introduction of OFR in 2011, but a decrease on the 79% of respondents in 2009, under the rules based approach.

Respondents' views were more positive under the new regime in relation to whether the SRA operates fairly in its contact with firms (62%) and the proportionality of firm visits in protecting the professions reputation (75%); in both cases a higher proportion of firms in 2012 agreed compared to firms in 2011.

Chart 2.2



Weighted by size of firm

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

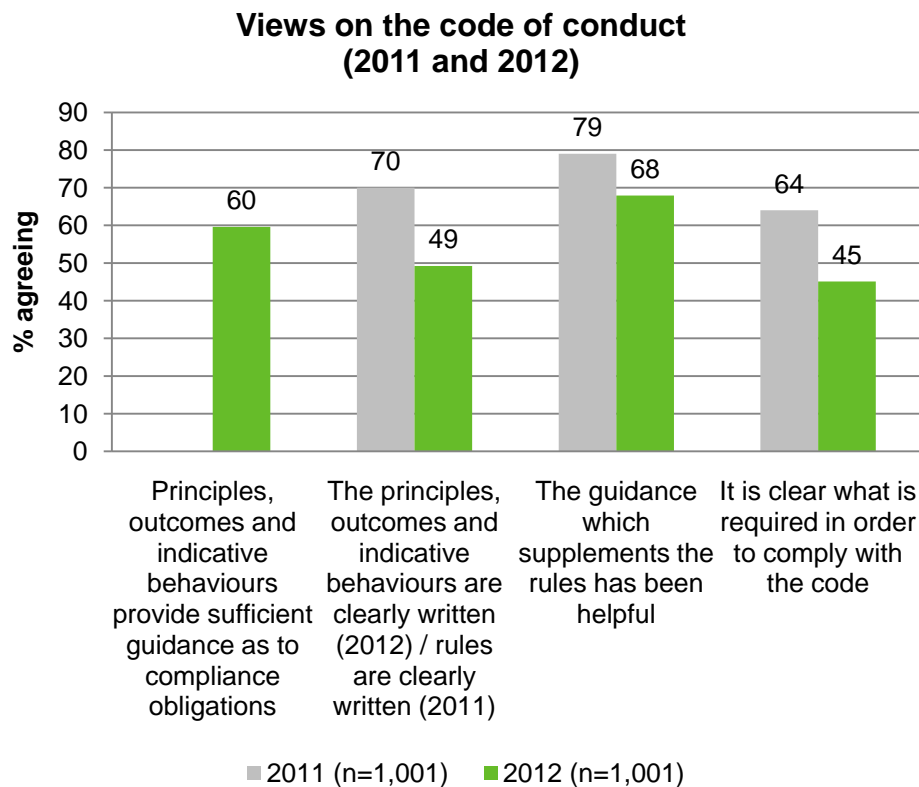
In 2012, almost three-quarters of firms had consulted the Solicitors' Code of Conduct within the past month (72%), a significant increase on the 65% reported in 2011.

Prior to the introduction of OFR (2009 and 2011 survey sweeps) feedback on the Code overall had been very positive. The vast majority (84%) of firms in 2011 had reported that the professional principles underpinning the rules were clear and almost two-thirds (64%) of firms in 2011 indicated that it was clear what was required in order to comply with the code.

After a year under OFR, views were less positive. Fewer firms considered the principles, outcomes and indicative behaviours to be clearly written or found the supplementary guidance useful. Under half of firms in 2012 (45%) indicated that it is clear what is required in order to comply with the code⁷.

⁷ Now in its sixth iteration since its introduction in October 2011.

Chart 2.3⁸



Weighted by size of firm

Firms' views differed in relation to the statements above by firm size.

- Small firms were typically more positive. Firms with five or fewer solicitors were more likely than medium (6-40 solicitors) and large (41+ solicitors) firms to agree that it is clear what is required in order to comply with the code. Almost half of small firms agreed (48%) compared to 37% of medium sized firms and 35% of the larger practices.
- Similarly, a higher proportion of medium and large firms were negative in relation to the principles, outcomes and indicative behaviours providing sufficient guidance as to compliance obligations; 58% of medium sized firms and 60% of large practices disagreed compared to 47% of small firms.
- Large firms were less likely to agree with the SRA's guidance supplementing the rules being helpful; 48% of large firms agreed, compared to 71% of small firms and 63% of medium sized firms.

Panel perspective

Panel members were more negative towards the code of conduct than non-panel firms across all statements. Of those panel members agreeing to the statements in 2011,

- 35% now disagreed that the rules were clearly written

⁸ Firms in 2011 were not asked about whether or not 'Principles, outcomes and indicative behaviours provide sufficient guidance as to compliance obligations'.

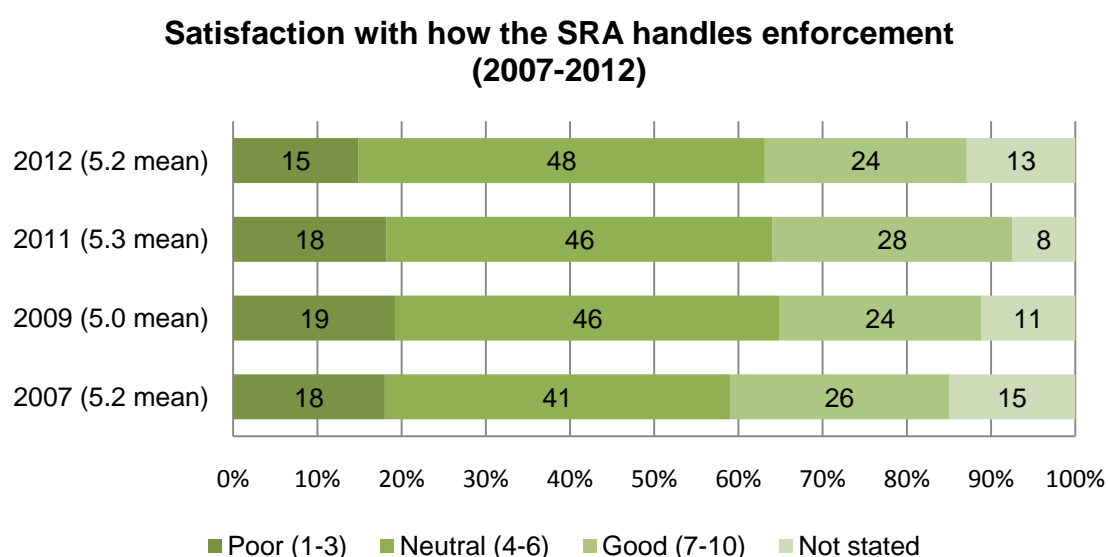
- 26% now disagreed that the guidance supplementing the rules have been helpful, and
- 52% of firms in 2012 disagreed that it is clear what is required in order to comply with the code.

2.3.2 Opinions on enforcement

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

Average satisfaction ratings with how the SRA have handled enforcement have remained stable since 2011, with no significant changes in the average ratings between 2011 and 2012.

Chart 2.4



Weighted by size of firm

Panel perspective

Panel members had lower average satisfaction ratings compared to non-panel members and were less likely to give a 'good' response (25%) compared to non-panel members (34%).

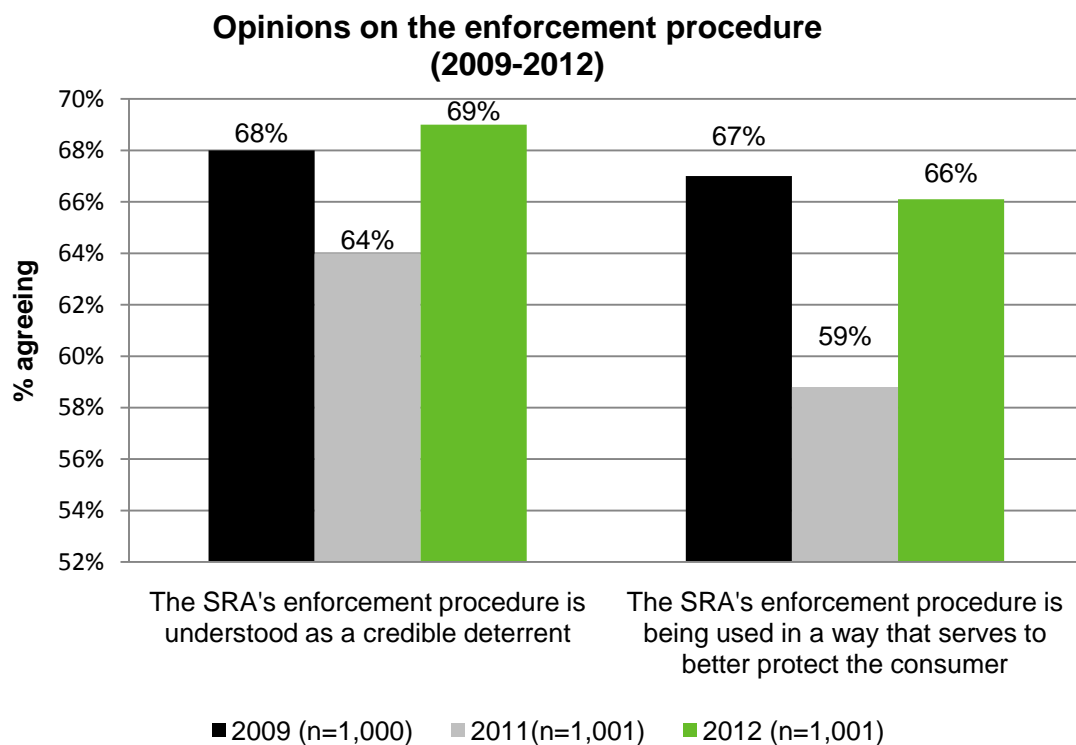
2.3.3 The enforcement procedure

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

In 2012, around two-thirds of firms agreed that the enforcement procedure is understood by the industry as a credible deterrent (69%) and that the SRA's enforcement procedure is being used in a way that serves to better protect the consumer (66%). The proportion of firms agreeing to the statements in 2012 was higher than in 2011, but about the same as in 2009. However, respondents in 2012 were more polarised in their views, with significantly smaller proportions giving neutral responses compared to 2011.

Chart 2.5



Weighted by size of firm

2.3.4 Views on the general effectiveness of the SRA

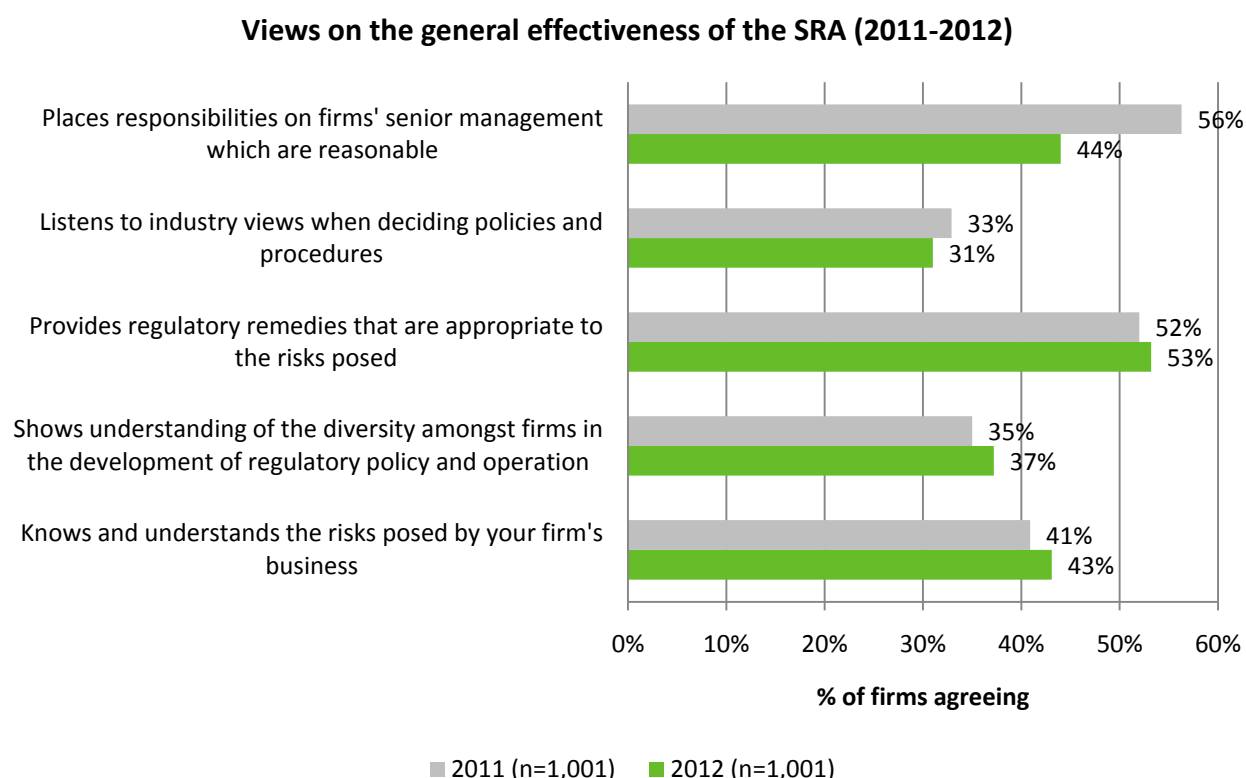
Firms were asked to rate the extent to which they agreed or disagreed with a number of statements in relation to general effectiveness of the SRA. Only in relation to the SRA providing regulatory remedies appropriate to the risks posed did more firms agree than disagree. Firms were more negative than positive against all other statements.

Firms in 2012 were significantly less likely than firms in 2011 to agree that the SRA

- places responsibilities on firms' senior representatives which are reasonable⁹
- listens to industry views when deciding policies and procedures.

Firms in 2012 were more polarised in their views compared to firms in 2011 across all other statements. Similar proportions of firms agreed to each statement in 2011 and 2012, but significantly smaller proportions in 2012 gave neutral responses.

Chart 2.6



Weighted by size of firm

Group comparisons revealed differences in responses by firm size.

- Large firms were more likely to agree that the responsibilities the SRA places on firms' senior management are reasonable; 64% of large practices agreed to the statement compared to 46% of small firms and 38% of medium sized firms. Larger firms are more likely than small and medium sized firms to have

⁹ It will be interesting to note what the impact of the introduction of Compliance Officers for Legal Practices (COLPs) and Compliance Officers for Finance and Administration (COFAs) will be on responses to this statement in future sweeps, once the roles have become well established.

dedicated compliance staff, and thus are able to delegate compliance responsibilities.

Panel perspective

Panel membership impacted on responses to three out of the five statements. Panel members were more polarised than others in their views in relation to the SRA knowing and understanding the risks posed by firm's businesses and providing regulatory remedies appropriate to the risks posed. Panel firms were also more likely to disagree that the responsibilities placed on senior management are reasonable; 57% of panel members agreed compared to 49% of non-panel members.

Section Two highlights

- Average ratings for SRA's performance against its four objectives were lower than in 2011, ranging between 5.4 (for administering the regulatory process) and 6.1 out of ten (for upholding the rule of law), representing significant decreases on 2011 scores. The largest increases in the proportions of firms giving the SRA a 'good' (7-10 point) rating were found in relation to the SRA's performance in setting standards of behaviour and providing the right degree of protection for consumers.
- Firms' views on the enforcement procedure were more positive under OFR compared to the rules-based regime. A higher proportion of firms in 2012 than in 2011 agreed that the SRA's enforcement procedure is understood by the industry as credible deterrent and that it is being used in a way that serves to better protect the consumer.
- The vast majority of firms in 2012 (86%) agreed that the current regulatory system (OFR) places too great a burden on law firms, a significant increase on the 77% in 2011 under the rules-based regime. Correspondingly, the proportion of firms agreeing that the responsibilities of firms' senior management are reasonable dropped from 56% in 2011 to 44% in 2012.
- Firms' satisfaction with how the SRA handles enforcement remained neutral in 2012, although average scores represented a small (but not statistically significant) decrease on 2011 ratings. The proportion of firms rating the SRA's performance in handling enforcement as 'poor' was the lowest it had been since the survey began, however, almost half (48%) of firms gave a 'neutral' response and 13% did not answer the question.
- Firms in 2012 were significantly less likely than firms in 2011 to agree that the SRA places responsibilities on firms' senior representatives which are reasonable and that the SRA listens to industry views when deciding policy and procedures.

3.0 Experiences of regulation

The 2012 survey collected data on the different types and methods of contact with the SRA. Firms' experiences of regulation were explored by capturing their ratings of overall satisfaction with their relationship with the SRA, and, where relevant, their views of key services, the Ethics Helpline and experiences of a disciplinary investigation.

3.1 Contact with the SRA

One quarter of firm representatives had last spoken to someone at the SRA (other than for renewal enquiries) within the previous month (at the time of the survey) and half had been in contact with the SRA within the previous six months. These figures are comparable to levels of contact recorded in the 2011 survey.

Table 3.1: Last spoke to someone at the SRA

Contact with the SRA	Number (unweighted)	% of all firms (weighted) (n=1,001)
Within the last week	82	8%
Within the last month	189	18%
Within the last 6 months	265	26%
6 to 12 months ago	131	13%
1 to 2 years ago	147	15%
Longer than 2 years	72	8%
Never	100	11%
Don't know	15	1%
Total	1001	100%

Firms which did not consider themselves to have a SRA Relationship Manager were asked whether their firm or partner had experienced different kinds of contact with the SRA and how that contact was made¹⁰. Contact by the SRA was most commonly made for the purposes of gathering information; 17% of firms had experience of this type of contact, (primarily via email). Seven percent of firms had been contacted about a complaint and in almost half of such instances this contact had been made by letter (46%). Contact was made with 5% of firms in relation to an event or an occurrence at the firm. Around two-fifths of firms found the feedback from the contact helpful.

Table 3.2: Mode of contact with the SRA

Type of contact with the SRA	% of firms with contact (weighted) (In brackets, unweighted number of firms)	Modes of contact (weighted % within contact type)					Weighted % of firms finding feedback helpful (7-10)
		Phone	Letter	Email	Face- to- face	Don't know	
Contact about a complaint	7% (92)	33%	46%	43%	4%	2%	36%

¹⁰ In the piloting of the survey it was found that it was not appropriate to ask the same set of questions dealing with contact to managed firms as the nature of the relationship and the reasons for contact differed.

Contact about an event / occurrence at the firm	5% (41*)	42%	40%	49%	8%	0%	42%
Contact about a theme	3% (33*)	15%	36%	48%	24%	0%	36%
Contact to gather information	17% (145)	19%	18%	69%	8%	1%	N/A

*Caution, low valid counts

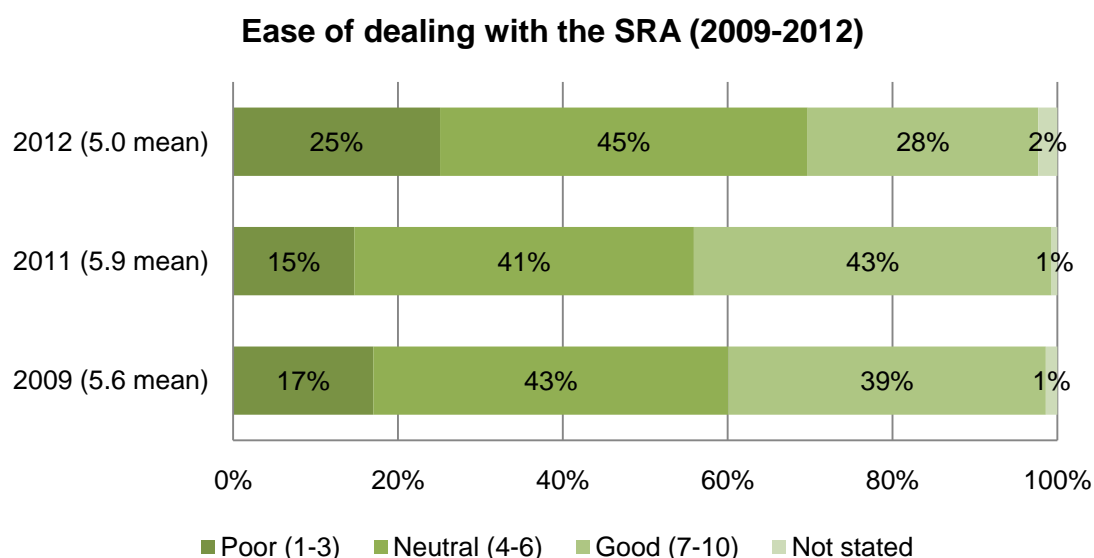
In 2011, firms which had had face-to-face contact with the SRA were asked a series of questions to evaluate the approach and understanding of staff (see supervision section in 2011 report), however, 2012 levels of face-to-face contact were too low to support analysis of these findings.

3.1.2 Satisfaction with the ease of dealing with the SRA

In 2012, the average satisfaction rating for ease of dealing with the SRA remained 'neutral' at 5.0, but represented a significant decline on the 5.9 scored in 2011. More firms in 2012 rated ease of dealing with the regulator as 'poor' than in any other sweep of the survey, 25% compared to 15% in 2011 and 17% in 2009.

Correspondingly, satisfaction dropped from 43% in 2011 to 28% in 2012. The difficulties experienced by firms in the 2011 Practising Certificate renewal process, the first year of online renewals with 'My SRA' may go some way in explaining this. Sixty-five percent of those rating ease of dealing with the SRA as 'poor' had also rated the SRA's performance of administering the regulatory process as 'poor'.

Chart 3.1



Weighted by size of firm

When asked whether the ease of dealing with the SRA had changed since the introduction of OFR, nearly two-thirds of firms (63%) stated that the ease of dealing with the SRA had stayed the same. One-fifth of respondents noted that the ease of dealing with the regulator had deteriorated, 15% reported that dealing with the SRA had improved, whilst 2% percent were unable respond.

Panel perspective

Of the 556 panel members providing ratings in both 2011 and 2012 surveys, those rating the ease of dealing with the regulator as 'poor' in 2011 had experienced the most change since October 2011.

- Around half (53%) of this group reported that ease of dealing with the regulator had remained poor,
- 9% had registered an improvement, whilst
- 39% thought that the ease of dealing with the regulator had deteriorated.

A quarter of panel firms giving a 'neutral' rating in 2011 and just under one-fifth (17%) of panel firms giving a 'good' rating reported that ease of contact had deteriorated.

Table 3.3: Change in the ease of dealing with the regulator under OFR (panel firms)

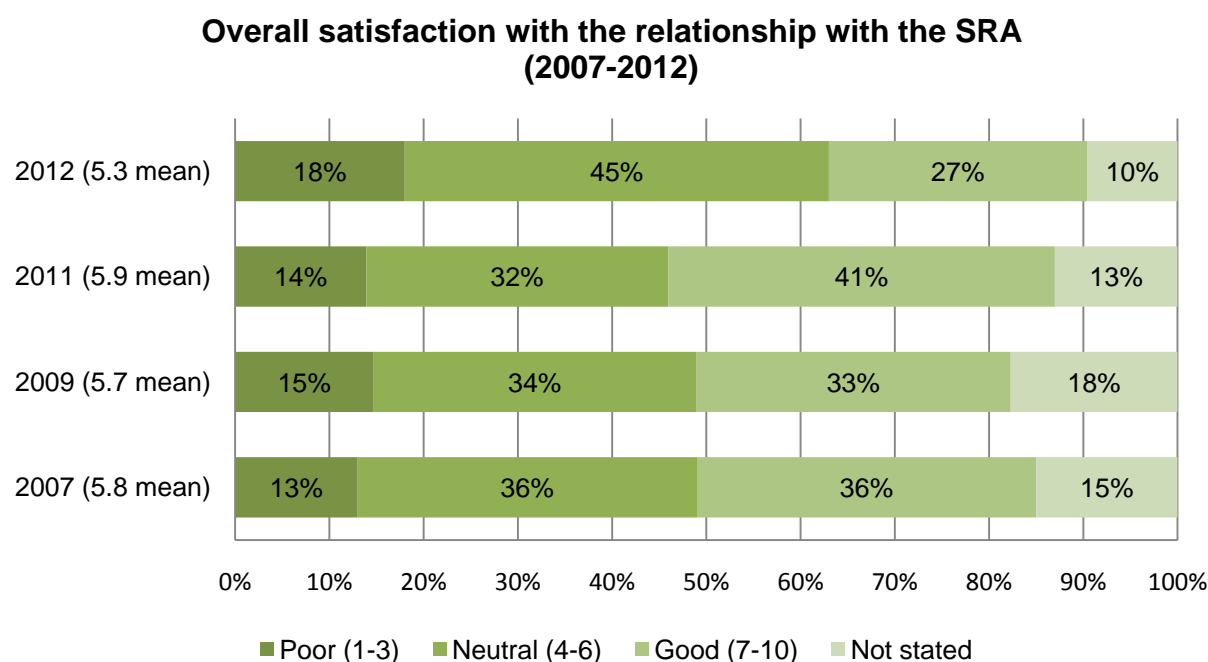
Change under OFR	Overall satisfaction with ease of dealing with regulator from the 2011 survey		
	% 'poor' (n=80)	% 'neutral' (n=224)	% 'good' (n=252)
Improved	9%	14%	22%
Stayed the same	53%	61%	62%
Deteriorated	39%	25%	17%

3.2 Relationship with the SRA

In 2012, 27% of firms were satisfied with their relationship with the SRA, the lowest proportion since the benchmarking survey began in 2007. Correspondingly the average satisfaction rating dropped significantly from 5.9 in 2011 to 5.3 in 2012. Changes were most likely attributable to the large increase in 'neutral' responses, rather than 'poor' ratings which increased four percentage points over the period.

When asked in what way the firm's relationship with the SRA had changed under OFR, the majority of firms (75%) reported that their relationship had stayed the same, 9% reported their relationship had improved whilst 14% reported a deterioration (2% did not know).

Chart 3.2



Weighted by size of firm

- As in previous sweeps, levels of reported satisfaction with the relationship between firms and the SRA have been more positive amongst smaller firms.

Table 3.4: Firms' satisfaction with their relationship with the SRA, by size of firm (2012)

	Average mean score	% of firms size rating relationship as good
Small (n=506)	6.03	42%
Medium (n=353)	5.36	30%
Large (n=59)	5.36	29%

Panel perspective

Of those panel members who in 2011 rated their relationship with the SRA as being 'poor',

- 65% reported that under OFR this relationship had remained the same,
- 28% of these firms considered the relationship to have deteriorate, and

- 7% stated that the relationship had improved.
- Of firms giving a neutral rating in 2011,
 - 75% indicated that the relationship had remained the same under OFR,
 - 16% that the relationship had deteriorated, and
 - 9% said that it had improved.

Table 3.5: Changes in relationship with the SRA under OFR (panel firms)

Change under OFR	Overall satisfaction with the SRA from the 2011 survey		
	% 'poor' (n=89)	% 'neutral' (n=206)	% 'good' (n=264)
Improved	7%	9%	12%
Stayed the same	65%	75%	78%
Deteriorated	28%	16%	10%

3.3 The Ethics Helpline

Around half of respondents (49%) had contacted the Ethics Helpline since October 2011¹¹. Around one-third of users had used the Helpline within the previous month and 82% within the previous six months to the survey.

Table 3.6: Use of the Ethics Helpline

Last contacted Helpline	Number of firms (unweighted)	% of firms contacting helpline (n=497)
Within the last week	47	9%
Within the last month	127	23%
Within the last 6 month	237	50%
6 to 12 months ago	75	15%
1 to 2 years ago	10	3%
Don't know	1	0%

The mean satisfaction score for the service provided by the Helpline, as in previous years, was better than for overall satisfaction with the SRA, at 6.8 out of ten. This represents a significant decline on 2011 ratings, but is the same rating as given in the 2009 survey. Similarly, mean satisfaction scores for the guidance and advice received from the Helpline returned to 2009 levels at 6.7 out of ten.

Table 3.7: Satisfaction ratings of the Ethics Helpline (2009-2012)

Year of survey	Mean satisfaction rating for service (1-10 scale)	Mean satisfaction rating for guidance and advice (1-10 scale)
2009	6.8	6.7
2011	7.3	7.0
2012	6.8	6.7

Sixty percent of users of the Helpline were satisfied (7-10 rating) with the service in 2012, compared to 71% of users in 2011. The remaining respondents were more likely to give a 'neutral' (4-6 rating) (30%) than a 'dissatisfied' (1-3 rating) (10%) rating.

In 2012, 57% of users rated being satisfied with the advice and guidance they received from the Ethics Helpline, representing a significant decrease on the 67% of firms satisfied in 2011.

¹¹ Down on the 65% of users in the 2011 survey.

3.4 Experiences of disciplinary investigation

Just five percent of firms had had some experience of a disciplinary investigation since the new style of regulation had been introduced.

Investigated 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 (although notably a quarter of respondents gave a 'don't know/no answer' and a negative response suggesting a degree of uncertainty as to what an outcome focused approach might be in practice).

and more evenly split with regard to

- Taking proportionate action;
- Willing to discuss the findings of the investigation.

Firms were most negative about the time taken to complete the investigation with just one-third agreeing that the time taken was reasonable.

Chart 3.3



Weighted by size of firm

A smaller proportion of investigated firms in 2012 (70%) reported that the reasons prompting the investigation had been made clear to them, 85% of investigated firms in 2011 had been made aware of the reasons.

Section Three highlights

- Average satisfaction with firms' relationship with the SRA was neutral (5.3 out of ten), a small decline on the 5.9 ratings in the 2011 survey. For the main (75%), this relationship had stayed the same since October 2011, for 9% the relationship had improved and 14% reported that the relationship had deteriorated.
- Average satisfaction with ease of dealing with the SRA was again neutral (5.0 out of ten), representing a decline on average ratings in 2011 (5.9). The majority of firms (63%) stated that the ease of dealing with the SRA had remained the same since the introduction of OFR. One-fifth of respondents noted that the ease of dealing with the regulator had deteriorated, and 15% reported that dealing with the SRA had improved.
- Average satisfaction scores for the service provided by the Ethics Helpline (6.8 out of ten) and for the advice and guidance provided (6.7) were both higher than overall satisfaction with the SRA, but were down on ratings in 2011.
- The views of investigated firms were more positive than negative in relation to the investigation
 - being fair;
 - staff being willing to discuss compliance issues;
 - staff justifying decisions.
 - Taking an outcomes focused approachInvestigated firms were more likely to hold mixed views on;
 - the SRA taking proportionate action;
 - staff being willing to discuss the findings of the investigation.
- Investigated firms in 2012 were most negative about the time taken to complete the investigation, with just one-third agreeing that the time taken had been reasonable.
- A smaller proportion of investigated firms in 2012 than in 2011 had been made aware of the reasons prompting the investigation, 70% compared to 85% in 2011.

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 costs¹² of compliance were viewed as excessive;
- whether the costs to the SRA of regulating firms are made transparent;
- the extent to which the Practising Certificate (PC) fee represents value for money; and
- the extent to which the firm charge represents value for money.

A significantly higher proportion of firms in 2012 than in 2011 considered, given the size and nature of their business and their level of risk, the internal costs of compliance to be excessive: 47% of firms in 2012 considered compliance costs excessive compared to 39% in 2011 (and 37% in 2009). The proportion of firms considering internal compliance costs to be reasonable decreased from 27% in 2011 to 18% in 2012.

Table 4.1: Evaluation of internal compliance costs (2009-2012)

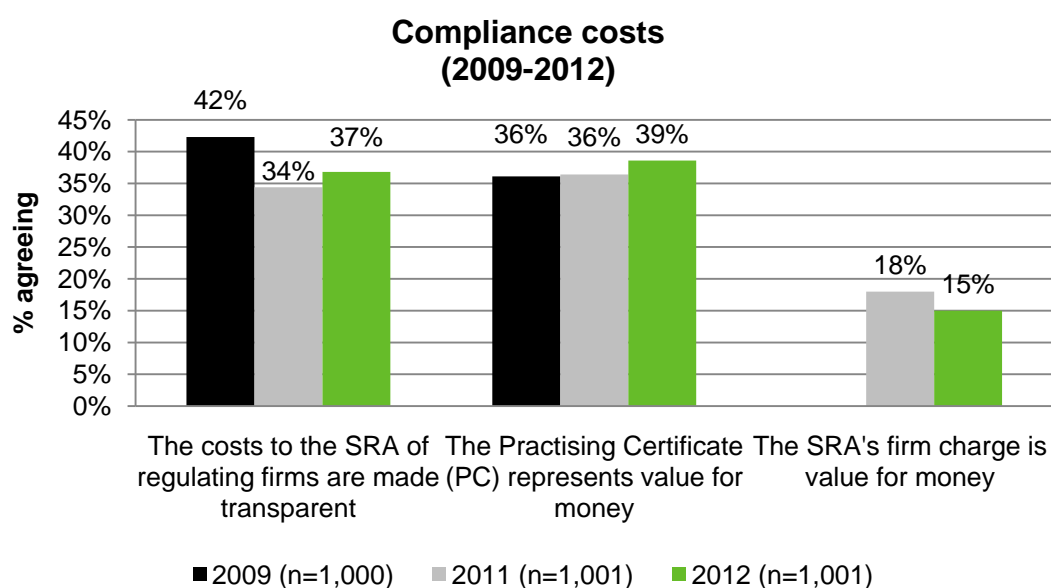
	Weighted % of firm in 2009 (n=1,000)	Weighted % of firms in 2011 (n=1,001)	Weighted % of firms in 2012 (n=1,001)
Internal costs are excessive	37%	39%	47%
They are high, but not excessive	35%	32%	33%
They are reasonable	26%	27%	18%
Don't know	2%	3%	2%

As Chart 4.1 illustrates, the proportion of firms agreeing that the PC fee is value for money had remained stable since 2009. Fewer firms in 2012 (15%) considered the SRA firms' charge to be reasonable compared 18% in 2011. Views as to whether the costs to the SRA of regulating firms are transparent¹³ were more varied, over half of firms in 2012 disagreeing (54%), compared to 49% in 2011 and 47% in 2009.

¹² 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.

¹³ The SRA's website provides information on fees required and how these sums are allocated to the relevant bodies (SRA (51%), Law Society (24%), Leo/LSB (19%), SDT (3%) and contingency fund (3%) at <http://www.sra.org.uk/mysra/fees/fee-policy-2012-2013.page> and a top level breakdown of SRA spend is provided in the SRA's Annual Report <http://www.sra.org.uk/sra/how-we-work/reports/ofr-beyond.page>

Chart 4.1



Weighted by size of firm

Responses differed in relation to size of firm.

- Over half of medium sized firms viewed internal compliance costs as excessive (54%) compared to 47% of smaller firms and 33% of the larger practices. The prevailing view amongst larger firms was that internal costs were high, but were not excessive. Twenty percent of small practices considered internal compliance costs to be reasonable, compared to 16% of large practices and 13% of medium sized firms.

Table 4.2: Evaluation of internal compliance costs, by size of firm

	Weighted % of small firms (n=551)	Weighted % of medium firms (n=373)	Weighted % of large firms (n=61)
Internal costs are excessive	47%	54%	33%
They are high, but not excessive	33%	33%	51%
They are reasonable	20%	13%	16%

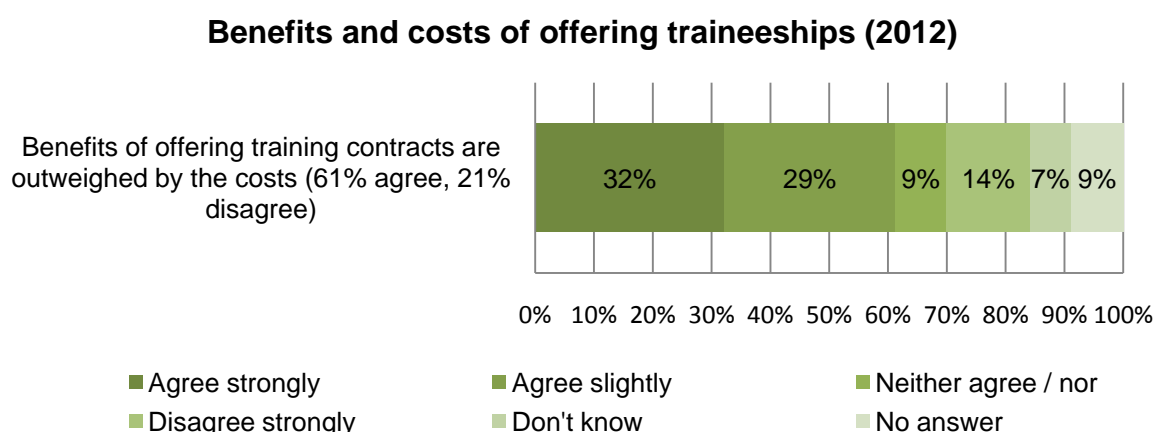
- Larger practices were more likely to give a neutral and less likely to give a negative response compared to smaller firms in relation to the PC representing value for money.

4.2 Training contract costs

Forty percent of representatives in 2012 indicated their firm took on trainee solicitors, a proportion remaining stable since 2009.

Similar to 2011, firms taking on trainees were more negative than positive in their views of whether the benefits of offering training contracts are outweighed by the costs. 61% of all firms in 2012 agreed that the benefits are outweighed by the costs. Firms not taking on trainees tended to be more neutral in their views compared to those firms with trainees.

Chart 4.2

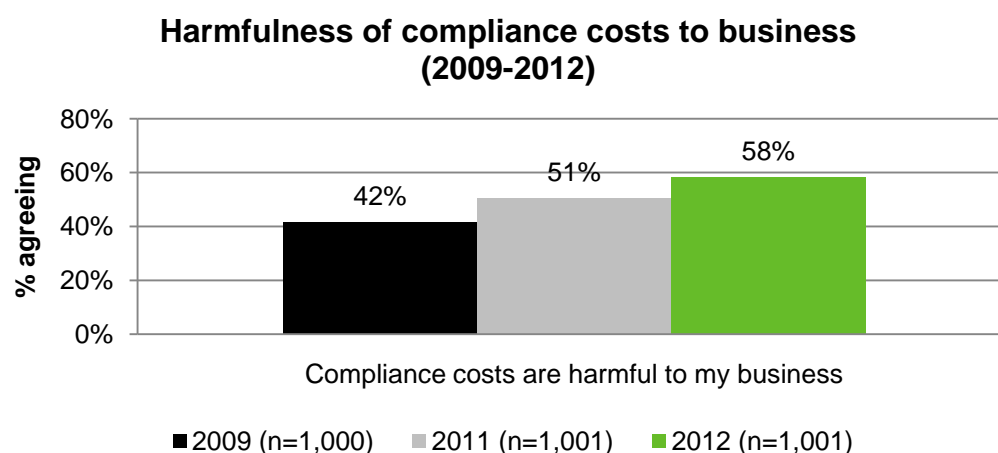


Base=1,001 Weighted by size of firm

4.3 The harmfulness of compliance costs to business

Firms in 2012 were significantly more likely than in previous survey sweeps to report that compliance costs were harmful to their business¹⁴. Almost three-fifths of firms, irrespective of size, agreed that costs were harmful (58%) in 2012 compared to 51% in 2011 and 42% in 2009.

Chart 4.3



Weighted by size of firm

¹⁴ This could also be a reflection of the current economic climate.

Views only differed in relation to type of firm.

- High street firms (63%) were more likely than other types of firm (53%) to agree that the costs of compliance are harmful to their business.

Panel perspective

A higher proportion of panel members reported that compliance costs were harmful to their business, 61% compared to 52% of non-panel firms.

Table 4.3: Compliance costs being harmful to business (panel firms only)

	Weighted % of panel firms (n=709)	Weighted % of non-panel firms (n=286)
Agree	61%	52%
Neutral	3%	5%
Disagree	36%	42%

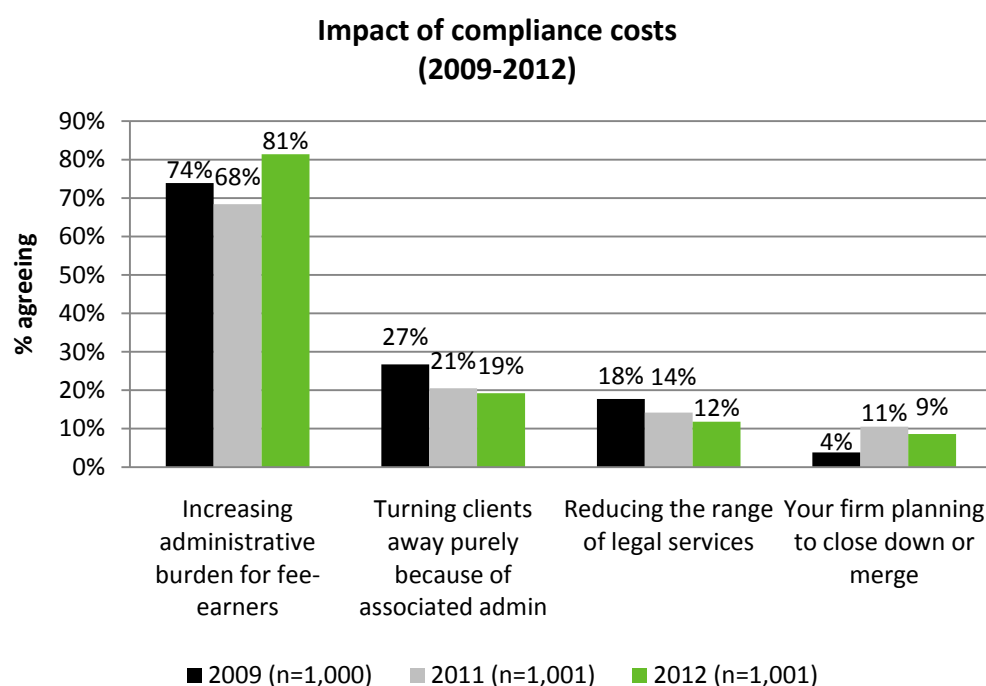
4.4 Impact of compliance costs and obligations

The majority of firms (81%) reported that compliance obligations over the previous year had resulted in an increase in the administrative burden for its fee-earners, a significant increase on both 2011 (68%) and 2009 (74%) figures. It will be interesting to see to what extent, if at all, these views change as the roles of COLPs and COFAs are embedded within each firm.

A similar proportion of firms in 2012 as in 2011 planned to

- turn away clients purely because of the associated admin (19% compared to 21% of firms in 2011);
- reduce the range of legal services provided (12% contrasted to 14% of firms in 2011); or
- close down or merge (11% compared to 9% of firms in 2011).

Chart 4.4



Weighted by size of firm

Views on the impact of compliance costs were found to vary with type and size of firm.

- Across all statements high street firms were more likely than other types of firms to report each impact due to compliance costs.
 - reduced range of services (15% compared to 9% of non-high street firms);
 - plans to close down/merge (11% contrasted to 6% of non-high street firms); or
 - turn clients down due to admin (23% compared to 15% of non-high street firms).
- A higher proportion of small firms reported they would reduce the range of services they provided (13%) compared to 8% of medium firms and just 5% of the larger practices.

Section Four highlights

- Almost half of firms (47%) in 2012 considered the internal costs of compliance to be excessive, an increase on the 39% of firms in 2011. The PC fee and Firm Charge were considered as being value for money by less than two-fifths of firms (39% and 30%).
- In 2012, less than two-fifths of firms (38%) thought the costs to the SRA of regulating the profession were made transparent.
- Forty percent of firms took on trainees, a proportion that had remained stable since 2009. Around three-fifths of those firms agreed that the benefits of offering training contracts are outweighed by the costs.
- The proportion of firms agreeing that the costs of compliance are harmful to their business increased from 42% in 2009 to 58% in 2012.
- The majority of firms (81%) reported that compliance obligations over the previous year have resulted in an increasing administrative burden for fee-earners, a significant increase on both 2011 and 2009 figures. The proportion of firms reporting that they were turning away clients, reducing the range of legal services or planning to close down or merge remained stable.

5.0 Experiences and views of OFR

Firms' experiences of OFR were measured using a set of questions about

- compliance costs under the new regime,
- the ease of compliance,
- firms' views and concerns in relation to OFR, and
- any changes in firms' approach to risk.

5.1 The cost of compliance under OFR

Sixty percent of firms reported that the costs of OFR were higher than under the old regime, 31% considered the costs to be about the same and just 3% indicated that costs under the new regime were lower (six percent did not answer the question). Given the requirements for firms to fund an extra two roles (Compliance Officers for Legal Practice (COLPS) and Compliance Officers for Finance and Administration (COFAs) this finding is unsurprising.

The majority view was that compliance costs were higher than under the old regime, however, smaller firms more likely to think compliance costs were comparable under the two regimes: 35% of small firms found compliance costs comparable compared to 24% of both medium and large firms.

Table 5.1: Compliance costs under OFR compared to rules based approach, by size of firm

	Weighted % of small firms (n=526)	Weighted % of medium firms (n=358)	Weighted % of large firms (n=59)
Higher than under the old regime	61%	75%	75%
About the same	35%	24%	24%
Lower than under the old regime	4%	1%	2%

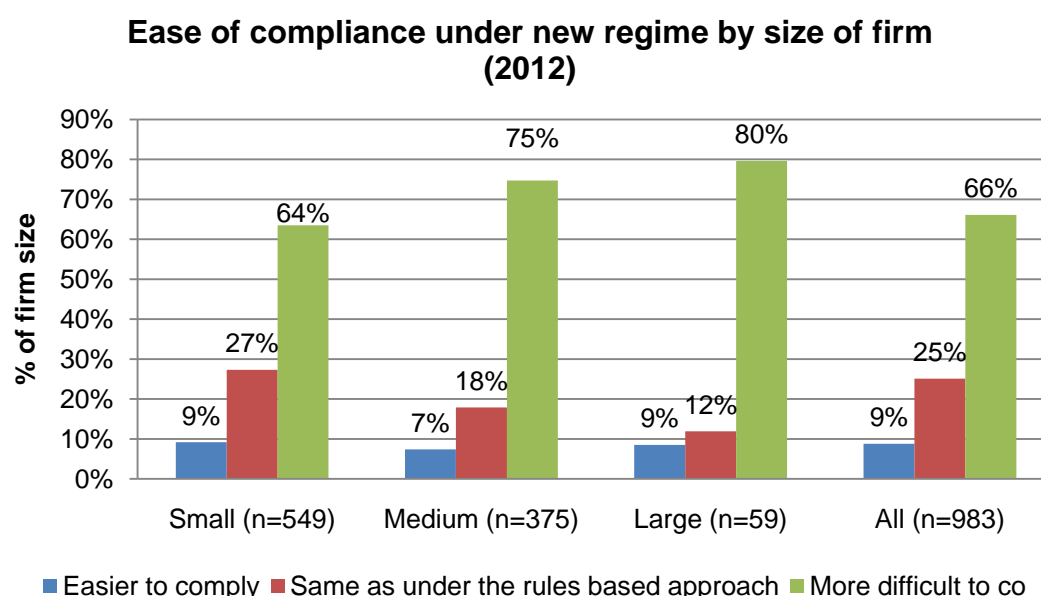
5.2 Ease of compliance under OFR

Two-thirds (66%) of all firms reported that compliance under OFR was more difficult than under the rules based regime, 25% indicated ease of compliance was about the same whilst 9% thought that compliance had got more difficult.

Views on the ease of compliance varied only in relation to firm size.

- Views on the ease of compliance varied with size of firm, with smaller practices being more likely than the larger firms to find compliance under the new regime the same as under the rules based approach (27%). Correspondingly, around two-thirds of small practices (64%) found compliance more difficult under the OFR less than the 75% of medium sized firm and 80% of the larger practices.

Chart 5.1



Weighted by size of firm

5.3 Approach to risk

Ninety percent of firms in 2012 had a formal risk management policy in place.

Around half of firms (52%) considered themselves to have the same approach to risk as under the rules based regime, whilst 47% reported having a more cautious approach to risk under OFR. Less than 1% of firms reported having a less cautious approach to risk, less than 1% of respondents could not answer the question.

- A higher proportion of high street firms reported a more cautious approach to risk (57%) under the new regime, compared to 37% of other types of practices.

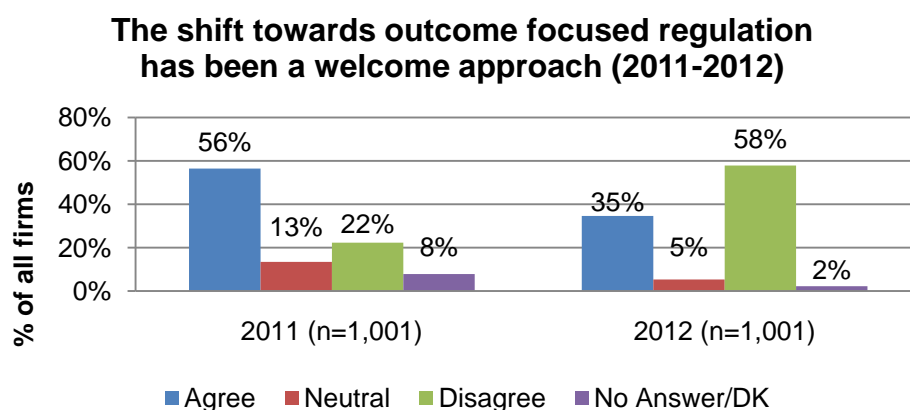
5.4 Views on OFR

The vast majority (88%) of senior representatives in the 2011 survey had been aware of the changes to regulation being introduced by the SRA in October 2011 and about half (53%) had made efforts to gain a better understanding of the new requirements. Around three-quarters of firms in the 2012 research indicated that they had either read SRA documentation, attended SRA road shows or had participated in online seminars specifically on OFR.

A welcomed approach?

Prior to the introduction of the new regulatory regime, 56% of firms agreed to the statement 'the shift towards outcome focused regulation is a welcome approach'. Firms in 2012 were far less receptive with 35% of firms agreeing with the statement and 58% disagreeing that the approach was welcomed.

Chart 5.2



Weighted by size of firm

Open to retrospective regulation

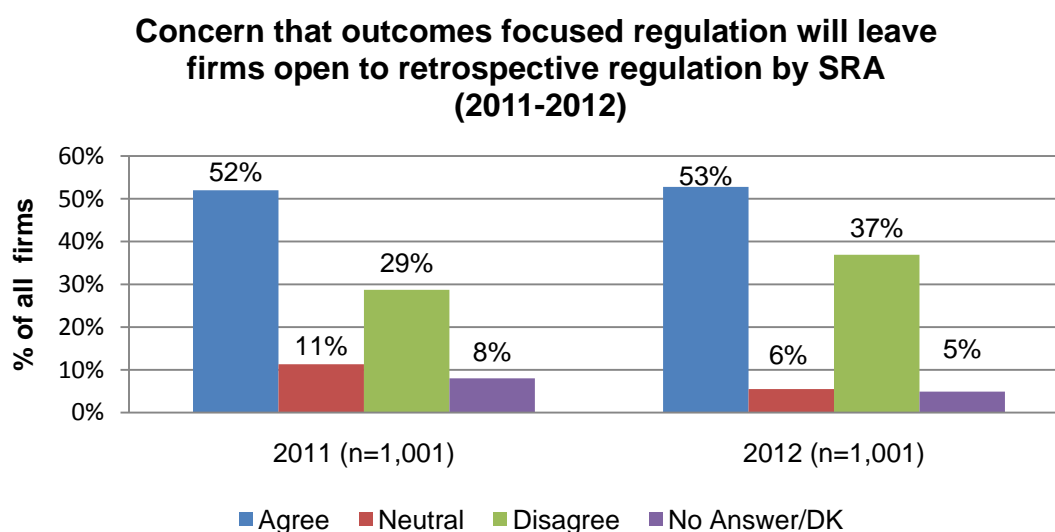
A similar proportion of firms in 2011 and 2012 were concerned that OFR would leave them open to retrospective regulation (52% and 53% respectively), although a higher proportion of firms in 2012 disagreed compared to 2011 (37% compared to 29% in 2011).

'You feel nervous that your actions are going to be put under a microscope with benefit of hindsight and highlight issues which could not have been foreseen at the time'.

(5-10 partner firm, high street)

Firms reporting concern about being retrospectively regulated were more likely to have disagreed with the statement 'The SRA have made it clear how OFR works in practice' (67% contrasted to 47% of those not concerned). This may suggest that once firms are aware of how OFR works in practice (the relationship between supervision and enforcement) and not just about what the requirements from firms are, such concerns may be alleviated.

Chart 5.3



Weighted by size of firm

This was a concern expressed by high street firms and medium sized firms in particular.

- A higher proportion of high street firms (60%) compared to 50% of other types of firms were concerned about being left open to retrospective regulation;
- Medium sized firms were more likely to agree, 65% contrasted to 53% of small and 48% of large firms.

Panel perspective

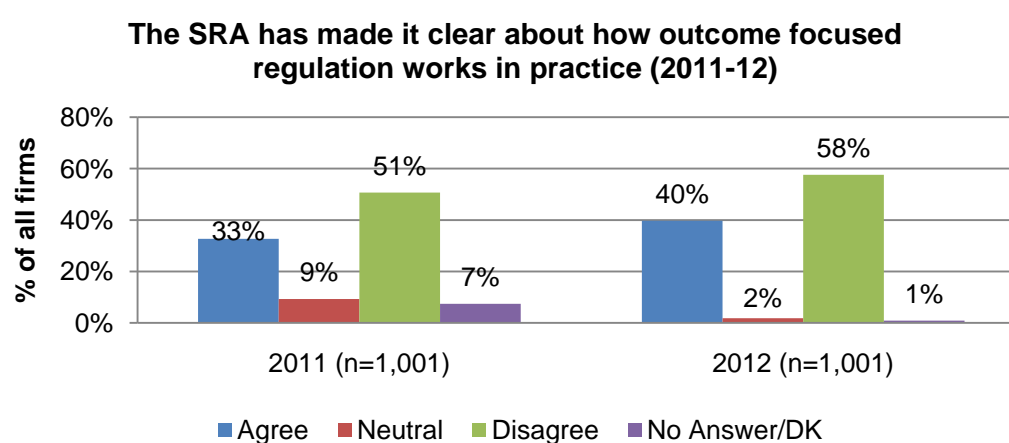
Panel members were more polarised in their views, with a higher proportion of panel members agreeing that this was a concern.

SRA clear about how OFR works in practice

The majority of firms did not think the SRA had been clear about how the new regulatory regime worked in practice. Firms were more polarised in their views in 2012 compared to 2011. Views did not vary by any of the key groups.

'Previously established attitudes have been laid open to doubt and often it is not possible to determine from reading the code of conduct, what the position now is. It is more difficult to cascade the understanding of the code into the less qualified or less skilled members of the firm'.
(5-10 partner firm, high street)

Chart 5.4



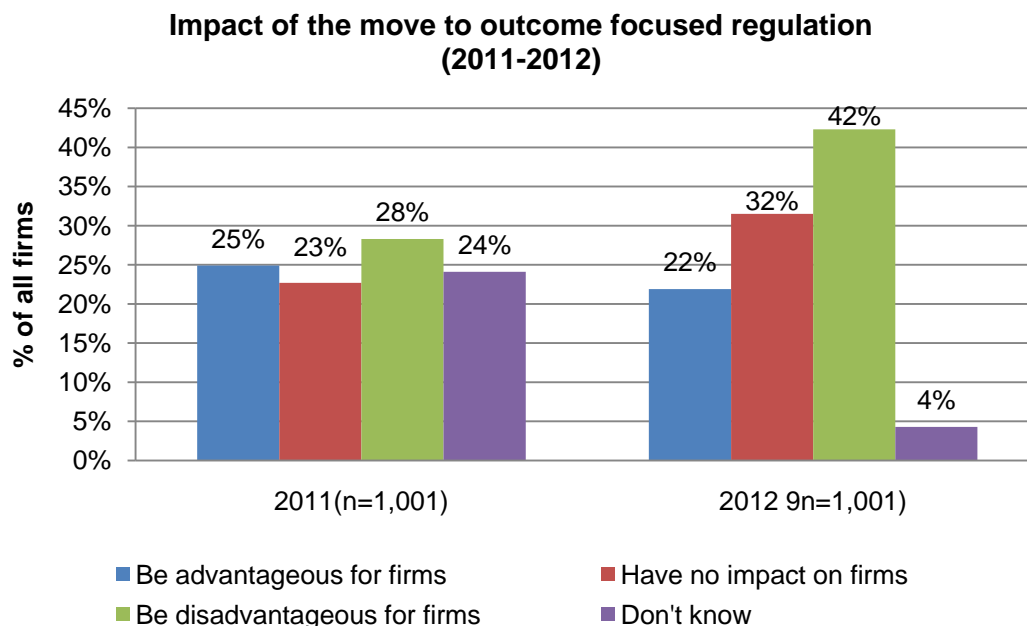
Weighted by size of firm

5.5 Impact of OFR

As noted above, OFR was considered to be more burdensome, more expensive and more difficult to comply with than the rules based regime. As Chart 5.5 illustrates, in 2011, 28% of firms reported that they anticipated that the move to OFR would be disadvantageous and predictions were fairly evenly split, with a similar proportion considering the regime to be advantageous, disadvantageous or having no impact on firms; A year after the introduction of the new regime, 42% of firms stated that the move had been disadvantageous for firms.

Views about the impact of OFR, did not vary by any key characteristics.

Chart 5.5



Weighted by size of firm

5.5.1 Perceived disadvantages of the new regulatory approach

Almost two-fifths of firms considered the new regime to be disadvantageous to firms. These firms were then asked to explain in what ways OFR had been disadvantageous. Greater flexibility, seen as an advantage by some firms (see below), was perceived by others as uncertainty, a 'lack of clarity about what standards mean in any particular situation'. Over half of those firms considering the new regime as being disadvantageous cited uncertainty as the reason for holding this view. Whereas the rules based approach provided certainty, a safe harbour, OFR was considered to rely on firms making their own judgements as to whether or not they are compliant.

'The whole process is more complicated and relies on us to make judgements about how the SRA may interpret particular issues. Because when you have a rule, it is relatively straight-forward to ensure that you comply with that rule whereas, the current approach is that, it is for us to seek to achieve certain outcomes and we run the risk that the SRA will come along and question our judgement retrospectively'.
(11-25 partner firm, high street)

Firms cited uncertainty as a barrier to innovation and to working with their regulator.

'Under rules-based regulation, you knew what you could and couldn't do and under outcomes-focused regulation it is not certain. It is difficult to invest in new ways of providing legal services if there is uncertainty as to whether it meets the regulations. Because you can't invest in new ways of doing things'
(11-25 partner firm, high street)

'The lack of clarity from OFR means that there is now significant internal debate in the firm on how to comply their particular rule when we are developing a new service or product..Secondly, certain parts of the firm use

the rules to justify a very negative approach to business development and financial management’.

(5-10 partner firm, niche / specialist)

‘Because it hasn’t given us any clear guidance as to the expectations of the SRA and because their vagueness it means that the industry’s nervous of it’s own regulator rather than working with it’.

(Sole practice, high street)

‘Outcomes- focused regulation is too open ended and vague which will lead to those solicitors that abuse the system to avoid punishment and those solicitors that follow the regulation can be inappropriately punished by the SRA’.

(5-10 partner firm, niche / specialist)

Table 5.2: Perceived disadvantages of OFR (multiple responses allowed)

	N (unweighted)	Weighted % citing OFR a disadvantage to firms (n=442)
Open to interpretation / uncertainty/ retrospective	232	53%
Administrative bureaucratic burden	129	29%
Time to comply	102	23%
Cost	60	14%
Disproportionate - small/high street firms struggle/overburdened	33	8%
Does not benefit client	27	6%
Lack support / knowledge from the SRA	15	3%
Advantage to competition / ABS	8	2%
Other	24	5%
No comment	3	1%
Don't know	1	0%

5.5.2 Perceived advantages of the new regulatory approach

Just under one-third of all senior representatives (31%) in 2012 agreed that their firm had benefited from efficiencies as a result of the new style of regulation. A higher proportion of high street than non-high street firms reported benefiting from efficiencies delivered through the introduction of outcomes-focused regulation (34% compared to 27% of non-high street firms).

Around one-fifth (22%) of firms in 2012 indicated that the introduction to OFR had been advantageous to firms. These firms were asked in what ways OFR had been advantageous to firms. Around one-third stated that the new regulatory regime had made them more aware and focused on regulation and risk. This had been experienced at both firm and individual solicitor level.

Firm level

- More focused and pro active on identifying and managing risk

‘..Made us consider risks that we would otherwise not of factored in. It forces us to consider constantly the financial viability of the practice’

(5-10 partner firm, high Street).

'We are evaluating each new situation'
(Sole practice, niche/specialist firm)

- Ensuring the firms had the right infrastructure and necessary training.

'It directs attention specifically on issues of risk it also requires and infrastructure within the firm which highlights areas of risk'
(11-25 partner firm, Niche/specialist firm)

'We have made our policies more accessible and much clearer that our staff can understand'
(11-25, niche/specialist firm)

'I think just because the focus on outcomes and the training and info set out means that partners have to apply their minds insuring that appropriate training is carried out'
(2-4 partners firm, high Street)

At individual solicitor level, representatives thought the new regime had resulted in

- Greater awareness amongst fee-earners of what's going on in regulation, making solicitors more aware of their professional obligations. Concentrating and galvanising minds on what is and what is not required;

'It just makes you more aware when your doing things, just when your taking instructions and managing files.'
(Sole practice, niche/specialist)

'In the sense that its made people concentrate/ focus on the prime requirements of practising solicitor.'
(Sole practice, niche/specialist firm)

- Better risk identification.
'by identifying the scale and scoop of risk as a concept throughout all areas of practise'
(2-4 partner firm, high street)

Focus on client needs / monies

Around a fifth of representatives (19%) reported that OFR made the firm focus more on client care and client monies. The new regime was thought to improve communication between solicitor and client, requiring solicitors to

'address the clients concerns in a way they understand'
(5-10 partner firm, high street).

'In dealing with clients, it is much easier to talk about the outcome and a common sense approach to that rather than quote a series of rules and regulations. It is easier to deal with our clients issues using that approach'
(2-4 partner firm, high street)

Outcomes-focused regulation provided solicitors greater scope to define the service and parameters of the case with the client at the outset (5-10 partner firm, high street). Firms have been given the ability to *'choose a method of compliance that*

suits their clientele' (26+ partner firm, large city firm). Those firms dealing with more sophisticated clients would be able to take a more risk based approach.

More flexible – taking into account firms' needs

Just over one-tenth of firms viewing OFR as advantageous noted that the new regime was more flexible and therefore more realistic.

'It can take into account the diversity of firms large or small. We can adapt the principles to fit the size and type of the firm. Its not just ridged box ticking'.

(Sole practice, specialist/niche firm)

Representatives indicated that firms had been given greater control to set own goals and benchmarks, to develop own procedures for dealing with risk and responsibility for making judgements as to whether or not they were complying.

Table 5.3: Perceived advantages of OFR (multiple responses allowed)

	Number of responses (unweighted)	Weighted % of firms citing OFR an advantage (n=224)
More aware / focused on regulation / risk	78	36%
Focus on customer / client monies	41	19%
More flexible – taking into account the firm's needs	28	13%
Easier / clearer	23	11%
Improved management	19	9%
Reviewed system / approach / practices	19	9%
Based on principles / outcomes not rules	10	5%
Procedures and policies	8	4%
Encourages best practice	8	4%
More cautious	6	3%
Realistic / practical	3	1%
Mentioned a disadvantage	2	1%
Other	20	9%
Don't know	2	1%

Section Five highlights

- Around two-thirds of firms in 2012 reported that under OFR
 - compliance costs were higher, and/or that
 - compliance was more difficult than under the old rules based regime.
- Around half of firms considered themselves to have the same approach to risk under the new regime as they did under the rules based approach. 47% of firms had a more cautious approach to risk. Ninety percent of firms had a formal risk management policy.
- A year after the introduction of OFR firms were far less welcoming of the approach. Prior October 2011, 56% had welcomed the approach, compared to 35% of firms after a year of it have it being in operation.
- The proportion of firms concerned that the new approach would leave them open to retrospective regulation from the SRA remained stable, in both 2011 and 2012, just over half of firms expressed this as a concern.

- Almost three-fifths of firms (58%) reported that the SRA had not made it clear how OFR works in practice, up on the 51% of firms in 2011. A higher proportion of firms reporting concern about being retrospectively regulated disagreed that the SRA have made it clear how OFR works in practice, compared to those not concerned about being retrospectively regulated. This may suggest that once firms are aware of how OFR works in practice (the relationship between supervision and enforcement) and not just about what the requirements from firms are, such concerns may be alleviated.
- Whereas firms' views of the impact of the new regime on law firms had been equally mixed in 2011 with a similar proportion considering OFR to be advantageous, disadvantageous or having no impact on firms, a year after its introduction views were more varied. Two-fifths of firms in 2012 considered the new approach to be disadvantageous contrasted to 28% in 2011. The proportion of firms reporting the new regulations would have no impact on firms increased from 23% in 2011 to 32% in 2012.
- The comments of respondents considering the new regime to be disadvantageous were predominately about the uncertainty of the new approach, that the principles could be open to different interpretations which would judged retrospectively by the regulator. The approach was considered to be more burdensome in terms of the amount of extra administration required and the time and costs of compliance.
- Respondents considering the new approach to be advantageous said that it had made firms more aware and focused on regulation and risk. This was noted to be at firm and at individual solicitor level. The focus on clients needs had improved under the new regime with firms able to be more flexible in choosing how to comply, taking into account the type of client. A different approach to risk could be taken with the more sophisticated client.

6.0 Conclusion

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

- 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 benchmark from which to measure firms' views and experience of OFR
- v. A basis upon which to track and compare the effectiveness of regulation over time.

The findings from this research will help us to better understand and support the interests and concerns of our members and focus our lobbying activities with the SRA and Legal Standards Board on the profession's behalf.

An overview of perceptions of senior decision makers

Firms' views on the SRA's ability to meet its objectives under OFR were less positive in 2012 than in 2011. Firms in 2012 were less likely to give the SRA 'good' ratings in relation to their performance in setting standards of behaviour, promoting and securing standards, providing the right degree of protection for consumers and upholding the rule of law, than their counterparts in 2011.

Views on the SRA's contact with firms had improved, with a higher proportion of firms in 2012 than in 2011 reporting that the SRA operated fairly in its contact with firms and that firm visits are a proportionate way of protecting the profession's reputation. Levels of overall satisfaction with the way in which the SRA handles enforcement had remained stable, whilst views on the enforcement procedure being understood as a credible deterrent and being used in a way to better protect the consumer had improved on 2011 findings.

The proportion of firms in 2012 agreeing that OFR places too great a burden on law firms was significantly higher than those firms reporting a burden under the rules-based regime (2011 and 2009). Almost three-quarters of firms in 2012 considered the SRA's information requirements from firms to be excessive, representing an increase on the proportion of firms in 2011, but a decrease on firms in 2009.

Firms were more positive than negative in relation to the SRA providing regulatory remedies that are appropriate to the risks posed, but more negative than positive in regards to placing reasonable responsibilities on firms' senior management, listening to industry views when deciding policies and procedures, showing understanding of the diversity amongst firms in the development of regulatory policy and operation and knowing and understanding the risks posed by firms.

The operational efficiency of the SRA

Just one-third of firms rated the SRA's performance in administering the regulatory process as 'good', a reflection possibly, of firms' experiences with the 2011-12 PC renewal exercise, the first year of online renewals. Senior representatives' ratings of overall satisfaction with the SRA remained predominately neutral (5.3 out of ten), despite being down on 2011 ratings. One-quarter of firms reported being satisfied with their relationship with the regulator. The majority of firms reported that their relationship with the SRA had remained the same under OFR. Amongst panel firms

giving a neutral overall satisfaction rating in 2011, 75% said their relationship with the SRA had stayed the same, 9% said it had improved and 16% indicated the relationship had deteriorated. Panel firms giving a negative rating in 2011 were more likely to report deterioration in 2012.

Satisfaction ratings relating to the ease of dealing with the SRA had also remained neutral, although the overall average in 2012 (5.0) was a significant decrease on the average score found in 2011 (5.9). For almost two-thirds of firms, ease of dealing with the regulator had stayed the same, the remaining firms were more likely to report deterioration than an improvement in the ease of dealing with the regulator. Views of the SRA's Ethics Helpline were more positive than for the SRA generally, with average satisfaction scores of 6.8 out of ten for service and 6.7 for satisfaction with the guidance and advice received.

Firms with experience of a disciplinary investigation were more positive than negative about the investigation being fair, the willingness of staff to discuss compliance issues, the justifying of decisions and that an OFR approach had been taken by staff. Firms were more negative about the time taken to complete the investigation with just one-third agreeing that the time taken had been reasonable. The length of time taken from the opening of an enforcement file to issuance the STD was also raised by the LSB in its analysis of the SRA's self-assessment¹⁵.

The cost and impact of regulation

A higher proportion of senior representatives in 2012 considered the internal costs of compliance to be excessive (47%) compared to 2011 (39%) and 2009 (37%). Sixty percent of firms considered compliance costs under OFR to be higher than under the rules-based regime. Research by the SRA specifically on the impact of OFR on firms, found that a large proportion of firms reported significant increases in the amount of time and money required to comply with OFR. However, the majority of these firms accepted that what they do 'in order to comply was directly related to the good management of their business and the need to look after their clients' interests'¹⁶.

Supporting the above, the proportion of senior representatives indicating that compliance costs were harmful to their business rose from 42% in 2009 to 58% in 2012. The proportion of firms agreeing that the PC fee represents value for money in 2012 slightly increased and the proportion considering the SRA's firm fee value for money slightly decreased on 2011 figures. A significantly higher proportion of firms in 2012 reported an increasing administrative burden for its fee-earners than in 2011. A similar proportion of firms in both years planned to turn clients away, reduce the range of services provided or planned to close down or merge.

Views of OFR

Whilst about two-thirds of firms in 2011 had agreed that the shift towards OFR was a welcomed approach, in 2012 two-thirds disagreed that the new approach was welcomed. A similar proportion stated that compliance was more difficult under the new regime. Just over half of firms were concerned that OFR would leave them open to retrospective regulation, a comparable figure to that reported in 2011. Of those expressing this as a concern, a higher proportion felt that the SRA had not made it clear how OFR was to work in practice compared to those without such a concern. This may suggest that were the SRA to further communicate how OFR works in

¹⁵ Ibid at n.3, at p.20.

¹⁶ Ibid at n.1 at p6.

practice, (how decisions regarding risk are made and enforced), such concerns may be alleviated. Less than half of firms agreed that it was clear what was required in order to comply with the code (45%) compared to 64% agreeing in 2011.

Whereas firms in 2011 held equally mixed views on what the impact of OFR might be on firms, in 2012 a higher proportion of firms reported the impact of OFR had been disadvantageous to firms than advantageous. Those who considered the approach to be disadvantageous to firms perceived it as being open to interpretation, uncertain, retrospective, administratively burdensome, time consuming and costly. Those firms viewing the new approach as advantageous to firms commented that the move to OFR had made them more aware and focused on regulation, risk and their clients' needs.

Change

Average scores, in relation to the SRA's performance against its purposes and its enforcement of OFR, although lower than in 2011, remained neutral.

Appendix A

About the sample

Senior representatives from 1,001¹⁷ were interviewed by telephone by Moulton Hall Research, an independent research agency, during the period November 2012 to January 2013. A panel approach was adopted to ensure that any differences, (if found), could be confidently associated with changes to the regulatory regime, rather than to differences in the firms taking part. 712 interviews were held with senior representatives¹⁸ from firms taking part in the 2011 sweep (panel members), in the majority of cases this was with the same individual (86%).

A further 289 randomly selected (within firm size) firms (non-panel members) were contacted to address panel attrition, to provide sufficient number of responses to enable robust analysis of different sub-groups of firms. The overall response rate for the survey was 66% of the contacted sample¹⁹. Responses were weighted back to the profile of all firms using partner count to ensure the sample was representative of all firms on this characteristic. Confidence intervals associated with statements across the whole sample are +/- 2.94%, at the 95% confidence level.

Profile of firms (population and sample)

	Population (n)	% in the population	Number in sample	% of sample	% weighted
Sole practitioner	4,482	44.4	298	29.8	44.5
2-4 partners	4,152	41.1	279	27.9	41.1
5-10 partners	942	9.3	280	28.0	9.2
11-25 partners	331	3.3	90	9.0	3.2
26+ partners	195	1.9	54	5.4	1.9
Total	10,102 ²⁰	100.0	1,001	100.0	100.0

Further information / contact details

For further information about the survey methodology or about the survey findings please contact Joanne Cox from the Law Society's Research Unit on 020 7320 5892 or joanne.cox@lawsociety.org.uk.

¹⁷ Approximately 10% of the regulated community.

¹⁸ Predominately senior partners or partner equivalents. Five percent of non-panel members in 2012 were Compliance Officers.

¹⁹ Almost three-quarters (74%) of the 962 firms agreeing in 2011 to take part in the 2012 survey participated, five percent had either closed down or merged. Interviews were not conducted with firms which had merged in the interim as it was thought that these firms would have had a different experience of the regulatory process and were therefore not representative of firms more generally. The response rate for the randomly selected firms was 52%.

²⁰ The Law Society Annual Statistical Report 2012