SRA REQUIRES DETAILED COMPLAINTS INFORMATION

By Jayne Willetts | Solicitor Advocate, Jayne Willetts & Co - Specialists in Professional Regulation

The SRA has recently announced that it will require firms to provide a detailed breakdown of the number and type of complaints received in the last 12 months as part of the process of renewing their authorisation this autumn. The good news is that this will be the only additional information required by the SRA this year as part of the renewal process. The bad news is that next year a much heavier burden of providing regulatory information will be imposed.

The new requirement will be of concern to many and might be difficult to apply in practice, all the more so as one of the new principles is a duty to comply with the firm's regulatory obligations – thus increasing the risk of inadvertently providing a misleading response.

Firms will be obliged to report to the SRA on the numbers of *'formal'* complaints received by them in the past 12 months. The first and most obvious problem is knowing what is, and is not, a formal complaint. The Lexcel standard requires firms to define for themselves what sort of complaints need to be dealt with under the firm's complaints system. Some firms choose a wide definition (as encouraged by the Legal Services Commission in the past) of *'any expression of client dissatisfaction however expressed'*, whereas others have chosen a more restricted version such as *'any problem referred to the firm that the fee earner is unable immediately to resolve'*. Firms adopting these different and equally valid approaches might have widely differing numbers to report, but to conclude that the firm with the greater numbers of complaints is therefore more of a risk to the profession is, at best, suspect.

A further concern to arise from the SRA announcement is its apparently simplified approach to complaints classification. Firms must report not only the number of complaints received but also fit them into one of 14 headings (or *'other'*). In real life, complaints often defy any such clear classification: is a complaint about inadequate retainer information under the current rule 2 *'conduct'*, for example, *'failure to keep informed'* or even *'failure to advise'*? These classifications are based on the headings used by the Legal Ombudsman and further guidance is promised in due course.

Finally, firms will also have to indicate how many of the complaints have been resolved. Again, in real life, this is often difficult to say. If a client has declined to respond to the firm in a complaints investigation for one, three or six months at what stage can it be fairly concluded that the complaint will not be further pursued and is thus *'resolved'*?

The more fundamental concern is that firms have long been encouraged to seek out client concerns in order that they can be addressed, in line with the best standards of customer care found elsewhere. Will the firm that has adopted a proactive approach to complaints management now be disadvantaged when compared to a firm that has set out to suppress problems when they arise? This development must bring with it the risk that firms will become less inclined to be progressive on the issue of complaints management if they know that their records could result in a down-grading of their risk profile at the SRA. It might even be argued that the firms that report more complaints are those that should be regarded as the more obviously compliant and those reporting a low number the more suspect. As ever, things are not quite as straightforward as they might at first appear. ■