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The Cube
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Dear Margaret

SRA consultation on co-operation agreements

The Panel wishes to indicate its support for the introduction of co-operation agreements and make some brief observations on implementation.

There is clearly a careful balance to be struck between ensuring that those who are guilty of wrongdoing are appropriately sanctioned for their actions and preventing and detecting wrongdoing at an early stage to minimise future detriment to consumers. Overall, domestic and overseas experience suggests that the benefits of co-operation regimes outweigh the costs. We are mindful of the potential severity of harm that consumers might suffer in legal services and the challenges of detecting wrongdoing, including that clients may be unaware of misconduct and so cannot assist the SRA. Therefore, on balance, introducing co-operation agreements is likely to benefit consumers overall and we would support such a policy.

The SRA has openly acknowledged the potential risks and challenges, and we agree with the list of proposed safeguards contained in the draft policy. Of particular interest to consumers is likely to be provision of redress through Regulatory Settlement Agreements (RSA); this enables direct benefits to the individuals affected as well as indirect benefits for all consumers via enhanced detection. Fairness considerations are also important, so ensuring the regime is no more generous to wrongdoers than necessary will be vital to public confidence. Crucially, coming forward with self-incriminating evidence offers no guarantee that the SRA will not take disciplinary action. On one point of detail, the agreements should ensure that the wrongdoer, as well as not retaining the benefit of their misconduct, may also not gain benefits in future, e.g. by ‘selling’ their story.

Key to public confidence will be transparency, especially as individual decisions may provoke anger. We are pleased to note that agreements will generally be formalised in RSAs, which are usually published. Exceptions to this rule should be rare, while the number of instances and reasons for non-publication should be reported annually. In addition to transparency

over individual cases, public confidence is likely to be enhanced if the SRA evaluates and reports annually on the overall operation of the policy.

The leniency policy does not exist in isolation, but interacts with other elements of the SRA's regulatory arrangements. In particular, success depends on the incentives for all solicitors and entities created by the SRA's disciplinary and appeals processes and the level of investigative resources at its disposal. A genuine threat of severe sanctions is a precondition for deterring malpractice. We note the forthcoming LSB review of approved regulators' arrangements in this area.

Finally, the multi-channel delivery model used by modern businesses means there will inevitably be occasions when the SRA's leniency regime interacts with leniency regimes operated by other regulators, in particular the Financial Services Authority. The regulators should engage in the development of these policies and aim for harmonisation where possible to create a consistent approach for consumers and businesses.

I hope these brief comments are helpful. Please contact Steve Brooker, Consumer Panel Manager, with any enquiries.

Yours sincerely

Elisabeth Davies
Chair