



Regulatory Developments

STATUS

1. The report is open, but the appendices are considered confidential and certain sensitive paragraphs are also redacted in yellow.

EXECUTIVE SUMMARY

2. This paper highlights recent news stories and other developments in professional services regulation that may be of interest to the IRB. There is a summary of consultations and consultation feedback in the **Appendix**, however the main body of this report outlines particular items of topical interest.
3. This document discusses the following in more detail:
 - a) Chief Executive Leaves FRC
 - b) Concerns over ESG reporting
 - c) Developments in Corporate Governance
 - d) FRC's role in Local Audit
 - e) Scottish Government rejection of single regulator proposal
 - f) Online comparison tools
 - g) SRA fining powers
 - h) Latest case on professional behaviour
 - i) Failure To Prevent offence

RECOMMENDATIONS

4. The IRB is asked to consider whether any of these developments could be of relevance to ICAEW's own regulatory activities and whether it wishes PSD senior management to follow up any of the developments noted here. The appendix is for note, but the board may ask questions of staff where further information is required.
5. The IRB is asked to approve the classification of the paper as open and identify where redaction may be appropriate, as has been highlighted in yellow. Also agree to the non-disclosure of the appendices.

CHIEF EXECUTIVE LEAVES FRC

Financial Reporting Council in hunt for new chief

<https://www.cityam.com/audit-watchdog-faces-catch-22-in-hunt-for-new-chief/>

6. In early February, Sir John Thompson announced he was leaving his role as Chief Executive of the Financial Reporting Council to take the lead at HS2.
7. Commentators point out that the Department for Business and Trade will have a difficult balance to strike in choosing a new Chief Executive for the FRC as they will need to champion reform as part of the establishment of ARGA, and work to increase audit quality. There is also the eternal tension between having a candidate with sufficient understanding and experience of Big Four firms, while being seen to take a tough stance against firms. The FRC has faced criticism in the past for recruiting former Big Four partners.
8. In the interim, Sarah Rapson (Executive Director, Supervision) is deputy CEO, and the press speculate that she may be in the running for the job.

CONCERNS OVER ESG REPORTING

FRC updates 2021 Statement of Intent on ESG

[Read the FRC's Statement of Intent on ESG](#)

9. The FRC has published an update to its 2021 Statement of Intent on Environmental, Social and Governance ('ESG'). Since then, it has undertaken a significant number of initiatives both in the UK and internationally, to assist and support its wide range of stakeholders and drive best practice in high-quality and comparable ESG reporting and disclosure.
10. The update to the Statement sets out areas where there remain ongoing challenges in ESG reporting, suggesting actions for preparers to produce decision relevant information, and the FRC's plan to engage with the market to ensure stakeholder needs are being met as demand for ESG information continues to evolve.
11. The report also highlights the FRC's key areas of focus regarding ESG reporting during 2023 which include projects and thematics on -
 - ESG Data - how and where to find it and use it effectively
 - Materiality disclosures – what should be considered when determining what are material issues
 - Support for FRS102 Preparers
 - What are the ESG reporting requirements of the Corporate Governance Code?
 - The link between investors and ESG reporting

DEVELOPMENTS IN STEWARDSHIP & CORPORATE GOVERNANCE

FRC lists successful signatories to UK Stewardship Code

<https://www.frc.org.uk/news/february-2023/frc-lists-successful-signatories-to-uk-stewardship>

13. The FRC has announced an increase in the number of signatories to the UK Stewardship Code following the publication of its updated list.
14. The list now includes successful applicants who submitted their reports at the end of October 2022. The regulator received 105 applications, of which 88 were successful, taking the total number of signatories to 254, up from 235 in September last year. This includes 179 asset managers, 58 asset owners and 17 service providers. The additional signatories bring the total assets under management of the list to £46.4tn, up from £40.7tn.
15. The FRC comment that the more diverse range of business models and investment styles among successful applicants is a positive indication of the broader adoption of responsible investment practices across the industry.

FRC tries to dispel corporate governance knowledge gap

<https://www.accountancydaily.co/frc-tries-dispel-corporate-governance-knowledge-gap>

16. The FRC has published a detailed factsheet to dispel common misconceptions about corporate governance and stewardship, following a spate of corporate scandals relating to misconduct. The document addresses several frequently asked questions, going back to basics such as what is corporate governance and how can the FRC enforce the code against directors, the meaning of stewardship and the implications for large businesses, and non compliance risks.
17. The document highlights the voluntary nature of the corporate governance code with the premise of comply or explain, in the event of failure to follow the guidance. The code does not give the FRC powers to take action against directors that fail to comply as it is not a legally binding document.
18. We understand that there is likely to be a review of the corporate governance code and supporting material in Q1 2023.

FRC'S ROLE IN LOCAL AUDIT

New MoU outlines FRC's role in Local Audit System

<https://www.frc.org.uk/news/march-2023/new-memorandum-of-understanding-for-local-audit-sy>

19. The FRC and the Department of Levelling Up, Housing and Communities (DLUHC) have published a **Memorandum of Understanding (MoU) outlining the FRC's role as shadow system leader for the local audit system.**

20. The FRC comment that the MoU marks a significant milestone in the delivery of reforms the Government committed to the local audit framework following the Redmond Review. Neil Harris, Director of Local Audit at the FRC, will lead a new local audit department at the organisation with five key responsibilities:
- leading a coherent and coordinated policy response to challenges arising across the local audit system;
 - facilitating stronger governance across the local audit framework;
 - leading work to improve competition, bolster capability and market supply;
 - overseeing the entire quality framework for local audit;
 - and reporting on the local audit system.
21. There have been concerns for some time about the Local Audit system, and the long delays to the completion of local audits.

REJECTION OF SINGLE REGULATOR BY SCOTTISH GOVERNMENT

<https://www.gov.scot/publications/legal-services-regulation-reform-scotland-scottish-government-response-findings-consultation-analysis-report/>

22. On 22 December 2022, the Scottish Government rejected the primary recommendation of the Robertson report which was that the Government establish a single regulator for legal services in Scotland:

“There should be a single regulator for all providers of legal services in Scotland. It should be independent of both government and those it regulates. It should be responsible for the whole system of regulation including entry, standards and monitoring, complaints and redress. Regulation should cover individuals, entities and activities and the single regulator should be a body accountable to the Scottish Parliament and subject to scrutiny by Audit Scotland.”

23. What the Scottish government has decided instead is set out in paragraph 26:

“Firstly, to implement a modern, forward-looking model for legal services regulation, which will build on the existing framework. This should allow for a proportionate approach that seeks to balance and deliver the key priorities of all stakeholders. The existing regulators should retain their regulatory functions, with a greater statutory requirement to incorporate independence, transparency and proportionate and risk-based accountability within regulatory approaches. Evidence of improvements in the way in which legal services are regulated and how the legal complaints system operates in Scotland must be gathered.”

And then in paragraphs 30 -32 and 34

“30. Building on the existing framework a two-tier system for legal service regulators would allow for a proportionate and risk-based approach while allowing the framework to adapt to change in the market and address concerns that the landscape is complex and difficult to understand. The framework should continue to be funded by those regulated as it is now.

31. *First tier regulators would be those regulators with a significant membership or whose members provide largely consumer-facing services.*

32. *In this tier, regulatory functions would be required to be delegated to an independent regulatory committee comprised of legal and non-legal members, chaired by a non-legal member. The regulator would be required to ensure that the regulatory committee is sufficiently resourced in the exercise of its regulatory functions. A register of members would require to be publicly available.*

...

34. *The regulatory committee should set its own governance structure, priorities, and strategy. It should oversee arrangements for a client compensation fund. It should operate independently of the regulator's governing body. It would be required to consult on this work with the regulator's governing body and key stakeholders."*

24. The Scottish Government also indicated its intention to bring in entity regulation – although it's not very clear how it will do this (paras 49-51)

"49. Consumers often presume and expect that their legal services are regulated at an entity level (as a legal business as a whole), which is not necessarily the case. From the perspective of the client, their contract is with the legal business and the client places expectations on that entity. However, the current legal framework for the regulation of the legal profession in Scotland places the emphasis on regulating the individual solicitor. The consultation analysis indicates that the majority of respondents (80%) agreed that entity regulation should be introduced.

50. A revised regulatory model should provide for entity regulation of legal businesses which will allow for regulation that centred on the public interest and protection of the consumer, and will bring forward many recognised benefits.

51. Entity regulation should not replace or dilute the regulation of individual legal professionals, to ensure the strongest of consumer protections a hybrid approach will provide increased efficient and effective regulation – both from the consumer and the solicitor perspective. This would provide proportionate risk based and appropriately targeted regulation."

25. The Law Society of Scotland's response to the announcement can be found here <https://www.lawscot.org.uk/news-and-events/law-society-news/reforms-on-legal-regulation-good-news-for-consumers-and-the-scottish-legal-sector/>

ONLINE COMPARISON TOOLS

[Trustpilot reviews of law firm defamatory, judge rules](#) | [News](#) | [Law Gazette](#)

27. A debt recovery firm is taking legal action against the review website Trustpilot in relation to 20 different reviews which include allegations of fraud and harassment. BW Legal Services Limited which is regulated by the Financial Conduct Authority and the Solicitors Regulation Authority is suing for libel over the comments posted.

28. The judge said each review's meaning was defamatory at common law and consisted of a mixture of statement of fact and expressions of opinion.
29. The case is of interest given the work by other legal service regulators to develop online comparison tools. There was a pilot of a tool by the SRA, CILEx Regulation and the Council for Licensed Conveyancers last year, and the BSB is encouraging barristers to sign up to a digital pilot that will allow the public to submit ratings and reviews. The digital comparison tool pilot was launched last autumn and will allow potential clients to locate and select service providers using criteria such as location, ratings and reviews.

SRA FINING POWERS

SRA confirms updated approach to fines and publishing decisions

[SRA | SRA confirms updated approach to fines and publishing decisions | Solicitors Regulation Authority](#)

30. Following public consultation, the SRA has confirmed the [detail of changes for how we levy financial penalties](#) to law firms and solicitors. The reforms, which will come into effect later in the year, will see:
- the introduction of a fixed-penalty regime for lower-level misconduct
 - future fines for both firms and individuals linked directly to bandings based on percentages of income/turnover
 - a pilot on the use of personal impact statements for cases involving sexual misconduct, discrimination or any form of harassment
31. The principles behind these changes [were confirmed last year](#), following consultation. The SRA comment that the changes should help cases to be resolved more quickly, saving time, costs and stress for all involved. The new fining bands will enable different levels of fine to be issued to a low-earning junior solicitor compared to a senior equity partner for similar offences.

[Solicitors may now avoid SDT for significant but inadvertent breaches - Legal Futures](#)

32. Comments in the legal press point out that the implications of the new approach means that significant but inadvertent breaches need no longer be referred to the Solicitors Disciplinary Tribunals. But equally there are certain types of cases that should go to the SDT irrespective of the SRA's powers, such as allegations of sexual misconduct, racism, bullying and harassment.
33. The SRA's new approach is of relevance to our ongoing review of our Guidance on Sanctions.

Calls to raise SRA's fining power to £250 million or increase its resources

[Raise SRA's fining power to £250 million, say peers | News | Law Gazette](#)

34. The House of Lords Select Committee on Communications and Digital have called for the SRA to have powers to fine firms up to £250 million for abusive litigation in SLAPPs (Strategic litigation against public participation). The recommendation follows a mounting political row over revelations that the sanction head of Russian mercenary group Wagner was able to secure the release of funds in 2021 to sue an investigatory reporter in London.

[We can't expect small-fry SRA to fight oligarchs and organised crime | Opinion | Law Gazette](#)

35. The legal press have commented that the criticism of the SRA by politicians is unfair given the size and resources of the organisation, and it cannot be expected to prevent drug trafficking and international criminal activity.

FAILURE TO PREVENT OFFENCE

New 'Failure to prevent' offence could hit lawyers (and other professionals)

[New 'failure to prevent' offence could hit lawyers | News | Law Gazette](#)

36. The government is preparing to bring in new laws to create an offence of failure to prevent fraud that could put solicitors at risk of facing prosecution. This is part of the Economic Crime and Corporate Transparency Bill.

37. The legislation proposes to lift the statutory cap on the SRA's power to issue fines for disciplinary matters relating to breaches of the economic crime regime.

38. Pressure has grown in recent weeks for the government to put in place extra measures to make failing to prevent economic crime a criminal offence, as opposed to a regulatory issue.

39. Any changes would likely impact accountants in the same way as lawyers, although ICAEW is not restricted by a cap on maximum fines in the same way that the SRA currently is.

LATEST CASE ON PROFESSIONAL BEHAVIOUR

[Rebuke for 'lewd gesture' at 2017 Christmas party | News | Law Gazette](#)

40. A solicitor has been sanctioned for after being filmed making a rude gesture at an office Christmas party more than five years ago. In the decision notice, the SRA said the solicitor acted with a lack of integrity, damaged the trust placed in the provision of legal services, caused harm and distress to the recipient and failed to treat a fellow professional with respect and dignity. He was fined £600.

41. This is of relevance to our ongoing project to review and update the content in ICAEW's Code of Ethics about Professional Behaviour.

APPENDICES

Appendix Name	For consideration or for reference	No of pages
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Appendix A	Review of consultations and feedback March	Reference	7
Appendix B	Review of consultations and feedback January and prior	Reference	3

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Date of report	23 March 2023