



Why can't the SRA adopt a policy on time extensions?

The principles of transparency, consistency and accountability underpinning the Legal Services Act require our regulator to publish a policy on extensions of time, says **Nigel West**

The way the SRA exercises its role of regulating solicitors has occasionally generated much resentment. There may even be a case for saying that in some instances our regulator has done so in an unlawful way.

The SRA normally provides a solicitor with only fourteen days to respond to letters seeking explanations for alleged misconduct regardless of the time which has elapsed since their last communication, the length of their letter and the complexity of the issues.

In my experience, nothing generates more ill-will between a solicitor and the SRA than a requirement to provide a response within fourteen days to a letter which has been sent after many months of silence. That happens too often to be acceptable.

The professional rules impose an obligation on every solicitor to respond to correspondence from the SRA promptly, and no solicitor under investigation wishes to make matters worse by a failure to respond to correspondence promptly. The obligation is currently embodied in Outcomes 10.6, 10.8 and 10.9, which provide that a solicitor must co-operate fully with the SRA, comply promptly with any written notice from the SRA, and provide all information and explanations requested. The professional obligation to comply with those outcomes reinforces the deep sense of unfairness which is felt when the SRA has taken months to prepare their letter.

The obvious step to take when given insufficient time is to make a formal written request to the SRA for an extension. Unfortunately a request does not always lead to enough time. The decision as to whether or not to grant an extension is in practice made by the case supervisor and, if an objection is taken to the decision, the supervisor's team manager.

That can lead to subjective decisions which vary between different teams and decisions can range from reasonable extensions to remarkably short extensions or (incredibly) assertions that the SRA does not have any power to extend time.

“An extension policy will lead to a greater sense of fairness in a stressful procedure, which will do as much to enhance the image of the SRA as any relationship management”

The latter type of response can be extremely frustrating and soul destroying for a solicitor who has been provided with two weeks to respond to a letter in circumstances where - for instance - he has been on holiday for part of the time and needs to retrieve files which have been archived in order to respond.

Transparent and proportionate

Section 28 (3) of the Legal Services Act 2007 imposes an obligation on a regulator to act in a transparent, consistent, proportionate, targeted and accountable manner and to have regard to other principles of best regulatory practice. There is a strong argument for saying that the principle of proportionality is not currently observed and that the SRA should set a time limit for responding to a letter which takes account of the time taken to prepare their enquiry.

There is an even stronger argument for saying that the principles of transparency, consistency and accountability should lead to publication by the SRA of a policy on extensions of time. The policy should require

the supervisors to exercise their discretion having regard to the length and complexity of the SRA's requests, the prejudice if any arising from the grant of additional time, the age of the matter under review, whether the fee earner who conducted the case has left the firm, whether the solicitor responsible for replying to the letter has been absent from the office due to illness or holiday, and whether there is a need to retrieve documents from storage.

If such a policy is introduced it will not only lead to consistency. It will also lead to a greater sense of fairness in a stressful procedure. That sense of fairness will do as much to enhance the image of the SRA as any relationship management. It will remove one of the main complaints most often made by solicitors undergoing investigations.

The time is ripe for publication of a policy. The Solicitors Regulation Authority is very quiet at the moment. They are not sending practitioners as many letters as they used to. It is not clear to me why that has happened. An optimist might hope that it is a reflection of the changing times and the commitment to outcomes-focused regulation.

The pessimist may say the SRA is just facing changes in staff, an office move and other internal reorganisations and that the current silence is simply a lull before the storm. I hope the optimist's view is right. However, there is a risk that a number of solicitors will soon receive letters from the SRA asking for explanations on investigations which they hoped had long since been abandoned.



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