

Riliance: Regulatory & Compliance Update (Legal Sector)

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Presenter

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Before we get started, a few things to note

- Competency - A2
- Questions answered at the end.
- Slides and the recording will be available after the webinar.

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Administration

What we have been interested in over the last month

- LinkedIn blogs – costs information – compliance officer risks – residual balances – AML – reporting breaches – new ways of working – SRA Standards – providing clients with key information – property risks – remote ID checking risks – LeO mediation – competency – data protection – negligence claims
- For further updates sign up to our newsfeed by emailing support@riliance.co.uk

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Regulation



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Journey to the STaRs!

The SRA Standards & Regulations (STaRs) are now live!

Guidance was issued on the day they were implemented!

Did you know non-solicitors fall within the Code for Firms and have a duty to report serious matters direct to the SRA!



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We have numerous resources to help you comply with the STaRs, including updated policies, web-based and face-to-face training, helpline, etc.

<https://www.sra.org.uk/solicitors/standards-regulations-resources/>

LeO guidance on cybercrime

LeO issues its approach to dealing with cybercrime related complaints



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<https://www.legalombudsman.org.uk/wp-content/uploads/2017/11/180823-Cybercrime-guidance-FINAL-VERSION.pdf>

LSB issues veiled threat to BSB

The Legal Services Board (LSB) has issued a thinly veiled warning to the Bar Standards Board (BSB) over the need to invest “substantially” in consumer information after its controversial decision to withdraw from funding Legal Choices.



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Legal Choices is the consumer-facing website advising members of the public on dealing with lawyers, set up in 2012. Until now, it has been collectively run and paid for by all the legal regulators.

More cases heading to the SDT

The Solicitors Disciplinary Tribunal (SDT) is expecting to adjudicate on a steady stream of sexual misconduct cases in the coming year.



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Seven cases have already been lodged by the Solicitors Regulation Authority (SRA) this year, with a further eight to 12 expected before the end of 2019.

The regulator estimates a further 20 sexual misconduct cases being sent to the tribunal in 2020.

New immigration rules suspended

The Solicitors Regulation Authority (SRA) has had to suspend rules that were due to come into force that would allow solicitors to operate from firms regulated by the Office of the Immigration Services Commissioner (OISC).



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Rules 9.5(b) and (c) and 9.6 of the new Authorisation of Individuals Regulations will not come into force after the Legal Services Board approved the delay on Friday.

Immigration is the only area of law which is not one of the reserved legal activities but is subject to a standalone regulatory regime overseen by the OISC.

Solicitors working in SRA-regulated firms are exempt from OISC regulation, but if they are not working in such practices, OISC requires them to apply to be authorised as part of an OISC-registered organisation. If approved, they act as an OISC-registered adviser rather than as a solicitor.

However, the OISC has been worried about the overlap between its regime and the new SRA rules allowing solicitors to practise from unregulated businesses.

LeO ditches mediation scheme

The Legal Ombudsman (LeO) has ditched plans to introduce mediation as another route to settling dispute between lawyers and their clients after a trial showed limited interest.



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It also saw limited success in trialling methods to encourage lawyers to settle their cases without needing to involve the ombudsman.

It was reported in August that LeO was running a 'proof of concept' trial to see whether formal mediation would enable the service to resolve cases without the need for a full investigation.

According to a report to the most recent meeting of the Office for Legal Complaints – the body that oversees LeO – offering a telephone-based session with a trained mediator had very limited success.

SRA in the firing line

The Solicitors Disciplinary Tribunal (SDT) has rejected four allegations of multiple rule breaches against a solicitor because they were so badly drafted.

But residual balance charge upheld!



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<https://www.legalfutures.co.uk/latest-news/tribunal-rejects-sras-disciplinary-ambush>

Notable disciplinary cases - barristers

- A barrister suspended last month for offensive messages on Facebook posted one that was effectively a threat to kill a member of the public. A Bar disciplinary tribunal said his posts were targeted at a woman and were “misogynistic”. He was suspended for 10 months after making the comments on a private group called ‘London floaters do as you likey’.



Notable disciplinary cases - solicitors

- A solicitor who forged three documents to help him in an investigation by the Solicitors Regulation Authority (SRA) has been struck off.
- A solicitor who transferred the title of a property from a joint owner without checking whether they had agreed to it – and when they knew nothing about it – has been rebuked by the Solicitors Regulation Authority (SRA).
- A solicitor discarded an undertaking he had given and tried to take advantage of a mistake made by the law firm on the other side of a conveyancing transaction, it has emerged. Waheed Rahman has been suspended for six months, a sanction suspended for two years, with conditions placed on his practising certificate that ban him from being a manager or employee of a law firm without the Solicitors Regulation Authority's (SRA) permission.
- A solicitor who practised without insurance has been spared an appearance before a disciplinary tribunal, in part because he was suffering from depression at the time. The Solicitors Regulation Authority (SRA) has published a settlement agreement with John Thomas Elwy Owens, under which he has been rebuked and fined £2,000.

ICO guidance

Special category personal data
needs to be handled more carefully



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<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/11/why-special-category-personal-data-needs-to-be-handled-even-more-carefully/>

Operational



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Cyber security threat

The vast majority of major law firms still have significant unaddressed cyber-risk, despite repeated urging by regulators, insurers and others to shore up their defences, according to new research.



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It found larger law firms especially prone to hackers taking over their website addresses to perpetrate spoofing scams, employing vulnerable servers, and using out-of-date software or invalid security certificates.

The study was conducted by tax, advisory and risk firm Crowe, in conjunction with the University of Portsmouth's Centre for Counter Fraud Studies.

It is just the latest warning of law firms being targeted by criminals; the Solicitors Regulation Authority revealed a fortnight ago that its study of 40 law firms which suffered a cyber-attack over the past three years found that more than £4m of client money was stolen from 23 of them.

Using KYND's anti-cyber attack technology, the researchers examined the cyber-exposure of some 200 firms, chosen for their high turnover.

Overall more than 90% of them (182 firms) were found to be "wide open to having their domains spoofed and used to send spam, phishing or otherwise fraudulent emails either internally or externally".

Every single firm with a turnover between £1m and £10m was at risk of their website

addresses being spoofed.

Further, around eight out of ten of the 200 firms were running services publicly known to be vulnerable to hackers and a similar number had at least one domain registered to a personal or individual email address, which the research said represented “a significant threat to business continuity and domain ownership”.

Would you spot the difference?

Modern "hyper realistic" masks can be so convincing that people often can't distinguish them from a real face

Could you be fooled if carrying out CDD via web calls (Skype, etc.) with clients?



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Court searches

A scheme which enables barristers to bypass court security has been rolled out in 30 more courts – but solicitors still have to undergo searches.



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The professional access scheme – which allows barristers to use electronic ID cards to avoid onerous security checks – is now in operation in 55 courts, including ones in London, Birmingham, Cardiff, Oxford and Durham.

Barristers receive digital identification cards from the Bar Council, which they download onto their mobile phones or tablets. These cards are then scanned at court with equipment provided by HM Courts and Tribunals Service.

Expert witness criticism

Criticism by lawyers, judges and the press may be deterring health professionals from being expert witnesses in family cases, a working group looking into a chronic shortage has said.



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The group was set up by Sir Andrew McFarlane, president of the family division, who warned last year that the supply of expertise was 'drying up'. In a draft report published yesterday, the working group said the shortage could be particularly harmful for children under the age of three, as delays could have a direct detrimental impact on the success of future placements.

More than 700 legal and health professionals responded to a survey to gauge the extent of the problem.

Child and family psychiatrists and psychologists, paediatricians, neurosurgeons and geneticists were among the eight major shortages identified.

Nearly six in 10 health professionals were concerned about being criticised by the press, the judge or in cross-examination. Around four in 10 healthcare professionals identified inflexible court timetabling as an issue. Four in 10 also raised issues about the volume of material. A third of healthcare professionals identified a lack of support from NHS trusts. Other barriers or disincentives were remuneration, court processes, and lack of support and training.

PI firms under the spotlight over referrals

Claimant personal injury solicitors are buying leads obtained illegally and in breach of the referral fee ban, a leading insurance company has claimed.



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Aviva said solicitors should have to declare the means by which the client was obtained, and through which business the client was referred, to ensure it was not a lead secured without proper consent.

“This simple action would improve standards in this murky area and help to clean up the bad behaviour often associated with the acquisition of claims leads and, ultimately, lead to a sharp drop in the number of nuisance calls,” it said.

Presenteeism

The case of a City lawyer told that leaving work slightly early to pick up her children was setting a bad example, shows how the profession needs to work on changing the culture of presenteeism.



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Katy Fridman, founder of Frankly Flexible, told Legal Futures that she has “thousands of female lawyers” in her closed Facebook group, called ‘Flexible working for people like me’, who have left the profession due to inflexibility and “are looking for alternative careers as they have felt unable and unsupported in progressing their careers in their firms”.

She reported on LinkedIn this week that a lawyer in the group had asked her to post anonymously for advice on where to find a new flexible role “as her current manager in a top London law firm says that her leaving slightly early to pick up her children is setting a bad example to the juniors in her team”.

Ms Fridman wrote: “Wouldn’t it set a better example to the junior lawyers for the firm to be seen to be actively supporting their working parents? The firm itself promotes flexible working but these inconsistencies are rife in organisations and need addressing.

“[It] makes me so cross that she’s looking for a new job and that her firm isn’t supporting her to stay. To those in my network who have the ability to influence this in your organisations – please look at how your policies are being pushed down through the organisation with training and education for managers to handle this in

their teams and how this will ultimately create a more loyal and diverse workplace.”

5AMLD – focus on compliance with 4AMLD

Solicitors will have an 'incredibly short' time to get to grips with new rules on money laundering before regulations implementing the latest anti-money laundering regime come into force, the Solicitors Regulation Authority has warned.



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Among other provisions, the fifth directive widens the scope of 'obliged entities', sets out the circumstances under which customer due diligence may be carried out electronically and requires the reporting of discrepancies in records of beneficial owners. It also tightens rules around trusts and requires the UK to establish a central mechanism allowing the identification bank account holders and controllers.

The SRA plans to set up its programme of checking firms' AML risk assessments. 'From next year we will begin a rolling programme, so you could have your risk assessment called in.'

Failing to provide costs information

Master Leonard Dunbar v Virgo Consultancy Services Ltd [2019] EWHC B12 (Costs) provides an object lesson as to why lawyers must give a full and proper estimate of costs to their clients. The defendant solicitor sought £84,000 in costs. The Master ordered that the claimant need only pay a balance of £8,000.



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<https://www.civillitigationbrief.com/2019/11/28/a-case-that-should-be-read-by-every-lawyer-who-bills-clients-claim-84000-get-8000-provide-adequate-estimates-of-costs-or-else/>

Miners claims could increase

A miner who lost the chance of compensation due to the negligence of his solicitors is entitled to damages because later evidence indicating that he was not eligible was irrelevant, the Supreme Court has ruled.



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However, the court did not take a view on the main issue before it: the admissibility in a professional negligence action of subsequently acquired evidence relating to the value of the original claim.

This was because the original claim was run under the special rules of the government compensation scheme for vibration white finger (VWF), rather than a regular tort claim.

Link to SRA Standards

Ensure that your link to the SRA rules has been updated in accordance with regulation 9 of the Provision of Services Regulations 2009, from the SRA Handbook 2011 to the SRA Standards and Regulations 2019.



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<https://www.sra.org.uk/solicitors/standards-regulations/>

Christmas behaviour

Ensure you remind staff to behave themselves at Christmas, especially where alcohol is involved, otherwise they could face prosecution by the SRA for lacking integrity



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What to expect in 2020

- SRA thematic reviews of:
 - STaRs compliance
 - AML compliance
 - COLP/COFA roles
 - Competency
 - Transparency
- Potential property referral ban



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Here are some of things you should be planning for:

SRA Standards & Regulations (STaRs) - the SRA is likely to be carrying out a thematic review of these in 2020; if you haven't already done so you should:

- Review and update your policies and procedures as appropriate;
- Provide training for all staff
- Review case management/accounts systems to ensure they are fit for purpose;
- Review compliance registers to ensure they meet the firm's requirements going forward - the SRA will expect you to keep evidence of compliance with the STaRs and that you can justify your decisions;
- Review your compliance plan and update it to take account of the new regulatory landscape;
- Review your breach reporting procedures - you don't only have to report what clearly constitutes a serious breach but also other matters; you also need to review whether solicitors will have the confidence that your COLP/COFA will report matters to the SRA or whether solicitors will want to report direct to the SRA themselves. You also need to consider how non-solicitors will deal with reporting serious matters, as according to the new rules they have a duty to report direct to the SRA and not via the COLP/COFA!
- Ensure you are displaying the SRA's digital logo on your firm's website

Contact from the SRA in relation its AML thematic review; make sure you:

- Have a comprehensive firm-wide risk assessment in place;
- Provide AML training to ALL staff - the lack of training for support staff has been identified as an issue by the SRA;
- Carry out appropriate client due diligence and note the findings;
- Review your reporting to the NCA - the SRA is likely to assess whether the work you do should have led to more SARs being made.

Property related referral ban - the government may impose a ban in early 2020 if transparency over estate agent arrangements has not improved; if your firm is paying for such referrals you should ask yourself:

- How will we market our services in place of paying referral fees?
- Will we be able to bridge any fee income gap if estate agents choose to send work elsewhere?
- Do we need to start planning for a reduction in property staff if the ban leads to an upheaval in the conveyancing market?

SRA Thematic Reviews - apart from the above mentioned reviews the SRA has indicated that it is also likely to be carrying out further reviews of competency and transparency; there is also talk of a review of the compliance officer regime to make sure COLP/COFAs are doing what is required of them.

The above may seem daunting for you but we are here to help with services including:

- STaRs training and policies
- Reliance risk and compliance system for recording and managing key compliance areas
- AML training and policies

Market



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Areas being covered.

Consumers & the law

Most people know very little about how the law works in the UK, research has found, with 44% admitting that they did not know the difference between a solicitor, lawyer or barrister.



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The survey of 2,000 people commissioned by Slater & Gordon also highlighted huge gaps around both criminal and civil law.

A third were not sure on the difference between criminal and civil courts, while 22% thought you had to have a master's degree in law to be a magistrate.

The findings come at a time when there is a growing focus on the need for public legal education.

When it came to legal terminology, one in ten people thought probate was the same as probation, with 23% thinking the term 'silk' simply related to the wigs that barristers and judges wear.

Co-op legal services on the up

Co-operative Legal Services (CLS) – one of the original alternative business structures – has recorded a 29% increase in turnover in its last financial year as it consolidates its position as the country’s largest probate provider.



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Its recently published results showed that, in the year to 5 January 2019, CLS saw turnover rise from £22m to £28.3m, with profits up 54% to £2m.

The business has recovered steadily since reporting a £9m operating loss in 2013. Turnover – which reached a high of £33m in 2012 – hit a low of £18m in 2015.

Most of the revenue growth last year came from CLS’s probate practice, up 40% to £18.8m. That followed its acquisition in late March 2018 of Simplify Probate, then the UK’s second largest provider of probate, from the group that owns QualitySolicitors.

Online conveyancing

Only 19% of home buyers use online conveyancers, despite the dominance of online searches as a way of finding property, a report has found.



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However, young people were much more likely to use online conveyancers – 30% of those aged between 18 and 24, compared to only 10% of the over-55s.

The study by IRN Research of 562 consumers who bought a property in the past two years, found that 63% used national websites like Rightmove, Primelocation and Zoopla to find their property.

However, when it came to their conveyancing, exactly the same proportion relied on a solicitor with a physical office location.

A third (34%) used a licensed conveyancer with an office and 19% an online conveyancing service provided by either a solicitors' firm or licensed conveyancer.

Upcoming Events

Webinar - Where are you on your journey to the STaRs?

1.00pm on 12 December 2019

Register here -

<https://pages.theaccessgroup.com/STaRS-webinar.html>



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