



Regulatory and Compliance Update (Legal)

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Administration

- ◊ Questions – lodge these via the question facility and they will be answered at the end
- ◊ Competency (solicitors) – A2
- ◊ Webinar recording – this will be uploaded to your LMS account or made available
- ◊ Polls

Online resources

◇ Access Website - <https://www.theaccessgroup.com/>



◇ DL&C website - <https://www.theaccessgroup.com/digital-learning-and-compliance/>



◇ Twitter - @RilianceSL



◇ LinkedIn (Riliance) - <https://www.linkedin.com/company/2396873>



◇ Newsfeed – contact us to sign-up



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Regulation



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LeO wants its budget to increase

The Legal Ombudsman (LeO) is seeking to increase its budget by 20% in the next financial year to “radically” improve the time it takes to deal with complaints and “eliminate all unnecessary waiting time”.



LeO has undergone substantial process change in recent years, but while it has met some of the secondary timeliness performance measures for dealing with complaints, it has not achieved others and overall not reached the overall performance sought.

AML thematic review

The Solicitors Regulation Authority (SRA) has written to 6,500 law firm COLPs asking them to make a declaration that they have a firm-wide risk assessment complying with the anti-money laundering (AML) regulations.

But don't sign too quickly!



More than a fifth (21%) of firms previously reviewed failed to comply with the regulations, either by not addressing all the risk areas, or by sending a client or matter assessment instead of one applying to the whole firm.

The sweep also identified a problem with firms using template risk assessments.

In the letter to compliance officers for legal practice (COLPs) the SRA said many firms had “poor-quality” firm-wide risk assessments, “and in some cases had no assessment at all”.

As well as being a mandatory requirement a firm-wide risk assessment helped create “appropriate policies, procedures and controls” to protect firms and safeguard against money laundering.

The SRA has said the declaration was being requested both under regulation 66 of the AML regulations, and paragraph 3.3 of the SRA’s code of conduct.

The SRA said, “There are no exceptions to the requirement to do this. We may take action against any firm that fails to make the declaration.” It said COLPs might want to consult their money laundering compliance officer or money laundering reporting officer before providing the declaration.

Even if firms were no longer in scope of the regulations, they need to complete the declaration.

The letter included a link to a declaration form, which must be sent to the SRA before 31 January 2020.

Ms Best stressed that the SRA was not asking firms to submit their firm-wide assessments, but only to confirm that they had one and it complied with the regulations.

“We take our responsibilities as a supervisor under the regulations extremely seriously. Money laundering, and

the crimes it enables, is a serious risk for the UK, and a priority focus for us.”

The 400 firms that were previously contacted have not been sent letters, nor have the 100 big firms that the regulator handles through relationship managers.

Speaking at the SRA’s COLP and COFA conference in October, chief executive Paul Phillip warned firms to “take immediate action now if you are not on top of your money laundering risks” and said “strong action” would be taken where the regulator had “serious concerns”.

SRA clarifies position over publicity rules

The new rule that prohibits solicitors from making unsolicited approaches to members of the public is not a blanket ban on all advertising.



The new rule is a ban on targeting members of the public individually.

New guidance on paragraph 8.9 of the Code for Solicitors says: “You do not make unsolicited approaches to members of the public, with the exception of current or former clients, in order to advertise legal services provided by you, or your business or employer.”

Paragraph 7.1 (c) of the code of conduct for firms replicates this provision.

The guidance said these rules “prohibit unsolicited approaches to members of the public which, even if permitted by law, may feel unwelcome or intrusive”.

It explained: “This means you cannot make direct or specifically targeted ‘approaches’ to members of the public in person, by phone or via other means which target them individually.

“In all cases we expect you to give particular weight to the circumstances and position of the person contacted.”

The guidance clarified that solicitors were allowed to advertise their services to the public so long as it was done in “a non-intrusive and non-targeted way”.

It explained: “This means, for example, that you may place an advert on the radio or TV, on billboards, in a local newspaper, online or on a social media platform. None of these would be considered to be intrusive as they do not constitute approaching members of the public on a targeted or individual basis.

“Sending leaflets to people’s homes is allowed, but only under specific circumstances whereby the distribution could not be considered to be targeted – for example you may send leaflets to all homes within a large geographic area, but may not selectively distribute leaflets to only specific homes or individuals based on wider information you know about them.”

An example of prohibited advertising would be a firm identifying from online media a list of people who have recently been involved in a major road traffic accident and sending them a letter saying that it could help them claim compensation.

“We would consider this a breach of our standards as it involves a targeted approach to specific members of the public which may feel intrusive to those who receive it due to the particular circumstances that they find themselves in.”

SRA lacks transparency and accountability

In a performance report on all the legal regulators the Legal Services Board (LSB) has criticised the Solicitors Regulation Authority (SRA) for a lack of transparency and accountability.



The SRA's performance on accountability and transparency was downgraded to 'not met – action required', again by 31 January 2020.

The LSB said the SRA had failed to provide it with "detailed plans" as to how and when it would improve "accountability to stakeholders" and transparency in the performance measures considered by its board.

Back in January, the LSB said the SRA, which has banned the public and press from board meetings since 2017, was "not sufficiently transparent" in explaining its decisions at that level.

The LSB said, "Our starting point on this is that it is difficult to see how a regulator can effectively provide adequate visibility of how its board holds the executive to account without holding public board meetings.

PII changes not going ahead

The SRA has confirmed that, following consultation, it will not be making changes to the current rules requiring solicitors to have a minimum level of professional indemnity insurance (PII) cover.



A consultation last year proposed removing the 'one-size-fits-all' rules on PII. The proposals aimed to make sure firms were providing the public with appropriate protection, while enabling them to take out cover that better reflected the work they did. This could potentially reduce costs for some firms, particularly smaller ones where PII is a very significant overhead, and lead to lower prices for customers. It could also attract new legal businesses into the market.

The SRA proposed a range of changes, including reducing the minimum level of cover for firms from £2m (£3m for incorporated firms) to £500,000. Reflecting greater risks, firms carrying out conveyancing would have a required minimum cover of £1 million.

Other proposals for the terms and conditions included greater flexibility around defence costs and capping the level of cover needed for the six-year run-off period after a firm closed.

There were 160 responses to the consultation. Feedback indicated - among other issues - that insurers might not lower premiums, or firms might not take the opportunity to lower their cover. There was also concern that if changes resulted in firms buying additional layers of insurance to maintain current levels, costs and complexity could increase. Even if costs were lowered, some thought that overall consumer protection would be reduced.

SRA Enforcement Strategy – a must read!

- We require all those we regulate to be familiar with our standards, explanatory guidance, and the law and regulation governing their work, and to be able to explain and justify their decisions and actions.
- Our codes of conduct place obligations on those we regulate to report to us any facts or matters which they reasonably believe are capable of amounting to a serious breach of our standards or requirements.
- Prompt reporting is important.
- Whether or not a matter should be reported is a matter of judgement, which will depend on the individual facts and circumstances. If you are unsure about whether to make a report, you should err on the side of caution and do so.
- You (solicitors) should be prepared to make a report yourself if you are not satisfied that the COLP/COFA will take the same view.



Solicitors
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ICO consultation on the draft right of access guidance

The ICO is running a consultation on the draft guidance to gather the views of stakeholders and the public.



These views will inform the published version of the guidance by helping it to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

<https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/ico-consultation-on-the-draft-right-of-access-guidance/>

First GDPR fine issued

In the first use of fining powers under the General Data Protection Regulation (GDPR), the Information Commissioner's Office (ICO) has fined a London pharmacy £275,000 for failing to ensure the security of special category data.



According to a notice Doorstep Dispensaree Ltd, which supplies medicines to individuals and care homes, left some 500,000 documents in unlocked containers at the back of its premises in Edgware. The documents included names, addresses, dates of birth, NHS numbers, medical information and prescriptions belonging to an unknown number of people.

Documents, some of which had not been appropriately protected against the elements and were therefore water damaged, were dated between June 2016 and June 2018. Failing to process data in a manner that ensures appropriate security against unauthorised or unlawful processing and accidental loss, destruction or damage is an infringement of the GDPR, which came into force in the UK in May 2018.

Steve Eckersley, ICO director of investigations, said: 'The careless way Doorstep Dispensaree stored special category data failed to protect it from accidental damage or loss. This falls short of what the law expects and it falls short of what people expect.'

The administrative fine was imposed under S.155 of the Data Protection Act 2018.

Notable disciplinary cases (solicitors)

- ◊ A partner who misled beneficiaries about the progress of a case to resolve a dispute over estate assets and then found himself “too embarrassed” to tell them the truth has been struck off.
- ◊ A solicitor who failed to complete several probate matters promptly – with one taking 15 years – has been fined £15,000.
- ◊ A partner who said she felt “threatened and intimidated” by clients who would not accept her advice to discontinue has been struck off for lying about the progress of their cases.
- ◊ A solicitor has been rebuked and fined £2,000 for sending a client a cheque for his damages which bounced.
- ◊ A solicitor who spent £46,600 of a disabled client’s interim payments on costs and disbursements instead of on rehabilitation, has been fined £50,000

The Solicitors Disciplinary Tribunal

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Operational



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Are you entitled to make a deduction?

A law firm made an unlawful deduction of wages when it took £1,700 from the salary of a sacked solicitor turned office manager to cover the cost of a training course.



Damages Based Agreements (DBAs)

The Law Society has broadly welcomed efforts to encourage the use of damages-based agreements, although the support is caveated with pleas to iron out some technical issues.



<https://www.lawgazette.co.uk/news/law-society-backs-efforts-to-encourage-dbas/5102405.article>

SRA Standards & Regulations – how do you match up?

- Are you STaRs compliant?
 - No – 18%
 - Unsure – 44.5%
- Have you provided solicitors with training?
 - No - 25.5%
 - Unsure – 8%
- Did you know non-solicitors have to report serious matters direct to the SRA?
 - No – 57.5%
- Have you updated your policies & procedures?
 - No – 37%
 - Unsure – 24.5%



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Market



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Legal sector revenues up

The collective revenue of the UK's top 10 firms is higher than that of the largest 100 firms a decade ago as the legal sector's turnover and trade surplus grow despite political uncertainty.



Investors to take advantage of the STaRs

Investors are poised to buy into the legal services sector to capitalise on recent regulatory changes, with corporatised law firms best placed to benefit.



It is also forecast that an unprecedented level of consolidation would result in half of mid-sized law firms disappearing through mergers and acquisitions in the next two years.

Consumer-focused investors are poised to “Uberise” the legal market.

Legal sector employment outlook mixed

The legal services sector is to shed 13,000 jobs in the decade to 2027 – with a further 22,000 at risk if technology brings radical change to the workforce, research for the Law Society has predicted.



Legal secretaries would be hardest hit, with numbers falling by two-thirds, while the number of lawyers would increase by almost 2% every year.

However, the number of lawyers would be reduced slightly by a no-deal Brexit, shrinking by almost 4% over the next six years.

Total employment in the law has risen from 254,000 in 1998 to a peak of 345,000 in 2009, before falling post-economic crisis to 329,000 in 2016

The proportion of lawyers in the legal workforce is expected to increase sharply over the 10-year period featured in the research, rising from 47% in 2017 to 57% by 2025.

About 70% of law graduates looking for a training contract don't get one and don't get to fulfil their dreams of becoming a barrister or a solicitor.

Forthcoming webinar series – Working with the STaRs (SRA Standards & Regulations)

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- ◊ Risk management – 5th Feb
- ◊ Risk-based file reviews – 12th Feb
- ◊ Complaints management – 19th Feb
- ◊ Breach management – 26th Feb

You will receive an email later in January where you will be able to sign up for the above webinars.



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How helpful was this webinar for you?

- Extremely helpful
- Very helpful
- Somewhat helpful
- Not so helpful
- Not at all helpful

Poll 1



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- ◊ What would you like to find out more about?
 - ◊ Compliance policies
 - ◊ Compliance training
 - ◊ Risk & compliance services
 - ◊ Webinars
 - ◊ Other (we will contact you)

Poll 2



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Any questions?



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Products & Services

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◊ Legal Futures

◊ Law Society Gazette

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