



Regulatory and Compliance Update (Legal)

March 2020



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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 – none this month

Forthcoming webinars

- ◊ COLPs and Health & Safety
 - ◊ 18 March 2020 (1pm – 2pm)

- ◊ Cyber Threat
 - ◊ 7 April 2020 (1pm – 2pm)

- ◊ HR risks within law firms
 - ◊ Series in May/June

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Regulation



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SRA clarifies position over reporting by non-solicitor employees

After lobbying the SRA for clarity over the reporting of serious issues by non-solicitor employees, we have now received a letter detailing the position; full details have been provided in our recent blog.

[Click here to see our blog](#)



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Westminster Legal Policy Forum

We attended the recent Forum where government and regulators discussed the future of legal regulation; key topics covered:

- Independent review of Legal Services Regulation ([Prof Mayson's speech](#))
 - The future of legal services
 - The state of the legal market
 - The focus on consumers
 - Regulation in the legal services market
- [Read our blog](#)



Read Prof Stephen Mayson's key comments

CMA carrying out thematic review of transparency and regulatory independence from representative bodies.

SRA to supervise tax advice

The updated money laundering regulations, which came into force on 10 January, has extended the SRA's AML supervision to include firms offering tax advice.



The SRA is to ask the 7,000 firms it already supervises for AML purposes – out of the 10,200 total of private practice law firms – whether they offer tax services.

LeO demanding budget increase

The Law Society and Bar Council have launched an outspoken attack on a planned 20% rise in the budget of the Legal Ombudsman (LeO). The Law Society has said the LeO had not provided “credible evidence” for the increase, which it could not support.

 LEGAL OMBUDSMAN

Legal Professional Privilege

There are no special rules allowing regulators such as the Financial Reporting Council (FRC) to override the protection of legal professional privilege (LPP), the Court of Appeal has ruled.



Delivering judgment in *Sports Direct International v the Financial Reporting Council* [2020] EWCA Civ 177, Rose LJ said she agreed with Sports Direct that there was no principle that disclosure of documents to a regulator was in some circumstances not an infringement of LPP.

Regulation of AI

A body that identifies gaps in the regulatory landscape on the use of artificial intelligence (AI) and advises individual regulators is needed as the technology develops, the government has been told.



**Committee on
Standards in
Public Life**

The recommendation of the Committee on Standards in Public Life comes as legal regulators begin to address questions around the use of AI.

The committee said contributors to its review were concerned that public bodies were introducing AI “without a clear understanding” of legal requirements.

CLC looking to approve TPMA's

Firms of licensed conveyancers will only be able to use third-party managed accounts (TPMAs) if it is in **each** client's best interests.



There is growing interest in TPMAs as a way to reduce the risk of holding money in client accounts and the Solicitors Regulation Authority has joined the CLC in backing their use.

The draft guidance says that using a TPMA would not release the CLC practice from the requirement to act in the best interests of its clients, "so the firm must ensure that the decision to use a TPMA, and the TPMA provider used, is appropriate in the circumstances of each case".

Alongside this and the authorisation of the CLC, the firm would have to tell the client about the arrangement and that the consumer protections applying to TPMAs were different to those applying when holding money in a client account.

Regulatory independence

The Legal Services Board (LSB) is ramping up pressure on the Law Society, the Bar Council and other approved regulators over ensuring the independence of their regulatory arms.



The LSB plans to introduce ongoing monitoring of regulatory independence to ensure they obey the revised internal governance rules (IGR) introduced last year to ensure greater independence. The IGR define the relationship between representative bodies (officially called approved regulators) and their regulatory arms where they are part of the same organisation.

FATF watchlist

The Financial Action Task Force has added the following to its money laundering watchlist :

- Albania
- Barbados
- Jamaica
- Mauritius
- Myanmar
- Nicaragua
- Uganda



FINANCIAL ACTION TASK FORCE

Trinidad and Tobago has been removed after having “strengthened the effectiveness of its AML/CFT regime”.

Whilst there is no strict regulatory obligation to conduct EDD measures in relation to customers with exposure to 'grey listed' countries, firms should ensure that the above is accounted for when assessing geographic (customer and whole-firm) risk.

Conveyancer reliance of developers

The Competition and Markets Authority (CMA) has expressed concern that conveyancers' advice to leasehold clients may be compromised by their relationships with developers.

[CMA Report](#)



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An update from the CMA on its investigation into the leasehold said it was concerned more generally that homeowners have been unfairly treated and prospective buyers misled by housing developers, and that it was now planning enforcement action against wrongdoers.

On conveyancing, its report said developers recommending panel solicitors has been "the subject of criticism".

The CMA said: "It is permitted under professional conduct rules and there are obvious advantages in principle. However, the solicitor's duty is to act in the best interests of their client, with independence, honesty and integrity.

"There is a risk that this may be compromised if solicitors are concerned to avoid losing the recommendation that comes from the developer.

"This is a matter of concern and goes together with concerns about the effect of some inducements offered to purchasers to move to speedy exchange of contracts."

Solicitor suing the SRA

A solicitor who alleges he was harassed by the Solicitors Regulation Authority is bringing unprecedented proceedings against the regulator through the employment tribunal.



In particulars of claim he alleges that the SRA has demonstrated 'deep, entrenched racism' in the way he has been treated, particularly in comparison with white individuals involved in the investigation whose accounts have been 'taken at face value'. He claims the SRA has been 'grossly negligent' in its duty to investigate others who he alleges have committed misconduct. He also says the SRA has made 'bogus' visits to his premises and harassed him by threatening referral to the Solicitors Disciplinary Tribunal over late payment of a practising certificate fee.

At a preliminary hearing he resisted attempts by the SRA to strike out his claims and to remove five defendants from the proceedings.

The solicitor has said that the SRA has now dropped its investigation into him but is now misappropriating members' funds defending its own wrongdoing.

The next hearing is in March 2020 at the Employment Tribunal Midlands West.

Notable disciplinary cases (solicitors)

- A solicitor who persuaded a vulnerable client to pay £4,700 into her personal bank account has been struck off.
- A partner who overcharged clients and then lied to the SRA about sending bills to them has been struck off. A fellow partner was suspended for a year because, despite holding both compliance officer roles at the firm, he failed to step in.
- A solicitor claiming to have become overwhelmed by pressure of work has been struck off after dishonestly misleading clients that she had made court applications. In one case, she created a fake email to convince the client she had done her job when she had not.
- A young solicitor who lied about back-dating legal aid documents has agreed to leave the profession.

The Solicitors Disciplinary Tribunal

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Operational



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Sexual harassment

The law has many of the elements of the film industry that led Harvey Weinstein being tried for multiple sexual offences, it has been claimed.



“The hierarchy of law firms and organisations and how the most interesting work is allocated, and careers progressed can create perverse incentives for sexualised behaviour,” “Lawyers often work in a pressure-cooker environment where what is ‘reasonable’ behaviour becomes distorted. Add to that the effects of alcohol and there is a recipe for disaster. Mark Solon, chairman of training company Wilmington Legal.

Ryan Beckwith to appeal his £35,000 fine and £200,000 costs after being found to lack integrity.

PII for freelance solicitors

An insurance intermediary in the City of London has opened the door to the new breed of freelance solicitors by launching the first indemnity cover for them.



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The lack of appetite among insurers for covering freelance solicitors was flagged well in advance of their creation in last November's Standards and Regulations (STaRs). A network for freelancers could not get off the ground because of this problem – leaving the concept an aspiration rather than a reality.

First freelance solicitor has just started practicing.

Be careful how you email!

A manager at a logistics company was constructively unfairly dismissed following a “public dressing down” in a group email from another senior manager.



The tribunal upheld the claim, noting: “There is no doubt that a single incident of abuse, verbal or written, can found a claim for ‘constructive’ unfair dismissal.”

£14,176.79 in compensation and lost earnings.

Business Continuity Planning

Have you updated your BCP to take account of staff absences caused by Coronavirus?



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- Staff who get it in the UK
- Staff who get it outside the UK
- Staff who get quarantined when on holiday
- Covering work?

MIPIM (international property-related conference) postponed

RTA Claims Portal

The government's plans to introduce the portal in April have been put back to August 2020.



Are you independent from introducers of work?

A personal injury solicitor put his own interests ahead of his clients, turning a “Nelsonian blind eye” when concerns were raised so as to maintain the flow of referrals from claims companies.



The firm was “financially dependent” on receiving clients from claims management companies (CMCs) – who were responsible for 97% of the firm’s clients – and did not advise clients that paying fees to the CMCs may well not have been in their best interests.

In contrast, it was in the firm’s interests that the client would pay a fee to the CMC, since the firm had a financial interest in maintaining its flow of clients from CMCs

National Crime Agency Scam

If you are contacted by anyone purporting to be from the NCA asking for access to your system or information, report it on 0370 496 7622.



Legal Professional Privilege

A large London firm has been ordered to disclose documents about a client accused of running a fraudulent investment scheme after the High Court found that letters sent by the law firm fell outside the normal lawyer/client relationship and the scheme itself bore 'classic hallmarks' of fraud. The documents would otherwise have been legally privileged.



The judge said that the firm had 'recklessly and/or negligently enabled the scheme and induced many of the individual claimants to invest by affording the scheme apparent respectability by endorsing it as the client's legal adviser.'

Electronic signatures

Documents signed electronically (including deeds) - even when a statutory requirement for a signature predates the digital age - have legal force in England and Wales.



The written ministerial statement from the Lord Chancellor was confirming the conclusions of last year's report by the Law Commission, which itself had sought to clear any lingering doubts over the issue.

Endorsing the commission's conclusion, the lord chancellor said that electronic signatures 'are permissible and can be used in confidence in commercial and consumer documents'.

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Market News



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Will writing

The four-leading will-writing brands are beginning to take “a noticeable market share”, new research has suggested. It also found that, for the first time, a majority of probate matters are handled on a fixed-fee basis.



The Wills & Probate Consumer Research Report 2020 from IRN Research, which included a survey of 1,208 adults, estimated that the top four volume players – Co-operative Legal Services, Which? Legal, Irwin Mitchell and Slater & Gordon – have a combined share of the will-writing market of between 15% and 18%.

“This is expected to increase,” IRN said. “For the first time, there are signs that the leading brands can begin take a noticeable market share of this fragmented market.”

LPC pass rates

Pass rates on the legal practice course (LPC) have fallen significantly, while the achievement gap between white and ethnic minority students remains large, new research has found.



The Solicitors Regulation Authority's (SRA) annual quality assurance report on education and training, for the year to 31 August 2018, also recorded a yawning gap between the pass rates at the best and worst law schools.

The LPC pass rate fell from 66% the year before to 56%, while for the common professional examination (CPE)/graduate diploma in law, it dropped from 64% to 60%.

Claims Management Companies

The number of authorised claims management companies (CMCs) has plunged by almost 40% since the Financial Conduct Authority (FCA) took over the task of regulating them last April.



According to the latest figures from the FCA, 741 CMCs are currently authorised or hold temporary permissions. This compares with over 1,200 CMCs authorised by the Ministry of Justice (MoJ) before the change of regulator in April 2019.

Number of conveyancing firms falls

The number of conveyancing law firms has fallen to a new low as the market felt the “full brunt” of Brexit-related political and economic uncertainty last year.



The quarterly tracker from Search Acumen said this was also reflected in a sharp decline in transaction volumes, but it predicted this would not last with confidence returning.

The total number of “active” conveyancing firms tumbled to a record low of 3,920 in the final quarter of 2019, down 5% from a year earlier. The research dates back to 2011.

Transaction volumes dropped 8% on the previous quarter, and 15% on the same period in 2018, to 226,444.

AI on the radar

The risk of lagging behind in adopting artificial intelligence has emerged as a concern among financial directors of top-100 firms. However more traditional concerns - led by pressure from clients to cut fees - are seen as the biggest challenge to profitability.

Thomson Reuters



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A survey of financial directors by legal information company Thomson Reuters found that 28% of respondents see falling behind their rivals in implementing artificial intelligence technology as 'a significant risk to profitability'. The most frequently cited threats were 'downward pressure from clients' (46%) and 'competition between law firms' (39%).

As a response to such pressures, 69% of the financial directors polled said they would be likely to cut unprofitable services over the coming year, up from 42% looking to make cuts five years ago.

Other possible measures to improve profitability that may be taken over the next year include:

- 56% would be likely to put more work through junior staff to improve profitability
- 50% would use technology in more areas of their business as a means to cut costs
- 47% would be likely to make lateral hires of senior teams from rival firms

Meanwhile 57% of finance directors predicted growth in intellectual property work in the next year, up from just 8% in last year's survey. Areas of work expected to contract were led by commercial property and construction.

Any questions?



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Online resources

- ◉ [Digital Learning & Compliance website](#)
- ◉ [LinkedIn page](#)

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◊ Legal Futures

◊ Law Society Gazette

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