



Regulatory and Compliance Update (Legal)

April 2020



Brian Rogers, Regulatory Director, Digital Learning & Compliance



This Document is the Property of Access UK Limited Classification - Restricted

#WeareAccess

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

Policy updates and forthcoming webinars

This Document is the Property of Access UK Limited Classification - Restricted

freedom to do more

- Updated policy & precedents library
 - Major changes: Breach Register v2 - Complaints and Reporting Policy v2 - Conflict Policy (Private Client) v2 - Conflict Policy (Commercial Practice) v2 - File and Case Management Procedures Manual v2 - Financial Management Policy v2 - Information Management and Security Policy v2 - SRA Transparency Rules Pack v2
 - Minor changes: Client Care Letter v1.1 - Consumer Contracts Briefing Sheet v1.1 - Terms of Business v1.1
- Cybercrime – how exposed is your firm?
 - 7 April 2020 (1pm – 2pm)
- How to maintain compliance whilst working remotely
 - 14 April 2020 (1.30pm – 2.30pm)
- How to engage your people in your firm's compliance programme
 - 20 April 2020 (1pm – 2pm)



freedom to do more

Regulation



This Document is the Property of Access UK Limited Classification - Restricted

#WeareAccess

SRA view on compliance during the Covid-19 crisis

- ◊ *We expect solicitors and firms to continue to meet the high standards the public expect. This means they must do everything they reasonably can to comply with our rules and follow our Principles. This includes serving the best interests of their clients and upholding the rule of law.*
- ◊ *We expect firms to have appropriate contingency plans in place for disruption, but we recognise that these are exceptional circumstances and the coming months could present particularly challenging issues.*
- ◊ ***We must all remain pragmatic. We will take a proportionate approach: this includes our approach to enforcement. If we do receive complaints, we would take into account mitigating circumstances, as set out in our enforcement strategy. This includes focusing on serious misconduct, and clearly distinguishing between people who are trying to do the right thing, and those who are not.***
- ◊ *We would recommend that if you do face compliance difficulties linked to the virus, you should clearly document the approach you have taken.*

Money laundering levy

Firms that fall within the regulated sector will be subject to a levy of 100 million pounds to help the government tackle money laundering



The Treasury said it would publish a consultation on the levy later this spring.

FATF guidance on digital client due diligence systems

This Guidance is intended to assist governments, regulated entities and other relevant stakeholders in determining how digital ID systems can be used to conduct certain elements of customer due diligence (CDD)

FATF Guidance



SRA delays “swoop” on firms over AML!

The coronavirus crisis has hindered the Solicitors Regulation Authority’s (SRA) efforts to pursue law firms that have ignored its efforts to check they are complying with its anti-money laundering rules.



A rolling monthly programme of anti-money laundering spot checks on firms will be undertaken this year.

Anti-money laundering visits to firms have been moved to a conference call. “We will not review firm files until we are able to attend offices in person. We will continue to call in firms’ risk assessments, policies, procedures and controls.

Complaint or not a complaint?

The new Chief Ombudsman wants to be able to use its 'own initiative' powers to deal with 'silent sufferers' – clients who are unhappy with their lawyer's service but decide not to complain (35%).



Rather than needing somebody to complain in order to trigger, for example, a thematic review on a particular problem in the profession, she said, “should you have own-initiative powers so you could potentially not have to wait for that complaint and instead identify the issue as the ombudsman and move forward on that basis?”

LeO request for 20% increase in budget rejected.

Consumers still in the dark

Consumers are still in the dark about the technical and service quality of their prospective lawyer.



The Legal Services Consumer Panel said it remains difficult for people to make informed decisions about their provider – four years after the Competition and Markets Authority made the same assessment of the sector. The panel's latest comments came in its consumer impact report which measured how the legal sector is faring against the CMA recommendations.

The panel said a dearth of quality indicators weakens the progress that has been made towards price transparency in recent months and creates the danger that consumers place too much emphasis on price at the expense of other important factors.

Notable disciplinary cases

- Legal executive banned following her attempts to cover up a mistake on a personal injury matter.
- Paralegal banned for failing to progress a client matter and, when questioned about it she created and backdated letters to pretend it was progressing.
- Paralegal banned after taking money from clients intended for application fees and legal costs.
- Legal secretary banned and fined £2,000 after misappropriating £342 from her firm, after fabricating a bank receipt. She also failed to repay a salary overpayment of £300.
- Paralegal banned for providing his personal bank account details on one occasion to the other side's solicitors and on another to the other side's insurance company in two separate matters.

The Solicitors Disciplinary Tribunal



All non-lawyers!

freedom to do more

Operational



This Document is the Property of Access UK Limited Classification - Restricted

#WeareAccess

Working from home risks

- Lack of supervision
- Breaches of confidentiality
- Cyber crime
- Competency
- Reporting (breaches, complaints, claims, SARs, DSARs)
- File reviews (CQS/Lexcel)
- Regulatory compliance
- Accessing client data

[Working from home blog](#)



Key legal workers

- Advocates (including solicitor-advocates) required to appear before a court or tribunal (remotely or in person), including prosecutors;
- Other legal practitioners required to support the administration of justice including duty solicitors (police station and court) and barristers, solicitors, legal executives, paralegals and others who work on imminent or ongoing court or tribunal hearings;
- Solicitors acting in connection with the execution of wills; and
- Solicitors and barristers advising people living in institutions or deprived of their liberty.



Legal professionals involved in court and tribunal hearings, as well as those advising people deprived of their liberty or on executing wills are 'keyworkers', the Ministry of Justice (MoJ) has said.

As a result, if they cannot have their children safely looked after at home, they will be prioritised for education provision at schools and nurseries.

Conveyancing and Covid-19

The government has issued guidance on how the conveyancing market should be operating during Covid-19 crisis

[Government guidance](#)



Conveyancing guidance

Organisations representing conveyancers have joined forces to issue guidance on handling matters during the coronavirus pandemic, including how to vary completion dates where contracts have already been exchanged.



The group behind it includes the Law Society, the Society of Licensed Conveyancers, the Chartered Institute of Legal Executives, Bold Legal Group and the Conveyancing Association, and has the support of government departments including HM Land Registry.

Its primary purpose is to help conveyancers assist clients and comply with the government statement issued last week that said they should continue to support the sales process “as far as possible” but look to change dates of completion during the lockdown where possible.

Scam emails

Watch out for scam emails purporting to be from potential clients wanting help with conveyancing matters; warn your staff not to respond

[Keeping data safe](#)



Zoom insecurity

If you use Zoom video conferencing system be aware that the system has been found to lack appropriate security standards to prevent unknown users from joining a call



PII insurers avoiding ABSs!

Broker says market has shifted and insurance companies generally are no longer writing policies for Alternative Business Structures (ABS); they are concerned about the influence of non-lawyer owners/managers



Banks delay new online banking security measures

Banks have delayed the implementation of measures requiring the name of the payee to be provided along with the sort code and account number when carrying out online bank transfers



AML checks for law firm partners

A solicitor acting in a property transaction has admitted not following anti-money laundering procedures because her client was a partner at a large international law firm.



She conceded the status of the client “led her to believe the transaction, as a whole, was low risk”.

She has been fined £2,000 by the SRA and will not be referred to a disciplinary tribunal as a result.

She was instructed to act in a residential conveyancing transaction worth £3.2m, which completed in January 2019, where a significant proportion of the completion funds (net of a mortgage) of £1.6m was being gifted by a relative of the client.

The relative lived in south-east Asia and she failed to carry out customer due diligence checks on her and the source of the gifted funds – which turned out to be a trust in another country in the region – and to verify who the ultimate beneficial owner of that trust was,

She also did not follow the firm’s procedures, failing to complete “adequately or at all” its internal money laundering form and property fraud questionnaire.

Further, had she properly answered the AML risk questions on the case management system used by the firm for client onboarding, it would have returned a higher risk score requiring further investigations.

Loss of CQS

“One of my colleagues went on a course recently presented by Tracy Thompson, who is the CQS Lead Assessor. Some of the scariest information I have received in years. You fail CQS, and you might as well stop doing residential property!”.



Lack of AML training

A top 50 firm has been rebuked by the regulator after failing to adequately train staff in anti-money laundering measures.

**MONEY
LAUNDERING**

The SRA first asked the firm in November 2018 whether it had complied with the requirement, and by the end of 2018, it said it had trained approximately two-thirds of the “relevant employees”. The rest received the training by early October 2019.

After the SRA began disciplinary proceedings, the firm admitted that the delivery of the training had taken longer than anticipated.

Breach of undertakings

A law firm has been rebuked by the Solicitors Regulation Authority (SRA) for breaching an undertaking in a conveyancing transaction.



The agreement recorded that the firm acted for a property developer on the sale of a new-build residential property and gave an undertaking to the buyers' solicitor to provide a building regulation certificate and a structural defects insurance policy on or before completion.

Completion took place on 23 April 2018, but the firm did not provide the certificate until 10 January 2019 and did not provide the policy at all. Instead it handed over a certificate of completion from an architect, which gave less protection than the policy would have done.

This was in breach of the outcome 11.2 of previous SRA Code of Conduct – requiring solicitors to perform all undertakings “within an agreed timescale or within a reasonable amount of time” – and of principle 6, which means solicitors have to act in a way that maintains the trust the public places in them and in the provision of legal services.

In mitigation, Gudgeons Prentice said it has shown insight “and understands the important role undertakings play in the delivery of legal services”. Further, this was an isolated incident and the firm has co-operated “fully” with the SRA’s investigation.

The SRA said a written rebuke was the appropriate outcome because the firm had been “reckless as to the risk of harm to the purchasers”, while the remedial action of obtaining the architect’s certificate did not remove that harm entirely.

“A public sanction is required in order to uphold public confidence in the delivery of legal services,” the agreement added.

Clinical negligence reforms

The government has hinted it is poised for sweeping reforms of clinical negligence claims amid continued concern about costs.



Discussing client matters in public

The head of the Scottish Bar has referred himself to the Scottish Legal Complaints Commission (SLCC) after being caught talking on a train about his client, Alex Salmond, in a derogatory manner.

BREACH OF
CONFIDENTIALITY



In a video obtained by the Sunday Times, Gordon Jackson QC, dean of the Faculty of Advocates – the Scottish equivalent of the Bar Council – is heard saying: “I don’t know much about senior politicians but he was quite an objectionable bully to work with in a way I don’t think Nicola [Sturgeon] is. I think he was a nasty person to work for... a nightmare to work for.”

He then appeared to say Mr Salmond could be seen as “a sex pest but he’s not charged with that”.

The paper said the conversation took place in a standard carriage and was filmed by another passenger. It was during the trial and Mr Jackson talked about how his plan was to “put a smell” on one female witness. He also named two of the accusers, whose identities are protected by a court order.

Any questions?



Products & Services

- Risk & Compliance System
- ERM System
- LMS System
- HR System
- Webinars
- Blogs
- White Papers
- Compliance Policy Library
- Compliance Helpline
- Risk & Compliance Consultancy



freedom to do more

○ Telephone:
0845 345 3300

○ Email:
ComplianceSolutions@theaccessgroup.com

○ [Request a demonstration](#)

Contact us

Request a system
demonstration



This Document is the Property of Access UK Limited Classification - Restricted

#WeareAccess

Online resources

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

freedom to do more

◊ Legal Futures

◊ Law Society Gazette

Acknowledgements



This Document is the Property of Access UK Limited Classification - Restricted

#WeareAccess