



Regulatory and Compliance Update (Legal)

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Regulation



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SRA and the Law Society

The Solicitors Regulation Authority (SRA) is to become a distinct legal entity within the Law Society Group, potentially triggering a difficult debate over the division of £73m of reserves.



Although this will provide for clearer financial reporting, the new arrangement does not change the fundamentals of the relationship between the two.

LeO position on current lockdown

The Legal Ombudsman will take a ‘flexible and common sense’ approach to accepting cases and progressing investigations in the coming disrupted months.

The logo for the Legal Ombudsman, featuring the word 'LEGAL' in a stylized, outlined font above the word 'OMBUDSMAN' in a solid, sans-serif font.

The Legal Ombudsman has said it does not have the power to make short-term changes to the scheme’s rules, but it can use discretion over how complaints are handled by solicitor firms during the Covid-19 crisis.

In practice, that means firms will still be required to respond to first-tier complaints within eight weeks, but the ombudsman will take into consideration whether any delay was as a result of the lockdown.

Service providers are expected to be open and honest with clients, explaining the challenges they are facing and the reasons why it is taking longer than usual to respond to complaints. Lawyers should keep clear notes to evidence any delays and if the business has closed, this should be communicated with clients.

The ombudsman said: ‘We will look at how well you kept the client informed about what was happening when and why, as well as your assessment and acknowledgement of any impact this has on them – particularly for vulnerable people or urgent matters.’

In terms of its own work, the ombudsman says it is currently able to maintain a ‘reasonable’ level of service and will, where it is possible, continue to progress complaints.

While complainants can bring a complaint to the ombudsman after eight weeks, they are being warned there may be delays before it will be investigated. If possible, the advice is for clients and firms to seek to resolve disputes between themselves.

For full-scale investigations, the ombudsman said it will respond ‘flexibly’ to requests from firms for extra time to gather evidence and respond to questions, and lawyers are urged to be open about any challenges they may be facing as a result of the crisis.

The ombudsman may take the unusual step of suspending investigations if all parties find it difficult to engage at the moment.

There is acknowledgement that certain areas of law, such as conveyancing and litigation, may be more affected than others by the virus situation. The ombudsman said its scheme rules include giving consideration to what was good practice at the time of the matter being complained about. Clients should be kept informed about how their legal matter is being handled, including whether lawyers are working from home and the limitations that come with that.

Reserved legal activity

Changes to the list of reserved activities that only authorised lawyers can do has been floated as one of the ways legal regulation could be flexed to help the profession recover from the Covid-19 crisis.



Professor Mayson's upcoming final report from his independent review of legal services regulation is also likely to recommend a move away from the current reserved activities.

However, with legislative reform unlikely at the moment even without the coronavirus crisis, the government has encouraged the LSB to use the powers it already has to sharpen the regulatory regime.

LeO – big data and machine learning

The Legal Ombudsman (LeO) is exploring whether to use big data and machine learning technology to suggest outcomes and make recommendations in resolving complaints about lawyers.



Senior ombudsman Mariette Hughes, who is charged with improving the watchdog's efficiency, said a first step might be to use technology to triage decisions about the risk and complexity of incoming cases in order to know which staff resources to devote to investigations.

"Automating this area of work would mean things move more quickly through our process and would free up staff to focus on the investigation of complaints," she said.

In future, machine learning technology could be used "to identify patterns and trends between complaints made and outcomes reached and support [LeO's] objective to share learning and insight from cases with the profession".

She continued: "The technology could be used to suggest outcomes and make recommendations for resolution, based on the trends and correlations identified in existing data sets."

However, she cautioned that maintaining the human element in investigation was vital: "It is important to remember that effectiveness is not always about speed; it is also about accuracy and freeing people up to undertake the complex elements of our work, and to have the time to build relationships that can ultimately support the resolution of complaints."

Who will you instruct?

The future for the Bar is “bleak” if work streams and earnings do not improve, with over half of barristers now working less than 18 hours a week, the Bar Council has warned.



Without financial aid, 56% of barristers could not survive in their chambers for six months, rising to 77% who could not survive a year. The figures were even higher for those up to seven years in practice and more dramatic still for the publicly funded Bar.

Legal Choices

The future of the legal sector's consumer-facing information website is in doubt after it has emerged that no-one wants to run it.

The Solicitors Regulation Authority, one of the regulators running and funding the Legal Choices site, has said the collective ownership model is no longer appropriate for managing a sector-wide, high-profile product.



SRA chief executive Paul Philip last month wrote, on behalf of all regulators who co-own the site, to his counterpart at the Legal Services Board, Matthew Hill, calling for the oversight regulator to take ownership of Legal Choices, saying the its future was at risk. The Bar Standards Board has already withdrawn from the scheme.

In his letter, Philip said the SRA's solution would secure a public service that is 'genuinely valuable and well regarded'. But it appeared last week that the LSB has little appetite for the job, with the board effectively telling frontline regulators the website is their responsibility.

Qualification of solicitors

Trainee solicitors will be able to qualify without first completing the professional skills course (PSC) because of the Covid-19 outbreak, the Solicitors Regulation Authority (SRA) has decided.

It has also reminded firms and other employers that new trainees need not have completed the legal practice course (LPC) before starting work.



Trainees looking to qualify this September need to complete the PSC, but certain elements require face-to-face assessment.

Though the SRA has allowed PSC providers to temporarily move to online or remote proctoring of PSC assessments, it said yesterday that “we know that it may still not be possible for trainees to successfully complete the course in time for their planned admission point”.

As a result, trainees can apply to defer completion of the PSC, but will need to have done it within a year of being admitted.

SRA rules require organisations to pay for a trainee’s first attempt at the PSC and it said this obligation continued even if the trainee took it after admission.

LSB to review disciplinary decisions

The Legal Services Board (LSB) is planning to review a “random sample” of regulators’ disciplinary decisions to ensure the right processes and procedures are in place.



The LSB said that although it lacked the power to appeal to the High Court against legal regulators’ decisions, there was “no impediment to the development of a considerably more rigorous approach” to oversight than it currently had.

AML reports (SARs) to the NCA

New SAR Glossary Codes for reporters and information – April 2020

[NCA Glossary Codes](#)



The UKFIU has implemented three new SAR Glossary Codes for reporters as a result of the increased threat posed by organised crime groups (OCGs) seeking to exploit the COVID-19 situation by means of fraud.

HMRC Self-Assessment Tax Refund system

Whilst the system was introduced by HM Revenue & Customs (HMRC) prior to COVID-19 there is the potential for it to be exploited in the current climate.

Use code XXSATXX in any SAR relating to suspected fraudulent use of the Self Assessment Tax Refunds system. This may relate to identifying a change in pattern or behavior in accounts which could suggest fraudulent activity.

Government Priority Schemes

The government has introduced a number of schemes to offer support to businesses/individuals during the outbreak. Reporters should be alert to the potential for these schemes to be exploited by OCGs to commit fraud.

Use code XXGPSXX in any SAR relating to suspected fraudulent use of Government Priority Schemes established as a result of COVID-19. This may relate to identifying a change in pattern or behavior in accounts which could suggest suspicious activity.

General code

The UKFIU is conducting specific analysis to inform partners of observations on what is being seen in reporting around COVID-19 and SARs.

It would assist UKFIU analysis if reporters also used the code XXCVDXX in any SAR relating to suspicious activity connected to COVID-19.

Notable disciplinary cases

- A solicitor who “dipped into” a divorce client’s money, repeatedly lied about it, and warned her not to complain to the Solicitors Regulation Authority (SRA) or Legal Ombudsman (LeO) has been struck off.
- A solicitor who became an alcoholic after taking part in the drinking culture of a former firm has been fined by a tribunal after two drink-driving convictions.
- A solicitor who repeatedly transferred funds from client to office account before sending out bills has been rebuked by the Solicitors Regulation Authority.
- A solicitor has been struck off for illegally subletting his council flat.

The Solicitors Disciplinary Tribunal



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Fee-earners “generate little profit” for SME law firms

Just under 90% of fees generated by fee-earners at small and medium-sized law firms last year were used to cover their costs, Law Society research has found.

Position under Covid-19?



The survey recorded that, on the whole, 2019 was a “very positive” year with fees up, staff and partner numbers on the rise too, and WIP and debtor balances are down.

“However, there are indications that some firms are struggling,” said the Law Society’s law management section. Pressure to raise salaries has resulted in firms’ overheads growing more quickly than fees, leading to the first reduction in net profits per partner that we have seen for quite some time.

“This needs to be addressed quickly, as future investment in a firm and its people is only possible if fees and profits are growing.”

Covid position:

Nearly three-quarters of small law firms believe they may have to close their doors in the next six months as result of the coronavirus crisis, Law Society research has found.

Some 774 small firms – defined as four partners or fewer – responded to the Law Society and 71% said they could be six months or less away from going out of business as work drains away.

The dangers of social media (and not thinking!)

A paralegal has been dismissed for saying on Facebook that Boris Johnson deserved to catch coronavirus.

A senior official of a national union has been suspended after saying on social media that he would “throw a party” if Boris Johnson died of coronavirus. A series of comments also stated that he hoped that the whole cabinet and other senior politicians would catch the disease.



SRA and residual balances

Four partners have been fined for sitting on 979 residual balances, totalling over £468,000, for “lengthy periods of time” and where there had been no activity for six months.



The SDT heard that an investigation officer from the Solicitors Regulation Authority (SRA) obtained a list of all matters where client money was held but there had been no transactions for at least six months from the law firm, based in Llanelli, Carmarthenshire. The 979 matters had balances ranging from 2p to £95,000.

The officer found that the law firm’s last five accountants’ reports had all been qualified.

The SRA contacted the accountant, who replied that retention of client money had been “mentioned to the firm” but “as far as I am aware this has not been actioned by the client”.

The firm’s COLP and COFA told the SRA he was aware of the residual balances, but “the intention had been to delay addressing the residual balances until the firm had installed a new account software package”. He “could not confirm a specific date for the installation of this proposed new software as he was considering the available packages on the market”. He agreed that the issue could not be further delayed.

The SRA’s officer reviewed a selection of matters with longstanding residual balances, such as one client owed £944 in compensation from a local authority since 2006 and an estate owed £750 since 2002.

Junior lawyers under pressure

Furloughed but asked to work, starting work at 5am, prevented from working from home despite living with vulnerable parents – these are some of the stories to emerge from a survey of junior legal aid lawyers.



One in 10 respondents were furloughed. However, one respondent said: 'Some of us are being told to continue to work although we have been furloughed. We are worried to tell the firm that this is against the government guidelines, due to the potential effect it may have to our career and roles. I feel partners/directors are taking advantage of trainees and young newly qualified solicitors. In addition, we are being told to contact clients via our personal mobile phones.'

Dozens of respondents said their employers were not allowing flexible working. One said: 'Working hours remain the same, 9-5. This is problematic as it is taking a long time to do basic food shopping with long queues.'

Being required to attend the police station was the main Covid-19 risk for a quarter of respondents. Health risks also arose from seeing clients in person to sign up for legal aid, attending psychiatric hospitals, and going to the office to receive or send post or bill files. Although police and legal chiefs have agreed an interview protocol, YLAL is receiving anecdotal evidence that some forces are unaware of the protocol or unable to comply.

Some employers are making their staff take risks. One said they were expected to be in the office twice a week. Another said they were not allowed to work from home despite living with vulnerable parents.

Furloughing staff

Most law firms have implemented a furloughing strategy, looking at reductions of up to 40% in headcount to survive the coronavirus crisis, according to a survey (ILFM/Saffrey Champness).



The poll of over 200 firms – the make-up of which was not specified – revealed that 77% have communicated to staff a programme of furloughing.

The survey found that the majority were looking to furlough up to 40% of staff, but more than a fifth were looking at 40-60% of staff, with nearly 7% furloughing more than 80% of the workforce

Some 18% have looked to vary contracts. “It seems that the contractual and practical challenges of reducing staff hours, which would presumably require a fair and consistent approach across the board and present its own unique set of challenges, is not attractive to firms at this stage,” the researchers said.

“Furthermore, 63% of firms have so far not introduced pay reductions, while for those firms that have taken this step, most are relatively moderate at no more than 20%.

“Also of note is the fact that only 6% of firms have started redundancy negotiations with staff. For now at least, firms’ attentions are apparently fixed on the longer term and what the partners want their practice to look like once they have weathered the storm.”

The survey found that a good proportion of firms were first looking to their partners to help ease the financial pressure – 42% were reducing partner drawings and 36% still considering it – and most have not yet rescinded job offers.

Of the 65% of firms that have recently made job offers, 77% have chosen not to withdraw them.

Reporting scam emails

You can now report scam emails to the National Cyber Security Centre and they will take down the sites generating them – email details to report@phishing.gov.uk



National Cyber
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AML advisory note

The Legal Sector Affinity Group (LSAG) has published an advisory note on AML compliance during the Covid-19 pandemic.



Changes to identity verification and signing deeds

On 4 May, temporary changes were introduced for verifying a person's identity and for signing deeds in land registry matters



Identity verification

In addition to conveyancers and chartered legal executives, verification can now be undertaken by people who work, or have worked, in certain professions including:

- retired conveyancers, chartered legal executives, solicitors and barristers
- bank officials and regulated financial advisers
- medical doctors, dentists and veterinary surgeons
- chartered and certified accountants
- police officers and officers in the UK armed forces
- teachers and college and university teaching staff
- Members of Parliament and Welsh Assembly members
- UK civil servants of senior executive officer (SEO) grade or above
- magistrates

The verification can also be done by way of a video call.

Further details on these changes will be available from 4 May in our new practice guide 67A: temporary changes to HM Land Registry's evidence of identity requirements.

Signing deeds

HM Land Registry will accept deeds that have been signed using the 'Mercury signing approach'.

This means that, for land registration purposes, a signature page will need to be signed in pen and witnessed in person (not by a video call). The signature will then need to be captured, with a scanner or a camera, to produce a PDF, JPEG or other suitable copy of the signed signature page. Each party sends a single email to their conveyancer to which is attached the final agreed copy of the document and the copy of the signed signature page.

This will be effective from Monday 4 May. Practice guide 8: execution of deeds will be updated with more information on Monday.

Covid-19 related insurance claims

The Financial Conduct Authority is seeking urgent legal clarity on business interruption insurance (BII), as businesses including law firms face confusion over their claims.



The regulator said it will bring key cases to court 'as promptly as possible' to get an independent view on disputed policies. In order to get the 'fastest possible judgement' it intends to put cases before the court on an agreed basis with the insurers.

Covid-19 not stifling mergers and start-ups

The coronavirus crisis has not stopped a series of mergers taking place across the country in recent weeks, as well as specialist law firms starting up.



- Birketts merged with EC3 Legal
- Ellisons merged with Blocks Solicitors
- Buckles has acquired Miller Sands
- Churchers Solicitors has merged with Walter Gray
- Sampson Coward merged with Whitehead Vizard
- LCF Law has acquired Crooks Commercial Solicitors
- Moore Blatch merged with Barlow Robbins
- New start-up - Keidan Harrison
- New start-up - Rook Irwin Sweeney

Any questions?



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