



Regulatory and Compliance Update (Legal)

July 2020



Brian Rogers, Regulatory Director, Digital Learning & Compliance



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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

Upcoming Webinar

- Professional Indemnity Insurance – what you need to do to make your firm attractive to insurers
 - Market overview
 - Cause of claims
 - Impact of Covid-19
 - Preparing for renewal
- Presenters: Brian Rogers & Marc Rowson, Senior Vice President, Lockton
- Date: 29 July 2020
- Time: 12.30pm
- Registration



Access acquires Eclipse

The Access Group has acquired Eclipse Legal Systems to expand its legal solutions suite and extend its presence in the legal sector



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Regulation

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SRA thematic reviews

- AML - review to be enhanced
- STaRs – review to take place 12 months after its implementation (November 2020)



To meet its legal obligations to prevent money laundering, the SRA said it would expand its AML visits so as to visit all high-risk firms on a three-year rolling basis, along with visiting a sample of lower-risk firms – the SRA will also review the methodology it uses to risk rate firms.

Further, every month it will call in and analyse a sample of firms' AML policies, procedures and controls, or their risk assessments, and are planning to undertake a thematic review into tax advice.

SRA - "The impact of Covid-19 on the profession, consumers and, indeed, the wider economy is likely to be significant and long lasting. There is potential need for greater regulatory activity at a time of this significant financial uncertainty for the profession and law firms, at the same time as the economy is adapting to a post-Brexit transition environment.

VAT on disbursements

HMRC to withdraw VAT concession on property searches obtained by post on 1 December 2020



The postal concession allows solicitors to treat fees for local authority searches obtained by post as disbursements for VAT purposes, meaning VAT is not payable on the recharge of the fee to their client.

In withdrawing the concession, HMRC states that allowing fees for postal searches (which are now very uncommon) to continue to be treated as VAT disbursements in all cases is inconsistent with the decision in *Brabners*.

HMRC also stated that it will publish revised guidance on VAT disbursements to ensure consistency and provide clarity.

DAC-6 implementation delayed

HM Revenue and Customs confirmed that the UK is taking up the optional six-month deferral and that the government will amend the UK Regulations that implement DAC 6 to give effect to this.



The amended Regulations may not be in force by 1 July 2020, but HMRC confirm that no action will be taken for non-reporting during the period between 1 July and the date the amended Regulations come into force, so that there is no expectation that reports will be made in July.

LSB reviewing regulatory regime

The Legal Services Board is set to conduct a major review on the extent to which it can reform the regulatory regime including the reserved legal activities using its existing powers.



It is likely to ask the government to support the work financially, as it would be unfair to ask lawyers to pay in full for a review that will have a significant impact on the unregulated sector.

The LSB has identified the RLAs as one longer-term way to flex regulation to help the profession recover from Covid-19.

This came before the Ministry of Justice's unsurprising confirmation last month that a full review of the Legal Services Act 2007 was not on the agenda.

LSB – “Over time, the regulatory system is falling ever further out-of-step with the evolution of the market. It is important that the regulatory framework is as fit for purpose as it can be to support the sector to recover from the Covid-19 pandemic, maintain its international competitiveness following EU exit and deliver wider consumer and public interest outcomes.”

SIF cover extended

The SRA has agreed to extend by a year the use of the Solicitors Indemnity Fund to provide post six-year run-off cover for claims against firms which have closed without a successor practice.

SOLICITORS INDEMNITY FUND



It was decided to extend the use of the SIF for post six-year run off cover for another 12 months until 30 September 2021.

Law Society warning over staff refusing to return to work

It is not clear whether staff can refuse to come into work or decide to leave a workplace if they think it's unsafe because of Covid-19



The Employment Rights Act 1996 protects employees if they leave or refuse to attend the workplace for health and safety reasons, but the rights have “rarely” been tested in the employment tribunals, and never in a pandemic situation.

TLS - “This means it’s hard to be certain as to the strength of this right. Where an employee has been dismissed because of taking protected action, under section 100(1) of the Act any compensatory award is uncapped, so those organisations that do not take seriously this right leave themselves open to a potentially significant financial penalty.”

An added complication was that a complaint about health and safety was likely to count as a protected disclosure for the purposes of whistleblowing legislation. “This opens up the possibility for the employee to claim interim relief.”

LeO shake-up

The Legal Ombudsman (LeO) is set for a major leadership shake-up in the wake of its recent budget debacle and following the decision of the chief ombudsman to leave.



The LeO has been dogged by performance problems for several years, and in March it hit a fresh crisis after it was forced to backtrack on its request for a 20% budget rise, with the Legal Services Board (LSB) describing its performance as unacceptable.

In a letter to the LSB last month, the LeO said its board was “clear that a restructure of the senior leadership team is now absolutely critical”.

A review of the events around the budget “identifies that the lack of senior operational capability and capacity within the LeO management team was a significant factor”. It also raised questions about LeO having neither a chief operating officer nor a director of operations.

Two recently completed audit reports “both highlight basic control failures”.

The budget exercise laid bare the staff problems LeO has, with very high levels of turnover and a staff survey finding that more than 50% of employees wanted to leave in the next year, while half of new recruits exited in their first two years.

SRA pressing ahead with SQE

The Covid-19 crisis will not stop the introduction of the Solicitors Qualifying Exam in September 2021, the Solicitors Regulation Authority has decided.



Disability awareness – should be a professional requirement

The Equality and Human Rights Commission has called for codes of conduct to be amended to make disability awareness a professional requirement.



The commission conducted an inquiry into the experiences of adult defendants in the criminal justice system with 'hidden' disabilities, publishing its findings and recommendations today. It says legal professionals do not currently have the guidance or training they need to be able to recognise impairments, their impact or how adjustments can be made.

Notable disciplinary cases

- ◊ A trainee solicitor who applied to join the roll with a falsified LPC certificate has been banned.
- ◊ A paralegal who settled a client's personal injury claim without the client's knowledge and then paid settlement monies to two other clients who were not associated with the case has been banned.
- ◊ A paralegal who told clients he had issued proceedings when he had not has been banned.
- ◊ A paralegal who lied over his response to a question about whether his client had signed an amended statement has been banned.

The Solicitors Disciplinary Tribunal

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Operational

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Job Retention Scheme update

The update provides information relating to what can be claimed during July, August and September 2020.



- There are no changes to grant levels in June.
- For June and July, the government will pay 80% of wages up to a cap of £2,500 for the hours the employee is on furlough, as well as employer National Insurance Contributions (ER NICs) and pension contributions for the hours the employee is on furlough. Employers will have to pay employees for the hours they work.
- For August, the government will pay 80% of wages up to a cap of £2,500 for the hours an employee is on furlough and employers will pay ER NICs and pension contributions for the hours the employee is on furlough.
- For September, the government will pay 70% of wages up to a cap of £2,187.50 for the hours the employee is on furlough. Employers will pay ER NICs and pension contributions and top up employees' wages to ensure they receive 80% of their wages up to a cap of £2,500, for time they are furloughed.
- For October, the government will pay 60% of wages up to a cap of £1,875 for the hours the employee is on furlough. Employers will pay ER NICs and pension contributions and top up employees' wages to ensure they receive 80% of their wages up to a cap of £2,500, for time they are furloughed.

Job Retention Scheme – negligent advice

Lawyers and others who advised clients on the scheme are at risk of claims as the government looks to claw back payments to which recipients were not entitled.



A number of clear risks were emerging, from losing the opportunity to make claims or making incorrect ones; HMRC has proposed that the burden would be on the recipient of the grant to justify the decision to claim it.

Clawback seems likely where the applicant deliberately made a false claim, where genuine errors in making the claim led to an award higher than it should have been, and where the claim was accurate at the time it was made, but circumstances then changed (for example, the employee returned to work) or the grant was not used for the reasons originally intended.

Job Retention Scheme fraud

34% of employees on furlough have been asked to work in breach of the Scheme rules



One in five has been asked to either cover someone else's job or to work for a company linked to their employer.

The government has recently announced plans to give employers 30 days (may be increased to 90 days) to confess any furlough fraud, following concerns the system was being abused.

A spokesman for HMRC, which is running the scheme, said it has received 3,079 reports from the public as of 14 June, and urged any employee who thinks their company is abusing the system to contact them.

Employment claims

Employment lawyers could be about to see a surge in enquiries, with data from Citizens Advice showing that people are becoming increasingly concerned about redundancy.



In the first month of the lockdown, Citizens Advice said it saw a lot of changes in what people were looking for advice on – from flight and accommodation cancellations to sick pay and what to do if you can't pay your bills.

By mid-April, when the lockdown was well underway and government interventions in place, the top five issues became very clear: furlough, self employment, benefits, not being able to pay bills, and Universal Credit.

But over the last month, with life moving towards a new phase, the pattern was “reverting to being more volatile”.

In the last four weeks, pages on ending tenancies have been the sixth most viewed and, while numbers were lower, the page on divorce has been in the top five most-viewed pages on Sundays since mid-May.

Citizens Advice said that, as lockdown continued to be relaxed, it anticipated seeing issues similar to the start of the pandemic return to the top.

New instructions returning to pre-lockdown levels

New instructions have been running at about 70% of the pre-lockdown level over the past two and a half months, but there are definite signs of a revival, with conveyancing roaring back.



Surprisingly, civil litigation has proven to be the strongest area of practice during lockdown.

Quill is using real-time charts depicting instruction volumes by specialism, from law firms across England, Wales and Scotland.

The overall chart, which puts new instructions at about 70%, shows a slow upward movement through May and a significant spike during the first week of June.

Review of legal regulation – Professor Stephen Mayson

It is time to move from regulating lawyers to regulating legal services, but to differing degrees depending on the risk to the public interest of the work.



The recommendations for the long term in this report aim to address these issues through the following principal proposals:

- (1) The overriding objective of regulation should be the public interest, whether relating to the rule of law and the administration of justice, or the protection of consumers from harm and detriment.
- (2) The scope of regulation should be extended to include all 'providers' of 'legal services', including those who are currently unregulatable as well as providers of lawtech. There should be limited exemptions or exclusions in relation to most self-representation, family and friends, information-only services, and public officers.
- (3) There should be an independent, single, sector-wide regulator of legal services, though with the power to delegate the exercise of defined and limited regulatory powers to other bodies. The current Legal Services Board, approved regulators and regulatory bodies would be replaced.
- (4) The regulator would maintain a public register of providers, and apply regulatory conditions for before-, during-, and after-the-event regulation. These would be applied, monitored and enforced on a sector-wide basis, irrespective of provider, and as appropriate to the importance and risk of particular legal services or to the relative vulnerability of the clients concerned.
- (5) Minimum conditions of registration would require common standards and disclosure, as well as access to complaints investigation and redress and to protection through indemnity insurance. A revised and more extensive ombudsman scheme would act as a single point of entry for complainants who are individual consumers or micro-organisations.
- (6) The current reserved activities should be replaced with a requirement for prior authorisation in order to secure the public interest. Where this is required for public good services (principally the exercise of rights

of audience or the conduct of litigation), there would be a dedicated regulatory body as part of the single regulator.

- (7) Professional titles should not be the only route for entry by individuals into legal services regulation. The single regulator would establish the conditions for the award and removal of titles, but the professional bodies would actually confer or remove title. Professional bodies would also play a role in education and training, in forms of specialist accreditation required by the regulator and, where they wished to, in promoting professional standards above those required by regulation.

As expected, regulators are not keen on the idea of being abolished.

Significant breaches of transparency rules

Around 90% of firms are not complying with the price transparency rules, mainly by either not giving enough information or not making it sufficiently prominent, rather than not publishing anything.



DG Legal - Almost three-quarters (72%) failed to comply with rules on publishing information about complaints handling, again generally by not providing enough information or making it easily found.

Around a quarter of firms were not displaying the SRA's digital badge or their SRA number either at all or in a sufficiently prominent manner.

The research also found 20% of firms' privacy policy lacking compliance with GDPR – while on 62% of websites, the 'contact us' form did not include or refer to the policy.

Also, 26% of firms did not have secure websites, in breach of the Data Protection Act.

A third of firms used logos incorrectly, either displaying the Law Society or SRA logos, which they are not allowed to do, or by using out-of-date accreditation logos.

Property Logbooks

Property logbooks could be introduced to the home buying and selling process to speed up conveyancing.



The Home Buying and Selling Group, which comprises various representative groups including the Law Society, has set up a working group to look at how to securely provide a logbook, which would be a digital file containing the key data needed to complete a property transaction.

The logbook would be transferable between homeowners. The information, which would grow over the life of a property, would be formatted so that it could be integrated into other digital systems run by estate agents, local authorities and conveyancers. The government has already indicated that it would support property logbooks.

Concerns that this is just HIPs with another name and would have the same issues (out of date, etc)

Sexual misconduct

The Solicitors Regulation Authority is investigating almost 120 cases of alleged sexual misconduct, following a surge in reporting over the past six months.

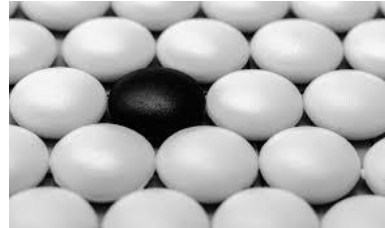


The regulator said it has 117 cases related to sexual misconduct still to deal with, including 36 new incidents since November. This figure has risen steeply over the past two years.

Despite the growing number of sexual misconduct cases reported to the SRA, however, only seven were referred to the Solicitors Disciplinary Tribunal in 2019, five of which have now concluded. Just one case has been referred to the tribunal so far this year.

Corporate clients demand investment in black lawyers

A call for in-house legal teams to use their purchasing power to demand that panel firms 'demonstrably invest in the recruitment, retention and promotion of black lawyers' has gone out to the legal profession.



The idea is among a set of actions proposed by the Black Solicitors Network to tackle what it calls 'pervasive racial disparities and inequalities' relating to lawyers of African or African/Caribbean heritage.

Action points include:

- Implementing systems and processes to monitor racial diversity through the employee life-cycle from recruitment to promotion, attrition (for example by conducting exit interviews) and remuneration.
- Policies to combat attrition levels as black lawyers rise up the hierarchy. These could include access to 'stretch' and high-profile assignments, client opportunities, secondments and mentoring/career coaching programmes.
- Introducing mandatory anti-bias, anti-racism and inclusion training for all staff.

Email interception

Security experts have highlighted email interception as the “weakest link” in firms’ defences against cybercrime in the property market.



Former home secretary Lord Blunkett was among those who called for more use of personal contact and the “human touch”, which he described as “counter-intuitive in terms of productivity but magnificent in terms of service”.

Neil Walsh, head of cybercrime, anti-money laundering and counter-financing of terrorism at the United Nations in Vienna, said people were more at risk working at home in the lockdown, partly because they were going onto websites they normally would not go onto when in the office, and criminals were “taking opportunities”.

He said that as well as “doing the basics to ensure hardware and software was up-to-date”, firms should be particularly wary of attempts to put them under time or financial pressure to do something.

CQS fee refunds

“Between 1 April and 31 December, we are offering a 75% fee discount to CQS members. Those who have already paid will get a 75% refund. We have started rolling out the refunds.” – The Law Society



Good news for some!

Any questions?



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