

Regulation Report

SRA Thematic Review of Personal Injury Firms

During August, 80 firms were selected to participate in the SRA's thematic review of the personal injury sector in order to improve its understanding of the way that firms work. The SRA will publish its research in October and announce its proposals early next year.

At the recent PI Futures Conference, Richard Collins, SRA Director of Strategic Planning, explained that the regulator wanted to weed out the bad conduct that exists from claimant and defendant lawyers alike. Mr Collins praised the personal injury sector as a "huge success story" but said that it was in the interests of high-quality firms and consumers to make sure poor practice or behaviour that harmed consumers or public confidence in the profession was dealt with in a targeted way.

Whilst the stated aim of the thematic review appears laudable, the reality of the SRA visit for the 80 firms has not been a comfortable experience. Firms have been required to answer 67 detailed questions contained in a 21 page questionnaire and to respond 7 days before the SRA visit. Questions relate to breakdown of work, staff training, ownership of separate businesses, use of Medco, and details of files obtained as a result of mergers and acquisitions. One example is "During an average personal injury case, how often do you meet your clients?"

On the day of the visit, the firm is required to produce to the SRA a list of current PI fee earners, a list of current PI files and PI training records for each fee earner. From the lists supplied, the SRA chooses on the day of the visit a fee earner who is interviewed and questioned about two of his or her current PI files, without the chance to prepare in advance.

The review is stated not to be a formal investigation but firms are warned that "if the SRA finds information that the firm has not followed the Handbook then it may take further action in line with the SRA Enforcement Strategy". Firms should not therefore underestimate the amount of work required to comply with the SRA's enquiries and the importance of ensuring the accuracy of the information provided to the SRA.

The SRA's thematic review follows hard on the heels of the Government's Insurance Task Force's report published in January 2016. The report claimed that more could be done to tackle solicitors who are involved with bogus insurance claims whilst acknowledging that this might be happening either unwittingly or knowingly. Page 7 of the report concludes that "more can be done by the SRA and CMR (Claims Management Regulation) both within their discrete areas of regulation and by more co-ordinated action"

The SRA ever susceptible to political pressure followed this up with its own Warning Notice on 21 March 2016 entitled "Risk Factors in personal injury claims". Firms were reminded of a long list of issues including cold calling, referral arrangements, bringing claims without client's authority or knowledge, and payment of damages to third parties without accounting to the client.

As an aside, in a classic example of the left hand not knowing what the right hand was doing, the SRA omitted from the draft Code of Conduct published in June 2016 any restriction on cold calling. There was an outcry from the insurance industry and from claims management companies who remained subject to a ban on cold calling. The SRA noticed the mistake and has subsequently indicated that there will be a specific provision in the next version of the draft Code banning cold calling and prohibiting solicitors from accepting cases generated by individuals who had engaged in such behaviour.

There was a time when firms only heard from the SRA when a complaint had been made by a client or other law firm. This is no longer the case. The SRA has become a proactive rather than a reactive regulator. Personal injury work ticks many risk boxes on the SRA's Risk Index. Additionally, this thematic review has been generated by continuing pressure from the Government, the media and the insurance industry.

The SRA wants to demonstrate to its critics that it is taking their concerns seriously. The downside for personal injury firms is that they are at risk of disciplinary action if anything untoward is discovered.

Claimant personal injury firms have been under financial pressure since legal aid was withdrawn many years ago and replaced with conditional fee agreements. LASPO increased the problems. This latest thematic review merely adds to the burden. If there is one message that firms should take away from this review, it is that the SRA expects to see processes, procedures, staff training and statistical information very well documented – so be prepared, as there will be other thematic reviews.



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