# COMPLIANCE TOP TEN FOR 2016

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What does 2016 have in store for us? In no particular order, here are ten significant compliance issues for the New Year.

**1. UNBUNDLING LEGAL SERVICES**

With the decline in legal aid, firms are increasingly being asked to provide unbundled services. The risks of doing this have been reduced but by no means eliminated by the recent judgment in *Minkin v Lesley Landsberg [2015] EWCA Civ 1152*. The Court of Appeal threw out a negligence claim against a family lawyer and ruled that solicitors may offer *"unbundled"* services without being liable for matters beyond those in their client retainer. This decision is welcome news to the profession but does not mean that firms can be cavalier. This is a high risk area and particular attention must be paid to the terms of the retainer.

**2. SEPARATE BUSINESSES AND INNOVATION**

The restrictive separate business rule was abolished on 1 November 2015. Solicitors can now have an interest in a separate business providing non-reserved legal activities. This opens up the opportunities for investment by law firms in associated businesses. The SRA has also introduced SRA Innovate - an advice service to assist firms with innovation in the legal services market.

**3. INFORMATION SECURITY AND CYBER CRIME**

The number one risk to all firms should not be underestimated. The horror stories during the last 12 months of cyber theft from client accounts of amounts ranging from £50,000 to £2m make chilling reading. Even if a firm escapes intervention and persuades its professional indemnity insurers to pay out, its ability to continue in practice is almost certainly at an end due to prohibitive premiums for the following year. This risk is in addition to the daily risks of malware, theft of client details and general interruption to business that can be caused by the cyber criminals. Awareness training for staff not just accounts staff is essential, backing up offline, culling social media activity and cyber liability insurance should all be considered.

**4. MISLEADING CLIENTS, COURTS & EMPLOYERS**

There appears to be an increasing trend in fee earners deceiving courts, their own firms and clients to conceal lack of activity or wrong doing. Fabricating documents, advising clients that proceedings have been issued, advising clients that proceedings are settled, making payments of damages from office account, and making false entries on the time recording system are all examples of misconduct brought before the SDT in the last 12 months. The explanations for such misconduct have ranged from inadequate supervision of junior staff, heavy workload, illness and/or fear of losing employment. The old rule to seek immediate help from a peer or supervising partner seems to have been forgotten in this brave new world. Deception of any kind invariably results in a striking off order for dishonesty. It is basic stuff but prevention is dependent upon personal supervision of fee earners and spot checks on the files including the financial transactions.

**5. CLIENT CONFIDENTIALITY & CONFLICTS OF INTEREST**

These two foundation stones of practice will continue to be subject to constant challenge with the increase in ABSs and the relaxation of the separate business rule. Any third party relationship for the referral of work should be carefully tested in advance for issues of client confidentiality and conflict as well as Principle 3 not allowing independence to be compromised.

**6. SUCCESSION AND EXIT PLANNING**

As the daily struggle to balance the books continues now exacerbated by the legal aid changes, there will be more entrants and more exits from the legal services market. It will no longer be inevitable that firms of a certain size will survive. With this in mind, contingency plans for all firms' key managers in the event of long term illness, death, and financial failure are essential.

**7. PROFESSIONAL INDEMNITY INSURANCE**

The existing mandatory limits are still in place but are likely to be reduced when the current SRA consultation is completed. A specific new Outcome (7.13) was introduced in April 2015 requiring firms to review the adequacy of their own insurance arrangements. If compulsory limits are reduced further, firms could be faced with an additional burden of deciding on a case by case or work type by work type basis whether they need top up insurance.

**8. NEW CPD REGIME**

From 1 November 2016, all firms will be subject to the new regime and will be responsible for organising their own CPD as opposed to the previous minimum hours requirement. Training can therefore be tailored more closely to a firm's needs. Firms and individuals will need to complete an annual declaration to confirm that they have participated in appropriate CPD during the previous 12 months. As with professional indemnity insurance, the buck stops with the firm – it is the firm's responsibility to ensure its partners & staff have adequate CPD.

**9. PROTECTING YOUR FIRM'S REPUTATION**

Whatever the sanction imposed by the SRA or the SDT, it is nothing as compared to the damage to reputation that occurs when a regulatory decision appears on the SRA website or a judgment is published on the SDT website. Almost 100% of disciplinary outcomes are now made public. The recent practice by both the Gazette and Legal Futures to publish an article on virtually every single disciplinary case that becomes public adds fuel to the fire of reputational damage.

**10. COMPLYING WITH THE SRA ACCOUNTS RULES**

The majority of SRA investigations involve breaches of the Accounts Rules. Financial housekeeping is fundamental to a successful practice. Employ the most experienced finance manager that you can afford but more importantly make sure you understand the Accounts Rules yourself and can ask the right questions by way of challenge. It is the partners that are responsible in the event of any breaches as strict liability is imposed by Rule 6. ■

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*Jayne Willetts is also a director of Infolegal - a law firm compliance and risk management consultancy. Infolegal subscribers can now download the second edition of the Solicitors Office Procedures Manual by Matthew Moore and Vicky Ling in advance of its publication and can also access a range of detailed guidance notes and factsheets on these topics and many others. www.infolegal.co.uk.*