Regulation Report

Maintaining independence from clients

The recent announcement that three partners at a well-known London firm have been referred to the Solicitors Disciplinary Tribunal accused of using the firm's client account as a banking facility is a salutary reminder of the perils of acting for commercial clients.

The allegations which occurred prior to 6 October 2011 and which are firmly denied are that *"in four separate matters each solicitor has allowed funds to be paid into and out of client account when it was unnecessary and inappropriate as there was no underlying legal transaction in which they were conducting reserved legal work to which the payments were linked".*

This decision follows hot on the heels of a Solicitors Disciplinary Tribunal judgment[1] published in January 2016 where a solicitor who allowed her client account to be used as a banking facility by a property investment company client was suspended for six months. Third parties had paid over £117,000 into client account in order to invest in a scheme offering high returns on property investments. The SDT considered that the misconduct was serious as "*it could reasonably have been foreseen that if the scheme failed, the investors would lose their money.*

Principle 3 of the SRA Principles 2011 provides that we must *"not allow our independence to be compromised"*. It is important that solicitors do not yield to undue pressure from clients. Use of a client account as a banking facility (as in the SDT case above) is just one example. Others might include knowingly misleading the court, or conducting litigation that does not have legal merit or providing a favourable opinion on a point of law.

Independence can easily be overridden in the understandable desire to promote a client's interests and to maximise commercial return. When a sole client especially a dominant client is responsible for a significant proportion of a firm's fee income, challenges to independence may become more likely.

Ironically, in the very early days, solicitors were very much *"men of affairs"* (never women) and handled all aspects of a client's business. Handling client's money for whatever purpose was considered part of the daily responsibility of a solicitor. However, this gentlemanly business adviser role is no more. Becoming close to our clients (although essential for business development) can be a regulatory minefield.

Research[2] commissioned on behalf of the SRA identified a shift in the balance of power from law firms to clients represented by the way major corporates and financial institutions seek to impose their own terms of engagement upon law firms. This shift is not necessarily reflected in the current SRA approach to regulation, which assumes the law firm is setting its own terms of engagement. The restriction imposed by clients via contract as to who a firm can and cannot act for was also seen as an access to representation issue.

The imposition of these contractual requirements constitutes a form of regulation of the law firm by the client and has the potential to reduce the distinctiveness of those lawyers as legal professionals. They see themselves as, and begin to behave like, *"mere service providers".*

Some respondents suggested that they did not see themselves as independent nor did their clients expect them to be so. Interestingly, the COLP was seen as the "holder" of professional values for the firm as opposed to this being the responsibility of individual solicitors. There was also a lack of systematic training on professional obligations and the potential threats to those obligations.

In today's commercial and competitive world, maintaining professional standards in the face of client pressure is far from easy but it is vital if we are to preserve the reputation of the profession for the benefit of all. We must ensure that our young lawyers are given the confidence and training to equip them for this task. Let us hope that the SRA's latest plans to revolutionise entry to the profession does not adversely affect their ability to do so.

1 SRA v Quartey & Esuruoso SDT 11350-2015
2 Independence, Representation & Risk 2015 Claire Coe Smith & Dr Steven Vaughan

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