Regulation Report

Supervision - defining the duties of partners, COLPs and COFAs

Supervision is a key element of risk management and is of concern to the SRA under Principle 8 of the Handbook - the need to manage the practice *"in accordance with proper governance and sound financial and risk management principles"*. Quite how this translates into the duty to supervise work effectively has been examined in three cases heard in the Solicitors Disciplinary Tribunal ("SDT") in recent months.

In *SRA v Gill and Cain & Cochran Solicitors Ltd SDT 11507-2016* the supervision of a junior employee was subjected to close scrutiny. Mr G was admitted as a solicitor in September 2012 and the next month joined C & C as an assistant solicitor to set up an employment law department. Various issues arose with Mr G's client files including failure to comply with directions made by Employment Tribunals and wasted costs applications. Mr G left the firm in May 2014 and a report was made to the SRA.

The SRA requested as part of its investigation a copy of the firm's supervision policy; copies of all performance review documents relating to Mr G; details of the firm's file review procedures together with copy documents relating to any of Mr G's files which were reviewed; details of how Mr G's training and support needs were identified and addressed and finally details of the firm's management and governance structures at the time of Mr G's employment. The firm was able to provide some of these documents but was not able to provide a file review policy or records of file reviews undertaken on Mr G's files.

It was alleged (and admitted) that the firm failed to operate an adequate system for supervision of Mr G's matters and that, as a result, it failed to act in the best interests of its clients (Principle 4) and failed to run its business as required by Principle 8. It was separately alleged (and again admitted) that the firm failed to provide a good standard of service (Principle 5) to the clients who had been subject of the errors and mistakes made by Mr G.

The second Tribunal decision involved a rogue cashier, a not uncommon occurrence. In *SRA v Burrows and Featherstone SDT 11541-2016,* Mr B was the COLP and Mrs F the COFA in a two partner firm. In addition to a number of client account breaches, the sum of £30,532.54 was stolen from office account. Whilst one might anticipate that a theft from office account would not concern the SRA, it was alleged in this case that the theft from office account was evidence of lack of supervision by the partners. The modus operandi by the cashier was to cash 75 office account cheques with Barclays Bank. The cashing of cheques by non-partners was contrary to the firm's mandate so Barclays had no option but to refund the funds obtained by the cashier to the firm. Nonetheless, the SRA alleged that the partners had failed to exercise sufficient supervision. There are no details of the exact failings in the SDT judgment, apart from a general reference to lack of proper accounting systems and proper internal controls.

The SRA alleged that the two partners failed to maintain trust in the provision of legal services (Principle 6); failed to run their business in accordance with sound risk management principles (Principle 8) and failed to protect client money (Principle 10) the latter being an illogical allegation when the factual basis for the allegation was a theft from office account not client account. An additional and separate allegation was made against Mrs F as COFA. She was very much the junior partner to Mr B but nonetheless was found to have breached her duties as COFA including a breach of Rule 8 (e) of the Authorisation Rules and Principle 7 – failure to comply with regulatory obligations.

The role of the COFA was further considered in *SRA v Hulme SDT 11467-2016*. Mr H, an Assistant Solicitor and COFA for his firm failed to report to the SRA that unpaid professional disbursements of over £84,000 had not been paid out or transferred to client account in breach of Rule 17.1.

There were two notable features in this case. First, it was the SRA's case that as Mr H attended Board meetings as an Assistant Solicitor before he was appointed COFA, he was aware of the breach and should have reported to the SRA as soon as he was appointed COFA. Secondly, the fact that Mr H had reported the breach to the COLP, a partner with the firm, who said that she had reported the breaches to the SRA was not considered to be a fulfilment of his duty as COFA. He was fined £7500 and banned from acting as COLP or COFA.

Overall, these SDT cases demonstrate a stricter approach by the SRA to the supervisory responsibilities of partners and COLPs and COFAs when breaches are discovered. In Gill & Cain, the SRA insisted not only upon sight of the firm's office procedures but also evidence that the procedures were being implemented. It was not enough to have an office manual – it must also be shown to be in operation. There was no quarter given for the fact that this was a small firm. Also of note is the SRA's separate allegation that a failure to provide a proper standard of service by the firm to its employee's clients constitutes professional misconduct, with the firm being vicariously liable for its employee's errors. The traditional approach would have been to treat such conduct as professional negligence

Of concern is the SRA's harsher treatment in relation to the two relatively junior solicitors appointed as COFAs in *Burrowes & Featherstone* and again in *Hulme.* It can only discourage those who might wish to become involved in the financial management of smaller firms in particular.

The SRA appears to be moving away from the time-honoured principle of personal culpability for professional misconduct to vicarious liability for the errors and omissions of staff whatever the underlying facts. Has there been a debate or consultation on this realignment by the SRA? If there has, it must have passed me by.

Jayne Willetts
Solicitor Advocate
Jayne Willetts & Co
Specialists in professional regulation

Overall, these SDT cases demonstrate a stricter approach by the SRA to the supervisory responsibilities of partners and COLPs and COFAs when breaches are discovered

Jayne Willetts is also a director of Infolegal - a law firm compliance and risk management consultancy - www.infolegal.co.uk

infolegal
law firm compliance advice and training