

Regulation Report

Compliance Top Ten for 2017



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Some perennial issues and regulatory changes on the horizon which will affect all firms are identified below.

The SRA Handbook

The SRA is planning to review the entire Handbook during 2016/17 and consultations have already been held on its plans for the Principles, Code of Conduct and Accounts Rules (see below). It is anticipated that the changes will be effective in spring 2018 but firms need to be aware of what is in the pipeline for future business planning. No firm will be unaffected.

1. The SRA Code of Conduct – or two

The SRA plans to create two Codes of Conduct next year – one for individual lawyers and the other for firms. The main idea behind the change is to make it clearer as to which obligations fall on the firm and which on the individual. Inevitably, however, there has to be overlap as, for example, both firm and individual must not act where there is a conflict of interests and both must protect confidential information. Whether this represents clarity remains debatable. Another objective is to remove duplication and to remove obligations which have their basis in statute, such as LASPO. As part of the changes, outcomes will become standards and the current guidance, the indicative behaviours, will be removed. Overall, there will be further paring back of detail on how to achieve compliance. Continuing developments will no doubt be flagged up by the SRA during 2017.

2. The SRA Accounts Rules

Again, the drive is for clarity and simplicity. Much of the detail has been stripped out with the intention being that the rules become much more Principles based. The headline change, however, is a proposed new definition of client money. If adopted, money held on account of costs and for unpaid professional disbursements will no longer be client money and must be paid direct into the firm's own account – not client account. In fact, the SRA envisages that the need for a client account may be removed altogether. Should this go ahead, and the indications at present are that this is likely, firms could be left with a fairly short window of time to make huge changes to their accounting systems with corresponding re-education of their accounts staff. All COFAs need to keep abreast of the SRA's plans for this fundamental change.

3. Other Handbook changes

Coming shortly are consultations on the Practice Framework Rules (PFR), Authorisation Rules and Indemnity Insurance Rules. The main, and fairly

explosive, change which the SRA is looking to achieve through the PFR is already well trailed. This is a relaxation which will allow solicitors to be employed by non-lawyer employers to provide legal services (excluding reserved activities) to the public. This means that any business will be able to employ a solicitor to provide, say, will writing or company law advice to the public. The solicitor will be regulated but the business will not. The detail of how this change will work in practice is not yet fully revealed but initial proposals are that a solicitor so employed would not be able to hold client money. The change is being proposed under the banner of access to justice but how clients will understand the limitations on the regulatory protections they will and will not get is a hard nut to crack. Inevitably, it will increase competition for regulated firms.

4. Thematic reviews

The SRA uses these to gauge compliance and risk in specific areas of practice and, more generally as a fact finding exercise. Firms are selected on the basis of information already held about them by the SRA. Although not specifically designed to catch firms out, the SRA makes quite clear that if breaches are discovered, they may be further investigated and ultimately disciplinary measures could be taken. In 2016, firms which undertake criminal and PI work were put under the microscope. It is undoubtedly the case that more of these reviews will be conducted in 2017 and firms need to be aware that the SRA will drill down in some detail to look at policies, procedures and systems and staff training and awareness of compliance issues. The New Year may be a good time to review and update procedures and staff training.

5. Information security and cyber crime

This was a top ten tip last year but statistics show that, despite warnings, this is becoming even more of an issue. In its risk outlook the SRA says that a quarter of firms have reported being targeted by cyber criminals with nearly one in ten losing money as a result. As a consequence, insurance companies are increasingly resistant to claims on firms' professional indemnity insurance for cyber attacks. It is important that staff are fully aware of the risks and the means that criminals will use to obtain information about clients and their transactions. Effective IT software must be in place to protect, store and back up information and up to date anti-virus and anti-malware systems are essential.

6. Investment scams

These have been in the news again recently with

the SRA issuing a public warning about the use of law firms to legitimise dubious investment schemes which turn out to be scams. In November, the SRA said that it was dealing with cases in which the public have lost at least £100 million and recently a solicitor was jailed for 8 years for his involvement in fraudulent schemes. His firm was unaware of his activities. Typically, these schemes involve investments in carbon credits, agricultural rights, rare earth minerals or diamonds, holiday homes not yet built and leases of individual hotel rooms. The SRA warns that these scams are on the rise again and insurers will not pay out if a firm has facilitated fraud. Can you be sure that no one in your firm is involved in schemes of this nature?

7. Continuing competence

The new regime came into force fully in November 2016. Solicitors must now use the SRA competency statement to benchmark their training requirements. These need to be reviewed on at least an annual basis with staff appraisals being probably the best time to do this. Firms will need to certify that solicitor staff have reviewed their needs and addressed them. It can be anticipated that the SRA will keep a close eye on how the new training regime rolls out. Maybe this could be the subject of a thematic review?

8. Vulnerable clients

The SRA has raised the issue of vulnerable clients as a priority risk in the context of service standards in its risk outlook. Others, including the Legal Ombudsman and the Law Society, which has issued guidance on identifying and dealing with vulnerable clients, have flagged up its importance. Firms should have strategies for dealing with clients with vulnerabilities who are likely to need extra support. Many circumstances can create vulnerability including age, language problems and learning difficulties. The SRA will be looking shortly at vulnerability in the context of family proceedings. Time to check that your client care policy covers identifying and supporting vulnerable clients?

9. Confidentiality

This is a fundamental legal and regulatory obligation. However, it can easily be put at risk and the SRA issued guidance in 2016 to underline the dangers. It is also high on the list of the SRA's concerns when authorising new firms. Aside from cybercrime, small acts of carelessness can put confidentiality at risk. An email wrongly addressed, a laptop used on a train, papers left on a bench in a court waiting room or conversations about client matters in public places are all events that threaten clients' confidential information. Could it be time to review your firm's training and policy on this subject?

10. Complaints handling

The SRA has been talking to the Legal Ombudsman this year about the type and nature of complaints received about solicitors. The usual culprits have surfaced with failure to communicate issues to clients or advise properly, delay and excessive costs topping the list. Taking complaints handling seriously can have advantages for the firm. If a complaint can be handled swiftly and fairly, the client relationship may well be cemented and strengthened. Lessons can be learnt. Has a training issue been identified? Is a fee earner not coping with their work for health or other reasons? Complaints cost time, money and stress. Something else to be reviewed?

eConveyancing starts to take shape

an interview with Adam Bullion, General Manager of Marketing & Product at InfoTrack

Why is changing technology important?

It has become clear that advances in technology, such as the advent of the internet and the smartphone have changed human behaviour. From our professional lives, where we work longer hours due to remote technology, to the behaviour in our personal lives, where we expect to have access to information instantly and be able to perform many tasks wherever we are, whenever. Consumer behaviour also has changed, and ecommerce has become king, so we no longer need to ever leave our homes to buy goods. These daily efficiencies are also expected by staff, and as a business owner it is our duty to implement the appropriate technology to meet these changing needs, particularly when, regardless of technological advances, many business processes remain stagnant.

In terms of the conveyancing process where do you foresee the potential for change?

I believe that the conveyancing industry is a legal sector that is overdue for change. Aside from searches, many parts of the process have already become electronic and are hosted online, such as the submission process for the SDLT and AP1 forms. However, no provider has taken advantage of this ability, until now. At InfoTrack, we look at the most cumbersome and form heavy sections of conveyancing and turn these into electronic versions that are easier to complete and enjoyable to use. Upon review, we identified the contract pack as the next segment of the process where administrative processes can be reduced and optimised. With this in mind, we have created eCOS (electronic Contract of Sale) which combats the time consuming process of copying information into a contract, as well as dealing with the slow and unsecured way in which these documents (including the TA6 and TA10) are handled. eCOS is a fully electronic process that conveyancers can take now advantage of and be seen by their clients as truly forward thinking.

Tell us more about eCOS, what does this do?

We created eCOS (electronic Contract of Sale) to be a paperless solution that gives conveyancers the ability to compile the full contract pack electronically, including the TA6, TA10, contract, title and plan. Our smart eCOS portal also allows the contract pack to be easily sent and received by both the conveyancer and the client within InfoTrack, so you can rely on it being a fast, paper-free and completely secure process that requires no printing scanning, posting or faxing. These



contract packs can also be signed electronically by all parties involved, using the latest in e-signature technology. At InfoTrack, our mission to build the end to end conveyancing process online is being enacted one process at a time, and eCOS is the next step.

Are electronic signatures acceptable forms of signing legal documents?

With a growth rate of over 53% annually, e-signatures are rapidly being adopted in many industries and at different levels of transactions. The Law Society recently released a practice note on the use of electronic signatures in law, and with secure, stringent measures put in to maintain the highest level of security, electronic signatures are highly regarded and are an efficient way of signing documents. The technology we use is by DocuSign, the global industry leader in e-signing.

Would you offer any advice to conveyancers looking to adopt new technology?

InfoTrack aspires to create technology that is not only incredibly efficient and simple to use, but also makes day-to-day processes more enjoyable. I believe that good technology should be a joy to use, as well as providing clear operational benefit. So when adopting new technology for your firm, I always suggest that a series of questions are asked; does it add value to the customer? Does it reduce operating costs? Is it relevant? Will it help us excel in our core competencies? Will it reduce cost/improve quality/provide a set of functions that did not exist before? Those technologies that will be most valuable should respond 'yes' to all those questions.