

Who will guard the guards themselves?

Supervision – an important requirement of Rule 5 of the Solicitors’ Code of Conduct 2007, but more honoured in the breach, and there is little in the guidance notes (notes 45 to 52) to say what it means in practice. When we ask partners about how they supervise their staff, a frequent answer is that they have ‘an open door policy’. An open door policy is important (though some might say an ‘open plan office’ is even better), but it is not supervision. Supervision implies something active, terminology adopted in the latest version of Lexcel, the Law Society’s practice standard.

Results of online testing of staff using Desktop, a risk management diagnostic tool developed by our firm include, for example, a significant number of fee-earners who might not advise a partner if they have discovered an error on a file, or who might not feel comfortable asking a colleague to review a file if they had a problem. In another example, nearly a quarter of staff did not believe there was a partner with relevant expertise with whom they could readily discuss a work problem. The surveys are conducted anonymously and externally to encourage openness in responses.

Average fines were £5,400 on a sample of approximately six years of Solicitors Disciplinary Tribunal decisions where supervisory failures were alleged. True, these cases included other breaches, but the failure of supervision was a factor that made the other breaches by employed staff possible, and some were serious such as conflicts, mortgage fraud and money laundering.

Supervision issues frequently crop up in investigations by the Solicitors Regulation Authority (SRA) when something serious has gone wrong. The enquiry may address the following:

- ◆ Arrangements for overseeing incoming post, faxes and email, the last of which challenges the best of firms. Sometimes firms are fastidious about post, but faxes then bypass the system. Who signs outgoing post? Are there any limitations or restrictions?
- ◆ Who has authority to take on a new client or matter and what are the controls? How does it link into your other systems, including conflict checks and anti-money laundering?
- ◆ How often and by whom are reviews of work by fee-earners carried out?
- ◆ What controls do you have for monitoring and giving of undertakings? One complaint involved an alleged breach of £200 given at the conclusion of a conveyancing transaction, which the complainant ultimately withdrew as he had been mistaken, but the SRA still pursued investigations in to the firm’s controls, or lack of them.
- ◆ Are there written procedures for supervision of staff and client matters? If they are not documented, how can you maintain consistency of approach, other than in the smallest firm?

- ◆ What arrangements do you have for supervising progress of client matters when members of staff are on holiday or out of the office, or off ill?
- ◆ Who can authorise client account withdrawals in accordance with rule 23 of the Solicitors’ Accounts Rules 1998?
- ◆ What are your systems for delegating responsibility for supervision? Are supervisors supervised? We conducted a review of one firm on behalf of insurers, following a massive, multiple mortgage fraud involving hundreds of transactions. Lessons had not been learned, and the firm may now be uninsurable in the open market: the firm still had a non-partner, non-solicitor supervising a volume conveyancing team but subject to no supervision himself.

Senior staff, such as retired partners with many years of experience, may require less supervision, and partners may trust an individual implicitly. Trust alone is not enough: it must be verified. You may be called upon to justify their actions, so make sure you have an audit trail to support your position. If you can demonstrate that you have systems, you may avoid disciplinary action if something does slip through the net, applying the decision in *Connolly v Law Society* [2007] EWHC 1175 (Admin).

Levels of supervision and what they entail were examined in the 2009 report by Young Legal Aid Lawyers (Supervisor ratios: ensuring quality legal aid lawyers for the future) including issues of wider application than legal aid work and a variety of survey respondents’ views on what effective supervision should entail.

New methods of working give rise to new challenges, none more so than outsourcing. The Court of Appeal in *Sharratt v London Bus Co Ltd (The Accident Group Test Cases)* [2003] EWCA 718 held that, where appropriate, solicitors may delegate some of their functions to un-admitted staff and independent contractors as long as they discharge their supervisory responsibilities and choose reputable independent contractors. Considerations applied in the US include obtaining CVs and references on the individuals, interviews by telephone or video conferencing, and communication during the assignment.

Finally, turning to the question in the heading, originally posed by the Roman poet Juvenal: Who supervises your partners? In one large firm, where a partner became embroiled in mortgage fraud, the SRA probed into the supervisory roles of the senior partner, managing partner, head of department and office managing partner. It is not just a question of supervising junior staff. Good governance requires accountability, all the way up to the top. [FDLegal](#)



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