

Supervision (again)

By **Frank Maher**

Practice standards unit visits and forensic investigations by the Solicitors Regulation Authority (SRA) cover, among other things, how firms discharge their duties to supervise their staff. I addressed some aspects of supervision in the October/November 2009 issue. That article focused on the duty on law firm managers and principals that arises under rule 5 of the Solicitors' Code of Conduct 2007 (the Code). The topic is important enough to merit further attention, and a number of the larger firms and in-house legal departments that my firm advises have been looking at this in rather more detail.

There are several other provisions in the Code relating to supervision, as detailed below.

(A) Rule 2.02 (1) (client care) requires that “you must... ensure that the client is given, in writing, the name and status of the person dealing with the matter and the name of the person responsible for its overall supervision”.

(B) Rule 3.02 (competing bidder exception to the conflict rule) provides that “unless the clients specifically agree, no individual acts for, or is responsible for the supervision of, more than one of those clients”.

(C) Guidance note 61 to rule 3 states that: “The implications of 3.04 [accepting gifts from clients] need to be made clear to all members of your firm who take instructions from clients, whether solicitors or not. Supervision is important to ensure compliance.”

(D) Rule 3.10 (acting for buyer and seller in conveyancing) requires that “different individuals authorised to do the work, who normally work at each office, conduct or supervise the transaction for seller and buyer”.

(E) Rule 4.02 (duty of disclosure) provides that: “If you are a lawyer or other fee earner you must disclose to a client for whom you are personally acting on a matter, whether individually or as one of a group, or whose matter you are personally supervising, all information of which you are aware which is material to that client’s matter regardless of the source of the information...” (subject to certain exceptions).

(F) Guidance note 44 to rule 4, dealing with information barriers, provides that it may be appropriate to agree with clients “that no member of the restricted group is managed or supervised in relation to that matter by someone from outside the restricted group”.

(G) Rule 15.05 sets out the requirements for supervision in overseas offices in terms of having at least one manager who has been entitled to practise as a lawyer for a minimum of

36 months within the past ten years; requiring the firm to be managed and supervised with a view to ensuring that its affairs are properly conducted at all times; and, that clients’ matters receive proper attention and are supervised so as to ensure that the quality of the work is checked with reasonable regularity by suitably experienced and competent persons within the firm.

Non-compliance may result in the imposition of internal sanctions by the SRA or referral to the Solicitors Disciplinary Tribunal. The penalties for non-compliance include striking off, suspension, reprimands and unlimited fines. Costs orders are often substantial.

Non-compliance with the requirements for supervision may also constitute a breach of the core duties in rule 1 and be conduct unbecoming a solicitor.

Further statutory requirements for supervision arise indirectly from the provisions relating to ‘reserved activities’. Reserved work is defined in section 12 and schedule 2 to the Legal Services Act 2007 as a “reserved legal activity” and, in outline, comprises the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and administration of oaths.

A person who undertakes a reserved activity, but is not permitted to do so, commits an offence.

Schedule 3 provides for exemptions in relation to the various reserved activities. There is, for example, an exemption for hearings in chambers or the county court the effect of which is to permit paralegals or other unqualified staff to conduct them when acting on the instructions of a person who is authorised to conduct litigation. However, there is no equivalent exemption for persons conducting litigation under the supervision of a person who is authorised to do so. Care is needed, therefore, as to the form and procedure for signing of documents in order to avoid an offence. In relation to the other reserved activities, there are exemptions for employees working at the direction and under the supervision of authorised persons.

These statutory obligations make it essential that firms can *demonstrate* (by documentary evidence) that they have *systems* for compliance. *FDLegal*



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