LEGAL RISK LLP
SOLICITORS

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Life after Cobbetts: COLPs' and COFAs' obligations

The collapse of Cobbetts, followed swiftly by a number of smaller firms, including Atteys and Blakemores, has highlighted the profession's exposure in more ways than one. The Solicitors Regulation Authority (SRA) faces the risk of costly interventions, far exceeding its budget, which raises the spectre of a cash call on the profession. This in turn may impose an unwelcome burden on firms, many of which are already stretched to the limit.

Picture: The Cube, Birmingham

Firms must expect a greater interest from the SRA in their financial affairs. All partners are responsible for financial management, and both the Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) have obligations to monitor compliance and report if the firm is in serious financial difficulty.

The SRA have been looking closely at even the largest firms' accounts. A detailed analysis of what to expect from their analysis appeared in the February edition of our Compliance Diary, our monthly compliance service for COLPs and COFAs. This is not a newsletter. Instead, it provides monthly advice and guidance on a compliance programme assisting COLPs and COFAs to demonstrate that they are monitoring and managing compliance with the key SRA requirements.

We can offer a fixed fee half day with our consultant, an ex-SRA Financial Investigations accountant, for your COFA to assist in understanding the SRA's requirements.

For subscriptions to Compliance Diary or to arrange a consultation on your financial management obligations contact info@legalrisk.co.uk.

Supervision

We are seeing signs from our disciplinary practice that this is an issue where the SRA may examine the finer details of compliance. There are several statutory obligations for the supervision of employees – and partners. These include provisions in the SRA Code of Conduct, the SRA Practice Framework Rules, the SRA Training Providers Regulations, reserved activities under the Legal Services Act 2007, anti-money laundering relating to Politically Exposed Persons (PEPs), as well as the preservation of clients' legal professional privilege.
We have provided a detailed analysis of these and other provisions for subscribers to our Compliance Diary service.

For subscriptions to Compliance Diary, advice on supervision, or assistance with SRA conduct investigations contact info@legalrisk.co.uk.

COLP and COFA reporting obligations

The SRA plans to drop the requirement for compliance officers to report all non-material breaches. They will still need to record them. See here.

Lessons from Cyprus: the Euro

The proposed tax on bank deposits is a stark reminder of the risks which the Euro and the banking sector still pose for client money, and of the undesirability of holding it for any longer than absolutely necessary, quite apart from the requirement in Rule 14.5 of the SRA Accounts Rules 2011 not to provide banking facilities.

We have advised many major firms on their terms of business to address banking risk, as well as limitation of liability. Meanwhile **Challinor & Ors v Juliet Bellis & Co & Anor** [2013] EWHC 347 (Ch) contains a reminder of the solicitors' responsibilities when receiving escrow money to know why they are receiving it and on whose behalf they are holding it.

For advice on terms of business and on limiting liability contact info@legalrisk.co.uk

News from the USA

Legal Risk partners attended a conference on law firm malpractice and risk management in Chicago. Our clients include many of the leading US firms and US insurers of law firms.

Growth areas for claims include intellectual property and many against insurance defence lawyers, with more claims against the latter for breach of loyalty than any other sector. Many of these claims are by insurers. While we have not seen the same claims exposure on this side of the Atlantic, we are increasingly instructed by law firms in relation to conflict issues involving insurers' panel firms.

As tax avoidance schemes are increasingly in the spotlight in the UK, in the USA a tax lawyer has been sentenced to eight years' imprisonment for tax scheme work; she was a partner in Jenkins & Gilchrist, a firm which collapsed following action by the Internal Revenue Service over its tax schemes. (Acknowledgements to conflicts lawyer Bill Freivogel for drawing this to our attention – www.freivogel.com.)

Information security concerns are looming ever larger for the USA, as in the UK. Security of medical records, both paper and electronic, has become a major issue for US personal injury firms, with the threat of large fines under the Health Information Protection Act. Cyber policies are gaining ground; part of the service under the policy may include incident support. There is no standard wording however, and each policy must be looked at individually. The FBI have met with the 20 largest firms, as law firms are perceived as the biggest area of risk in corporate and other work. Seven Canadian law firms were reported to have been hacked in connection with the unsuccessful $40 billion bit to acquire Potash Corporation of Saskatchewan by BHP Billiton.

Conflicts are always a major issue at conferences such as this, and this year was no exception. One area covered was the risk of being conflicted from unsuccessful participation in beauty contests and other preliminary meetings. This is addressed in ABA Model Rule 1.18 and in the recently released New York City Bar Association Formal Opinion 2013-1. This addresses the question of whether an unsuccessful firm can represent a client in a matter substantially related to the subject of the beauty contest, when the client's interests are materially adverse to the prospective client's interests in the matter, and how the firm must handle information it receives from the prospective client.

Excessive zeal was an interesting topic following the recent striking off of a partner in a leading UK litigation practice on an application to the Solicitors Disciplinary Tribunal by an opposing party in hostile, high value litigation. Firms should consider how they create a culture which prevents inappropriate behaviour, and how they monitor aggressive practitioners.

The interesting spectre was raised of obtaining video evidence of testamentary capacity when preparing deathbed wills; a recent article referred to a study which found solicitors seriously lacking when making a judgment as to the potential testator's capacity.

A survey revealed that US firms are focusing their efforts primarily on conflicts, intake procedures, information security and records management. 58% of respondents have an automated process for tracking and managing engagement and conflict waiver letters. While this had dropped from 61% in 2010, we suspect it is significantly higher than in the UK. In both jurisdictions, automated processes are only part of the answer.

"Growth areas for claims include … many against insurance defence lawyers, with more claims against the latter for breach of loyalty than any other sector."

Articles & Events

For recent articles see here.

For upcoming events see here.

Picture - Chicago by night

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