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Client survey

Client surveys may form a useful part of monitoring compliance with Outcome 1.1 in the SRA Code of Conduct, which requires that ‘you treat your clients fairly’.

Our thanks go to the many clients who participated in our recent client survey. We were delighted by the response with 42% responding to our online survey and a number of other clients kindly participating in interviews. Our objectives were to assess our quality of service and ascertain what areas of risk and compliance clients are planning to focus on over the next 12 months. As an incentive, we entered all participants in a draw for a donation to charity; the winner nominated [The House of St Barnabas](#).

Key areas of risk which respondent firms will be addressing are cyber risk (64%), managing their compliance framework (47%) and data protection (42%). 39% aim to focus on meeting clients’ requirements, particularly topical in the context of increasingly demanding outside counsel guidelines, and 38% improving client and matter inception. The last of these is particularly significant in our view: we believe that managing this effectively is approximately 80% of a firm’s risk management. It is an area on which we advise many firms. Done properly, it can also help improve efficiency.

As to the level of client satisfaction, 62% found our services met their needs extremely well, and 36% very well. 94% scored us 8 out of 10 or above when we asked how likely they are to recommend us to a colleague or contact, with 64% scoring 10 out of 10.

SRA Accounts investigations

The most recent Annual Report for the Solicitors Disciplinary Tribunal (2013/14) shows that 16% of applications to the tribunal involved accounts breaches, and 8% improper utilisation or misappropriation of client money.

Experience shows that this can be an issue in even the best-regulated firms with excellent reputations. We are advising several firms on such investigations. These cover a variety of issues, from rogue fee earners, to inadequate systems and some also involve difficult points of law or interpretation. A number of key issues arise, including adequacy of supervision, use of client account as a banking facility, and bills which are paid out of client account without being delivered to clients.

Meanwhile, although financial stability is no longer a ‘high priority risk’ according to the SRA Risk Outlook 2015/16, we are seeing evidence that it is still a significant issue in the profession which gives rise to a variety of compliance issues.

Personal liability for private client work – a lottery?

Claims by disappointed beneficiaries are not new, but the recent £33 million lottery prize raises the stakes. What if a client won the lottery after you (negligently) drafted the will? There is also claims exposure from the administration of trusts and estates of high net worth clients.

But there are more mundane risks too – as firms close, and their run-off insurance in many cases is limited to the minimum (which may reduce if the SRA proposals take effect), lawyers who advise on higher value estates may be exposed to personal liability which is uninsured.

There are also practical issues of day-to-day administration which make it attractive for a firm to consider setting up a trust corporation. In addition, there are other measures which may help manage the risk of personal liability. We have advised many leading firms on these issues.

EU Directive on Consumer ADR

This is not only an issue for firms which know they act for consumers – others may be affected through employment work, or by advising directors on corporate work for example.

The Law Society has changed its [advice for firms on compliance with the UK regulations](#) which transpose the EU Directive on consumer alternative dispute resolution (the ADR Directive). We are advising firms on their documentation.

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Confidentiality

We commented earlier on law firms' focus this year on cyber-risk, and the threat of hacking is ever-present. Yet in our experience lawyers continue to put client confidentiality at risk in the simplest of ways, for example by discussing client matters on the telephone in public places, working on files on public transport and talking in coffee shops. We frequently see examples of this.

One recent example involved a senior partner of a well-known firm discussing a clinical negligence matter on the telephone on a train with the file on display in front of him. Cases such as this involve sensitive personal data, so there are also data protection issues which may attract sanction.

According to the Information Commissioner, the two main data protection issues affecting the legal profession in 2014/15 were loss and theft of paperwork (29% of breaches) and data being posted or faxed to the incorrect recipient (22%).

We are also encountering significant issues in relation to personal injury firms seeking to offload files to other firms and failing to appreciate the confidentiality and data protection issues, quite apart from the costs concerns when assigning Conditional Funding Agreements. We are advising many firms on these issues, and also provide training for staff in confidentiality and data protection.

Recent articles

Should we buy cyber cover?

Frank Maher discusses what firm's should consider when asking themselves if their professional indemnity insurance should cover cyber crime.

First published in The Legal Compliance Bulletin.

Events

Law Society of Northern Ireland Cybercrime sessions

Frank Maher will be speaking on Cybercrime and Cyber Security at various locations across Northern Ireland.

Ark's 12th AML Compliance for Law Firms

Sue Mawdsley will be chairing the conference.

Law Society AML workshops

Sue Mawdsley will be delivering numerous AML workshops across the UK.

Solicitors Journal Live Conference

Francis Dingwall will be talking on the risk of overseas clients when dealing with commercial property.

Law Society's Risk and Compliance Conference

Francis Dingwall will be delivering a session on 'Messages to COLPs and COFAs – how to manage your compliance'

For further information on any of the above, please contact info@legalrisk.co.uk

Ireland – LLPs

Our client base extends to many leading law firms outside the UK, including leading Irish firms. Limited liability partnerships are about to become a possibility for law firms in Ireland, with the passing of the Legal Services Regulation Bill. However while this is a welcome development, which should generally remove the risk of joint and several liability for the acts or omissions of fellow partners, we believe the legislation will still leave an uncomfortable gap where individuals remain exposed for their own mistakes. Adopting LLP status is only one step in a journey to manage risk. Interestingly, unlike the UK but in common with some US states, LLPs under these provisions, when they are brought into force, will not be legal entities.

Anti-money laundering

Transparency International has published its [Corruption Perceptions Index 2015](#).

Meanwhile, an article in Bloomberg Business reports – 'After years of lambasting other countries for helping rich Americans hide their money offshore, the U.S. is emerging as a leading tax and secrecy haven for rich foreigners. By resisting new global disclosure standards, the U.S. is creating a hot new market, becoming the go-to place to stash foreign wealth. Everyone from London lawyers to Swiss trust companies is getting in on the act, helping the world's rich move accounts from places like the Bahamas and the British Virgin Islands to Nevada, Wyoming, and South Dakota.'

Sanctions

The EU has ended economic and financial nuclear-related sanctions against Iran, but some limitations remain. In addition, some EU companies may still be subject to US sanctions and export control provisions, and EU companies which are not subject to US primary sanctions may still be subject to US secondary sanctions imposed by the US against non-US citizens. In addition, EU companies which export products or services to Iran and which are of US origin or contain more than 10% US origin technology will require a US licence.

Cybercrime

A report by United Security Providers says that it is estimated that 91% of cyber-attacks now start with a spear phishing email and the open rate is 70% compared to a non-personalized mass mailed phishing email which has an open rate of only 3%.

Our online training to raise the awareness of staff and reduce risk of exposure to cybercrime and bank scams continues to be popular. We have UK and overseas versions, priced at £15 plus VAT per user, minimum two users.

RISK UPDATE