

REGULATION AND COMPLIANCE

Quis custodiet?

SRA CEO Antony Townsend has reiterated the suggestion made by his chairman Peter Williamson that ultimately there need only be one regulator of legal services. But in the absence of the Legal Services Board, who would keep the SRA up to the mark? Client care features in its requirements of the firms which SRA regulates, but there are widespread reports of a conspicuous absence of client care in its treatment of the firms which it regulates. Letters are left unanswered, queries left unresolved and missed deadlines have become the norm. First, the missed October deadline for ABS; then the repeated delays over the on-line renewal of practising certificates. Now, we hear that the end-March date for the submission of applications for approval of COLP and COFA is to be moved back.

In the absence of the LSB, who would guard the guards?

Risk Management

Risk management is an essential part of compliance under Outcomes Focused regulation, and the pilot firms involved in the SRA's consultation process were asked to compile "Risk Registers", identifying the risks to which they might be exposed and indicating how these might best be minimised or avoided. So this is a useful indication of what SRA will expect of other firms. Risks might be graded by reference to their impact or their likelihood and they are likely to encompass risks which affect firms in general (e.g. the loss of records in a fire); risks which are specific to the individual firm (e.g. over-dependence on particular clients or types of

business); and market-related risks (e.g. the impact of Tesco Law on competition in given market sectors). The important thing is that firms should be able to provide evidence of having considered these matters; and additional brownie points are likely to be awarded if staff are seen to have been consulted and contributed their input.

The SRA suitability test

COLPs and COFAs will need to convince the SRA of their suitability to hold that role, as will non-lawyer would-be owners or managers of ABS firms. This will include the non-lawyers in the circa 500 law firms which have registered as Legal Disciplinary Practices and will need to be licensed as ABS before end-October 2012 (unless that deadline is also missed by the SRA). Mercifully, solicitor partners in ABS applicants will only need to prove suitability if they are nominated as COLP or COFA. Solicitors are deemed to be suitable to be managers or owners of ABSs if they hold a current practising certificate, by virtue of Rule 13.2 of the Authorisation Rules. For those whose suitability does need to be confirmed, however, Solicitors Journal has pointed out an unexpected hurdle. Solicitors who have been officers of client companies which have been wound up will be ineligible, as might also solicitors whose regulatory record is tarnished.

Helpline for COLPs

SIFA's Stuart Bushell and his colleagues Ian Muirhead and Ian Cockerill are pleased to offer solicitors a free telephone and e-mail advice service on matters relating to Outcomes Focused Regulation. Phone 01372 72172 or e-mail stuart@sifa.co.uk or ian@sifa.co.uk

The key to Outcomes Focused Regulation

Solicitors concerned at the apparent woolliness of Outcomes Focused Regulation could do worse than look at the SRA's Enforcement Strategy for Conveyancing. This highlights specific procedures which SRA will expect to see in place when it checks – as it will do – to ensure that firms have embraced the requirements of OFR. What it makes clear is that the key to OFR is the adoption of management systems and controls, which will ensure that firms operate in an efficient and disciplined way. Conveniently, this will equip them to face the competition which the Legal Services Act is about to unleash. The Conveyancing Strategy is the first such Strategy to have been issued, and it will be followed by others, addressing the main areas of solicitors' business specialisation. For a summary of the Conveyancing Strategy, go to the COLP & COFA support area of www.sifalegal.co.uk

Lawyers tempt accident victims with iPads

Insurance Times and Global Reinsurance repeat the Mail on Sunday's story about two law firms offering expensive incentives, including iPads, to personal injury victims, in a bid to gain instructions to handle their claims. Ironically, the story coincided with another which reported the growing incidence of repetitive strain injury resulting from the use of iPads. The proposed ban on referral fees is predicted to result in ABS mergers between law firms and claims management companies, but would it be going too far to conclude from the iPad story that some firms are actually trying to create claims?

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