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DEBT RECOVERY WARNING FROM SRA

The strict application of the principles and rules of the Code of Conduct can have some unwelcome ramifications for firms practising in debt recovery work. Particular problems arise where the firm receives its instructions from a debt recovery agency on behalf of its creditor clients. Firms in this position would be well advised to pay heed to a recent Warning Notice published by the SRA.

A typical scenario is where a creditor business instructs a debt recovery agency to collect its debts. The agency in turn has an arrangement with a solicitors' practice and sends out pre action letters using the solicitors' headed paper. If that is unsuccessful the agency instructs the solicitors' practice to issue proceedings on behalf of its creditor client. When the debt is recovered the solicitor accounts to the agency, which then in turn accounts to the creditor client.

In many cases this arrangement works perfectly well. The creditor client - some of whom may have thousands of debts to collect – has only one organisation to deal with and the costs of dealing with an agency are lower than dealing direct with solicitors. Many would take the view that this arrangement should be beyond reproach and would be likely to work in the best interests of the creditor clients.

The SRA, however, is concerned that in being party to such tripartite arrangements firms are putting their independence at risk. The actions of the agency may involve them, indirectly, in becoming party to overly aggressive and/or misleading correspondence. A further concern is that the debt recovery agencies are carrying out reserved legal activities contrary to the Legal Services Act 2007.

The Warning Notice comes hot on the heels of two cases heard in the Solicitors Disciplinary Tribunal in 2013. The first case is Trevor Munn *(SDT 11003-2012)* where Mr Munn was fined £40,000 and ordered to pay costs of £35,000. Mr Munn allowed a debt recovery agency to send out pre action letters on his headed paper in a standard format originally drafted by him. He also permitted court proceedings to be issued on behalf of the creditor clients in his name as if he were acting for the creditors. Fixed costs were claimed on the basis that a solicitor was acting for the creditor claimant even though the proceedings had been issued by the agency.

As the conduct of litigation is a reserved legal activity, it is the issue of proceedings which was the most serious allegation in this case. There was no direct relationship - contractual or otherwise - between the creditor client and the solicitor despite the fact that Mr Munn was on the record at court as acting *"on behalf of the Claimant"*. To all intents and purposes the agency was conducting litigation. Section 14(1) of the Legal Services Act provides that it is a criminal offence to carry on a reserved legal activity unless entitled to do so and O(7.9) of the Code of Conduct provides that reserved legal activities must not be outsourced to people who are not authorised to undertake them.

The second case which has been relied upon by the SRA in the warning notice is the subject of an appeal, so the judgment is not presently available on the SDT website.

Apart from this Warning Notice on debt recovery, the SRA has also published notices recently on other types of work (stamp duty land tax and payment protection insurance) that it considers challenging from a regulatory viewpoint. Practitioners will recall that the SRA had similar concerns regarding miners' compensation and land banking cases in the past. Such notices and guidance are welcome in setting out the SRA's position.

What differentiates the debt recovery cases from some of the other examples is that the creditor clients are almost exclusively business clients and not private individuals. They are sophisticated enough to weigh up the risks of dealing with debt recovery agencies. The SRA does not allege a failure to act in the best interests of clients. The Notice states categorically that an assertion that you were acting in the *"best interests"* of your client is not an answer to the making of an improper demand. The SRA's focus is in relation to protecting the conduct of litigation as a reserved legal activity and protecting the interests of the debtors from misleading or aggressive correspondence.

Firms should be aware that innovative ideas for business development that involve an intermediary dealing direct with the ultimate client are those that are likely to attract the attention of the SRA. Simply concentrating on the interests of your own client is not enough - other professional considerations to be found in the Principles and the Code of Conduct of the SRA Handbook are also likely to apply. ■

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