



Current Risks From The Regulator

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The SRA Risk Outlook, which first appeared in 2012, was updated in July 2014 and is well worth checking by COLPs at least. The report provides a useful insight to the issues concerning the regulator at present and will be particularly helpful to any firm that is updating its risk register.

The update lists as its current priority risks those which are considered to be *“widespread, current and posing a significant risk to the public interest”*. These are: the misuse of money or assets; money laundering (where the SRA claims to be investigating several serious cases); bogus firms; lack of a diverse and representative profession; and failure to provide a proper standard of service – especially to vulnerable clients.

Risk to client money inevitably falls into this category of risk for the obvious reason that loss of client money always has a huge impact on clients, the firm concerned and the reputation of the profession as a whole. Similarly, money laundering seems likely to remain in the top category of risk, the SRA commenting that this risk is largely caused by poor systems and procedures. This in turn may have been prompted by concerns in Government about an impending inspection of the UK in relation to its anti-money laundering controls by the international body FATF (the Financial Action Task Force) in 2016 and the widespread view that the controls required of all sectors covered by the Money Laundering Regulations 2007 are being enforced in a *“tick-box”* manner.

An interesting new entry, however, is bogus firms - a problem for some time but now receiving more attention. The SRA reports that in the first 4 months of 2014 there were 235 reports of bogus firms. Criminals are increasingly using stolen identities to steal money and confidential information, commonly in relation to the most serious and costly forms of mortgage fraud. Extra care is needed in transactional work where the firm is dealing with advisers on the other side with whom they are unfamiliar, taking into account the ease with which fraudsters can *“clone”* actual firms and divert all communications to themselves. The SRA also advises that firms should undertake regular checks of its own web profile for scam sites.

The SRA's concern for vulnerable clients focuses on poor advice to those who cannot judge the quality of that advice. Surprisingly it does not make a link to the cost of such advice. Most traditional law firms have difficulty offering a service to vulnerable clients because of the massive cuts in legal aid. Vulnerable clients are therefore forced to act as litigants in person assisted in some cases by McKenzie friends or other unqualified *“legal”* advisers who are paid but unregulated. Added to this, with the current variety of business structures offering legal services, it is now so difficult for a client to identify who is regulated and by whom that it is not surprising that clients fall unwittingly into the grip of the unregulated sector.

Also listed are three *“other priority risks”* which include: breach of confidentiality; information security and cybercrime; lack of

independence; and failure to act with integrity or ethics: improper or abusive litigation

The reference to information security risks coincides with the recent release by the Information Commissioner (*“ICO”*) that it has received 15 reports of data breaches in the last three months involving members of the legal profession. A major overhaul of the law is planned in this area and an EU Regulation is likely from 2017 imposing a duty to report data breaches to the ICO.

A new risk for this year is lack of independence. The SRA reports that it has seen cases where pressure from influential clients has compromised firms' prioritisation of the public interest. It refers to sophisticated in-house legal departments in large financial institutions or multinational businesses shifting the balance of power between the client and their legal adviser. To quote Lord Neuberger: *“Lawyers owe overriding specific duties to the court and to society, duties which go beyond the maximisation of profit and which may require lawyers to act to their own detriment and to that of their clients”*

The SRA describes improper or abusive litigation as that which involves *“exploiting a client or third party's lack of knowledge of the law or the lack of resources open to them”* and where the justice system is manipulated so that a firm can increase its financial return. This is a very wide category of risk. Examples of problems in litigation include firms being criticised by judges for aggressive correspondence in corporate litigation or accused of unethical conduct towards witnesses or their statements; the High Court warning that immigration solicitors face referral to the SRA if they make *‘abusive’* judicial review applications that fail to follow proper procedure and a number of cases where judges have dramatically reduced excessive costs claimed in litigation, sometimes by over 90%.

Finally, it is interesting to note that financial instability has been downgraded from a priority risk, although the SRA says that it is still a factor in other regulatory risks, such as a failure to act with integrity. Additionally, the SRA comments that although the economic upturn is having beneficial effects, firms should be alert to the problems which can arise from trying to expand too quickly and making lateral hires that fail to deliver the hoped for results. As ever, cash management is key to avoiding the risks of overtrading. ■



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