



COMPLIANCE TOP TEN FOR 2014

As COLPs and COFAs look back on their first year in these roles, what does 2014 have in store for us? In no particular order, here are ten significant compliance issues for the New Year.

1. REFERRAL FEES

Although acknowledging that it “can enforce the word of the law but not the spirit of the law”, the SRA wrote to 900 firms in 2013 that it considered may have been reliant upon bought work. Visits to firms and possible enforcement action is anticipated in 2014. This initiative is in addition to the SRA warning notice published in October 2013. Expect scrutiny of your financial records if you are in this situation so record keeping is essential.

2. GROUP CONTAGION

The Co-op has provided us with a classic example of group contagion. Damage to the Co-op brand caused by the activities of the Reverend Flowers (indirect contagion) and then a threat to the financial stability of the legal services division caused by the bank’s woeful financial performance (direct contagion). The latter can be controlled by firewalling, but the former is hard to control without giving up the benefits of a single brand.

3. CLOUD COMPUTING

Outsourcing data processing and storage to an external provider is increasing in popularity due to the low cost and flexibility. However, because of the duty to keep client information confidential, firms must ensure that the selected system provides sufficient protection. Due diligence checks are essential. Firms have also been warned by the SRA to take into account the use of US based providers given the nature of US surveillance law.

4. MONEY LAUNDERING

We can expect the spotlight to focus on anti-money laundering policies again in 2014 as the Government will have to draft a revised set of Money Laundering Regulations to address the requirements of the 4th EU Directive on the topic. The



new provisions are unlikely to take effect until 2015 but this may well prompt update training in line with the Law Society guidelines that it is ‘preferable’ that ‘relevant staff’ should receive some form of update training every two years.

5. FINANCIAL STABILITY

Having identified from a review in 2013 that one in 20 of the firms surveyed were “at very high risk of being in financial difficulty” the SRA was considering whether to contact many more law firms about their financial position. What it hoped to achieve by this exercise other than damaging the confidence of the profession and giving lenders even more jitters remained to be seen. This plan was overtaken by events when many firms closed at Xmas due to lack of insurance and in addition

we see a regular report in the legal press of firms suffering financial failure. The SRA’s attention is focused on this issue as the number of legal firms reduces dramatically.

6. SUCCESSION AND EXIT PLANNING

As the daily struggle to balance the books continues, there will be more entrants and more exits from the legal services market. It will no longer be inevitable that firms of a certain size will survive. With this in mind contingency plans for all firms’ key managers in the event of long term illness, death, and financial failure are essential.

7. LEGAL SERVICES REGULATION REVIEW

By common consent, the regulatory structure introduced by the Legal Services Act 2007 was overly complex. A Ministry of Justice consultation

closed in September 2013 and we therefore await further proposals. Changes such as the SRA becoming the sole regulator for all legal services and the abolition of the Legal Services Board have been mooted.

8. RISK REVIEW

Risk now drives all SRA activity from rule drafting to disciplinary investigations to authorisation of new firms. Consult the SRA’s Risk Review publication and put in place a risk register. This is not a five minute job and once done does need continual review. The profession is subject to a greater degree of change and threat than ever before, meaning that strategic thinking is now vital.

9. CLIENT CONFIDENTIALITY AND CONFLICTS

Third party relationships are in the SRA firing line and must be robust in relation to core values such as client confidentiality and the avoidance of conflicts. Even though personal injury work has suffered a setback with the banning of referral fees complicated structures still exist for other types of work such as payment protection insurance claims and right to buy litigation.

10. CLIENT SERVICE

Top tip for 2014 – continue to focus on excellent client service - the best riposte to all of the challenges faced by all types of law firms. ■

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