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CHANGES TO TERMS OF BUSINESS & UPDATE ON COLPS & COFAS

For most firms and practitioners, the standard terms of business which tend to accompany retainer or engagement letters are seldom checked despite being in almost daily use. This can sometimes mean that contents are included which are quite remarkably out of date, with references to NCIS in relation to money laundering reports (replaced by the Serious Organised Crime Agency as of April 2006) being one of the worst offenders.

An occasional check of all such documentation is important, and the recent replacement of the Financial Services Authority ('FSA') by the newly installed 'Financial Conduct Authority' ('FCA') and 'Prudential Regulation Authority' ('PRA') will require changes to the contract documentation in use in the great majority of firms. The change is of relevance to most firms as a result of the requirement in the SRA Financial Services (Conduct of Business) Rules ('COBR') which form part of the *'specialist services'* section at the end of the SRA Handbook.

Those firms that are required to provide notice to clients on their authorisation to carry on *'regulated activities'* (such as disposing of shares in commercial or family law work) or advice on insurance (*'insurance mediation'*) will need to update all references from the FSA to – now – the FCA. This is most likely to appear in the terms of business of most firms, in which case, the new required wording for insurance mediation is as follows (and as found at s.3.3 of the COBR):

> *"[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/register."*

Similar changes of reference to the FCA will also be required in any accompanying change to the similar wording in use advising on your status with regard to regulated activities.

COLP and COFA nominations

All concerned – both at the SRA and within law firms – would have hoped that the nomination process for the required reporting officers – COLP and COFA – would have died down by now. The SRA has reported, however, that it is pursuing almost 800 firms (roughly one in fifteen of all firms in England and Wales) for irregularities in the nomination process.

At the top of the SRA's list are a total of 21 firms who explained their persistent failure to make the required nominations with a variety of excuses ranging from having to care for elderly relatives, being abroad for a significant period or deadlock between the partners as to who should be nominated. Those who explained their failure through *"not bothering to read SRA e-mail"* were clearly not setting out to impress the regulator.

The greater number of outstanding enquiries relate to the 300 firms which delayed in providing information to the SRA as part of the nomination process, and 545 firms or individuals which failed to disclose information to some degree. Since it is an underlying principle of the Handbook that firms must deal with the regulator in an *"open, timely and co-operative manner"*, some form of enforcement action might be expected against all or most of these. This might range from a letter of advice to the closure of the firm through an intervention. Others will no doubt face referrals to the Solicitors Disciplinary Tribunal (SDT), especially if there has been an element of dishonesty in failing to disclose significant information.

As a final comment on the COLP and COFA nomination process, which has featured in this column and elsewhere in the *Bulletin* frequently over the last year or so, it might still be questioned why different standards were needed for the two reporting officers at all. If, as Lord Bingham once famously stated, a solicitor must be capable of being *"trusted to the ends of the earth"* then surely anyone on the Roll should have been capable of fulfilling the required duties – subject, perhaps, to knowledge of the SRA Accounts Rules for COFAs? If the highest standards apply to all solicitors then surely the SRA could have made the last few months much easier for all concerned had they confined their investigations to the non-solicitors who were nominated – more commonly for the COFA role? ■

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