



NON SOLICITOR STAFF

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At one time the Law Society was only concerned with regulating qualified solicitors. The position is now very different with the introduction of Legal Disciplinary Practices (“LDPs”) in March 2008. Law firms need to be aware of the current provisions covering non solicitor staff within their practices. Alternative Business Structures (“ABSs”) are due in October 2011 and a new draft Code of Conduct will be published in May 2010 when further changes will be made.

The SRA has the power to regulate unqualified persons under section 43 of the Solicitors Act 1974 (“s 43 Order”). A s43 Order restricts the future employment of unqualified persons. The wording of s43 has recently been amended to include recognised bodies and managers to cover LDPs.

The s43 Order governs anyone who is, or was (at the relevant time), employed or remunerated by a solicitor in connection with his practice but is himself not a solicitor. An unqualified person cannot be employed by a solicitor, employee of a solicitor, recognised body, manager or employee of a recognised body without the permission of the Law Society.

There are two types of manager. There are non-solicitor managers, also governed by their own approved regulatory bodies (barristers, legal executives, licensed conveyancers, trade and patent agents and public notaries); and non-solicitor managers who are not governed by an approved regulatory body. A manager of an LDP would therefore be unqualified for the purpose of a s43 Order, although that manager may also be an employer!

The SRA itself can impose a s43 Order (usually when there has been a conviction) but a s43 Order is more often made after a referral by the SRA to the Solicitors Disciplinary Tribunal. The order can apply to an employee or anyone remunerated

by a solicitor’s practice such as non solicitor fee earners, secretaries, receptionists and cashiers.

A decision to refer the matter to the SDT for a s43 Order gives rise to a rebuttable presumption that there has been a lack of supervision. Therefore, when a s43 Order is sought, there is invariably a parallel investigation into the supervision and management systems of the practice to ensure compliance with inter alia Rule 5 of the Solicitors’ Code of Conduct 2007 (“SCC”).

Such an investigation can be time-consuming and costly for the firm, which will need to display effective and appropriate procedures for supervision and management. Failure to do so could result in a finding of a breach of Rule 5 of the SCC regardless of the seniority or expertise of the unqualified person.

This may seem complicated but will seem like child’s play when the new Code is introduced. I anticipate that the freedom to practise in ABSs will be tainted by the regulatory burden that the SRA will have to impose on qualified solicitors if the public interest is to be protected.

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