

July 2011

Pre-OFR round up

Another success in the SDT

On Tuesday 12 July we secured the settlement of long-running proceedings against our client who was facing charges of accounts rule breaches, failing to provide costs information to clients, failing to honour an undertaking, misleading clients through an associated web site and failing to comply with the referral fee rules. The allegations arose from the failed Miners GLO for which he and a former partner had been responsible during 2005 and 2006.

Our tactics of ceaseless attrition encouraged the SRA to accept that two allegations were unsustainable and the gravity of the remaining allegations had to be considerably reduced in order to avoid applications to strike out allegations for want of any evidence.

The Regulatory Settlement Agreement (RSA) was the subject of intense negotiation and we were pleased to secure amendments which emphasise the technical nature of the breaches and the efforts to which our client went, together with his co-Respondent, to ensure they complied with the rules in the first place. The RSA should be published on the SRA web site in the next few weeks under the names Wynne Lewis Edwards and Simon Mark Evans.

The use of RSAs to resolve proceedings in the Tribunal is being seen more frequently but can only be achieved by a sustained effort of negotiation and attrition.

We are delighted that the right result has been secured for our client enabling him to move on in his chosen career.

Change to letterheads, websites and emails

Yes, yet another change!

From (not before!) 6 October 2011, replace:

We are regulated by the Solicitors Regulation Authority

with:

We are authorised and regulated by the Solicitors Regulation Authority (Outcome 8.5)

Everything else remains the same.

ABS now OFR Day! – 13.07.11 SRA Press release

The SRA issued a Press Release on Wednesday 13 July confirming that they may not be able to licence bodies seeking to become ABSs on 6 October 2011. This arises because insufficient Parliamentary time remains this session to pass the necessary statutory instruments to bring those rules into effect. The slippage is likely to delay the SRA becoming ABS capable until late 2011 or early 2012. The delay arises because of the Law Society Council debate about whether the SRA should licence ABS. However, we understand that the Council for Licensed Conveyancers is ready to proceed on 6 October.

However, Outcomes Focused Regulation is in place and all set to come into force on 6 October 2011.

How is your Transition Planning progressing? This is the term the SRA give to the process of changing your firm from

being compliant with a prescriptive set of rules (the 2007 Code) to an outcomes focused approach (the 2011 Code). The SRA published the new Handbook containing all the 2011 rules on line on 6 April 2011 to allow the profession 6 months in which to make the switch.

If you are uncertain about how to proceed or are encountering difficulties either culturally or structurally within your firm do not hesitate to call us to discuss the issues.

Outsourcing – another challenge from OFR – Outcome 7.10

From 6 October your firm needs to have addressed two related issues:

- Your clients must be made aware of what services provided by your firm are in fact provided by third parties. For example, digital dictation, off site back up of data, e-disclosure and other services “critical to the delivery of any legal activities”.
- Your firm must have entered into contractual arrangements with such third party providers enabling the SRA or its agents to obtain information from, inspect the records (including electronic records) of, or enter the premises of, the third party, in relation to the outsourced activities or functions.

The competitive advantage and regulatory risks of a multi-disciplinary partnership

A number of our clients are considering a one stop shop by offering different professional services under one umbrella, to take one example, tax advisory services.

There are a number of serious issues which arise if you are preparing to become this type of multi-disciplinary partnership, a form of ABS. Those issues are partly regulatory but also arise from the way in which the law of legal advice privilege is developing. If you are considering this option then we would be pleased to discuss the issues before implementing your plans.

Additional resources

Our programme of talks and other events continues following the success of our participation in the Law Society of England and Wales’ road show.

In addition to the public talk programme we are also providing a programme of practical sessions addressing how OFR and ABSs may affect private practice and in house solicitors. Tailored to the specific needs of individual firms, departments or in house teams the programmes run for half a day or a day and focus on issues such as how to address the new Code’s requirements on outsourcing and the effect of the Legal Services Act 2007 on pro bono activities provided by in house solicitors, always with a focus on managing regulatory risk.

If you would like to book one of these sessions do not hesitate to contact us.

We are also speaking at the main Law Society event on 6 October in London:

Preparing for change: risk and opportunity in the new regulatory environment

<http://services.lawsociety.org.uk/events/node/53464>

– we hope to see you there.

This technical paper has been written as a general guide only. It should not be relied upon as a substitute for specific legal advice. No responsibility can be accepted by the author or the firm for any loss occasioned as a consequence of acting or refraining from action on the basis of this paper.

GUISE Solicitors Limited is a company registered in England with registration number 07139803 and trades as GUISE Solicitors. Our directors are solicitors of England and Wales. We are regulated by the Solicitors Regulation Authority.

Directors: Tony N Guise and Sabina Rinker

1 Alie Street London E1 8DE t: +44 (0)20 7264 0350 f: +44 (0)20 7264 0351