

Interventions: avoidable or inevitable?

Recent statistics from the SRA confirm that rapidly rising numbers of interventions and the mounting costs of archiving files would cost the profession an extra £3.6m in the financial period 10-11. In the year to June 2009 the number of interventions increased by 20% with an expected 100 in the year to June 2010. This edition of the Brief considers the circumstances which lead the SRA to intervene, how it is done and the consequences for the solicitors involved in an intervened upon firm.

This draconian power was introduced in order to protect the Compensation Fund from becoming exposed to dishonesty on the part of solicitors so that the Law Society could close down firms with no notice (if necessary). The Solicitors Act, 1941 granted power to intervene for breaches of the Accounts Rules but since then the power has expanded to include cases where the Code has been broken and where the Indemnity Insurance Rules are breached. A recent change (introduced via the Legal Services Act, 2007) has extended the consequences of intervention to former principals as well as principals at the time of the intervention and so the power has become all encompassing.

Section 35 of the 1974 Act simply refers to the powers in Part II of Schedule 1 to the 1974 Act becoming exercisable in the circumstances described in Part I of Schedule 1. This rather convoluted approach does not assist in understanding what can happen.

The grounds for intervention include:

- Dishonesty
- Breach of the Code, Accounts rules or Indemnity Insurance rules
- Entering into bankruptcy or an IVA (although the SRA frequently grant a waiver to enable that solicitor affected to continue practising subject to conditions)
- Abandonment of a practice
- Imprisonment
- Mental illness
- Senility
- Acting as a solicitor without a practising certificate

Amongst many others.

Once a resolution to intervene has been passed by an Adjudication Panel (comprising 3 solicitors) the SRA have vested in them client and office money (usually bank accounts are frozen) together with all documents in the possession of the intervened firm, primarily the client files. Post is redirected to the Society's Intervention Agents (a firm of solicitors on the SRA Panel

for these purposes) and the vesting and possession of files takes place irrespective of any issues about lien.

The consequences for the partners are usually devastating since the firm is all but destroyed leaving principals with practising certificates (usually) suspended, facing the SDT months down the line and a huge bill (joint and several) for the SRA's costs of the intervention which are typically at least £100,000 but can be much more.

Can these dire consequences be avoided? Probably not if a firm has engaged in serious fraud or dishonesty. However, some interventions are avoidable and arise only because the pre-intervention exchanges with the SRA are not managed as well as they might be. If correspondence is received from the SRA or a visit takes place it is vital that expert advice is taken at an early stage to ensure the firm responds in an appropriate manner. Firms that ignore correspondence, respond in an unnecessarily defensive or aggressive manner or promise co-operation but fail to deliver are the firms which are more likely than not to be intervened upon. It may be necessary to reconstruct the firm by introducing new compliance systems with appropriate support in the form of legal cashiers, compliance specialists and even partners to satisfy the Authority that the firm is being rehabilitated in the management of its business. Solicitors have a duty to co-operate with the Regulator (Rule 20.05 Code) and the quality of that co-operation must be full and prompt to avoid intervention (see also guidance note 27).

Usually the first a firm will know of the decision to intervene is the arrival of a fax or a telephone call from the SRA (or its Agent) serving notice of the intervention and seeking to meet to take possession of the client files. The firm's Bank will be informed at the same time and office and client account will then be controlled by the SRA. An interview will be held with the principals of the firm to determine where client files are held, where archived files are stored and to gain access to the firm's electronic records amongst other issues. The responsibility for the firm's overheads remains with the principals including staff salaries and rent for the premises. An intervened upon firm remains entitled to recover its outstanding bills but this effort is hampered by the removal of the files. Such files are usually then sent to clients free of any lien making fee recovery problematic.

A challenge can be mounted to the decision to intervene. Application has to be made to the High Court within 8 days of service of the notice of intervention. The period of 8 days cannot be extended. There has only been one successful challenge to an intervention (Yogarajah [1982] 126 Sol Jo 430) which led to the withdrawal of the intervention. However, we were recently involved in a (rare) case where the Authority was persuaded that withdrawal of the intervention was appropriate on certain terms as to the management of the practice and costs.

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