

SRA enquiries and how to survive them

With the regulator becoming increasingly robust in pursuit of its stated objective of protecting the public from mis-behaving solicitors the best defence is: "be prepared". This article looks briefly at the different types of visit and how best to manage the process.

1. **Intervention**

- i) Without any notice the Solicitors Regulation Authority (SRA) authorises one of their Panel solicitors to step into a firm and assume responsibility for client files and monies so as to prevent loss to the public.
- ii) Although interventions were fewer in 2006 (50, down from 60 in 2005 and a high of 113 in 2000) this is still the nuclear option in terms of regulating the profession.
- iii) The most notice you will have of this action may be a fax that morning, if you are lucky.
- iv) The intervened upon firm ceases trading, the practising certificates (PCs) of all partners are immediately suspended (both equity and salaried).
- v) Intervention can arise from a report by a member of the public, the Police, your local Law Society or a member of the profession; under rule 20.04 of the Code of Conduct 2007 (the Code) we each have a duty to report any misconduct we find in other members of our profession.
- vi) Intervention can be challenged although very prompt action is required since the application must be issued within 8 days of the service of a notice about intervention taking place (para 4, Part II of Schedule 1 to the Solicitors Act, 1974). There has been no successful challenge to any intervention.
- vii) Costs associated with the intervention are payable by partners (both equity and salaried) and vary considerably but assume little change from £100,000.
- viii) The Intervention Agent does not assume responsibility for your firm's overheads or collecting in debtors. All partners remain jointly and severally responsible for those matters.

1. **Practice Standards Unit (PSU)**

- i) The PSU is tasked with visiting every firm in England and Wales to assess their compliance in order to make recommendations for improvement.
- ii) This is obviously an ambitious target so in practice this means that certain firms are prioritised for visits. Initially this was complaints driven but has changed to focus on firms relying on referral arrangements. These being the areas where most issues have arisen in recent times

3. Forensic Investigation Unit (FIU)

- i) This is the most common type of visit and starts with a letter from the FIU investigating accountant enclosing a list several pages long of the documents that the visiting SRA officer will wish to see. Usually one has 7 days' notice of such a visit.
- ii) The purpose of the visit will be to assess your firm's compliance with the Code of Conduct 2007, the Solicitors Accounts Rules, 1998 and other, associated rules.
- iii) A visit may last one or more days and can lead to further visits by either one or two officials.
- iv) Typically when the visits are concluded an interview will be arranged with principals to discuss issues arising from the visits. These can take place with your representative and should be regarded as akin to a Police interview although they do not take place under caution. One of my firm's clients has referred to the interview in these terms:

“...the meeting was not a discussion but more of a question/interrogation exercise, approximately 30-40 questions at least must have been asked.”

- v) This is not unusual and in such circumstances it is vital that one does not say anything which could jeopardise one's position in any later proceedings. The golden rule is – if in doubt ask for time (e.g. 14 days) to refresh one's memory from the file and to write with a considered response possibly prepared with the assistance of a solicitor specialising in this field. Remember, always treat the SRA in a friendly, co-operative way – but never forget, they are not your friends.
- vi) Following the interview (probably many months later) a letter will arrive sending a report and asking you to answer questions about issues arising. This letter is the start of a process which can last several years and may end in the Solicitors Disciplinary Tribunal. Any reply to that letter needs to be carefully prepared with the benefit of specialist advice.

4. Special Projects

- i) This essentially means claimant personal injury practices about which there is much furore at present as a result of the controversy surrounding the miners' compensation scheme run by the DTI of which it is alleged some firms have taken advantage.
- ii) In particular the issue of referrals and payment for those referrals is under the spotlight.
- iii) If your firm undertakes such work it would be prudent to review the firm's compliance with the Code of Conduct (take a look at rule 9) and ensure that, if referrals are paid for, that the firm's record-keeping is up to date and in place.

5. Investment Business Unit (IBU)

- i) Does your firm share commission with an independent financial adviser (IFA) or other professional adviser e.g. an accountant? If so there are 2 sets of rules with which your firm will need to comply in order to show the IBU that your firm is compliant.

- ii) Those are the Solicitors Financial Services (Scope) Rules and the Solicitors Financial Services (Conduct of Business) Rules otherwise known as the Scope rules and the CoB rules respectively. These remain in force following the Code of Conduct being implemented on 1 July 2007. Failure to comply could be very costly in terms of managing any continuing SRA inquiry which can last up to 3 years or more. The cost of investing time in putting in place appropriate systems to ensure compliance and/or seeking appropriate advice is tiny in comparison with the costs associated with managing an enquiry let alone the cost of the reputational damage to your firm if an adverse finding is reached and published.

I strongly recommend that you review the state of your firm's compliance today. If a visit is about to take place seek advice from a specialist in the field urgently.

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