

Key Compliance Issues For Legal Firms Webinar

Thursday 15 June 2023



Presenters



David Gilmore | Director and Founder | DG Legal

David founded DG Legal in 2000. He has worked with several government departments and has advised dozens of charities involved in the legal sector. David has also provided advice and assistance to hundreds of law firms and other legal organisations. He delivers specialist consultancy and training on a wide range of topics including business management & strategy, tendering, compliance and quality assurance.

[Email David](#) | [View David's Full Bio](#)



Deborah Witkiss | Product Director | Insight Legal

Deborah started her career working in legal finance before moving in to legal software 18 years ago, training and supporting law firms in their use of technology as well as teaching solicitors about dealing with their accounts and managing their practices. Deborah joined Insight Legal in 2012 and, following a number of years as COO, is now the company's Chief Product Officer.

[Email Deborah](#) | [View Deborah's Full Bio](#)

Presenters



Sarah Charlton | Consultant | DG Legal

Sarah has a BSc (Hons) in Applied Accounting and is a Fellow member of the Association of Chartered and Certified Accountants. Her career spans over 35 years working within the legal sector, fulfilling roles from COFA through to CEO. During her career she has worked with a number of legal regulators, professional bodies and government organisations. Sarah has been a member of the Institute of Legal Finance and Management throughout her career, qualifying as a Fellow member in 2005. Sarah also served as chairperson between 2010-2012 and continues to serve as an Executive Council Member.

[Email Sarah](#) | [View Sarah's Full Bio](#)



Michelle Garlick | Partner | Weightmans

Michelle qualified as a solicitor in 1992, specialising in professional negligence litigation, and joined Weightmans as a Partner in February 2008. She is also the firm's MLRO. Over the years, she has advised and represented many hundreds of lawyers and legal businesses on their regulatory obligations and is known for her pragmatic, commercial and supportive approach.

[Email Michelle](#) | [View Michelle's Full Bio](#)

Agenda

- Welcome and Introduction
- David Gilmore: Common Compliance Errors Made By Law Firms
- Deborah Witkiss: Compliance Issues for Law Firms
- Sarah Charlton: SRA Accounts Rules Consultation, Suspense Accounts & Banking Facilities
- Michelle Garlick: Effective Supervision

Common Compliance Errors Made By Law Firms

David Gilmore | Director & Founder | DG Legal

Common Issues

- ❏ Sending emails to the wrong recipient
- ❏ SRA Transparency Rules:
 - ❏ Costs information not displayed on website or inconsistent across service areas
 - ❏ Complaints information not displayed on website or non-compliant with Rule 2
 - ❏ Digital badge not used or not used correctly
 - ❏ Email signatures not containing regulatory information
- ❏ Privacy policies:
 - ❏ Non-compliant with the updated UK GDPR
 - ❏ No reference to the Data Protection Act 2018
 - ❏ None or not enough detail provided on individuals rights, how long data is stored and how the data is used

Common Issues

- ❁ Terms of Business/Terms and Conditions/Terms of Engagement containing outdated references
- ❁ Firms that provide services that fall under the Money Laundering Regulations 2017:
 - ❁ Not conducting AML audits (where appropriate to the size and nature of the practice)
 - ❁ AML Firm Wide Risk Assessment not up to date or incomplete
- ❁ Insufficient AML checks and recording procedures

Serious Compliance Issues

- ⦿ Appointing non-solicitors as Directors or shareholders
- ⦿ One partner partnerships
- ⦿ COLP and/or COFA resigning before seeking approval of new role holders from the SRA
- ⦿ Common areas self-reported to the SRA are:
 - ⦿ Deception / Dishonesty
 - ⦿ Misleading non client
 - ⦿ Misleading client
 - ⦿ Taking unfair advantage of non client

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Compliance Issues for Law Firms

Deborah Witkiss

Director

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Managing Financial Risk

- It is possible to manage financial risk from outside the accounts department
- The COLP and COFA are not solely responsible for compliance, but the champions of risk management within the firm
- Appropriate accounting and reporting systems are essential
- It's not just about recording and reporting breaches, prevention is better than cure

The 2019 SAR Changes

- Rule changes took effect 25th November 2019, but many firms haven't implemented any changes
- Reduced the rules from 52 to 13
- Compliance is not just the job of the accounts department
- What can be done from outside the finance team to catch and manage breaches and risk?

Some Common Breaches

- Residual balances
- Written notification of costs
- Frequency of reconciliations
- Three-way reconciliations
- Retaining unknown payments
- Money incorrectly held in Client or Office accounts

Spotting the Issues

- Key checks and observations when you're outside the finance team
 - Where to look
 - What to look for
 - When there should be alarm bells
- Could you prevent it from happening in the future by
 - Reviewing your staff training?
 - Revising your policies?
 - Better using your Legal Accounts system?

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SRA Accounts Rules Consultation, Suspense Accounts & Banking Facilities

Sarah Charlton | Consultant | DG Legal

Brief Overview

- An overview of the SRA AR's consultation
- The use of a suspense ledger
- Banking facilities

SRA AR - Consultation

Client money

2.1 *Client money* is money held or received by you:

- (a) relating to *regulated services* delivered by you to a *client*;
- (b) on behalf of a third party in relation to *regulated services* delivered by you (such as money held as agent, stakeholder or held to the sender's order);
- (c) as a trustee or as the holder of a specified office or appointment, such as done of a power of attorney, *Court of Protection deputy* or trustee of an occupational pension scheme;
- (d) in respect of your *fees* and any unpaid *disbursements* if held or received prior to the delivery of a bill, for the same or other written notification, of the costs once these have been ~~xxxxxxx~~.

Properly incurred

SRA AR - Consultation

Client money must be kept separate

- 4.1 You keep *client money* separate from money belonging to the *authorised body*.
- 4.2 You ensure that you allocate promptly any funds from *mixed payments* you receive to the correct *client account* or business account.
- 4.3 Subject to rule 4.4, where you are holding *client money* and some or all of that money will be used to pay your *costs*:
 - (a) you must give the *client* or the paying party a bill, ~~of *costs*~~, or other written notification, ~~of the *costs* incurred, to the *client* or the paying party~~;
 - (b) this must be done before you transfer any *client money* from a *client account* to make the payment; and

SRA AR - Consultation

- (c) any such payment must be for no more than the specific sum identified in the bill ~~of costs~~, or other written notification, of the *costs* incurred, and covered by the amount held for the particular *client* or third party.

4.4 Rules 4.3 does not apply where you withdraw *client money* from a *client account* in full or partial reimbursement of money spent by you on behalf of the *client*, or the third party for whom the money is held.

SRA AR - Consultation

Operation of a client's own account

10.1 If, in the course of practice, you operate a *client's* own account as signatory, Part 2 of these rules does not apply ~~save for~~ but you:

- (a) ~~rule 8.2—obtain periodic~~ statements from *banks, building societies* and other financial institutions for each such account;
- (b) ~~rule 8.3—reconciliations~~ keep a record showing transactions initiated by you which should be checked against the statements from *banks, building societies* or other financial institutions; and
- (c) ~~rule 8.4—bills and notifications of costs~~ keep readily accessible a central record of all *clients'* own accounts that you operate including all bills or other written notifications of *costs* given by you.

10.2 The record kept under rule 10.1(b) must be signed off by the *COFA* or a *manager* of the firm at least every 16 weeks. You should promptly investigate and resolve any differences that have been identified.

Suspense Accounts

Common mistakes:

- ❏ No policy or procedure in place
- ❏ Funds not held on a temporary basis
- ❏ Used for purposes other than unidentified receipts or multiple suspense ledgers
- ❏ Creating a central ledger for 'storing' balances

Banking Facilities

Common mistakes:

- ❁ Mis-interpretation to SRA AR rule 3.3
- ❁ Complacency
- ❁ Over reliance on AR1
- ❁ Subtle variations can bring it in or out of the scope
- ❁ Technical knowledge gap within the law firm to spot those variations

Weightmans

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Effective Supervision

DG Legal

15 June 2023

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To Cover

- Why is effective supervision so important?
- SRA regulatory obligations
- The 4 key themes
- Top tips

Why is supervision important?

- SRA requires it!
- PII insurers expect it!
- Confidence in quality of service to clients
- Competency, learning and development
- Supportive firm culture
- Protection of reputation

SRA Regulatory Requirements

- Code of Conduct for Solicitors
 - 3.5 – *“where you supervise or manage others providing legal services, you remain accountable for the work carried out through them and you effectively supervise work being done for clients”*
 - 3.6 – *“you make sure that those you manage are competent to carry out their role and keep their professional knowledge and skills and their understanding of legal, ethical and regulatory obligations up to date”*

SRA Regulatory Requirements

- Code for Firms
 - 4.4 – *You have an effective system for supervising client matters*
 - 2.1 – *Effective governance structures, arrangements, systems and controls in place to make sure that the firm and its staff comply with regulatory and legislative requirements*
- Authorisation of Firms Rules –
 - 9.4 “*regulated work must be supervised by at least one person who has practised as a lawyer for at least 3 years*”
- See also Guidance on workplace environment and Statement of solicitor competence.

SRA Guidance – Effective Supervision

- Published 23 November 2022
- Purpose:
 - Sets out key themes of approach SRA expects firms/their managers to follow
 - Gives guidance on particular situations and areas of legal work, including good practice examples
- Nothing new /groundbreaking in the guidance – a common sense, risk-based approach to compliance with the regulatory obligations

The 4 Key Themes

1. The need for supervision
2. Appropriate supervision arrangements
3. Conducting supervision
4. Ensuring supervision is effective

1. The need

- Accountability:
 - Regulated individuals and firms are accountable for the actions of those they supervise
 - Must have at least one appropriately experienced individual supervising the legal services to ensure the services are delivered in accordance with SRA Standards and regulations
 - Supervisors should be “*appropriately qualified and experienced both in the relevant area of law and in supervising the delivery of legal services*”

2. Appropriate arrangements

- Risk-based approach
 - Who, what, where, when, how?
 - Factors to consider:
 - Risks for clients (loss of life/liberty/limited scope for redress?)
 - Specific legal/regulatory requirements on who can supervise (eg reserved activities, immigration/claims management activities)
 - Inherent risks – exercise of judgement v routine/administrative work?
 - Client's circumstances/vulnerabilities
 - Experience, competence and workload/level of support
 - Capacity of supervisor
 - Geographical location
 - Nature of/ease of access to other support/tools/standardised processes

3. Conducting supervision

- Direct communication
 - Clear oversight of work being done at all key stages?
 - Readily available to support
 - Robust assurance that legal and regulatory requirements are being met.
 - Supervisor should
 - have some knowledge of each matter being progressed by the person doing the work and/or should monitor a meaningful sample of their work
 - Provide advice or guidance on specific matters(eg non-standard issues) as necessary

4. Ensuring supervision is effective

- *“Merely putting supervision arrangements in place is necessary but not sufficient to fulfil regulatory obligations.”*
- *“Firms must take pro-active steps to make sure that supervision is working effectively and supervisors are accountable”*

What does good/effective supervision look like in practice?

- See guidance for examples and for specific areas of legal services
- Choose supervisors and line managers carefully and where different, share feedback.
 - Approachability, availability and 100% attentive
 - Open door policy – how has this been adapted for remote working?
 - Appropriate and supportive delegation
 - Ensure clear instructions as to what is expected, timescales and role responsibilities
 - Regular constructive feedback (both ways!)
 - Careful checking of drafts/approval requests
- Check for quality/accuracy of advice, policies followed, ethical/regulatory issues/file management
- Carry out matter risk assessments (not just for AML compliance!) to appropriately allocate the work based on capacity, skills, experience etc.
- Record/evidence supervision
- Supervision is not just for junior lawyers!
 - peer reviews
 - internal auditors

For discussion in your firms

- How well do we do supervision? How can we find out?
- What are the blockages preventing you personally or as a firm from providing effective supervision?
- How is/could supervision time be recorded, whether on the file or as a separate non-chargeable code?
- Who is responsible for 121s and peer file reviews and how do you make sure they are carried out?
- Is there any recognition/allowances given for those who have greater supervisory responsibilities?
- Do junior staff feel comfortable speaking up/admitting mistakes?

What poor supervision might look like!

- [SRA v Gurpralad Landa Singh & Kim Singh Landa](https://www.solicitorstribunal.org.uk/sites/default/files-sdt/12381.2022.Singh_.Landa_.pdf)
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