

Solicitors Risk alert - COVID-19

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The SRA's approach to regulation during the Covid-19 outbreak - pragmatism but no relaxation

The profession, like everyone, is adjusting to the disruption of the Covid-19 outbreak. That can involve working remotely, where such a facility exists, or firms simply doing their best to ensure that client work is still dealt with by prioritising the most urgent matters.

This inevitably increases pressure on solicitors to do the right thing where their ability to keep on top of their work is hampered by the current crisis.

What does the SRA expect of the profession?

The SRA has now made its first public statement setting out what it expects of solicitors during this time of national emergency. The Regulator has made it clear that although it will take a 'proportionate approach' when considering conduct at this time, its approach to the high standards expected of the profession remains the same.

Firms are expected to do everything they possibly can to continue to comply with the Rules. The SRA has promised to be "pragmatic" but that does not mean that there is any relaxation in its approach to regulation.

What does this mean in practical terms?

Whilst the SRA is known for its high expectations even in ordinary circumstances it will take into account whether a solicitor or a firm has intentionally breached its Rules and Principles. It is all the more important therefore that all of us make every effort to ensure compliance, and that business continuity plans are put in place effectively to ensure that is the case.

Firms should keep records of the steps they have taken, and all legal professionals should keep an audit trail as best they can, which could be used to help defend any subsequent disciplinary action should an inadvertent breach occur.

Communication with clients is also key. If the strict deadlines in the Accounts Rules cannot be complied with, for example, clients should be informed.

Similarly we recommend informing clients that remote working practices have been implemented and, in particular, if their data is going to be taken or accessed outside of the office. For firms who do not already have policies dealing with this issue, now is the time to prepare and implement them as many institutional clients are likely to object to the removal of hard copy documents to our homes even for perfectly legitimate purposes.

The SRA is allowing firms more time to submit Accountant's Reports, but only where there is 'good reason' for the delay. The SRA has also invited firms to apply for temporary COLP/COFA approval if the existing COLP/COFA is incapacitated for more than two weeks. Early engagement with the SRA, which has itself implemented remote working for the most part, is key.

Solicitors cannot afford to let their high standards fall due to the challenges which can arise from remote working. Clients' instructions should be obtained in the usual way. Care should also be taken in relation to signing documents where a personal signature cannot be obtained, particularly in the context of litigation where solicitors should generally try to avoid signing Statements of Truth on behalf of their clients. An electronic signature can provide a solution in certain circumstances, but this is not always appropriate.

What resources are available?

Fortunately plenty of advice is available and we will continue to alert our clients to key developments.

The SRA's dedicated Coronavirus Q&A's can be found [here](#). The Law Society is also providing helpful guidance. For us, however, the message is simple - communicate with clients, opposing parties, the court and, if necessary, the Regulator quickly should compliance difficulties arise, try to do the right thing and keep a record of all communications in case of a problem later.

At DAC Beachcroft, we are also responding to the challenges by implementing our business continuity plan and remote working. We recommend engaging with colleagues regularly using tools such as Skype and Zoom to ensure that colleagues' well-being is considered and that supervision is maintained. Diary systems we usually rely on have been strengthened and we recommend sharing deadlines with the whole team. Be proactive with opponents, ensuring that consent to serve documents

by email is obtained as soon as possible, for example, and requesting extensions of time early, where that is necessary. Speak to your clients regularly and use technology to keep in touch if you can.

These steps are important from a regulatory perspective, but also they enable us all to stay connected and to support each other, our teams and our clients during this unsettling period.

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