

Risk Outlook 2018/19

25 July 2018

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Foreword

Our annual Risk Outlook sets out what we think are the risks and the challenges faced by solicitors and law firms. I know how fundamental the work of solicitors is to every part of our society and our communities, so it is important that firms and professionals take the right steps to meet those challenges.

As the regulator, we can help by sharing our view of the risks and what can be done to address them.

This year we have 10 priority risks that all solicitors and firms need to consider. The Risk Outlook suggests what can be done to manage the risks and avoid harm to the public, the rule of law and the proper administration of justice.

Many of the risks we are highlighting are not new, but none of us can afford to be complacent.

We have included two new priority risks this year – managing claims and cyber security. We are increasingly concerned about the practises of some firms that offer personal injury work, including holiday sickness claims. Similarly, some firms bringing payment protection insurance claims may not always be meeting the high standards we expect.

Cyber security has always featured in the Risk Outlook as a consideration when protecting people's information and money. But we recognise that this is of increasing concern to the profession, so we have set it out as a separate risk. We have worked with the National Cyber Security Centre to provide you with top tips on keeping cyber-safe.

Our Risk Outlook also updates you on issues such as accessing legal services, dubious investment schemes, money laundering, information security and diversity. We remind you of the importance of not drafting the terms of non-disclosure agreements in a way that suggests a person may not report misconduct to a regulator or a law enforcement agency or make a protected disclosure.

As many of you will know, we are changing how we regulate to focus on high professional standards, removing outdated constraints and helping to tackle the barriers that hinder access to legal services. We are aiming to bring in our new Codes of Conduct, Accounts Rules and other changes, including new practising flexibility, in spring 2019. In my view, these changes will provide a solid foundation for you to manage risk in your firms, whilst freeing you up to innovate and grow.

Paul Philip
Chief Executive

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Introduction

What is the Risk Outlook

It provides an overview of the priority risks to:

- people who use legal services
- the operation of the rule of law
- the proper administration of justice.

It aims to:

- help solicitors and law firms manage risk
- show the priorities we allocate our resources to
- explain how we address these risks.

How to use the Risk Outlook

For each risk, we explain:

- why it matters, based on evidence
- actions that solicitors and firms can take
- what we are doing to help to manage the risk.

Where relevant, we also give details about potential changes we see on the horizon.

Solicitors and firms should think about how the risks apply to them and their own business to get the best value out of the Risk Outlook. We have included case examples and have highlighted certain areas of work to help solicitors and firms understand the risks and the actions they can take.

Our assessment of risk is based on a wide range of input from across the sector. The Risk Outlook is not guidance and does not contain exhaustive lists of obligations or actions. It should be used to raise awareness of the priority risks that need to be managed.

Access to legal services

Many people and businesses do not get the legal help they need. More can be done to improve access to legal services.

Why this risk matters

When a person or business needs legal help, it is important they have access to good quality, affordable legal services to help them solve their problems. If they are unable to access support this can lead to a range of poor outcomes and hinder the proper administration of justice. This can undermine trust in the profession and the justice system. It can also give the impression that legal services are for the few that can afford it.

For some people on very low incomes, public funding is available for certain legal services. And regardless of whether legal help is publicly or privately funded, people should be able to choose their legal services provider. Therefore, a competitive market, where people can choose from a range of affordable options, will support people to get the best outcome when they need legal help.

Legal needs

Over the last 18 months, 32% of people had at least one legal need, such as buying a property and family problems.¹ [#n1]

The needs experienced by different groups vary by amount and type. For example, adults with a long-standing illness or disability are more likely to have problems relating to injury or ill-health from an accident or negligence, anti-social behaviour by neighbours and financial problems.² [#n2] And businesses with black, Asian and minority ethnic (BAME) owners, or businesses run by people with a disability, are significantly more likely to have a legal need.³ [#n3]

Some people are more likely to experience negative effects, such as stress, financial difficulties and harassment, because of their legal need, especially:

- people with a limiting illness or disability
- lone parents
- people on means-tested state benefits
- people running small businesses.⁴ [#n4]

Changes to society, such as our aging population and more informal working practices, are likely to result in different types of legal needs.

Finding legal help

It can be hard for people to know whether their problem needs legal help and what sort of help that might be. Around 35% of people with a legal need try to resolve it on their own without any legal or professional help.⁵ [#5] And, 50% of small businesses try to resolve their legal needs alone.⁶ [#n6] The two main barriers to accessing legal services are the:

- affordability of services

- lack of information.

For those that do take professional advice, 27% of people and 22% of small businesses researched the market before choosing their legal service provider.⁷ Only 2% of those that take professional advice use an online comparison website.⁸

People want to know the price and have some indication of quality when choosing a legal service provider.⁹ But, only 18% of law firms have prices on their website.¹⁰ Some 61% of people using legal services speak to the firm to find out the price.¹¹ People can also over-estimate the cost of services and 28% do not use a solicitor because they think that they are unaffordable.¹² Firms could be losing new business if their prices are not readily available.

Using legal services

Conveyancing and will writing are the most commonly used legal services, followed by power of attorney.¹³ There are regional variations in the use of legal services. For example, people in London are more likely to use immigration and housing services and are less likely to use will writing and probate services compared with average use across England and Wales.

The way services are delivered is changing, with more people expecting fixed fees and online delivery.¹⁴ But there is still a strong preference for local services, meaning smaller firms are well placed to meet the needs of their communities.

The market is steadily growing and diversifying, which is leading to greater choice for people and small businesses. For example, our impact evaluation of alternative business structures (ABSs) and multi-disciplinary practices (MDPs) [<https://www.sra.org.uk/sra/research-publications/abs-evaluation/>] shows that people are benefiting from their services. ABSs are more likely to innovate than other firms and increased competition should lead to more choice. And MDPs may appeal to small businesses so that they can find their professional services under one roof.

Spotlight on technology to create more accessible services

Technology means the public can access legal help in novel ways, often costing them less than traditional legal help. And it gives firms chances to offer their services differently and more efficiently, and potentially reach new markets. Firms offering these services should be mitigating any associated risks, such as cybersecurity and information security.

There are several digital services that can help people with problems before or after getting professional legal advice, such as those that help people make claims and complete legal documents and forms.

For businesses negotiating contracts or dealing with litigation, there are a range of tools. For example, there are artificial intelligence (AI) systems that support litigation processes and contract drafting.

These types of programmes work on routine tasks. They free up lawyers' time for more complex work and to meet with clients and potential clients. They can help to improve access for all legal services users, particularly those in rural areas (with internet access) as well as those on low incomes or in situations that increase their vulnerability.

What solicitors and firms can do

Many solicitors and firms are improving access by competitive costing and innovative service delivery, such as automating some services.

To address the barriers to accessing legal services, solicitors and firms can:

- share more information about services and prices online, and with relevant organisations that support people with legal needs, so it will reach a wide variety of people
- keep information clear and concise so it is easy to understand
- help people understand services and prices by training staff that deal with enquiries from the public
- tell people about the Legal Choices website [<https://www.legalchoices.org.uk/>], which offers information on the different types of legal help available
- ask for feedback about how the information has been presented to see if it can be improved.

Spotlight on research about better information

Our independent research [<https://www.sra.org.uk/sra/how-we-work/archive/reports/price-transparency-legal-services-market/>] has found people make better choices when they can see the price of a service up-front. It also found that, when choosing a provider, the most important factors are their reputation and the price. Firms that advertise their prices say it helps people to understand their services and attracts more clients.

A second piece of independent research [<https://www.sra.org.uk/sra/how-we-work/archive/reports/better-information/>] found that people valued regulation and were more likely to choose a provider whose website included a 'regulated by the SRA' logo. It also found that people are willing to weigh up price and regulatory protections, such as access to the Legal Ombudsman and our Compensation Fund.

We also commissioned further independent research about how clear legal costs could help small businesses access legal services.

What we are doing

We work with others to understand how to best help improve access to legal services. For example, the Legal Choices website [<https://www.legalchoices.org.uk/>] helps people to better understand the problems that may need professional legal advice and how they can resolve them. We work jointly with the other legal regulators to run and develop the website, liaising with advocacy groups and the public to make sure it meets people's needs. We have also been working with the Commission on Justice in Wales to support their work on access to justice.

Regulatory reform

We are making it easier for people to choose the legal service they need by sharing our information and requiring firms to provide more information. We are introducing a wide package of reforms. And our Better information, more choice [<https://www.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/>] proposals will require firms to publish information on prices and what this covers for a range of legal work. This information will help people find legal services that better meets their needs and should also encourage competition.

We will develop an SRA clickable logo for use on firms' websites, which links to a digital register to help the public understand who we regulate and the protections that come with it. The digital register will also include information about the disciplinary action we have taken against a firm or person. We will also publish market-level data on complaints made to firms.

Our Looking to the Future [<https://www.sra.org.uk/sra/policy/future/looking-future/>] proposals will introduce:

- new, clear principles that solicitors must follow
- a short Code of Conduct for individuals and firms
- less prescriptive Accounts Rules
- more flexibility in how solicitors can practise, including allowing:
 - solicitors to practise reserved legal activities on an individual freelance basis
 - non-authorised businesses to employ solicitors to offer non-reserved activities to the public.

We believe our reforms will allow more growth and innovation, while maintaining high standards and public protection for those that need it most.

We have consulted on changes to make sure people get the right level of protection [<https://www.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/>] when using a solicitor or firm.

- Our professional indemnity insurance (PII) proposals will give firms more flexibility to choose the right level of insurance to suit their business and clients.
- Our Compensation Fund proposals are designed to make sure financial support is focused on those most in need of help.

And, in turn, people should benefit from a more competitive marketplace and increased choice.

Educational reform

The Solicitors Qualifying Examination (SQE) [<https://www.sra.org.uk/become-solicitor/sqe/>] will mean that future solicitors will all have to meet the same standard regardless of their training route. It will also help support diversity in the profession; helping people to find a solicitor who understands their community and problems.

And our training requirements will be more flexible when the SQE is introduced. This may mean that university law clinics and other places where the public can access support might expand their reach, as law students will be able to use a wider range of work experience to prepare for the SQE.

SRA Innovate

Our SRA Innovate initiative [<https://www.sra.org.uk/solicitors/innovate/sra-innovate>] can provide a safe space for firms who want to provide new services in new ways that could benefit the users of legal services. We have also launched a new policy, so we can grant waivers to our rules if a firm's idea is in line with our regulatory objectives and has a public benefit.

We will evaluate the impact of all our proposed changes¹⁵ to understand if access to legal services has improved. And we will publish the results to help firms understand how their services can improve access to legal services.

Case example: Innovation Space allows solicitor to provide legal services in an unregulated business

We allowed a solicitor to offer legal services in a business that was not regulated by us or by another legal regulator. We did this by granting them a waiver to one of our rules. The services the business offers are non-contentious employment matters and commercial legal advice for families employing domestic help. It also advises domestic staff, so they understand their working rights and make sure they are treated fairly.

Without the waiver, the business would have to outsource legal services, which results in a disjointed customer experience and potentially extra costs for domestic staff and their employers. The business is piloting these services in our Innovation Space.

Cyber security

Solicitors and law firms face increasing threats from cybercriminals. Secure information technology (IT) systems and well-informed staff are the best ways to protect their firms and their clients.

Why this risk matters

Cybercrime is an ever-growing risk and is now widespread in the UK. Cybercriminals target firms because of the money and information they hold. Attacks can also threaten a firm's own operations or its reputation.

We are receiving more reports of cybercrimes. There were 157 reports in 2017, up 52%, compared to 103 in 2016.

Cybercrimes and scams include:

- email modification fraud – the most common type of cybercrime against solicitors, where criminals intercept and falsify emails between a client and the firm, leading to bank details being changed and money being lost
- phishing and vishing – where criminals email or phone to obtain confidential information, such as a password, through gaining the trust of a solicitor or other member of staff
- malware – harmful software that includes viruses and ransomware programs, which encrypt files and demand a ransom in return for decrypting the files
- CEO fraud – where criminals impersonate a senior figure at a firm through hacking, or having a very similar email address, to impose authority and order money transfers
- identity theft – where bogus firms copy the identity and brand of a firm.

In the first quarter of 2018, email modification fraud accounted for more than 70% of all cybercrime reports. Almost all other cybercrime reports also involve some form of forgery to deceive targets into responding, rather than explicit hacking of the firm's systems.

In 2016, £9.4m of client money was reported as lost to cybercrime, increasing to £10.7m in 2017. We suspect there is some underreporting, particularly where money is replaced promptly by the firm or their insurer. This is because we are seeing fewer reports than we would expect given media reporting of the frequency of these attacks.

Spotlight on email modification fraud

This fraud happens when criminals impersonate someone going through a process involving the transfer of money, such as a property transaction. They do this by breaking into that individual's email system or forging emails from it.

The criminals contact the solicitor through the stolen or falsified address to tell them the bank account details have changed. They usually do this at short notice and when there is time pressure, for example, on the afternoon of a property completion.

The solicitor sends money to the new bank account and this is quickly moved on by the criminals. When used to steal conveyancing money, it is also known as 'Friday afternoon fraud', as many of these transactions take place on Friday afternoons.

We also see cases where the criminal impersonates the firm and tells the client that the firm has new bank details. In these cases, the client sends the deposit and other money directly to the fraudster's account.

This fraud is relatively common in firms and often accounts for at least half of all cybercrimes. During 2017, email fraud reported to us fell to an average of 46% of all cybercrimes but in the first quarter of 2018 had risen to 71%.

Spotlight on remote working

Firms are increasingly using systems to help their employees work on the move. This includes 'bring your own device', which allows people to work from home or anywhere on their own devices while connected to a cloud-based server. This can offer security if updates to the system are made automatically and data is backed-up.

We are also seeing more use of video conferencing systems and smart, connected devices, such as internet connected printers.¹⁶ [16] However, the connected devices are often not fully secured or updated. Malware targeting these devices increased six-fold in 2017. This can be a serious, but subtle threat, such as:

- a compromised smart alarm or thermostat could tell a criminal when a building is unoccupied
- a compromised video conferencing system, printer or home assistant could be used to steal sensitive data.

What solicitors and firms can do

We want firms to benefit from the advantages IT can bring. However, they need to take care that their system keeps client information and money safe. The best defences against many cyberattacks are to:

- keep systems updated
- use antivirus software on desktops and laptops
- backup important information frequently and securely, and learn how to restore the system from a backup
- encrypt mobile devices and install a system to track and delete the data if they are lost
- make sure everyone in the firm knows how to create secure passwords [<https://www.ncsc.gov.uk/blog-post/three-random-words-or-thinkrandom-0>]
- avoid using administrator accounts (those with the privilege to access other users' accounts and install software) for regular work that does not involve maintaining the IT system
- make sure everyone in the firm knows how to recognise the signs of email modification fraud and common phishing scams [<https://www.ncsc.gov.uk/guidance/avoiding-phishing-attacks>]
- plan how to respond to an attack or other incident.

Our paper on IT security: keeping information and money safe gives more detailed advice on how to defend against cybercrime. The National Cyber Security Centre (NCSC) also give advice and information [<https://www.ncsc.gov.uk/guidance/keeping-your-smartphones-and-tablets-safe>] , including specific guidance for smaller businesses [<https://www.ncsc.gov.uk/smallbusiness>] .

Losses of client data and money that amount to, or may be, serious breaches or misconduct should be reported to us [<https://www.sra.org.uk/home/contact-us/>] . Reports will be dealt with in line with our enforcement strategy. We are also interested in evidence of near misses and other scams that target firms or their clients. Our Professional Ethics team [<https://www.sra.org.uk/home/contact-us/>] can provide more advice on what to report.

What we are doing

We are working with the NCSC and the IT security sector to regularly update the information we provide to firms.

No defence is perfect, and some organised cybercrime activity can be hard for even technology companies to stop. As such, we take a proportionate approach to breaches reported to us. When we have taken regulatory or disciplinary action against firms, it has been where the firms did not:

- take reasonable steps to protect themselves or check their client's instructions
- follow basic security guidance
- report the incident, where appropriate
- act to remedy the losses.

Our Accounts Rules reforms include options to use third-party-managed accounts [<https://www.sra.org.uk/solicitors/guidance/third-party-managed-accounts/>] instead of a traditional client account, giving firms the option to avoid the exposure that a client account brings. Money held in these accounts is not subject to the Accounts Rules, but firms need to act in the best interests of each client and decide whether a managed account is appropriate in each case.

We will be publishing more information on how firms are using advanced IT, including artificial intelligence. We are also working with the NCSC to include the latest recommendations on how to protect systems from attack.

Case example: Firm's data stolen and spread through social media

In March 2018, a firm was attacked with ransomware. The criminals left a ransom note on the firm's system, saying that they had obtained sensitive information and would publish it unless the firm paid £3m. The firm declined to do this and the criminals began publishing the firm's data through Twitter.

The firm worked with computer forensics specialists to deal with the breach and find out how their system was accessed. And they obtained an injunction from the High Court to bar anyone from further sharing the information that the hackers had published, as well as successfully securing the removal of information from websites. They reported the breach to the National Crime Agency and to us.

It is not yet clear how the firm's systems were infected with ransomware, but many of these attacks rely on fake links or attachments in emails.

Diversity in the profession

Law firms, solicitors and the public all benefit from a diverse and inclusive legal profession.

Why this risk matters

The legal profession is changing and starting to reflect the diversity of wider society. More needs to be done to improve the representation of all groups, particularly in senior roles.

Equality, diversity and inclusion in the legal profession is important for many reasons, including:

- the effective administration of justice, as a diversity of views and approaches, whether in firms or in the judiciary, supports an independent justice system and maintains the rule of law

- allowing the most talented people to become solicitors and progress in their careers which helps to maintain high standards
- improving access to services, as some people may be more likely to seek legal help from solicitors they share some social or cultural characteristics with.

There are also business benefits of a diverse and inclusive workforce, including:¹⁷ [17]

- a better understanding of the market and a wider customer base
- more informed decision-making and more innovative solutions to business problems and market changes
- attracting and retaining the best staff at all levels of seniority
- cost efficiencies and better productivity from improved staff morale and retention.

Research into diversity in the profession

Our law firm diversity tool [<https://www.sra.org.uk/solicitors/resources/diversity-toolkit/law-firm-diversity-tool-2/>] shows that entry into the profession is diverse but women, black, Asian and minority ethnic (BAME) and disabled lawyers continue to be under-represented at partner level, particularly in large firms. And BAME and disabled solicitors are more likely to work in smaller firms. Solicitors that went to state schools and were the first generation to go to university are also more likely to work in small firms.

Independent analysis [<https://www.sra.org.uk/sra/how-we-work/archive/reports/diversity-legal-profession/>] of the diversity data we collected about the people working in firms found that:

- the prospects of becoming a partner are higher for white men than any other group across all types of firms
- women and BAME men are more likely to be a partner in small firms
- BAME women are particularly disadvantaged in progressing to partner level in the profession.

What solicitors and firms can do

Firms have a responsibility to promote and encourage diversity at all levels by nurturing, valuing and developing all the talent they recruit. Embedding diversity and inclusion into their culture allows firms to realise the benefits that different people can bring.

Career paths are influenced by people's social background and education as well as barriers to entering, and progressing in, professions. There are different barriers for different groups. And some people face multiple barriers if they are a member of more than one disadvantaged group. It is best for firms to take more than one approach to improving diversity and evaluate the success of their initiatives.

To improve diversity and inclusion firms can:

- create a culture where people feel able to talk about diversity and staff feel included and valued
- offer mentoring schemes, which can improve access to the profession and diversity at management levels – initiatives such as Inspired by Law, Aspiring Solicitors [<https://www.aspiringsolicitors.co.uk/>], Sponsors for Educational Opportunity [<http://www.seo-london.org/>] and the Social Mobility Business Partnership [<https://smbp.org.uk/>] can help firms
- use our law firm diversity tool [<https://www.sra.org.uk/solicitors/resources/diversity-toolkit/law-firm-diversity-tool-2/>] to benchmark their diversity, and encourage all staff to respond to all questions
- carry out pay audits to identify any pay gaps between different groups of people
- consider unconscious biases and help staff overcome these to make objective decisions about recruitment and selection
- offer flexible working, such as home working to help the work-life balance of all staff, particularly those with caring responsibilities
- ask senior managers to lead by example, such as challenging any offensive behaviour in the workplace
- support different routes to the profession, including apprentices, paralegals and legal executives, so talented people from all backgrounds can access the profession

- consider the wellbeing of staff and help staff manage their stress levels.

Our report, *The business case for diversity* [<https://www.sra.org.uk/archive/risk/risk-resources/risk-business-case-diversity/>] , and our diversity resources [<https://www.sra.org.uk/solicitors/diversity-toolkit/diversity-toolkit>] have more practical examples about how to promote a diverse and inclusive workplace.

Networks such as Women in Law [<https://womeninthelawuk.com/>] , the Black Solicitors Network [<https://www.blacksolicitorsnetwork.co.uk/>] , the Society of Asian Lawyers [<http://www.societyofasianlawyers.co.uk/>] , the Disabled Solicitors Network [<https://www.lawsociety.org.uk/topics/disabled-solicitors/>] and the lesbian, gay, bisexual and transgender (LGBT) Lawyers Division [<http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/lgbt-lawyers-division/>] run business and social events, and offer career support and networking.

Case examples: Making flexible working available for all staff

"We changed the culture by shifting the onus. We began by assuming all flexible working requests could be agreed. Instead, managers had to prove why flexible working couldn't work."

Law firm

"The benefits are that you retain a greater number of people, especially those returning from maternity leave. It helps you attract staff and gives rise to continuity as staff stay and therefore clients deal with the same people that understand their business.¹⁸ [n18]"

Law firm

What we are doing

We continue to work with firms and other organisations to encourage a diverse and inclusive profession. We have:

- had our diversity data independently analysed [<https://www.sra.org.uk/sra/how-we-work/archive/reports/diversity-legal-profession/>] to explore solicitors' career progression
- reviewed [<https://www.sra.org.uk/sra/how-we-work/archive/reports/unlocking-benefits-diversity/>] how firms are promoting equality, diversity and inclusion
- worked with solicitor groups to improve the representation of women and BAME solicitors in senior roles, such as Women in Law [<https://womeninthelawuk.com/>] , the Society of British Bangladeshi Solicitors and the British Nigeria Law Forum [<http://www.bnlf.org.uk/>]
- measured the impact of removing the minimum salary [<https://www.sra.org.uk/sra/how-we-work/archive/reports/minimum-salary-trainees/>] for trainees, which found that the average pay gap between different ethnic groups has reduced
- engaged with firms, academics and others about the Solicitors Qualifying Examination (SQE) and innovative routes into the profession while maintaining standards.

An independent review [<https://www.sra.org.uk/globalassets/documents/sra/research/monitoring-maximising-diversity.pdf?version=4a1ace>] of the SQE proposals found that it should open up opportunities to access the profession, increasing the potential for social mobility and support diversity.

We promote good practice in equality and diversity in our own work. For example:

- We have Disability Confident accreditation [<https://www.gov.uk/guidance/disability-confident-how-to-sign-up-to-the-employer-scheme>] , as we make sure that disabled people have the opportunities to fulfil their potential.
- We are a Stonewall Diversity Champion [<https://www.stonewall.org.uk/diversity-champions-programme>] , as we have an inclusive workplace.
- We have staff networks around diversity, wellbeing and inclusion. These support staff and organise our attendance at professional and community events, such as Pride and the UK Diversity Legal Awards.

Case example: Mentoring scheme to promote Lesbian Gay Bisexual Transgender (LGBT) inclusion

We are working with Stonewall and several firms to promote LGBT inclusion through a cross-firm mentoring programme [<https://www.sra.org.uk/lgbt>] . Some of the legal sector's top-ranking

firms in the Stonewall Workplace Equality Index [<https://www.stonewall.org.uk/uk-workplace-equality-index>] are offering mentoring to small and medium sized firms in England and Wales. They share best practice and give guidance about creating an LGBT-friendly workplace.

On the horizon

It is possible that pay gap reporting is likely to extend to ethnicity. Some firms are already taking a lead on this. The Government has commissioned research into what steps employers have taken to promote diversity in the workplace and how they are trying to reduce the ethnicity pay gap. And the Hampton-Alexander Review [<https://www.gov.uk/government/publications/ftse-women-leaders-hampton-alexander-review>] calls for one-third of FTSE leadership positions to be held by women by 2020.

Information security

The information that clients share with their solicitors can have great financial and personal value. Solicitors must know how to protect the information they are holding.

Why this risk matters

Solicitors hold sensitive and confidential information about their clients and must protect it. Any loss of that information can have financial, reputational or personal consequences for the client and for the solicitor that loses it.

There were 512 concerns reported to us about breaches of confidentiality in 2017 and a further 122 in the first quarter of 2018.

Information security is not just about technology and protecting electronic information. It is also about protecting printed data and sensitive discussions.

Data from the Information Commissioner's Office (ICO)¹⁹ [[#n19](#)] shows that:

- for all sectors in the first quarter of 2018, they received:
 - 97 reports of cyber security incidents
 - 119 reports of lost paperwork
 - 284 reports of data being sent to the wrong person by email, post or fax
- there has been an increase in the reports of all data security incidents, which may be because of the increased awareness of data protection and the launch of the ICO's Personal Data Breach helpline [<https://ico.org.uk/for-organisations/report-a-breach/personal-data-breach/>]
- the most common legal sector breaches are confidential emails and letters being sent to the wrong person, and lost or stolen paperwork.

Solicitors have always needed to work on the move, as they need to visit clients and courts. This means that they must work with confidential materials outside the safety of a secure office. It is important that solicitors take care to keep information safe and confidential while working remotely.

Spotlight on the General Data Protection Regulation (GDPR)

Solicitors must comply with the GDPR and the Data Protection Act 2018.

Law firms will need to be sure that they are meeting GDPR requirements, including:

- telling people how their data is being used
- training staff and promoting awareness
- understanding what data they hold and how this is managed
- transferring data in line with GDPR requirements
- making sure suppliers have appropriate controls in place and are carrying out proper due diligence checks
- conducting an impact assessment when any new data processing or systems might lead to a high risk, such as when they introduce a new technology.

There are additional obligations that may apply to some firms, such as appointing a Data Protection Officer. There is also the requirement for enhanced internal record keeping where a business has more than 250 employees or its activities relate to higher risk processing, such as:

- processing personal data that could result in a risk to the rights and freedoms of an individual(s)
- processing special categories of data or criminal convictions and offences.

The ICO has accessible guidance [<https://ico.org.uk/for-organisations/sme-web-hub/>] to help small businesses comply with GDPR. The Law Society also has a guide for solicitors [<https://www.lawsociety.org.uk/support-services/practice-management/gdpr/>] on GDPR compliance.

What solicitors and firms can do

Firms can protect information by focusing on simple steps, including:

- double-checking emails and letters are being sent to the right address. Some email systems will flag an external email address is being used
- protecting physical documents, for example by locking filing cabinets at night and taking precautions when transporting documents
- using privacy screens for laptops to protect information for mobile workers
- making sure that sensitive conversations are not overheard
- keeping electronic data backed up securely
- using appropriate encryption when storing and transferring personal data
- understanding and meeting their GDPR and Data Protection Act 2018 obligations.

When there is a serious breach of confidentiality, firms need to report it to us and consider whether a referral should be made to the ICO by following their guidance on reporting a breach [<https://ico.org.uk/for-organisations/report-a-breach/>].

What we are doing

Our report, Information security: keeping information and money safe, provides more detail on common information security threats and on the best practices for how to deal with them.

When we learn about criminal activities or frauds targeting those we regulate, we issue scam alerts [<https://www.sra.org.uk/consumers/scam-alerts/>] to warn the public and firms about known threats. There is also a quarterly round up [<https://www.sra.org.uk/consumers/scam-alerts/scams-round-up/>] of these alerts to show the high-risk scams for both members of the public and solicitors.

When a loss of client data is reported to us, we take action where needed, considering the facts of the case. We expect solicitors and firms to take reasonable steps to protect information, and to promptly report to us any loss that may amount to a serious breach or misconduct. While we recognise that no defences are perfect, we are likely to act where client information is exposed and the firm did not take appropriate steps to protect it.

Integrity and ethics

Solicitors are responsible for meeting high professional standards. The business culture in law firms should reflect this.

Why this risk matters

Solicitors owe duties to:

- the court
- the wider public interest
- their clients
- their colleagues
- third parties.

Acting without integrity and ethics can lead to poor outcomes and undermines the proper administration of justice.

Cases where solicitors put their clients' interests above all other considerations can also harm public trust in legal services, which ultimately undermines the rule of law.

We received 2,090 reports about concerns of solicitors acting without integrity or ethics in 2017, and 439 in the first quarter of 2018. There has been little change compared to recent years, for example there were 449 of these reports in the first quarter of 2016.

Tax avoidance schemes

Solicitors advising on taxation need to be aware of the legal position of artificial tax avoidance arrangements. The Government does not view tax arrangements that do not meet the spirit of tax law as being legitimate.

Solicitors should be aware of the penalties that apply to 'enablers'. Enablers include:

- solicitors involved in developing and advising on schemes
- those involved in implementing the scheme by creating companies or trusts
- those involved in marketing schemes.²⁰ ^[#n20]

HM Revenue & Customs will impose a penalty where they defeat a tax avoidance scheme that has abused the tax law. The penalty is the full payment received by each enabler.

The Advertising Standards Authority is also investigating advertising by tax advisers and has made findings against those advertising avoidance schemes.

We warned firms about facilitating tax avoidance schemes [<https://www.sra.org.uk/solicitors/guidance/tax-avoidance-duties/>] that go beyond the intentions of Parliament.

Harassment and non-disclosure agreements (NDAs)

The role of solicitors in drafting NDAs in relation to allegations of harassment has received public and political attention.

While we recognise that NDAs have legitimate uses, solicitors must not draft agreement terms in a way that suggests a person may not report misconduct to a regulator or a law enforcement agency or make a protected disclosure.

We will act against any firm that uses NDAs to cover criminal activity or serious professional misconduct. Our warning notice [<https://www.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/>] provides further detail, and our paper on balancing duties in litigation [<https://www.sra.org.uk/archive/risk/risk-resources/balancing-duties-litigation/>] includes warnings about the use of unenforceable litigation threats to prevent legitimate criticism.

As with many other forms of poor conduct, preventing harassment in firms themselves can be tackled through the business culture communicated through business leaders. An effective tool is to encourage staff networks that help people discuss issues. It is also important that staff affected by issues such as harassment feel able to report problems. Some firms have launched confidential helplines for this purpose.

What solicitors and firms can do

Solicitors must always act with integrity. As well as being honest, this includes having sound morals and following the ethical codes of the legal profession.²¹ ^[#n21] Solicitors are expected to follow high standards in both what they say and what they do.²² ^[#n22]

Solicitors must put their ethical obligations first and keep their independence. This means that they must not and should not put their own, or their clients', interests above their wider professional obligations to the administration of justice, the rule of law and the courts. Given their professional responsibilities, this means that they should be prepared to decline instructions that would conflict with their obligations.

When handling litigation, solicitors must be sure to bring cases honestly and professionally, without allowing themselves to become complicit in misleading the court. For example, solicitors must:

- not abuse the court system by using proceedings to delay a legal process
- make sure they have full information and make the court aware of any limitations in their case.

What we are doing

We are reforming our regulations [<https://www.sra.org.uk/sra/consultations/consultation-listing/litf-better-information-consultation/>] with shorter, less prescriptive rules that focus on ethical standards. This lets solicitors use their professional and ethical judgment in their work.

Where we see ethical problems, we warn solicitors and may conduct research and analysis of the issues. Our paper on balancing duties in litigation [<https://www.sra.org.uk/archive/risk/risk-resources/balancing-duties-litigation/>] provides more detailed advice on how to manage situations where solicitors' ethical duties may conflict. We will be updating this paper soon.

Case example: Immigration solicitor struck off for abuse of the appeals process.

The Solicitors Disciplinary Tribunal (SDT) struck a solicitor off the roll [<http://www.bailii.org/ew/cases/EWHC/Admin/2018/957.html>] for abusing the court system by bringing hopeless appeals to immigration decisions. The solicitor had made a practice of bringing last minute challenges to removal decisions. In one of these challenges, they left out important information which would have meant the submission would have been rejected.

The Immigration Tribunal found that the appeals had no legal merit and that the solicitor had designed them to exploit a "weak spot" in the judicial system to delay deportations where there was no justification.

The SDT found that the solicitor's actions had shown a lack of integrity. The solicitor appealed but the High Court upheld the decision of the Tribunal. It found that the solicitor's actions had been an abuse of process and that it was suitable that deterrence was a consideration when making their decision.

Investment schemes

The promoters of questionable investment schemes often try to legitimise them by involving solicitors and law firms.

Why this risk matters

Questionable investment schemes offer unrealistically high returns for investors and often lead to significant losses of money. Very few solicitors would ever knowingly become involved in the promotion or administration of a dubious investment scheme.

We have seen cases where solicitors and firms have become involved by:

- acting for the promoter
- acting for potential investors
- acting for both
- passing people's money through their client account.

The schemes that concern us are those that take advantage of people, with the solicitor's reputation being used to persuade people to invest. Schemes can include potential investment in, for example:

- off-plan property
- hotel room leasing
- car park spaces
- bank instrument trading
- carbon credits
- fine wines, art and diamonds.

The promoters often move money through the solicitor's client account and tell people that the solicitor's insurance and the Compensation Fund will protect their money. But it is very unlikely that this will be the case. And the people that give their money to the promoter of a questionable investment scheme are not usually the solicitor's client.

The financial losses for people can be high. If solicitors are involved in such schemes they risk harming public trust in the profession. We are likely to take action including making a referral to the Solicitors Disciplinary Tribunal (SDT).

In March 2018 we were investigating 51 reports of investment fraud. There had also been 106 applications made to the Compensation Fund relating to investment schemes, totalling £47.4m since 2015.

The Financial Conduct Authority [<https://www.fca.org.uk/news/press-releases/over-55s-heightened-risk-fraud-says-fca>] (FCA) found that people over 65, with savings of more than £10,000, are three and a half times as likely to fall victim to investment fraud.

Our warning notice [<https://www.sra.org.uk/solicitors/guidance/improper-client-account-banking-facility/>] and case studies on Rule 14.5 [<https://www.sra.org.uk/solicitors/guidance/improper-use-client-account-banking-facility/>] should be read by all solicitors holding client money.

What solicitors and firms can do

Solicitors and firms must not become involved in questionable investment schemes and should:

- read and follow our warning notices on investment schemes and conveyancing [<https://www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing/>]
- carry out due diligence on any promoter of an investment scheme
- not allow the client account to be used as a banking facility
- not provide advice or services that would give the appearance of a false underlying legal transaction
- not allow regulatory protections, such as insurance and access to the Compensation Fund, to be used to persuade or reassure people
- not give anyone the impression that they are a client if they are not
- not take unfair advantage of people
- carefully analyse any complaints or contact from people who are not clients but are affected by a transaction, as this may help uncover a questionable scheme
- get help and advice from our Professional Ethics team [<https://www.sra.org.uk/home/contact-us/>] to understand obligations and help with dilemmas.

The FCA's Scam Smart page [<https://www.fca.org.uk/scamsmart>] contains advice on recognising the warning signs of investment fraud.

What we are doing

Guidance

Our report about questionable investment schemes and warning notices [<https://www.sra.org.uk/solicitors/guidance/>] provide information about the signs of investment fraud and the consequences for those who become involved.

Acting in the public interest

Where solicitors have allowed their client account to be used as a banking facility, or have become directly involved in questionable schemes, we will act to protect the public. Solicitors who act dishonestly, or without integrity, can expect us to take disciplinary action and for their case to be referred to the SDT.

Case example: Solicitor struck off for involvement in diamond and art trading

A solicitor was struck off and ordered to pay £67,000 costs after acting for companies that offered investments in diamond and fine art trading.

People paid money into the client account totalling more than £400,000 thinking they were investing in a legitimate investment scheme.

One person said: "I took reassurance from the fact that my monies were paid into a solicitor's client account and would be dealt with in an ethical fashion. In fact, it was explained to me that by paying the money to a solicitor, this would give me the same safeguards as buying a house and using a solicitor."

However, some people did not receive the goods that they had paid for. The solicitor also deducted fees from their funds, even though there was no agreement in place for them to be clients.

The SDT said that it had no doubt that the involvement of a solicitor lent a "veneer of respectability" to the transactions. And the SDT said the solicitor should have read the warning notices issued by us but had not. Had the solicitor done so, they would have realised these transactions were dubious.

Case example: Three solicitors suspended for their role in a housing development investment scheme

The SDT suspended three solicitors for their involvement in a questionable investment scheme. The firm had acted for the promoters of a scheme involving social housing developments in Brazil. The firm held the investors' money in their client account and distributed it as instructed by the investment company.

The scheme folded, leaving debts of £21m.

The SDT found that the solicitors had failed to act with integrity and had acted in a conflict of interest. The scheme had not needed a solicitor to be involved, and their role had been to add credibility for investors. The Tribunal suspended the solicitors from practice for one year, which was increased to three years' suspension for two of the solicitors after an appeal to the High Court.

Managing claims

Solicitors and law firms must make sure that claims are made properly and honestly. They must also meet their duties to the court and the proper administration of justice.

Why this risk matters

Solicitors and firms play a critical role in delivering access to justice for people who have been harmed. But while they must act in the best interests of each client, they also have duties to the court, the rule of law, and the proper administration of justice.

When several people have a valid claim in law, many firms will use claims handling processes to help meet demand. This can include employing non-legally qualified staff, working with introducers and using the latest technology to speed up the process. Solicitors and firms must competently progress all claims and meet the high standards expected of them.

There are particular concerns in areas of work such as holiday sickness claims and payment protection insurance (PPI) claims, but also in the wider personal injury market.

Personal injury

We regulate more than 10,400 firms and 7% of all firms specialise²³ in personal injury. 16% of the firms that specialise in personal injury are an alternative business structure (ABS), which is more than in other areas of work. This has increased by 5% in the last 12 months and is likely to be because personal injury firms may find it easier to become an ABS because of their existing relationships with insurers and claims management companies.

We continue to have concerns about some solicitors and firms involved in bringing claims for personal injury. We have warned [\[https://www.sra.org.uk/solicitors/guidance/risk-factors-personal-injury-claims/\]](https://www.sra.org.uk/solicitors/guidance/risk-factors-personal-injury-claims/) solicitors and firms that we are concerned some firms are:

- allowing third parties to cold call potential clients

- entering into referral arrangements that are in breach of the Legal Aid Sentencing and Punishment of Offenders Act 2012
- taking and acting on instructions from third parties, without making sure that the instructions originate from the client
- settling claims without a medical report
- paying damages or sending cheques to third parties without accounting properly to the client
- in some extreme cases, bringing claims without the knowledge of the person named as the claimant
- not training and supervising their staff adequately.

Firms that carry out cases with one or more of these features will face regulatory action.

The top five reasons for investigations about personal injury services are:

- Alleged insurance fraud (24%).
- Client care and competence (19%).
- Prohibited referral fees (9%).
- Misleading court (8%).
- Cold calling (7%).

Misconduct relating to personal injury services is almost twice as likely to be referred to the Solicitors Disciplinary Tribunal (SDT) than other work - 5.2% of all reports compared to 2.9% for other areas of legal work.

Holiday sickness claims

We have warned solicitors and firms about the conduct of some holiday sickness claims [<https://www.sra.org.uk/solicitors/guidance/holiday-sickness-claims/>]. Genuine claims for holiday sickness can be pursued, but we are concerned that some are being submitted without proper analysis of the evidence or an understanding of the legal position.

We have investigated and acted against firms over potentially improper links with claims management companies and payment for referrals of claims. We are also seeing firms pursuing claims without proper instructions.

The extent to which firms should verify their clients' cases is risk-specific. For example, there seems to be a serious risk that many holiday sickness claims are not genuine. Examples of risk factors in holiday sickness claims would include:

- The claim is made some time after the alleged incident.
- There was no report of the claim to the hotel.
- There was no extensive sickness among others in the same accommodation.
- The claim comes from or involves people generating claims in the resort.
- The client's report of the holiday at the time of them being away was positive.
- The client drank or ate excessively.

It is difficult to verify holiday sickness claims. In the case of *Wood v TUI Travel* [2017] EWCA Civ 11, the Court of Appeal commented:

"...it will always be difficult (indeed, very difficult) to prove that an illness is a consequence of food or drink which was not of a satisfactory quality, unless there is cogent evidence that others have been similarly affected and alternative explanations would have to be excluded."

Solicitors must engage with case law and properly assess all evidence before submitting claims.

Payment protection insurance claims

We are concerned that some firms are failing to meet high professional standards when bringing claims for mis-sold PPI and other financial products. We have seen some firms:

- acting in matters without first investigating that there is a valid claim
- making claims without knowledge of the policy holder
- failing to properly identify clients and confirm their instructions
- submitting false claims in the hope of a settlement without further investigation by the defendant
- charging unreasonable costs for a limited amount of work, contrary to their trustee and regulatory duties.

Our warning notice [<https://www.sra.org.uk/solicitors/guidance/payment-protection-insurance-ppi-claims/>] explains that firms who conduct cases which have one or more of these features may face regulatory action.

The Financial Guidance and Claims Act 2018 [<http://www.legislation.gov.uk/ukpga/2018/10/contents/enacted>] has introduced an interim cap on the fees that solicitors can charge when undertaking PPI work. Solicitors and firms can only charge 20% of the claimant's damages in fees, if the claim is settled without court proceedings.

What solicitors and firms can do

Solicitors and firms must make sure that in following their client's instructions they do not compromise their duty to the court and the proper administration of justice.

They should also comply with any relevant legislation applicable to the claim, such as the:

- referral fee ban in personal injury cases (Legal Aid Punishment of Offenders Act 2012)
- interim fee cap in PPI claims (Financial Guidance and Claims Act 2018).

Solicitors should read our warning notices [<https://www.sra.org.uk/solicitors/guidance/>] to keep up-to-date with common risk factors when bringing claims.

What we are doing

Our report on the importance of balancing duties in litigation [<https://www.sra.org.uk/archive/risk/risk-resources/balancing-duties-litigation/>] can help solicitors recognise situations where their duties conflict.

We reviewed [<https://www.sra.org.uk/sra/research-publications/payment-protection-insurance/>] firms conducting PPI claims, before the interim fee cap, to find out more about the work and raise awareness of good and poor practice. We found that 16 out of the 20 firms we visited were routinely charging fees of more than 25%, with some charging as much as 50% of the total claimed for clients.

We are investigating multiple allegations about the conduct of firms involved in PPI and personal injury, including holiday sickness claims.

Where solicitors do not comply with their professional obligations, we will investigate and take action as appropriate. Solicitors who act dishonestly or without integrity can expect us to take disciplinary action, including referral to the SDT.

Case example: Action taken against firms paying referral fees

We will take action where solicitors do not act with integrity or in line with the rules of professional conduct. For example, in 2018 the SDT fined two solicitors and their firm £12,000 for paying prohibited referral fees, which they were falsely recording on their firm's ledger as 'marketing fees'.

Money laundering

Law firms can be attractive to those looking to launder the proceeds of crime and finance terrorism. Solicitors play an important role in preventing and detecting money laundering.

Why this risk matters

The legal market can be an attractive target for money launderers. Criminals want to instruct legal professionals to hold or transfer money because of the perceived legitimacy this offers. Solicitors and firms are at an increased risk because they:

- regularly hold large sums of client money in pooled client accounts

- advise and transfer money in relation to property and financial transactions
- have access to financial markets.

Money laundering is not a victimless crime as it helps fund terrorism, drug trafficking and people smuggling. And serious and organised crime costs the UK an estimated £24bn each year.

Organised crime can only operate if the criminals can move their money into the legitimate financial world. Solicitors who make money laundering possible, whether deliberately or unknowingly, can face serious consequences including criminal prosecution and regulatory sanctions.

There has been a 67% rise in money laundering reports to us since 2016, with 60 in the first quarter of 2018 compared to 36 at the end of 2016.

Suspicious Activity Reports (SARs)

One of the tools against money laundering is the suspicious activity reporting system. Legal professionals submitted less than 1% of the total SARs to the National Crime Agency (NCA) in 2017.²⁴

"Solicitors are at the front line of the detection mechanism for money laundering but are worse than any other financial services sector in reporting suspicions. We get some very good quality reporting from the legal profession, but we get some that focuses very carefully on the identity, but not at all on the source of the funds – one half of the due diligence. Solicitors are a crucial source of information and intelligence on how criminals hide their assets. We have a very, very few who are criminally complicit, some who are careless and others who are unsure about their responsibilities."

Director of the National Crime Agency, Donald Toon speaking at our Compliance Officer Conference, 2017

The creation of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) shows the Government's focus on legal and financial professionals as important to the defence against money laundering.

Spotlight on conveyancing

Conveyancing is particularly attractive to money launderers because of the large sums involved. The Government's National Risk Assessment [<https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2017>] views conveyancing transactions as a serious risk, although it accepts that few solicitors are knowingly involved in illegal activity.

Four in ten of the SARs from the legal sector relate to conveyancing. In particular, residential conveyancing SARs have risen by 66% across the past two years. The faster turnover of house sales makes residential property a more common target for money launderers than commercial property. It is more usual for complex trusts to be involved in commercial conveyancing transactions.

Solicitors working in this field should take extra care, particularly when the transaction has the warning signs of potential money laundering, such as:

- purchases of very high value properties by overseas companies and trusts
- purchases involving money from high risk countries.

What solicitors and firms can do

Solicitors and firms play a critical role in detecting and preventing money laundering and terrorist financing. They must comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 [<http://www.legislation.gov.uk/uksi/2017/692/made>] and can refer to our guidance [<https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing-transfer-funds-information-payer-regulations-2017/>] on their obligations.

To prevent money laundering, solicitors must:

- carry out proper customer due diligence on their clients
- verify the client's identity and check the source of funds (where appropriate)
- check the circumstances of the proposed transaction

- be aware of the warning signs for money laundering risks [<https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing/>], particularly in high risk work such as conveyancing
- be very careful to avoid the client account being exploited
- submit a SAR if there is suspicion about a client or transaction
- create and maintain a risk assessment.

They must not allow:

- their client account to be used for money laundering purposes
- money to transfer through it without a legitimate underlying legal transaction.

Firms can refer to our risk assessment [<https://www.sra.org.uk/sra/research-publications/aml-risk-assessment/>], along with the National Risk Assessment

[http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf] and a comprehensive knowledge of their services, clients and delivery channels, to help their own risk assessment.

The NCA's guidance on the Defence against Money Laundering [<https://nationalcrimeagency.gov.uk/who-we-are/publications/167-defence-against-money-laundering-daml-faq-may-2018/file>] (DAML) regime is useful for improving the quality of SARs. A DAML gives a defence in law to the 'principal' money laundering offences under the Proceeds of Crime Act. The Government's 'Flag it up' [<https://flagitup.campaign.gov.uk/>] campaign is aimed at helping solicitors and accountants identify potential money laundering signs.

The Legal Sector Affinity Group's guidance gives detailed information about how to comply with anti-money laundering obligations.

Case example: Solicitor imprisoned and struck off for facilitating money laundering

In May 2018, a solicitor was jailed for nine months and struck off for facilitating money laundering. The solicitor had handled the purchases of 26 properties for a criminal gang whose activities included drug dealing, mortgage frauds, and murder. The solicitor did not conduct identity checks or keep proper records and had allowed the client to conduct banking activities through the client account.

In sentencing at the Crown Court, the judge said that, although the solicitor had not been deliberately dishonest, the solicitor had reasonable grounds to know or suspect that the client was laundering money. The solicitor had ignored significant and serious legal and statutory duties.

Case example: Firm allowed client account to be used as a banking facility

A firm allowed a client to use their client account as a banking facility for years, with millions of pounds passing through without any underlying legal transactions. There was no suggestion that the money involved was the result of money laundering, but the practice of paying personal bills for the client through the client account is contrary to the Accounts Rules. The reason for that ban is to prevent criminals from using solicitors' client accounts to transfer money into the legitimate financial system.

The partner handling the transactions was fined £15,000 by the Solicitors Disciplinary Tribunal, and the firm was also fined £35,000 for failing to take appropriate action to prevent the breach.

What we are doing

The Office of Professional Body Anti-Money Laundering Supervision (OPBAS) check that our supervision of firms' compliance with money laundering legislation is effective.

We have updated our guidance [<https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing-transfer-funds-information-payer-regulations-2017/>] on the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 [<http://www.legislation.gov.uk/uksi/2017/692/made>] and good

practice information on complying with the money laundering and counter-terrorist obligations. We are working with other regulators across the UK to give a consistent approach.

We also published a warning notice [<https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing/>] describing the signs that firms should be aware of, and where they may need to take action to avoid committing a criminal offence or breaching professional obligations.

Our money laundering risk assessment [<https://www.sra.org.uk/sra/how-we-work/archive/reports/aml-risk-assessment/>] sets out information on money laundering and terrorist financing risks, which may be useful for firms' own risk assessments.

Our recent in-depth review [<https://www.sra.org.uk/sra/research-publications/preventing-money-laundering-financing-terrorism/>] of 50 firms found that most firms are doing what is needed to prevent and tackle money laundering, but some need to do more. We are also researching what firms have done since the introduction of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 [<http://www.legislation.gov.uk/ukSI/2017/692/made>]. This will inform our risk-based approach.

On the horizon

The cryptocurrency boom has led to people starting to use cryptocurrencies for financial transactions, such as conveyancing. Firms must be aware of the money laundering risks if a client wants to do this. Those risks are not necessarily different from the use of cash in some ways, for example, it can be difficult to trace the source. While cryptocurrencies can be used for criminal purposes, many of them will be from a legitimate, if high risk, investment.

Protecting client money

People trust solicitors to look after their money. The right controls must be in place to keep it safe.

Why this risk matters

Solicitors are trusted with client money. Around 7,500 law firms hold client money and must comply with our Accounts Rules [<https://www.sra.org.uk/solicitors/handbook/accountsrules/content/>]. These rules are there to keep this money safe.

The number of solicitors and firms that fail to protect client money is low. However, it is essential that all firms, regardless of size and make up, have the right systems and controls in place to protect their clients' money and maintain public trust in the profession. Client money is at risk if there are few controls on who can access the client account and limited controls within a firm's accounting system.

Between May 2017 and 2018, there were, on average, 94 concerns per a month reported to us about the misuse of client money or assets. About a third of the concerns involve fraud relating to property, insurance, probate, public funding or tax. While, over one third of the concerns about money being misappropriated relate to conveyancing, probate and immigration work.

Most of these concerns proved to be about poor accounting systems and lack of communication rather than dishonesty.

What solicitors and firms can do

Good accounting systems and checks are crucial to protecting client money from being misused.

Firms must:

- vet, train and supervise staff
- make sure everyone knows their responsibilities to keep client money safe
- have systems for good account management and audit
- reconcile accounts that are signed off by the compliance officer for finance and administration at least every five weeks
- not allow the client account to be used as a banking facility
- have a business succession plan and contingency plans for accounting staff
- have strong IT systems with good backups

- engage with us about any concerns.

All solicitors are responsible for keeping client money safe – not just the compliance officers. Partners and managers should ask themselves:

- Could you prove staff understand and follow your policies?
- What do you do if staff fail to follow your policies?
- Do you have systems that monitor money transfers, and who makes them?
- Do staff understand the importance of keeping client money separate from the office account?
- Are the recommendations of your reporting accountants being applied?

If client money is taken by a third party, such as through a cyberattack, or by a staff member, the firm must report this serious breach to us promptly. They need to do this even if they have already replaced the money. They may also need to notify Action Fraud, their insurer, the Information Commissioner's Office and take IT advice.

Case example: Rebuke for poor accounting systems

A recent SDT decision rebuked and fined a firm's sole director and compliance officer for finance and administration. The qualified accountants' report led to an investigation which found that:

- there was no cash book or record of client balances on individual client ledgers
- the solicitor did not do three-way client bank account reconciliations
- the solicitor had transferred more money from the client account to the office account than was owed
- the solicitor held damages received for a client in the firm's office account instead of the client account
- client money for professional disbursements was held in the firm's office account instead of the client account but were then paid from the client account.

The solicitor admitted they had breached several Accounts Rules. They were fined £2,000 and had to pay £600 costs.

Case example: Strike off for misuse of client money

The SDT decided to strike off a partner who had made several improper withdrawals from client accounts totalling almost £2m while working at two firms. The Tribunal found they had used the client account as a banking facility, which breaches the Accounts Rules.

What we are doing

We protect the public by investigating reports and acting where needed, and we have powers to award compensation for money lost by a firm.

Acting on reports

We respond proportionately when solicitors, firms and others report the loss of client money. We usually act against firms when they did not:

- have suitable systems to protect against crime
- replace lost money promptly
- report matters promptly.

Solicitors who knowingly misuse their clients' money are likely to be referred to the Solicitors Disciplinary Tribunal (SDT) and are at risk of serious sanction, including striking off the roll, if they have been dishonest.

Recovering lost money

We help the public if a solicitor, or anyone working in a firm, is dishonest or incompetent. We do this by:

- requiring that all firms have professional indemnity insurance (PII)

- managing the Compensation Fund. People can make a claim on the Fund if the claim falls under our rules. It is a discretionary fund and we decide whether to make a grant on a case by case basis.

We have consulted on changes to make sure people get the right level of protection

[<https://www.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/>].

- Our PII proposals will give firms more flexibility to choose the right level of insurance to suit their business and clients.
- Our Compensation Fund proposals are designed to make sure financial support is focused on those most in need of help.

Reforming the Accounts Rules

The reforms to our Accounts Rules [<https://www.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/#download>] will:

- be clear about the standards we expect when solicitors handle client money
- allow firms that only hold fees and disbursements to choose whether they want to use a client account
- make it easier to use alternatives to holding client money, by introducing clear safeguards around third-party-managed accounts [<https://www.sra.org.uk/solicitors/guidance/third-party-managed-accounts/>].

The new Accounts Rules will be introduced alongside the rest of our Handbook reforms

[<https://www.sra.org.uk/sra/policy/future/looking-future/>], which is planned for April 2019.

Accountants' reports

An independent accountant must check a firm's compliance with the Account Rules, except for firms that hold low levels of client money. Where the accountant finds risks to client money, the report must be qualified and sent to us by the firm. The report does not have to be sent to us where technical breaches of the Accounts Rules have been found which has not led to a risk to client money.

Our guidance for firms and accountants [<https://www.sra.org.uk/solicitors/guidance/accountant-report-exemption-obtain-one/>] is reducing the number of accountants' reports that are sent to us unnecessarily. These are mainly from firms sending unqualified reports but also qualified reports where no risk to client money has been found. The new Accounts Rules will also reduce reports being qualified unnecessarily. This means that our resources are focused on serious breaches to better protect the public.

Case example: Receptionist banned for not reporting lost client money

We banned a firm's receptionist from working in any firm we regulate after the member of staff lost money on the way to the bank and then tried to hide the mistake. The firm quickly found that the money had not been paid into the client account when reconciling the accounts and they replaced it. As the receptionist had lied to the firm, we decided that they could not be trusted to carry out their role honestly and act in clients' interests.

Standards of service

Solicitors must meet high professional standards of behaviour and competence.

Why this risk matters

Poor service can lead to people not getting the help they need. This has a greater impact when someone is vulnerable or in a vulnerable situation. We know that people can be or become vulnerable when seeking help because it is often a stressful situation or because they are at risk of harm.

We set the high standards of behaviour and professional competence expected of solicitors and law firms in our Principles [<https://www.sra.org.uk/solicitors/handbook/handbookprinciples/>], Code of Conduct [<https://www.sra.org.uk/solicitors/handbook/code/>] and Statement of Solicitor Competence [<https://www.sra.org.uk/solicitors/competence-statement/>]. These help to make sure clients receive a good standard of service and maintain the reputation of the profession.

Most concerns that the public report to us are about lack of competence, negligence or delay. We look at the risks to clients and the public from solicitors who are not competent and safe to practise. The Legal Ombudsman (LeO) provides redress for clients who had a poor standard of service. The

proportion of complaints to LeO about poor communication and delay has increased over the last few years.²⁵ [fn25]

High standards must be achieved by all solicitors practising in all areas. However, certain areas of law attract more complaints, such as conveyancing. And other areas of law regularly deal with people in vulnerable situations, such as those in the criminal justice system or making immigration applications.

Spotlight on conveyancing

Home-buying can be a stressful time and significant sums of money are handled by solicitors. Conveyancing continues to attract the most complaints to both us and LeO compared to all other areas of work.

We commissioned independent research [<https://www.sra.org.uk/sra/how-we-work/archive/reports/conveyancing-legal-services/>] which found that 76% of people were satisfied with the service they received from their conveyancing solicitor. However, there was room for improvement. When people were dissatisfied, it was about mistakes made in legal documents or invoices and poor communication.

The research found concerns about the service provided to first time buyers and those buying or selling leasehold properties. These included first time buyers not receiving a clear explanation of the legal process and people buying a leasehold property not getting information on the length of lease or service charges.

Some 14% of the people who made a complaint to their conveyancing solicitor said that they did not receive a response. In some cases, this could be because the solicitor did not recognise an expression of dissatisfaction made verbally, or in general communication, as a complaint.

People want updates on the progress of the transaction and information about how to complain. Clear and timely information is particularly important for first time buyers and sellers, and for transactions that need specific detailed advice, such as leasehold transactions.

Recent cases show that conveyancers and insurers should handle transactions carefully, particularly those that are high-risk. When acting for a buyer, it is important to carry out due diligence checks on the seller, otherwise firms may be liable to their client for breaches of warranty of authority, trust or undertaking.

Spotlight on advocacy and criminal litigation

Poor standards of service in criminal practice can lead to severe harm, particularly as many people in the criminal justice system may be vulnerable. And if there are issues surrounding a professional's competence in this setting, there can be a wide impact on confidence in the profession. Many of the concerns reported to us in this area of work are about solicitors breaching our Principles.

We jointly commissioned, with the Bar Standards Board, independent research [<https://www.sra.org.uk/sra/how-we-work/archive/reports/criminal-advocacy/>] with judges which found that advocates' skills in dealing with young and vulnerable witnesses is improving. But judges said that there is room for improvement in:

- advocacy training
- opportunities to gain experience
- standards of case preparation
- advocates' ability to ask focused questions of witnesses and defendants.

"There is a terrible tendency to cross examine about what people said in statement rather than what people actually did and what really happened. It's becoming more and more wide spread, even good advocates do it, even good advocates cross examine for far too long."

Circuit judge

The courts and advocates should make sure that people can understand and take part in the court process. Training and resources such as The Advocate's Gateway [<http://www.theadvocatesgateway.org>] and our youth court resources [<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/youth-court-advocacy/>] help to raise awareness of people's vulnerabilities and how to approach them.

"I have done lots of cases where there have been Ground Rules Hearings and cross examination of young and vulnerable witness where advocates have to prepare questions in

advance and give them to the judge for discussion. The difference it makes is enormous."

Circuit judge

"On the whole, the advocates have got it... They're asking the right questions, keeping it simple depending on the age of the child or what the disabilities of an adult witness might be, or whatever it is."

Circuit judge

Spotlight on immigration and asylum

People using immigration services are often vulnerable. For example, those seeking asylum include unaccompanied children, people who speak or understand little English, or people who might be homeless.

Concerns reported to us in this area of work lead to more disciplinary action than those in most other areas.

LeO receives more complaints about firms not releasing files or papers in immigration and asylum work than most other areas of work.²⁶ Legal documents and passports are often people's most valuable possession.

There is also evidence that some solicitors lack the skills to obtain and record sufficient, relevant information [\[https://www.sra.org.uk/sra/how-we-work/archive/reports/asylum-report/\]](https://www.sra.org.uk/sra/how-we-work/archive/reports/asylum-report/) from asylum seekers, and lack the knowledge about the specifics of a case and the law underpinning it.

We visited several firms to review [\[https://www.sra.org.uk/sra/how-we-work/archive/reports/asylum-seekers-report/\]](https://www.sra.org.uk/sra/how-we-work/archive/reports/asylum-seekers-report/) their practices and behaviour in detail. Most of the firms understood the potential vulnerability of their clients and showed dedication to supporting their clients. There was scope for improvement in:

- communicating information to clients and giving an appropriate explanation of costs
- the role and quality of interpreters
- meeting clients' specific needs
- the ongoing training and the competency of advisers
- the appropriate and professional use of the appeals process.

We are working with firms to improve standards and we act to protect the public where necessary.

What solicitors and firms can do

Providing a good service makes business sense, as building and maintaining a good reputation is important for success.²⁷ Understanding the needs of each client means that the right service can be given to each person.

Solicitors must reflect on their practice and keep their core technical, ethical and legal skills and knowledge up to date through regular learning and development. Firms could:

- support staff training and development in core skills and knowledge, as well as communication and complaint handling skills
- identify ways that technology can improve their processes and services
- set out information clearly, for example under headings and in plain English, to make it easier for people to understand and refer to important points
- give information in different formats suitable to people's different needs, for example, in a different language or in 'easy read' format
- get feedback from clients about the service and information they received
- monitor their online presence, including reviews and social media
- encourage an open culture about complaints and avoid placing blame on fee earners so they can respond in a productive way and share how they have learned from complaints.²⁸

Solicitors and firms can improve their service by giving clear, concise and accessible information throughout the work about the:

- costs, which should be updated when the cost is likely to change
- legal work, which could be repeated at times when people need the information most
- progress of the work
- complaints processes, LeO and alternative dispute resolution services.

Case example: Creating a culture of excellent customer service

Some firms communicate a culture of excellent customer service from senior levels, including good complaints handling. For example, one large firm found involving fee earners or managers helped them to improve their service and avoid future dissatisfaction.

"When I joined there was a head of complaints, but people felt they could just throw the complaints at him and wipe their hands of them. But now I teach the heads of department to be involved - the first level of our complaints procedure is to sort it at a departmental level."

"Law firm

What we are doing

Professional standards

We are introducing two clear, short Codes of Conduct, for solicitors and firms. The Codes will have a greater focus on professional and ethical standards, rather than on compliance with prescriptive rules. This will also help people understand the standards they can expect from solicitors.

Research

We also commissioned independent research about solicitors' first tier complaints processes [<https://www.sra.org.uk/sra/how-we-work/archive/reports/first-tier-complaints/>] which found that:

- complaint handling can help to improve service standards
- many firms could better manage people's expectations by providing clear and timely information
- people who have a disability are more likely to be dissatisfied with the outcome of their complaint and less likely to understand the complaints procedure or know how to complain
- some firms acknowledge informal expressions of dissatisfaction as complaints, which helps to stop them from escalating into formal complaints.

This research, as well as the research into people's experiences of conveyancing services [<https://www.sra.org.uk/sra/how-we-work/archive/reports/conveyancing-legal-services/>], supports the Competition and Markets Authority [<https://www.gov.uk/cma-cases/legal-services-market-study>] findings about the lack of clear information about price, service, complaints and quality in the legal services market. We are using the research findings to inform our regulatory reforms. And we will be publishing the first of our annual complaints reports in 2019 to give market-level information about the complaints received by firms.

Solicitors Qualifying Examination

To make sure the solicitors of tomorrow have the required skills and competencies we are introducing the SQE. This centralised assessment will mean all new solicitors meet the same high standards, helping people from every background to join the profession and provide the high standards of service needed by communities.

Notes

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