



RPC's Lawyers' Liability and Regulatory Update

31 August 2022

Welcome to the latest edition of our Lawyers Liability & Regulatory Update, in which we look back over the last month at key developments affecting lawyers and the professional risks they face.



MOJ plans to impose compulsory mediation for all County Court claims

The Ministry of Justice (**MOJ**) has announced plans to impose compulsory mediation (currently a 1-hour telephone call) in small claims and, eventually, in all County Court claims. The MOJ is also considering how the civil mediation market should be regulated. We explain and critique the current proposals and encourage lawyers, their insurers and brokers to provide feedback to the MOJ [in our article available here](#).



Court of Appeal confirms that conditional fee arrangements do not give rise to implied duty of good faith

In *Candey Limited v Bosheh & Anor* [2022] EWCA Civ 1103, the Court of Appeal has upheld a High Court decision that conditional fee agreements (**CFAs**) do not imply a duty of good faith on the part of the client. A firm of solicitors acting under a CFA who had been instructed by their client to settle proceedings on a "drop hands" basis, with no order for costs, was not entitled to recover costs from their client on the basis that the client had breached a duty of good faith. The ruling cautions solicitors who enter into CFAs about the risks of clients agreeing a settlement that deprives them of their entitlement to conditional fees. [Our full article is available here](#).



Uncertain times create unsteady ground for legal professionals

The ongoing war between Russia and Ukraine has already resulted in many headlines for business interests in the UK, not least rising energy prices and increased market uncertainty. A lesser-known consequence is the Government's expedited efforts to reform laws on corporate criminal liability and provide greater transparency for overseas entities that own UK land.

The Economic Crime (Transparency and Enforcement) Act 2022 (the **Act**) introduces a register to capture and disclose information about overseas entities' beneficial owners and/or managing officers to Companies House. Although the legislation came into force on 1 August 2022, overseas entities will have until 31 January 2023 to apply for registration. Critical to the annual registration process is the requirement to independently verify information such as the extent of an individual or corporate's control over an overseas entity.

As one of the few "relevant persons" who can carry out these verification checks under the legislation, legal professionals may find themselves at a crossroads. Government guidance from the Department for Business, Energy & Industrial Strategy (**BEIS**) expects them to be "sceptical, but not forensic", whereas the much

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more conservative guidance from the Law Society advises "extreme caution".

Given the potential for legal professionals (especially those specialising in commercial property transactions) to mistakenly interpret the verification requirements as being identical to existing money laundering due diligence checks, the possible sanctions of criminal prosecution, regulatory actions and reputational damage are a real risk.

Although the BEIS guidance is helpful and a valuable practical tool, it is vital that legal professionals ensure that they review it alongside the Act and any relevant regulations, before carefully assessing whether they are indeed in a position to provide verification statements or if engaging a third party might be preferable in the circumstances.



Risky Business: what to do when former clients ask further questions

In *Spire Property Development LLP & Anor v Withers LLP* [2002] EWCA Civ 970, the Court of Appeal considered the scope of a solicitor's duty when a former client posed questions to a solicitor concerning a transaction after the retainer had ended. The judgment will be of interest to solicitors who are asked for advice in circumstances where no retainer exists. [Read our full article setting out the key issues here.](#)



Risks remain after Law Society guidance on solicitors' undertakings

After the Supreme Court's recent decision in *Harcus Sinclair LLP v Your Lawyers Ltd* [2021] UKSC 32 highlighted the gap in the court's inherent jurisdiction to enforce solicitors' undertakings, the Law Society has now produced some guidance to practitioners on the risks to be aware of when giving and receiving such undertakings.

The key takeaway for solicitors and for those working in solicitors' firms is that undertakings expressed on behalf of an LLP or limited company firm are not subject to the court's inherent jurisdiction because those are separate legal entities from the individual solicitors working for them (and so, they are not officers of the court). Unless such undertakings are enforceable in contract, they are unlikely to provide adequate protection to clients relying on them.

The new guidance does not change that point of law. But now the Law Society has broken its silence and indicated what it considers to be best practice in this area, there is little excuse for solicitors not to be aware (and advise their clients) of the risks inherent in giving and receiving undertakings. [Read the full article explaining the practical implications in our article here.](#)



Hong Kong: Update on "Alternative Payment Mechanism" for residential property sales

The closure of a law firm by the local regulator (the Law Society of Hong Kong) can attract a lot of attention in a city like Hong Kong. As a result of exercising its statutory powers, all monies in a closed (intervened) law firm's client account are held on statutory trust by the Law Society for the persons beneficially entitled to them.

The verification of claims made by the former clients of a closed law firm can take a long time. This is a particular problem where the law firm's practice involves conveyancing work and former clients need deposits and completion funds returned to exchange contracts and complete transactions.

With this in mind, the financial services and treasury bureau of the government has been working in cooperation with the Hong Kong Monetary Authority (Hong Kong's de facto central bank) and the

Hong Kong Association of Banks to come up with an alternative payment mechanism – to be known as "Payment Arrangements for Property Transactions" (**PAPT**). The idea is to replace existing payment arrangements with respect to mortgaged secondary residential property so that, rather than mortgage funds passing through law firms' accounts, the funds are remitted between the banks by direct transfer via the interbank payment system.

PAPT has been the subject of a six-month consultation that began at the end of last year. On 20 July 2022 the Monetary Authority and the Association of Banks announced that a pilot arrangement would be extended to all licensed banks in Hong Kong that provide mortgages. At present, PAPT is an alternative payment mechanism that banks may offer to their mortgage customers. The plan is that it will apply to all bank mortgages with respect to secondary residential property within the next six months.

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