Solicitors Regulation Authority

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## *Effective supervision - Guidance*

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### *Status*

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

The guidance does not set out any new standards or requirements beyond those in legislation and our current Standards and Regulations.

### *Who is this guidance for?*

This guidance is for solicitors and firms we regulate that supervise individuals delivering legal services. This includes services delivered by individuals who are not authorised by us.

For the purposes of this guidance, the term 'solicitor' includes registered European lawyers (RELs), registered foreign lawyers (RFLs) and registered Swiss lawyers (RSLs).

In this guidance, where we use the term 'legal services providers', this includes solicitors and firms we regulate, as appropriate.

### *Purpose of this guidance*

Effective supervision of those delivering legal services plays a vital role in delivering good outcomes for clients, staff and third parties, and in maintaining public confidence in legal services. The purpose of this guidance is:

- to set out the key themes of the approach that we expect firms we regulate and their managers to follow when arranging and providing supervision for all the legal services they provide. This includes where regulated people supervise services delivered by individuals who are not authorised by us
- to give guidance on particular situations and areas of legal work, including good practice suggestions we have heard from firms.

In March 2026, the Court of Appeal clarified that an unauthorised person can lawfully perform any tasks that are within the scope of the conduct of litigation for, and on behalf of, an authorised individual, such as a solicitor, appropriately authorised legal executive or appropriately authorised barrister.

The Court held that it is the authorised individual who retains responsibility for the tasks delegated to the unauthorised person. The authorised individual is, therefore, the person carrying on the

conduct of litigation. In order to comply with their professional obligations, solicitors must be satisfied that the arrangements in place mean they are exercising proper direction, management supervision and control.

The approach set out in the guidance is intended to meet the regulatory objectives set out in b the Legal Services Act 2007. These include protecting the public interest, promoting the interests of consumers, encouraging a diverse and effective legal profession, and promoting adherence to the professional principles *[link: http://www.sra.org.uk/solicitors/standards-regulations/principles/]*.

This guidance should help legal services providers to meet the requirements in our Standards and Regulations, as well as comply with other relevant legal and regulatory requirements on supervision. Firms seeking our authorisation should find the guidance helpful in setting out what we expect from them in terms of arranging adequate and effective supervision once authorised and beyond.

Effective supervision is both a regulatory requirement and good practice in the delivery of services to clients. While negligence when delivering legal services is not itself always proof of a failure in supervision, effective supervision has a role to play in managing negligence risks, as well as other regulatory risks.

In applying this guidance, you should always exercise your professional judgement taking into account the contextual circumstances of the business model you operate within.

We recommend that, regardless of your area of practice, you read all of this guidance. The good practice and guidance on how you can comply with your professional obligations will apply across the board.

## *Key themes*

### *1. The need for supervision*

Regulated individuals and firms are accountable for the actions of those they supervise. Legal services providers (other than freelancers and sole practitioners with no staff) should therefore arrange for one or more appropriately experienced individuals to supervise the legal services the firm provides. This is to provide assurance to the organisation that all the legal services it delivers are of appropriate quality and are delivered in accordance with our Standards and Regulations.

These individuals should be appropriately qualified and experienced both in the relevant area of law and in supervising the delivery of legal services.

Below, we provide further guidance on reserved legal activities and the importance of supervision. We pay particular attention to the reserved legal activity of 'conduct of litigation', given the recent clarification by the Court of Appeal. As with all of our guidance, where further relevant information is provided by the Court, we will review and update this document.

### *2. Appropriate supervision arrangements*

Legal services providers should use a risk-based approach when deciding on appropriate supervision arrangements. There is no single model of supervision. The level and form required will depend on the nature and risks of the work being undertaken, the experience and competence of those carrying it out, and the context in which the work is delivered.

In deciding what arrangements are appropriate, legal services providers should consider matters such as who will supervise work, how many people they will supervise, how much of each person's

work a supervisor will see, how often they will communicate, and whether supervision will take place face-to-face, remotely or through a combination of approaches.

Factors to take into account in making such decisions include:

- the risks involved for clients and others if legal services are defective. For example, whether there is a risk of loss of life or liberty through imprisonment or deportation, or of other serious detriment with limited scope for redress
- whether there is a specific legal or regulatory requirement governing who may carry out the work in question. And the qualifications or authorisation required (for example, requirements under immigration or claims management legislation), and what those requirements involve
- the nature of the inherent risks involved in the work being supervised. For example, work involving the use of a high degree of judgement will usually carry more risk of errors or failure than routine or primarily administrative work
- the circumstances of clients and whether there are particular vulnerabilities that should be taken into account
- the experience, competence and workload of those carrying out the work and the level and kind of support they need
- the capacity of the supervisor and the other demands on their time. For example, a supervisor with their own fee-earning caseload will have less time available to supervise the work of others
- whether those carrying out the work are in the same location as their supervisor, in another office, working remotely or in a hybrid or agile arrangement
- the nature of, and ease of access to, other support available to those carrying out the work, which might include help from other colleagues (whether legally qualified professionals or not), guidance, and tools or standardised processes.

*3. Conducting supervision*

A supervisor should communicate directly with each person they are supervising often enough to make sure that the supervisor:

- has clear oversight of work being done
- is readily available to support the person doing the work
- can provide robust assurance that legal and regulatory requirements are being met.

The supervisor should assure themselves that they have effective knowledge of the matters being progressed by the person doing the work and/or should monitor a meaningful sample of their work. This is depending on the risk factors listed in 'Appropriate supervision arrangements'. The supervisor should provide advice or guidance on specific matters (such as non-standard issues) as necessary.

The supervisor remains responsible for any work conducted under their supervision.

*4. Ensuring supervision is effective*

Supervision needs to be effective. Merely putting supervision arrangements in place is necessary but not sufficient to meet legal services providers' regulatory obligations. Legal services providers should take proactive steps to make sure that supervision operates effectively, that supervisory arrangements are clear and understood, and that supervisors are accountable for how those arrangements function.

## *Regulatory requirements - SRA standards and regulations and guidance covering all areas of legal services*

Our Code of Conduct for Solicitors, RELs, RFLs and RSLs *[link: http://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]* provides that where you supervise or manage others providing legal services, you remain accountable for the work carried out through them. And that you effectively supervise work being done for clients (paragraph 3.5).

The code also requires that you make sure that those you manage are competent to carry out their role. And that they keep their professional knowledge and skills and their understanding of their legal, ethical and regulatory obligations up to date (paragraph 3.6).

Similar provisions are included in our Code of Conduct for Firms *[link: http://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/]* (paragraph 4.3) which also specifically requires firms to have an effective system for supervising client matters (paragraph 4.4). The code also requires them to have effective governance structures, arrangements, systems and controls in place to make sure that the firm and its staff comply with regulatory and legislative requirements (paragraph 2.1). Additionally, a firm's compliance officer for legal practice (COLP) must take all reasonable steps to make sure there is compliance with relevant regulatory arrangements, including those relating to supervision (paragraph 9.1).

The Code of Conduct for Solicitors, RELs, RFLs and RSLs requires solicitors to be able to justify their decisions and actions in order to demonstrate compliance with their obligations under the SRA's regulatory arrangements (paragraph 7.2). We therefore expect that solicitors will record their rationale and decision making when designing systems and controls, and delegation arrangements. This applies to all legal services you deliver.

Our Authorisation of Firms rules *[link: http://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/]* require authorised bodies to have their regulated work supervised by at least one person who has practised as a lawyer for at least three years, and who might be either a manager or employee of the body or an external resource (Rule 9.4). This requirement for at least three years' experience does not apply to other people in a firm who have supervisory responsibilities, but firms should make sure that anyone with supervision responsibilities has appropriate experience.

Our Statement of solicitor competence *[link: http://www.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/]*, which defines the continuing competences that we require from all solicitors, says that solicitors should be able to disclose when work is beyond their personal capability, recognise when they are experiencing difficulties, seek and use guidance and support, and know when to seek expert advice (section A3).

Our guidance on the workplace environment *[link: http://www.sra.org.uk/solicitors/guidance/workplace-environment/]* includes a section on supervision and competence, which sets out our expectation that firms have the necessary systems and culture to enable staff to raise concerns and be supported if they are experiencing problems. The guidance sets out the role that effective supervision plays in supporting the wellbeing of staff. The guidance links to our workplace culture thematic review, which includes examples of good practice that firms can adopt.

## *Further guidance and good practice - all areas of legal services*

### *Choosing supervisors*

Supervisors do not have to be at partner level – firms should use a risk-based approach, taking into account the factors in 'Appropriate supervision arrangements'.

Appropriate supervision should be in place for everyone delivering legal services, including partners and consultants, as well as employees. Supervision of senior staff should include consideration of ethical and regulatory competencies, as well as standards of supervision and leadership.

A supervisor can be a line manager but can also be an individual with no line management responsibilities. Supervision is a specific legal and regulatory requirement to make sure the appropriate delivery of legal services, as discussed in this guidance. Line management has a wider role including professional development and wellbeing. However, supervisors who are not line managers can make an important contribution to the wellbeing and development of those they supervise and should share feedback with the managers of those they supervise where appropriate.

Firms should make sure that both supervisors and their supervisees are aware of their respective responsibilities for making supervision work effectively, and that supervisees know who is supervising them. See recording supervision arrangements. *[link: http://www.sra.org.uk/solicitors/guidance/effective-supervision-guidance/#recording]*

A solicitor, acting as a supervisor, must exercise professional judgment to make sure that they are able to perform the role competently. This will be informed by considerations such as:

- whether they have sufficient expertise and skills to understand the work they are responsible for supervising
- whether they can exercise effective oversight.
- what the tasks are. This may be considered on a case-by-case basis or as part of designing a process. They should give express consideration to the nature of the tasks that are being delegated to determine the level of supervision required
- whether there are any risks to effective supervision
- whether they are able, in practice, to exercise proper direction, management, supervision and control over the work being delegated with confidence.

### *Good practice suggestions*

*For firms and supervisors*

- Make sure there is clarity about what tasks you are delegating and to who, and your expectations about the direction, supervision and control of those tasks.
- Where firms rely on standing processes or controls as part of their delegation arrangements, these should be set out clearly in a form that can be referred to by supervisors and those to who work is delegated. This can help avoid uncertainty about the scope and limits of delegated authority, and may include written operational frameworks, team instructions or similar materials (see 'Recording supervision arrangements' below).
- Arrange peer reviews of work by senior staff, particularly where novel or particularly complex issues are involved.
- Designate a quality control reviewer for all engagements assessed as high risk or complex.
- Include supervision as a topic in performance reviews and make supervision

skills a criterion for promotion.

*For people being supervised*

- Make sure there is clarity about what tasks are delegated to you and what your supervisor's expectations are. You must not work outside those arrangements.
- Be aware of when your supervisor is available to help you.
- Flag issues to your supervisor in good time ahead of deadlines and make it clear if a matter is urgent or important.
- Be open about your capacity and when you need help.

You can find links to other resources about people management, coaching and mentoring at the end of this guidance.

## *Choosing supervision arrangements*

### *Span of supervision*

In deciding how many people are needed to supervise an area of work, firms should consider carefully how many people each supervisor will be able to supervise effectively, taking into account the risk factors set out in 'Appropriate supervision arrangements'.

This may include consideration of the supervisor's available time, their own workload, the nature and complexity of the work being supervised, and the experience and competence of those carrying out the work. Where a supervisor's span of supervision is too wide, there is a risk that supervision becomes infrequent, reactive, or overly reliant on formal processes, rather than providing meaningful oversight of work as it is carried out.

### *How much work supervisors should check*

A supervisor should see enough of the work of those they are supervising to be satisfied that the overall quality of work is satisfactory and the risks relating to the work are being managed appropriately on a day-to-day basis. This will support the supervisor to identify any patterns, risks (which may include those arising from the supervisory arrangements in place) and issues across the supervisee's work, which might not otherwise be apparent if individual items of work are reviewed in isolation.

In deciding whether a supervisor should have some knowledge of every matter the supervisee is dealing with, or should review a sample of their work, firms should take into account the risk factors set out in key theme 2 (appropriate supervision arrangements). Risk factors that might be particularly important in this context include:

- the risk of client detriment if work is not of suitable quality
- the inherent risks involved in the work such as the degree of judgement needed
- the experience and competence of the supervisee – a trainee will need a higher proportion of their work checked than someone with a long track record of doing similar work to a good standard.

Where work is high risk, the supervisor might need to have some awareness of every file. And where it is broadly low risk and standardised, it might be reasonable for the supervisor to see only a small sample of work. In this case, they should make sure the sample includes work that the supervisee does not ask them to look at.

Good practice suggestions we have heard from firms include:

- agreeing the structure of supervision required for each matter at the outset
- making sure that all team members are aware of expectations around supervision
- encouraging questions from supervisees and clarifying what needs escalation or approval
- listing outgoing communications and documents which should always be discussed in draft with the supervisor, including novel or complex advice, drafts of key documents, communications to clients on costs or rates, and details of any conversation involving substantive queries or concerns.

*When supervisors should check work*

As set out in 'Conducting supervision', the supervisor should have clear oversight of work being carried out, including at key stages where appropriate. Where work is advisory or transactional, the delivery of the final 'product' might be the only key stage at which the supervisor should see the work. Where work is more complex, the supervisor should have sufficient sight of the course of a matter to enable effective oversight, rather than only seeing the final delivery of a product or service.

Where tasks are delegated to unauthorised people, the authorised person supervising the work should establish when and how they will check the work. This is important:

i. because you will want to be assured of the quality of work and be able to identify and address issues at an early stage; and
ii. where you are delegating tasks that are reserved legal activities, it is the authorised person who is responsible for this work.

*What checks should involve*

Where a supervisor checks work, this should include an assessment of:

- the quality of the substantive legal work – is it accurate and does it meet the client's needs
- whether the firm's policies have been followed (for example, on signing-off work)
- any relevant ethical and regulatory considerations
- the management of the file, including whether key actions are clearly documented and the matter is being progressed appropriately.

*When supervision should happen face to face*

Supervision can take place face to face or remotely, depending on the risks involved and the work patterns of supervisor and supervisee. (Remote, hybrid and agile working is covered in the next section.)

Where a supervisee and supervisor are working in the same office, this will not in itself make sure adequate supervision. There must be specific arrangements for the supervisor to review what the supervisee is doing and discuss it with them.

Supervision should always include an element of direct discussion between the supervisee and supervisor, as well as reviews of documents and other work done and of case files. That discussion may take place remotely (for example, by phone or video call) rather than face to face where appropriate.

However, supervision may sometimes be particularly effective when conducted face to face. This includes situations where:

- the supervisee is new to the role or lacks experience in the work or area of law concerned
- supervision has highlighted previous problems with the quality of the supervisee's work. And closer support or coaching by the supervisor has been identified as a way to manage risk.

Again, firms should take a risk-based approach using the risk factors set out in 'Appropriate supervision arrangements' and considering the needs of individual supervisees.

*Supervision and contractual commitments*

In deciding on supervision arrangements, firms should consider any relevant contractual commitments or arrangements with clients, for instance, where a lawyer is on secondment.

A 'good practice' suggestion we have heard from a firm is to have a secondment agreement that sets out the supervisory arrangements in relation to the seconded lawyer. This is where it may be impractical for the firm to supervise the day-to-day work. In these circumstances, the secondee remains an employee and the firm retains ultimate responsibility.

Where a firm has outsourced work entirely, then the firm will not be responsible for supervising the work in the sense covered by this guidance. This could be, for example, by contracting with counsel in another jurisdiction to provide advice on a matter where the firm has no expertise.

The firm will however have a contractual responsibility to the end client which might, in practice, require them to take reasonable steps to make sure that work done elsewhere is adequately supervised by the relevant provider. Supervising work outside an employment relationship is covered further down.

*Recording supervision arrangements*

Firms should be able to evidence the supervision arrangements they choose for each area of work, and the risk-based reasons for the approach they have taken. This should include the firm's arrangements for ensuring that supervision is effective in line with 'Ensuring supervision is effective'.

Recording these arrangements can help to support supervisors and supervisees in understanding and meeting the firm's expectations in respect of supervision (see 'Choosing and appointing supervisors'). It will also help to provide continuity in the event of staff changes.

Firms should consider how they expect supervisors and supervisees to record the delivery of supervision (for instance in records of one-to-ones, casework discussions, and file reviews), and make these expectations clear to those involved. This should include consideration of how to record and share learning points from issues identified in supervision.

Good practice suggestions we have heard from firms include:

- using protocols to identify the level of supervision needed in each practice area. For example, all communications with clients to be checked by partner/senior

solicitor, no court documents to be filed without partner/senior solicitor sign-off

- supervision should be evidenced, for example by emails, file notes and time records. But it is not necessary to capture every instance of supervision, such as ongoing informal discussion about a draft document where the supervisor is working directly with the supervisee
- where tracked changes on a document are used to provide feedback, these should include an explanation of why changes have been made.

*Remote, hybrid and agile working*

Our rules and guidance on general supervision in law firms apply to remote and hybrid (part-remote) working as they do to office working. They also apply where people are working in an agile way, for instance with variable working hours, or are working in different time zones.

Whether working patterns are remote, hybrid or agile is in itself a factor that firms should take into account when setting their supervision arrangements, as set out in Appropriate supervision arrangements' in this guidance.

Where agile working means that the supervisee and supervisor are not working the same hours, supervision might involve an element of asynchronous or 'non-live' discussion, for instance by messaging or email. However, appropriate 'live' back-up support should also be available to the supervisee if needed.

Good practice suggestions we have heard from firms include:

- a quick daily discussion with supervisees who are working remotely about what they are doing, when it is due to be done and who is reviewing it
- asking supervisees to share an up to date 'to do' list at the end of each day
- respecting everyone's time and working patterns and encouraging people to be open when they are finding it difficult to juggle priorities
- operating a virtual 'open door' policy for those working remotely
- involving junior staff in client calls and virtual meetings and maintaining regular pastoral conversations
- using screen sharing tools to review documents with supervisees in real time
- setting up a buddy system for remote workers and arranging informal group discussions so that junior staff can ask peers for advice.

Firms may also find it helpful to refer to other resources on good practice such as:

- the Law Society's guide on remote supervision of junior staff and trainees
- the Law Society of Scotland's hints and tips on remote supervision of trainees.

*Supervising work outside an employment relationship*

In some circumstances, a solicitor or firm might arrange to:

- supervise work done by someone with who they have no employment relationship.

- agree supervision arrangements with someone with who they have no employment relationship.

In such cases, both parties should have a clear shared understanding of:

- the fact that the arrangement includes providing supervision within the meaning of this guidance
- any relevant legal or regulatory restrictions on providing supervision outside an employment relationship (for instance, see the 'Restrictions on supervising claims management work summarised')
- what action to take if there is a concern that one of the parties is failing to meet their obligations in respect of supervision.

It is good practice for this understanding to be set out explicitly in writing. It might also be helpful for this agreement to set out any implications of the supervision arrangement for client care arrangements and professional indemnity insurance. This will depend on the activity involved and the professional obligations of those carrying out the work.

### *Supervising solicitors who practise advocacy*

We have published resources *[link: http://www.sra.org.uk/solicitors/resources-archived/advocacy/]* to help advocacy firms support the learning and development of their advocates. This includes guidance on how firms can supervise their staff *[link: http://www.sra.org.uk/solicitors/resources-archived/advocacy/maintaining-competence-advocate/]* in this area.

### *Supervising trainee and aspiring solicitors and other legal professionals during periods of training or qualifying work experience*

Our guidance on the supervision of trainee and aspiring solicitors for educational and training purposes has changed significantly with the introduction of the Solicitors Qualifying Examination (SQE):

- trainees on the Legal Practice Course route are signed off as 'competent' on the basis of their work. And we have guidance about supervision requirements *[link: http://www.sra.org.uk/become-solicitor/legal-practice-course-route/period-recognised-training/managing-trainees/supervising-trainees/]* for periods of recognised training which includes supervisors' responsibilities, reviews, appraisals and training records
- aspiring solicitors on the SQE route are signed off as having completed qualifying work experience (QWE), but not as competent since this is tested through the SQE assessments that individuals must take before admission as a solicitor. We have guidance for firms on QWE *[link: http://www.sra.org.uk/solicitors/guidance/meeting-standards-good-qualifying-work-experience/]* and guidance on meeting our standards for good QWE *[link: http://www.sra.org.uk/solicitors/guidance/meeting-standards-good-qualifying-work-experience/]*, which includes high-level expectations on effective supervision, but following this guidance is not a regulatory requirement.

Firms that supervise trainee and aspiring solicitors should:

- integrate their training with the wider supervision arrangements covered by this guidance

- be aware of where differing supervision requirements apply for the purposes of QWE for the SQE and the general supervision of legal services, and tailor their arrangements accordingly.

Solicitors and firms might also supervise staff who are trainees in other regulated legal professions. For instance, we understand that many people undergoing qualifying employment and work-based learning for the purpose of CILEX membership work in SRA-regulated firms and are supervised by a solicitor. Solicitors and firms in this position might want to consider this when deciding on their supervision arrangements.

Good practice suggestions we have heard from firms include:

- regular reviews of trainees' supervisors to check that they have the time and skillset to supervise to the required standard
- anonymised surveys to assess whether trainees feel supported during QWE and have sufficient feedback
- a template to record QWE activities with a checklist to provide reassurance that key experiences have been covered.

### *Anti-money laundering requirements*

We have published;guidance *[link: http://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing-transfer-funds-information-payer-regulations-2017/]*to help those we regulate understand their obligations under the Money Laundering Regulations (MLRs) and how to comply with them, including appropriate internal controls. Where relevant, solicitors and SRA-regulated firms should take this guidance into account when deciding on their supervision arrangements.

### *Regulatory and statutory requirements - specific areas of legal services*

The Legal Services Act 2007 (LSA) set out a list of six reserved legal activities and who is entitled to carry out those relevant activities. A person is entitled to carry out a reserved legal activity where that person is either an authorised person in relation to the relevant activity or that person is an exempt person in relation to the relevant activity.

In applying these provisions, legal service providers should be aware that different considerations apply to some of the reserved legal activities, including in relation to what work may be delegated and on what basis. The sections below summarise key statutory and regulatory considerations that are more relevant to supervision arrangements.

### *Reserved legal activities – rights of audience, conveyancing and probate*

The LSA permits unauthorised persons to carry out the following reserved legal activities, under supervision:

- exercise rights of audience if their work includes assisting in the conduct of litigation under the instructions and supervision of an authorised person (Sch 3 para 1(7))
- carry on reserved instrument activities at the direction and under the supervision of an authorised person working in the same organisation (Sch 3 Para 3(3))
- carry on probate activities at the direction and under the supervision of an authorised person working in the same organisation (Sch 3 Para 4(2)).

In deciding the supervision arrangements for unauthorised people performing work in reliance on these provisions, legal service providers should take into account the specific statutory requirements that apply. This includes the need for the authorised person both to supervise the work and to provide instructions (for rights of audience) or direction and supervision (for reserved instrument and probate activities). These requirements should be considered alongside the risk-based approach set out in key themes 2 and 3 of this guidance.

In most cases, individuals who supervise, direct or carry on reserved legal activities must hold a practising certificate. Section 88 of the Solicitors Act 1974 exempts the solicitor to the Treasury, any other public department, the Church Commissioners and the Duchy of Cornwall from the requirement to have a practising certificate. Where section 88 applies, you should make sure that any individual relied on to supervise, dirFect, or carry on reserved legal activities falls within that exemption, by having regard to our When do I need a practising certificate? guidance *[link: http://www.sra.org.uk/solicitors/guidance/practising-certificate/]*.

*Reserved legal activities - Conduct of litigation*

The section applies where an unauthorised person works under the supervision of an authorised person eg within a firm authorised by the SRA.

The Court of Appeal held that unauthorised people can lawfully perform any tasks, which are within the scope of the conduct of litigation for, and on behalf of, a solicitor or other authorised person. The authorised person will continue to hold responsibility for:

i. the task performed by the unauthorised person; and

ii. the responsibilities flowing from professional principles.

While the Court confirmed that unauthorised individuals may lawfully perform certain tasks, the delegation of those tasks by a solicitor engages our regulatory framework.

The words 'carry on the conduct of litigation' refers to direction and control of, and responsibility for, tasks. 'Conduct of litigation' refers to the tasks to be undertaken.

Supervision arrangements in connection with this sits alongside the wider systems and controls required by the Code of Conduct for firms and the Code of Conduct for Solicitors, RELs, RFLs and RSLs.

As noted above, when establishing arrangements for supervision and delegation of tasks to unauthorised people, legal service providers must be satisfied that the arrangements in place are effective. In particular, they must make sure that the solicitor and/or the authorised person is exercising proper management supervision and control over the tasks being delegated. In some cases, the degree of appropriate control and supervision will be high, with approval required before things are done. There will also be cases where the nature of the task is routine, and a lower level of control and supervision will be required. See our case studies for further assistance in establishing systems and controls.

Retaining responsibility for the conduct of litigation will usually require a combination of clear delegation, effective supervision, and appropriate audit and quality assurance. Below are **examples** of ways in which legal services providers may structure delegation and supervision arrangements so as to retain responsibility for the conduct of litigation. These can equally apply to other areas too.

*How and when tasks are delegated to unauthorised people:*

- this can be:

i. direct allocation of individual tasks to specified staff with consideration given to whether approval is required before things are done; or

ii. by developing a process, with a clear scheme of delegation, which captures the different activities to be undertaken. There must be clear instructions about what tasks are delegated to the unauthorised person

- the act of delegation (or system put in place) must be clear and not based on assumptions by the solicitor and/or the unauthorised person
- systems may be embedded within a case management system, with defined allocation of tasks. Where this is viable you should extract and review management information in order to understand, amongst other things, caseload and case flow
- solicitors and firms must, at all times, exercise their professional judgement when establishing systems and controls.

*How can a solicitor demonstrate responsibility via direction, management, supervision and control*

The system for delegating tasks is a key limb in demonstrating responsibility and so it is important that this is clearly articulated. We set out above guidance in relation to appropriate supervision arrangements, conducting supervision and ensuring supervision is effective. You must also have proportionate audit and quality assurance measures in place and take prompt action to address any issues or breaches identified.

Arrangements for delegation and supervision should be established in advance. To demonstrate how they have provided direction and control, legal services providers might choose to:

i. provide clear prior instructions on a matter-by-matter basis; or

ii. use a clear and appropriate work process to set out a compliant standard approach to the work, which requires any non-standard issues to be escalated to the supervisor.

In essence, an authorised person will need to be able to demonstrate that they have directed the progress of any given matter.

We expect legal services providers to make sure that existing delegation, supervision and escalation arrangements are clear, effective, and consistent with this guidance and the decision of the Court of Appeal. Where you conclude that your current systems and controls are not adequate, you should take prompt steps to review and address those arrangements.

### *Claims management activities*

The Financial Services and Markets Act 2000 (FSMA) (Regulated Activities) Order 2001 excludes claims management activity from the requirement for Financial Conduct Authority (FCA) authorisation in certain circumstances. In particular, this applies where the activity is carried on at the direction of and under the supervision of a regulated legal practitioner working in the same organisation (Regulation 89N). The definition of claims management includes advising and representing claimants as well as investigating claims. If a firm does not hold FCA authorisation, then a failure to meet this requirement for direction and supervision will contravene FSMA's general prohibition, which is a criminal offence.

In deciding on supervision arrangements in line with key themes 2 and 3, solicitors and firms should consider this statutory requirement for a regulated legal practitioner both to supervise the work and

to provide direction.

For instance, the supervisor should see enough of the work of the person under supervision to provide assurance that claims meet relevant guidance and requirements in terms of being properly made out and having sufficient merit. A good practice suggestion from a firm is that there should be a standard check that claims are based on adequate investigation of damages claimable and awards achieved.

Solicitors and firms may meet the requirement to provide direction by:

- providing clear prior instructions on a matter-by-matter basis; or
- using a clear and appropriate work process to set out a compliant standard approach to the work and requiring any non-standard issues to be escalated to the supervisor.

In essence, solicitors and firms will need to be able to demonstrate that they have directed the progress of any given matter.

Given the requirement that the person providing direction and supervision works in the same organisation as the person doing the work, our view is that a solicitor cannot supervise claims management work outside an employment relationship, unless the person being supervised is also a solicitor.

### *Immigration work*

We have published separate guidance which sets out the legal and regulatory requirements on the supervision of immigration work *[link: http://www.sra.org.uk/solicitors/guidance/immigration-work-guidance/]*.

### *Legal aid work*

Legal aid contracts include detailed and prescriptive supervision requirements – see for instance the section on supervisor standards (paras 2.10-2.28) in the Standard Civil Contract.

Solicitors and firms might find some of these requirements helpful examples of good practice when considering supervision arrangements for private work. For instance, the Standard Civil Contract requires:

- supervisors to have relevant supervision experience (para 2.19)
- face-to-face supervision at least once a month (para 2.23)
- temporary supervision arrangements if the supervisor is absent (para 2.24-5).

#### *Supervisors not authorised by the SRA*

If your firm employs people who are authorised by a legal regulator other than the SRA, you must check that the scope of their authorisation covers activities they are being asked to undertake and supervise. For example, while all solicitors are permitted to undertake the conduct of litigation by way of their authorised status, this is not the case for all legal executives or barristers.

#### *Supervision and Artificial Intelligence (AI)*

When using AI tools in the delivery of legal services, regulated firms and authorised individuals should consider what effective supervision of AI assisted or AI generated work looks like in practice. This includes ensuring that outputs produced with the assistance of AI are subject to appropriate human review, scrutiny and professional judgement.

Regulated firms and individuals should refer to the information available on our SRA Innovate webpage *[link: http://www.sra.org.uk/solicitors/resources/innovate/latest-innovate-update/]* when considering the use of AI in legal practice and must ensure that an authorised individual retains ultimate responsibility for any legal services delivered with AI assistance.

## *Our approach to enforcing supervision requirements*

### *Enforcement*

Where we become aware of a potential breach of our Standards and Regulations relating to supervision, we will respond in line with our enforcement strategy *[link: http://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/]*, which sets out our approach to enforcement. The strategy explains that we focus our action on serious breaches – which include both serious misconduct, and serious breaches of our standards or requirements such as failures of firms' systems and controls.

Where an unauthorised person can, on the facts and circumstances, takes responsibility for tasks that amount to the conduct of litigation, then we will consider taking action against the unauthorised person and, where appropriate, the relevant solicitor and/or firm. This may include situations where an unauthorised person is, in practice:

- making substantive decisions about the conduct of proceedings
- determining strategy
- or dealing with the court or other parties as if they were responsible for the litigation, rather than acting on behalf of and under the direction of an authorised person.

Supervision requirements are an example of systems and controls, and a serious failure to meet the supervision requirements in our Codes of Conduct and rules might therefore lead to enforcement action, even if that failure has not resulted in direct harm to clients.

The following case studies are fictional but help to illustrate our enforcement approach to dealing with supervision concerns.

*Case study 1: Conveyancing*

We received complaints that a conveyancing firm had incorrectly advised clients about the terms of their new leases, and in particular the related fees and the means by which these were calculated. We decided to investigate.

We discovered that the firm had developed and introduced a system to streamline work, which involved using a detailed template for advice to the client in respect of leases from a particular housing developer. The work was done by a team of six paralegals, who were line managed by a partner.

However, when the developer's standard lease terms changed, the firm continued to use the template without updating it. The change to the standard terms was not noticed as the paralegals did not understand that they needed to read the leases as well.

The supervising partner had not instructed the paralegals in the proper use of the template. She did not do any meaningful check on any of the outgoing advice. She did not undertake any sampling of the current work of the team, other than when a paralegal asked for specific support on a tricky question. The partner also did not undertake any further investigations when initial complaints from

clients were received. The problem was therefore not noticed for over five years. It has now been fixed and affected clients have been compensated.

The firm was referred to the Solicitors Disciplinary Tribunal (SDT) and fined £15,000.

*Case study 2: Claims management*

We received complaints that a consumer claims firm was sending a large number of identical letters to potential defendants, and that the letters did not take account of information that the firm had already been given. We decided to investigate.

We discovered that a team of 12 paralegals was doing the claims work. The team had been given a process map to follow in respect of any new claims they received. Some claims handlers would take account of information received from defendants or ask their supervisor for advice, but others simply went through the process without any regard to the information received. Most claims handlers also did not revert to the client when relevant new information was received.

The team was said to be supervised by a lawyer who worked three days a week. The supervisor had four years of previous qualified experience in criminal litigation. The supervisor could see the list of case files but did not speak to any of the team about casework unless they asked him a question. The supervisor also had various other duties in addition to supervision. The firm had not undertaken any assessment of whether its arrangements for supervision and direction of claims were sufficient to allow it to conduct claims handling work without authorisation from the FCA.

In response to our investigation, the firm immediately changed its arrangements for supervision. It hired three more qualified and experienced full-time lawyers to direct and supervise the work of the claims team. The paralegals were retrained, including training on when they needed to escalate issues or revert to the client for further instructions. The firm introduced requirements for regular catch-ups between the supervisors and the claims handlers and set out clear requirements for supervisors to randomly select a number of live files each month from each case handler to check for any problems which might need addressing.

The firm was referred to the SDT and fined £30,000.

This next group of cases are designed to assist you in developing appropriate systems and controls for the legal model you operate. These are intended to support you in complying with your regulatory obligations.

*Case study 3: Who is responsible?*

A solicitor of three years PQE is supervising a team of unauthorised people with significant experience. The solicitor calls the Professional Ethics helpline to ask for guidance about how to supervise a non-authorised colleague with 20 years' experience. We explain that it is the solicitor who retains responsibility for those tasks, and that this responsibility cannot be delegated to their more experienced unauthorised colleagues. This reflects the requirements in the Code of Conduct (paragraph 3.5) and is consistent with the Court of Appeal's decision.

We advise the solicitor to consider holistically whether they are able to take on the role of supervisor in these circumstances. The fact that non-authorised colleagues are more experienced than them is not the sole relevant factor. With appropriate systems and controls, and a clear focus on clarity of roles, we consider that this situation can be managed. We remind the solicitor that they must exercise their professional judgement.

*Case study 4: Systems and controls*

Firm A specialises in low value personal injury claims arising from road traffic accidents. The department is made up of one solicitor (the authorised person) who directly supervises three legal

executives (unauthorised people in relation to conduct of litigation) who in turn manage five paralegals. The solicitor, as the authorised person, retains responsibility for and determines the scope of, any delegation of tasks that amount to the conduct of litigation. This remains the case even if the day-to-day work is reviewed by the legal executives.

The solicitor has established a clear set of systems and controls to make sure that there are clear rules in place about:

- what tasks are delegated and to who
- that the legal executives will oversee the process to make sure that the rules are being followed and report on any exceptions
- that the solicitor actively reviews management information about the caseloads held by each member of the team, status of cases, average case duration, average settlements, complaints, CSAT scores and audit scores.

In this scenario, the solicitor drafts and controls all precedents and processes. The solicitor has weekly meetings with the legal executive supervisors, and the frequency of these meetings with the paralegals is dependent on their expertise and competence. Finally, the solicitor has in place an audit and quality assurance process that is responsive to changes in the composition, experience and workload of the department, notwithstanding that the underlying work remains low-risk and standardised.

Firm A engages with many medical experts – as noted above the solicitor has drafted and controls the precedent bank including letters of instruction. The unauthorised people are permitted to draft the letters of instruction and provide a summary of the expert report on receipt. However, the solicitor has exercised their professional judgement and determined that they will decide whether the report is adequate or requires further work by the expert and then whether it supports or undermines the claim.

In this example, the solicitor has, in making their decision, taken into account the skills and competence of the unauthorised people with the team.

*Case study 5: High Volume work*

Firm K does a large volume of high-risk legal work across different practice areas, including legal aid work, carried out by junior staff under supervision. There is a risk of client detriment if the work is defective. The firm considers that because of the high volume of work, it is not realistic for a supervisor to see every file, so they only check a small sample of the overall work.

The solicitor supervisor calls the Professional Ethics helpline to ask advice. In our view, given the risks to clients, we would not consider this an effective supervision arrangement. This sample size will not give supervisors enough assurance that the quality of work across the full range of different matters being handled is satisfactory. Or that any risks of client detriment across those different areas of work are being identified and addressed in a timely way. If a firm's business model is based on junior staff carrying out high-risk work, the firm should resource its supervision accordingly.

*Case study 6: High volume work*

Firm H gives a solicitor responsibility for supervising 10 paralegals who are providing high volume legal services. The solicitor has their own fee-earning caseload, so only has time to look at the work being done by the paralegals every few months.

Given the very limited proportion of work that the supervisor sees, we would not consider this an effective supervision arrangement.

### *Annex – The definition of the conduct of litigation*

There is, at present, no exhaustive or definitive list of tasks that fall within the conduct of litigation. Solicitors must therefore exercise their professional judgement when considering what may fall within and outside of this definition. In doing so, you should have regard to the fact that the Courts have consistently taken a narrow interpretation.

The Code of Conduct for Solicitors, RELs, RFLs and RSLs requires solicitors to be able to justify their decisions and actions in order to demonstrate compliance with their obligations under the SRA's regulatory arrangements (paragraph 7.2). We therefore expect that solicitors will, as a matter of good practice, record their rationale for their decisions. In particular, where those decisions inform the design of systems and controls, and delegation arrangements relating to the conduct of litigation.

The first limb of the definition of conduct of litigation is 'issuing proceedings before any court in England and Wales'. This refers to the process of starting court proceedings by issuing an originating document such as a claim form (see, for example, CPR Part 7.2(1)).

The second limb is 'the commencement, prosecution and defence of such proceedings'.

The third limb is 'the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)'. This limb is also limited to formal steps. One example is service of documents such as statements of case.

Authorities have held that the following are unlikely to fall within the statutory definition of the 'conduct of litigation':

- pre-litigation work. See Heron Bros Ltd v Central Bedfordshire Council [2015] EWHC 1009 (TCC)
- giving legal advice in connection with court proceedings: See Agassi at [56] and JK v MK (E-Negotiation Ltd and another intervening) [2020] EWFC 2, [2020] 1 WLR 5091 at [27]
- conducting correspondence with the opposing party on behalf of clients: See Agassi at [56]
- gathering evidence. See Factortame at [25] to [29]
- instructing and liaising with experts and counsel. See Factortame at [28]
- signing a statement of truth in respect of a statement of case. See O'Connor v Bar Standards Board (unreported, 17 August 2012) at [27]
- signing any other document that the CPR permits to be signed by a legal representative, as defined by CPR Part 2.3.

The Courts have also held that purely clerical or mechanical activities are not included within the scope of the conduct of litigation. This includes a postal worker delivering a letter containing a claim form.

#### *Defence to criminal proceedings*

Section 14(2) of the LSA provides a statutory defence for a person charged with carrying on a reserved legal activity where they can show that they did not know, and could not reasonably have been expected to know, that the offence was being committed. This defence is fact-specific and does not remove the need for appropriate systems, supervision and control to be in place in advance; reliance on it will depend on the particular circumstances and evidence available.

## *Other resources*

Although supervision is different from staff management, firms and supervisors might find the following resources helpful when considering their supervision arrangements:

### *Acas (employment advice organisation)*

Guidance for people taking on management responsibility for the first time, covers the role of the manager, leading and communicating, performance management and developing team members.

### *Chartered Institute of Personnel and Development (CIPD)*

Coaching and mentoring [PDF 7 pages, 105Kb] factsheet covers techniques and how to create a coaching culture in the workplace.

### ***CIPD and Mind (mental health charity)***

Guidance on supporting mental health at work which covers helping people to stay well and managing stress.

## *Further help*

If you require further assistance, please contact the Professional Ethics Guidance helpline. *[link: http://www.sra.org.uk/contact-us/]*