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Executive summary

THE LEGAL landscape has changed dramatically in recent years to the extent that the majority of law firms are now operating in a significantly different manner than in times past. Notably, regulatory changes, the impact of a global recession, and increasing client demands mean law firms have had to ‘adapt or die’.

Adapting to change often means that law firms need to change business model, or at least to refine their methods of providing legal services to meet the particular challenges of legal practice today. Notably, firms are increasingly recognising the huge benefits of using non-qualified staff to undertake routine legal work that has traditionally been the reserve of qualified lawyers.

This means solicitors are being freed up to focus their skills on the more demanding legal work a client requires. The desired outcome is a faster, cheaper, and generally more efficient means of providing an excellent legal service – and satisfied clients who will recommend the firm to others. However, a greater use of non-qualified staff for fee-earning activities brings a significant challenge – supervision of their work by experienced solicitors is essential – even in circumstances where they have many years of practice experience under their belts.

The necessity for supervision of fee earners undertaking legal work is not limited to those who are unqualified: newly qualified solicitors, for instance, and solicitors undertaking an unusual transaction must be adequately supervised. In many cases, it is subjective – depending on the level and experience of the particular solicitor and the nature of the case/deal/transaction in question. This places the onus on the law firm: what procedures and policies do the firm have in place to facilitate effective supervision; and to identify when supervision is required – if at all?

Regulatory changes mean effective supervision of staff is fundamental – arguably to an extent never required before the SRA’s shift to outcomes focused regulation. Breaches of the SRA Code of Conduct 2011 carry potentially serious sanctions, with entities more likely to be pursued by the regulator (as opposed to individual fee earners). The collateral damage to the reputation of both the firm and individuals may be irreparable; no firm should to be lackadaisical when it comes to its reputation.

If a fee earner is not supervised and an error is made, client complaints and potential negligence claims are likely to follow. Risk management is a necessary component for firms seeking to ensure regulatory compliance. Apart from the obvious PII implications, undertaking thorough, effective risk assessments with the supervision of fee earners in mind should, if carried out properly, reveal where procedures need to be reviewed or implemented.

Many firms are already recognising the importance of ensuring the right procedures for supervision of fee earners are in place and working effectively – particularly those already embracing the skills of paralegals and other unqualified staff. The aim of this report is to highlight areas firms may not
yet have considered. Who, for instance, is adequately qualified to supervise?

For law firms who have not yet reached an awareness of how important the issue of supervision of its fee earners is, our aim is that these firms discover what the issues are, where the dangers lie, and what firms should be doing.

Chapter 1 introduces the legislative, regulatory, and economic changes that have contributed to the seismic shift in the legal marketplace. The Solicitors Regulation Authority (SRA), for instance, is increasingly concerned about the experience of consumers of legal services. Important legislative changes have also directly impacted on the legal profession including:

- The reduction in legal aid;
- Outcomes focused regulation;
- The introduction of alternative business structures (ABSs);
- The Woolf reforms; and
- The Jackson reforms to civil litigation.

Throw in the fact that consumers are increasingly aware of what they are entitled to when accessing a service and the choice of legal services they have today and it is obvious that law firms have far greater responsibilities and challenges in providing excellent and efficient services to their clients than ever before. Furthermore, society is increasingly litigious: clients unhappy with the service they receive are far more likely to sue than they would have done some years ago.

Chapter 1 also considers changes in the law firm business model, the increasing use of non-qualified staff, and the cost pressures on law firms following a global recession. An examination of supervision in law firms must be considered against the backdrop of these changes so that the reader can fully appreciate the issues at hand. Professional indemnity is a critical issue in the supervision context, and this chapter also looks at what PII providers are looking for from law firms when providing cover.

Chapter 2 considers who needs supervising. It addresses, for instance, the classes of employee who must be effectively supervised and those who may require supervision. In many cases, this is subjective; law firm partners and managers must appreciate that it is not necessarily the status of the employee but the level of experience and expertise that counts. Even partners are not necessarily excluded! The SRA v Maitry ruling will be discussed in this context. This report submits that supervision is invariably a subjective issue to be considered in the context of each individual fee earner.

Chapter 2 looks at several recent cases that have reached the Solicitors Disciplinary Tribunal (SDT). Examining these different types of cases can be helpful in considering, for instance, the class of employee concerned and the status and experience of the supervisor. This chapter also considers specific practice areas that merit particular mention for their unique areas of risk.

Chapter 3 examines the legal and regulatory requirements faced by law firms in the context of supervision, and considers (with reference to experts) whether the current regime is working. The SRA’s shift to outcome focused regulation means firms’ responsibilities to clients have necessarily shifted. We look at what OFR means in the context of supervision with reference to, for example, The Law Society’s guidance and other guidance and frameworks.

We also consider further related guidance, including Lexcel and various specialist quality marks, and explore how these can assist firms in their compliance obligations.

Chapter 4 examines the critical role of the supervisor, their nature, and their responsibilities. Law firms must have an
effective supervision procedure, which includes provision for appointing an appropriate supervisor. Critical questions include: who can supervise? and what must be done to satisfy the regulations? We consider the change in the legal landscape and tightening of regulation affecting what supervisors must do in light of the SRA’s requirements, the Maitry case, and associated rules and guidance. This chapter also considers the supervisor’s role within the firm, and their relationship with the supervised fee earner concerned.

Today, technology impacts on every area of legal practice – Chapter 5 looks at this key topic. Legal process outsourcing, for instance, is big business – commonly utilising paralegals and other non-qualified staff to undertake routine legal work. Globalisation and technological advances mean standard legal work can be streamlined and outsourced instead of being manually performed by highly qualified lawyers. This raises the question of supervision and who supervises junior staff undertaking outsourced work. This chapter considers the risks and how best to manage these. In addition, we consider issues including cyber security and data protection, areas that are critical to firms. For instance, fee earners using personal devices for work raises supervision implications in addition to those related to the use of technology in the workplace.

With firms increasingly employing non-lawyers to undertake fee-earning work, Chapter 6 looks at the particular supervision-related risks inherent in employing unqualified staff – with a useful reminder to firms of what constitutes ‘reserved legal activities’ in the particular context of supervision. For instance, this chapter considers privilege and how this relates to non-lawyers and supervisors.

Chapter 7 considers the implications of ineffective supervision. Lack of supervision can lead to potentially serious consequences for all parties involved: the fee-earner concerned, the supervisor, the client, and the firm itself. It can lead to regulatory sanctions and disciplinary action, negligence claims, and serious reputational damage to the firm and to individuals. We look at the potential sanctions that might be imposed, and revisit cases outlined earlier to illustrate the disciplinary action that might result from a lack of supervision.

By contrast, Chapter 8 sets out the real benefits to a firm of effective supervision, and what firms can do to implement effective risk management, practices, and procedures for good supervision in-house – with the addendum that one size does not necessarily fit all. We look at the need for training and implementing effective procedures in the context of supervision, who needs training and why, and demonstrate that this is a vital cog in the overall risk management strategy of a law firm.

Finally, Chapter 9 looks to the future. Further regulatory changes are likely to impact on the issue of supervision of fee earners. Firms should also be aware of advances in technology and anticipated changes in the legal profession – including imminent changes to CPD and training requirements, and SRA proposals to ease the burden of compliance.