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Big hitters finally face wrath of fines from watchdog

A change of approach from the Solicitors Regulation Authority has changed the view that it won't chase commercial firms

City firms have been fined almost £1 million for rule breaches
TOMAS SEREDA/GETTY IMAGES

Four City of London law firms have racked up the best part of £1 million in fines in the past year for breaching professional rules in an unprecedented blitz of regulatory action that has some commentators suggesting there is a new sheriff in town.

Regulation experts also predict that there will be more to come as the profession's watchdog sheds a reluctance to pursue the large commercial law firms.

The four firms in the 2017 rogues' gallery are not small niche players known only to a few. Clifford Chance, the most recent guilty party, and one of its partners were penalised last week with a combined fine of £100,000.

Prior to that two the City offices of two US firms were also hit. Locke Lord was clobbered with a £500,000 fine, the biggest to be doled out by the Solicitors Disciplinary Tribunal, while White & Case took a hit for £250,000.

Earlier in the year Clyde & Co, an established English international firm, and several of its partners went down to the tune of £80,000.
Lying behind this sudden flurry of harsh medicine is a year-old change of approach from the profession's watchdog, the Solicitors Regulation Authority (SRA).

In September last year the authority issued a practice direction that launched a policy of "agreed outcomes" with firms that put their hands up to rule breaches.

Some suggest the process is moving towards the model increasingly used in regulatory financial services business. It involves firms that have breached professional rules discussing the issues with the regulator and reaching an agreement, which is then put to the tribunal for signing off.

As Iain Miller, a professional regulation partner at London law firm Kinglsey Napley explains, the SRA's fining powers are limited and low — the authority is only able to impose a maximum fine of £2,000 — "which is not going to cut much ice with firms like Clifford Chance," says Miller.

In the past the regulator would have to issue proceedings in the tribunal to achieve higher fines, which can be a risky and expensive strategy if it loses at a full hearing.

John Gould, a partner at Russell-Cooke, says that historically the perception in the City was that "the SRA avoided action against large well-resourced firms".

According to Gould, two factors have changed that view: the introduction of entity regulation — under which the authority take a closer interest in law firms as businesses rather than in individual lawyers — and the advent of the law firm compliance officers with self-reporting obligations.

"Historically, actions would be against individuals who were often ex-partners by the time of any hearing," Gould says. "More general investigations into large firms would have rarely seemed like a good use of resources. Now the entity is answerable for the misconduct of individuals."

Gould's analysis is that the recent spate of high fines is a coincidence, "but the likely trend is that there will be more".

Frank Maher, another specialist regulation lawyer and a partner at the Liverpool firm Legal Risk, concurs that there is a new atmosphere of self-reporting among City legal practices. "One particular area where we are seeing problems in large firms is accounts rule breaches, and particularly the misuse of client account as a banking facility," he says.

The lawyer predicts that increased pressure on that front could come as the issue has been flagged up in the Treasury's national risk assessment of money laundering and terrorist financing for 2017.

All four of the recent miscreant firms and their partners will be grateful that their practices had not converted to alternative business structures (ABS) under provisions in the Legal Services Act 2007, because doing so leaves those entities open to significantly higher potential fines from the regulator.

While the SRA's ability to fine without going to the tribunal is limited to £2,000 for traditional law firm partnerships, its scope with ABSs is massive: the cap on fines for individuals is £50 million while for businesses as a whole it is £250 million.

At present there are four significant UK ABSs quoted on the stock exchanges in London and Sydney. And commentators speculate that the ability of the regulator to impose multimillion-pound fines without reference to the tribunal could be dissuading some larger practices from adopting that structure.

About six years ago the SRA applied to the Ministry of Justice (MoJ) for an increase to the cap on fines it can impose directly on conventional law firm partnerships. The regulator wanted to move up to at least £10,000, pointing out to ministers that costs at the tribunal meant that the lower cap was outdated.

However, the MoJ rejected the request and there is no indication that the SRA is gearing up to reignite the issue.

Broadly, commentators anticipate that more large fines will come through the agreed outcome route at the SDT.

"The SRA is increasingly interested in looking at whether there has been a failure in processes at larger law firms," says Miller. "That is the whole point of the principle of entity regulation."

He predicts that larger firms "will have to become a lot more alive to how to deal with the SRA. They used to think that the regulator would just harrumph and then go away. But now the regulator has a mechanism for dealing with larger firms and City firms will need to have a conversation with them."

Co-operation is key, argues Miller. "If a law firm suspects something has gone wrong, then conducting an internal investigation and taking the results to the SRA is going to be a big help. Doing so can go a long way towards convincing the regulator that the firm has made the appropriate changes to its systems."