

Supervisors must live up to their title and accept responsibility

Even if you are honest, a dishonest partner or employee could sink your career and ruin your practice, says **John Gould**

Every solicitor knows they must have effective systems and controls in place to comply with regulatory rules and to supervise client matters. However, the consequences of supervision failure may be much more serious than an unhappy client or even a negligence claim.

Take the case of Ms M, the managing partner of a two-partner firm, where Mr B was senior partner. They employed Ms A, who was an unqualified, but very experienced, conveyancing executive. Ms M was scrupulous about financial and compliance matters. She was very much the junior partner having qualified two years ago.

Ms A acted for mortgagees without disclosing that part of the advance was being used to pay costs in breach of the mortgage conditions. Ms M faced allegations of misconduct based on a failure to supervise Ms A. The case against Mr B did not proceed on the basis that there was insufficient evidence of culpability.

Ms M did not see herself as a day-to-day supervisor of conveyancing work and admitted to limited relevant legal knowledge. Given Ms A's experience and trustworthiness, she considered the supervision she provided was appropriate.

The Solicitors Disciplinary Tribunal decided that it was for

Ms M to satisfy herself that she had sufficient legal knowledge and experience to be able to identify problems with conveyancing work carried out by Ms A. It counted against Ms M that she was described as 'managing partner', had been named as overall supervisor in client care letters, and had signed the formal certificates to obtain the advances.

The tribunal declined to make an order against Ms A under section 43 of the Solicitors Act, which would have prevented future employment by solicitors, because she was not considered a sufficient risk. The purpose of section 43 was not punishment and she therefore went unpunished.

Ms M was fined £2,000 and ordered to pay costs of £10,000. The collateral damage was substantial. She was represented by leading counsel at the tribunal and had to pay the costs of an unsuccessful appeal including a further adverse costs order of £19,000.

In addition, the inability to obtain the CQS conveyancing mark resulted in the removal from various lender panels and the closure of the firm's second office. Professional indemnity insurance premiums tripled.

Experience counts

It is a lesson for inexperienced solicitors. If you agree to be a manager or supervisor, you need to be sure that you can and will

discharge the role. Nominal supervision should not be an option. Accepting more general responsibilities for management may result in a person being answerable for the firm's compliance in general.

Breaches of the accounts rules are matters of strict liability. Where a firm is in breach, a principal will also be in breach simply by being a principal. More important for the individual is whether that breach shows misconduct on their part too.

Where serious breaches occur, there is a strong inference that there has been a lack of supervision. This means, for example, that the actions of a dishonest employee could lead to allegations of misconduct against clearly honest principals for failing to supervise.

This might include not only straightforward theft by an employee but also, as in one case, the dishonest clearing of client account balances by raising improper fee invoices. This matters because breaching the rules in the absence of any culpability is not misconduct.

The risk isn't confined to dishonest employees because a dishonest partner may also create problems for those responsible for overall supervision or management.

Although it is nearly inevitable that a dishonest partner will be struck off, the circumstances may also



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produce the same result for an honest partner.

In a small firm, responsibility may not require such a partner to be formally designated as responsible for supervision.

If a large sum is taken from a client account, systems are wholly inadequate or behaviours can be characterised as reckless, it may well lead to being struck off. **SJ**



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