

A storm of disclosure

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By **Kerry Underwood**

The Solicitors' Code of Conduct 2007 makes for grim reading for many practices, warns Kerry Underwood

The Compensation Act 2006 came into force on 23 April 2007, but it is the Solicitors' Code of Conduct 2007, and the stated intention of the Solicitors' Regulation Authority (SRA) to enforce rigorously the referral rules, that are of more significance to solicitors.

The Act is introduced by a bewildering torrent of Regulations and Orders of extraordinary complexity, but the vast majority of those selling or referring work to solicitors are exempt, including lawyers themselves, insurance companies, trades unions, student unions, charities, not for profit agencies, the Motor Insurers' Bureau, the Medical Protection Society, medical defence unions, insurance brokers, independent financial advisers and those supplying fewer than 25 cases a quarter (the last three categories being subject to some exceptions).

Around 1,200 claims management companies applied for licences but, at a conservative estimate, a further 5,000 are exempt. Certain types of work, notably conveyancing, are also exempt under the Act.

However the Solicitors' Code of Conduct 2007, effective from 1st July 2007, applies to solicitors' firms dealing with any referrer, exempt or not, and to any work, whether covered by the Act or not, and thus solicitors paying for conveyancing or remortgage work are subject to the Code.

The Code replaces the Solicitors' Practice Rules following the abolition of the Law Society's regulatory function and is mandatory and breach of its provisions exposes solicitors to the full gamut of disciplinary measures, including striking-off. The relevant part is Rule 9 – Referrals of Business.

It does not apply to referrals between lawyers, which have always been allowed.

The key element is that the solicitor must ensure that the introducer complies with the code of conduct. The solicitor and referrer must enter into a written agreement, available for inspection by the SRA, and as part of that agreement the introducer must undertake to comply with the provisions of this rule (Rule 9.02).

Rule 9.02 specifically states that the solicitor must be satisfied that clients referred by the introducer have not been acquired as a result of marketing or publicity or other activities, which if done by a solicitor, would be in breach of any part of the Code. The most obvious point is that no work must ever be obtained by "cold calling". It is essential that the solicitor knows how each and every client has been obtained by the introducer. This applies to work obtained from estate agents, brokers, mortgage companies, legal expenses insurers, trades unions, the RAC, AA, etc. as well as those organisations more often thought of as claims management companies.

The agreement must ensure that the introducer, before making the referral, tells the client how much they are receiving from the solicitor for the referral. Thus if the AA or an insurance company is selling the case to a panel solicitor it must state, each time to each client, how much that body is receiving for that case. How the public will react to being told that the solicitor, apparently nominated for its expertise, is paying £700 or more to the nominator remains to be seen. It is hard to see how the reputation of these organisations or these solicitors, or indeed the legal profession as a whole, will survive such disclosures intact.

The solicitor must do likewise before accepting instructions and the solicitor's disclosure to the potential client, unlike the referrer's, must be in writing (Rule 9.02(g)).

A solicitor must not become so reliant on any introducer as a source of work that this affects the advice given to a client. Historically, 20 per cent has been regarded by the Solicitors' Practice Rules as the maximum "safe" amount of work from any one source, although this figure is not enshrined in the new Code of Conduct.

In the SRA's Guidance re Rule 9 it is recommended that each firm conducts regular reviews monitoring the independence of advice given to each client in each case and the amount and proportion of the firm's income arising as a result of each referral arrangement. Under the Solicitors' Information and Referral Code 1990, to be replaced by Rule 9 of the Code of Conduct, "regular" means at least every six months. The new code is not specific, but solicitors would be wise to conduct such a review, with everything fully documented, at least once every six months.

In February 2007, the SRA issued a warning card, sent to every firm in the country, stating: "The Solicitors' Regulation Authority is cracking down on solicitors whose referral arrangements compromise their clients' interests, and who undermine public confidence in solicitors."

It lists eight questions that solicitors must ask themselves, including:

"Do I know how the introducer obtained the client?"

"Am I able to advise the client independently without fear of offending the introducer and at the risk of losing a valuable stream of work?"

"Is the agreement between the introducer and the client fair and in the client's best interests, and if it isn't am I able to advise my client accordingly?"

The last question is particularly interesting – can a solicitor on a restricted legal expenses insurance panel ever truthfully answer "Yes" to this?

As the warning card makes crystal clear, if the answer to any of the eight questions is "No", then the solicitor is liable to disciplinary action and must change or terminate the agreement with the introducer.

The storm, a long time coming, is about to break.

You have been warned – literally.