

Innocent partners could see their careers blighted under the strict liability enforcement of outcomes-focused regulation, worries **Susanna Heley**



# No more aggressive prosecutions

I have, on occasion, wondered what it is about being a partner in a law firm which makes it such a desirable achievement. On the one hand, there is a certain amount of prestige and recognition in reaching the perceived heights of partnership; on the other, you are accepting responsibility for all sorts of unpleasant possibilities. While civil remedies can, for the most part, be managed quite adequately with a properly drafted partnership agreement, what of regulatory responsibilities?

Law firms can only work efficiently if the staff and partners can trust each other to carry out their roles properly and in accordance with the rules. The rules however do require partners to supervise each other and ensure that there are no breaches of the Accounts Rules (the position with respect to other breaches is more ambiguous). Just consider the High Court case of *Bass & Another v SRA* [2012] EWHC 2012 (Admin). A two partner firm took on an additional partner. Part of her role was to close files which had belonged to her predecessor. All seemed to be going well for a few months until the original partners realised that bills were being improperly raised to clear off old client balances. The new partner was dismissed and the matter reported to the SRA. The whole affair lasted just short of five months.

The SRA prosecuted all three partners and, of course, the original two were obliged to admit the breaches of the Accounts Rules on the basis of strict liability. Allegations of a failure to supervise contrary to the Code of Conduct then in force were accepted by the tribunal but overturned on appeal. Nevertheless, the end result of the case was that all three partners were fined the sum of £5,000. Giving his judgment, Bean J said: "There is no dispute that in most cases the need to maintain public confidence in the profession means that breaches of the

Accounts Rules must result in at least a financial penalty."

He then went on to distinguish an earlier case in which "innocent" partners had had their first instance fines overturned and replaced with a reprimand. The net effect of this case is that "innocent" partners, those not directly involved in any breaches of the rules, should according to the High Court expect to be fined unless there is some indication that the breaches were particularly difficult to discover.

## "'Innocent' partners should expect to be fined unless there is some indication that the breaches were particularly difficult to discover"

In some ways, this case is a worrying development, particularly in view of its timing. Despite the advent of outcomes-focused regulation (OFR), the approach to enforcing the rules remains based on strict liability. In addition, the SRA has the power to issue fines up to £2,000 against solicitors employed in traditional firms. COFAs will be obliged to report all breaches of the rules to the SRA either immediately (in the case of material breaches) or in their annual report. It remains to be seen whether the SRA will seek to fine all partners in all firms where breaches have occurred. I do live in hope of a proportionate and measured approach to enforcement and prosecution but it may be that I am destined to be disappointed.

The issue of strict liability and the prosecution of rule breaches as a matter of conduct is an issue which has been raised increasingly both in the tribunal and in the press. Under the auspices of the SRA, we have moved away from the old concept of "conduct unbecoming a solicitor" to a more technical approach.

In some ways this may make the penalties to be levied against members of

the profession less potent. They are not so much a mark of disapproval of actions taken or omitted by solicitors but rather an administrative exercise more akin to say parking or speeding fines: those technical automatic breaches of rules which everyone may fall foul of on occasion and which the public becomes inured to because they are so common and understandable that they lose their impact. OFR is supposed to redress the balance and help us get back to a situation where aggressive prosecutions

are not the immediate response to any issue but rather one of the SRA's enforcement tools, selectively and proportionately used in response to transgressions which are blameworthy. This may be more an expression of hope than what we will see in practice.

Sadly, those wanting to be approved as authorised role holders or members of the Conveyancing Quality Scheme (CQS) may find their careers blighted by disciplinary findings in circumstances where no finger of blame could possibly be pointed at them. In a world where insurers and lenders are also concerned about past findings, it may be that a blameless solicitor becomes unemployable as a consequence of his partners' transgressions. For the sake of the profession, let us hope that matters do not get that far.



Susanna Heley is a solicitor at RadcliffesLeBrasseur ([www.rlb-law.com](http://www.rlb-law.com))