



# Under the microscope

*For the busy manager of a law firm, few things cause more upset than the unwelcome news that the Forensic Investigation Unit is planning to visit. So what should you expect if it happens to you? Richard Lane explains*



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**L**et's be clear about one thing. The Forensic Investigation Unit (FIU), part of the Solicitors Regulation Authority (SRA), does not carry out any routine or random monitoring visits to firms. If an investigation has been authorised, it is because the SRA has information which indicates that there is a potential problem at a firm, and the SRA's Supervision Unit has taken the decision to commission the FIU to carry out an onsite investigation at the firm's premises. Typically, the following factors may be relevant in the decision to authorise a visit by the FIU:

- disclosure by the firm's compliance officer for finance and administration (COFA) that a material breach of the SRA Accounts Rules 2011 has occurred;
- issues identified during a supervisory visit that are considered more serious and warrant consideration by the FIU;
- information or a complaint received from either a client or a member of the public about the firm or an individual within the firm;
- concerns raised about the conduct of an individual or a firm by another member of the profession, perhaps via the SRA's Red Alert Line;
- intelligence information gathered by the SRA from other organisations such as the police, HM Revenue and Customs, banks, building societies or other regulators;
- failure to deliver an accountant's report to the SRA, when due;
- the receipt of a qualified accountant's report revealing serious breaches of the SRA Accounts Rules 2011; or
- a firm's reporting accountant exercising their 'whistle-blowing' powers to disclose concerns or problems to the SRA.

The latest statistics published by the SRA show that in the year to June 2013, a total of 435 investigations by the FIU were authorised.

Since April 2009, it has been the policy of the SRA to disclose, wherever possible, a brief explanation of the reasons behind the decision to authorise an inspection. However, details will not normally be disclosed where the SRA, at its absolute discretion, considers that there is a risk that disclosure could:

- breach any duty of confidentiality;
- disclose or risk disclosure of a confidential source of information;
- significantly increase the risk that those under investigation may destroy evidence, seek to influence witnesses, default, or abscond; or
- otherwise prejudice or frustrate an investigation or other regulatory action.

## HOW A VISIT WORKS

For practices carried out from an office within England or Wales, the SRA's primary powers of inspection are contained within rule 31 of the SRA Accounts Rules 2011. Where an inspection has been authorised, you must, at the time and place fixed by the SRA, produce any records, papers, client and trust matter files, financial accounts and other documents, and any other information necessary to enable

preparation of a report on compliance with the rules.

The request by the SRA for a firm to produce the documentation required under rule 31 must be given in writing. Such notification can be sent by post, document exchange, fax or e-mail. Alternatively, the notification letter can be delivered in person by the SRA's representative.

Normally, where an inspection is authorised, the notification letter will be sent by recorded delivery to the most recent address held by the SRA's Information Directorate, just seven working days prior to the inspection date. Where there are reasonable grounds to believe that evidence may be destroyed or clients' money put at risk if notice were given in the normal way, the SRA may authorise a visit to be undertaken on a 'walk-in' basis. Where this is the case, an SRA representative – normally the person(s) who will carry out the investigation – will deliver the notification letter by hand, with a view to commencing their investigation immediately.

The short notice period, even for a 'normal' investigation with seven days' notice is, of course, a deliberate strategy on the part of the SRA; the FIU wishes to see the 'real' situation at the firm, not what is achievable after several weeks of tidying and housekeeping! However, the short timescale can be very challenging for firms, allowing little time to prepare for the visit, or even clear the diary of other appointments. Upon receiving notification, firms therefore often contact the SRA seeking to postpone the start date of the inspection. While the approach adopted by the SRA to such requests is not completely inflexible, only on rare occasions would it agree to postpone an inspection visit for any period of time. It will normally seek to get a foot in the door and start the inspection as planned, but it may be open to the suggestion of a short delay once it has established that clients' money is not in jeopardy.

While the SRA will request that various documentation and information is produced

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to the investigator at the commencement of the inspection visit, the basic requirement is that the firm's accounting records, including a recent client bank account reconciliation statement, together with supporting documentation, such as bank statements, are available for inspection. Generally, for a well-run practice, relatively little preparation is required in advance of a visit.

### WHAT TO EXPECT

There is no set format for an inspection by the FIU. The visit may be undertaken by a sole investigator, or by a small team of two or three people. An investigation may last just a few days, but could be as long as weeks or months where the issues under consideration are more complex.

In recent years, the SRA has introduced new processes that are designed to ensure that ongoing investigations are not left open any longer than necessary. All open investigations are reviewed after three months, and managerial approval is required to extend an investigation beyond those three months; if approved, the investigation will be reviewed again after four or five months have elapsed. Where an ongoing investigation has been in progress for six months, the approval of a senior manager within the SRA is required to extend it further. Such a decision would be subject to review after three further months have elapsed. It can be unsettling and highly inconvenient where an inspection becomes prolonged in this way.

Most inspections would normally start with a meeting between the investigator(s) and one or more partners or other relevant staff within the firm, such as the compliance officer for legal practice (COLP) and/or COFA. This initial meeting allows the investigator(s) the opportunity to ask questions in order to confirm both the basic data the SRA holds about the firm – such as the details of the partners and the number of branch offices – and basic information about the firm's accounting systems and procedures. This meeting also gives the investigator the chance to get a clearer understanding of the firm's governance structure, the areas of law that it practises and the extent and effectiveness of any internal controls in place. The SRA's investigator(s) will use the information gathered at this meeting to identify any high-risk areas of work with which the firm might be involved that will, probably, be given special consideration during the course of the investigation.

While the investigator(s) may have specific issues they wish to review during an investigation, it would be very unusual to restrict the scope of the inspection without

first considering the firm's general level of regulatory compliance. Normally, this will involve a detailed review of the accounting records and the most recent client bank account reconciliation statement and the associated list of client matter balances. The investigation will usually also involve a wider examination of other accounting information, such as the individual client ledger accounts and billing records.

Almost inevitably, a detailed examination of a selection of client matter files, in conjunction with the relevant client ledger accounts, will follow. While the direction of an investigation is often driven by accounting considerations, the scope of the investigation will reach far beyond SRA Accounts Rules compliance issues, to take in more general concerns about the conduct of matters in accordance with the SRA Handbook, as well as other considerations such as compliance with the Money Laundering Regulations 2007.

The investigator(s) will know from their own experience that it is impossible to predict how an investigation will progress or whether or not serious breaches, fraud, dishonesty or other misconduct will be revealed as a result of the process. The SRA employees who visit your firm should be professional and polite in their approach – but do not expect them to be friendly. In many respects, their task is a simple one – to investigate and gather any necessary evidence to prove potential wrongdoing on the part of the manager or employees within a practice.

### WHAT HAPPENS AFTERWARDS

At the conclusion of the investigation, a factual report will be prepared and sent to the Supervision Unit. This report will detail breaches or other concerns arising from the inspection process, and can include both documentary evidence and explanations provided by relevant persons during the course of the investigation. It can also include oral evidence obtained at a formal closing meeting that is sometimes recorded. Where the issues are sufficiently minor, the Supervision Unit will engage with the firm to ensure that the necessary corrective action is taken, including changes to systems and controls to prevent similar breaches arising in the future. Where the issues are more serious, a desk-based casework investigation will follow, requiring the solicitor(s) or other individual(s) to provide further explanations before a final decision about the appropriate course of action is made. The range of sanctions available to the SRA is very wide and includes findings, warnings, rebukes, fines, and the imposition of practising certificate conditions or referral to the Solicitors Disciplinary Tribunal.

### Top five survival tips

1. Be open and honest with the SRA's representative at all times.
2. Don't tell the SRA what you think it wants to hear – tell them the truth. If you don't know the answer to a question, say so.
3. Minimise the risk of surprise questions being sprung on you by asking the SRA to outline areas of concern and particular client matters that it may wish to discuss with you in advance of any closing meeting or interview.
4. Consider whether your interests are best served by insisting on answering any questions raised by the SRA in writing, rather than orally.
5. If you become aware of serious compliance issues before or during the course of an investigation, seek professional advice on your position and how best to proceed.

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