

In-house Ethics in Practice

TRACEY CALVERT



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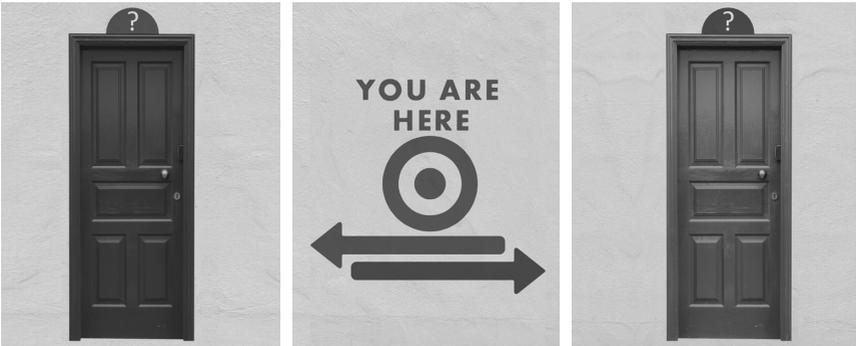
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Executive summary

WE ARE living in interesting legal times. It is no longer the case that the traditional default career choice for solicitors is private practice and working exclusively with other solicitors. In many ways, this is a less attractive option than previously with oversight into such businesses increasing, competition getting fierce, and clients becoming more fickle. More practitioners than ever are considering the alternatives to this style of practice.

We are not simply talking about the alternative styles of private practice which the 'new kids on the block' (the alternative business structures) can offer to solicitors. Increasingly, working in-house as an employed solicitor is regarded as the career path of choice. It enables the solicitor to ply their trade in a different environment and to provide services to their employer and business which support a common goal, whether this is in terms of commercial benefit, charitable purpose, or public service. Being an integral part of such organisations can be very rewarding and enable the solicitor to have many more opportunities and experiences than their private practice cousins are offered.

However, these opportunities need to be reconciled with the responsibilities which come with being a regulated person employed in an organisation alongside many different types of colleague. First and foremost, being a regulated individual means that the solicitor must never forget, or put to one side, their ethical duties. In some organisations, the solicitor may have been hired to add ethical gravitas to the business and to be the 'ethical heartbeat' from which a particular culture with compliance values originates. In other circumstances, the solicitor may be employed to provide legal services, but without the business having an understanding of what distinguishes the individual from other employees.

The bottom line is that any compromise in displaying ethical values will have consequences for the solicitor concerned. They must be prepared to challenge improper requests and also be able to demonstrate to their regulator that they are doing nothing which endangers their own reputation or the reputation of the profession. This means that having a good understanding of what the regulator expects to see is the only sensible starting point for a solicitor considering this type of career.

In this report, we will provide an overview of 21st-century regulation of the solicitors' profession in order to make the point that it is very different in style to 20th-century regulation. It has created an environment where in-house solicitors are being brought back into the fold so that they are now of similar interest to the regulator as private practitioners. This was not the case for a good many years, but an in-house solicitor today is running the risk of scrutiny if they do not acknowledge and address this change.

We will also look at the key regulatory issues which an in-house solicitor must consider. These will include such matters as whether they need a practising certificate, through to their relationship with the client base, common conduct dilemmas, and – it has to be said – common misunderstandings. Risk management and evidence of compliance are also discussed with suggestions for documentation and processes which will support an ethical environment.

Two points should be made at this juncture. Firstly, the report uses terminology such as in-house practice, business, and organisation. These are used to describe all types of in-house legal services and they are not simply directed at solicitors employed in commerce and industry. In fact, this entire sector of the profession is more diverse than the language would suggest. We know from recent research that there are some 25,600 in-house solicitors (more than twice the number registered in 2000) and that 60 per cent are employed in the private sector, 37 per cent in the public sector, and 3 per cent in legal advice centres and registered charities and other alternatives.¹ Regardless of type of employment, or employer's objectives, the regulatory and ethical issues discussed in the report are relevant and must be taken into account by all in-house solicitors.

Secondly, the in-house solicitor's regulatory concerns are not those of their colleagues or employer and this may create particular tensions which must be addressed. The regulatory reach does not extend beyond the regulated individual, but some of the expected values do imply a need for cooperation and understanding. In terms of solicitors working in legal teams, it is worth

bearing in mind this fact. Other qualified lawyers such as employed barristers and legal executives are likely to have similar ethical and regulatory duties because of their relationship with their own regulatory body. Non-qualified staff will not have such concerns. However, many of the duties placed on solicitors, particularly those in managerial or leadership roles, are facilitated by 'buy-in' and cooperation from all colleagues.

Reference

1. Oxera Consulting Limited, 'The Role of In-House Solicitors', published by the SRA, February 2014. See: www.sra.org.uk.

About the author

TRACEY CALVERT is a lawyer who has worked in the law since 1985. She initially worked in a niche shipping law practice in the City of London, specialising in non-contentious work, and was then employed by a local authority in Worcestershire before joining the Law Society in 1997.

Tracey was recruited as an ethics adviser in the Professional Ethics guidance team and became a senior ethics adviser in 2003. Her responsibilities in this role included the training and quality assurance of this highly popular and successful team, which provided confidential guidance to members of the profession on all aspects of conduct.

Tracey has also accepted secondments to the Law Society/SRA professional indemnity team and as a manager of the casework and operational policy team, dealing with admission, character, and suitability issues. In 2009, she took up her final role within the SRA, joining the policy team. She was a member of a very small team which drafted the SRA Handbook and her particular responsibilities were in respect of the new SRA Code of Conduct and the rules in the 'Specialist Services' section of the Handbook.

Tracey's particular interests are conduct, equality and diversity development, financial services, and anti-money laundering policy. During her time at the SRA she has drafted many rules, guidance, and articles, and has engaged in many stakeholder activities, both generally and in respect of the SRA Handbook.

Tracey is the director of Oakalls Consultancy Limited which provides regulatory compliance services to individuals and entities regulated by the SRA. She lectures on professional conduct, financial services, and anti-money laundering policies, and also provides compliance training and writes on compliance topics.

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