AI compliance for law firms: client and matter considerations

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A note discussing the client and matter-level compliance issues that SRA regulated law firms should consider when using artificial intelligence (AI) (including generative AI) and legal technology tools, both within their business and in the provision of legal services.

Scope of this note

Artificial intelligence (AI) allows computers to perform tasks that would normally involve human intelligence. Machine learning is a type of AI through which computers identify and learn from patterns within data (for example, to answer questions posed by the user), as opposed to being programmed to produce a particular output (see *Practice note, AI jargon buster*). AI can be viewed in two categories:

- Legacy AI includes basic entity extraction and classification, such as detecting certain clauses within a contract.

- New AI includes new, transformer-based large language models that can carry out more complex cognitive tasks, such as (for example) assessing the language the customer uses in emails to predict the likelihood of that customer terminating an agreement.

The development of new AI effectively moves the technology closer to a position where it can understand concepts and draw inferences in a more human-like manner.

Reflecting a greater willingness among clients and consumers to engage with AI systems and legal technology tools, many law firms are increasingly looking to harness the benefits of such technology, both in managing their businesses and in providing legal services.

However, use of these tools creates risk and law firm risk and compliance professionals must ensure that their firm's deployment of AI (particularly new AI) is safe for their business and clients and is in line with relevant legal and regulatory obligations.

This note examines the client and matter-level regulatory and compliance issues that firms should consider when using AI and legal technology in the provision of services. It focuses on issues that would be of concern to the firm's risk and compliance professionals and does not cover wider legal considerations arising out of the use or development of AI tools (for example, employment law or product development issues).

The note is aimed at SRA regulated law firms practising in England and Wales but will also be of interest to other legal services businesses.

The Legal Services Board (LSB) has issued guidance to regulators on how they should ensure that their regulatory approach to AI use in their regulated communities encourages innovation and aims to widen consumer access to justice (*LSB: Guidance on promoting technology and innovation to improve access to legal services*. The SRA's approach may therefore develop over time. We will update this resource when further information becomes available.

For information about the overarching regulatory duties, and firm-level issues, that law firms should consider in relation to their use of AI and legal technology, see Practice notes:

- *AI compliance for law firms: key considerations*.

- *AI compliance for law firms: firm-level considerations*.

Client care

When using any technology system in connection with client matters, the best interests of the client must be a primary consideration. If a particular AI or legal technology system can benefit the client and save time and money, it may seem obvious that the firm should use that system. Where the firm has developed a system that has been fine-tuned to undertake a particular type of work, it may even be considered remiss of the firm not to suggest the use of such system in connection with a client's matter.

However, in every case the firm should be mindful of its regulatory obligations, and the potential risks and benefits, and consider whether AI use is appropriate for the particular client and matter involved.

Regulatory requirements

The SRA rules on client care are set out in the *SRA Code of Conduct for Firms* and the *SRA Code of Conduct for Individuals*.

Key obligations include:

- Providing services in a competent and timely manner (*rule 3.2, SRA Code of Conduct for Individuals and rule 4.2, SRA Code of Conduct for Firms*).

- Considering and taking account of their client's particular attributes, needs and circumstances (*rule 3.4, SRA Code of Conduct for Individuals and rule 4.2, SRA Code of Conduct for Firms*).

- Giving clients information in a way they can understand and ensuring they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them (*rule 8.6, SRA Code of Conduct for Individuals*).

These rules require the firm not only to think about the most efficient and effective way to undertake work for clients, which may include the use of legal technology or AI, but to also propose a course of action that takes into account, and is appropriate to, the client's particular needs and appetite for risk.

This is in line with the LSB's guidance to regulators on how they should approach AI use within their regulated communities. (*LSB: Guidance on promoting technology and innovation to improve access to legal services*).

This has a strong consumer focus and, in particular, suggests regulators consider how best to ensure:

- Consumers are informed about the benefits of technology in legal services, costs, quality and routes of redress.

- Their regulated communities are transparent with clients about how technology may be used in their matter.

The SRA may develop their approach further in future, following the LSB guidance.

Informing the client

The SRA makes clear that firms are expected to tell clients about how AI will be used in their case (see *SRA: Risk Outlook report: The use of artificial intelligence in the legal market (20 November 2023)*). The SRA states that how this is done is a matter for the firm and there is no explicit guidance on the level of information that should be given to clients. However, the firm should ensure that its approach can be fully understood by the particular client and equips them to make informed decisions about their matter, in line with rules 4.2 and 8.6 of the *SRA Code of Conduct for Individuals* (see *Regulatory requirements*).

It is best practice to have an open dialogue with the client at the outset of their matter or, for existing matters, when the potential for AI use in the matter first arises.

The firm may not always strictly need to obtain formal consent to the use of AI from the client (for example, where the use of a particular technology is an integral part of how the firm runs its business). However, where the firm proposes direct or novel use of AI in the client's particular matter, it should provide the client with detailed information to enable the client to take a view as to whether the potential benefits outweigh the identified risks.

Points to cover include:

- What the proposed system is, how it operates, how it arrives at its conclusions and the extent to which humans are involved in checking the output generated.

- How the AI could be used in their matter and its potential benefit to the client.

- How the usage would be managed and work in practice.

- The risks involved in the usage, including, for example, an explanation of any risks inherent in data being hosted in a third-party system or issues around the reliability of the technology.

- What safeguards will be in place to mitigate the risks, and what the client's recourse would be should anything go wrong.

The firm should adapt its explanation according to the needs of the client. For example, more sophisticated clients or those with experience of AI may require less granular detail. What is important is that the firm must be confident that the client understands the proposed use and has made an informed decision to accept any limitations or risks.

Recording the client discussion

The firm should keep a file record of this exchange with the client in case of any future query. One approach might be to build this into the onboarding process and client and matter risk assessment.

The firm may wish to use the client's letter of engagement to record and confirm the content of any discussion and agreement with the client around the use of AI in the matter, setting out the scope and limitations of how the technology will be used, and highlighting the risks. It is best practice to obtain a signed copy of the engagement letter from the client in any event, but this will also help to evidence the client's agreement to how AI will be used in their matter and their acknowledgement of the risks.

In some cases, the firm may conclude that it is not in the best interests of the client to use AI or legal technology on their matter, even if the client has suggested it. In these cases, the firm should be prepared to explain to the client why it considers that using the technology would not be appropriate for the matter, particularly if this may result in higher costs for the client.

Legal panel and external counsel terms

Some clients may have specific terms for instructing panel firms or external counsel which restrict the firm from inputting the client's data into any generative AI tool without the client's express consent.

When agreeing the parameters of any such restrictions the firm may wish to discuss the issue with the client, explaining any controls the firm may have established to safeguard the security of client data (for example, where data is held on an enterprise, as opposed to a consumer, platform).

Limiting liability

The firm should consider whether it will need to make any adjustments to the firm's standard engagement letter and terms of business in the light of the firm's use of AI in relation to client work.

Some firms include details of their in-house or preferred third-party technology in their standard client terms of business, alongside information about any extent to which they seek to limit their liability in relation to the use of the technology.

The firm should consider the Law Society's warning that practitioners cannot contract out of their regulatory or ethical responsibilities under the *SRA Standards and Regulations*, and that there may be other restrictions on a firm's ability to limit its liabilities (see *The Law Society: Using lawtech in your practice (20 May 2020)*).

For template engagement documentation, including information about limiting liability, see Standard documents:

- *Law firm standard engagement letter: paragraph 12*.

- *Law firm standard terms of business: paragraph 9*.

Costs and charging models

In considering its approach to client costs and charging models in AI enabled matters, the firm should consider its obligations:

- To act in the client's best interests under Principle 7 of the *SRA Principles*.

- Not to abuse its position by taking unfair advantage of clients or others under rule 1.2 of the *SRA Code of Conduct for Individuals*.

In line with these rules, and to reduce the risk of any client complaints or challenges to the firm's costs, the firm should ensure that all costs charged to clients are reasonable and justifiable. Therefore, if the firm has made a significant costs saving through its use of AI or legal technology, the firm should consider the extent to which it should pass on these costs savings to the client.

Practitioners must provide clients with the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as the matter progresses, about the likely overall cost of the matter and any costs incurred (*rule 8.7, SRA Code of Conduct for Individuals*). This is a requirement for all client matters, but where AI is used on a client matter the firm should take particular care to inform the client of any impact the AI use may have on their costs.

The firm should provide details of any charges or costs benefits in the use of AI, together with information about the effect on costs of a decision not to use AI, so that the client can make an informed decision about how their matter is to proceed and whether they wish AI to be used. In many cases, legal technology will help to lower the cost of undertaking certain types of legal work and enable matters to be progressed more rapidly. However, it is important to manage the client's expectations of the perceived gains and cost savings. Factors to consider include:

•   The firm should provide details of any specific charges, or different charging schemes that may apply. For example, there may be an additional set-up charge for use of an AI e-discovery system, or use of that system may be charged to the client by volume of data processed rather than by human time spent, as the client has previously experienced.

•   Answers to questions can be generated quickly by generative AI. However, a human lawyer will still need to spend time verifying any results. Additionally, even where the generative AI is itself asked to explain how it arrived at a conclusion, for example, by being asked to give references for any information it has generated (which can be helpful from a client care perspective and in ensuring that outcomes are explainable), that may further add to overall cost, given that system use is often chargeable based on the number of "tokens" used in reading input and generating outputs.

Case outcome or settlement prediction

Matter acceptance

If the firm is considering using AI case outcome prediction tools to assist in deciding which new instructions to accept, the firm should consider potential access to justice issues. Nonetheless, it is open to the firm to decide which matters it wishes to act on, and outcome prediction tools may be helpful in gauging the prospects of success of a new matter as part of this decision-making process.

When using such tools, the firm should assess:

•   The limitations and risks of these tools, particularly in relation to the potential for bias and accuracy issues.

•   The benefit of a human review of any potential new instructions, to assess any nuances that an automated system might miss.

For further information about considering matter acceptance, see *Checklist, Matter inception*.

Advising clients

If the firm intends to use case outcome or settlement prediction tools in advising clients, for example on the merits or settlement strategy of any litigation, the firm should:

•   Ensure the outcome is supervised by a human with the required expertise to sense check the prediction made by the system.

•   Provide clear advice on, and ensure the client fully understands the limitations of, the tool (and any advice), so that they are not misled into overreliance on a system's findings.

- Continue to properly explore all potential avenues with the client in terms of how they may wish to proceed with a particular matter

Drafting, document generation and legal research

The principles discussed elsewhere in this note apply equally to drafting, document generation and legal research.

Key considerations include:

- Whether it is appropriate and in the client's best interests to use AI in their matter in the way proposed, bearing in mind the circumstances of the matter and the client's particular attributes and needs (see *Client care*).

- Whether the client understands the risks and benefits involved in using AI in the way proposed and whether they have given properly informed consent to this (see *Informing the client*).

- The extent to which the firm's policy permits client information to be inputted into a legal technology system or large language model as part of the prompt for the research or drafting task. Consider:

  - how this impacts the firm's data protection and client confidentiality duties (see *Practice note, AI compliance for law firms: key considerations: Data protection* and *Confidentiality and privilege*); and

  - whether it will be possible to generate the draft or request the research in such a way that no client information will need to be entered into the system.

- How will the firm ensure that research and drafting outputs are:

  - free from inaccuracies (given the potential for hallucinations) and biases; and

  - appropriate and suitable for the intended purpose in the client's matter.

(See *Practice note, AI compliance for law firms: key considerations: Service and competence*.)

Both a firmwide usage policy and technical controls should be in place to enforce the firm's governance rules, with appropriate disciplinary procedures invoked in the event of any breach. For further information, see Practice notes:

- *AI compliance for law firms: key considerations: Monitoring and controls*.

- *AI compliance for law firms: firm-level considerations: Policies, values and appropriate use*.

Chat bots and AI-generated legal advice

User client status

Where a firm intends to use a chat bot to interface with potential clients, or to generate very high-level basic legal information, the firm will need to consider the status of that information and whether the users who are the recipients of the chat bot output ought properly to be treated as clients.

At the point of use (for example, on the tool's start page), it should be made clear to potential users of the chat bot what their client status will, or will not, be.

Information for users

In addition to informing potential users of what their client status will be, it will also be necessary in most cases to notify users of the following:

- That the software is not supported by human input or oversight.

- That the software can only provide general information and is not providing legal advice.

- That users should contact the firm if they require legal advice tailored to their particular circumstances on which they can properly rely. This advice may differ from the chat bot output.

- How any information that they enter into the chatbot will be handled. In keeping with data protection obligations, records of user queries and the answers provided by the software should be kept for no longer than they are needed for any relevant purpose (see *Practice note, AI compliance for law firms: key considerations: Data protection*).

Testing and ongoing monitoring

Firms should always pilot and thoroughly test public facing systems before going live with them to ensure that the system does not produce unintended results. Reviewing test outcomes may indicate that the firm should implement further controls on the system. For example, the firm may need to place limits on the types of questions that the chat bot is permitted to answer.

Once the system goes live, the firm should monitor usage and run regular checks to assess the quality of the outputs generated, to consider whether any further system training or maintenance is needed.

Complaints, claims and insurance

If the firm receives a claim or complaint from a client which arises out of the firm's use of AI, subject to any client status issues (see *User client status*), this should generally be dealt with in accordance with the firm's usual client complaints procedure and (if necessary) notified to the firm's professional indemnity insurers or the SRA in the usual way. The firm should be adequately prepared to handle questions about AI use as part of its complaints procedure.

The firm should also review the terms of its insurance policies (including any cyber insurance policy) to ascertain whether additional requirements apply in relation to claims arising out of the firm's use of AI.

When notifying matters externally, it is best practice to be transparent with insurers, regulators or the Legal Ombudsman (as appropriate) about the involvement of the use of AI in the subject matter of the complaint.

For guidance on ascertaining how best to deal with an issue raised by a client, see *Practice note, Triaging professional negligence claims, complaints and conduct allegations*.

For further information about considering notifying a matter to the firm's insurers, see *Practice note, Triaging professional negligence claims, complaints and conduct allegations*.

Further reading

For further Practical Law resources on the use of AI and particular issues for law firms, see:

- *Legal technology and artificial intelligence toolkit*.

- *AI toolkit (UK)*.

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