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Why delegation and supervision should be on your firm's agenda

Supervision requirements are often seen as a drain on potential fee-earning within law firms, but it is a legal requirement that can deliver real value and advantages if done correctly, writes Merinda Timpany.

We know why we need to supervise our teams, but sometimes it is easier said than done. That challenge has become even more pronounced because of the recent requirement for many people to work remotely because of the COVID-19 lockdown.

The starting point to acknowledge is that supervision is required in legal practice. Early-stage lawyers must complete a period (usually two years) of supervised legal practise (s49(1) of the Legal Profession Uniform Law (NSW)). For senior lawyers, rule 37 of the Australian Solicitors' Conduct Rules 2015 states that a "solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter".

As well as being a regulatory requirement, it is widely recognised as good risk management to carefully supervise files. If you need further incentive to act, it is worth noting that good delegation and supervision is fundamental to staff development, satisfaction and retention.

Grey areas

Despite all the good reasons for delegating and supervising properly, there is very little guidance on what good delegation and supervision looks like in a law firm. The legislation does not define 'reasonable supervision' and the Law Society of NSW acknowledges that it will depend on the particular circumstances.

The Law Society website promotes the decision of *Legal Services Commissioner v Michael Vincent Baker* [2005] LPT 002. It notes that liability to the client, and the fiduciary duty to the client, remains with the principal regardless of delegation to a staff member, noting that a reasonable step is to have strong compliance management systems, guidelines and tools. However, it does not set out specific requirements for such systems.

This contrasts with other professional industries where supervision is tightly regulated; for example, for junior doctors in the medical sector, or professional apprentices. Nevertheless, there are some good resources available that can assist firms:

- The Queensland Law Society has several resources, including a Supervision Factsheet that can be downloaded [here](#).
- Professional Indemnity insurance providers have a vested interest in firms providing good supervision, and the Legal Practitioners' Liability Committee (LPLC) has produced a [checklist](#) and an [instruction sheet](#).
- Jeff Giddings and Michael McNamara have written an excellent article, *[Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got To Do With It?](#)* [2014] UNSWLawJl 44; (2014) 37(3) UNSW Law Journal 1226.

Heather Hibberd, Chief Risk Manager at the LPLC, describes the importance of supervision in terms of “training, maintaining and sustaining”. This concept applies not just to early-stage lawyers but across a career. Under this three-point mantra, the motivations for good supervision are as follows:

1. **Train** staff to improve their knowledge and skills (this is more relevant for junior staff).
2. **Maintain** quality and standards (everyone can make a mistake or have issues in their lives that mean they are not completely focused).
3. **Sustain** practices to ensure everyone is coping (this is particularly relevant for the legal profession given its high rate of mental health issues and high pressure).

A five-point strategy to follow

Given that supervision is so important, how can you do it well? I suggest following this delegation and supervision approach.

Plan (every day)

- What are you going to delegate?
- Who will you delegate to? Why are you delegating to them? Think about building capacity in a team by delegating when a matter is less time-sensitive; whereas if the matter is more urgent it is wise to choose someone who has done this before and who can finalise it quickly and correctly.

Communicate clearly

- What do you want produced? What should it look or feel like? This might include consideration of structure and tone. Ideally, produce examples of similar good work

- that has been done in the past, and it is even better if you have good and bad examples.
- When do you want it? What is the actual deadline, and what are the review points? How long should the task take?
- Why do you want it?
- How should it be done? Are there particular references you expect, or particular people to talk to?
- Check for understanding with the delegatee: 'Tell me what you think you need to do.'
- Tell them everything you know to allow them to do the job well. Contrary to older-school thinking, if you want good work it is not an opportunity to 'test' juniors.

Review regularly

- Set deadlines and stick to them. Don't ambush your team at the coffee machine with questions or chase-ups.
- Stick to times – and don't cancel planned reviews.

Provide feedback (most weeks) that is contemporaneous and matter based

- Plan before the meeting:
 - What was the nature of the product I wanted?
 - What were the specific differences between what I wanted and what I got?
 - Why did the differences occur?
- Be positive – it reinforces behaviour.
 - What was good?
 - Why was it good?
- Be constructive – what different pathways were available and why might they lead to better outcomes?
- Feedback is always:
 - Timely – as close to the event as possible.
 - Private – particularly for less positive feedback.
 - Face to face where possible.
 - Specific.
 - Constructive.
- Feedback should never be emotional. If necessary, postpone the meeting until you are calm.

Reflect

- Where was the relationship previously? Think about capability across technical and soft skills. What is the level of trust – you for them, but also them for you?
- Where is the relationship now?

- Where do you want the relationship to be?
- How will you get there? What are the opportunities? Which brings you back to **Plan...**

These considerations apply even more in a world where the workforce is working remotely. People will always complain about the amount of communication they receive within law firms – but for many reasons it is better to communicate too much than too little.

Merinda Timpany is Legal and Compliance Counsel at mycar and is the former Regional Risk Manager & Senior Legal Counsel, Australia & Middle East, for DLA Piper.

Plan every day.

- What to delegate.
- Who to delegate to. Why them - build capacity in team.

Reflect

- Where was the relationship previously?
- Where is it now?
- Where do you want it to be?

Communicate clearly

- What do you want produced? Look/feel.
- When do you want it? Actual deadline; Review Points; How long should it take?
- Why do you want it?
- How should it be done?
- Check for understanding: 'Tell me what you think you need to do'.
- Tell them everything you know to do the job well rather than 'testing' them.

Provide Feedback that is contemporaneous, matter based, and most weeks.

- Plan
 - What was the nature of the product I wanted?
 - What were the specific differences between what I wanted and what I got?
 - Why did the differences occur?
- Be positive – It reinforces behaviour.
 - What was good?
 - Why was it good?
- Be constructive – what different pathways were available and why might they lead to better outcomes?
- Feedback is always:
 - Timely
 - Private
 - Face to face where possible
 - Specific
 - Constructive
- Feedback is never emotional. If necessary, postpone.

Review

- Set time frames: Give deadlines and don't ambush by the coffee machine.
- Stick to times - don't cancel.