COFA and COLP – The Need for Compliance

By Richard Lane

The SRA Authorisation Rules 2011, which forms part of the SRA Handbook, imposes a requirement on every firm of solicitors or Alternative Business Structure (ABS), authorised by the Solicitors' Regulation Authority (SRA), to appoint a person(s) to act as the Compliance Officer for Finance and Administration (COFA) and Compliance Officer for Legal Practice (COLP). This feature will concentrate on the role of the COFA, although much of what follows is also relevant to the role of the COLP.

Who Should Act?

It is vital that firms realise that whoever takes on the role of a COFA will find it, if done properly, to be quite onerous and will involve exposing that individual to additional regulatory risks. Therefore, it is important to ensure that sufficient time and effort is invested in deciding who is the most appropriate person to take on the role and to draw up a job description for the role, specifying what is involved and the resources available to that individual.

The nominee for COFA does not require any special qualifications. This is different to the role of COLP, where the rules specify that they must be a qualified lawyer. However, the person to be appointed must have sufficient seniority within the firm to have full access to all of the firm's accounting records and financial management information and, most importantly, to be in a position that, should it be necessary, they are able to report directly to the SRA without reference to anyone else within the firm.

It is unlikely in a small firm that the SRA will approve the nomination of a legal cashier, particularly if that person works on a part-time basis, as they would not be considered to have sufficient standing within the firm to go above the partners' heads when reporting matters to the SRA. However, in medium sized or large firms there is a much greater chance that the firm's accounts manager or finance director will be in the best position to act as that firm's COFA.

For the majority of firms, particularly those that are small or medium sized, it is perhaps inevitable that the person who is nominated will be a partner, member or director of the firm. A COFA is able to delegate much of the workload to others working in the firm but, of course, they will always remain responsible for ensuring that, where necessary, any issues are properly disclosed to the SRA.

The SRA Authorisation Rules specify that the nominee must be an employee or manager of the firm. That said, employee is defined in the widest sense of the word and would include someone who is retained on a '*contract for services*' basis.

Remember, the nominee will be subject to vetting by the SRA. There are a whole range of reasons, from historical regulatory issues, convictions for criminal offences involving custodial or suspended sentences, to insolvency or bankruptcy concerns, which may cause the SRA to refuse the appointment of the chosen nominee.

The Role

In essence, the COFA is responsible for ensuring that the firm has appropriate accounting systems and procedures in operation and that the firm complies with the provisions of the SRA Accounts

Rules 2011. The COFA will be responsible for ensuring that all breaches of the SRA Accounts Rules are recorded and reported to the SRA. Material breaches, which may be a significant but isolated breach or a pattern of failures, must be reported by the COFA to the SRA on a timely basis. All other breaches can be reported to the SRA by inclusion on the annual information report which will need to be submitted to the SRA by every regulated practice.

Clearly, it is imperative that the nominee should have a very good understanding of the SRA Accounts Rules if they are to be effective in their role. For most practices, there will be a particular area where certain compliance issues are likely to be more problematic. For example, in a litigation practice the treatment of professional disbursements is often an issue, whereas in a conveyancing firm it could be that the treatment of residual balances on client ledger accounts gives rise to difficulties. The COFA will need to be satisfied that all staff, not just those within the accounts department, have received adequate training on the SRA Accounts Rules in order to minimise the chances of reportable breaches arising.

Many firms will need to address their culture towards the treatment of breaches and how these are disclosed within firms. It is imperative that all breaches are brought to the attention of the COFA and that there should be a clear and defined process by which any breach, no matter how minor, is recorded and communicated back to the COFA.

Timetable

The SRA's original intention was that nominations for the roles of COLP and COFA should have been made to them by no later than 31 March 2012. However, there has been some slippage to this timetable. Recently, the SRA announced that firms will be able to nominate COLP's and COFA's from 31 May 2012, with a closing date of **31 July 2012**. The process will involve completing an online nomination form and will require a senior manager within the firm, together with the nominees for the roles of COLP and COFA, to give binding declarations to the SRA for which they will be held personally liable.

Summary

The person nominated to fulfil the role of COFA requires careful consideration. Most firms will need to take a serious look at their approach towards compliance with the SRA Accounts Rules and their attitude towards risk. Without doubt, the consequences of non-compliance are more serious than ever before.

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