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About the author

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Chapter 1:

The requirement to have a COLP and COFA

Introduction to roles

The fact that it is necessary for law firms authorised by the Solicitors Regulation Authority to appoint compliance officers should not be a surprise to anyone reading this book. The concept was introduced in the Legal Services Act 2007 (LSA), translated into SRA language with the SRA Handbook 2011, and launched onto the solicitor-led membership in 2013.

Every law firm that is authorised and regulated by the SRA must have a Compliance Officer for Legal Practice (a COLP) and a Compliance Officer for Finance and Administration (a COFA) – or a head of legal practice and head of finance and administration if the firm is an alternative business structure – as a condition of authorisation. Losing a compliance officer is highly likely to have difficult regulatory repercussions.

But why do we need these roles? In this chapter we set out the origins of the COLP and COFA roles and explain why they were introduced. Whilst this is information that you may choose not to share with colleagues, it is nonetheless useful to understand why these roles were created and the responsibilities they carry. Being a COLP or a COFA carries with it an expectation that the role-holders will fulfil significant regulatory duties.

Brief background to the Legal Services Act 2007

The roles have their origins in the LSA and in order to understand why this is so, it is helpful to acquire a little knowledge of this piece of legislation.

The LSA has shaped the regulation of the legal services market in England and Wales and has a direct impact on how we provide legal services. It is not an exaggeration to describe it as a revolutionary piece of law-making.

Revolution was needed to open up the provision of legal services and to promote competition, flexibility of practice style, and consumer choice. It was also needed to build in some much-needed consistency in the regulation of all legal service providers, and to provide appropriate oversight and checks and balances.

The headline changes that were facilitated with the LSA were:

- The creation of the Legal Services Board as a super-regulator overseeing front-line regulators (bodies described as approved regulators), and with powers designed to ensure that these bodies complied with duties contained in the LSA when fulfilling their functions;
- The separation of representation from the regulation of a professional group;
- The requirement for regulatory bodies to be approved;
- The creation of regulatory objectives and professional principles that apply to the work and initiatives of the approved regulators and all authorised persons;
- A statutory framework to allow non-lawyers to be licensed to provide reserved legal activities (i.e., those legal services protected by statute, which can be provided only by qualified persons) through entities called alternative business structures (ABSs); and
- The creation of a single body to consider consumer-style complaints about the services provided by all legal service providers; the Office for Legal Complaints.

Latest figures released by the SRA indicate that over ten percent of authorised law firms are now ABSs. It is the development of ABSs that is responsible for the compliance officer regime. This is because ABSs can operate with minimal lawyer input whilst providing reserved legal activities such as activities relating to litigation, conveyancing, and probate services. The LSA was drafted to ensure that the fundamental ethical and professional principles that have always underpinned the delivery of these, and more broadly all other reserved and unreserved legal services, by traditional law practices run by lawyers and mainly employing lawyers, remained part of the character and ethos of all varieties of entities providing legal services.

One of the mechanisms for supporting this goal was a requirement in the LSA for all ABSs to have a head of legal practice (a HOLP) and a head of finance and administration (a HOFA). Section 91 of the LSA sets out the HOLP's duties and section 92 sets out the HOFA's duties in respect of the "licensed body" in which they are employed. This reference to "licensed body" is a description of an ABS-style authorised practice and is a term used by the SRA in its authorisation processes.

The legislative text requires the HOLP and HOFA to “take all reasonable steps to ensure compliance with the terms of the licensed body’s license, and as soon as reasonably practicable, report to the licensing authority any failure to comply with the terms of the license”. The terms of the license include a duty to ensure compliance with the licensing authority’s rules by the ABS itself and also by everyone connected with it such as its owners, managers, and employees. The HOFA has responsibility for ensuring compliance with rules made by the licensing body in respect of accounts and the HOLP has responsibility for compliance with all other rules relevant to the body’s license.

The HOLP must be an “authorised person” such as a solicitor or qualified lawyer. In this way, the LSA has created a system in which compliance rests with an individual who is qualified in the provision of one or more of the reserved legal services being provided by the ABS. This implies that they will have suitable subject knowledge and also will have been trained in the relevant regulatory and ethical requirements and be familiar with the standards required.

The creation of the roles gives regulators specific individuals within an ABS with whom they are legally entitled to have compliance conversations.

Further statutory protections include requirements that the HOLP and HOFA nominees must have consented to their designation and must be approved (albeit some individuals with an existing relationship with the regulator are deemed approved) by the regulator. This is designed so that the role-holders will be undertaking their compliance responsibilities willingly and knowingly and that the regulator has the opportunity to vet them to ensure that they are suitable candidates for the role.

Role of the SRA

The largest approved regulator is the Solicitors Regulation Authority (the SRA). The SRA is the independent and approved regulator of the solicitor’s profession in England and Wales. It regulates solicitors of England and Wales and it also has powers to authorise and license law firms in England and Wales.

It is answerable to the Legal Services Board (the oversight regulator) and must ensure that its work is consistent with the LSA, and in particular the regulatory objectives and the professional principles described in this Act.

It is not a representative body; this is the role of the Law Society of England and Wales. Nor does it handle consumer complaints; this is the responsibility of the Office for Legal Complaints (sometimes described as the Legal Ombudsman or LeO). Instead, its remit is to ensure that

solicitors and law firms conform to the high professional standards that it sets, to supervise and to take enforcement action as needed against individuals and law firms that fail to meet these requirements.

As an approved regulator and as a licensing body, it has been the SRA's responsibility to draft rules that will support this regime. More widely, this new role meant that it needed to review pre-existing rules and regulations and refashion them to suit the requirements of modern regulation in the LSA era.

It drafted the SRA Handbook in response to these requirements. In this work, the SRA wanted to create a single set of regulations that would apply without distinction to both ABSs and also more conventional and traditionally composed law firms. For this reason, the SRA took the HOLP and HOFA roles that were specifically and exclusively designed for the ABS market and decided to apply the concept of compliance officer appointments and tasks to all law firms, regardless of type.

For this reason, authorisation conditions dictate that every law firm authorised by the SRA must have a COLP and a COFA – in other words, a compliance office for legal practice and also for finance and administration. Changing the legislative titles slightly (from HOLP to COLP etc.) was deliberate and designed to make it very clear that the role-holders were to focus on compliance-related issues.

This was transformative for many law firms. Part of the rationale for doing this was because the SRA had concerns that some solicitors and some law firms did not engage with regulatory requirements in an appropriate way. By adding titled compliance officers and developing its rule book to show what a suitably-run law business looks like, the SRA's intention was to change attitudes to regulation, improve the relationship between regulator and regulated individual or entity, and to promote the development of compliance cultures in which compliance in practice was demonstrated and evidenced, and which fostered working environments in which ethical behaviour was supported.

The SRA Handbook was replaced by the SRA Standards and Regulations (the STaRS) in November 2019. The compliance officer roles have remained and the role-holders, together with the owners and managers of their businesses, continue to be in the regulator's spotlight. In ways that may surprise some more seasoned practitioners, the SRA involves itself in understanding how the authorised business is run. For example, the latest themes of this nature involve the SRA in considering how it can ensure that workplace wellbeing is accommodated within its regulatory framework so that it can use its supervisory and enforcement powers where it

considers that the workplace environment does not facilitate professional behaviours.

Key extracts from Standards and Regulations that explain the authorisation process for compliance officer role-holders

The SRA Authorisation Rules set out the SRA's arrangements for the authorisation of law firms that are categorised as recognised sole practices, recognised bodies (solicitor-owned and managed law firms), and licensed bodies (ABS law firms) and collectively described as "authorised bodies". These Rules are part of the STaRs, which can be accessed at www.sra.org.uk.

Rule 8.1 of the SRA Authorisation Rules contains the requirement that all authorised bodies must have an individual who is designated as its COLP and an individual who is designated as its COFA, and whose designations are approved by the SRA.

Rules 8.2 and 8.3 add more detail to this starting point, as follows:

"8.2 Subject to rule 8.3, an individual who is designated under rule 8.1 must:

- a) Be a manager¹ or employee² of the authorised body;³*
- b) Consent to the designation;*
- c) Not be disqualified from acting as a HOLP or HOFA under section 99 of the LSA; and*
- d) In the case of a COLP, be an individual who is authorised to carry on reserved legal activities by an approved regulator.⁴*

8.3 An authorised body is not required to comply with rule 8.2(a) where an individual who is designated under rule 8.1:

- a) Is currently approved by the SRA as a compliance officer for an authorised body with a manager or owner in common with the body; and*
- b) Is a manager or employee of that related authorised body."*

In other words:

- The COLP and COFA roles cannot be outsourced to a specialist service. The reference to "manager" is to the sole principal, a director of a limited company law firm, a member of a limited liability partnership law firm, a partner in a partnership, or in relation to any other body, a member of its governing body. The reference to "employee" means an individual who is either engaged under a

contract of service by a person, firm, or organisation or its wholly owned service company; or is engaged under a contract for services, made between a firm or organisation and that individual; or an employment agency; or a company that is not held out to the public as providing legal services and is wholly owned and directed by that individual, or under which the person, firm, or organisation has exclusive control over the individual's time for all or part of the individual's working week.

- The COLP must be a lawyer of England and Wales, a registered European Lawyer, or registered with the Bar Standards Board under Regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000.
- The role-holder must not be disqualified from acting as COLP or COFA (such as would be the case if the SRA used its disciplinary powers to prevent an individual from fulfilling a particular role in the firm).

Approval of role holders

The SRA Authorisation Rules state that compliance officers (and new managers and new owners) must be approved by the SRA before accepting their appointments, unless they satisfy the "deemed approval" criteria.

The reason for compliance officer approval is obvious and because these role-holders have specific responsibilities in connection with the firm's regulatory relationship and the oversight of matters that relate to the firm's continuing authorisation. As we will see later in this book, they are expected to be the main point of contact with the SRA notifying the regulator of matters of relevance. This expectation requires a certain robustness and an understanding of the need to be individually, and on behalf of the firm, open and transparent and accountable.

These roles provide reassurance to the SRA that the decision to authorise individuals and entities to be legal services providers is a good decision and does not compromise consumer protection or public interest objectives. The SRA must be satisfied that the compliance officers in situ are of a suitable character to safeguard regulatory objectives. For this reason, approval is a prerequisite except in circumstances where the individual is already authorised by the SRA, or has been previously approved as a role-holder, and will be deemed to be fit and proper to be a COLP or COFA.

To meet these criteria, the individual must satisfy the requirements of rule 13.5 of the SRA Authorisation of Firms Rules and:

- Be a lawyer and a manager of the firm;
- Not be a compliance officer of any other authorised law firm;
- Not be subject to a regulatory or disciplinary investigation, or adverse finding or decision of the SRA, the Solicitors Disciplinary Tribunal, or any other regulatory body; and
- Your firm must have an annual turnover of £600,000 or less.

If the prospective COLP or COFA meets all the criteria, and the firm satisfies the turnover requirements, approval is a notification process. This is completed by the submission of a form to the SRA confirming that the individual is deemed fit and proper. The firm's records will then be updated to show the role-holder's new title.

Approval process for individuals who are not deemed approved

For obvious reasons, individuals who are not able to satisfy the deemed approval criteria will be subject to greater pre-appointment scrutiny by the SRA so that the regulator can satisfy itself as to the suitability of the proposed role-holder.

The application process is longer, and it makes sense to ensure that sufficient time and resources are allocated to the process. The SRA aims to make most role-holder decisions within three months from the date of submission of a correctly completed application. It will endeavour to reduce this to 30 days if the application is deemed low risk but the period can be extended to six months in some higher risk circumstances.

A firm that operates without a COLP and COFA is in default of the SRA Authorisation Rules and whilst there are emergency provisions to cater for unavoidable situations, such as the sudden death or incapacity of an existing role-holder, there are very few other circumstances in which the SRA will understand or sympathise with a gap in coverage. The firm will be expected to factor in sufficient time to ensure that there is continuity.

The application process for a new non-deemed COLP or COFA is designed to seek out information that enables the SRA to satisfy itself that the individual is sufficiently senior to discharge their responsibilities and to be able to report serious matters to them in an unfettered way. The SRA will want to be satisfied that the role-holder has suitable experience, knowledge, and support with which to fulfil their duties. The SRA also expects completion of a character and suitability assessment.

If the SA believes that the candidate is suitable, then it can approve them

unconditionally. However, the SRA also has the option to grant approval with conditions or to refuse the application.

Rule 3.2 of the SRA Authorisation Rules states the circumstances in which approval with conditions may be granted. In other words, this caters for the situation in which the SRA considers that any risks posed by an applicant can be managed with conditions imposed on them and/or the firm. Rule 3.3 states that these conditions may specify that certain requirements must be met or must be taken by the firm; restrict the carrying on of particular activities; or prohibit the taking of specified steps without its approval.

Refusal of an application will occur if the SRA is not satisfied about the suitability of the candidate such that there are public interest risks to accepting a particular individual as a role-holder. Examples of circumstances that might trigger this decision include an applicant with a history of dishonesty, or a history of non-compliance with regulatory requirements, or where approval with conditions will not manage the underlying risks in a suitable way.

Individual role-holder and ongoing transparency requirements

Rules 13.10 and 13.11 of the SRA Authorisation of Firms Rules collectively create the requirement that an approved role-holder (regardless of whether they were previously deemed approved or not) has an ongoing regulatory duty to notify the SRA promptly of any information that is relevant to the SRA's assessment of their character and suitability.

This notification duty requires an understanding of the SRA's Assessment of Character and Suitability Rules, which requires disclosure of criminal conduct (at rule 3.1) and other conduct and behaviour (at rule 4.1). Below are extracts from these Rules,⁵ which shows the breadth of notifiable matters.

Table 1: Criminal conduct. Source: SRA.

Most serious (A finding in this category is likely to result in refusal)	Serious (A finding in this category may result in refusal)
<p>You have been convicted by a court of a criminal offence:</p> <ul style="list-style-type: none"> • For which you received a custodial or suspended sentence; • Involving dishonesty, fraud, perjury, and/or bribery; • Of a violent or sexual nature; • Associated with obstructing the course of justice; • Which demonstrated behaviour showing signs of discrimination towards others; or • Associated with terrorism. <p>You have been convicted by a court of more than one criminal offence (these could be less serious offences when considered in isolation but taken more seriously because of frequency and/or repetition).</p> <p>You have shown a pattern of criminal offences or criminal behaviours (e.g., starting from a caution but moving through to convictions).</p> <p>You have accepted a caution from the police for an offence involving dishonesty, violence or discrimination, or a sexual offence.</p> <p>You have been included on the Violent and Sex Offenders register.</p>	<p>You have accepted a caution for, or been convicted by a court of, a criminal offence not falling within the most serious category (which is likely to result in refusal).</p> <p>You are currently subject to a conditional discharge or bind over by a court.</p>

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