

## SRA requirement to appoint compliance officers risks clash of responsibilities

Author: Stephen Ralph and Peter Scott

*Balance independence with business knowledge when appointing COLPs, say Stephen Ralph and Peter Scott*

Although the Solicitors Regulation Authority (SRA) has delayed the deadline for law firms to nominate their new compliance officers, larger law firms in particular still urgently need to review their governance arrangements in order to effectively manage the conflicts that are likely to occur between a compliance officer for legal practice (COLP) on the one hand and management and/or partners on the other.

The SRA requires firms to appoint a COLP as a fundamental part of its compliance and governance arrangements. The authorisation rules and the guidance notes to the suitability test in the SRA Handbook make clear that a COLP must be, and be seen to be, independent and able to act independently.

As SRA executive director Samantha Barras said in a speech in December 2011 when referring to those larger firms likely to be subject to SRA 'relationship management': "I would... caution against making your senior or managing partner your COLP. We will expect to meet regularly with the COLP and for that person to be completely on top of risk and compliance management in your firm. A titular COLP will not be acceptable."



However, the 'independence' requirement should not necessarily rule out a COLP being a member of a law firm's management team. Indeed, it is likely to be in many firms the only workable solution.

The independence requirement is a need to maintain independence of the role of the COLP, whether from the management team or from other partners. The conundrum many firms are likely to face is that the person most likely to be able to ensure compliance with the requirements of the SRA Handbook will be the managing partner. Given the requirement for a COLP to act independently in the manner we have described, how can those who are appointed as COLPs ensure that they can effectively discharge their responsibilities, reconcile conflicts within the firm and protect themselves?

As well as COLPs being required to take all reasonable steps to ensure compliance with the firm's authorisation, one of the aspects of the role most likely to lead to conflicts within firms will be the requirement to report to the

SRA any failure to comply, which responsibility is independent of a firm taking immediate steps to remedy breaches.

Experience tends to show that there is often reluctance on the part of some partners to be managed, and this is likely to create disputes for both management and COLPs. Given the responsibility of those in management to drive forward the business, they may not always be as concerned as a COLP to ensure compliance.

Over the years we have seen many examples of tensions arising between management and partners over the implementation of decisions when management have sought to achieve a particular goal in the perceived interests of the firm, and have structured circumstances to achieve it, giving rise to disputes with partners. In future, such situations are also likely to create serious conflicts between management and COLPs.

An example of this is where older partners are exited inappropriately and/or younger partners are sacrificed to provide for a continued role in the firm for their seniors in circumstances which have given rise to justified complaints of discrimination. Where previously such an issue would be dealt with between management and complainant and the tribunals, equality of opportunity and respect for diversity is now a mandatory principle embedded in the SRA Handbook and will inevitably involve the COLP, who must take all reasonable steps to ensure compliance.

Such eventualities (and there are many other potential areas for conflict and dispute), if not provided for, will make it difficult if not impossible for COLPs to effectively carry out their role. Importantly, how can COLPs who are part of management resolve their conflicting responsibilities in such cases?

The duties of partners/LLP members, as are currently set out in partnership/members' agreements, are revisited, amended and supplemented so that partners/members are obligated to comply with all the principles, outcomes and rules in the SRA Handbook. This is to ensure that the firm complies and renders all such assistance to management and/or the COLP as may be necessary.

Partnership/members' agreements should, as a condition precedent to COLPs accepting the role, allow the COLP access to all partnership/LLP information and documentation, and include the right to attend management meetings if not part of management. Consideration should also be given to incorporating in partnership/members' agreements a whistle-blowing policy.

Further, if there is a difference of opinion between management and/or partners on the one hand and the COLP on the other, the COLP should be indemnified by the firm in relation to the execution of his/her responsibilities, including for penalties imposed as well as costs and expenses. Provision should also be made for the COLP to take, at a firm's expense, independent advice and for the resolution of disputes.

Unless protection is afforded in this way to a COLP, there will be unwillingness to accept and to remain in the role. This presents an urgent challenge to firms if the COLP role is to be workable.

*Stephen Ralph is a consultant to Penningtons and head of the firm's professional practices group. Peter Scott is a consultant to Penningtons and principal of Peter Scott Consulting*