

**PETER SCOTT CONSULTING**

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## **managing**partner COLP & COFA conference 2012

The first 100 days as COLP / COFA – first actions, first conversations to have

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Do you really know what is expected of you by the SRA?

This is what Samantha Barras, Executive Director of the SRA said in December 2011

*“What has changed is the explicit requirement for firms actively to engage with Principles and Outcomes, and avoid a tick-box approach. **That is the role of the COLP in particular – to be responsible for taking reasonable steps to put in place systems and controls for good compliance in the firm”***

*“To be the focal point in the firm for thoughtful engagement with our regulatory regime”*

And she continued .....

“For those firms in the Relationship Management approach to supervision, we will expect to meet regularly with the COLP and for that person to be completely on top of risk and compliance in your firm ..... A titular COLP will not be acceptable”.

Bearing in mind those words ...

- Have you considered **whether** you will be able to satisfactorily fulfil the role?
- And if so, **how** will you from the outset be able to ensure you can meet your responsibilities?

## Systems and controls for good compliance?

- Outcome O(7.2) requires firms to **have appropriate systems and controls in place** to achieve and comply with all Principles, rules and outcomes and other requirements of the Handbook
- Outcome O(7.3) requires firms to **identify, monitor and manage risks** to the achievement of all outcomes, rules, Principles and other requirements in the Handbook if applicable and take steps to address issues identified

As the COLP or COFA, what will you now need to do to ensure that you will be able to take all reasonable steps to enable your firm to achieve, inter alia, these outcomes?

First actions, first conversations to have?

1. Secure internal buy-in as a condition of your taking on the role
2. Assess whether you will be provided with sufficient:
  - independence of role;
  - access to information regarding risk; and
  - resources

to enable you to effectively carry out the role.

# 1. Securing internal buy-in

Who has one (or more) of these in their firm?



“That’s a great idea  
..for the rest of you!”



“Heavyweight gorilla”



“You can’t manage  
me.  
I’m a big biller!”

Deal with your big gorillas!

Your role as the COLP or COFA will only be capable of being effectively carried out if partners and other owners of your firm accept that they must be **'accountable'**

# Accountability?

“We have no room for those who put their own personal agenda ahead of the interests of the clients or the office”

*David Maister's "Predictive package"*

How can the COLP or COFA secure accountability?

You can try to persuade partners that this is why they should be compliant ...

***“The pursuit of excellence, with the aim of doing things better for the clients”***

Director of Risk of a ‘top ten’ UK law firm

However laudable, currently this is unlikely to ‘*win hearts and minds*’.

Instead, adopt the ‘**zero tolerance**’ approach!

**For example, require from your partners the following contractual assurances as a condition precedent to your acceptance of the role ....**

- All partners to comply with all Principles, Outcomes and Rules and other requirements of the Handbook and to fully support the COLP / COFA – with sanctions if they do not.
- Full access to be given to all firm's information
- Indemnities to be provided in relation to the COLP's / COFA's responsibilities in respect of penalties, costs and expenses
- A right to take independent advice at firm's expense for the resolution of disputes
- Incorporate a 'whistle-blowing' policy
- Firm to pay premiums on appropriate insurance policies for COLP and COFA

2. Assess whether you will be provided with sufficient:

- independence of role;
- access to information regarding risk; and
- resources

to enable you to effectively carry out the role.

## Independence of role?

**The Guidance Notes to Rule 15.1 Authorisation Rules state that**

“As well as evidence about the candidate, the Suitability Test takes into account evidence about the honesty and integrity of a person that the candidate is related to, affiliated with or acts together with, whom the SRA has reason to believe that person **may have an influence over the way in which the candidate will exercise their role.**”

How independent will your role be as COLP / COFA?



## Independence of role, for example in relation to reporting obligations?

- If an employee or non equity partner?
- Even if an equity partner?
- If a managing partner, where responsibility to drive performance of the firm may conflict with the COLP / COFA role?  
(in many firms the managing partner is likely to be the only person capable of ensuring compliance procedures are followed)

## Access to information / knowledge?

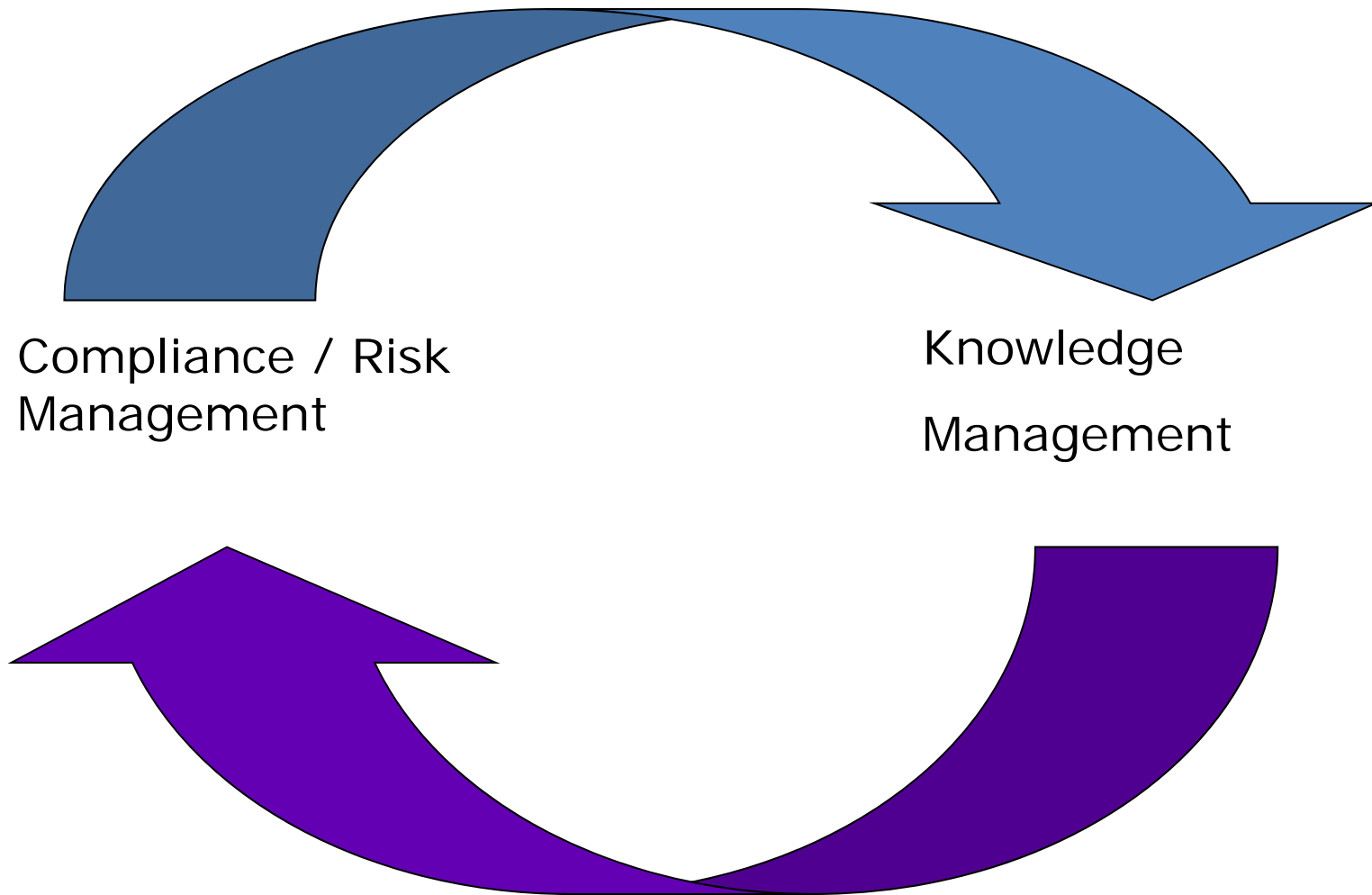
- Will you be provided with access to full information likely to impact on compliance and other risks?
- **What** are your risks?
- **Where** does the knowledge of your risks reside?
- Can you / will you be able to **access** it?
- Do you / will you have **systems** to monitor, review and upgrade your knowledge?

If you cannot measure risk, you will not be able to manage it

# Law firm risks



**Failure to manage your knowledge will involve serious risk**



Compliance / Risk  
Management

Knowledge  
Management

Establish the **resources** you will need to effectively carry out your role

For example:

- Do you have a budget?
- What will your team look like?
- Internal or external?
- Part time partners or professionals?
- Paper records or use of IT
- If IT is used - bespoke or 'off the peg' systems?

## Planning your resources

Carry out a cost / benefit analysis to establish **the most resource effective** method for you to manage your role as COLP / COFA for your firm to be compliant

## First actions, first conversations ... other areas on which to focus

- Your role will need to be management driven with top level buy-in
  - management must not only drive compliance but also live it
- Zero tolerance is required, with no exceptions – just do it!
- A mind-set change will be required – managing compliance risk needs to be seen as everyone's job - training and education programmes can build awareness and change
- Build a 'no blame' culture to encourage disclosure
- Above all – identify your 'big gorillas' and deal with them

Otherwise everyone will be at risk

Any questions?