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COLPS AND COFAS - HERE WE GO

By the time of publication I imagine that most firms receiving the Bulletin will have successfully navigated their way through the SRA's on-line nomination process for their COLP and COFA. In common with many readers of this column I am now my firm's COLP elect and, as a sole practitioner, COFA too.

As ever, the SRA's computer programme was not without its complications, but the questions asked of the 'authorised signatories' did at least prove to be much simpler than had been suggested even quite shortly before the process went live. It had been stated at a conference in early May that all firms would have to certify that their compliance arrangements were in place as part of the nomination process – to the alarm of many of the many delegates in attendance who clearly had yet to address the management implications of the roles. Now, at least, we have time to refine the all-important 'compliance plan'.

A quick reminder first of the basics. The SRA Authorisation Rules, which make provision for these roles, require all practices to have 'suitable arrangements in place' for the Compliance Officer Legal Practice ('COLP') and Compliance Officer Finance and Administration ('COFA'). A practice that could not agree on who should be nominated, or who could not find office holders acceptable to the SRA, would have to cease to practise. Rule 8(5) makes it quite clear that all 'authorised bodies' (as all practices are now termed) must 'at all times' have one or more individuals in both roles.

Both COLP and COFA must be either a partner or proprietor of the practice ('manager') or be an employee, must be of 'sufficient seniority' and be in a 'position of sufficient responsibility to fulfil the role'. The COLP, though not necessarily the COFA, must be a lawyer, but so defined to include barristers, legal executives and certain registered foreign lawyers. The main responsibilities of both roles are to ensure compliance with the areas of their responsibility and to record any non-compliance. After several changes of approach by the SRA during the lengthy planning and consultation process the eventual outcome is that both COLP and COFA will have to maintain records of non-compliances and then report those that are 'material breaches' to the SRA 'as soon as practicable'. In the case of the much more numerous lesser breaches

these are deemed to be duly reported if they are made available as part of the annual practice renewal process. The COLP will have a more general brief to ensure compliance with all the firm's statutory and professional obligations, other than compliance with the SRA Accounts Rules which will fall to the COFA.

One of the oddities of the regime is the long period that will now elapse between having nominated the office holders and their taking up their formal roles, which will not now occur until 1st January 2013. No doubt most office holders will be using this time to develop the necessary management policies, systems and controls and ensure that they are working effectively. The SRA takes the view that most of this should have already been in place as a result of the combined effect of chapters 7 and 10 of the 2011 Code of Conduct – dealing with management of the practice and the relationship with the SRA and other regulators (such as the Legal Ombudsman). For those of you who have been nominated to either role these are as good a starting point as any, with the obligations to 'actively monitor' your firm's 'achievements of the outcomes' and 'financial stability and viability' at the first two of the indicative behaviours to chapter 10 (to the extent that it is correct to describe IBs as 'obligations' – in itself a moot point). It is worth stressing that these do not form part of the Authorisation Rules still to take effect, but are part of the Code of Conduct which has been in full force since October last year – a point stressed by the SRA on a number of occasions.

There is one more intriguing consideration to note carefully. In the accompanying guidance to the roles of COLP and COFA the SRA deals with the relationship of the obligations on the Compliance Officers to record and report 'material breaches', as opposed to the obligations already in force to report 'promptly' to the SRA any 'material changes to relevant information about you including serious financial difficulty' or 'serious misconduct by any person authorised by the SRA' (outcomes 10.3-4). The SRA suggests in this note that there is no real difference between the 'serious' breaches described here and the 'material' breaches that might arise under the Authorisation Rules. This advice may well suggest that the Compliance Officers should be alert to the need to report the more significant problems that arise in advance of the formal start date next year. ■

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