



MANAGEMENT AND REPORTING OBLIGATIONS UNDER THE NEW HANDBOOK

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The SRA has now published what it hopes will be its final version of the Handbook which, barring objections from the Legal Services Board or other unforeseen problems, will take effect later this year. The main implementation date for law firms is 6 October 2011, although various elements relating to Alternative Business Structures ('ABSs') will be phased in from August.

At this stage of the process it is interesting to note the changes that have been highlighted by the SRA in this latest phase of this fundamental re-regulation project. There had been widespread claims that outcomes-focused regulation ('OFR') would represent a significant reduction in the degree of regulation that law firms would be subject to, but the SRA now seem to be going to some lengths to deny that this is the case. In their helpful summary of the main changes '*Your quick guide to getting started with OFR and the new Handbook*' they stress that enabling firms to deal with their clients in the way that they consider the most appropriate to achieve the right '*outcomes*' for their clients should not be confused with '*light touch regulation*'.

A key step in all firms' preparations for the new regime will be to designate the holders of the two compliance officer roles – Compliance Office for Legal Practice ('COLP') and Compliance Officer for Finance and Administration ('COFA'). These roles are based on the equivalent requirements for ABSs which are Head of Legal Practice ("HOLP") and Head of Finance and Administration ("HOFA"). For law firms the COFA has responsibility for compliance with the Accounts Rules and the COLP has responsibility for compliance with all other regulatory rules.

In response to submissions made by the larger firms the reporting responsibilities of the COLP have been relaxed. Previously it had been proposed that the COLP would have to report to the SRA as soon as reasonably practicable '*any failure*' to comply with the terms of the firm's authorisation and any statutory obligations (other than under the Accounts Rules which would be the responsibility of the COFA). As

drafted this would have meant that the COLP would have had to report any breach of, for example, the Code of Conduct, however trivial. There is now more emphasis on recording any compliance failures and to make such reports available on request, with the reporting duty now being limited to '*material*' compliance failures.

The SRA stress in their most recent commentary that the COLP and COFA do not have sole responsibility for compliance with Handbook requirements and that '*ultimately compliance is the responsibility of the firm*'. Although there is no specific requirement that a COLP should be a partner they are likely to be in the great majority of firms as they must have '*sufficient seniority*' and be '*in a position of sufficient responsibility to fulfil the role*'. For existing firms there is no need to nominate the compliance officer appointments until March 2012 and they will be '*authorised*' in the following October, but the most sensible course of action for most practices would be to agree who the officer holders are likely to be and then charge them to develop the processes and systems that will be needed to ensure that the required records can be developed and maintained. In so doing they would be well advised to consider the suggested contents of a '*compliance plan*' to be found in guidance notes to the same section of the Handbook.

Whether there will be a rush of partners volunteering for these new roles is debatable. In some firms there will already be full time compliance partners; but in others a spot of press ganging may be necessary. There may also be inter-partner friction if breaches of the rules occur and reluctance by the other partners to share responsibility. The role of the COLP may not always be a happy one. ■