Regulation Report

COLPs, COFAs & sharing the blame

There has been a long review period within which the SRA has concentrated on simplifying the Code of Conduct and Accounts Rules, but it would seem that the roles of the two reporting officers - COLP and COFA - are here to stay. There was, however, a suggestion that the roles might have been abolished for small firms - sole practitioners most obviously - shortly after Paul Philip, the current Chief Executive of the SRA, took up his post in 2014. Commenting at the time Mr Philip announced that one of the issues then to be addressed was whether insisting that smaller practices should have to nominate their COLP and COFA or "whether it's overkill". In the end the SRA opted to retain both roles but instead to simplify the nomination process for solicitors.

The two roles have their origins in the Legal Services Act 2007 which required a *"head of legal practice (HOLP)"* and also a *"head of finance and administration (HOFA)"* for the new forms of non-lawyer concerns - alternative business structures - which became possible under the Act. In due course, HOLPs and HOFAs became COLPs and COFAs and, crucially, the SRA chose to extend the requirement for the roles to all of the practices regulated by them, in other words *"authorised bodies"* (law firms, however constituted, and sole practitioners) as well as *"licensed bodies"* (ABSs) as required by statute.

Almost as soon as the need for reporting officers arose concerns were then expressed that the appointments would personalise the duties of compliance to too great a degree. So far as the COFA is concerned, therefore, a guidance note was added to rule 6 of the SRA Accounts Rules stressing that the obligation to appoint a COFA was *"additional to, not instead of, the duty of all principals to ensure compliance"*. Likewise, guidance note vii to Rule 8 of the SRA Authorisation Rules states that, notwithstanding both appointments, the firm and its principals *"remain fully responsible for compliance"*.

It is also commonly overlooked that there are more general duties to report financial difficulties and serious misconduct at outcomes 10(3) and (4) of the Code of Conduct, as illustrated by a recent report of disciplinary action emerging from an intervention by the SRA. Khalid Shahjahan had been a non-executive director of the Yorkshire firm Legal Development Partners which was the subject of an intervention in 2013. Despite evidence of his lack of direct involvement in the management of the practice and the fact that he was a non-executive director of the practice, the SRA alleged "a number of areas of default", including breaches of the Accounts Rules and failure to report serious misconduct. Mr Shahjahan entered into a Regulatory Settlement Agreement with the SRA and agreed to a fine of £2000 plus £5,000 costs.

The point to stress is that the duty to be open with the regulator and the Legal Ombudsman, as found at Principle 7 in the Handbook, extends beyond the reporting officers: non COLPs and COFAs please take note. It is also worth a reminder in the same context of the strict liability imposed by Rule 6 of the SRA Accounts Rules upon principals to ensure compliance with the Rules regardless of personal culpability.

Finally, recent research suggests that an over-emphasis of the obligations of COLP and COFA to ensure compliance within their firms may have produced unwelcome consequences. A research project undertaken by Dr Steven Vaughan of Birmingham Law School concluded that the appointments had led to "insourcing" of professional compliance issues to the compliance departments in larger firms and a "striking lack of awareness" of professional principles on the part of others within the firm.

We might therefore hope that the imminent availability of simpler and more accessible regulation might enable firms to revisit their training programmes and ensure greater general awareness of professional compliance issues, thereby reducing the undue emphasis on the roles of COLPs and COFAs that was always likely as soon as they were appointed.

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