Chapter 1: The requirement to have a COLP and COFA

THIS CHAPTER sets out the origins of the COLP and COFA roles and explains why they were introduced. It also looks at who can undertake these roles and, in outline, the responsibilities they carry. While the final approval of COLPs and COFAs was completed in spring 2013, some firms are already replacing the original roleholders (for various reasons) and this information will therefore still be relevant to many.

The background to the roles
Legal Services Act 2007 – The HOLP and HOFA roles

One of the main aims of the Legal Services Act 2007 (LSA) was to open up the legal services market by promoting competition and encouraging innovation for the benefit of consumers. To do this it set up a statutory framework to allow non-lawyers to be licensed to provide certain mainstream legal services, defined as ‘reserved legal activities’, through entities called ‘alternative business structures’ (ABSs). As ABSs can operate with potentially little lawyer input, the LSA was drafted to ensure that the fundamental ethical principles which have always underpinned traditional law firms remained part of the ethos of all entities providing legal services.

One of the mechanisms for ensuring that this would happen was through a requirement in the LSA for all ABSs to have a head of legal practice (HOLP) and a head of finance and administration (HOFA). Sections 91 and 92 require the HOLP and HOFA to ‘take all reasonable steps to ensure compliance with the terms of the licensed body’s licence and as soon as reasonably practicable, report to the licensing authority any failure to comply with the terms of the licence.’ The terms of the licence must include compliance with the licensing authority’s rules (s.85 LSA) by the ABS and those associated with it, such as its owners, managers, and employees. The HOFA has responsibility for ensuring compliance with the SRA Accounts Rules and the HOLP for compliance with all the other rules.

Because the HOLP must be an ‘authorised person’ such as a solicitor, the LSA ensures responsibility for compliance falls on someone qualified in the provision of one or more of the reserved legal services being provided by the ABS. This also means that they will have been trained in the relevant regulatory and ethical requirements of their regulator and will be familiar with the required standards.

Another reason for introducing these roles is that they give regulators specific individuals within an ABS with whom they can deal with over compliance issues.

Further statutory protections include requirements that the HOLP and HOFA must have consented to their designation and must be approved by the regulator. This means that they should be undertaking the responsibilities willingly and knowingly and that the regulator has the opportunity to ensure that they are suitable to undertake the role.
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The introduction of the COLP and COFA roles

It was the SRA’s responsibility to draft rules which would enable it to become a licensing body so that it could license ABSs. In drafting the SRA Handbook, the SRA wanted to create a single set of regulations which would apply without distinction to ABSs and conventional solicitors’ firms. The SRA, therefore, introduced the HOLP and HOFA roles into its own rules but changed the titles to compliance officer for legal practice (COLP) and compliance officer for finance and administration (COFA). In this way, these COLP and COFA roles became universal for all firms regulated by the SRA. Renaming them made it clear that they were focused specifically on compliance.

Part of the reason for doing this was that the SRA’s experience as a regulator suggested many solicitors’ firms did not take regulatory compliance sufficiently seriously. By attaching specific responsibility for ensuring compliance to named and approved individuals within each firm, the SRA hopes to encourage a sea change in attitudes. This approach has the further advantage to the SRA of providing identifiable points of contact to deal with when there needs to be dialogue between the SRA and a firm on any regulatory issue. Therefore, although the HOLP and HOFA roles were introduced specifically for ABSs, the SRA liked the concept and believed it had equal validity in relation to all of the firms it regulates.

Who may undertake these roles?

Rule 8 of the SRA Authorisation Rules 2011 sets out the conditions under which firms are authorised. Much of the emphasis is on firms achieving regulatory and statutory compliance and, to help ensure this, Rule 8 requires that all firms must have in place at all times a COLP and a COFA approved by the SRA. Rule 8 sets out details of who may undertake these roles and what the roles entail.

Rule 8.5(b) requires firms to have at all times ‘an individual:

i. who is a manager or an employee of the authorised body;
ii. who is designated as its COLP;
iii. who is of sufficient seniority and in a position of sufficient responsibility to fulfil the role; and
iv. whose designation is approved by the SRA.’

Rule 8.5(d) similarly requires ‘an individual:

i. who is a manager or an employee of the authorised body;
ii. who is designated as its COFA;
iii. who is of sufficient seniority and in a position of sufficient responsibility to fulfil the role; and
iv. whose designation is approved by the SRA.’

Rule 8.5(g) follows the LSA in requiring that:

- The COLP and COFA consent to the designation;
- The COLP is a lawyer of England and Wales, a registered European lawyer (REL), or registered with the Bar Standards Board (BSB) under Regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000; and
- Neither the COLP nor the COFA is disqualified from acting as a HOLP or HOFA.

Apart from the fact that the COLP must be a lawyer, the rules are not prescriptive in terms of exact qualifications but they do make clear that the roles are seen as carrying significant responsibility and, accordingly,
require individuals who have considerable authority within the firm. The reasons for this are clear. The SRA anticipates that these individuals will be able to ensure and maintain a culture of compliance within their firms which must encompass everyone from the management team and fee earners to all the support staff.

For some COLPs and COFAs, this will involve bringing about a complete culture change within their firms. They will need to work from the top down to ensure greater awareness by everyone of the compliance issues which affect them and of the risks to compliance in their firm. This means that the individuals chosen will need to be, if not actually managers, employed at senior level and have the authority to influence individuals from senior partner or director level down to junior members of staff. Without the ability to carry senior members of the firm with them, they will struggle to maintain the necessary authority to be effective in their roles.

An interesting aspect of COLP and COFA approval concerns sole practice. There is still a requirement buried in the Practice Framework Rules (rule 12) that a sole practitioner must be ‘qualified to supervise’. This means that they must have been entitled to practice as a lawyer for at least 36 months in the last 10 years and to have completed the training specified from time to time by the SRA. Most who set up on their own as sole practitioners will, at least initially, have to be both COLP and COFA. What is now becoming clear is that meeting the requirements to be ‘qualified to supervise’, which were for many years the passport to setting up on your own, may no longer be sufficient. The SRA has made it clear that without hands on experience of operating a client account or without some management experience, aspiring sole practitioners may find it hard to get approval as a COLP and/or as a COFA. There may be ‘work arounds’ in that the SRA might grant approval, for example, subject to further training on book keeping and the Accounts Rules. The assumption can no longer be, however, that because an individual is ‘qualified to supervise’ they will also be considered suitable to be a COLP and COFA.

Chapter 2 will examine in more detail the appointment process and will look at who might be suitable for the roles.

What do the roles entail?
The COLP role – Ensuring compliance with the terms and conditions of authorisation

The COLP’s responsibilities are set out in Rule 8 of the Authorisation Rules and, in summary, are to ensure that their firm:

- Complies with all regulatory requirements (except the Accounts Rules);
- Complies with all statutory requirements;
- Has appropriate policies, systems, and procedures in place (a compliance plan) to achieve the above;
- Submits its annual information report;
- Pays the prescribed fee;
- Complies with any additional conditions applied by Rule 8; and
- Complies with any specific conditions applied by the SRA under Rule 9.

Rule 8.5(c) sets out in specific terms the responsibilities of the role and these are to:

1. take all reasonable steps to:
   (A) ensure compliance with the terms and conditions of the authorised body’s authorisation except any obligations imposed under the SRA Accounts Rules;
   (B) ensure compliance with the statutory obligations of the body, its managers,
employees or interest holders in relation to the body’s carrying on of authorised activities; and
(C) record any failure so to comply and make such records available to the SRA on request; and
ii. as soon as reasonably practicable, report to the SRA any failure so to comply, provided that:
(A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the SRA together with such other information as the SRA may require in accordance with Rule 8.7(a); and
(B) a failure may be material either taken on its own or as part of a pattern of failures so to comply.

(NB: In relation to (A) above the SRA has agreed to amend this requirement for all non-ABS firms so that it will be sufficient that the COLP records all non-material breaches – i.e. reporting will not be required.)

The COLP’s responsibilities are, therefore, very wide. The ‘terms and conditions’ of their firm’s authorisation under which they have an obligation to ‘take reasonable steps to ensure’ are set out primarily in Rule 8 which deals with ‘general conditions on authorisation’. Rule 8 is, therefore, the key to the responsibilities of the COLP role. Additionally, the SRA can impose further specific conditions on firms under Rule 9 and the COLP must make sure their firm complies with them (or the COFA if they relate to the Accounts Rules).

**Compliance with Rule 8**

**General requirements to comply placed on firms**

Rule 8.1 lays down general requirements of the firm and its managers to ensure the SRA’s regulatory obligations are met, and this will be the main focus of the COLP’s role.

Rule 8.1 also requires the firm and its managers to comply with all other statutory obligations which are imposed on them. This brings in obligations which are set out in, for example, the Solicitors Act 1974, the Money Laundering Regulations 2007, the Bribery Act 2010 and the Equality Act 2010. Again, the COLP’s responsibility will be to ensure that the firm and those individuals with personal obligations comply.

**Systems to ensure compliance**

Rule 8.2 adds the need for firms to demonstrate that they have suitable arrangements to achieve compliance. Effectively, this requires all firms to have a comprehensive compliance plan setting out the governance structure of the firm and the systems and procedures which will enable it to meet all of its obligations.

COLPs and COFAs will be instrumental in ensuring that the arrangements for their firm are in place, are effective, and that everyone knows about them. Greater detail on ensuring compliance in each role appears in Parts Two and Three.

**Approval of key personnel**

Rule 8.6 requires all managers and owners to be approved by the SRA and prevents certain individuals from being managers, owners, or employees without the SRA’s written permission. This section of Rule 8 is aimed at preventing those with a serious disciplinary history or serious financial problems from being involved with a firm regulated by the SRA. For example, those who have been struck off, have been suspended from practice, are subject to an order under Section 43 of the Solicitors Act 1974, or are undischarged bankrupts will be prevented from being owners, managers, or
employees of a firm without SRA approval. It will be the COLP’s job to ensure that there is proper screening of new owners, managers, and employees and that where approvals are needed they are obtained.

**Information requirements**

Rule 8.7 places information requirements on firms. These fall into two categories.

The first is an ongoing requirement to notify the SRA of changes as they occur to relevant information about the firm or its employees, managers and interest holders. The COLP will need to have a list of the changes that the SRA should know about. These will include events ranging from changes of address to a change in the nature of the firm which might mean, for example, that it is no longer a partnership or no longer eligible to be an ABS. The notes to Rule 8 list various regulatory and statutory reporting obligations as follows.

**SRA requirements:**

- Rules 3, 8.7, 8.8, 8.9 and 8.10, 18, 23, 24, and 25 of the Authorisation Rules (changes of information relating to authorisation of firm and individuals);
- Rule 18 of the SRA Practice Framework Rules (change of name, address, key personnel, and owners);
- Rule 32 of the SRA Accounts Rules (delivery of accountant’s report);
- Regulations 4.3, 4.5, and 14 of the SRA Practising Regulations (partnership becomes sole practice and key changes relating to a solicitor, REL, or registered foreign lawyer (RFL) such as criminal proceedings, name change, becoming manager, or owner, etc.); and
- Chapter 10 of the Code of Conduct (general and specific reporting requirements) – see Part Two.

**Statutory requirements:**

- Section 84 of the Solicitors Act 1974 (notification of a solicitor’s place of business); and
- Paragraph 21 of Schedule 13 to the LSA (non-authorised persons proposing to acquire an interest in a licensed body have notification requirements. Note that it is an offence to fail to comply with the paragraph 21 notification requirements).

Rule 8.7 also includes a requirement to notify all non-compliance with the rules and the conditions of authorisation. However, the rule makes clear that only ‘material non-compliance’ needs immediate reporting and, as part of its red tape initiative, the SRA has agreed to remove the need to report all non-compliance, although it must still be recorded by firms and records of non-compliance produced if requested.

Secondly, Rule 8.7 introduces a requirement for firms to file an annual ‘information report’ in the prescribed form. The COLP in each firm will have responsibility for ensuring that this report is properly completed and filed on time with the SRA. At this stage (July 2013), COLPs are still hampered by the SRA’s failure to publish a draft or to indicate in more detail what information will be requested. However, the SRA’s intention is to use the information collected in this way by the report to form the basis of its risk assessments of all the firms it regulates.

As the draft report forms are not yet available it is still largely guesswork as to what they will contain. As they will form the basis on which the SRA will assess each firm’s risk levels it seems sensible to assume they will concentrate on areas that the SRA looks at in relation to the authorisation of new firms and highlights in its risk outlook.
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Referral arrangements are always a hot topic and with the advent of the Legal Aid and Sentencing and Punishment of Offenders Act 2012 (LASPO) this is an obvious subject for detailed probing. Outsourcing arrangements are also viewed as carrying risks for clients, so questions about these activities are likely. Similarly, the contentious issue of separate business activities, particularly in relation to ABSs, is likely to form a significant part of the SRA’s focus. Financial stability is uppermost in the SRA’s concerns in the current economic and market conditions and firms must expect some forthright questions.

It is known that material non-compliance must be reported, and COLPs and COFAs will need to make sure that they now have systems for recording all non-compliance. It is quite possible that the SRA might want some indication of the general level of compliance. As part of this, questions about a firm’s complaints can also be anticipated. There may well be other questions, for example, about the type of management arrangements firms have in place and about their compliance plans and what they regard as the main risks to compliance that they face. It also seems likely that firms will be asked to disclose any quality assurance accreditations, such as Lexcel, that they have obtained.

Other Rule 8 conditions
Finally, there are two other general conditions on authorisation. These are:

- To pay an annual fee on the prescribed date which will be dependent on turnover (Rule 8.3); and
- That firms do not carry out an activity that they are not authorised to undertake (Rule 8.4). This will affect ABSs which are only licensed to carry on the reserved legal activities set out in their licence and only those activities for which they employ an individual who is authorised to undertake them.

Rule 8.8–8.10 also applies additional conditions specifically to partnerships, recognised bodies and licensed bodies (ABSs) which require notification of certain events to the SRA which affect the body’s status. Again, the COLP will be required to contact the SRA if any of these circumstances arise.

Rule 9: Imposition of specific conditions
Rule 9 gives the SRA power to impose further conditions on a firm’s authorisation in defined circumstances where it is in the public interest to do so. These conditions could, for example, prevent the firm having a business arrangement with a body or individual or prevent the firm undertaking certain activities. It is the role of the COLP to ensure that these additional conditions are met where they apply.

The COFA role – Ensuring compliance with the Accounts Rules
The COFA has responsibilities which are set out in Rule 8.5(e) of the Authorisation Rules but limited to ensuring compliance under the SRA Accounts Rules. Specifically, they are to:

i. take all reasonable steps to:
   (A) ensure that the body and its employees and managers comply with any obligations imposed upon them under the SRA Accounts Rules;
   (B) record any failure so to comply and make such records available to the SRA on request; and

ii. as soon as reasonably practicable, report to the SRA any failure so to comply, provided that:
   (A) in the case of non-material failures, these shall be taken to have been
reported as soon as reasonably practicable if they are reported to the SRA together with such other information as the SRA may require in accordance with Rule 8.7(a); and (B) a failure may be material either taken on its own or as part of a pattern of failures so to comply.’

(NB: As with the COLP role, the reporting requirements are to be removed in relation to non-material breaches for non-ABS firms.)

In essence the COFA must make sure that the firm has appropriate accounting systems and procedures to ensure clients’ money is correctly identified and handled in accordance with these rules.

Much of the detail that the COLP and COFA will be responsible for in terms of the systems and procedures which are required appears in the Code of Conduct and the Accounts Rules and this will be examined in more detail in Parts Two and Three.