

A day in the life of a COLP: reporting obligations in practice

All characters are fictitious

Harold Jones & Co was a long established firm with a reputation for doing the right thing. But only after they had tried all other alternatives.

Jemima, a salaried partner, had just returned from maternity leave wondering how she was going to cope with a completely clear desk, having handed over all her client matters before she went on leave, when in popped Harry, the senior partner.

"Jemima, great to see you back...We just thought, as you haven't built up your caseload yet, whether you might do something for us. We need to appoint a COLP – you know, the Compliance Officer for Legal Practice – and we thought you might be ideally placed..."

Anxious not to look as though she had nothing to do, though not having much idea of what it was all going to entail, Jemima happily accepted.

And so the firm made the application for SRA approval of her appointment, and in due course the email went out notifying everyone of her appointment. Being a rather diligent type, Jemima then set about reading up on what she had let herself in for.

She focused particularly on the

reporting obligations in Chapter 10 of the SRA Code of Conduct, and reflected that they were not really any more onerous than those in the previous Solicitors' Code of Conduct 2007. After all, there had been an obligation under the 2007 Code broadly to report serious misconduct, reason to doubt integrity or reason to believe that a solicitor or firm was in serious financial difficulty. She noted that there did not appear to be any provision for reporting 'reason to doubt integrity' in the 2011 Code, but concluded that it was probably there by implication anyway.

She looked again at the provisions in the Code imposes requirements on solicitors and all employees which require that:

'O(10.1) you ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you; O(10.4) you report to the SRA promptly, serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client);'

I must arrange some online compliance training for all the staff, she thought – not just the solicitors.

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She carried on her review of the SRA Handbook, and went more slowly when she got to Rule 8 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 and realised the enormity of what she had taken on. She realised at once that she would have to do something about a risk register and a compliance plan. Otherwise, how could she demonstrate compliance?

She noted that Rule 8.5(c) requires that she:

- (i) 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 any 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.
- This, she thought, is not like the money laundering reporting system where the firm must appoint a Money Laundering

“That would keep her on her toes – she would not want the SRA to hear about something from a staff member before they heard about it from her.”

Reporting Officer and those in the firm discharge their obligations by reporting to them in accordance with the particular firm’s internal reporting system. So even when partners and staff had reported matters to her, they may still have their own obligations to report to the SRA direct if breaches came within the provisions of Chapter 10. That would keep her on her toes – she would not want the SRA to hear about something from a staff member before they heard about it from her. The online compliance training she thought about earlier would help, if it told staff about their reporting obligations and to whom they should report.

Guidance note (x) to Rule 8.5 said that she would need to keep appropriate records of failures in compliance to:

- (e) monitor overall compliance with obligations;
- (f) assess the effectiveness of the firm’s systems;
- (g) be able to decide when the need has arisen to report breaches which are material because they form a pattern.

She thought about her obligation to keep a record of *all* breaches of the regulatory requirements – not just the Code of Conduct, but, it seemed, pretty much all legislation relating to the conduct of the firm’s business as a law firm, and its partners and staff.

And not just what they did in the office either – it might even extend, she thought, to conduct outside the office – she wondered about that time after the previous year’s Christmas party when Harry had been pulled up for drink driving on the way home.

And then she thought about the rest of the firm. Mention Rules to Harry, and he was incapable of thinking beyond his favourite res-

taurant. As for the others, what had they qualified as solicitors for, if it wasn’t to find ways round rules? Her work was going to be cut out.

Jemima also pondered the fact that the need to record failures to comply with the terms and conditions of the authorised body’s authorisation and its statutory obligations might extend to data protection and anti-money laundering legislation as these are expressly referred to in the Code, and anything else in The Legal Services Act 2007, the Solicitors’ Act 1974 and so on. It was a daunting prospect.

It was January, her appointment had taken effect, and everyone was back from the Christmas break.

Barely an hour had passed, when in walked Jerry, one of the associates, looking rather anxious and saying, ‘Jemima, I wonder if I might have a word with you. We have a bit of a problem. It is in confidence, isn’t it?’

‘Yes, of course’, she replied. But just as Jerry was about to let the sorry saga unravel, she thought

again. How could she talk in confidence when she had obligations

to report breaches to the SRA? And she would have to tell the

partners at some point too – if only to tell them about the

breaches she would have to notify, which would probably turn out

to be rather a lot, but probably also to enable her to implement

some systems to try and make sure they did not happen again.

So she put Jerry right, and said ‘Look, I’m not going to go round

telling everyone, but if there’s a breach of any of the regulatory

requirements, you have to tell me and I have to tell the SRA. So I

can’t undertake to maintain com-

plete confidentiality, but I will do what I can to keep matters as quiet as possible.’ With that resolved, Jerry explained what had happened.

His supervising partner – if the occasional ‘how are you getting on?’ could be classified as supervision – had looked after a property sale file while Jerry was off for a couple of days, and had given an undertaking to discharge two mortgages on completion. But on completion he had then forgotten to discharge the second charge, and the money had been sent to the client who now said he had spent it. Clearly this had to be reported to insurers, but it had to be reported to the SRA too.

Jemima thought about it, and concluded that a breach of undertaking was ‘material’, to quote the SRA Authorisation Rules, and thought, too, that it was quite likely that the buyer’s solicitors may report the breach to the SRA themselves. She much preferred that they heard about it from her.

She looked at guidance note (x) to Rule 8 of the SRA Authorisation Rules – In considering whether a failure is “material”, the COLP or COFA, as appropriate, will need to take account of various factors, such as:

the detriment, or risk of detriment, to clients;

the extent of any risk of loss of confidence in the firm or in the provision of legal services;

the scale of the issue;

the overall impact on the firm, its clients and third parties.

She also thought, in passing, about a Solicitors Disciplinary Tribunal report she had read in the Gazette, in which a solicitor had been fined for breach of undertaking. She rather hoped it would not come to that, but it did rather set the tone of her thought process.

So she immediately set about re-

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porting the matter to the SRA and also put it in her log of breaches. Although it was early days, knowing the partner concerned as she did, she couldn't help thinking that a pattern may emerge requiring perhaps rather drastic action. And she kept a note of her decision making process.

Later that day, Harry popped in and asked how things were going. Jemima mentioned the report. Harry went bright red – clearly horrified that Jemima, a 'mere salaried partner', as he crudely put it, had reported the matter to the SRA without seeking his approval. He was particularly angry that she had reported a breach by an equity partner.

The following morning, Jemima received a typed memo from Harry. (He didn't 'do' emails.) The memo gave strict instructions not to report any matters to the SRA without his prior approval. Jemima was furious. She immediately prepared a response drawing Harry's attention to guidance note (vi) to Rule 8 of the SRA Authorisation Rules – 'The firm must therefore ensure that any person designated as its COLP or COFA is of sufficient seniority, in a position of sufficient power and responsibility and has clear reporting lines to enable them to have access to all management systems and arrangements and all other relevant information including client files and business information. The existence of compliance officers in a firm and the requirements on them to ensure that the firm, as well as its managers and employees, are complying with the regulatory arrangements (COLP) and the SRA Accounts Rules

(COFA) is not a substitute for the firm's and managers'

responsibilities and their obligations to comply with Rule 8.1 (Regulatory compliance). Firms and managers need to take care not to obstruct, whether intentionally or unwittingly, a COLP or COFA in fulfilling their role.

Her memo also drew attention to note (viii) which required – Those designated as COLP will need to be in a position to be able to discharge the role. They will need to consider whether they are in a position to, for example: take all reasonable steps to ensure compliance with the terms of the firm's authorisation; compliance with the SRA's regulatory arrangements by the firm, its employees and managers; and with relevant statutory obligations e.g.

(B) that authorised persons and other managers and employees comply with the duty imposed by section 176 of the LSA (duty to comply with the SRA's regulatory arrangements); (C) under the LSA, AJA and the SA in respect of practice matters;

Harry backed down, and life continued largely as before, but with an uncertain peace. She wondered how long it would continue.

Not long, as it turned out. Kerry, an assistant solicitor, was next in line with a client's query about a bill. The client seemed pretty unhappy about the amount. So Jemima asked the client a few more files to check the care letter to see what had been agreed. If only.... Kerry worked for John, very much an

old school type, a partner well beyond his sell-by date. He had always resisted using client care letters. The firm had tried to address this by introducing a case management system which, the salesman had proudly said, made it impossible not to comply. But unbeknown to Jemima, John had found a way round it – print off the letter and leave it on the file. All rather easy, really!

So there was no client care letter. And the firm was clearly in a difficult position, because not only was there no costs information, but the client had not had the information required in Chapter 1 of the Code on complaints and details of the Legal Ombudsman.

Jemima asked Kerry if this was a one-off omission. Not so, it seemed – normal course of practice. That was how they did things in John's department. So Jemima looked again at guidance note (viii) to Rule 8 of the SRA Authorisation Rules which said that the COLP was required –

as soon as reasonably practicable, [to] report to the SRA any failure to comply. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the breach. The report need not be made until the annual information report under Rule 8.7 where such failure is neither material of itself nor because it forms part of a pattern of non-compliance.

Clearly, here was a pattern of non-compliance. So, with a heavy heart, she selected a few more files to check the position before setting about reporting it to the SRA.

Tomorrow, she thought, she

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must set about devising a plan for file review. While the rules did not seem to specify a requirement for it, it was hard to see how otherwise she might fulfil her obligations in Rule 8. And the senior partners were high on the list for file selection.

Life used to be so easy when she was handling cases...

She thought too about the record keeping requirements and her log of breaches. We do not yet know the specific fields of information the SRA will ultimately require but for internal purposes, she thought, she would start with:

- Description of compliance failure
- Individual(s) concerned
- How the file was identified
- File reference
- Date of discovery
- Date of report to SRA, if applicable
- Whether the client has been notified (with date)
- Remedial action required (by when and by who)
- Date remedial action taken

It would be helpful to have an audit trail showing how the failure was identified.

This would help her in her compliance monitoring obligations, monitoring for recurring themes, persistent offenders or breaches which indicate that one of the firm’s systems or policies is not working as it should.

She had wondered whether her friend, who was COLP in a large City firm, was having an easier time. Surely they would be far

more compliant, and in any event, they had their own SRA Relationship Manager – surely it would be easier to have someone you knew whom you could phone? But she had gone out for a drink the night before, and life was not so easy there either, or so it seemed.

Her friend had told her that recent minutes from the SRA’s Regulatory Risk Committee indicated that the Committee was anxious to dispel any ‘misconception that Relationship Management was merely a support mechanism for city or large firms rather than the rigorous application of high quality supervisory and investigative resource to firms of high impact’. She had also heard on the grapevine, that one firm had spent three weeks spanning the Easter break while it investigated a possible partner fraud, before feeling sure enough of its facts to report to its relationship manager, who had remonstrated with them for the delay. So perhaps the grass was really no greener there.

The moral of the tale is don’t wait until 1 January to put the building blocks in place. As a minimum: Inform everyone in the firm about the new COLP and COFA roles and who is being appointed;

- Make sure everyone in the firm understands the need to keep the Compliance Officers informed of breaches and how they go about it - try to explain that coming forward will be of great help to the COLP and COFA and much to be encour-

aged;

Prepare a spreadsheet that can be used to register the breaches and which can be easily reviewed;

Ensure there is a simple method of reporting to the COLP/COFA though ensure that more serious issues are not ‘lost’ in the system;

Initiate a system of regular review of the registers and act on any trends or issues which are identified

Ensure that awareness is maintained throughout the year not just for a week or two after the initial training.

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