



# Firms with compliance officers ready to go will benefit

Don't let the delayed nomination deadline for COLPs and COFAs and the uncertainty surrounding their role tempt you to put your compliance arrangements on hold, says **Susanna Heley**

**G**iven the delays and false starts that have bedevilled the introduction of mySRA and the ABS regime, one shouldn't really be surprised that the SRA pushed back the deadline for firms to nominate their mandatory compliance officers – COLPs and COFAs – from 31 March 2012. For those of you who are out of touch with the SRA's favoured acronyms, COLPs are compliance officers for legal practice and COFAs are compliance officers for finance and administration. Every firm was supposed to have nominated theirs by 31 March to give the SRA time to approve each nomination before the roles become active from 31 October 2012.

Apparently, pushing back the nomination deadline will allow firms more time to finalise nominations and give the SRA time to check the application process. Since the nomination forms are not expected to be published for around six weeks, it is probably a good thing that the process is being pushed back.

The SRA has, handily, published some general guidance on the information it will be seeking when firms make their nominations. This is all pretty much as expected and includes information about the firm's organisation and governance and the nominee's professional history and compliance with the suitability test.

For many firms, the nomination process will be the first time they come across the suitability test. From the SRA's perspective, the need to assess COLPs and COFAs for over 10,000 firms against the requirements of the test should give ample opportunity to identify any potential difficulties with the process.

## Continuing uncertainty

Looking to the future, one has to have sympathy with COLPs and COFAs. Outcomes-focused regulation has been

with us for five months now and already the handbook is on its third revision. Since COLPs and COFAs are to be responsible for reporting any compliance failures in a firm – either immediately or in the annual report, depending on the nature and potential consequences – it is a fairly safe bet that the compliance officers are going to be spending a fair amount of time getting – and then keeping – up to speed.

**“Once COLPs and COFAs become mandatory, a firm will not be able to practise lawfully without them”**

One extremely worrying aspect of COLPs and COFAs taking up their roles from 31 October 2012 is the continuing uncertainty over reporting requirements. We all know that the officers will be required to report any compliance failures to the SRA no matter how trivial. The distinction is that trivial compliance failures should be reported in an annual report. I understand that it is intended that the annual reports will be dealt with at the same time as PC renewal. Taken literally, therefore, the annual report for this year should be due by 1 November.

I suspect there will be transitional arrangements in place for this year. At present, however, we do not know what they might be. The SRA has indicated that there will be a consultation on reporting requirements shortly. I believe this presents a timing problem, since, even if the consultation is issued before the end of March, the usual response period is 12 weeks, which means that responses would

be due sometime in June. That doesn't leave much time for responses to be analysed and considered and guidance to be given to every firm.

## Come prepared

There is considerable benefit to firms in being prepared. Despite the delay in the nomination process, firms should by now have selected their nominees as COLPs and COFAs. The prudent course is to also select a back up in case your compliance officers are not approved or cannot take up the role for another reason. Once COLPs and COFAs become mandatory, a firm will not be able to practise lawfully without them. If your COLP or COFA dies or unexpectedly steps down, you will need to obtain temporary emergency recognition for a replacement. What to do in this eventuality should be a key part of a firm's disaster recovery plan.

Getting the right people – and the right support – in place and in a position to meet whatever reporting requirements are ultimately imposed is the only sensible course for firms. Leaving aside the unfortunate timing and the continuing uncertainty, by 31 October firms will have known for more than a year that COLPs and COFAs have to make annual reports. Firms ought to be reviewing their compliance arrangements and internal risk management procedures in any event. Such reviews will require internal information gathering.

With that in mind, will there be any reasonable excuse if firms fail adequately to prepare by collecting the relevant information?



Susanna Heley is a solicitor at RadcliffesLeBrasseur ([www.rlb-law.com](http://www.rlb-law.com))