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How to make compliance work for you to help you have more satisfied clients *and* at the same time to tame your big gorillas!

When I go into law firms to assist them to become compliant with outcomes focused regulation (OFR) I often find that there is a great deal of negative thinking concerning compliance. It does not need to be like that.

Instead law firms should look at OFR in a positive manner. Yes, it is compliance and it is mandatory – but if approached in a positive manner and implemented well, then the exercise to ensure compliance can bear fruit in at least two ways, which I discuss in this Briefing Note.

More satisfied clients

Here is the view of one senior Risk Director from a major law firm in this country as to why law firms should take compliance seriously and manage it well -

“The pursuit of excellence with the aim of doing things better for the clients”

If a law firm takes compliance seriously, with a view to being not just compliant, but more importantly, with a view to building a better and less risky firm, then following common sense procedures in looking after clients is likely to lead to less problems and to more satisfied clients. As has often been said, satisfied clients are the true test of a successful law firm.

Arguably the most important part of the new SRA Code is set out in Chapter 1 – dealing with *client care*. The sixteen ‘*outcomes*’ and twenty-eight ‘*indicative behaviours*’ in Chapter 1 may look like rules but when thought about carefully they do contain a great deal of common sense and if implemented in a sensible fashion, should enable many law firms to improve the manner in which they look after their clients. Reviewing how a firm presently operates when compared to such *outcomes* and *indicative behaviours* should be a vital part, not only of a firm’s compliance plan but should also be integral to improving its client relationship management programme.

For example, understanding *how to take instructions* at the outset of a matter is vital to anticipating the needs of the client and to managing the relationship. If the most important elements of the relationship between lawyer and client are not dealt with

adequately at that point then it is likely that the relationship will get off to a bad start and never recover.

Agreeing at the outset an appropriate level of service with the client, explaining your responsibilities and those of the client and in particular to discussing the subject of money (which many partners in firms seem to shy away from), are all matters covered by the *indicative behaviours* in Chapter 1, and are fundamental to creating a successful relationship with a client.

If a firm really wishes to improve its client service and be compliant then it should carry out a 'brainstorming' exercise in relation to each *outcome* of Chapter 1 (read in conjunction with each of the *indicative behaviours* in Chapter 1) asking questions such as

"Are we currently fully achieving this outcome?"

"If not, where are the gaps and what will we need to do to fill the gaps?"

"What procedures will we need to put in place to monitor our achievement of this outcome?"

"How can we test the effectiveness of our compliance procedures to improve the way we do things?"

However, it is now not sufficient just to be compliant. A law firm must be able to **demonstrate** how it is achieving the outcomes set out in the new Code. In practice this will require a firm to be able to document how it works and the decisions it makes – in short it will need to lay an 'audit trail' so that if challenged in the future it will be able to justify its actions.

A good test of how to do this is presented by the very first *outcome* in Chapter 1 – '*you must treat your clients fairly*'. If a firm has provided a client with excellent service and the file is well documented from beginning to end, then the file should speak for itself and be the means to demonstrate that the client has been treated fairly.

Tame your 'big gorillas'

There is another added benefit to be achieved from OFR. A law firm is very much like a chain – which is only as strong as its weakest link. If anyone in a firm does not follow procedures then that person is the weak link and can bring disastrous consequences to a firm.

Many law firms have what I tend to describe as 'big gorillas' – partners who are not prepared to be managed and who will typically say things such as

"You can't manage me – I am a big biller!"

“That compliance nonsense is alright for the rest of you – but not for me!”

“You can’t tell me what to do – I am as much an owner of this firm as you!”

The provisions of the new Code and the Authorisation Rules mean that the responsibilities of COLPs and COFAs will be onerous, and in some firms those roles will be unworkable, given existing ‘cultures’ within those firms and the absence of any real notion of *accountability* on the part of some partners. I mean by ‘*accountability*’ the willingness of partners to be managed and to put the interests of clients and the firm before any personal agenda.

Notwithstanding the provisions of Rule 8.5 of the Authorisation Rules which state that COLPs and COFAs must be of ‘sufficient authority and in a position of sufficient responsibility to fulfil the roles, how likely is it that COLPs and COFAs will in many law firms really be able to effectively fulfill the roles and not put themselves and their firms at risk from non-compliance, **unless steps are taken to ensure *accountability*?**

‘Big gorillas’ cannot be permitted to continue behaving as they do if law firms are to be compliant and COLPs and COFAs are able, effectively and without personal risk, to carry out their functions.

Accountability is central to a COLP and COFA being able to fulfill satisfactorily their roles. Compare large corporate organisations (the type which are likely to establish ABSs) where clear lines of reporting and responsibility will already exist and where the need for such a compliance officer is likely to be readily understood, accepted and implemented.

Some firms are turning OFR to their advantage and using the introduction of COLPs and COFAs as a means to deal with the lack of *accountability* on the part of partners. As one experienced managing partner said to me recently –

“I have told my partners that if I have to do the job, then we are first going to have a very serious debate within the partnership as to how this firm will be managed in the future!”

Some firms are now putting in place internal agreements whereby all partners are contractually required to be compliant with all regulation and to do everything necessary to enable the COLP and COFA to effectively carry out their respective roles. Indemnities against potential liabilities on COLPs and COFAs in the event that partners breach their obligations are being included in such agreements.

If ever there has been a moment to strike in relation to these 'big Gorillas' then it is now. Firms (by which I mean the majority of 'good' partners in a firm, using the well tried and tested 80 / 20 rule) should *use* the new regulatory regime to target those who are not prepared to follow procedures and clearly say to them that

"If you wish to continue to be a member of this club then you must obey the rules"

'Zero tolerance' is becoming the new law firm mantra as far as compliance is concerned.

A review of the *indicative behaviours* in the new Code will provide multiple examples of where the new Code can be used to tackle the 'bad behaviour' often seen in law firms, which behaviour cannot continue to be accepted if a firm is to manage its risks adequately. The risks to a firm from compliance failure should now provide those 'good' partners in the firm with the ability to say to the mavericks that 'enough is enough' and require them to comply ... or else. If this is not done, then everyone in the firm will be **at risk**.

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