

CASE STUDY

How one small firm approaches compliance

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Having described how a large firm manages its risks (*Legal Compliance Bulletin* [2009] September, issue 3, p.6), Peter Scott turns his attention to the other end of the size spectrum to look at how a small firm manages its compliance and risks

Small, high-street firms, which make up in terms of numbers the bulk of the legal profession, are often heard to complain that compliance is a burden, leading to the sacrificing of fee-earning time and 'quality of life time' with families. However, it need not be like this if small firms *organise* themselves to manage compliance and risk in a more *systematic* manner.

Rather than write a prescriptive article on how, in an ideal world, small firms should deal with compliance and risk, it seemed more useful to stay in the real world and look at how one small firm in particular, with only limited resources, effectively tackles its compliance and risk management. The firm of Carter Bells LLP in Kingston upon Thames (eight partners and 22 staff) was approached for this purpose.

The reason for this choice was because I had instructed them on a property matter last year and, both as a solicitor and as a client (probably a very demanding one), I was happy with their advice and service and impressed with their rule 2 compliance procedures which 'ticked all the boxes' and were handled in a helpful and user-friendly manner. As clients, we always knew precisely where we stood as to costs, etc. (although, my wife felt that the procedures were 'bureaucratic nonsense producing too much paper').

The firm has also embedded risk and compliance into its internal client inception procedures. A file cannot be opened unless and until positive written confirmation that the mandatory conflict-checking procedures have been carried out and that no conflict exists. The position is the same in relation to anti-money laundering procedures. It is also the firm's practice to require payments on account of costs at the commencement of a transaction in all matters (including residential conveyancing) and to require clients to pay disbursements as and when they are incurred. This ensures that the firm's exposure to financial risk is minimised. It is indicative of how the firm is run that, even at its relatively small size, it has for many years taken management seriously by having a managing partner.

So, how does Carter Bells get to grips with compliance? John Field, managing partner since 1987, was asked how the firm organises compliance internally, given its size and resources. John explained that until recently, as managing partner, he had taken the lead role in organising all compliance and risk management. However, with his impending retirement from the role, it had been decided that a different approach should be adopted. Instead of having one person responsible for all compliance, each of the partners will have a specific compliance role. This is a perennial debate in many smaller firms – how to

manage risks and be compliant most cost-effectively? The outcome of such a debate will often depend as much, if not more, on internal attitudes, as on cost. Carter Bells has decided to go a particular route, not only because it is considered to be more cost-effective, but most importantly because the partners (who are the owners and risk averse) recognise that it is in their own self-interests (as well as being good for clients) to ensure that their firm is run in as compliant and risk-free a manner as possible. This is a required mindset on the part of those who own and run a firm if good compliance is to be achieved. It can also provide real meaning to the term 'a partner-led firm'.

One partner randomly calls for files from fee earners to check that risk and compliance procedures are being applied

An example of this approach is that the partners between them carry out close supervision of matters by seeing all incoming post and DX and all outgoing mail, including significant emails which may contain detailed advice. Furthermore, all fee earners are instructed not to make any commitments on behalf of the firm by way of email, unless they have received prior approval from a partner. This enables the partners to be aware, on a continuous basis, of what is happening on their fee earners' files. In addition, the firm has put in place a system whereby one partner randomly calls for files from fee earners to check that risk and compliance procedures are being applied. This 'auditing' of each file is carried out against a 22-point checklist, a copy of which is returned to the fee earner with comments regarding any areas which might need to be improved on. A central register is kept of all checklists showing the results of each 'audit'.

This approach (of sharing the burden) can work in a firm the size of Carter Bells because it is a tight and collegiate partnership where the partners meet regularly, both on an informal and formal basis, to share knowledge about what is happening in their firm. In particular, they meet to discuss whether to take on substantial or unusual transactions and, on occasion, the firm has declined to act following such meetings. Likewise, it has been instilled into every partner and fee earner that they must consult the money laundering reporting officer if they have any doubts over a particular matter or transaction and they regularly do so. This can also lead to the firm declining to act. Knowing what is happening in the business is essential if risks are to be effectively managed. However, where compliance is to be shared in this way it is also important that at least one

person should have an overarching view and responsibility, in order to draw together all risk and compliance issues. Carter Bells is aware of the need for this and the task is being taken on by Frank Horder, the new managing partner.

Another advantage this approach can bring is that if all the partners are seen to be actively engaged in 'living' compliance in this way on a daily basis, then staff are more likely to follow their example. The firm builds on this approach by having a regular programme of training for its staff to increase knowledge and awareness, using both staff meetings and its intranet.

However, it is not sufficient merely to be compliant, it is also necessary to be able to demonstrate effective compliance (particularly for rule 5).

John Field was asked how the firm deals with this aspect. He explained that the firm's office manual and procedures are regularly reviewed and updated (for example, the firm's engagement procedures have recently been revised) and detailed records of its engagement compliance, anti-money laundering and conflict-checking procedures are maintained. However, he also said that the firm is not in any way complacent and is currently looking at how to produce better document trails to evidence compliance, as well as focusing more effort on areas such as risk assessment, file audit and business continuity. The firm already has Investors in People accreditation and is currently considering Lexcel accreditation as a key tool to help in managing risks and compliance.

And thinking to the future, the partners would like to introduce a software package (ideally linked to the firm's practice management system and Lexcel procedures) to provide a more structured approach to monitoring compliance and risks. For the present, the current procedures (including close supervision by the partners of files, post-opening arrangements, controls over advice letters and training) all combine to build

effectiveness into the firm's compliance and risk management. As John Field says, 'the files speak for themselves'.

When the firm had a monitoring visit from the Law Society in January 2006, a pre-visit file audit by the firm showed how good the extent of compliance was and this was echoed in the inspection which was followed up with a useful written summary of its findings and a short list of recommended actions. These were communicated and explained to all partners and members of staff and fully implemented.

Carter Bells' partners are realistic in recognising that compliance is not an optional activity - it has to be done and done well, even given the constraints of resource which every small firm has - and they will continue to work hard at it with a demonstrably positive attitude and approach to the task. In the future, more formalised processes in relation to compliance and risk than they have previously adopted may be necessary, but this is in any event likely to materialise if they go down the Lexcel or similar route.

The most important things that this small firm demonstrates (which every firm, large or small, can achieve if so minded and which are not dependent on resource) are that:

- * managing risk and compliance needs to be driven and seen to be driven 'from the top' by owners/managers; and
- * managing risk and compliance is 'everyone's job'.

Developing a mindset particularly around these propositions is a starting point for any firm (large or small) if it is to become compliant.

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