

This is a question that many firms are grappling with and anxiously seeking guidance to address their concerns with regard to Regulation 8.2 of the SRA Authorisation Rules. In particular there is the risk that the regulator may conclude that the compliance arrangements of a law firm are not suitable following its own investigations. Although that risk cannot be entirely avoided, I believe that it can be appropriately mitigated.

In my experience the majority of law firms would already have arrangements in place but whether they are sufficiently comprehensive and fit for purpose in the new regulatory regime is a real challenge. One way to address this challenge is by law firms benchmarking their arrangements against a compliance framework.

Whilst OFR rightly recognises the diversity of law firms which is likely to increase with ABS, it is likely that the majority of firms would share some common elements in their compliance framework irrespective of size or client profile.

So what should a comprehensive compliance framework look like for legal services providers? A compliance framework is a set of interconnected activities that taken together help a firm to create and maintain the right culture to ensure compliance with regulatory requirements. A generic compliance framework for law firms should ideally consist of the following key activities, tailored and adapted as appropriate to reflect the diversity of firms.

Compliance Framework	
Key Activities	Key Features
Governance arrangements	<ul style="list-style-type: none"> Clearly defined responsibilities for compliance among the 'Managers' (role as defined in the SRA handbook) Clearly defined responsibilities for oversight of compliance and accountability to the Managers particularly where the firm has audit committees and/or risk committees Managers have overall responsibility for instilling a culture of compliance in the firm Managers engage and demonstrate a clear and unambiguous commitment to the compliance framework Managers demonstrate appropriate oversight over compliance arrangements including implementation and effectiveness Compliance officers have direct and unfettered access to Managers including senior management and audit/risk committees as appropriate to escalate issues and secure necessary support to achieve compliance Compliance officers with multiple portfolios to declare conflicts of interest where appropriate
Compliance risk management	<ul style="list-style-type: none"> Identify likely regulatory and compliance risks Assess the seriousness of the identified risks taking into account likely impact and probability Risk assessment process is aligned with business planning process
Compliance risk management	<ul style="list-style-type: none"> Embed risk mitigation in automated processes and workflows Adopt quality standards where appropriate – Lexcel, ISO 27001 (information security)
Compliance	<ul style="list-style-type: none"> Outline compliance and ethical objectives
Planning	<ul style="list-style-type: none"> Areas of focus in the relevant business planning period Target resources to the critical risks in the firm Action plan of compliance tasks including frequency Prioritisation and allocation of resources Allocation of responsibilities for compliance tasks and arrangements for supervision Contingency arrangements
Compliance advice	<ul style="list-style-type: none"> Proactive engagement and collaboration between compliance officers and other departments Involvement of compliance officers in strategic decision making Providing advice on transactional matters and bespoke issues as appropriate
Compliance training and awareness	<ul style="list-style-type: none"> Regular and effective training of employees, contractors and suppliers as appropriate on relevant policies, procedures and processes Timely updates to staff from senior management (CEO or Managing Partner) on compliance performance particularly on good practice and highlighting issues of concern as appropriate Forums for sharing and discussions on compliance issues Promote a culture of self reporting of compliance failures
Compliance policies and procedures	<ul style="list-style-type: none"> Code of conduct within the firm that is aligned with regulatory requirements and addresses the key compliance risks Regular review and updating of policies and procedures Clarify the consequences of non compliance
Compliance monitoring	<ul style="list-style-type: none"> Review of staff performance with regard to compliance through appraisal/annual review process Regular auditing of compliance processes and systems Follow up of self reported failures Tracking and follow up on corrective actions Review of reports from compliance officers by senior management
Compliance enforcement	<ul style="list-style-type: none"> Swift, consistent and appropriate action taken to address persistent and serious violation of compliance policies and procedures
Engagement with regulators	<ul style="list-style-type: none"> Proactive provision of relevant information to regulators Coordinating visits and/or investigations by regulators
Compliance records	<ul style="list-style-type: none"> Relevant regulatory obligations Risk register Complaints, Claims, File review and Compliance failures registers Training records Minutes of relevant meetings Auditable trail of documents and decisions Compliance failures
Compliance reporting	<ul style="list-style-type: none"> Regular internal reporting to 'managers' Regular external reporting to regulators
Compliance effectiveness review	<ul style="list-style-type: none"> Assessment of client outcomes Analysis of compliance failures including non reported failures Culture surveys Internal Audit (in-house or outsourced to a third party) to provide independent objective assurance

Following a benchmark against the framework it may highlight gaps and/or activities that may not be well developed which will require remedial work. Furthermore, it is recommended that firms undertake a compliance effectiveness review periodically (at least annually) to evaluate the suitability of its arrangements in the context of the outcomes achieved.

The compliance effectiveness review is owned by the 'managers' and designed to give them assurance in accordance with their responsibilities outlined in Regulation 8.1 of the SRA Authorisation Rules. The review can be conducted by the COLP and COFA or by internal audit or an external consultant, but the 'managers' as the 'governing body' must own this activity and take responsibility for taking necessary action arising from the review including restructuring the compliance team as appropriate.

Although adopting the proposed compliance framework does not eliminate the possibility that the regulator could take the view that a law firm's compliance arrangements were unsuitable taking into the account the circumstances of their investigations, it is likely that the firm would be in a better position to engage constructively and positively to resolve any differences of opinion.