

The Challenges of Complete Proactive Legislative Compliance

Tim Cheadle, General Manager,
LexisNexis UK Enterprise Solutions

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The legal profession is undergoing a systemic change, mainly driven by information technology, globalisation and regulation. Today, most law firms will concede that however cumbersome and burdensome regulation might be compliance with it is imperative. The Legal Services Act 2007 (LSA) is unleashing unprecedented change. Aside from increasing competition as a result of the introduction of legal disciplinary practices and alternative business structures, the LSA has extended the powers of the Solicitors Regulation Authority (SRA) and established the Office for Legal Complaints under the Legal Services Board. Law firms are being closely watched! A law firm's intellectual property is only matched by its reputation. Both are potentially at risk as firms negotiate the changing regulatory environment.

The Solicitors Regulation Authority could be your best friend!

The SRA is currently undergoing its biggest-ever consultation on reforms that will see the Solicitors' Code of Conduct practically rewritten as a number of detailed conduct rules are scrapped in a bid to move away from tick-box, prescriptive compliance to principles and outcomes-based regulation. This change in approach should not be misconstrued as 'regulation-lite', the SRA often points out.

At the centre of this transformation is the introduction of 'outcomes-focused' regulation that promises to offer a more flexible approach for firms, it will see the SRA take a lighter approach with firms that consistently complied with regulations, but come down heavily on those that do not. Law firms and individual practitioners who respond positively will be able to enjoy a more constructive relationship with the SRA, they will experience lighter supervision. Those firms who do not can expect to be dealt with severely.

The new code of conduct is slated to come into being on October 6, 2011. In view of this looming date, the smart firm will be proactively planning to ensure a happy relationship with the SRA!

Whilst the SRA's approach to regulatory compliance may be controversial, law firms must rise to the challenge and apply their principles and moral codes to ensure that they deliver the desired outcomes for their clients. To achieve this, law firms need to make radical changes to the way they conduct their business, moving towards a more value and results-based approach to legal services delivery. If embraced in the right spirit, regulation can help firms achieve this goal, which ultimately will strengthen customer loyalty and positively impact on the bottom line.

In order to avoid an investigation by the SRA, penalties and possible reputational damage, solicitors have a legal responsibility to carry out Know Your Customer checks on all clients as part of the Third EU Anti-Money Laundering Directive. The Solicitors Regulation Authority is considering important amendments to Rule 3 (conflict of interests) and Rule 4 (confidentiality and disclosure) of the Solicitors' Code of Conduct 2007. Cases such as *Winters v Mishcon de Reyai* may help clarify appropriate firm behaviour in the short term - however, are all these changes being properly reflected in the firm's processes and supporting systems?

An ever changing legal environment

A direct result of the LSA, legal services will soon be unbundled and re-packaged. Some firms such as Osborne Clarke are even considering giving away certain services free so that the firm can retain and focus on high value strategic work. Let there be no doubt that giving legal services free will not in any way reduce firms' regulatory burden. Against this backdrop, ensuring regulatory compliance becomes exceedingly difficult and expensive.

Recently, Azam & Co2, a London immigration firm lost a judicial review action against the Legal Services Commission (LSC) after it missed a deadline to apply for a new legal aid contract. The High Court ruled that the LSC was not obliged to write to the firm directly to notify it of the bid deadline.

There is a raft of other wider regulations such as Money Laundering Regulations 2007, Statutory Audit and Company Reporting Directives that law firms have to adhere to too. These provisions also aim to encourage the adoption of self-regulating practices to facilitate greater transparency in business management and financial reporting. In addition, with over 90 per cent of business documentation now in electronic form, firms are subject to disclosure under rule 31.4 of the Civil Procedure Rules and paragraph 2A of the Practice Direction³. Simply, this means that aside from emails, word processed documents, imaged documents and metadata (information relating to changes made to electronic documents stored on a computer system); firms also need to appropriately access, store and present instant messaging and multimedia files such as voicemail and video, per case requirements.

Further, the economic recession has played its part in cranking up the pressure on law firms, which is forcing them to undertake complete scrutiny of the methods, sources and technology they deploy to deliver legal services.

Where to Start?

Managing the depth and breadth of compliance is indeed a daunting and onerous task. However, law firms that master the art of compliance also benefit from significant efficiency gains and help meet the larger objectives of business including profitability and reputation. Firms can face heavy fines from authorities when they ignore their business risks. Of course, any mishandled situation has the possibility to become an embarrassment and damage the firm's ability to attract new business. Importantly, in more than half of the serious incidents - arising out of poor risk management, the partner involved is no longer with the firm within two years. Minimising risk is not just about protecting the firm's reputation and hard-earned funds; it is also about protecting a valuable asset - the firm's people.

Solicitors today need to cover more practice areas to find and service new business and retain clients post workforce reductions. Therefore, time is becoming even scarcer as lawyers intensify their work commitments with additional client-facing and business development activities.

Firms should be reflecting on the following points, in order to start thinking strategically about risk and compliance:

- **Are we targeting the right business for our firm- are we opening up compliance risks for the sake of speed or profit?**
- **Are we proactively protecting ourselves from external risks or accusations?**
- **Are we managing the employee on-boarding process with compliance in mind? Are lateral hires adhering to the same compliance procedures?**
- **Will always we get paid for the work we do?**
- **How are we monitoring our highest-risk business processes? How can we complete remove manual errors?**
- **Is our intellectual property and our client information well protected?**
- **Will senior partners be alerted to irregular activity within the firm before it's too late?**

These questions reach right across a firm and the resulting answers and implied reforms have implications on a firm's technology, people and processes. Managing risk and securing information access across all personnel, offices and technology systems is no easy task.

What's in it for me?

With all of the above information in mind, the challenge of proactive compliance may seem all too daunting. However, the benefits of an effective risk and compliance system and methodology far outweigh the resource and time investment. Improved business performance and predictability is enabled by encouraging transparency across your firm, clients and beyond. It gives a management team a systematic process for anticipating and controlling risks, and the tools to proactively determine proper actions and critical tasks, reducing unacceptable compliance holes.

Secondly, given the challenges of working in today's climate, proactive compliance can aid firm sustainability. As outlined above, the legislative environment is not a static one and as such, effective compliance toolsets mean that even as mandates increase and business models and processes become more complex, the firm can evolve and hone without upheaval or falling foul of new legislation.

Finally successful compliance management results in greater legal business agility. As the business environment continues to change at an ever increasing pace, comprehensive and integrated compliance processes helps your firm become better at identifying business risks and their interdependencies. It helps management teams evaluate assumptions in the current business model and assess the effectiveness of the strategies for new business models. By enabling decision makers to identify and assess alternative future scenarios, proactive compliance processes lead to greater business agility and promotes competitive differentiation.

Legal practices must take a consistent and streamlined approach to regulatory compliance – one that encompasses all regulations as opposed to undertaking several individual initiatives to comply with the various legislations. Adopting technology is the only fool-proof way to achieve sustainable compliance. LexisNexis Axxia dna, a next generation, integrated practice management platform, is one such technology.

For more information

To find out more about [LexisNexis](#) and to discuss your firm's specific business requirements, please visit www.lexisnexis.co.uk/enterprisesolutions, email salesinfo@lexisnexis.co.uk or call +44 (0)1132 262065 to speak to a LexisNexis Enterprise Solutions consultant.

