Teal
Compliance

COMPLIANCE
THAT WORKS!

Welcome to this eBook looking at how to build Compliance That Works in your firm –

Compliance Officers - who tell me how frustrated you are that the time and money you spend on compliance doesn't seem to be worth it!

I've spent 17 years pondering this, and I have a programme of advice and guidance, pointing you in the right direction, to detect where compliance might fail and how to fix it.

Amy

THE BIG
PROBLEMS

Do you know what the top three issues are that I hear from compliance people in law firms? (I'm sure it's the same in most places though). I'll be looking at each of them and then we will get into the nitty-gritty of overcoming them.

In third place is "It is hard to get a straight answer on what I am supposed to do".

No offence to the Regulators, they do try to help us, but it is quite often that you get an answer from them that "it's a matter for you".

That can be really difficult because if you haven't appreciated or got experience with the intricacies of how your Regulator approaches compliance, it's hard to anticipate how they will deal with you if something goes wrong.

There are plenty of disciplinary cases, and more on the way, where firms thought they were doing their best, only later for the Regulator to find fault.

How do you get the information that you need, to know if you are doing the right thing?

In second place in our top three issues reported to us by Compliance Officers is time to fit everything in.

Quite often those responsible for compliance have got other roles too, fee earning, HR, marketing. Even those where compliance is their full-time job still report there is not enough time to get everything done.

We have had a very busy time in compliance in the last few years: GDPR, we had a new set of standards and regulations, we have had two lots of Money Laundering Regulations in the last five years (and probably some more on the way!).

It is relentless really, when it's busy, or there are problems like COVID, the potential risk is that compliance gets kicked into the long grass or businesses decide that compliance is too expensive and can't afford to resource it properly.

In first place in our top three issues that I hear from compliance people is they feel that time and money is wasted because they feel that people still do not do what they ask them to do.

I come across compliance people all the time frustrated that they have tried to express how important these things are and they are just not feeling that they are getting traction.

It's my practice to sit back and watch what's going on, and after 17 years of doing that, I've made several observations.

In this eBook I will be outlining the issues I've seen and how to solve them using our Compliance That Works method.

Now we get into the nitty gritty of how to solve those problems we've been talking about, by looking at each of the 6 stages of Compliance that Works.

CLARITY
Get clear on what you need to do, what you have in place already and whether it works.

CAPACITY
Figure out how to fit it all in. Who do you need, what should they do, and how do you show a return on investment?

COMMUNICATION
Make it clear what is expected, find out why it might not work and above all make it relevant to your staff and their role.

COMMITMENT
This is a critical step – ask people to commit to compliance and explain the consequences if they don't.
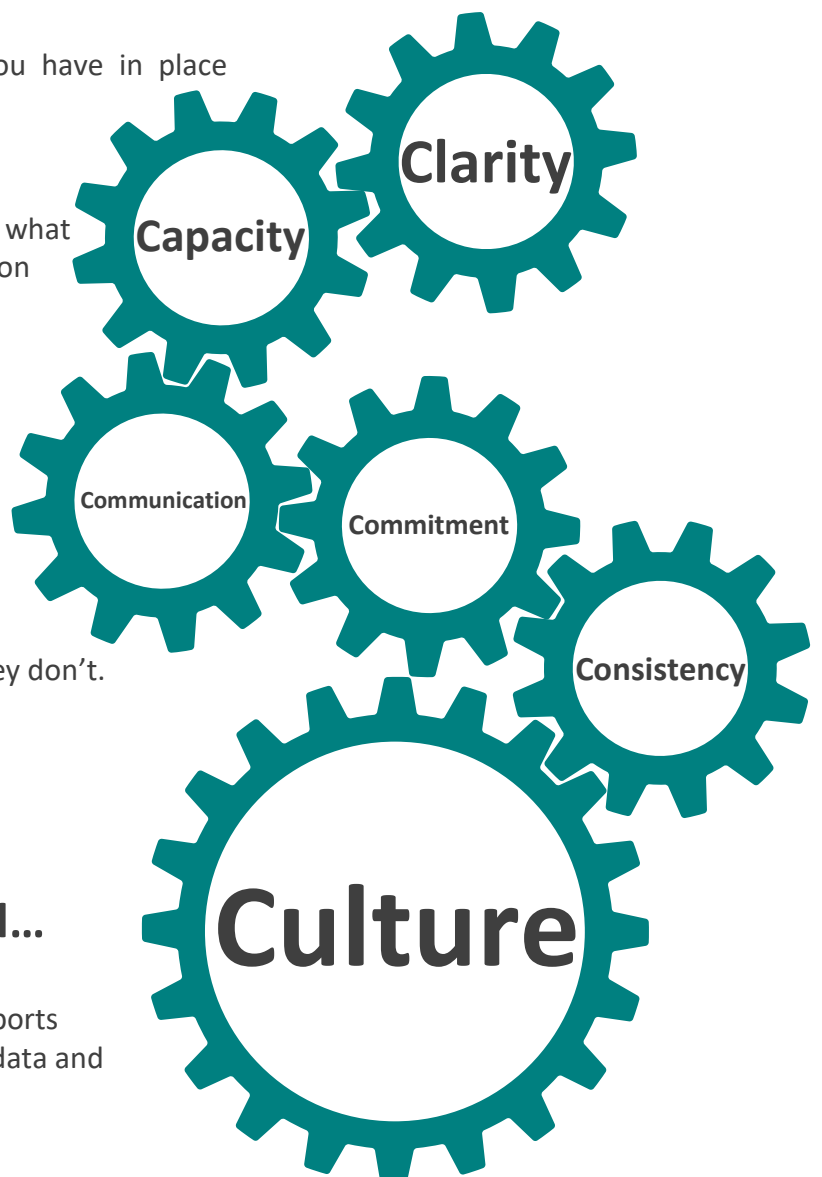
CONSISTENCY
Making sure your policies and procedures are working by building a control framework.

And the most important of all...
CULTURE
Developing a culture within the firm which supports rather than hinders compliance, by having the data and the skills to challenge non-compliance.

Clarity

Capacity

Communication

Commitment

Consistency

Culture

Clarity

Get clarity on where you are now. This means carrying out a gap analysis. Which is easy for me to say, but what do I mean?

You are likely to be responsible for more than one area of compliance, so don't try and do it all at once, you'll never get the time for it, and might just put it off.

But you know the saying "How do you eat an elephant? One bite at a time".

Tackle one discipline at a time: Financial Crime, Code of Conduct, Accounts Rules, Data Protection, Risk Management.

"*How do you eat an elephant? One bite at a time.*"

And then for each area, answer these questions:

A. What do the rules/regulations/law require us to do?

B. Do we have a policy/procedure to cover that?

C. Is the policy/procedure being followed for each requirement of the rules/regulations/law?

D. Does the policy/procedure work – i.e., is it effective and ensuring or preventing what it's supposed to?

In carrying out this activity you will need to know what you're meant to have in place, appreciate what is working/what failing would look like and have the information on which to make these decisions. Those are not small issues and so we'll look at these a bit further on.

HOW MANY RISKS ARE YOU PREPARED TO TAKE?

What is it you need to have in place to ensure compliance?

Whatever the standards and regulations say. Right?

It's not that simple, is it? We're given principles and standards, rather than a blueprint for what to do.

I'm sure you've heard "it's a matter for the firm to decide what is appropriate".

So how do you do that – decide what is appropriate?

It goes without saying, attending training, reading guidance and articles, and speaking to other people about it can help you work out what you CAN do, but won't necessarily tell you what you SHOULD do.

We spend a lot of time speaking to firms about how they COULD tackle risk and compliance, and whilst many firms do similar things, to ensure your compliance works, your approach to implementation should be aligned with your firm's risk appetite.

I've noticed that there is a range of appetites amongst firms, from the extremely risk averse, to those who accept a good degree of risk. And indeed, often there is the same variation in the personal risk appetite of the Partners.

For compliance to work, we need everyone pulling in the same direction, so the policies and procedures need to reflect the risks (if any) the business is prepared to take.

A simple way to get a handle on this is to look at the high-level risk categories, say financial risk, or quality risk and ask each Partner to score it on 1-5 where 1 is risk averse, and 5 is actively seeking risk.

Obtain an average of all the Partner's scores.

It's likely you will land somewhere between minimal risk and open to risk. Apply this to some specific risks to "try it out" before finalising the approach.

Thereafter, apply this appetite in considering how to implement new policies and procedures or when reviewing existing ones. It's also a useful tool to use when you are conducting a root cause analysis where there has been a failure to follow a policy or procedure – was the policy or procedure outside the actual risk appetite of the firm, and should it be changed to align with it?.

You don't know what you don't know, or else you'd know it!

This is one of the challenges we have in compliance. We only know about the risks that we've identified or that we've been told about by someone else who has identified them.

For seven of my 17 years in compliance I was in the compliance team of a large firm and heard about most things that went on there. I thought I knew a lot. But after then I became Head of Risk and Compliance for a network of over 100 firms, and that's when I realised, I knew only a fraction of the issues which could occur.

Over four years there, and now five years in my own business I have heard about thousands of issues, literally! It's rare that I'm surprised any more, but that experience has shown me that when it comes to compliance, we should expect the unexpected.

So, getting Clarity on what you need to do will include tapping into other people's experience. Whether that's in a Networking Group like ours, attending our "Ask Me Anything" sessions where other people raise issues, or attending Masterclass training - getting as much data about the risks which firms see is critical.

PROPER TRAINING!

Fun fact – did you know both of my husbands are engineers and served their time as apprentices!

From time to time I come across people in compliance who are "time served". Been doing the role for ages. And sometimes those people are the hardest to engage in learning because of their experience, but even very

experienced people usually come away from a training course, or webinar with something useful.

Now, I would say that wouldn't I, being someone who provides training?

But wherever you get your training from make sure the training you're getting is a deep dive into the area, not just the same sessions as all the staff. You need to know the rules and regulations, but look for practical experience, stories from the coal face, real world examples of how to implement policies and procedures.

BRINGING ALL THE COMPLIANCE DATA TOGETHER

Often when I'm talking to a firm, I will find that many of the compliance roles have been divided up amongst three or four people, to spread the workload.

Particularly in smaller law firms, it's not always possible to nominate just one person to reduce fee earning (perhaps to none) and have them handle all the compliance.

Where the roles are distributed amongst a group of people, it's really important that the information doesn't just sit in a silo of, for example, PII claims handling, or file reviews.

To get clarity on the compliance in your firm, you need all the data, from each area of compliance to really draw a heat map of where problems are.

Some firms approach this by having a Risk Committee where all those with a compliance responsibility will meet and share issues they have.

And by data, I mean a thorough analysis of the causes of issues, in a way that can be drawn together to create a composite picture of where issues are.

I've found the underlying causes of issues usually boil down to one of a few categories – for example lack of capacity, lack of training, failing to understand the risk, lack of care.

Only by looking at the causes of issues across the different areas of compliance will you be able to identify the biggest problems to sort out.

Capacity

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CAPACITY

So, we've spent time looking at getting clear on what you need to have in place for compliance. You've established the scale of the task before you, and now we move on to making sure the firm has capacity to achieve compliance.

I know that resources are scarce. I hear that in all sizes of law firms. It's critical you make smart use of those resources, and this section covers making sure you have enough people doing the right things, and how to calculate the return on investment.

What roles do you need to fill?

Some are obvious, COLP, COFA, MLRO, MLCO, Complaints Handling, PII Claims Management, a person responsible for Data Protection. It's sensible to consider deputies for the main compliance roles.

Depending on the size and nature of your firm and processes you will also want to think about the following roles:

- File Opening Team
- CDD Analyst
- File Auditors
- Cashier(s)

I've also found it very effective to have a compliance representative in each department. These individuals can be really helpful when rolling out new compliance initiatives because they know exactly how cases in the department work. They can also be great supporters and help encourage compliance around the firm

SELECTING COMPLIANCE OFFICERS

So, we've got a list of the roles, but who should fill them?

I've been recruiting people into compliance roles for 15 years now. Here are some of the attributes I think you need to look for in people working in compliance roles:

- *Attention to detail* – there is a lot of detail in compliance, we're often dealing with data, which can come from various places, and needs assimilating to paint a picture of what is happening. In addition, when it comes to writing policies and procedures, there can be a lot of detail to be captured about why and how things are done. When we're conducting audits and policy reviews, we often find some parts of the Regulations or rules have been overlooked.

- *Unflappable, calm* – Compliance breaches most often happen on Fridays – actually I don't know if that's true, it just always feels like it! They always seem to happen at the worst times, when you've got something better to be doing, and can often stop you in your tracks to deal with them. You need people who are calm under pressure, who can keep their nerve, and above all keep their temper in check when an error has occurred when "they should have known better".

- *Fair and Trustworthy* – This is absolutely critical for Compliance Officers who are investigating breaches. When a member of staff has been involved in a compliance breach, more often than not they will be mortified, and will feel terrible about it. It takes a lot for them to put their hand up and say what has gone wrong (particularly if they've not done what they were supposed to). People who are scared of being penalised as a result of failures will think twice about coming forward. They are much more likely to come along to someone they can trust (not to shout at them) and who will be fair in dealing with any consequences.

- *Discreet* – This is closely related to the last one, but someone who is considered discreet, especially for compliance breaches, complaints and PII claims. This stuff makes people feel sick, and they'd like as few people as possible to know about it.

- *Brave* – Being brave is so important. In compliance we sometimes have to challenge things, the way things are done, the way people are behaving. I'll talk more about this later when we look at the Culture component.

COST OF COMPLIANCE RESOURCES

A mistake I see made from time to time is overselling the benefits of appointing people into compliance roles.

In my experience, building or expanding a compliance team very rarely saves any money, but it is likely to lead to better compliance.

There are promises of freeing up Fee Earner time or speeding up dealing with conflicts or CDD. But in actual fact, it probably works out exactly the same amount of time - if not maybe longer, if not enough people are available centrally to deal with file opening.

Everyone still needs training, and in some cases the lawyer will need to maintain responsibility for some aspects, such as risk assessments.

But, by building a central team you will eventually have more experienced people in compliance, who've seen lots of different issues and likely will have had more specialised training. This will improve their ability to identify issues and thereby protect the firm and lawyers.

Promising the Partners that this investment in a central team will "pay for itself" with Fee Earners recouping time is a dangerous path, try to avoid it.

To work out properly what it's going to cost and what impact it has on the existing arrangement I recommend mapping out the current process - both in terms of cost and how long it takes, and then map it to the proposed new structure.

Work out the difference in cost of staff, but also the impact on the timescales for opening files and decide whether it's worth doing.

GETTING VALUE FOR MONEY

So, what if you're limited on who you can bring in to help?

How can you make your time and money go far in supporting your compliance programme?

Make use of those departmental reps, get them involved in monitoring compliance, and updating the teams about policy changes.

Support staff are also a wealth of knowledge, they will know what is working and what's not working, check in with them, they will be able to tell you what they think will work.

Use your time and budget wisely. There are many ways to access training for your teams at reasonable prices.

If you find writing training difficult, it might be a better use of your time to buy that in or attend a session and re-deliver to your colleagues.

You can, of course, outsource much of it. It's unlikely you can outsource the responsibility for compliance but everything else is doable.

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Communication

COMMUNICATION

Communication is the next component of my model. And it's such a wide topic!

First back to our problem cases, specifically that most common gripe - "people won't do what I ask them to do. I've got the policies and we've run training so they should know what to do but they aren't doing it."

Is it disobedience, or is it something else?

I don't know about you, but most of the people I've met in the legal sector have a good sense of right and wrong, a good moral compass.

Sure, there is the odd bad apple, one in every barrel.

But non-compliance is usually a lot more complicated than someone refusing to do what they are asked.

We are going to look at the most common reasons why people don't comply and it's not simply because of impenetrable policies and boring training (although we'll talk about them too). It's more than that and good communication on both sides is key to building a compliance programme which works.

WHY NOT?

Do you know why they aren't doing what you want them to do?

One of the great things I found about being a compliance person was that everyone would tell me what they were thinking.

Of course, I wasn't a Partner at the time, or in charge, so they'd give me the lowdown on what was going on, who said what, who thought what, who was or wasn't doing what they were supposed to.

It was really useful to be "in the know". Also frustrating at times because, like I said, I wasn't a Partner so couldn't always do anything about what I heard.

For compliance to work you need this intel! Find a way to take the pulse of the firm and focusing on what the support staff think will give you a clear picture of what's happening, instead of what they think you want to hear!

We do this on audits now, and here's the killer question that will get you to the heart of it - "If I had a magic wand and could change one thing about the firm, what would it be."

WHAT AREN'T THEY TELLING YOU?

A couple of years ago, a good friend of mine had just started a new job at a law firm. She is an experienced Legal Secretary.

I asked her how it was going, and she told me how surprised and happy she was to have been invited on the firms away day. She said she'd never been included in that type of thing in previous firms, and it made her feel like her opinion was valuable, and that she was valued.

For a week.....

I said, "what happened after the week?"

She said, "We got our pay rises".

Support staff got 1% and the Fee Earners got 7%.

And she went right back to feeling undervalued, ignored, unequal.

I asked her whether she'd said anything about how that made her feel, she said "what's the point? It's always

Been like this. I thought this place was different, but I guess it's not. They talk about people being equal, everyone is valued, but then when it comes to money, they treat us differently."

This firm was clearly trying to include everyone, build that "one team" spirit with the away day. But then, in rewarding the Fee Earners considerably higher pay rises, they trashed that progress.

We'll talk a lot more about this when we cover the culture component, but I mention it here because getting that communication right, wondering what you don't know and finding out is super important if you want compliance to work.

HOW ARE THEY GETTING ROUND YOUR PROCESS?

If you think that your policies and procedures aren't being followed you might need to work out what people are doing instead!

One thing that's always stuck with me is "sitting in the seat of someone trying to break your procedures".

Now, I'm not saying people will always deliberately try and break the rules, but sometimes people will push boundaries, or as we've seen in more than a few disciplinary cases recently, try and cover up non-compliance.

I think there is a much bigger question to answer - why do people do this, but for now, asking around about how you can "get past" the boundaries you have put in place, some theoretical stress testing of your policies and procedures will help you close any gaps and build a compliance programme that works.

DEATH BY POLICY.

Has anyone ever died from being bored?

Now, I do love a Policy, and I'm guessing you do too!

But goodness me, they are so long! You need to put some time aside to read them and absorb them.

I've seen firms try to strip them right down but in doing so, miss out some (if not most) of the important details.

Sometimes they have to be long.

So how do we get people interested and engaged when we know most people won't read past page 5?

Simple really - put all the important stuff before page 5.

That's what we do. We do have long policies, but we also prepare a "key facts" document for the front - where staff can get to the "must know" info quickly and easily.

The remainder of the document has lots of detail for those of us who like that kind of thing (you, me, Regulators…).

Bonus tip: And just before we leave policies - get someone with fresh eyes to read them before you roll them out - especially if it's an update. Ideally someone who doesn't know how things work - a new person if you've got one handy.

It's so easy to end up with disjointed policies which have been updated over the years, in piecemeal fashion and that don't actually make sense when read cover to cover.

IT'S SIMPLE REALLY.

WHAT IS COMPLIANCE FOR?

It's about protecting people. Clients. Colleagues.

Someone said to me once *"there's no non-compliance in air traffic control. Failing to comply there means people lose their lives".*

I'm glad I picked a career without such drastic consequences for non-compliance, but that doesn't mean it doesn't matter.

It matters.

It matters to the people who wanted their legal problems solved.

It matters to the person who has made an avoidable mistake.

But yet, many training courses focus on the detail of the rules or drafting of the Regulations.

Whilst they are important, if you don't make it relevant to the learner, it risks going in one ear and out the other.

For example, in our AML Essentials Course we do explain that there are criminal and regulatory consequences for becoming involved in money laundering, but we start and end each course explaining what the baddies do and how that affects our communities, our economy, our families.

AML compliance is not to satisfy Regulators, that's a by-product. It is about stopping the baddies.

After many years delivering these courses I reckon there's more than a few people who have decided not to use cash only nails bars and hand car washes since they realised how these can be used to exploit people for the purposes of laundering money for the baddies.

That's what effective and relevant compliance training results in - a change in behaviour that protects people.

Same with complaints handling training, data protection training, code of conduct training. Same with all compliance training.

TOP TIPS FOR WRITING ENGAGING TRAINING

I started in compliance as a Trainer way back in 2005.

I inherited a course. It was all rules and regulations, it was pretty stale.

In compliance training you do need the rules and regulations but too much of that and people literally drop off!

Here are my top tips for writing and presenting engaging training:

1 Don't make it too long. I usually never make staff training courses last for more than 90 minutes. My Masterclasses are longer than that, but I've found 90 minutes without a break is about the longest people can stay attentive. If you are preparing online training, and if you can split the material up, having four x 20-minute sessions might work better.

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2 Build in audience participation. Ask questions of the audience, involve them in scenarios. Nothing focuses the attention of the audience more than thinking they might be asked to answer something. In fairness, it's rare I randomly pick on people to participate, usually someone will speak up!

3 However, watch out with the audience participation thing, be ready to fill the silence if no-one joins in.

4 Over the years I noticed a direct correlation between the amount of participation I would have with an audience and whether I did an "ice breaker" at the beginning. It appears that if you've not broken the silence (ice) they won't join in. Just asking people to introduce themselves works. If you are training a department, where everyone knows each other, I tend to use the "tell the person next to you something they'd find surprising about you."

5 Do not commit murder by PowerPoint! We all want to make sure we remember what to say, but do resist having a long script, or worse, slides that are basically your script. If you do want to give people detail, consider preparing training notes to go with the slides.

6 Keep checking they are keeping up and more importantly, that you are making sense. I also try to keep an eye on everyone, to see they are not looking confused.

7 Storytelling makes for the most impactful training courses. Examples from real life, or scenarios help to reinforce the lessons in the course. I have been known to borrow storylines from TV shows to illustrate some points!

8 Practice, practice, practice! I've delivered some of my courses over 1000 times! I now know them off by heart, but for new courses I have to practice. I need to work out the cadence - is it the right length. I need to get any rules and regulations locked into my memory so I'm not just reading off the slides, and I need to practice to make sure the stories do fit the course.

9 Think about how you evaluate the impact of the training. Start with the end in mind - effective training results in people complying. Be careful if relying on "happy sheets" - which most post training feedback forms are, and instead consider asking a few weeks or months after the session "what impact did this training have on you?"

Commitment

COMMITMENT

So, we've checked what we need to do, we've drafted policies people will read and delivered training which is relevant and engaging.

So, we're good to go. We've got compliance working?

Well, probably not, in my experience.

When we look at the root causes of non-compliance, it's often put down to human error, or lack of care. It sometimes feels like they are ignoring what you've asked them to do.

Why is this happening when you explained what the policy is, and where it came from?

We like to call it plausible deniability - I forgot, I didn't realise I had to do that, I thought it was someone else's job - you get the picture!

This is where our Commitment component comes in. There are three parts to this:

- ## ASK
- ## REWARDS
- ## PENALTIES

ASK

Firstly, ask people to agree to complying with the policies and procedures.

In all my years of looking at policies and training I've rarely seen this done.

It's such a simple step but so powerful. It works because people in law firms are trained to keep promises.

You might do this verbally at the end of the training session, or within a "compliance charter" which they sign up to. It doesn't need to be complicated.

But that on its own won't do it. We'll also look at the carrots and sticks you can also use!

REWARDS

I love carrots!

Incentivising people to engage in compliance.

One of the perennial explanations I come across for non-compliance is not having enough time.

People in law firms are often measured on chargeable time and billing, rather than any of the other things they are expected to do.

I recall being a Fee Earner and expected to time record 5.5 hours a day, and to be working an extra hour each day than my contracted 35 hours (that's a whole other story!). So, to time record 5.5 hours out of 8 which would leave plenty of time, theoretically, to do compliance, attend training, attend internal meetings,

do business development.

Except, every day was a struggle because the workload was too much, too many cases. I was on calls most of the day and staying late to get dictation done.

So, my archiving got left in the bottom drawer of the filing cabinet, I never found time to write articles, and all networking was at after work events.

Sound familiar?

Well, I've since found that what gets measured gets done.

Setting a compliance non-chargeable time target, which is monitored, may give people the opportunity to schedule it in, to make sure it gets done. I've seen firms use this really well, reviewing the target within 1-2-1 supervision meetings, or bi-annually at appraisal meetings.

I've seen other "carrot" incentives, like regular raffle prizes for those who meet compliance standards.

I love the 100-club scheme from one of my clients, made up of those with 100% compliance on file reviews.

We once incentivised people to complete a training course by offering half a day holiday for completing the whole programme and passing a test at the end.

PENALTIES

So, sticks….

I frequently see this:

"Breach of this policy may result in disciplinary proceedings".

But when I ask "have you ever disciplined anyone for non-compliance" the answer is usually no - unless there has been some very bad behaviour (dishonesty/criminality).

And when I ask "under what circumstances will you discipline someone for non-compliance" the answer isn't always very clear.

Some firms however have given this a great deal of thought. They have decided on steps they will take in the event of non-compliance.

My favourite is my client who puts people on the "naughty" list for compliance failings on file review. If you go on there, you'll stay until you have clear file reviews and if you're on there at promotion/bonus time you won't get them. People there are pretty motivated to make sure they comply.

Towards the end of this report, we'll be talking about how important Culture is in getting this working, but suffice to say, you've got to be fair and consistent in penalising people for non-compliance for it to be respected.

Consistency

CONSISTENCY

CONSISTENT

Every January, gyms are packed, low calorie food is selling out in shops, people are eagerly waiting for the scale needle to show a loss.

Good luck to them all.

And many of them will shift the Christmas pounds by

the end of January.

But unless they are consistent in eating healthy and exercising regularly, that weight could creep back on.

That's why slimming clubs are so successful. Humans are not great at being consistent, especially if they don't think it's important/life threatening!

It's the same with compliance.

I find that after I've delivered training, reports to the Compliance Officers go through the roof! And gradually, over time, people lapse into old habits, taking the easiest path, and our compliance initiatives falter.

In our Consistent component, we talk about the controls you need in place to check it's all working as it should, and how to keep people on track.

CONTROL FRAMEWORK

Do you know if your compliance policies and procedures work? Do you test them? Do you have early warning systems?

You will be aware that in many areas of compliance you need to have policies and procedures to demonstrate compliance.

In some, like AML, you also need to have controls.

What do I mean by controls?

So, you've all got confidentiality policies - we will maintain our client's confidentiality.

You'll have a procedure for disposing of confidential waste - use the specific confidential waste bins which will be collected and disposed of weekly (or something like that).

Have you got a control?

How would you check it works?

Check the confidential waste bin???

Well, that will just tell you some people complied, but not if someone isn't.

So how do you do that??

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From time to time check the normal bins, check there is no confidential information in there.

Now there are lots of different controls you can adopt, so whatever I say in this component won't be definitive.

Controls can go on and on. You'll recall we talked about risk appetite earlier in the month - how many controls you have will likely depend on that.

Over the next few posts, we'll talk about what things you might check, and why. And if you've got any good controls, feel free to share with our group.

WHICH PROCESSES NEED CONTROLS?

Do they need all of them checking or just some of them?

Look for "several birds with one stone" type checks.

What activity, if you do it, can give you comfort that a number of things are happening at once? Compliance file reviews are a good example of this. You check for 10 – 20 things at a time.

Sometimes it's only one check which confirms many things have been ticked off - like receiving a signed client engagement back which indicates several important compliance requirements have been met.

It goes without saying that you'd want to make sure

you have controls on things which carry serious consequences for non-compliance - like Money Laundering Regulation compliance.

You'll also want to check that business-critical procedures are followed - that people attend certain training courses for example.

Now I'm always saying, there are several ways of testing whether something works, some more effective than others, and next we'll think about what type of controls you might have and how useful (or fool proof) they might be.

NOT ONE SIZE FITS ALL

There are many ways to cook an egg!

When deciding how to build controls, it often comes down to how certain do you want to be that a particular 'this is or isn't being done'.

Earlier I talked about establishing the firm's risk appetite, and this is likely to affect how rigorous you want your testing of the process to be.

If you have a very low risk tolerance, you might be more inclined to make sure there is near total compliance.

Those prepared to take some proportionate risks are likely to have fairly frequent sampling of the processes. At the other end of the scale, risk takers may have

minimal or no checks.

Just like when we looked at establishing risk appetite, I'd recommended trying to capture different ways of testing each policy and procedure you want to check and work them through.

You might end up with a Goldilocks type situation. Some of them might seem too much for the risk or consequences of non-compliance, some might seem too light touch, but hopefully you'll find a way which feels "just right".

ROOT CAUSE ANALYSIS

It's great to find your systems are being followed and that they manage the risks you'd identified.

But what if you find a problem? Whether that is as a result of your controls or because there was an issue – a potential claim or complaint for example.

How do you work out what went wrong, why, and how to stop it happening again?

Very often, when I ask about the causes of non-compliance, particularly when they lead to an issue, such as a potential negligence claim, I'm told it was caused by "human error".

If you learn nothing else from me, please don't stop your investigation at human error.

It is basically a given there will be some human error, it's a service delivered by humans (usually!).

But what is the reason, too busy, not trained, confused/ don't know the law, shouldn't have taken the work on……

And why was that………

There are many ways of conducting root cause analysis, I like the simple five whys process (which you can find easily if you Google it) but whichever one you choose, make sure the investigation is sufficiently thorough to find the true cause! Don't settle at "it's just one of those things".

Absolutely right, it is just one of those things - a learning opportunity.

But let's be clear, for compliance to work, we need to move away from blame as much as possible.

Root Cause Analysis is not about blame. It's about being curious about whether something works or not, and if not, work out where you need to focus attention.

Culture

CULTURE

Culture is the most important component of Compliance That Works. You can ace the other parts but if your firm's culture doesn't support compliance, then your hard work can be in vain.

Let's unpack some of the contributing factors which make for a poor compliance culture, and what to do about them.

WHY SHOULD THEY CARE?

I once had a boss, who was disliked by nearly everyone who worked for him.

He was charming when you first met him, but it didn't last long. People would jump when he came in the office. He would shout at people. You'd never know what mood he was in.

One Christmas party we went into Manchester for a meal at a Chinese restaurant. He went round the tables removing the cutlery and told everyone they had to learn to use the chopsticks or we'd have nothing to eat! People were embarrassed and some humiliated as they tried to pick up this new skill.

He was a "I'm paying their mortgage; they'll do whatever I ask" type. Sadly, he's not the only one of that ilk I've met in the law.

One day in February he announced there wouldn't be any pay rises that year. Of course, we were disappointed. There wasn't an in-depth explanation except that the business wasn't doing as expected so no pay rises.

And then, on 1st March, he turned up in a brand-new car, a top of the range Jaguar.

People weren't best pleased!

We talked about picking the right person to be a Compliance Officer earlier and that it's important that person is considered to be fair.

He wasn't perceived as fair. And what happened when he wanted people to do things for him? When he needed some discretionary effort from people, some goodwill?

Well, there was none.

Everyone did their contracted hours. Everyone worked diligently but apart from that, they gave him nothing. They resented him and people just didn't care about his problems.

When people feel they are not treated fairly, they won't go that extra mile, they won't be looking out for potential issues and try and fix them.

You'll have people thinking "that's not my problem" "I'm doing my job and no more" "they don't pay me to do that".

But the problem is for compliance and risk management, we need people to be looking for the unexpected, anticipating problems, letting us know about them, so we can manage them.

Not shrugging their shoulders and saying, "nothing to do with me".

And perceived fairness is a huge part of that. Treating people with respect.

It's not rocket science, but in the law, there can be so much 'them: us', a strong sense of hierarchy which can work against this team spirit and collective responsibility for compliance that we need.

Teal Compliance

ARE THEY GETTING MIXED MESSAGES?

Generally, law firms reward their lawyers based on their expected billing target.

Quite a few firms pay bonuses to those who exceed those targets.

And meeting or exceeding target often plays a big part in promotion considerations ("they're a good biller, let's not lose them").

Month end is coming and it's all chasing down cases we can invoice.

Indeed, people who are big billers are sometimes allowed to get away with not complying. ("We can't challenge them; they are the firm's biggest biller, and they might leave.")

So everywhere we turn in a law firm, all roads lead to chargeable time and invoicing.

So, it's no wonder the list of compliance things gets kicked into the long grass sometimes.

You've not only got to have the policies and procedures, but the leaders in the firm need to make sure they are clear on how important compliance is. If all the messages the business hears are about fees and billing, and all we measure people on is fees and billing, don't be surprised when compliance doesn't work!

DIFFICULT CONVERSATIONS

If I could recommend only one thing for firms to improve their chances of having a compliance programme that works, it would be this - difficult conversations training!

As long as I've worked in the legal industry I've come across secrets. I've come across frustrations which have not been shared. I've come across people scared to object to other's behaviours.

People who don't want to rock the boat, fear the consequences of calling out poor behaviours.

People, quite often, who know they aren't following the rules but who think they won't be challenged.

Underpinning a lot of these issues are people who don't know how to have difficult conversations.

There is nothing more destructive to a compliance programme than someone being allowed to ignore it, and it go unchallenged.

People will notice, and inevitably they'll wonder why it's fair for one person to "get away with it" and one by one other people will either stop following the rules or resent that they are!

Having an open and honest culture, when calling out poor behaviours is encouraged, and where effort has gone into facilitating difficult conversations is critical. In fact, this is likely to have the biggest impact of all of the tips I've given you.

This is not a compliance team intervention, it's a whole firm issue, but resolving it can supercharge the success of your compliance programme.

Now, as you know, I stay in my lane of compliance, so this is not training we currently offer, but I have made some great contacts in this space, so if you are looking for people to help, let me know.

And just like that, we've finished our exploration of our Compliance That Works model.

Here is the link to our self-assessment of Compliance That Works where you can find out where you score in each area and where to improve: **Compliance that works (scoreapp.com)**

And finally, I'd be super interested in hearing what your favourite/most useful tip was. What have you taken away from the report? Are you taking any action as a result of delving deeper into Compliance That Works?

If you'd like to hear more about our Compliance Sorted services, you can book in with one of our team by emailing **hello@tealcompliance.com**.