



# compliance training and e-learning

an epic white paper



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# how Sarbanes-Oxley changed the world

In 2002, two relatively unknown US politicians called Paul Sarbanes and Michael Oxley found themselves propelled onto the international stage when they were commissioned to draft legislation aimed at ensuring the spate of scandals that rocked corporate America at the time never happened again.

The Act which now bears their name was a direct response to the debacles at Enron, Worldcom and Arthur Andersen, and was initially designed to stop fraud on such a massive scale recurring. As is often the case, the legislation that actually made it to the statute books took on a life of its own, and has since been described as “one of the most influential and controversial

pieces of corporate legislation ever to have hit the statute books.”

Effective since 2004, Sarbanes-Oxley (or the Public Company Accounting Reform and Investor Protection Act as it is formally known) requires all publicly traded companies in the US to submit an annual report on the effectiveness of their internal accounting controls to the SEC. Any corporate officer who does not comply, or submits an inaccurate certification is liable to a fine of up to \$1m and ten years in prison if he or she does so mistakenly – and up to \$5m and twenty years in prison if the failure is intentional. In the globalised world in which we live, the repercussions of the Act have inevitably spread far beyond the US and are being taken very seriously by every multinational, not least those with operations in the UK.

And quite right too, some may say. What Sarbanes and Oxley had not anticipated, however, was the cost burden that their well intentioned efforts would impose - not just on multinationals, but on the business community as a whole.

Criticism of the law has centred on the costs of compliance. US companies paid an average of \$2.4m more than anticipated for their audits, according to The Economist, May 2005. The FEI (Financial Executives International), and Deloitte stated that large firms on average spent 70,000 additional man hours complying with the new law.

It is not just affecting the top end of industry; according to a survey of smaller companies (>\$1 billion revenues) by US law firm Foley and Lardner, Sarbanes Oxley has more than tripled the average annual regulatory costs of being a public company in the US. The law is also accused of having held back IPOs and put a brake on M&A activity, as well as driving capital abroad to other financial markets, such as London.

While the sight of a handcuffed Ken Lay, once an all American hero and bosom buddy of George Bush, being sentenced to what is effectively life imprisonment for his part in the Enron scandal means that the corporate world will continue to take Sarbanes-Oxley very seriously. But this is just the tip of the compliance iceberg. From 1 October 2006 for instance, it has been illegal in the UK to discriminate against existing or potential employees under the terms of The Employment Equality (Age) Regulations 2006. And although transgressors are unlikely to find themselves serving 25 years hard labour, both public and private sector organisation have a legal obligation to ensure their staff both understand and comply with the new rules. This means investment in compliance training which, in the UK's increasingly regulated business environment, is becoming something of a boom industry.

# what is compliance training?

Broadly speaking, it is training that an organisation has to do in order to continue functioning in a fully professional manner. This usually results in mandatory development plans being the highest, and sometimes the only, priority for staff in the organisation. Career and personal development issues have a lower priority.

Unlike other forms of training, which often result from of internal initiatives, compliance training almost always has external drivers such as legislation, regulation, technical standards or best practice. Very often, compliance will involve meeting some tangible target or measure, often certified by an outside body and will have a set

deadline for implementation.

It means different things to different people:

- **Financial compliance** - for a lot of people, the word 'compliance' refers solely to financial compliance. There is a Compliance Institute in the UK and an International Compliance Association. Both deal more or less exclusively with financial issues
- **Regulated industries** - large companies in the Energy and Telecoms sectors, for instance, employ compliance officers, but in each case they're chiefly concerned with the industry regulation pertaining to their particular sector – for the examples above, Ofgem and Ofcom respectively. Equally, regulations and regulatory bodies exist for many other industry and public service sectors; pharmaceuticals, transport

and environmental to name just three. All have very specific regulations and processes for monitoring and reporting compliance, but the common factors are that workers in those industries have recorded, demonstrable skills or knowledge that are consistent with the regulations

- **Health and Safety** - H&S is a well established compliance area with its own institute (IOSH) and its own niche suppliers, but very much its own subject heading
- **HR compliance** - the wealth of compliance requirements generated by government legislation in areas pertaining to employment ethics, such as disability discrimination, diversity, age discrimination and the like. These are all of intimate concern to HR departments and all are fertile ground for the training industry, though they also tend to be thought about in their own discrete 'box'

This fragmented view of compliance training reflects the way in which needs have grown in different areas, keeping pace with the gradual increase in regulation that has been seen in all areas of organisational activity. This growth in regulation has been steady, not to say remorseless, and there are now over 140 different government bodies carrying out regulation activities.

Arguably, technology is to blame for at least some of this growth in regulation. As the ability to digitise, codify and control information increases through the use of ever more sophisticated computer systems, so the opportunities for further regulation and control multiply. So too do the expectations of transparency, because organisations now have - in theory at least - the ability to record every file, every email, every phone call and every information exchange that individual employees make. At the same time the expectations legislators have of the power of those systems increases.

# drivers of compliance

Compliance is first and foremost driven by factors in the external environment. Usually, this involves some sort of change in the legislative or regulatory jurisdiction under which the organisation operates, to which the organisation is obliged to make a response.

The most common sources for compliance drivers are:

- General legislation
- Industry regulation
- Professional best practice
- Developments in technology
- Quality standards (e.g. ISO 9001, Six Sigma)

The great power of compliance as a driver of training lies in the obligation of the organisation to respond. However, some drivers

impose stronger and more urgent obligations than others.

## General Legislation

Where compliance requirements carry onerous penalties for high ranking individuals, they are taken very seriously and give rise to large scale strategic initiatives. There are not only strong organisational motivators to do the training but strong personal ones as well.

Health and Safety provides another example of legislation driven training with strong personal motivators. One could risk endangering one's life or the life of a colleague through being undertrained, and there is also the possibility of prosecution in cases of negligence. Perhaps not surprisingly, this is one of the most well established areas of compliance training.

## Industry regulation

Industry regulation provides powerful organisational drivers for training and communication programmes, as compliance is essential to an organisation's ability to trade within its industry and carry out its core business. This applies to much regulation within the Financial Services industry, which is regulated by the FSA, the Financial Services Ombudsman and a plethora of other bodies.

Compliance training for the financial sector is well established as a niche market. However, there are many other industry sectors with strong compliance drivers, including almost any industry whose regulatory body begins with an 'Of-', e.g. Ofwat, Ofcom, etc.

Industry regulators (along with institutes and trade associations) do the job of interpreting the impact of legislation on particular industry sectors, resulting in guidelines, rules and codes of practice which in most cases have some teeth, e.g. restrictions to a company's ability to trade.

## Professional best practice

Best practice guidelines are inevitably less pressing than the dictates of industry regulation, since they are usually voluntary and carry no explicit penalties for non compliance other than the danger of an organisation's standing and reputation suffering (with a concomitant effect on revenues or funding). Best practice represents a horizontal counterpoint to industry regulation's vertical emphasis, since it tends to exist within a professional practice area that cuts across industry sectors.

Data protection in marketing is a case in point. For a number of years, before legislators made an attempt to catch up with the growth of the internet, the gathering of personal data through email marketing was underpinned by law on data protection and distance selling originally designed for a pre online world.

Considerable interpretation was needed to establish what might and might not be acceptable (and professionally respectable)

in this new world, so that consumers could begin to distinguish reputable behaviour from bogus and possibly fraudulent approaches online.

Best practice soon emerged, and became the subject of training courses. Had it not, this newly burgeoning industry would have been severely held back in its growth and development. Eventually legislation caught up, which took note of the best practice that had been established during the interim.

## Developments in technology

The examination of best practice above shows that legislation is not the only primary driver of compliance training; the need to adopt changing technologies also plays an important part.

When the financial industry switched to 'Chip and Pin' technologies, for instance, retail organisations were faced with being completely left behind if they did not rapidly retrain for the new systems.

Market drivers can be as strong as legislative ones; non compliance with key industry technical standards can, in some circumstances, drastically curtail an organisation's ability to operate in its designated marketplace.

# the impact of compliance regulation

The urgency with which an organisation treats a particular compliance requirement will have a lot to do with the sanctions threatened for non compliance. But it will also vary according to that organisation's position in the 'food chain'.

The largest, highest profile and best resourced organisations make the biggest targets for regulators, and therefore tend to be the most compliance driven. BT has a dedicated compliance officer, for instance; whereas for many cash-strapped SMEs adherence to professional best practice, and even to certain legislative requirements, may be an aspiration at best.

So what happens when a new piece of legislation gets enacted, or when a new code of professional conduct comes into force: how does a general compliance requirement crystallise into a training need? In particular, why do certain compliance requirements end up generating a bespoke training need?

## Sector impact

Clearly, different sectors have different compliance needs. But legislative changes across the board, as well as legislation that affects two or more sectors, may have a very different impact depending on the sector.

The impact of a given compliance requirement may vary in scale. Changes in the rules on money laundering in 2003 had a big impact on financial services, a minor impact on the leisure industry (specific provisions covering

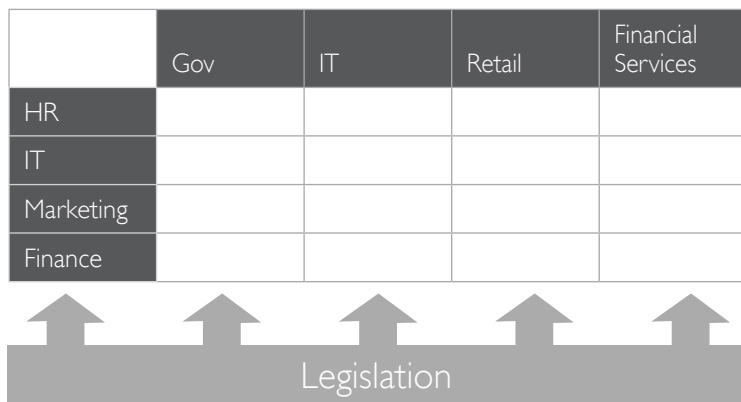
casinos) and almost none on the pharmaceutical industry.

A given change might impact different vertical sectors according to the way that job roles differ in that sector. Health and Safety is a very different matter for a team leader on an oil rig in the North Sea than it is for the manager of a Job Centre in Bristol. A change in Health and Safety legislation, for example, would affect these sectors differently and give rise to different training needs, although it might well be possible to fulfil those needs through a generic learning package for public sector workers and a generic learning

package for the oil industry, both covering the same legislation, but customised to the vertical sector.

A given compliance requirement may also impact horizontal sectors (or practice areas) differently, and to different extents. Changes in legislation on data protection, for example, would impact HR, Marketing and IT across all sectors, but would impact each differently.

For instance:



- Marketers preparing a direct mail piece might need to know how to word application forms
- HR people preparing a job reference might need to know what data they are allowed to give about a past employee
- IT people might need to know what access they are legally required to provide to personal data

Again, a generic learning package on 'Data Protection for Marketers', for instance, might be all that is needed to meet such a sector specific training need.

## Organisational impact

On the face of it, compliance training needs ought to be similar for every company in a given sector; as the compliance requirement, broadly speaking, is the same for everybody in that sector.

In practice, however, the impact on individual organisations can also vary.

This may have to do with an organisation's market positioning. A change in legislation for the aviation industry might impact differently on two airlines, one of whom is a national airline running international flights all over the



globe and the other is a budget carrier running mostly domestic short hops.

But even between quite similar organisations, the response to a given compliance requirement can vary according to that organisation's processes, policy and culture.

## Processes

Organisations tend to have their own individual operating processes and procedures, which may be different to those of other organisations in the same sector. A change in legislation may affect how certain processes and procedures are carried out, necessitating a change in the process, with a resulting change in behaviours. The result is the generation of a training need which is, at least in part, organisation specific.

## Policy

Organisations are required to have policies on a wide range of issues from environment to absenteeism and to

communicate these effectively to their staff. Again, these will vary in tone and emphasis from organisation to organisation. Organisational policies may affect how things are done in the organisation from day to day, have a key effect on behaviours and attitudes and will usually be aligned with the organisation's core values and beliefs.

Where a compliance requirement calls for a change in significant items of policy (e.g. discrimination disability, age awareness, information governance), it can affect processes, behaviours and attitudes, and may even call for a modification of the organisation's core values and beliefs. Such a compliance requirement may therefore end up generating a training need which is organisation specific in part, and probably more organisation specific than a compliance requirement that impacts only on processes.

## Culture

Culture has a symbiotic relationship with policy. Policy is what senior management would like to see happen, whilst culture is what actually happens on the ground. In a sense, culture is the end product of policy; however, of the two, culture is the more durable and harder to change so policy often has to make accommodations with culture.

# compliance and the public sector

In some ways the public sector faces a heavier burden of compliance demands than the private sector, usually for the simple reason that government bodies have to be seen to be beyond reproach - but sometimes because it is a matter of life and death.

Following Ian Huntley's conviction in December 2003 for the murder of Jessica Chapman and Holly Wells, there was widespread public disquiet when it became clear that Huntley had come to the attention of Humberside Police in relation to at least eight previous sexual offences. This information had not shown up in the vetting check carried out by Cambridgeshire Constabulary at the time of Huntley's appointment to Soham Village College.

In trying to establish how this had been allowed to happen, the Bichard report found "systemic and corporate failures in the way in which Humberside Police managed their intelligence systems".

Time and again, the report refers to failures in training and guidance: "The guidance and training available were inadequate and this fed the confusion which surrounded the review and deletion of records once they had been created".

Bichard also found a fatal lack of consistency across different forces in the guidance meant to aid staff in applying data protection legislation. It emerged that each of the 43 police forces, "produces its own set of local guidance and directions to give effect to ACPO's (and others') national guidance. Their precise content varied widely. On occasion, local forces had a different approach

to that contained in the national guidance, as the position in Humberside demonstrated.”

This inconsistent message on data protection that Bichard uncovered across the police forces seems to have been an important factor in the systemic failure to detect Ian Huntley before it was too late. Consistency of message is of vital importance in compliance training, and something which e-learning is uniquely equipped to ensure.

A further and more recent example of compliance issues in the public sector, relating to both process and procedure are those of personal protected data loss.

In response to recent high-profile losses of data, the Government set an October 2008 deadline for staff training on Information Governance compliance. The requirement comes from ‘Data Handling Procedures in Government: Final report’ which was written after three other independent reviews: the Poynter Review into the HMRC loss; the Burton

Review into the loss of a Ministry of Defence laptop and the Walport/Thomas review of data sharing.

# e-learning and compliance

Understanding the legislative and regulatory environment within which one spends one's working life is an essential step to achieving professional competence.

The net effect of good compliance learning is to professionalise the workforce and to allow individuals to perform in a more confident, assured manner; and ultimately to achieve an acknowledged standard of mastery in their individual area of practice.

So where does this all this leave e-learning?

Through its ability to scale to meet the compliance challenges of global business and to provide a much reduced time to market, e-learning has enabled mission-critical learning that could not have been accomplished through face to

face means.

Where compliance training programmes need to be rolled out across large, dispersed populations, against finite deadlines, e-learning has great advantages over face to face training:

- **Consistency of message** – everybody gets exactly the same message, no need to worry the key points haven't been communicated
- **Speed** - it's possible to train thousands of people at once/over a short timescale
- **Cost** - compliance typically involves large numbers of staff, so the development cost for e-learning is spread over a wide audience – the cost per learner becomes minimal
- **Trackable** - e-learning can automatically track/report on usage, essential where a large scale programme has to be coordinated and an

'audit trail' is required for proof of compliance

- **Tailored for individuals** - simple 'role filters' or diagnostics can create individual learning paths, ensuring individuals only receive the training they require, rather than a 'one size fits all' approach
- **Flexibility** - while 80% of the content of a legislation based e-learning course will be relevant to most organisations, 20% may need to be tailored to specific organisational requirements for commercial or cultural reasons
- **Easy to update** - law is subject to change, legislation is updated and an organisation's processes and procedures may change independently, so e-learning's ease of maintenance makes it even more attractive

Data Protection, Age Awareness, Money Laundering, Equality and Diversity, Environmental Law, Health and Safety, Risk, Information Governance, Security, Freedom of Information, Competition Law, Business Ethics, Trade Law... the list is endless!

In short, e-learning is absolutely ideal for compliance. In recent times, Epic has developed compliance e-learning in:

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