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T-C NEWS

COMPETENCE • EXPERTISE • PROFESSIONALISM

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The new Senior Manager's Regime –

A selection of relevant articles

The Senior Management Regime. Certification Regime and Code of Conduct are significant pieces of regulation that will affect all Banks , Building Societies and deposit takers in 2016. It has been confirmed that the same regulations will be extended to all other parts of the financial services sector in the not too distant future. Here we have put together a collection of articles on the subject to help develop your understanding of what to expect and help formulate your plans. You can download regular copies of T-CNews from www.t-cnews.co.uk free of charge

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Is your T&C scheme forced to adopt a 'Sheep dip' supervision approach for all individuals **?**

Are you satisfied with your file checking model, capacity and flexibility **?**

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Redland Business Solutions
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T: 01527 871938
E: sales@redland-solutions.co.uk

Formed in 2001, Redland Business Solutions is the leading provider of specialised GRC (Governance Risk and Compliance) IT solutions to the financial services and insurance industries. The company has received widespread acclaim for its Insight solution which ensures effective management in the T&C (Training & Competence) arena. The Insight platform enables critical business applications to be developed and deployed rapidly to support specific processes within financial services; including a leading edge T&C system.

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Targeting the top

A new three-part regulatory regime is set to make senior managers more accountable for corporate governance. But how will the new regime work and who exactly will it affect? Article provided by the Chartered Institute for Securities & Investment (CISI). **Jill Insley**

Of all the people associated with the 2008 banking crisis in the UK, two stand out from the crowd. One is Fred Goodwin, who brought one of the world's biggest banks, RBS, to its knees after engineering an ill-timed $100bn takeover of the Dutch bank ABN Amro. This resulted in the Government being forced to pump $71bn into the bank to ensure its survival. Goodwin lost his job, was stripped of his knighthood and has been referred to by commentators as "the world's worst banker". But seven years on, he has not faced prosecution.

The other is Peter Cummings, the HBOS banker whose division lent billions of pounds to property developers. Cummings was given a lifetime ban and fined £500,000 in 2012 by the regulator at that time, the Financial Services Authority (FSA), for his role in the banking crisis. According to the FSA, he had failed to "exercise due skill, care and diligence" in running the corporate banking division, and failed to manage high-value transactions as they showed signs of stress when the crisis took hold. HBOS had to be rescued by Lloyds TSB in September 2008.

Goodwin and Cummings might be the highest-profile examples of bad banking, but they are by no means alone. Over the past few years, banks have been forced to own up to a wide range of financial scandals, including misselling of inappropriate financial products, manipulating LIBOR, money laundering, and fixing foreign exchange rates. Banks have paid billions in fines, yet very few individuals have been forced to accept responsibility for the actions leading to these fines. However, a new Senior Managers and Certification Regime (SMCR), to be implemented early next year, aims to end this lack of accountability. The regime forms part of a new way of thinking towards corporate governance, which emphasises individual accountability.

The new regime

There are three parts to the new regime: the Senior Managers Regime (SMR), the Certification Regime, and Conduct Rules. The SMR, which replaces the Approved Persons Regime for relevant firms, focuses on 17 functions and 30 responsibilities defined by the regulator. Firms affected at present are banks, building societies, credit unions and insurance companies, as well as investment firms that are regulated by both the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). Although many of the firms that CISI members work for are not currently affected by the SMR, the regulators eventually plan to extend elements of it to other firms beyond banking and insurance. Therefore it is worth all Institute members being aware of how the SMR will affect financial services.

It is up to the firm to identify the individuals who perform any of the defined senior management functions (SMFs). The firm will then be required to assign the defined senior management responsibilities to these individuals. An individual may fill one or more functions, and more than one person may carry certain responsibilities. Executive directors and heads of internal audit, key business areas, compliance and money laundering reporting will be included.

However, only certain types of non-executive director roles – chairmen, senior independent directors, and the chairs of risk, audit, remuneration and nominations committees – will fall within the scope of the SMR.

Individuals who are identified as filling these roles will be pre-approved by the FCA or

PRA, but firms will also be required to ensure they have procedures in place to assess their fitness and propriety before applying for approval, and reassess fitness at least annually thereafter. People who already perform the key roles will be 'grandfathered' in.

Relevant documentation setting out this mapping of responsibility must be handed over to the regulators by 8 February 2016, ready for the start of the new regime just under a month later, on 7 March.

The regime is structured so more employees are subject to regulatory obligations, but fewer of them require individual approval by the regulators. The Certification Regime transfers responsibility from the FCA and PRA to the firms themselves for certifying staff other than senior managers who could pose a risk of significant harm to the firms or their customers. Finally, every employee of a bank (apart from ancillary employees such as cleaning and catering staff) will be subject to the baseline set of new conduct rules. As a result, relevant firms will need to enhance their procedures for assessing the competence of individual employees, as well as draw up a 'management responsibilities' map.

The third part of the regime, Conduct Rules, sets out a basic standard of behaviour that all firms covered by the regime must meet.

Paul Young, Director of Finance and Risk Management at professional services firm Grant Thornton, has been advising a number of banks (and the CISI – he presented a seminar on the SMR at a recent event) on the new regime. He says: "The number of processes and procedures that need amending across [functions such as] human resources, compliance, risk and IT is huge – from references, job descriptions and issuing certificates to new attestations, email-retention policies and the recording of minutes. The change is wholesale."

Dodging the blame

The SMCR came about following a report in 2013, Changing banking for good, by the Parliamentary Commission on Banking Standards. It said: "Too many bankers, especially at the most senior levels, have operated in an environment with insufficient personal responsibility. Senior executives were aware that they would not be punished for what they could not see and promptly donned the blindfolds. Where they could not claim ignorance, they fell back on the claim that everyone was party to a decision, so that no individual could be held squarely to blame – the Murder on the Orient Express defence."

The report recommended that senior bankers showing reckless disregard for their responsibilities should face criminal prosecution and possible prison sentences. Its recommendations were welcomed by all political parties, and the FCA and PRA were tasked with fleshing out the new framework of rules for firms and individuals.

The regulators had to work out the details of the regulation based on the Financial Services (Banking Reform) Act 2013, which enacted the recommendations, rather than being allowed to work from a blank sheet of paper. However, the rules that have stemmed from the Act have received a less than enthusiastic welcome from bankers, who claim the tougher rules will scare off the industry's best talent.

Young says: "Attracting and retaining talent may become more difficult under the new regime. But we strongly believe those firms which can demonstrate to existing and prospective senior managers that they have the right systems and governance in place to enable them to deliver on their responsibilities will be the firms that increasingly win the talent battle."

> "Attracting and retaining talent may become more difficult under the new regime

A shift in the burden of proof

Key to the new regime is the 'presumption of responsibility', which will apply to senior managers. The burden of proof for regulatory breaches will shift from the FCA and PRA to the individual manager under scrutiny.

This shift means that individuals will be required to satisfy the regulator that they took 'reasonable steps' to prevent, stop or remedy regulatory breaches that took place in their areas of responsibility.

Those who fail to prove they have taken the correct steps will potentially face unlimited fines, remuneration clawback and lifetime bans.

However, despite media coverage suggesting the new regime could see lots of bankers end up behind bars, individuals only face the threat of criminal conviction and a prison sentence if they are found guilty of reckless misconduct in the management of a bank, and the institution ultimately fails.

In its Strengthening accountability in banking report, Grant Thornton estimates that the cost of implementation will total £140m for banks, plus a further £7.25m for building societies and £4.38m for credit unions. These figures do not take account of the estimated ongoing costs after implementation.

Fines paid

These costs pale into insignificance compared with the £36.29bn paid in fines from 2009 to 2013 by just four of the UK's biggest banking groups – Lloyds, RBS, Barclays and HSBC – according to the CCP Research Foundation. The cost of the damage to these banks' reputations and the destruction of their customers' trust sits on top of these fines.

Provided the new regimes succeed in their aim, they should benefit the banking industry by reducing their regulatory fines, restoring customer confidence and boosting business. But it might take bankers, who are being threatened with the loss of bonuses and even their freedom, some time to acknowledge this.

Getting ready for the Senior Managers Regime

By **Neil Herbert** from HR Comply

The Senior Managers Regime (SMR) is coming soon and firms across the financial services industry are beginning to focus seriously on the consequences of this new regulation and their required response.

The new rules are wide ranging but there are four main strands:

1. The new Senior Managers Regime
2. The new Certification Regime
3. A new set of Conduct Rules
4. New Fitness and Propriety requirements

Those firms that will obviously be subject to the regulation (UK banks, building societies, credit unions, PRA designated investment firms and incoming branches of overseas banks) should be well underway with their response by now. A much wider set of firms, however, must be aware of the proposals.

For those responsible for embedding and managing the implications and requirements of the regime, the true complexity is in deciding which parts apply to them. Such firms should decide where their focus should be in terms of interpreting and implementing the relevant parts. As is often the case with regulation, the reaction from the financial services industry will probably be to baulk at: the costs; the damage to competitiveness; and the amount of time and effort required in order to comply.

What is also clear (and unfortunately seems to date to have largely been ignored in the wider industry) is that consultation has already begun in the application of the SMR to a much wider swathe of the wholesale sector – particularly investment or asset management firms and hedge funds. Despite this fact, we still encounter many clients and potential clients who insist that 'this doesn't apply to us, therefore we don't need to do anything or worry about it'! Slightly depressingly, this continues to be the prevailing attitude across the industry.

After seemingly endless communications of the same message by the FCA (that it is looking to hold senior management accountable for the embedding of compliant cultures and high ethical and conduct standards), senior management still seem to take the view that unless they are being made to do it they don't need to do it.

Most of our clients already effectively self-certify: they test the competence of individuals to perform roles at least annually; they define key roles by competencies, tasks and responsibilities; they design assessments that ascertain any skills, knowledge, behavioural and competence gaps; and then they build, deliver and record prescribed training accordingly. They also run their own F&P assessments.

I would argue that these activities are what any good employer and/or business that wishes to build high levels of corporate governance and mitigate their strategic or operational risk should be doing anyway.

Apparently not. It still confounds me that firms operating at the most professional levels of one of the (supposedly) most regulated, skilled and highly paid service industries of all should continue to think that such straightforward controls and human resource management strategies are of little to no importance. The perception appears to be that in the absence of regulation forcing them to do so, they simply won't be implementing such measures any time soon. The direct and inevitable result of this continuing attitude has been that the FCA has been forced to impose the complex and costly SMR regulation and process. Anyone in the industry who doesn't think that this enforcement is also coming his or her way is surely in deep denial.

We continue to tell clients (from both retail and wholesale sectors) that implementing simple monitoring and control of staff competence, risk and conduct behaviours (and designing assessment and training structures that ensure this is well controlled) is the only way to stay ahead of the 'regulation curve' and out of trouble.

Of course, the biggest implication for both firms and individuals come from the presumption of responsibility – particularly for those occupying the newly prescribed Senior Management Functions (SMF). For many, this will effectively rewrite their contractual relationship with both their employer and the regulator. This in itself presents significant challenges for HR departments in terms of repositioning the responsibilities of individuals within their job descriptions and employment contracts. It will also present new recruitment challenges to senior and SMF posts.

A key pre-cursor for achieving this presumption of responsibility will be defining the firm's response. For anyone with prescribed responsibilities and presumed responsibility for key areas or business functions under the SMR, they quite naturally will want some clear guarantees from their employer that they will be supported in every possible way in fulfilling these responsibilities. Such individuals will also require clear oversight and sufficient QA/MI for functions involved with risks or problems clearly flagged so that they can be dealt with swiftly. Quite rightly, these individuals should expect their firm to have very clear T&C, conduct and risk management processes in place to enable this. In other words, has the firm got their backs and have Compliance, T&C, HR and the senior team of the firm committed sufficient resource, technology and analysis to allow them to sleep at night?

There is really very little in the SMR final rules infrastructure that should come as a surprise. Monitoring, assessment and clear MI around the key responsibilities and functions will become critical. Those firms already governed by the Retail Distribution Review should have many of the underlying processes involved (with regard to conduct, TCF, competence etc.) well under control already. It is the wholesale sector, however, that continues to be furthest behind the curve and indeed continues to resist such change. This sector will doubtless complain the loudest when the regulation is imposed upon it. And let's be clear: it will be.

The Human Resource, Compliance, Risk and T&C professional must first seek complete buy-in and leadership from the senior management structure of any firm. A seat at the board surely beckons for the Compliance, HR and Risk professional. Indeed this is a great opportunity to drive through real change and take responsibility for the implications and requirements that SMR imposes on the business, its governance and regulatory risks at the highest level. The message has been out there for a long time, the 'writing on the wall' for even longer.

> “The perception appears to be that in the absence of regulation forcing them to do so, they simply won't be implementing such measures any time soon

With the implementation of far-reaching, costly and onerous regulatory controls on businesses, the larger firms at least are forced to take notice and invest resources accordingly. For the smaller firms the requirements are equally onerous and costly, but they potentially lack the deep pockets or the indeed the clarity of purpose to make it all happen.

Nowhere is this statement more pertinent than for the incoming branches of foreign banks. They must drive cultural change and invest in the human and technological resources to ensure full compliance, balancing that against the fact that in most cases they are small entities with limited budgets. This will be a difficult balance to achieve; it will involve investment in sound technology that is simple enough to be cost effective yet complex enough to provide the assessment and monitoring tools required.

In defence of reasonable steps…

By **Carl Redfern** from Redland Business Solutions

> “The Regulators have stressed the importance of “obtaining appropriate internal management information, and critically interrogating and monitoring that information.”

The Presumption of Responsibility under the SMR has enjoyed a significant amount of scrutiny and ‘air time’ since it was originally conceived and then enacted as part of the Strengthening Individual Accountability Reforms.

Linked to the Presumption of Responsibility is the concept of ‘the Reasonable Steps Defence’. This broadly sets out that you will not be ‘presumed responsible’ (and therefore guilty of misconduct) if you can satisfy the FCA or PRA that you have

“….taken such steps as a person in (your) position could reasonably be expected to take to avoid the contravention occurring (or continuing).”

This obviously begs the question what are ‘reasonable steps’?

Both regulators have made it very clear that they will in every case “….consider the specific facts of each situation which may fall within the Presumption of Responsibility and will act as (they) consider appropriate in light of those facts.”

Therefore there is not going to be any universal set of minimum standards or ‘safe-harbours’ for Firms or Senior Managers to fall back on.

However, both regulators have published some guidance covering these areas and it is worth considering it in more detail.

Of material importance is that the phrase ‘reasonable steps’ (and numerous variations thereof), is used throughout the regulations – not only in the areas relating to the Presumption of Responsibility.

Where and how the phrase ‘reasonable steps’ is used in the regulations, and the published guidance, points to the ‘direction of travel’ of both regulators.

A person, Senior Manager or anyone else, is just as likely to be found in breach of a Conduct Rule through a failure to take ‘reasonable steps’ and to be frank, given the broad scope of the conduct rules and the significant numbers of people obliged to comply with them, this risk must be material and significant for most firms.

The regulators will expect Firms to submit evidence, make representations and engage in dialogue when considering whether to potentially take any actions relating to a contravention, an incident where whether ‘reasonable steps’ were taken is being questioned. Consequently they will assess the steps the person actually took against their interpretation of what steps they (the regulators) would consider to be reasonable, in the relevant circumstances at that time. Quite reasonably they do not intend to apply the lens of hindsight to the given situation.

In relation to Senior Manager misconduct, in their

Supervisory Statement (SS-2815), PRA have set out some examples of the things they may consider when interpreting what 'steps' they might determine to be 'reasonable'. These examples include:

- ❑ The size, scale and complexity of the Firm
- ❑ What the Senior Manager actually knew or what they ought to have known
- ❑ The expertise and competence the Senior Manager had or ought to have had
- ❑ What steps the Senior Manager could have taken
- ❑ The timeliness they acted in
- ❑ The Senior Managers responsibilities and the wider allocations of responsibilities across the Frim
- ❑ Whether any functions were delegated, taking account that any delegation must be appropriately arranged, managed and monitored
- ❑ Overall circumstance and environment at the Firm – if they were subject to competing priorities

The guidance also includes some examples of what PRA considers could be reasonable actions the manager might have taken to prevent the contravention occurring or continuing. This list is quite long but very worthwhile reviewing. Samples of the steps it includes are,

- ❑ Implementing, policing, reviewing policies and procedures
- ❑ Structuring and control of day-to-day operations, including ensuring delegations are managed and reviewed
- ❑ Obtaining appropriate management information and critically interrogating and monitoring it
- ❑ Ensuing issues are raised, reviewed and followed up
- ❑ Ensuing provision of adequate and appropriate resources
- ❑ Awareness of external developments, including key risks

FCA similarly makes much use of the 'reasonable steps' phrase.

In fact, 'reasonable steps' is used in the actual text of 3 out of the 4 Senior Manager Conduct rules, and appears more than 30 times in the new COCON (Conduct Rules) handbook.

Senior manager conduct rules

- ❑ SC1: You must take **reasonable steps** to ensure that the business of the firm for which you are responsible is controlled effectively.
- ❑ SC2: You must take **reasonable steps** to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- ❑ SC3: You must take **reasonable steps** to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- ❑ SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

One thing worth thinking about is that although most Firms will have a very small population of Senior Managers, the way that these Conduct Rules are written has wide ranging implications on the business and people of the whole Firm.

If you consider rules 1, 2 and 3 above, the definition of 'reasonable steps' is linked to the Senior Manager '**ensuring that** . . .' something is happening, on a continuous and ongoing basis.

This means that, at least, all direct reports to the senior manager team need to understand these rules and how they have been applied in your firm. However, in truth, the impact is even wider than that. Most operational reporting (and all board reports??) will need to be reviewed from the perspective of how does it evidence 'reasonable steps'.

Probably, depending of the size and governance arrangements of your firm, most layers of management and supervision will be affected by the Senior Manager Conduct Rules.

Everyone with any material operational responsibility will need to be able to articulate how their departments, teams, reports, management information, policies, processes and monitoring delivers and evidences 'reasonable steps' to

- ❑ Control the business
- ❑ Comply with regulation
- ❑ Effectively discharge delegation

In section 3.1.5 of COCON, FCA sets out some general factors (which are consistent with the PRA guidance) that FCA would expect to take into account when assessing a Senior Manager's conduct:

1. *Whether they exercised **reasonable care** when considering the information available to them;*
2. *Whether they reached a **reasonable conclusion** upon which to act;*
3. *The nature, scale and complexity of the firm's business;*
4. *Their role and responsibility as determined by reference to the relevant statement of responsibility;*
5. *The knowledge they had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities.*

Unsurprisingly, that phrase 'reasonable' crops up again.

In relation to Senior Conduct Rule no.3 (. . . **reasonable steps** to ensure that any delegation . . .) both regulators are quite specific (section 4.2.18) . . .

"*. . . senior conduct rules staff should have reasonable grounds for believing that the delegate has the **competence, knowledge, skill and time** to deal with the issue.* "

And in section 4.2.21…..

*"Delegating the authority for dealing with an issue or a part of the business to an individual . . . without reasonable grounds for believing that the delegate has the necessary **capacity, competence, knowledge, seniority or skill** to deal with the issue or to take authority for dealing with part of the business indicates a failure to comply with rule SC3 in COCON 2.2.3R."*

The Regulators have stressed the importance of "obtaining appropriate internal management information, and critically interrogating and monitoring that information."

You probably already have existing operational monitoring and management information, comprising 'Key Performance Indicators' for the business, which are relevant, informative and appropriate, although these existing provisions and controls should be reviewed and updated where required.

However, for the 'people' aspects of your business, it is quite likely that existing MI is lacking. In this space many firms have assumed that HR teams will deliver the solutions for 'Accountability' and therefore also provide the necessary MI.

In my opinion this represents a significant risk. Many existing Performance Management solutions are not geared to provide the detailed information appropriate for evidencing 'reasonable steps'.

Consider the guidance above . . .

How will your existing Performance Management processes evidence that staff in key roles have the 'Competence, Knowledge, Skill and Time'?

If you look across your business to existing Training and Competence teams and the kinds of controls and processes which have been implemented to deliver compliance with the more stringent FIT and TC obligations covering 'approved roles' you will find the answer.

In the most part, existing TC policy, schemes, processes and systems can be applied to easily provide the required evidence that your Senior Managers have 'reasonable grounds to believe that delegates have the necessary!!

What evidence do you need to have 'reasonable grounds' for believing in the capability of your delegates?

Well, risk assessments, regular documented 1-1 meetings, frequent reviews of KPIs, documented Action Plans, clearly defined standards of Competence, relevant L&D plans, some empirical testing of knowledge and skill . . . this is the stuff of Training and Competence.

The new regime places a personal obligation on senior managers to prove that 'reasonable steps' were consistently taken throughout the general and daily management of the business.

Your solutions should give senior managers a 'reasonable' chance of preventing contraventions and misconduct, and it should identify actual issues early so that they can be stopped – these solutions must adequately cover the 'people' elements as well as operational and financial performance.

For most Financial Service firms, the operational and financial performance of your business is probably well covered by existing controls and potentially small parts of your 'people' population are well served by existing T&C.

I suggest that the 'reasonable' next step is to apply some (appropriate and proportionate) Training and Competence controls to everyone in your business **– it will 'defend' your Reasonable Steps.**

Preparing for the Accountability Regime

With the commencement of the new Accountability Regime now less than six months away, could the response of the training industry to the T&C needs make-or-break how prepared firms are by the deadline? Mark Jones from Unicorn Training explores this issue.

Would you apply for a job if the ad didn't explain what you would actually be doing?

Very few of us would.

Yet a significant proportion of regulated businesses have not previously been placing the same value on having robust role profiles in place for people employed by them even though the principal is exactly the same.

With the arrival of the Senior Managers Regime, Certification Regime and new Code of Conduct within the FCA's overhauled regulatory framework - now coming into effect in less than six months' time - overlooking the importance of role profiles in accountability is no longer an option. Evidencing is everything.

Role profiles are just one element of T&C that is under the spotlight as that 7 March 2016 commencement date looms ever closer.

Encouragingly the sense is that, throughout the industry, the approach to assessing the impact of this new Accountability Regime seems to have been viewed as an opportunity to look at compliance in the context of cultural transformation with reviewing and refreshing its T&C practices a key component of this.

But having the will to do this, and actually having the time, tools and knowhow to put the right systems and the best practices in place within the ever-decreasing timescales are two entirely different things.

"All firms, depending on size, number of employees, existing policies and procedures etc, will have varying challenges in meeting the deadlines," acknowledges Mark Jones, Commercial Director, Unicorn Training.

"But the one thing everyone has in common is the need for robust performance management and workflow systems, where recording, file checking and reporting against your firm's T&C scheme is as effective and accessible as possible.

"Everybody knows the FCA's bite has matched its bark so far, therefore as the new regulation around accountability comes into effect, being able to show the clear lines of reporting, roles and responsibilities, and producing evidence of competency within the wider context of compliance with the Accountability Regime is critical."

> "The Accountability Regime leaves no hiding place in the FCA's over-riding aims of raising standards and restoring public trust and confidence in the regulated sectors.

Getting to grips with who's doing what and why

Earlier this year Unicorn joined forces with leading financial services consulting and training specialists, FSTP, to bring a more targeted and streamlined approach to T&C and compliance for FCA regulated firms.

At November's CISI Training and Competence Conference 2015, the two are co-delivering a workshop on 'Role profiles – building the T&C foundation', taking firms through career journey scenarios including recruitment, performance reviews and appraisals, assessments, rewards, disciplinaries, grievance, etc, and highlighting where and how role profiles should be a key document in their processes.

"Role profiles are an integral part of what we do and how we do it in financial services," explains Philippa Grocott, one of the founding Partners of FSTP. *"They should set out competencies and form a central part of a job spec.*

"But in our experience of working with regulated firms, all too often we have found, in the worst case scenarios, job roles don't have a profile, or they are out-of-date, incomplete, or bear no resemblance to how a particular job has evolved over time.

"Especially with the introduction of Statements of Responsibilities, including Prescribed Responsibilities / Additional Responsibilities, and Certified Persons under the Senior Managers Regime, updating and/or putting in place role profiles is key.

"How do you effectively undertake a statement mapping exercise if you don't have a starting point? What is already a huge task almost becomes impossible.

"There is nothing specific laid down in the regulation that you must have a T&C scheme including robust role profiles, but, if you don't, how do people know what to do and how can accountability be managed? It's a very necessary requirement but when did you last do an overall assessment of the robustness of your role profiles?"

Robust role profiles give firms a starting point for the whole range of T&C procedures, for example, one-to-ones and performance reviews and assessing what someone does against competencies detailed in the profile to producing questions for job interviews set against the competencies that candidate needs for that role.

So how can you achieve this?

The bigger T&C picture

With deadlines so tight and with many firms still with so much to do ahead of March, having the right tools to speed up the process is becoming increasingly important.

A firm's T&C scheme provides the basis from which to review and monitor competencies through one-to-ones, file-checking, observations, performance reviews etc.

But streamlining these processes, which can often be disjointed and disparate, and having effective workflow systems to log outcomes, evidence competencies and provide a platform for ongoing monitoring and reporting against that TC scheme should be a no-brainer for senior managers with the FCA watching them like hawks.

Having access to something like a range of T&C template forms, including for role profiles, could be a Godsend to firms scratching their heads at where to start or even for those who just want to make what they already do easier and more transparent.

Templates are just one element of T&C that Unicorn with FSTP have embedded into their comprehensive compliance solution ComplianceServe to help firms better manage and report around their T&C schemes.

The end-to-end training delivered through the online platform not only includes templates and a range of other useful forms, but also a diagnostic assessment tool to identify gaps in knowledge and ComplianceServe's comprehensive content catalogue to help fill these knowledge gaps or refresh learning when it is felt to be required.

With time of the essence, there is a real demand for 'snackable' T&C and just-in-time and role relevant learning delivered online that not only embeds the core knowledge in line with the new FCA regulation amongst staff, but also heightens awareness of the implications of staff going off track in encouraging genuine behavioural change.

Meanwhile FSTP continue to deliver complementary face-to-face training for more senior roles and/or those requiring highly complex and/or specialist knowledge.

As Mark concludes: *"You could argue that we are starting to see more of a crossover between the traditional roles of risk and compliance teams and those in training and competence as whereas compliance is where the focus around conduct and behavioral and cultural change has been centred over the past few years now robust T&C practices are extrinsically tied in with that. You can't have one without the other.*

"The Accountability Regime leaves no hiding place in the FCA's over-riding aims of raising standards and restoring public trust and confidence in the regulated sectors.

"But the by-product is firms, almost by default, will have to adopt much more commonsense, transparent people management practices. How the training industry supports this could make-or-break how prepared a firm is for 7 March 2016."

The new Senior Managers Regime in Banking

By **FSTP**

Back in July 2014, the FCA/PRA published a consultation paper to the industry (CP14/13 & CP 14/14) on the eagerly awaited "New Regulatory Framework for Individuals". This has been closely followed by CP14/31 and CP28/14, as both regulators follow up on their initial proposal with further consultation as to how the new regime will work in practice.

> "If not, then I think many firms can expect interesting conversations with the FCA about the importance of nurturing a "training culture"

If you remember, CP 14/13 and CP 14/14 brought us the concept of the following:-

- ❑ The new Senior Managers Regime
- ❑ The newly created Certification Regime
- ❑ New Conduct Rules to support the above, and
- ❑ Revised Fitness and Propriety Requirements

It is worth noting that firms affected by these proposed changes are:-

- ❑ UK Banks
- ❑ Building Societies
- ❑ Credit Unions
- ❑ PRA Designated Investment firms

Following on from those initial papers, CP 15/9 most recently brought us near final rules and consultation on the presumption of responsibility within the banking sector.

For the purpose of this piece we are going to focus on the newly created "Senior Managers Regime" and will consider the rigour and responsibility that the new regime will bring in terms of training responsibilities and accountabilities within a firm.

Under the FCA prescribed ***Senior Management Functions and Prescribed Responsibilities*** it is interesting to note that in the FCA's list of 11 key areas, the items in respect of training sit 3rd and 4th respectively.

Let's take a look at what the FCA are expecting from firms and individuals with regards to responsibility and accountability for effective training.

Responsibility for: (a) leading the development of; and (b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all the members of the firm's governing body.

Responsibility for: monitoring the effective implementation of policies and procedures for the induction, training and professional development of all persons performing designated senior management functions on behalf of the firm other than members of the governing body.

So, what does that actually mean in practice? From our experience many firms have excellent and very focused induction programmes for new starters within firms. Coupled with many and varied opportunities for on-going CPD, at many levels within organisations individuals are well catered for. However, what we see very regularly is that those in either Senior Management or Board Positions are the ones that are offered the least opportunities in terms of training and professional development.

We have observed that there is still within many firms the view that once someone is holding a senior management or board position, their learning journey is complete, and that they are now "too busy" and/or "uninterested in furthering their professional qualifications and industry knowledge." However that corporate view is at odds with the individuals that we talk to whose thirst for knowledge and input grows as their career develops.

Let's hope that over time the new Senior Managers Regime and the training and development needs of those individuals affected will align and individuals will get the development opportunities they deserve. If not, then I think many firms can expect interesting conversations with the FCA about the importance of nurturing a "training culture" within their organisation where training is seen as the key to a successful career and not an unnecessary cost and interruption.

Ask the experts: Senior Managers Regime

Who will the new Senior Managers Regime apply to and what will their responsibilities be? Article provided by **CISI**.

The new regime is intended to make it easier for regulators to hold individuals to account, and applies to individuals responsible for managing regulated activities, or actions that might generate risk or serious consequence for the relevant firm.

The Prudential Regulation Authority's definition of 'senior management' includes chief executives, chief finance officers, chief risk officers, heads of internal audit, heads of other key business areas and group entity senior managers. The regime also applies to certain non-executives, including chairmen, risk, audit, remuneration and nominations committee chairs and independent directors.

Under the new rules, firms need to certify that individuals responsible for 'significant harm functions' are fit and proper to perform their role. Individuals must also submit applications for approval to perform a significant management function, including a 'Statement of Responsibility', setting out the aspects that they will be responsible for managing.

The regulator has introduced two tiers of new conduct rules, which apply to all significant managers and certified individuals. The first tier sets out the expected conduct for all individuals caught by the regime, including (but not limited to) a duty to be open and co-operative with the regulator and to observe proper standards of market conduct. The second tier cites that senior managers have a duty to control effectively the area that they are responsible for, and a duty to comply with the relevant requirements of the regulatory system.

Senior managers will be required to evidence that they have taken such steps as a person in his or her position could reasonably be expected to take to avoid wrongdoing – meaning the onus is now on the individual, rather than the regulator. If a senior manager is aware of a risk that the implementation of a decision could cause their institution to fail, and has taken no steps to rectify it, they will have committed a criminal offence.

Will the application of the new rules differ for UK branches of foreign banks?

The application of the regime to incoming European Economic Area (EEA) branches is problematic, because the home/host state dichotomy ties the UK regulator's hands. However, branches of third country firms (banks that are authorised outside the EEA) will be caught by the regime – although the criminal offence won't apply to them.

How can financial services firms and CISI members prepare for the rule changes?

Elements are still undergoing consultation, but the regime is expected to come into force fully by March 2016. The first thing firms need to do is to appoint a senior manager with personal responsibility for implementing the regime. They then need to consider how they will deal with the new and enhanced approval process for people performing senior management functions.

Once everyone affected has been notified and grandfathered over to the new regime, firms need to set up a structure that prepares new joiners and employees moving into new roles.

❑ Further information: New CPD raining course: Senior management responsibilities: Strengthening

❑ accountability, next dates 15 July 2015 (Manchester) and 24 September 2015 (London) - cisi.org/courses

❑ New CISI Professional Refresher: Senior managers and certification regime – cisi.org/refresher

Stuart Holman,
Deputy Managing Director, CCL

Bringing the code of conduct to life

By **Carl Redfern** from Redland Business Solutions

In this article I hope to show some examples of what the new code of conduct might mean when it comes into effect for the Financial Services industry and to bring it to life for the people and institutions that it will apply to.

I will start with a look at some dictionary definitions of both 'Conduct' and 'Culture'.

Conduct has several different definitions but there are probably two that we are most interested in.

1st Definition:

"The manner in which a person behaves, especially in a particular place or situation"

Synonyms: behaviour, way of behaving, performance, actions, acts, activities, deeds, habits, practices, manners

Example: "the townspeople regularly complained about the students' conduct"

2nd Definition:

"the manner in which an organisation or activity is managed or directed"

Synonyms: management, managing, running, direction, control, controlling, overseeing, supervision, regulation, leadership, administration, organisation, coordination, guidance;

Example: "the conduct of the elections"

A brief glance at the definitions and particularly the 'synonyms' indicates the breadth and scope of 'conduct' within a Financial Services organisation, and makes clear some of the links between 'conduct' as we might interpret it and 'culture', which has its own set of potentially complex and nebulous implications.

Culture can be defined as "The beliefs, customs, practices and social behaviour of a particular group of people"

One conclusion is that a firm's 'Culture' is a key factor in determining the 'Conduct' of its staff.

It seems obvious then that any initiative designed to implement the new Conduct Rules regime needs to be integrated and closely linked to any initiative tackling 'Culture' across the Firm.

> "It seems obvious then that any initiative designed to implement the new Conduct Rules regime needs to be integrated and closely linked any initiative tackling 'Culture' across the Firm.

Certainly, both words are enjoying a significant share of media coverage, regulator attention and industry profile.

In the detail of the Conduct Rules part of the new Individual Accountability Regime (IAR), the rules as they are currently drafted are:

First tier: all staff (excluding auxiliary staff)

1. You must act with integrity.
2. You must act with due skill, care and diligence.
3. You must be open and cooperative with the FCA, the PRA and other regulators.
4. You must pay due regard to the interests of customers and treat them fairly.
5. You must observe proper standards of market conduct.

Second tier: requirements for Senior Managers only

6. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
7. You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

8. You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee this effectively.
9. You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

It is material to note that these rules are still only 'draft', although I think it is unlikely that there will be any significant changes when the final rules are published.

Both FCA and PRA are due to publish their final rules covering most elements of the IAR by 'Spring / Summer 2015'. I think we can now forget 'Spring' but I guess 'Summer' could mean any time between now and end of August? To date, I have been unable to achieve any more clarity from either regulator about the likely date of the next round – we are all waiting and all in the same boat.

However, there are some things we do know.

Namely that the final version of these new Conduct Rules will apply to both Senior Managers and Certified Persons with effect from 7th March 2016. Which means that, by then, all Senior Managers and all Certified Staff must have been specifically trained in how these Conduct Rules apply to them, in their particular role. Firms then have until 7th March 2017 to issue the first Certificates to their Certified Staff and to roll out the Conduct Rules training and obligations to all except ancillary staff.

In the latest publications from the regulators they commented that despite feedback concerns about the potential cost implications of these Conduct Rules, *"a wide scope is critical to improving accountability and awareness of conduct issues all the way through firms, and for promoting the right culture, governance and conduct, in support of our consumer protection and market integrity objectives."*

Although FCA did add that they *"recognise the importance of ensuring that the new rules can be implemented proportionately."* And that they would *"look further at the reporting requirements that fall on firms, in regard to potential breaches of the new rules, and consider how they should be applied in practice."*

This feedback is important because it suggest very strongly that the rules and their scope are unlikely to change much but that perhaps the breach reporting obligations may ease.

One area we may hope to receive more guidance on relates to 'materiality'. Currently, there is no material threshold for notification of suspected Conduct Breaches. I suspect that it is appropriate for there to be a threshold but that the regulators will suggest that Firms define it for themselves – only reporting suspected beaches which they determine 'material', hopefully with some guidance from regulators. We will have to wait and see.

Returning to the link between the terms 'culture' and 'conduct', both have their roots in the betterment and refinement of individuals and personal behaviour. Both influence the way individuals act and therefore

collectively, the way the Firm behaves and interacts with customers and other participants in the markets. Both are therefore very much at the heart of what the regulators are trying to change through their focus on Individual Accountability, organisation governance and risk management.

However 'individual behaviour' is essentially intangible. Either because of the huge number of interactions that take place every day or even worse because future interactions haven't happened yet. It makes measuring and reporting on culture and conduct potentially very difficult.

So what can Firms do to provide assurance that they are on the right track and behaving appropriately?

The new 'conduct rules' sound like a good idea – they ought to provide a solid point of reference as guidance for staff faced with complex choices, or uncertain situations but there is a growing body of experience and evidence that 'value statements', like these new rules, fail to make an impact - staff simply don't find them useful guides in their day-to-day decision-making.

To create effective 'conduct' programmes managers need to be brave and be prepared to exercise judgement, this is after all what the regulator is going to do to assess your programme!

The FCA Business Plan 2015/16 sets out the risks they perceive and intend to focus on for this year and it is no surprise that it includes *"how poor culture and control continues to threaten market integrity"*. The detailed plan specifically refers to Individual Accountability as a key priority and goes on to state *"It is vital that firms, in wholesale and retail markets, ensure that cultural changes have been made to prevent poor conduct in future . . . We continue to address conduct issues arising from failures in firm culture and are committed to ensuring this momentum is not lost."*

In a speech given by Clive Adamson as far back as 2013, FCA suggested that they would *"draw conclusions about culture from what we observe about a firm – in other words, joining the dots rather than assessing culture directly . . . This includes assessing if the perceived customer-focused culture is supported by, for example, regular discussions on conduct at board level . . ."*

Under the IAR, Senior Managers will be personally responsible for Culture and Conduct within the Firm, for ensuring that appropriate behaviours become the norm and that appropriate outcomes are focused on.

However, the Senior Managers with these responsibilities will probably not be personally responsible for the business operations where most of the conduct risks occur or directly responsible for the staff who will give rise to them. Therefore these managers need to ensure that Management Information is available across the operation which does effectively monitor conduct and behaviours within each operational area and that the existing indicators which can be used to interpret and expose conduct issues actually help by being aligned and integrated with the management of the Conduct Rules regime.

New KPIs should be developed within Operations to monitor adherence to the new Conduct Rules and the related programmes of change. Firms should ask themselves what new metrics will they add to their governance regime to support the Conduct Rules programme and how will the required information be collected. Existing systems and processes across the operation may need to be enhanced to ensure that appropriate information can be reported holistically and by division, region, line of business etc. as required.

One large firm we are working with is adding new KPIs to people subject to Certification that will measure how well the Conduct Regime staff reporting to them are complying with the Conduct Rules. For example, are training and conduct workshops being attended and completed on time? Are people completing their personal declarations? How many breaches or suspected breaches are being recorded across operational areas? Performance against the new Conduct KPIs within their operations will form part of their annual Certification assessment.

Is this way, by being able to report against the Conduct Rules programme and the Certifications Regime holistically up to the responsible Senior Managers within the Senior Managers Regime key information is made available to the Board.

But critically, by being able to report all of the metrics operationally, across operational lines of responsibility, the firm's performance against the Conduct Rules and Cultural programmes can be owned by all of the management teams, within their areas and lines of responsibility and genuinely embedded in day to day activity and process monitoring.

Thereby breathing life into the new Conduct Rules.

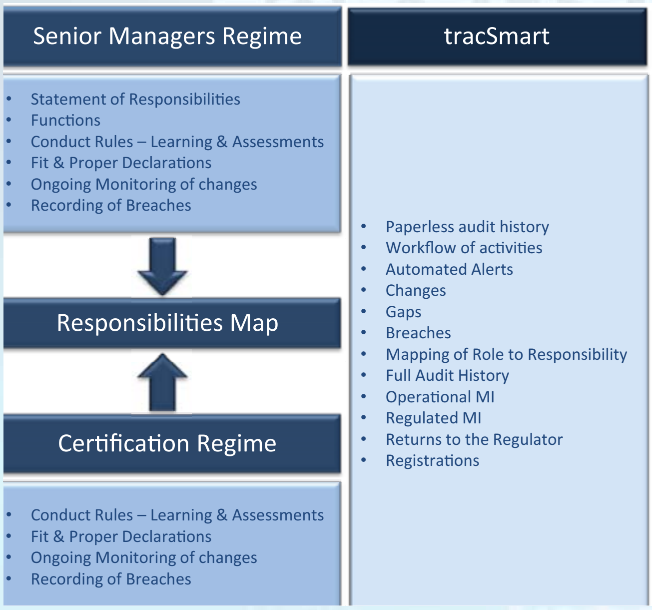
Preparing for the new Regime

Emma Howell, Head of Marketing, Worksmart

Whether you are an Executive of a large retail bank, a Compliance Manager in an international bank or working in T&C for a Building Society, you will not have failed to notice that the deadlines for implementing the new "Strengthening Accountability in Banking" regime are getting closer.

Supporting the regulatory bodies overarching strategic objective of ensuring the relevant markets function well, the PRA and FCA proposals include introducing:

- ❑ A new Senior Managers Regime which will clarify the lines of responsibility at the top of banks, enhance the regulators' ability to hold senior individuals in banks to account and require banks to regularly vet their senior managers for fitness and propriety;
- ❑ A Certification Regime requiring firms to assess fitness and propriety of staff in positions where the decisions they make could pose significant harm to the bank or any of its customers;
- ❑ A new Code of Conduct the rules, which take the form of brief statements of high level principle, set out the standards of behaviour for all bank employees.



It would appear that some are reacting quicker than others, with many firms having established and mobilised programmes and project teams driving out requirements and looking at the most effective way to implement the new regulation. These firms now understand the level of complexity involved – from defining who is an employee (what if they sit in a different country / operating company, or are a temporary hire) to defining a potential breach of the rules and the internal impact of a minor breach.

The concern however, is that there are a number who perhaps because they have fewer employees, simple organisational structures and generally good procedures, have not appreciated the detailed processes that may need to be introduced. The decommissioning of part of the FCA database of approved persons will change every affected company's processes for recruitment and how they deal with leavers and provide references. The level of complexity for all organisations should not be underestimated.

And of course the the penalties for non-compliance could ultimately result in a stay at Her Majesty's pleasure for responsible executives and/or sizeable fines for the responsible individual and the bank itself.

It is good business practice for senior executives to have clarity on their responsibilities and clear lines of communication to the people that report to them, and most companies have this today. However at the detailed level, the rules for SMR are quite demanding and fewer firms have the management information which, at the touch of a button, can provide executives with early warning signals and details of breaches which have occurred within their reporting line.

Equally, 'certified' managers and employees may well have clarity on what is expected from them in their individual roles, but perhaps not yet understand the impact of the new regime. Many banks will be developing new internal policies and procedures to make sure they are compliant with the new regime – and contravention of these policies could again lead to stiff penalties.

Preparation for the new regulation is key; finding the right people to help you map your organisational structure and policies / processes at the outset will go a long way to shortening the overall implementation of your system to support IAR.

The Senior Managers Regime (SMR) may, even for very large banks, only include a few tens of executives and, therefore, prove to be considerably easier to manage than the Certification Regime (CR). The requirement for mapping of responsibilities can, and no doubt will, in some cases be managed through a set of spreadsheets. Well, that's that box ticked then isn't it? Well maybe not....

Banks and Building Societies that want to mitigate the risk of fines down the line, and take the opportunity to realise real efficiencies on the back of this pending regulation, would be wise to consider exactly how they intend to create the clear line of sight that the regulator is looking for them to demonstrate. Using spreadsheets for SMR and a disparate system for CR may well end up the choice of many. And no doubt technology vendors in the space will be in a position to assist these organisations in managing the connectivity between the two as far as is possible. The Holy Grail though would surely be to have a single system managing both SMR and CR? And what of HR? Can a system designed to manage core HR activities ever be malleable enough to manage all the complexities of the new regime? For example, how will a potential breach, discovered in another business system, which impacts multiple SMFs and needs to be visible and communicated to multiple reporting lines be managed? Even if the software is technically capable of this, finding a systems integrator who has the experience of this regulatory domain to work out how to make it work in nine months time would be challenging to say the very least.

> "The decommissioning of part of the FCA database of approved persons will change every affected company's processes for recruitment and how they deal with leavers and provide references

When selecting vendors (be they internal IT or external suppliers) due diligence, not only to ratify their ability to deliver, but to ensure they fully understand the regulatory landscape and the regime itself, is crucial. From a systems perspective, the vendors that are best placed to deliver will be those whose core business is helping firms to turn regulatory compliance into a competitive advantage. And if they have an "out of the box" solution which addresses both the SMR and CR components of the new Accountability Regime, all the better! Work with your IT partners to ensure the implementation delivers real business benefit beyond simply being able to tick the correct box; facilitating a clear line of sight and open communication between senior executives and their reporting lines.

The timescales have been defined and the "near final" rules published so remember: Plan well ahead of time; be clear on what you want to achieve as well as what the regulator requires you to achieve; and be sure your IT partner can deliver in time

Welcome to the first edition of *Certification News*!

By **Carl Redfern** from Redland Business Solutions

Obviously, this statement is 'tongue-in-cheek' but it does refer to a serious point. Under the new Individual Accountability Regime being introduced for banking firms, Training and Competence (T&C) potentially becomes a sub-set of Certification, so Jeff, perhaps, this July publication does deserve a name chang ...?

> "Mistakes (or failings) by an individual resulting in their certificate being withdrawn are potentially career limiting!

In this article I explore the implications of the new Certification Regime, within the context of the wider Individual Accountability changes and compare some of the new obligations with existing regulated T&C requirements. Hopefully it will help to highlight those areas where Firms should apply their time and effort and 'thinking' to facilitate compliance with the new rules.

In CP15-09, published 16th March 2015, FCA set a more detailed timetable for the journey to the new regime. We can now expect:

- ❑ Publication of final rules on Individual Accountability by both FCA and PRA – Spring / Summer 2015
- ❑ Potential consultation extending Certification to cover wholesale markets – Summer 2015 (followed by Policy Statement end 2015, if required)
- ❑ Publication of Policy Statement covering foreign banks (subject to approval for extension of the regime)
- ❑ Transitional Arrangements – to be confirmed as part of the final rules
- ❑ Deadline for Responsibilities Map and Statements of Responsibility – 8th Feb 2016
- ❑ FCA Register will show new Senior Managers by 7th March 2016
- ❑ Deadline for issuing Certificates under CERT Regime – 7th March 2017

Although currently the Individual Accountability Regime (IAR) focuses on deposit taking firms, there are also changes to the Approved Persons Regime for Solvency II firms, which introduces a very similar set of changes for Insurers (excluding the Certification layer) and even the current Approved Persons rules are being modified to an extent, affecting Appointed Representatives and Investment Managers etc.

It is also perhaps very significant that FCA have released their latest Consultation Paper for IAR with a series of 'related documents' that include 'GC15/1 Risks to customers from performance management at firms' – which sets out findings from FCA work relating to performance management and leading from their work on 'financial incentives'. It sets out examples of good and bad practice. It seems clear that as far as FCA are concerned, Performance Management is tightly linked to Accountability and will have implications for firms currently outside of IAR and CERT.

Certification (CERT) is a component of the new IAR with the intended outcome of forcing Firms to take the 'Fitness and Propriety' (FIT) assessments of their staff more seriously, with more rigour, underpinned with more (a lot more) consequences. CERT reinforces that the FIT assessment needs to be a continuous, ongoing process, applied to a lot more roles across the business than the current Approved Persons regime.

So CERT is the annual application of FIT, to a wider population, with a lot more rigour!

Both regulators have promised new guidance for the application of the FIT assessment, but also stressed that it will not be material change, the essence will remain the same, other than the inclusion of a new focus on 'personal characteristics'.

The direct link within the CERT regime to regulated Training &Competence processes is clear.

The new rules under CERT define the following . . .
"when assessing the fitness and propriety of a person to perform a particular function the Firm must have regard to whether that person . . .

1. Has obtained a qualification
2. Has undergone or is undergoing training
3. Possesses a level of competence
4. Has the personal characteristics"

One of the significant consequences of the new CERT regime is that Firms will need to invest time in creating and documenting a 'Certification Policy' and 'Certification Scheme'.

The TC source book, as part of the FCA Handbook defines 'competence' as:

"competence means having the skills, knowledge and expertise needed to discharge the responsibilities of an employee's role, including a good standard of ethical behaviour"

Similar to existing (in many instances) T&C Schemes, organisations need to consider and define the following list, in respect of their Certification Regime obligations:

1. the roles and functions that will be subject to CERT
2. the 'route to competence' for each role
3. the 'maintenance of competence' for each role
4. the processes, tasks, activities and KPIs used to measure and monitor competence
5. a scale of remedial actions and development plan options for correcting performance issues
6. the supervisory policies and roles covering CERT functions, including
    a. 'locum' arrangements
    b. 'competent to supervise' assessments and maintenance
7. Links to 'Performance Management', Incentive schemes and HR policies

One of the questions frequently asked about the CERT regime is whether it is essentially 'regulated T&C' or essentially 'HR Performance Management'?

I suggest that the correct answer is 'both'.

For existing roles and staff subject to T&C today, the same (or very similar) T&C 'tools' will continue to apply. For many of the new roles and staff, using some of these T&C 'tools' will help to measure and monitor competence and fitness and propriety.

Examples of the 'toolkit' frequently employed within the T&C environment include:

❑ Documented Policy

❑ Documented Competence Standards

❑ Regular 1:1s – with documented outcomes

❑ Observations and Role Plays

❑ Formal KPIs

❑ Technical Knowledge Assessments

❑ CPD

❑ L&D Plan

❑ Remedial Action Plans or PIPs or similar

❑ Span of Control monitoring

❑ File Checks / Quality Checks

❑ Supervision Standards

❑ Risk Based Assessments

The primary objective of these tools, as applied within T&C schemes and day to day operations, is to identify where or if an individual might be 'slipping' against the relevant competence standards and take the appropriate action **before** a competence issue occurs, therefore preventing a 'breach'.

Obviously, under the CERT regime, this is significant – take the required corrective action and prevent the need to withdraw or 'not issue' a certificate and a material amount of administration effort, HR process, customer risk, conduct risk, reputation risk or financial risk to the firm is avoided. To say nothing of the professional implications for the individual involved – under the 'breach reporting' and 'regulatory reference' rules of the new regime, mistakes (or failings) by an individual resulting in their certificate being withdrawn are potentially career limiting!

A key difference is that Performance Management under HR is often a continuous process of review between manager and staff in support of accomplishing the strategic objectives of the organisation. Performance Management tends to be 'analogue' – a sliding scale from under to over-performing, with the assessment based on 'relative values' across the business.

T&C tends to be 'digital' – Qualitative and Quantitative assessment as 'competent' at any given point in time or not, with the assessment being made against a set of documented standards.

The CERT regime requires the practical application of both, according to role, applied in a proportionate and appropriate manner.

Key to making this work will be the 'judgement' of experienced and professional staff (T&C and HR and probably Compliance people). The judgement of what is the correct approach for each role will need to be documented and collaborated with the 'buy-in' of Senior Management, hence the suggestion of a Certification Policy and Certification scheme which can be signed off and distributed to those involved.

If any significant roles are determined in your business not to be subject to CERT, the policy document should probably also contain an explanation as to why not. One of the challenges going forward into the new world will be how much difference there is in interpretation of the definitions of Material Risk Taker and Significant Harm Function. Clearly there will be differences from one organisation to the next and how we handle staff who move from one firm to another into a similar role, which now is or isn't subject to CERT needs to be considered.

The new Certification Regime can be compared to an MOT – formally tested and issued once per year, the owner of a car is responsible for ensuring that it is 'road-worthy' at all times.

The tools, elements, record keeping, evidence, policies and procedures of T&C have been developed and are used today to frequently monitor individual competence within day-to-day operations, in the context of the business of the firm – to continuously measure 'road worthiness' and fix issues **before** they become significant (reportable).

It is exactly these processes that will make the Certification Regime successful.

So while the next issue of *T-C News* will not be called *Certification News'* it could reasonably include a 'glossy supplement' . . . ???

Senior Management competence: getting it onto the agenda

By **Ian Patterson** from the Patterson Group

This article is intended to answer one key question: what must senior managers and the leaders of businesses do to demonstrate they are competent for the role, and remain so? This is a far from easy question to answer. To compound this, there is often some complacency – senior managers may well believe that 'competence' is something that only the people below them need to worry about.

Not so. There will be much talk over the coming months about the Senior Managers regime (SMR). I acknowledge that for the banks and insurers this will represent an imminent and significant change but for financial planning firms, this is a more distant prospect, if at all. And SMR is primarily about senior manager responsibilities and accountability, not competence and how it is demonstrated. The need for senior management to have and be able to demonstrate their competence is an issue now; well it is if:

- a supervisory intervention is expected from the PRA or FCA;
- acquisitions are planned or the business is looking to significantly expand;
- there aren't clear succession plans within the business, or
- if the intention is to run the business more effectively.

> “In my experience, the question of ‘competency’ with senior management is typically met by looks of confusion and complacency in equal measures.

Whichever way you look, senior managers are under increasing scrutiny. I was involved in example of this recently where a business was looking to double the size of the business over the next 5 years through acquisition. The regulator asked this business to prove that the senior management team had the range of expertise necessary to manage a more complex business and a firm double the size in the future.

This shouldn't surprise anyone as the FCA expect firms to manage their own conduct risk and in many cases, this will stand or fall by the expertise of senior management. Frequently, the people ‘at the top’ are functional specialists who find them themselves running a business - a great financial planner running a financial planning firm, a great finance person becomes the finance director etc. Someone's greatest strength is often also their greatest weakness. Senior managers may be good functional experts but are they also good leaders of the business? Don't confuse the two because the regulator probably won't.

In my experience, the question of ‘competency’ with senior management is typically met by looks of confusion and complacency in equal measures. It's not that the concept is difficult, but the breadth of the role and responsibilities of a senior manager go well beyond that of a functional manger so it is more difficult to identify just what maintaining competence should look like. Running a business will need different knowledge and a different skills set to just carrying out a functional role. If you then throw in a leadership role and talent that wishes to progress, then how do we prepare people for this? The key with senior managers is to diagnose precisely where it is possible to add value. So, how do we do this? Here are five ideas.

1. Businesses need capable leaders – so how do you know you have them? My preferred approach is to use a diagnostic tool called the Emotional Capital Report or ECR[1] - this benchmarks leadership using emotional intelligence (EQ) against 10 indicators of emotional and social competence. In doing so, it then benchmarks the leaders EQ against over 6,000 leaders worldwide. You need to be licensed to use this tool but the result is that your senior managers get to compare themselves against the ‘best in class’. A personal development plan will usually result which is tailored to developing the individual's leadership capability, now and in the future.

2. Senior managers must be able to demonstrate competence and expertise at the level they operate at. Effective CPD is one such way. Members of the CII with a relevant qualification will be subject to the CPD regime but where this is not the case, meaningful CPD often does not take place. It should do, so what would this look like?

The FSA issued some guidance on effective corporate governance in 2010[2] and this is a good starting point. This identifies the competencies required for significant influence functions in six areas:

- ❑ **Market knowledge.** Awareness and understanding of the wider business, economic and market environment in which the firm operates;
- ❑ **Business strategy and model.** Awareness and understanding of the firm's business strategy and model appropriate to the role;
- ❑ **Risk management and control.** The ability to identify, assess, monitor, control and mitigate risks to the firm. An awareness and understanding of the main risks facing the firm and the role the individual plays in managing them;
- ❑ **Financial analysis and controls.** The ability to interpret the firm's financial information, identify key issues based on this information and put in place appropriate controls and measures;
- ❑ **Governance, oversight and controls.** The ability to assess the effectiveness of the firm's arrangements to deliver effective governance, oversight and controls in the business and, if necessary, oversee changes in these areas;
- ❑ **Regulatory framework and requirements.** Awareness and understanding of the regulatory framework in which the firm operates, and the regulatory requirements and expectations relevant to the senior manager role.

3. Qualifications and exams are clearly a good way of demonstrating competence/ongoing CPD where these are appropriate. The CII's AF6 exam is designed for senior managers so this is a good starting point but there are other exams such as the CII's MSc in Wealth Management or wider part-time qualifications such as MBAs.

4. Board effectiveness toolkit. Senior managers need to be able to operate as a Board or as an effective team. So how good are they and how do they know? How can they be even better? The Financial & Legal Skills Partnership publish free self-assessment material[3] which can be used with the senior management team to identify areas where performance could be further developed - both collectively and individually. This can provide a focus for ongoing individual CPD.

5. Performance management. Make sure there is an effective process which is used – this means it measures both what is done, and how. Behaviours, competencies or value statements are commonly used in larger firms but are not used widely in smaller ones. So assuming an individual's performance is effective, this will potentially confirm their competence and identify development areas to address. I say potentially because this is an interesting one: does satisfactory performance automatically equal competence? I would say not always so it is worth being able to offer something more than just this.

So, let me pull all of this together. The effective diagnosis of needs is the foundation of any sensible development for senior managers. Senior management often neglect development and documenting it. Often functional specialists lack the broader leadership skills the business needs, and the regulator will expect – especially where an authorised firm is growing rapidly through either acquisition or organic growth. If not, everything I have said still applies but it is perhaps less likely to be subject to regulatory scrutiny. In other words, development is a complete waste of time if senior management:

- ❑ are unable to perform their jobs any better
- ❑ never expect to have any meaningful contact with a regulator
- ❑ never come across anything new, *and*
- ❑ have a role that hasn't changed, and never will.

Ian Patterson
Development specialist and author of *AF6 -Senior Management and Supervision* and *J07-Supervision in a Regulated Environment*.

1 Roche Martin www.rochemartin.co.uk

2 FSA, CP10/03: *Effective corporate governance*, January 2010

3 Financial & Legal Skills Partnership, Board Effectiveness Toolkit. www.financialskillspartnership.org.uk

Learning & development plans for senior management

By **Martin Hughes** from T10 Partnership

The thing about senior managers is that, they are senior and they manage things. On the other hand, the thing about learning and development is that learning supports development. Plans? well, don't they just help people get from one place to another?

I've found when I've made these statements at the start of a learning day, they tend to polarise people. They'll either think I'm an idiot simply stating the bloomin' obvious or, as is always hoped, they'll think, great, let's get back to basics, strip away all the nonsense and hyperbole which so often accompanies L&D and actually learn something.

A couple of years ago I read a CIPD survey which showed that more than 90% of the 700 respondents believed that managers are '*important*' or '*very important*' in supporting learning and development in their organisations. The big "but" was that only 12% felt their managers took learning and development seriously, while 20% thought they didn't take it seriously enough. Awesome, if ever there was ammunition needed to get senior managers serious about learning, here it is.

I'm all for leading from the front and if managers expect their own people to take L&D seriously they need to get beyond the rhetoric about it '*being a good thing*' in its own right and embrace plans designed specifically for them. That'll silence their critics!

It would seem that having a clear plan is not just a good idea, but essential if the seniors are needing buy-in from the emerging talent pool. Nobody wants the bright young things to become cynical about learning when they themselves take on senior roles. Surely then it is one of the tasks of a manager to ensure first class learning for tomorrow's job as well as today's?

Having a plan demonstrates a desire to get from one place to another with an intention or decision about what is going to be done and having a detailed proposal for achieving it. It's something which needs to be done in advance. Senior managers with a plan written specifically for them will be able to turn the theory and knowledge into practical applications which affect the bottom line.

Back to basics

What do we mean by the term senior management? It's nothing to do with age, could well be to do with experience but most likely to do with responsibility which some would argue demands both inward and outward flows of learning. By inward I mean what the person learns themselves and by outward I mean in the form of coaching or mentoring others which, in case you were in any doubt, are entirely different things.

Taking the most popular information available on the web, a definition of the term "senior manager" can be summed up as *"…high level executives who participate actively in the daily supervision, planning and administrative processes required by a business to help meet its objectives."*

That's sorted then, we know who these people are, yet there's more to consider because to be effective in the area of senior management the manager must:

- ❏ be intelligent
- ❏ possess initiative
- ❏ be able to rise above problems
- ❏ be able to think laterally
- ❏ be confident
- ❏ have integrity

In which case we may not know who these people are after all! Some senior managers may have these characteristics from birth and others may need some encouragement to point them in the right direction.

These are of course characteristics which aren't necessarily gained through learning but should have been uncovered during the initial selection process and which should have been monitored and noted as people progress through their career. Assuming then a business has the right people in senior management roles to begin with, what do these people need to learn?

Learning Needs Analysis

Let's do a generic needs analysis for senior managers so that we can understand what managers do and what actions they take to achieve their goals and objectives. Then I'll suggest some learning to support changes in behaviour to allow them to perform their activities and develop in their roles.

Generally in any organisation, the management must have overall goals which include:

1.	knowing what is happening within their department and how it affects the overall business
2.	constantly seeking to improve those things which are within their control
3.	having viable plans to assist the implementation of new ideas or methods
4.	ensuring the short and long term commitment of all personnel.

Table 1

Drilling down to the next level, specific objectives to achieve the goals in table 1 might include:

1.	having an effective method of defining results expected from the business
2.	having an understanding of the impact of those results on the business
3.	improving the flow of communications up down and across the business
4.	securing and holding recruits of suitable calibre
5.	having a flexible succession plan for staffing the business in the future
6.	motivating people and rewarding them fairly in relation to the results achieved
7.	having a reliable means of judging people's performance
8.	encouraging people to continually improve their performance.

Table 2

Two questions worth asking at this stage are:

- ❑ what do senior managers expect to gain from their own leaning plan and
- ❑ exactly what development are they expecting to achieve?

> “The big “but” was that only 12% felt their managers took learning and development seriously, while 20% thought they didn't take it seriously enough

Question 2 is easier to answer because it can be defined as a comparison of where the manager is now and where they want to be in the next three to twelve months. Having established that, we can start to map out a plan to give the manager what they need in answer to question 1.

Looking at table 2, on the face of it, we can ascertain a need for not just an understanding of, but robust core competencies in:

• communications
• motivation
• statistical and financial analysis
• business development plans and strategy
• HR
• managing conflict
• change and performance management.

Table 3

Setting aside essential competencies in regulatory disciplines, a search online for senior executive learning programmes results in a list of training companies with similar themes focusing on strategy and change. One training provider offers *"…a fresh look at both new and established ideas by stripping them apart and applying them to individual's needs."*

I wondered how the focus got to just those two particular areas of strategy and change – is that all senior managers need to know about? What about all the other stuff, maybe it's included within these two themes?

Let's take the topics in table 3 as a sub list incorporated within our theme of strategy and change which senior managers need to have in their core skills portfolio. We can easily add the words strategy or change to create chapter titles in a learning plan e.g.

❑ communications strategy for a changing environment

❑ strategies for motivating people through changing times, or even

❑ how to get to the next level of business performance by having a defined change strategy.

It now seems appropriate that the themes of strategy and change are at the sharp end of an L&D plan for a senior manager. We can now create a personalised plan so that the exact needs of an individual manager and their organisation are taken into consideration to meet their particular roles and goals.

One other subject I would also suggest is teamwork. A manager who understands why it is necessary to have the right mix of personalities and talents in a team, understands the need to have output which is greater than the sum of its parts i.e. 2+2=5. So much of what is learned about teams can be applied to planning, strategy, motivation, communications and performance that I feel it almost should be mandatory learning for all managers. Plenty of team management theories have applications outside of teamwork which are beneficial to senior managers having an appreciation of people being a perfect fit in a team or role or seeing a need for flexibility of what someone might achieve given the opportunity. Any organisation is a team of people after all. The key is the correct application in the workplace.

Delivery methods

Learning styles differ, time available for study differs, but with so much flexibility built in to the different methods of learning available, managers can make their own decision on which method will not only suit them but also fit into their diaries.

What next?

Having taken an all too brief look at the inward learning potential for managers, outwardly the senior manager's responsibility is to define their own learning plans and support learning for their own people at an appropriate return on investment so that in a couple of years from now a different survey will conclude that senior managers take L&D very seriously and their participation in dedicated learning programmes has been shown to support and develop their people and their organisation in an ever changing marketplace.

Martin is a Partner at T10 – Pioneers of Effortless Learning & Development – weareT10.com

Strengthening Individual Accountability – the senior managers regime

Andy Bennett, Head of Regulatory Training at Fitch Learning, assesses the implications of the FCA/PRA consultation paper on individual accountability in the banking industry.

Article Summary: Key Facts

Existing regime	New regime
Controlled functions divided into Significant Influence Functions (SIFs) and Customer-Dealing Functions	Two distinct categories of Senior Management Functions (SMFs) and Significant Harm Functions (SHFs)
Fitness and propriety assessed for SIFs by the regulator	Fitness and propriety assessed for SMFs by the regulator for SMFs
Fitness and propriety assessed for Customer-Dealing functions by the regulator	Fitness and propriety assessed for SHFs by the firm. Verification sent to the regulator every year. Regulator issues a certificate
Statements of Principle govern the conduct of approved persons only	Code of Conduct governs the conduct of all relevant employees

Background

The financial crisis of 2008-2009 and the scandals that ensued led to the creation of the Parliamentary Commission on Banking Standards (PCBS). The PCBS was appointed by both Houses of Parliament to consider and report on professional standards and culture of the UK banking sector. There was specific focus on regulatory and competition investigations into the LIBOR rate-setting process. The PCBS was also charged with looking into the lessons to be learned about corporate governance, transparency and conflicts of interest, and their implications for regulation and for Government policy. Having done so, they were invited to make recommendations for legislative and other action, publishing their findings in "*Changing Banking for Good*".

The findings of the PCBS cover five main themes:

- ❑ Making individual responsibility in banking a reality, especially at the most senior levels;
- ❑ Reforming governance within banks to reinforce each bank's responsibility for its own safety and soundness and for the maintenance of standards;
- ❑ Creating better functioning and more diverse banking markets in order to empower consumers and provide greater discipline on banks to raise standards;
- ❑ Reinforcing the responsibilities of regulators in the exercise of judgement in deploying their current and proposed new powers; and
- ❑ Specifying the responsibilities of the Government and of future Governments and Parliaments.

The areas covered in this paper focus on the Financial Conduct Authority and the Prudential Regulation Authority's response to the first two themes: individual responsibility and reforming governance.

Strengthening accountability in banking: a new regulatory framework for individuals (FCA CP14/13 – PRA CP 14/14)

On the 30th July 2014, the FCA and PRA ("the regulators") published their response to the PCBS recommendation on individual responsibility.

In this consultation paper, the regulators set out their proposed new regimes for those employees of financial services firms who could pose significant risk to the firm itself or the customers of the firm. It is introduced with a statement of joint intent, "We – the FCA and the PRA – believe that holding individuals to account is a key component of effective regulation".

The new regime is set to replace the existing approved person regime with a more focused and rigorous regime.

The existing approved person regime

The existing regime links with the *Senior Management Arrangement, Systems and Controls* (SYSC) sourcebook of the regulators handbook. SYSC requires that all relevant firms apportion significant responsibilities to specific senior managers. These senior managers are charged with establishing and maintaining proportionate systems and controls within the firm. The fitness and propriety of these senior managers – and others – is then tested under the approved person regime.

Under S59 of the *Financial Services and Markets Act 2000* (FSMA2000), "An authorised person must take reasonable care to ensure that no person performs a controlled function … unless the Authority approves the performance [of the controlled function] by that person ..." The regulators dictate the roles that are considered controlled function in the Supervision (SUP) sourcebook of the handbook. SUP10A and SUP10B broadly divide the controlled functions into Governing, Required, Systems and controls, Significant management, and Customer-dealing functions. Firms must then ensure that all approved persons follow the regulators' *Statements of Principle for Approved Persons.*

Since the creation of the twin-peaks regulation in 2013, the responsibility of approval of these roles has been divided between the two regulators. The new regime will continue to create a clear distinction between the responsibilities of the two regulators in respect of approval.

The proposed regime

The new regime will split the existing approved person regime into two key sections; firstly, a senior managers regime and secondly, a certification regime.

The senior managers regime

The senior managers regime will be administered along the lines of the existing approved person regime. The regulators will prescribe the responsibilities that need to be apportioned; these will include both executive and non-executive functions. The regulators will also assess the fitness and propriety of the people holding these responsibilities. For dual-regulated firms, the responsibility for approving senior managers will be divided between the two regulators.

FCA Senior Management Functions for relevant firms

Executive	Non-executive
Executive director	Non-executive director
Significant responsibility senior manager*	Chair of nominations committee
Money laundering reporting	
Compliance oversight	

PRA Senior Management Functions for relevant firms except small credit unions

Executive	Non-executive
Chief executive function	Chairman
Chief finance function	Chair of risk committee
Chief risk function	Chair of audit committee
Head of internal audit	Chair of remuneration committee
Head of key business area	Senior independent director
Group entity senior manager	

The certification regime

The certification regime will focus more generally on other roles not included in the regulators prescribed senior management function list, but could cause significant risk to the firm and/or its customers. These roles are referred to as significant harm functions. This category will include all those individuals currently performing a significant influence function (SIF) that do not fall within the scope of senior management function. It will also include customer-facing roles that are subject to qualification requirements, such as retail advisers. In addition, anyone who supervises or manages a certified person and does not fall within the senior management function will also need to be certified. A key change here is that the firm will be responsible for assessing all certified individuals, and this certification will need to be done on an annual basis. In order to make the task of certification less onerous on the firm, a single assessment of the fitness and propriety of the affected employees can be made and a single certificate can cover all relevant persons. However, the regulators emphasise that the assessment needs to be specific to the role that they perform; any change in role or any new person within a relevant role will require an immediate assessment.

Conduct rules

The *Statements of Principle for Approved Persons* is also to be replaced by a *Code of Conduct*. Where the statements of principle applied only to approved persons, the new *Code of Conduct* will apply to all employees that could pose a risk to the FCA objectives. These objectives are: ensuring relevant markets function well; customer protection; market integrity; and effective competition. Exceptions to "all employees" will apply for those whose role would be fundamentally the same if they worked for a non-financial firm, for example receptionist, cleaners, catering staff, etc.

As the current statements of principle are divided into statements for all controlled functions and statements for significant influence functions, the new code of conduct will be divided into a first tier – applicable to all staff – and a second tier – applicable to senior managers. The regulators intend to include detailed guidance on how they envisage this code of conduct to be applied.

Combined FCA and PRA Code of Conduct
First tier – Individual Conduct Rules
Rule 1: You must act with integrity.
Rule 2: You must act with due skill, care and intelligence.
Rule 3: You must be open and co-operative with the FCA and PRA and other regulators.
Rule 4: You must pay due regard to the interests of customers and treat them fairly.
Rule 5: You must observe proper standards of market conduct.
Second tier – Senior Manager Conduct Rules
SM1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
SM2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
SM3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
SM4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

Conclusion

The statement being made by the regulators through this new regime is clear. In allowing the firm to certify a large proportion of its own staff that would currently be assessed by the regulators, they free-up more resources to take a more focused and rigorous approach to the assessment and monitoring of senior managers. Specifically, the regulators have stated that competency of the senior managers will be focused more directly on the competencies relevant to the role.

Through this new regime, the regulators address the issue of enhanced accountability for senior managers. They also address the issue of reforming governance by allowing firms to take responsibility for their own certification regime.

The new Senior Manager's Regime – and its effect on us all ...

By **Carl Redfern** from Redland Business Solutions

The new Senior Manager's Regime will have a significant impact across the whole of the Financial Services industry, in one way or another. In this brief article, I try to describe the potential breadth of the coming changes to other sectors, wider than Banking, and identify some possible things we can prepare to help us be ready for the change.

The current Approved Persons Regime has existed in many guises for many years.

To be approved to perform a controlled function, the firm / individual had to satisfy the regulator that the individual was 'Fit and Proper'.

Prior to 2009, the regulators mainly focused on a candidate's honesty, integrity and reputation. There was no real focus on technical ability or competence.

There is currently a much greater emphasis on technical capability and competence but the new regime will go much further.

Under the new Senior Managers Regime (SMR) a specific individual on the Board will be held personally accountable for the competence of most of the important employees within the Firm, including all of their peers in Senior Management!

The changes are significant and material and will affect everyone.

Three tiers of control are being introduced.

1. Senior Managers Regime (SMR) – essentially replaces SIFs although slightly narrower
2. Certification Regime (CERT) – essentially replaces CFs although applies to many more people
3. Conduct Rules (COND) – essentially applies to all employees (including SMR and CERT) with a few exceptions

CERT is intended to cover the next 'tier' of people in a relevant firm who perform functions which represent a 'significant risk or harm' to either the firm or its customers or staff who can be defined as 'material risk takers' – a much wider range of people than the current APER.

Key objectives of the new holistic regime include "ensuring that people who are responsible for failure should be personally accountable for that failure" and "changing the behaviour of people in relevant firms from the very 'Top' to the 'Bottom' for the better".

The SMR regime was due to only apply to the banking sector but on 23 October the Treasury Committee published its Project Verde report, in which it was highly critical of the current Approved Person's Regime.

In the report they asserted that "While the Approved Persons Regime will be abolished for the banking industry, it will be retained for many in the remainder of the financial services industry, including insurance and asset management. Given its manifest failings, this appears hard to justify. The Government and the regulators should at the earliest opportunity make proposals to extend the coverage of the Senior Managers and Certification Regimes to, and remove the application of the Approved Persons Regime from, other parts of the financial services industry."

Subsequently, Consultation Papers, PRA CP26/14 and FCA CP14/25 have been published setting out the new Senior Managers Regimes for Insurance (Solvency II) Firms.

These papers set out a similarly exciting timetable to the proposals for the Banking sector. The consultation closes 2nd February 2015, with changes coming into force by 2016. While the proposed changes are not specifically the same, there is no Certification Regime and the Management Responsibilities Map has unhelpfully morphed into a 'Governance Map' there are many 'reads across' and a lot that is very similar.

The first of the 'technical' Consultation Papers CP14/31 has also now been published, setting out more detail for the Banking Sector changes. This consultation covers some of the transitional arrangements, forms and consequential aspects for Individual Accountability, with responses due by 27th February 2015. In this paper it specifically discusses further consultations covering the roles of NEDs and Appointed Representatives.

It is clear that Individual Accountability is going to be introduced across the whole industry in one form or another and much more quickly than usual for such sweeping changes.

So, what does all this mean for the rest of us – those perhaps who are not Senior Managers under the new rules but work for them?

The Government's objective, as originally proposed by the Parliamentary Commission on Banking Standards, is to assign and allocate more clearly personal responsibility and accountability for key risks to senior individuals within banks.

On 10 September this year, Martin Wheatley, Chief Executive of the FCA, in his evidence to the Treasury Select Committee said that it had been "hard to nail an individual against responsibility because matrix organisation structures, committee decision-making means that individuals can always defuse responsibility".

Below I have tried to set out some key things that we can do to help to prepare for these changes and to make the transition to the new world as efficient as possible.

The potential key steps to successful compliance with the SMR are:

1. Design / Clarify / Agree
2. Implement
3. Maintain
4. Monitor

Step 1 – Design / Clarify / Agree

Begin by considering who are the Senior Management Function holders for your firm? Almost certainly your governance structure has developed organically over time and grown into what it is now. Does everyone agree? Do all of the key people on the Board and other governance committees have the same view of how it works and who does what? Probably not.

Probably, if you are responsible for documenting the details for the new regime, you need a means of creating multiple versions of the truth for debate and discussion. You need to ensure that you have a means of evidencing this process and version controlling changes so that the audit trail is clear as to how the Firm collectively agreed the results.

Step 2 – Implement

Once a version of your Responsibilities Map has been agreed there is a significant amount of detail required to complete it. For each Senior Manager, up-to-date documents need to be collected and stored in a secure repository which can be tightly linked to the current version of the Responsibilities Map. These documents need to include:

- ❑ Full CV
- ❑ Detailed Job Description
- ❑ Detailed Statement of Responsibilities, making reference to the PRA list of 'Prescribed Responsibilities' and the FCA list of 'Key Functions' (see below)
- ❑ A Learning and Development Plan
- ❑ Organisational Charts

When the detailed Statement of Responsibilities for each Senior Manager has been drafted it will need to go through a sign off process. Individual attestations need to be collected for all SMF holders.

Any subsequent changes will need to be version controlled and documented and stored in an auditable way to ensure that an appropriate evidence trail is created.

The draft version of the Statement of Responsibilities in the new consultation, CP14/31, is very demanding. It expects a material amount of detail about each SMF holder, including significant 'free text' descriptions explaining how the governance arrangements work for your Firm. It is definitely worth a detailed look at these draft forms early on to ensure that you have an appropriate system for documenting these details.

Step 3 – Maintain

Assuming you have successfully crossed the threshold and implemented your version of the Management Responsibilities Map, all of your SMF holders have signed off, the Board has signed off, a copy has been submitted to the Regulators, who have not raised any objections, you now need to ensure that it remains current and accurate at all times. The Board will have to attest to its accuracy every year. This means that any joiners or leavers, organisation changes, significant changes to responsibilities, governance, structure etc. will have to be documented in new versions and all supporting documents refreshed as required. You will need a process to review and sign off any changes and appropriate record keeping to retain copies of which full version of the Map was in force at any point in time.

Step 4 – Monitor

The Firm will have an obligation to attest annually that you have complied with the SMR obligations. How will you know?

The key point here is that the obligation covers more than the maintenance of the SMR. Under the regime, Senior Managers will have to confirm that all of the key functions they are responsible for have also remained compliant, including that any breaches of CERT or COND rules have been investigated, addressed and reported.

> "It is clear that Individual Accountability is going to be introduced across the whole industry in one form or another and much more quickly than usual for such sweeping changes

Achieving this will require a good hard look at the governance, risk and control systems in place across the business to satisfy the relevant SMF holders that they can personally attest and be happy to be accountable for their areas of operations.

In order to successfully monitor compliance with the new regime, existing systems may need to be enhanced to enable them to report along the clarified reporting lines of the SMR structure. It may be that new KPIs need to be introduced to ensure that management reports provide the information required to support the new regime.

While it is clear that our Senior Managers will be much more closely, directly and personally held to account under these changes, it also very true the new regime will impact all of us and what we do and how we do it.

It will be interesting to see who is most affected.

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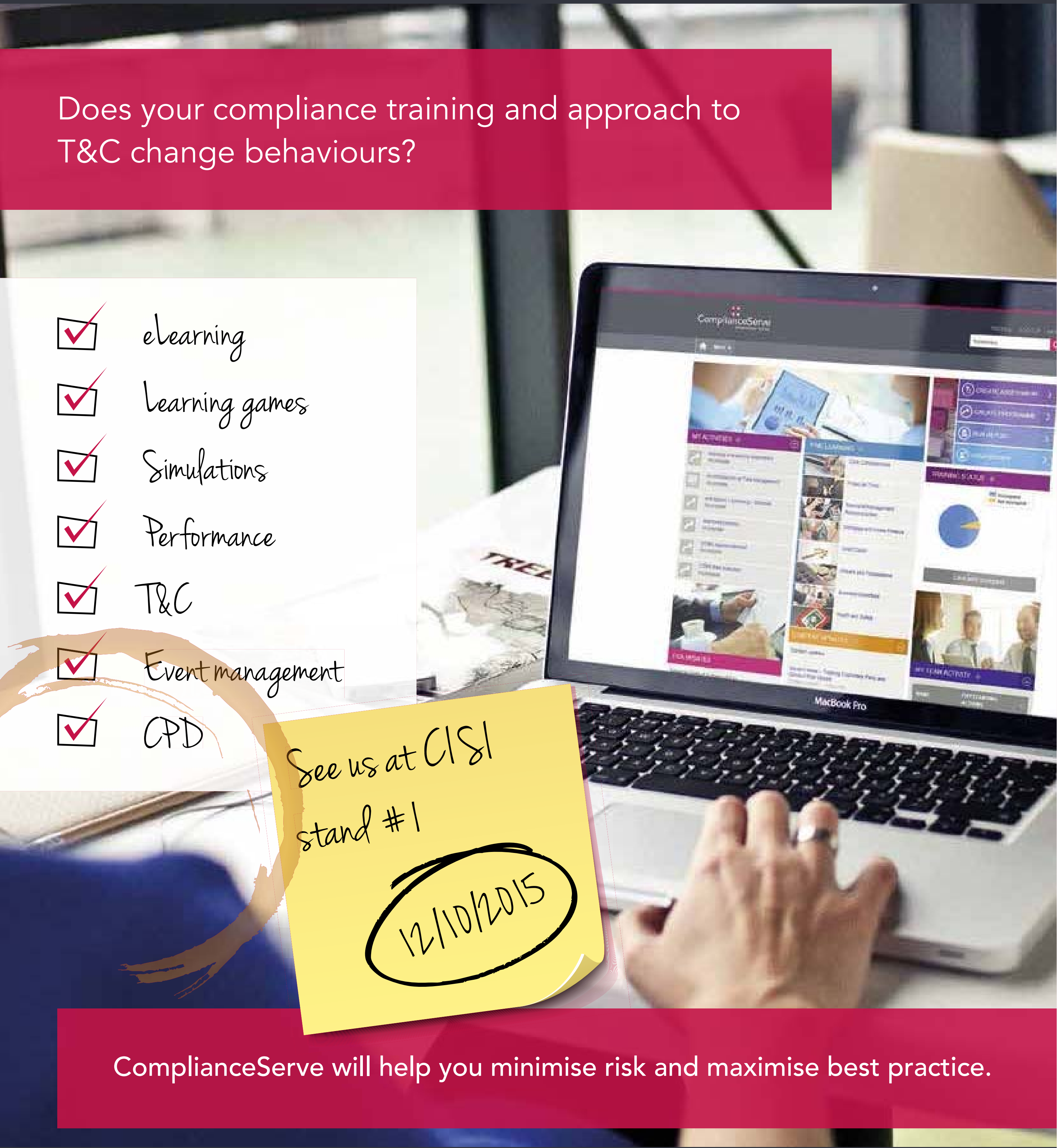

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