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SMCR – what's really happening?

By Ian Patterson from The Patterson Group

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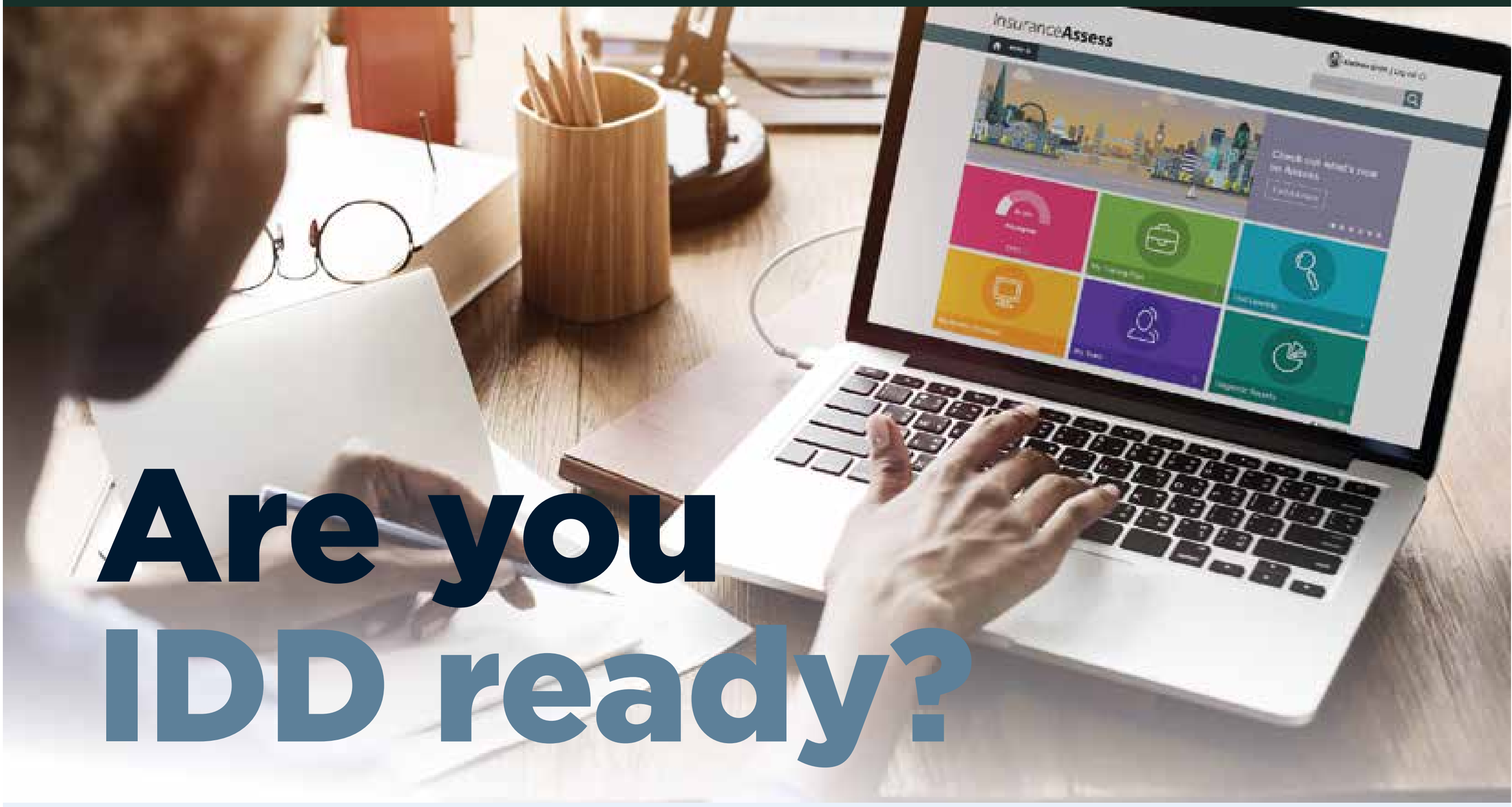

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IN THIS ISSUE

Welcome to the first edition of 2018. By the time you are reading this article MiFID II is in force. We have the IDD and the extension of SMCR regulations to look forward to this year as well as the GDPR. More than enough to keep us all busy! We have a selection or articles on these subjects including a survey undertaken by the Patterson Group focusing on the requirements of the SMCR. We do hope that you enjoy all the articles. Wishing you all the best for 2018.

Jeff Abbott

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Ask the experts: Governance of cryptocurrencies

Professor Michael Mainelli, chairman of Z/Yen Group, outlines the current state and future challenges of cryptocurrency governance. By **Jake Matthew**.

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A cryptocurrency operates independently of a central bank and uses an encrypted digital currency to regulate units and verification of fund transfers. The first cryptocurrency, bitcoin, was created less than ten years ago.

Now there are millions of unique active users of cryptocurrency wallets, according to estimates from the University of Cambridge Judge Business School's Global cryptocurrency benchmarking study, meaning governance and regulation is on the horizon.

What are MDLs?

Mutual Distributed Ledger (MDL) systems (blockchains) are multi-organisational databases with a super audit trail following a set of rules. To date, the most popular MDL application has been cryptocurrencies, with their associated initial coin offerings (ICOs).

What are the main governance challenges around the ownership and regulation of cryptocurrencies?

Governance structures have had a low priority so far, but trust in these increasingly popular systems depends on incorporating good governance principles, so interest has been rising in ensuring good governance.

Some basic governance questions apply to all MDLs:

- ❑ How do you go about creating and enforcing the rules by which the MDL is run?
- ❑ What happens when there are disputes between users?
- ❑ Who is allowed to change the software the ledger runs on, and who should have access to the data it contains?
- ❑ How do you go about managing risk and performance?

How should governance structures for cryptocurrencies be organised?

Effective governance in MDL systems rests on three pillars:

- ❑ **Architecture:** the role of the governance structure, its composition, remit, powers, responsibilities and its relationship with users is a critical component.
- ❑ **Accountability:** effective governance of MDLs enhances trust. Trust is enhanced when a governance structure is accountable to its stakeholders, transparent in its decision-making and subject to periodic audit and third-party review.
- ❑ **Action:** the governance structure must develop strategic and risk management plans, which are delivered through effective performance management frameworks. Trust can be further enhanced through the use of the voluntary standards market to independently verify performance metrics and the systems established to compile them.

How does governance differ for public, state-sponsored and private MDLs and cryptocurrencies?

There are many different classes of MDL, and more emerging. Three seem important.

- ❑ Public, unowned MDLs are struggling to build complex systems without human governance. MDLs are finding that certain functions, particularly software upgrades, need some central guidance.
- ❑ I know of no state-sponsored cryptocurrencies … yet.
- ❑ Private MDLs are interesting because, outside of cryptocurrencies, they are where the action is. Private MDLs are also realising that multi-organisational governance needs care and attention if you want a corporation to work together on an MDL.

Table 1 summarises the MDLs and governance structures we have found.

Type of MDL	Use class	Governance structure
Un-permissioned	**Public MDLs** Little formal governance structure. *e.g. cryptocurrencies*	**Cooperative** An autonomous association, jointly owned and democratically controlled
Permissioned	**State-sponsored MDLs** Governance structures of sponsoring agencies grafted on *e.g. land registries or identity*	**Appointed board** Board members are appointed by stakeholders, or the board itself, to bring particular knowledge and skills to the table
Permissioned	**Private MDLs** Highly defined governance structure *e.g. platforms for blockchain-based applications for business ecosystems*	**Oligarchy** The individuals that comprise the board are owners or stakeholders
Permissioned	**Consortium MDLs** Established and managed by a group of organisations, rather than a single entity; likely to have a complex governance structure. *e.g. financial services or Internet of Things (IoT) platforms*	**Membership** Board members are elected to their positions, and tenure is for a fixed period
Permissioned	**State -sponsored and consortium MDLs (see above)**	**Representative** For organisations that wish to have members who are enterprises instead of individuals. This structure may be appropriate for both consortium and state-sponsored MDLs

Source: Responsibility without power? The governance of Mutual Distributed Ledgers.

How are rules created for cryptocurrency ledgers, and who oversees their application?

As before, cryptocurrencies are a special type of MDL. Their rules are written by their initial programmers. No single person or body oversees the application.

Aside from hacking and cyber attacks, two high-profile governance incidents illustrate some of the problems – the 2016 'fork' (permanent divergence from the previous version of the protocol software, requiring all users to upgrade, and invalidating transactions from old nodes that have not been upgraded) of Ethereum – a distributed public blockchain network that features smart contract functionality – and the 2017 fork of the Bitcoin MDL.

In June 2016, 3.6m ether (cryptcurrency used on the Ethereum blockchain – worth around $70m at the time) was drained from the decentralised autonomous organisation (DAO) account by a hacker. In July 2016, 89% of ether miners voted to refund the money and alter the ledger accordingly.

The 2017 fork of Bitcoin took place in order to increase some seriously constrained transactions throughput (a few hundred thousand transactions per day compared with perhaps 20,000–40,000 transactions per second by major credit card systems at peak periods). This change required a majority of nodes (circa 7,000 in total) to agree to upgrade their software. Minority groups objected, leading to a schism.

In both cases, a majority of users decided to change the rules of the system post facto, and people were struggling to resolve an ethical or performance governance issue. Minorities of ether and bitcoin users kept a separate ledger going forward: Ethereum Classic and Bitcash respectively.

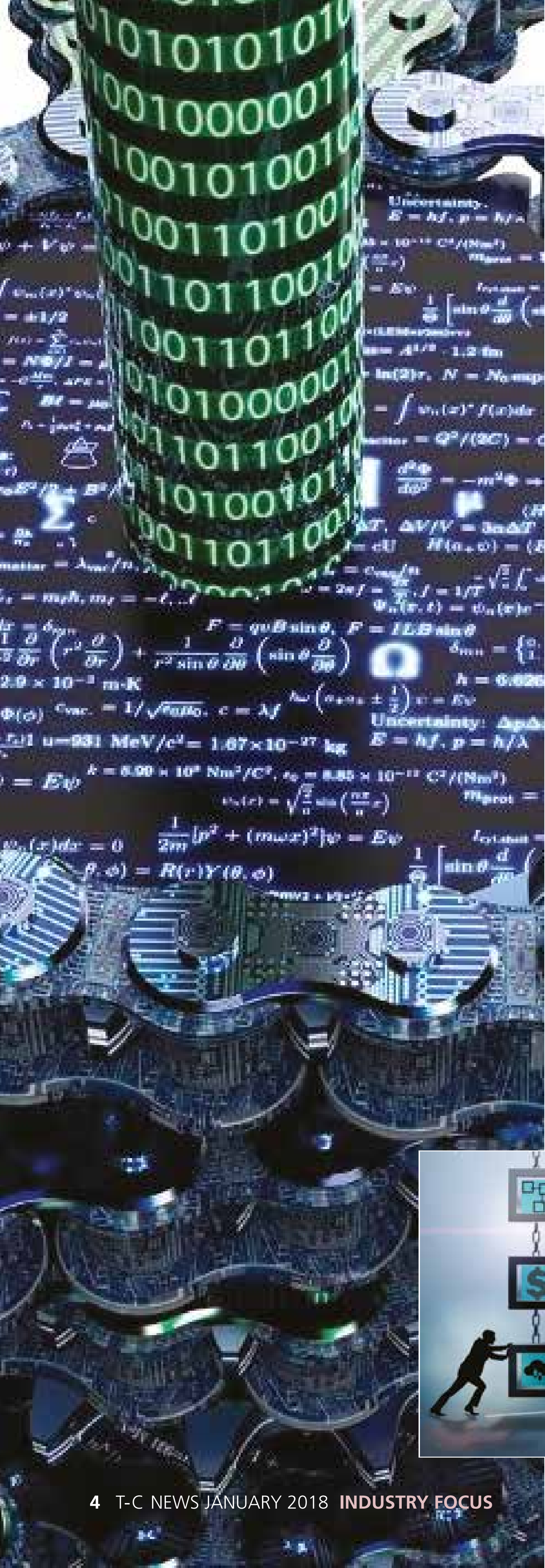
Tempers were high in both situations, but by 'solving the problem' the majority overruled their own code. 'Tyranny of the code' transformed into 'tyranny of the majority'. What if, in future, the majority decide to reverse transactions to do with tobacco or fur, or a country with a brash president, or anything to do with historic statutes?

Cryptocurrencies are, in many ways, experiments to test the limits of removing central control. What we seem to be finding in practice is that human intervention is still needed for practical applications.

What happens in the case of a dispute, and who is allowed to change the software application?

There are two types of dispute: a local dispute about specific transactions; and a system-wide dispute about actions objectionable to the majority, upgrades or the money-supply algorithm.

Specific dispute transactions might be handled more sensibly by code in the future. For example, perhaps there is dispute resolution insurance where a 'jury' of fellow cryptocurrency holders are paid to resolve a transactional dispute.



> Cryptocurrencies are, in many ways, experiments to test the limits of removing central control.

Software upgrades or changes to the money-supply algorithm may require human intervention, such as the creation of a board, to make such decisions.

Bitcoin has tried to backward-integrate a ‘foundation’, but this is difficult as the software has already been released. Ethereum began with a foundation, but it was founded with too little control to dictate future direction on its own.

Future cryptocurrencies are likely to pay more attention to where human intervention is needed, and establish appropriate structures from the beginning. We are all learning.

What is the future of governance and cryptocurrencies?

The tools for effective governance of MDLs are not that different from those used for the governance of other multi-organisational structures.

More incidents of confusion and scandal lie ahead, but most MDLs will wind up with some formal governance structure. Future formal governance structures are likely to blend today’s multi-organisational approaches with a stronger reliance on technology, automating away basic governance issues. Within MDL technology lies the seeds for automating the resolution of many disputes. So-called ‘smart contracts’ – embedded pieces of code within the ledger – permit complex resolution scenarios using software. When these fail, the software can invoke human intervention.

As ever, to solve a problem you first have to recognise you have one. Increasingly, MDLs and cryptocurrencies recognise that there are limits to ‘no human intervention’. They are there to solve human problems. However, humans will be part of the solution and new governance systems will aim to include humans appropriately.

What are you doing to prepare for the Senior Managers Regime?

This has been a popular question on recent FCA visits. With the deadline for Accountability II expected in 2018, are you confident in your answer to this question? **Mark Jones**, Director at Unicorn Training, takes a look at how you can be.

“Whatever timetable for SMR implementation the Treasury sets, you can’t have started soon enough.

So 2018 is here – foretold as the year of regulatory nightmares.

MiFID II will have already come into force by the time you were back at work in the New Year – that deadline was 3 January 2018 – while the cut off for the administrative behemoth that is GDPR looms large on 25 May 2018.

With no implementation date (at the time of going to print) as yet for the second tranche of Senior Managers Regime regulation, for solo-regulated firms and insurers, the temptation could be for it to fall to the bottom of the ‘to do’ list.

Don’t give in to it!

Lessons learned

We’ve been working closely with our partners FSTP, the multi-award winning financial services training and consultancy firm, on supporting firms with their strategy for Accountability 2, extending the Senior Managers and Certification Regime.

FSTP have a clear message – the FCA expects firms to have learned from those in the banking sector who went through this two years ago.

When SMR was implemented for the banking sector in 2016, some firms were far more prepared than others. Some almost left it too late, and getting their transition documentation in was a last minute effort, as what they thought was likely to be a pretty straightforward task turned out to be far more complex.

Aligning which Prescribed Responsibilities attached to which Senior Manager Functions, and who should take these depending on the business structure, was a particular source of debate and contention between Board Members and Senior Managers in firms too.

As FSTP attest, nothing is more persuasive than somebody who has gone through it saying 'I can't tell you how important it is to start early, this is what you've got to do, this is what caught us out, you think it looks straightforward on paper but . . .'

Rewind

We know the FCA introduced the SMR with the aim to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence.

Encouraging a culture of staff at all levels taking personal responsibility for their actions, and making sure firms and staff clearly understand and can demonstrate where responsibility lies, are the core components of their ambition.

And 'culture' really is the key word here.

FSTP found firms going through the first tranche of SMCR took the opportunity to look at SMR compliance in the context of cultural transformation, with reviewing and refreshing its T&C practices a key element. Those facing Accountability II can do the same.

This isn't a case of someone ticking a box on a form to say 'I have kept myself up to date and am competent to do my role', Senior Managers now have to sign it off.

Who would put their signature on that if they couldn't prove what the individual was claiming was true? Especially with the FCA insisting lower redress payments and fines under the SMR are likely to outweigh the compliance costs of the reforms.

Breaking it down

So what are the questions you should be asking?

Here are just a few… how do you prove your people are competent to do their jobs? Are people being assessed against a set of standards and competencies? What are these? Do your Senior Managers understand what the core competencies are?

It's not enough to say you have policies, procedures and processes in place, could you walk the regulator through them all? You want the regulator to be able to come into your firm and see who was responsible for what in each area of the business at any point in time, and then access all the information and evidence they need.

The desired outcome might be SMR compliance. But the by-product is firms are being encouraged to adopt much more commonsense, transparent, people and performance management practices underpinned by a solid T&C foundation.

The requirement to define and allocate Senior Manager Functions, and generate Statements of Responsibilities, have made creating clear job descriptions and role profiles a must, as are effective workflow systems to log outcomes, evidence competencies and provide a platform for ongoing monitoring and reporting.

Then there is any additional training, learning and CPD that Senior Managers need to do to fulfill and maintain their Prescribed and other Responsibilities, to ultimately comply with the regulatory requirements of both the Senior Managers and Certification regimes.

Whatever timetable for SMR implementation the Treasury sets, you can't have started soon enough.

Systemising your SMR policies and procedures removes the complexity of generating and maintaining offline files through access to an online audit and accountability trail, with automatic version control. Meanwhile, managing risk more effectively, by having clearly defined and approved responsibilities, brings assurance to Execs and NEDs on demand, whilst also providing firm wide SMR visibility and transparency.

Meanwhile, adopting an integrated approach to Accountability II means SMR and CR specific data can be incorporated into broader reporting and leveraged as allocation criteria for relevant learning and assessment activities.

This is why the Unicorn SMR Tool is helping firms get ahead with SMR compliance as part of an integrated platform that also features a T&C and workflow system, CPD tracking and reporting, a comprehensive GRC eLearning suite and a Certification Regime system, to deliver ongoing Accountability 1 and 2 support.

With much of this SMR implementation work being undertaken alongside 'business as usual', people and budgets are being stretched so the time and resource saving benefits can't be underestimated either. Your firm's Responsibilities Map and Individual Statement of Responsibilities can be easily planned, built and maintained via a secure, intuitive interface, directly from your desktop or mobile device.

SMR mapping can also be combined with T&C to go beyond simply the tracking of Functions and Responsibilities. Duplication of effort in creating and managing organisation hierarchies and reporting lines across multiple systems is also removed.

In a year of regulatory nightmares, you can avoid losing sleep over the second onslaught of SMCR.

All T&C roads lead to reasonable steps

By **Callum Grant** from Trailight

In times gone past T&C has been regarded as a bit niche or as people call it today… boutique! However, that myth can be dispelled. What might have been the perceived domain of retail investment advice now has critical relevance across so much of modern FCA regulation; RDR, MMR, IDD, MiFID II and in particular SM&CR.

At a recent meeting with a firm which called us in to discuss the impacts of the SM&CR extension on them and are also in the midst of implementing MiFID II, someone from the firm asked why they were talking about automating SM&CR without systemising T&C first. A fabulous question from someone who absolutely gets the connection between all the regulatory challenges they are facing and the important part T&C plays in all of it. My answer was of course we can help with both of your problems and in a very joined up way.

The glue that is binding all of this together is undoubtedly the fact that by the end of 2020, with all things considered and every aspect of SM&CR implemented, the whole of the FS industry has a mandate to be really focused on the conduct and the competence of its employees. In fact, it becomes at least an annual event for SMFs and certified staff because of the Fitness and Propriety rules.

The people on point are those holding Senior Manager Functions and Prescribed Responsibilities who are already or will be subject to the Statutory Duty of Responsibility. It means that the regulators can take action against Senior Managers if they are responsible for the management of any activities in their firm in relation to which their firm contravenes a regulatory requirement if they have not taken steps a person in their position could reasonably be expected to take to avoid the contravention occurring or indeed continuing.

Serious and potentially worrying stuff! Amongst a plethora of other things on senior managers minds, the reasonable steps they take to govern their businesses appropriately must have effective systems and controls around the people they employ, in simple terms that boils down to T&C good practice applied in a much wider and proportionate way.

To illustrate this, these are some key aspects of senior manager responsibility and the considerations the regulator will take into account where I believe T&C can have a powerful and positive impact for the SMFs concerned:

Examples of Relevant Prescribed Responsibilities	**Examples of Reasonable Steps Considerations FCA PS17/9 & DEPP**
• The firm's performance of its obligations under the senior management regime • The firm's performance of its obligations under the employee certification regime • Overseeing the adoption of the firm's culture in the day-to-day management of the firm. • Training of a firm's staff in the Conduct Rules and compliance with the FCA notification requirements • Developing and maintaining the firm's business model.	• Policies and Procedures. • Appropriate Systems and Controls • Collective Decisions • Monitoring Governance and Operational Risk • Understanding and Informing around the Firms Activities • Following Procedures • Reasonable Care • Reasonable Conclusions • Knowledge of Regulatory Concerns • Dealing with Issues • Acting in Accordance with Obligations • Handover • Delegation

Good T&C frameworks delivering the right outcomes with the related MI and intelligence to back it up can help to minimise the likelihood of firms and their SMFs falling foul of the rules resulting in action by the regulator. This would include using these outputs to provide clear documented evidence around each of the above considerations. This is not just about one-off events but enabling them to regard and record reasonable steps as an iterative process where being able to schedule actions, tasks and follow up is vital. Done well, it would provide the appropriate records, audit pathways and evidence to defend any regulatory action. Back to Fitness and Propriety then. F&P assessments for senior managers and those holding significant harm functions need to be heavily reliant on robust data and evidence relating to, amongst other aspects, conduct, competence and capability. This would include; appropriate knowledge, qualifications, experience, “It will be much more difficult to join the dots if there is heavy reliance on paper and disparate legacy systems.

meeting any relevant FCA training and competence requirements and whether the person has the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. It is obvious that recent specific competence related regulation needs to be taken into account and that the frameworks implemented in firms to address that regulation are connected into their F&P processes. Ideally this is relevant MI, records and evidence that will help firms answer the questions for each member of staff in scope.

- ❑ SYSC and TC make it clear what outcomes are required and the types of roles impacted.
- ❑ MiFID II brings qualifications, experience, CPD and appropriate supervision into sharp focus for information givers as well as advisers in retail and now wholesale investment firms.
- ❑ IDD requires all insurance distributors and their employees to have the appropriate knowledge and ability to perform their roles and introduces mandated minimum CPD to support that intent.
- ❑ COCON applies specific conduct rules and behavioural expectations to senior managers, certified and all but ancillary staff in the business

Reasonable steps and F&P are potentially complex challenges notwithstanding their ongoing nature. It will be much more difficult to join the dots if there is heavy reliance on paper and disparate legacy systems. More and more firms who were in the first wave of SM&CR are now realising that there needs to be structure around the chaos and are turning to specifically designed business software solutions to help them get it right and with less impact on resources. Firms which will be impacted by the SM&CR extension are learning from this and are actively seeking solutions now to help them automate and de-risk the process. After all the consequences of getting it wrong are dire.

In summary, the SM&CR is the catalyst for firms to ensure that their business is fully joined up. Thinking holistically about the role and influence of T&C and the management of people risk in the future will reinforce and perhaps reinvigorate its relevance in the wider business. I would argue that without robust T&C frameworks, data, records and appropriate outcomes, senior managers and boards will find it difficult to deliver their responsibilities and evidence that they have taken reasonable steps to comply with regulation, minimise consumer detriment and achieve positive outcomes for their firms.

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John Reynolds from Expert Pensions

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CP17/16: ''needs before objectives''

This is the client's real capacity for loss: do they ever run out of money?
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Adviser role when advising drawdown

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COBS 9.4.10G25/04/2016
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“There are more complicated solutions out there, if you want them.

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The future of corporate learning

By **Vivek Dodd**, Director, from Skillcast

We're going through exciting times of change in the world of corporate learning. In early 2017, Josh Bersin, founder and principal at Bersin by Deloitte, predicted that *"the $130 billion corporate learning market is about to be disrupted"*, and we see that happening all around.

Overall learning budgets are not growing fast, but budget allocations and priorities are undergoing a seismic shift. This is driven by the need to comply with regulations, engage staff and demonstrate value for money. The pervasion of mobiles, high bandwidths, video and data analysis are making it possible to engage with and train employees in ways that couldn't be imagined even five years ago. And employees are demanding more – they aren't opposed to learning, but they do want it to be relevant, and to choose how and when they will undertake it.

To try to make sense of some of the changes that are taking place, we describe six themes below that will shape the future of corporate learning.

1. Digital Content Libraries

Learning is increasingly going digital. Even where companies employ in-person training – eg induction or expert skills – there is an increasing component of digital content.

Digital learning can take place in diverse forms – from professionally developed micro-learning videos, interactive scenarios, e-books, podcasts, articles and research reports to informally generated blogs and vlogs. To harness the potential of these learning content objects, companies are turning to content curation and social learning. This is giving rise to digital content libraries that aggregate ready-made and custom content to support continuous and personalised learning.

2. People Analytics

Research by Deloitte reveals that companies are investing heavily in programs that use data for workforce planning, talent management and operational improvement. Digital learning provides a rich seam of data for this purpose. Gone are the days when data from digital learning was limited to course completion and assessment scores.

The most forward-looking organisations are now recording every click, every second spent and every response to a question, whether using X-API or other big data apps. And they are using this data to build knowledge and competency maps that reveal areas for improvement for an individual and/or the entire organisation, and provide a measure of success for learning interventions and/or the entire learning programme.

These analytics also pave the way for adaptive learning, whereby the learning platform recommends learning objects based on an employee's job role, experience and prior learning.

3. Experiential Learning

Virtual Reality (VR) and Augmented Reality (AR) technologies are taking amazing strides and opening up possibilities for immersive learning. VR has been around for decades for training employees in high-risk tasks, such as flying planes and operating nuclear power plants.

However, the more exciting developments are in the field of AR. This can be used to provide a just-in-time learning course that is superimposed using an AR display on real objects and situations. Falling prices and the availability of AR apps on mobile devices will drive the introduction of AR for training in a wide range of roles from sales and customer service to compliance and risk management.

4. Job-Aligned Learning

A powerful trend that's taking shape at those organisations that are furthest up the maturity curve is to align learning more closely to job performance. It's no longer acceptable to conduct training in isolation in the hope that some of it will stick when employees go back to their job roles. Instead, they want training to be integrated with performance support apps and job aids. For instance, they are integrating RegTech tools with digital learning to reduce operational complexity, and improve compliance with laws and regulations.

Research by US Departments of Labor, Commerce and Education found that this alignment is also good for the employee: *"the more closely training is related to the real job or occupation, the better the results for the employee"*. This can be seen in customer services courses, where employees build their own personal plan during the course and then use that as the blueprint for their service improvement.

5. Spaced Learning

Today employees are so distracted by calls, messages and emails that they don't have time to complete even a 30-minute course in a typical week. Furthermore, research shows that they will forget 60% of what they learn in a training course within a day (Ebbinghaus forgetting curve)!

The solution to this is spaced learning, which is a form of continuous learning where employees repeatedly learn about a given concept at defined intervals (spacing) and are questioned on the concept to force them to retrieve the information. Research in sales training and language learning suggests that spaced learning helps people to learn faster and retain more information.

6. Make Learning Fun

Most organisations are being squeezed between the increased training requirement due to growing regulations and increased pushback from employees. Some companies are finding their way out of this predicament by putting fun back into mandatory or compliance training. One way of doing this is by adding elements of gamification, such as interesting storylines, non-linear pathways, timers and risk taking. Another way is by recognising and rewarding employees for their achievements online or offline.

> "They aren't opposed to learning, but they do want it to be relevant, and to choose how and when they will undertake it.

Ultimately, though, employees are happiest about learning when they can control how they access the training and the pathways that they take to complete it. For instance, giving employees the possibility of skipping the post-course assessment if they can prove their competence within the course will improve their attention and motivation to learn.

The above themes demonstrate how corporate training is being disrupted and transformed in ways unimaginable even a few years ago. Companies that embrace these advancements will enjoy higher employee engagement, retention and productivity. We live in truly exciting times.

Introducing our SMCR Panel – here to answer your questions

We are delighted to announce that four representatives from four companies have stepped forward to form our SMCR panel. Each representative is highly experienced and expert in their field and is willing to answer questions you may have in relation to the Senior Manager and Certification Regime.

Questions should be addressed to the panel as a whole rather than a specific representative. As demand for their time is high this approach will help ensure getting a prompt response. Questions should be based on the regulations and their practical implementation. This may clarify your understanding of a regulatory requirement or validate, within reason, the approach you are taking.

This service cannot provide detailed specific advice but each of our panellists are happy to be approached should you wish to engage their firms for practical consultancy support.

To ask your questions email ask@t-cnews.com

Ask our SMCR Panel – *your frequently asked questions answered*

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IDD – are you ready?

By **Lynne Hargreaves** from Clearstep Consulting

Are you well-positioned or are you crossing your fingers hoping that the Economic and Monetary Affairs Committee (ECON) of the European Parliament is successful in postponing the implementation of the Insurance Distribution Directive (IDD) until the 1st October 2018?

It is likely that by the time this article is published we will know whether ECON has delayed introduction by almost 8 months or whether it is still "full speed ahead" for the 23rd February 2018!

In this article I am returning to the subject I wrote about earlier in the year, which focused on the first of the FCA IDD consultation papers, the high level people and T&C impacts and what firms should do in terms of ensuring they were ready.

Since that article there have been further consultation papers and policy statements on the subject of IDD. Indeed, there is still a further policy statement due in January - CP 17/33 which will feature the final rules on insurance-based investment based products (inducements, suitability and disclosure) as well as rules pertaining to conflict of interests, product oversight and governance, regulatory processes and Perimeter Guidance.

Hopefully you're all on target with implementation? From what I understand there may be some challenges around manufacturers meeting the full requirements of producing a dynamic Insurance Product Information Document (IPID) with personalised information, given the required system changes to be delivered in such a short duration.

Whether firms are ready for the people impact changes appears to depend largely on the size of the change to sales processes, existing T&C culture and arrangements (including systems) and whether the gap analysis on the first CP commenced early enough.

Where firms have a simple insurance product set sold on either a non-advised or advised basis, the incorporation of the new disclosure requirements, active questioning and personalised explanations

> "Where firms cross-sell insurance alongside, or in connection with other goods or services the new rules are likely to have an appreciable impact on sales processes.

are not viewed as significant changes, impacting on knowledge or skills that require training. It appears that communication of the small changes will suffice.

However where firms cross-sell insurance alongside, or in connection with other goods or services the new rules are likely to have an appreciable impact on sales processes and subsequently a greater impact on the role-related knowledge and skills. In these instances training is to be delivered with validation exercises before the rules go-live.

In terms of the professional requirements, some are still grappling with defining role scope. There is consensus of understanding in terms of the scope applicable to those who sell, service and deal with claims; as well as those responsible for supervision of said staff. It is the interpretation of the "management structure responsible for firm's distribution activities" where there is less consistency. Whether this should include Insurance Product/Relationship Managers, Marketing, Sales Process teams and ultimately those with the accountability for the distribution appears to be less uniform.

Where T&C is well embedded within a firm the actual delivery and demonstration of the 15 hours does not appear to be a challenge, as the foundation exists in terms of material and systems on which to record. Where it is less so and not necessarily seen as a business enabler there appears to be some work still to do in order to deliver and record the hours required.

Where a mature T&C culture exists the minimum knowledge and competence requirements do not appear to phase firms since the majority of existing Induction programmes, mandatory knowledge testing and attaining/maintaining competence requirements meets the new standards. Where the culture is less mature firms are looking to fill the identified gaps with the design of new material.

Those firms who started their gap analysis early, with a good T&C foundation in place, appear to be well-positioned to meet the 23rd February deadline.

For those Insurance firms with a less mature T&C culture, who are soon to be brought into scope of the Senior Manager and Certification Regimes, my one piece of advice would be to start your analysis and planning early and don't wait for the final rules!

Preparing for GDPR in the insurance sector

Ian Jerrum from Searchlight Insurance Training

> Frustratingly for insurance compliance people, the precise shape of the Data Protection Act 2018 has yet to be ironed out

In terms of regulatory change, the general insurance firms who comprise the majority of the businesses for whom my firm Searchlight delivers training and consultancy services have a lot on their plates right now.

The Insurance Distribution Directive (which was due to come in to force in February but has been delayed until 1st October) and the Senior Managers and Certification Regime (which will be extended to cover all insurance firms later in 2018), both loom large on the insurance compliance landscape.

A third major landmark is the transposition of the EU's General Data Protection Regime (GDPR) into UK law in the form of a new Data Protection Act, to replace the current 1998 Act, effective as of 25 May 2018.

That date is set in stone, so homework extensions will not be on offer. Nor will Brexit affect GDPR's implementation. If we want to continue trading with EU countries we will still need to demonstrate compliance with GDPR requirements, whether we're in or out.

Frustratingly for insurance compliance people, the precise shape of the Data Protection Act 2018 has yet to be ironed out. A draft act is likely to remain caught up in Parliamentary process for some time to come. At the time of writing the members of the House of Lords were poring over it word by word.

The general outlines are clear enough, but the Department for Digital, Culture, Media and Sport (DCMS) has made it clear that it aims to limit disruption to the current working practices of business in insurance and financial services generally, and this will involve some fine tuning.

Specific derogations (or carve-outs) within the final legislation offer a route to moderating any negative impact on financial services businesses. Insurance firms will particularly be looking for sympathetic treatment in areas such as fraud detection and underwriting at the point of sale.

In the two decades since the 1998 Act, the world of data and data processing has changed almost beyond recognition. Back then, Google was a new-fledged start up, *Titanic* cleaned up at the box office, and Apple's original all-in-one Bondi Blue iMacs made their first appearance.

Hardly surprising, then, that European data regulations needed a thorough overhaul. The optimism of the early internet years has given way to a much keener awareness of the downsides to online data transfer and access. Reflecting this, GDPR aims, above all, to restore control and ownership over personal data to data subjects themselves.

In seeking to achieve this, GDPR updates and extends the duties owed by data controllers and data processors. These expanded obligations are backed by a significant increase in the maximum fine the Information Commissioner's Office (ICO) can impose, up from £500,000 to €20m or 7% of global turnover.

In future, both controllers and – for the first time – processors will have a legal obligation to record and account for what data they have on their systems, the purposes for which they intend using it, who has access to it, and how long they will retain it.

The ICO has made clear that it will take a dim view of imprecision in any of these areas. Herein lies the key cultural challenge for many insurance firms who have historically tended to be better at capturing data than at paying close attention to what happens to it thereafter.

The key rule of thumb is that data should never be retained (at least not in individually identifiable form) any longer than its legitimate use or your legal obligations require. In practice, this will entail insurance firms trawling their records to identify personal data that needs to be deleted, anonymised or pseudonymised.

Lawful bases for processing personal data include doing so with the informed consent of data subjects, contractual necessity, compliance with legal obligations (in an insurance context, this would include identifying fraud), or where it is necessary to protecting data subjects' vital interests (i.e. where serious harm or death might plausibly result from data being unavailable).

If in doubt on this, or any other aspect of GDPR, the obvious point of reference is the ICO website. Here you can find regular updates on the new requirements as well as the latest available guidance on how to comply. At a recent seminar my firm ran on this topic, roughly half the delegates present indicated that they consult the ICO website once a month or more.

In the run-up to the new Act coming into force, I would certainly recommend this as a minimum. Time is fast running out for firms with work still to do to ensure they are compliant on 25 May.

But the new law is essentially evolutionary rather than revolutionary – and the ICO has indicated that it intends working constructively with UK businesses rather than going in hard with attention grabbing fines in the first instance.

Provided you keep yourself fully up to speed with your duties and obligations under the new Act, and maintain a conscientious and responsible approach to what data you hold/process and why, the Data Protection Act 2018 should not present too daunting a challenge.

Does your culture support SMCR?

By **Philippa Grocott** from FSTP

What would you say if the regulator asked "Does your culture support the Senior Managers and Certification regime? And if the answer is yes could you answer their follow-up question –"What evidence have you got that it does"?

Whether you are already immersed in the regime or are one of the many firms in the extended application of the regime you cannot have failed to miss the direct correlation between SMCR and Culture.

The regulators' dilemma

Over the years the regulator has come to realise

- ❑ Culture has been a root cause of failure
- ❑ Rules don't change cultures
- ❑ Fining firms large amounts of money won't change their culture . . .
- ❑ But making individual's responsible and accountable for their behaviour will change culture because culture is behaviour – "the way we do things round here".

How many times have you seen in FCA publications, be it the Business Plan, The Conduct Risk Report or a speech or an article made or written by an FCA executive, the word culture?

> "The regulator can certainly influence the composition of management within a company and has been known to ask for firms to change their entire Boards or run the risk of being closed for business.

In the FCA's 2017/18 Business Plan it stated "Our focus on culture and governance in financial services and its impact on individual and firms' conduct is a priority. We will continue to promote the right cultures, behaviours and effective governance across the industry to deliver appropriate outcomes for consumers, markets and competition"

Culture forms an important part in demonstrating these changes. With the embedding of the Senior Managers Regime in Banking and the implementation for other regulated firms coming along in 2018 there isn't a better time to ensure your strategy, governance and underlying culture are aligned.

The FCA wants to see progress on culture, alongside embracing the requirements of the Senior Managers and Certification regime, SMCR. They have made it clear that senior management teams and the individuals within those teams will be held to account for failings in company culture.

The regulator can certainly influence the composition of management within a company and has been known to ask for firms to change their entire Boards or run the risk of being closed for business.

Six cultural drivers:

When the FCA looks at a firm's culture they use the following drivers to make their assessment

- ❑ Leadership
- ❑ Strategy
- ❑ Decision making
- ❑ Controls
- ❑ Recruitment training and competence
- ❑ Reward

Let's take each of these in turn and give you some examples which you may find useful in helping to assess whether your culture would support the spirit and requirements of the SMCR.

Leadership

A firm are holding their annual Christmas event, business and recognising staff achievement in the day followed by a dinner and party in the evening. During the year the firm had undertaken a number of projects which involved the training of individuals across the group from Conduct Risk and TCF to Financial Crime. The CEO makes a big show of thanking all the people involved in leading the projects and confirms it was absolutely the right thing for the firm to be doing to ensure they treat their customers in the right way.

At the start of the evening a number of employees are sitting in the bar area having a pre-dinner drink. The CEO approaches the bar with a number of his fellow Board members and other Senior Management. The CEO announces "now we've finished with all that TCF nonsense who would like a drink?" His colleagues laugh and proceed to give their drink orders. The other employees' sittings in the bar hear the CEO and take note of the response from the other members of their leadership team.

Strategy

A firm embarks on a strategy to grow their business by 25% over 3 years. It will mean that a number of Senior Management will be away, overseas, from the main office for large periods of time. The day to day oversight activities have been delegated to middle management, a number of who have not been at the firm long, especially those in risk and compliance. It is difficult to communicate with the Senior Management when they are away due to the locations and time zones.

Decision Making

A firm takes the decision to 'white label' an investment product from another company. The investment product has been rated high risk by the provider. The Sales line in the firm that is white labelling the product decides to classify the product as medium risk. The Compliance department argues that the product is high risk and should remain so. The Compliance department report to the Sales line and are told to 'back down, the product is ideal for clients who have retirement funds to invest'.

Controls

A firm monitors the number of investment trades to identify potential 'churning'. The firm uses this information to write to the clients to ask if they are happy with the advice they received.

Recruitment training and competence

A firm uses eLearning to keep staff up to date and informed on a number of regulatory topics on an annual basis as part of their T & C scheme. The Board including the NEDs refuse to complete the eLearning as they do not see why they should also undertake this training as they believe the level at which they operate does not warrant them doing this. The Head of HR therefore struggles to ensure everyone completes their CPD as per the T & C scheme.

Reward

The new remuneration policy at a firm means that if advisers do not meet their competence standards they have 25% of their bonus deducted. A number of the advisors in the top 10% have pushed back against the policy and have threatened to leave if the criteria remain. The firm drops the requirement from the remuneration policy.

If your firm:

- ❑ Has internal processes and procedures that conflict with doing the right thing for the client
- ❑ Where profit is prioritised over "doing the right thing" and
- ❑ Words and figures differ in the leadership

You may want to question your culture further.

The reputation (and revenues) of your business depends on your approach to culture, and conduct risk and of course, SMCR. Every week we hear of another corporate failure that has eroded the trust in the industry – better business culture has become and will remain a regulatory priority.

SMCR – what's really happening?

By **Ian Patterson** from The Patterson Group

It's nearly two years since the FCA launched SMCR and SIMR. The intention was to put individual responsibility at the heart of how regulated firms conduct themselves. So how well have firms coped with these significant changes? Have senior managers changed their behaviours? And what can the huge swathe of smaller firms that have yet to face SMCR learn from those that have?

In conjunction with T-CNews, The Patterson Group set out to find some answers to these questions. We asked firms who are already subject to SMCR/SIMR about their experience, and asked those preparing for SMCR for their views. To encourage the most open responses from both populations, responses could be completed anonymously (which just less than half chose to do). The results of this are shown below. Both surveys, hopefully, provide a good snapshot of the perceptions of people on the impact of SMCR.

Firms that are already subject to SMCR/SIMR

The types of firms who responded in this population were predominantly the larger banks and building societies.

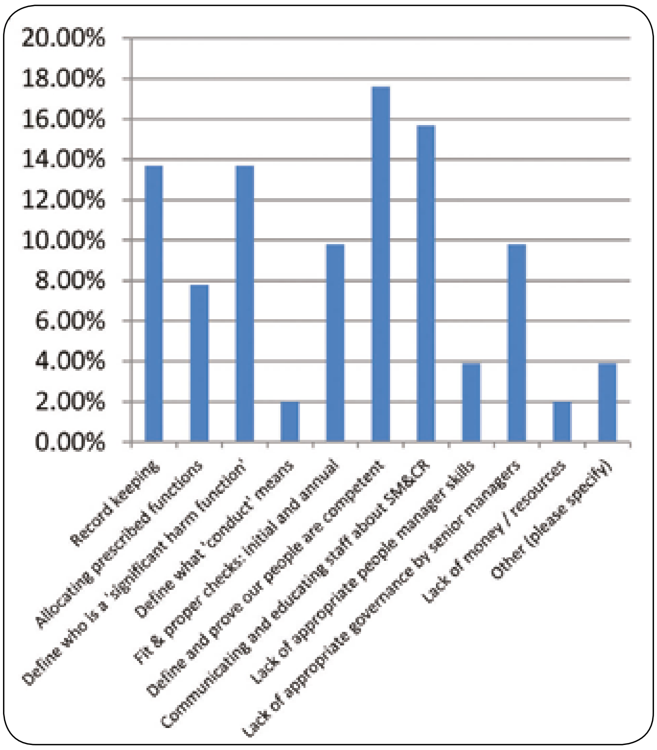
As SMCR/SIMR is intended to strengthen consumer protection by increasing the personal accountability of staff across the organisation and through strengthened governance processes, we started by exploring this fundamental area. What we found was a largely positive picture. Although it wasn't the case in every firm, an impressive 86% of respondents either agreed or strongly agreed that this has indeed been the case.

There is sometimes a perception, especially in larger firms, that senior management is remote and a little distant from day-to-day activities. So we asked whether people felt that senior managers had a good awareness of key elements of SMCR. For example, are they aware of the certification requirements, annual fit and proper checks, prescribed responsibilities and the need for staff to demonstrate their competence? The results showed again that the leadership team deserve a congratulatory pat on the back. All respondents either agreed or strongly agreed.

So far, so good. In our next question, we asked whether meeting the SMCR requirements had been a significant cost. Based on the respondents, it's clear that the experience of firms differed quite markedly. When asked about this, 57% either agreed or strongly agreed that introducing it had been a significant cost whilst 43% disagreed. So what do we make of this? Well if this accurately reflects the broader picture, the most likely reason could be that different firms began from different starting points. For example, those firms with robust performance management systems (that enabled firms to define and measure competence) probably benefitted from the previous investment in this area whilst others didn't.

So over half the respondents thought SMCR was a significant cost to them. How well did they do with this investment? Job done? Although not unanimous, the answer is mostly 'yes' with 86% saying they do not anticipate having to make significant changes going forward.

A key reason for embarking on this survey was to use the experience of those who have been through SMCR to help those who haven't. So with this in mind, we asked respondents to identify what they believe have been their three biggest challenges when introducing SMCR. The results to this question are shown in Figure 1 below:



There were clearly a range of different challenges but three key trends emerge:

1. Defining the roles and responsibilities of those people who are 'in scope';
2. Communicating SMCR to staff; and
3. How you determine (and prove) your people are competent.

This last point was the respondents' clear favourite. This is likely to include things like defining job roles or job descriptions, and how to define and evidence competence.

I must admit that I was a little surprised that 'record keeping' and 'lack of resources/money' weren't more prominent but this might reflect the fact that it was predominantly the larger firms, who you would expect to have resources, who responded.

Firms that are not yet subject to SMCR

As we know, SMCR is expected to be extended to all authorised firms towards the end of 2018. With this in mind, the next few months will be crucial in planning the implementation of this. A second survey asked firms who are not yet covered by SMCR to comment on how they view these requirements and their plans for meeting them. The most frequent type of firms who responded were asset and wealth managers, but there were also investment adviser firms, an EB consultancy and an insurance broker.

SMCR will apply to firms irrespective of size so we felt it was important to know the size of firms who were responding. We defined small firms as 1-10 employees, medium firms as 11-50 and larger firms as 51 employees or more. 76% of those who responded worked for larger firms, 24% for medium sized firms and, interestingly, there were no responses from small firms. This could possibly indicate that their awareness of SMCR is lower and they felt less able to comment on it.

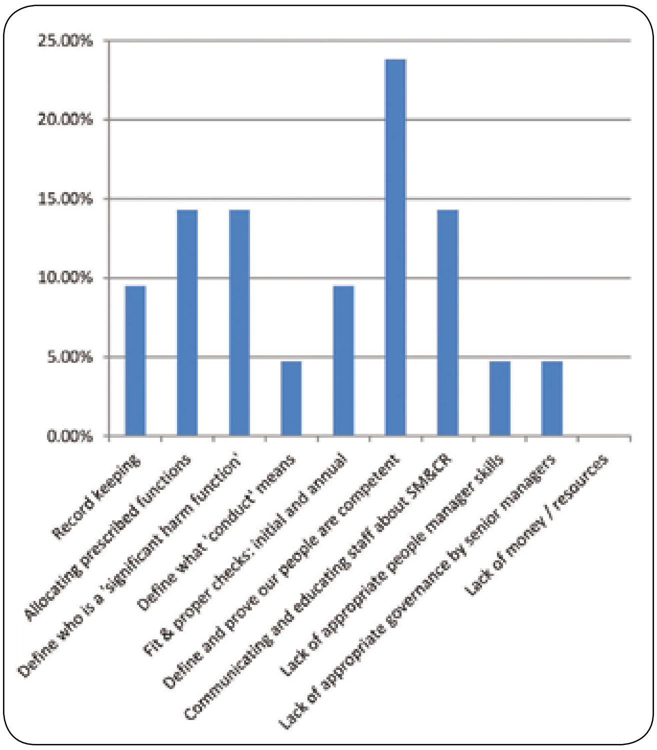
We were keen to get the respondents views on the awareness levels of senior management to the key elements of SMCR. The survey found that, by and large, respondents felt senior management understood the key issues. Not surprisingly, this understanding was a little lower than those in larger firms that have already been through SMCR. That said, a respectable 82% of respondents agreed or strongly agreed that management grasped the key issues; only 18% of respondents did not.

We again asked about the perceived expense of meeting SMCR. The results were broadly similar to the firms who had already been through the process so this suggests that this population have a realistic expectation of what they are about to face. 65% believe that SMCR will represent a significant cost to

> “To balance this, firms new to SMCR may be under-estimating the challenges in three areas: defining and allocating prescribed functions, determining what conduct looks like, and proving people are competent.

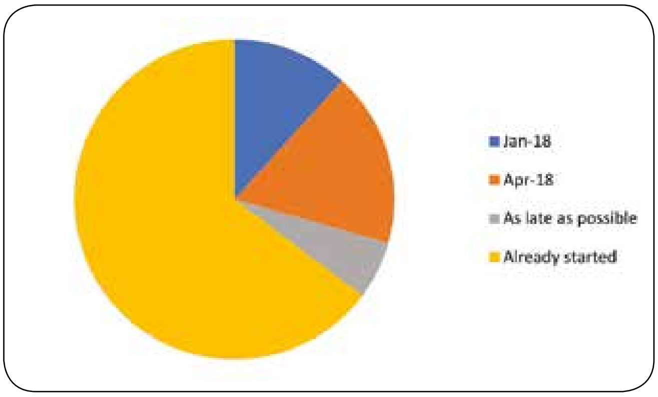
their business. This is slightly higher than the existing firms but this probably reflects the fact that smaller businesses are less likely to already have in-house expertise, or systems and processes in place.

So, how long do we have to prepare for SMCR? The FCA has indicated it is likely to be Q4 in 2018 so we could have only another 8 months. Getting the planning right for the banks and insurers was certainly a challenge in 2016 so we asked firms how planning is progressing for those that will come in-scope in 2018. We asked them when preparations are likely to start. Figure 2 shows the responses.



This suggests a broadly encouraging picture where around two thirds of firms appear to have already started preparations. A resounding majority of respondents answered another question saying they are confident they will be ready in time. Having said that, around a third said they have not yet started their preparations and the same amount said their firm didn't have a plan in place to meet the SMCR requirements. Given what SMCR will require firms to deliver, what is involved should not be underestimated.

Finally, we asked respondents what they thought the three main challenges would be in introducing SMCR in their firm. This is identical to the question we asked those firms already subject to SMCR so I will look at the key differences. There were three areas where firms that have yet to experience SMCR may be over-estimating the challenges that potentially lie ahead. These areas are: record keeping, the governance provided by senior management and the lack of money or resource. To balance this, firms new to SMCR may be under-estimating the challenges in three areas: defining and allocating prescribed functions, determining what conduct looks like, and proving people are competent. All three areas have undoubtedly been a challenge for the existing firms so it is possible that firms new to SMCR need to concentrate more in these areas. The full details are shown in figure 3.



Conclusions

The research suggests that SMCR/SIMR has been successful with existing firms in achieving what the FCA wanted, i.e. strengthening consumer protection by increasing the personal accountability of staff across the organisation and through strengthened governance processes. However, this has been achieved at a cost and those firms who are yet to experience SMCR also expect it to result in significant additional costs. Many are already planning for the introduction of SMCR but around a third of firms have yet to start and do not yet have a plan in place. There may also be a question of 'not knowing what you don't know'. The research flags up three areas where firms new to SMCR may be under-estimating the challenges that lie ahead. Overall, the research suggests a generally positive picture with work still to do. Time will tell.

Intelligent Accountability – Reasonable steps to managing culture

By **Carl Redfern** from Redland Business Solutions

Jonathan Davidson, Director of Supervision at the FCA gave a speech back in September 2017, about the extension of the Accountability regime. In it he made several interesting points, firstly that "the Accountability Regime is directly targeted at the culture of the Firm."

He went on to say. . .

"We cannot continuously and closely supervise outcomes in every one of these (56,000) firms. Our ambition is to be forward looking and pre-emptive by addressing root causes…We see two. First, the strategy and business models of firms and second, the culture of firms. And the two are closely interlinked."

Having individuals within firms being held personally accountable for their work has been shown to affect outcomes positively in a number of sectors.

My response is that culture may not be measurable but it is manageable."

This leads directly into a consideration of 'Reasonable Steps'.

As key elements of the Accountability regime, Reasonable Steps, the Senior Manager's Conduct Rules and the linked 'Duty of Responsibility' all reflect the above objective for 'managing culture'.

But there are significant risks which need to be navigated.

Called to Account

As much as 15 years ago, in her 2002 Reith lecture for BBC Radio (http://downloads.bbc.co.uk/rmhttp/radio4/transcripts/20020417_reith.pdf) , the philosopher Onora O'Neill spoke about the 'Question of Trust' and being 'Called to Account'. She refers to the perceived loss of trust in public and professional services and the response by regulators to enforce the "quest for greater accountability", resulting in "An unending stream of new legislation and regulation, memoranda and instructions, guidance and advice flooding in… The new accountability culture aims at ever more perfect administrative control of institutional and professional life…requiring detailed conformity to procedures and protocols, detailed record keeping and provision of information in specified formats"

In the lecture, she makes the point there is a high risk that the new 'accountability' obligations result in organisations focusing on the wrong things – focus on measuring that which can be easily measured such as volumes of complaints or exam pass rates. This 'out of focus' monitoring results in a constraint of professional judgement, preventing the experienced professional managers using their judgement to best effect because they are being obliged to work within frameworks and to standards set by governance teams without specific knowledge of their day jobs.

If it is not properly implemented, the extended Accountability regime risks not only changing but in fact distorting the intended outcomes and may even damage the Culture and Conduct within firms.

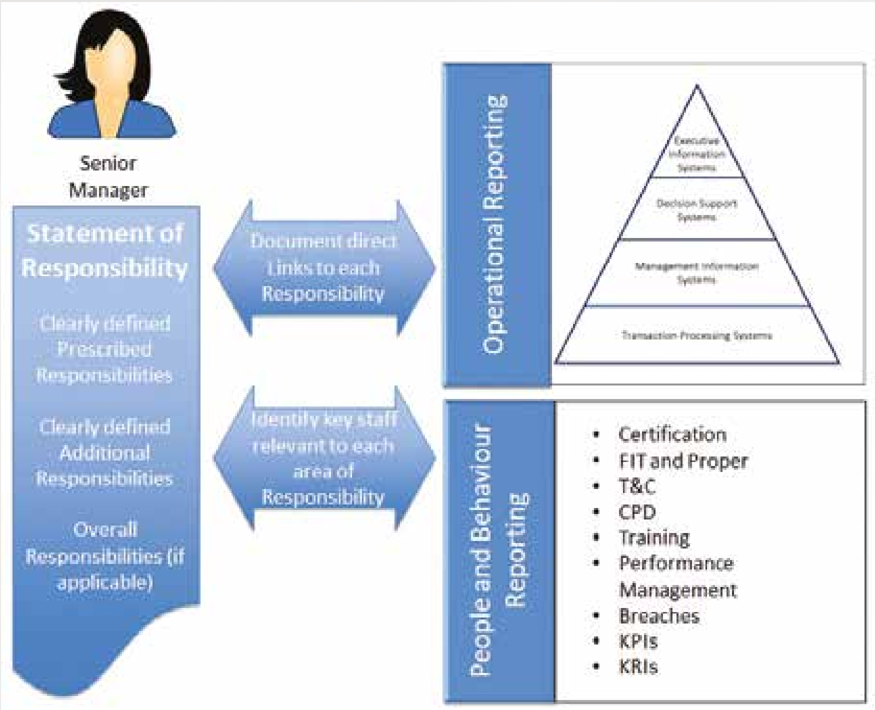
Looking even further back, one of Robert F Kennedy's venerated speeches at an election rally in 1968 addressed the topic 'How GDP failed', where he claims that GDP **"measures everything except that which is worthwhile"**. The full speech is on YouTube and worth listening to because it is an exceptional example of oratory. He describes GDP as measuring "air pollution and cigarette advertising…. the destruction of the redwood and the loss of our natural wonder" But it does not measure "health of our children, the quality of their education or the joy of their play…." It can be found at: https://www.youtube.com/watch?v=77IdKFqXbUY

Although the specifics of what GDP measures are not relevant to Accountability, the point is very clear. When implementing your programmes for Accountability have a care to consider the implications for culture and the day to day impact on staff conduct. Check that you are not adding new process or monitoring just because it is possible, rather than because it will genuinely add value.

A very good example of effective 'accountability' can be found in the World Health Organisation's (WHO) 'Surgical Safety Checklist'. It was developed with the aims of decreasing errors and adverse complications, and, increasing teamwork and communication in surgery. The result is a very simple seeming 19-item checklist (http://www.who.int/patientsafety/safesurgery/tools_resources/SSSL_Checklist_finalJun08.pdf?ua=1). Its simplicity has been the key to its success.

By following a few critical steps, health care professionals can minimize the most common and avoidable risks endangering the lives and well-being of surgical patients. It has gone on to show significant reduction in both morbidity and mortality and is now used by a majority of surgical providers around the world.

When it was first introduced, most staff, predominantly nurses and anaesthetists agreed that the 'Checklist' was beneficial, but a few staff, mostly surgeons initially thought it was time consuming 'admin'. However, over 93% of surgeons confirmed they would want the 'checklist' to be used if they were the patient!



There have been many detailed reviews of the results of the Checklist, but generally they confirm nearly 40% reduction in complications following surgery. One study published in the British Medical Journal examined some of the reasons for this success. They acknowledged the following:

1. The Checklist itself
2. The Hawthorne Effect (see below)
3. The simple introduction of a 'formal pause' (time to think and check), which could happen without a checklist, at key stages
4. Increased uptake of wider safety techniques (which could be a result of the focus caused by the introduction)
5. A broad change in safety culture (which could be a result of the increased priority of safety caused by the introduction)

If we consider the above factors, the Checklist itself could be considered a relatively minor change, the other four reasons are certainly also very significant.

Interestingly, the 'Hawthorne Effect' is a term first used in 1958 by Henry Landsberger, when analysing some experiments into staff productivity undertaken at the 'Hawthorne Works' factory near Chicago. The workers' productivity seemed to improve when changes were made and being monitored but it fell back when the study ended, even though the 'changes' persisted. Henry Landsberger suggested that the productivity gains occurred as a result of the workers feeling motivated by the attention and interest being shown in them, rather than the changes to their working conditions.

All of these reasons for improvement are relevant to the introduction of Accountability within Financial Services. Doing something that is proportionate and reasonable will evidence attention, focus and priority on the key topics, processes and obligations across the firm. If what is introduced is intelligent and sensible it should deliver at least some of these successful effects.

Pottage

At a recent conference on the Extension of SMCR, one of the speakers was a significant regulatory litigation expert, who was presenting on the developments in Enforcement cases since the introduction of the new Accountability Regime. I had the opportunity to ask the burning question – would the most famous of all 'accountability' cases (Pottage) have had a different result if the new regime had been in force at the time? Her answer was interesting…. in conclusion, NO!

But in my humble opinion, her answer was a little blinkered – the outcome would not have changed but the whole case would not have taken place at all!

The tribunal concluded that Mr Pottage was not guilty because he had taken 'reasonable steps'. The issue under the APER regime and under the prevailing ‘culture’ at the time was that the evidence of his ‘reasonable steps’ was not readily to hand, hence the original enforcement action. The necessary evidence only eventually came to light following the testimony of expert witnesses at the tribunal. Under the Accountability Regime, if the firm and relevant Senior Managers were successfully complying with their obligations, the required evidence that Mr Pottage was taking the relevant and appropriate actions would have been immediately to hand and this most notorious of cases would never have been pursued.

The costs of such cases are eye-watering for firms, the individuals involved and the regulators, without even considering the stress, distraction, disruption to business and risk to reputation.

When first introduced for Banks and Insurers, some of the most significant elements of the regime were relatively softly described and difficult to focus on. In the Accountability 2 consultations, the regulators have done a much better job of highlighting some of the most important elements, namely:

- ❏ Overall Responsibility
- ❏ Duty of Responsibility
- ❏ Reasonable Steps
- ❏ Handover Procedures

There is a small issue that some of these most material components of the new regime have fallen victim to the holy grail of ‘proportionality’ and therefore at first glance only apply to Enhanced Firms. However, be very careful if you are a ‘Core’ firm because most of these are essential elements of good governance practise and, although not obliged under the new regime, you will need to evidence these things in reality if you are ever investigated.

Process Automation

At Redland, our Accountability software solution, Insight is being used by a number of firms to help to support their SMR obligations and increasingly their Reasonable Steps Frameworks. It should be possible to draw a straight line from your Statements of Responsibility through Operational MI controls to your detailed People, Behaviour and Conduct Risk metrics. For individual Senior Managers, what they are personally responsible for has been written down and codified in their SOR. Their ‘reasonable steps’ evidence should link the operational controls relevant to each responsibility. This then leaves them with two questions:

How do they know that the people involved (delegates and their teams) are competent, certified (were necessary), effective and informed?

How can they evidence that they are reviewing the identified controls and taking the appropriate required actions and following them through to conclusions?

These are two areas where using systems and process automation can help. Automating some process management to ensure that regular reviews take place and to provide some ‘oversight’ to relevant teams that evidence is being recorded is very efficient and provides a simple solution to managing the inherent risks.

However, it is vital to ensure that any system or process management that is adopted is sufficiently flexible to push the necessary ‘actions’ to the appropriate people rather than creating administration tasks for your very busy senior managers. Resulting systems must also support the delicate balance between applying a ‘consistent’ policy across departments but allowing for individual senior managers to use their judgement about the detail record keeping that is relevant to their risks.

FCA Briefing

At a recent FCA briefing, one of their staff was asked about Reasonable Steps guidance and they gave a very short simple reply, “when the event in question occurred, did you do something sensible? Have you got a basic record of what you did?”

There is a healthy amount of guidance within DEPP and COCON about reasonable steps but senior managers are rightly concerned and seeking confirmation that their frameworks and policies are sufficient, while at the same time, not over burdensome.

“However, be very careful if you are a ‘Core’ firm because most of these are essential elements of good governance practise and, although not obliged under the new regime, you will need to evidence these things in reality if you are ever investigated.

Intelligent Account

To return to Onora O’Neill’s comments on Accountability, individuals should record an account of what they did, not a distorted history caused by over reliance on increasing sets of figures attempting to capture complex reality.

When implementing your Accountability Regime responses, try and leave space for simple, intelligent accounts of the sensible things your people were doing and why – a policy which reflects that will be a reasonable step towards managing our culture.

Something of nothing – or a radical shift in product development?

Julia Kirkland,
Partner in FSTP

> “Every product is now required to have a stated target market

The run up to the 3rd January deadline for MiFID II felt less like a mad dash for the finish line and more like a headless chicken race. I think we can safely say no firm was entirely ready and therefore in 2018 there will continue to be lots of work to do. The FCA has indicated that best efforts and “work in progress” will be tolerated as long as transaction reporting is right. Which leads me to wonder, how the new requirements of product governance might develop as we all learn to adapt in the post MiFID II world?

One delegate from a recent MiFID II awareness session that I ran (albeit they worked in a retail environment) described this as “something of nothing”. However other work that I undertook with an Asset Management house said they had been working on this for months in the run up to January. So what is changing? Every product is now required to have a stated target market and this applies to firm who **manufacture products** and to the firms who are subsequently **distributors** of those products. After 3 January 2018, any existing products which are still being distributed will need to be assessed in terms of the following requirements <u>at their next product review</u>. Any new products need to be designed with these requirements in place from day one.

Target market assessments apply to ‘end clients’ which would mean that professional clients or eligible counterparties who intend to on-sell a product are not the ‘end client’. In this scenario, the professional client or eligible counterparty would be **acting as a distributor** and would need to comply with the product governance requirements. Distributors include advisers and wealth managers and they will be obliged to monitor all investment placements and analyse how it aligns to the product manufacturers’ designated target market. Additionally distributors will be required to advise manufacturers when they distribute outside of the target market and manufacturers will need to consider whether or not they allow the distributor to continue distributing their products?

These are the 6 categories identified by ESMA.

1. **The type of clients to whom the product is targeted** – specification should at least be made according to MiFID II client categorisation, although additional descriptions may be used to refine the clients.
2. **Knowledge and experience** – the firm should specify which knowledge the target clients should have about elements such as the product type, product features and / or knowledge in thematically related areas that help to understand the product.
3. **Financial situation with a focus on their ability to bear losses** – the firm should specify the amount of losses a client is willing and able to afford (which can be expressed as a percentage of net investable assets).
4. **Risk tolerance and compatibility of the risk/ reward profile of the product with the target market** – ESMA suggests that basic risk attitudes should be categorised (and give the examples of ‘risk orientated’, ‘balanced’ or ‘conservative’). ESMA notes that different firms in the product chain may have different approaches to defining risk so it is important that a firm is explicit about the criteria that must be met for each category.
5. **Clients’ objectives** – the firm should specify the investment objectives of target clients and ESMA gives the examples of references to liquidity supply, retirement provision or the number of years the investment is to be held.
6. **Clients’ needs** – MiFID II introduced the concept of ‘needs of an identified target market of end clients’ and so the firm should specify aspects of the investment and expectations of targeted clients.

So these are all very familiar concepts to those in retail but less so in the institutional space. How will this be translated by the Asset Managers and how aligned will they all be? A “watch this space” issue for 2018, I suggest.

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Nothing like the present

By Len Horridge from The Skills Exchange

Sorry, that's a very bad pun and a poor start. Which is important when you make presentations: get the start right and the rest should follow. (And get the end right. Then the middle bit looks after itself.) But it's the new year, be kind…

Oh, this is about presentation skills, by the way… thought I'd tell you.

Funny, when we deliver presentation skills training (be it introduction, advanced or for public speaking) probably one of the best hints we can give people is get the start right and the rest will follow. The other 2 hints being using the power of 3, being the… no, you'll just have to read on.

When we start any presentation type of training/coaching the thing people want to know most is "how do we stop being nervous"? The answer is simple: you don't. Have butterflies but have them flying in formation (trainer cliché number one, I think, hope you are playing buzzword bingo whilst reading this). Nerves are key to a good presentation.

Most performers will tell you that you need nerves and adrenaline to perform at your best (no world record was ever broken in an empty stadium, there you go, cliché number 2 in paragraph 5!!!), you just need to control them. With most people, getting the preparation right is key (but, as was once told by somebody not a million miles away, don't over-prepare, which may just be right for me and not for others) but you also need to get into your brain that the audience out there doesn't want you to fail. And, anyway you should know more than them and they want to hear what you have to say. So, smile, don't jump into your words and don't be intimidated. Prepare and prepare slowing yourself down and smiling. People will like you, especially if you are brief and interesting.

Remember this: the audience want you to have a good time, they want to hear your ideas, even if they don't agree with them, and they want you to succeed.

And, as Eleanor Roosevelt once so rightly said: "No-one can intimidate me without my permission" so don't be intimidated.

And don't depend entirely on the words. Yes, use silence. It's powerful and doesn't just suggest you have dried up. It is also quite unnerving if you are in an audience; it shows control and confidence, even if you are quaking in your boots (I was tempted to do the incontinence knickers joke here but, and here's another hint, though it really is a rule, don't tell jokes, so I didn't, well not quite).

And third hint (did you see the other one?): keep it short and sweet.

TED talks (check them out if you haven't yet) last a maximum of 18 minutes, which they do for a reason. It is probably linked to recent research by Psychologist George Miller who found that the maximum amount of "information" people can deal with is 7, plus or minus 2 bits. Or just go for the rule of 3 and also tell them what you're going to tell them, tell them and tell them what you told them. Cliché!!! In any case, keep it short, most people have an active attention span on 20 minutes.

> "Prepare and prepare slowing yourself down and smiling. People will like you, especially if you are brief and interesting.

Do not fill the time; just get your message across.

"Ask yourself, If I had only sixty seconds on the stage, what would I absolutely have to say to get my message across." Jeff Dewar

Best practice is somewhat summed up by those TED talks (Technology, Education, Design, btw) which, strangely, come up with eleven hints for speakers, despite what we have said above; I think some are more pertinent than others and some we have already snuck in above… the ones to think about are:

- ❑ Start drinking water 15 minutes before you start talking… hydration is good, caffeine is bad and alcohol only should be taken afterwards (we also advise on wedding speeches!).
- ❑ Use your tone to strengthen your words; avoid monotone, use emphasis and repetition to make your point.
- ❑ Enjoy it, it'll soon be over and accidents can happen; as one TED speaker laughed as her slides spiraled out of order in rehearsal: "It's just about having fun, right?"

And that's 3 points, though I snook in others and you've read that in less than 20 minutes so we may be made our point, or points.

Happy New presentation year!

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The Insurance Distribution Directive

By **Tony Catt**

This is just another of the tsunami of rules being introduced in 2018, alongside MIFID II, GDPR and SM&CR, which will hit financial services firms in the UK in 2018.

The IDD consultation is now in its third iteration. We have had CP 17/7, CP 17/23 and most recently CP 17/33. The documents seem to have been getting longer with CP 17/33 running to 256 pages. The consultation from CP 17/33 closed on 25th November with the policy document due to be produced in January 2018 in time for adoption in February 2018.

There is a lot of confusion around whether the FCA is going to announce acceptance of the European proposal to delay the application date of IDD from 23 February to 1st October 2018.

As this proposal has been put forward by the EU institutions, it is therefore not something over which the FCA has any control, so no official announcement will come from them.

The FCA has advised that it will continue to work to ensure the UK meets its legal obligation to implement the IDD, and will consider in due course whether amendments are required to its published consultations and policy statements. The FCA advises regulated firms and their advisers should continue to monitor the FCA website for further information.

So, what is it about?

The Insurance Distribution Directive (IDD) is revision of the Insurance Mediation Directive (IMD), which was introduced by the FSA in 2005. It will come into force in February 2018.

Like the IMD, the IDD covers the authorisation, passporting arrangements and regulatory requirements for insurance and reinsurance intermediaries. However, the application of the IDD is wider, covering organisational and conduct of business requirements for insurance and reinsurance undertakings. The IDD also introduces requirements in new areas. These include product oversight and governance (POG), and enhanced conduct rules for Insurance Based Investment Products (IBIPs), where its stated intention is to more closely align the customer protections with those provided by the Markets in Financial Instruments Directive II (MiFID II).

The directive applies to all those who sell, advise on, or conclude insurance contracts, and those who assist in administering or performing them. Customers of these firms “range from individual consumers to large multinational corporations.”

Outcomes the FCA is seeking

The FCA’s proposed approach builds on the rules and guidance already in place and is consistent with the approach taken when implementing IMD. Generally, it has sought to introduce the minimum standards of the IDD into the FCA Handbook. However, in some places it has gone beyond the minimum standards.

This proposed approach should provide an enhanced regime that ensures a level playing field for sellers of insurance, helping to prevent arbitrage with competing products and providing better protection for consumers when buying insurance. This should ultimately result in:

- ❏ consistent consumer protections across different distribution channels, preventing regulatory distortions of competition
- ❏ products being sold to consumers that better meet their needs, alongside improved product information, enabling consumers to have greater confidence in their insurance purchasing decisions

Main provisions

- ❏ requires brokers and employees of insurance companies that sell insurance to do at least 15 hours of training and CPD per year
- ❏ introduces new product governance requirements, which are largely in line with the FCA’s product governance requirements
- ❏ requires firms that sell insurance on a non-advised basis make sure that the product they are selling fulfils the customers most fundamental needs
- ❏ imposes new duties on insurance companies that are selling products through companies that are not authorised by the FCA
- ❏ requires general insurance firms in the retail and small corporate market to provide customers with Insurance Product Information Documents, which are similar to Key Features Documents.

Professional standards

The IDD requires firms to ‘possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately’.

- ❏ At least 15 hours of professional training or development per year”.
- ❏ There are specific areas in which the practitioner must be able to demonstrate knowledge:
  - the insurance market, applicable laws governing insurance distribution;
  - claims handling, complaints handling, assessing customer needs, appropriate financial competency; and business ethics standards/ conflict of interest management.

Ancillary Insurance Intermediaries

The IDD introduces this concept for firms who meet the following requirements:

- ❏ The firm’s principal professional activity is not insurance distribution;

- ❑ The firm only distributes insurance products which are complementary to goods and services they provide as their primary professional activity; and
- ❑ the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.

The FCA sets out how the IDD requirements will apply, considering the three categories of AIIs:

- ❑ "In-scope AIIs" – Firms who meet the definition of being an AII and are within the UK's regulatory perimeter. This includes firms within scope of the Directive and firms such as motor vehicle dealers whose insurance distribution activities may be outside of the IDD but who are within the UK regulatory perimeter.
- ❑ "Connected travel insurance (CTI) providers" – Firms whose primary business is to make travel arrangements for customers, but who distribute insurance that is complementary to those services, such as travel agents, tour operators and airlines.
- ❑ "Out-of-scope AIIs" – Firms who are outside the UK regulatory perimeter by virtue of the CCE. Common examples include electronic goods and furniture retails.

At the moment, the FCA is requiring that in-scope AIIs and CTI providers to comply virtually the same requirements as insurance intermediaries. This is because:

- ❑ It is important that services are provided to customers by competent employees. This is a key customer protection, and it should be in place regardless of the category of firm.
- ❑ Staff working for AIIs and CTIs usually have a primary responsibility that is unconnected to insurance (for example, to sell cars or electrical goods which are the firm's primary business). Finally, It is appropriate to continue with the existing requirement for in-scope AIIs to hold the same level of PII cover, or comparable guarantee, as insurance intermediaries.

Is it going to work?

So, the IDD is running alongside MIFID II in trying to promote fairness to consumers and transparency of charges within products and the suitability of products to their target market. IDD brings general insurance products and practices much more in line with regulated financial sales.

I found it surprising that in the UK we went through the Retail Distribution Review (RDR) to get a fair deal for customers. Now Europe is going through a similar process with MIFID II and IDD to get consumers a fair deal and bring in some uniformity of practices throughout Europe in financial services.

As the UK has been through most of this already, the impact on UK advisers is lessened. Some of the disclosure issues will be tightened in the future, but most advisers are already complaint.

“Now Europe is going through a similar process with MIFID II and IDD to get consumers a fair deal and bring in some uniformity of practices throughout Europe in financial services.

The main difference in the UK will be for general insurance providers and distributors. The additional burdens will relate to staff training and knowledge. This is very positive for consumers as they should be much better protected by dealing with knowledgeable sales people.

Of course, there will be the usual gripes from advisers about undertaking CPD. They should understand that this is to improve their skills. They will be more capable of completing better quality sales, as they will understand more about the products and their application to the lives of their customers.

15 hours of CPD is a little over one hour per month. This would probably be the amount of time that they would spend familiarising themselves with products anyway. So, the only difference is that they will get a certificate showing that they have received training. I am not sure what there is not to like about that. Their only new problem is to set up a file to keep their certificates in.

Providers will need to ensure that their products are suitable to their target market. Surely, they would have been doing this already. They just need to produce Insurance Product Information Documents. Which they had probably already been producing. They just need to make sure that they are given to customers. Should not be too difficult to organise.

The practitioners need to be able to demonstrate knowledge of assessing customer needs, claims handling and complaints handling. The attainment of appropriate financial knowledge will increase the ability to assess customer needs. This, in turn, should enable claims handling to dealt with better. This appropriate financial knowledge should also lead to a greatly reduced need for complaints handling, but also ensure that any complaints arising are handled better.

This can only be positive for consumers in the future.

Lending into retirement and equity release – will 2018 see an uplift in solutions for the elderly?

Nick Baxter from Baxters Business Consultants

> “The days when ‘interest only’ loans were labelled as ‘ticking time bombs’ appear to be over.

How many times have I said this before? Are we on the brink of long term consumer friendly lending into retirement and equity release solutions? Sadly, a look back in time shows many false dawns, but I am optimistic for the future. There is no doubt that there is a consumer need for such loans – a report by the Building Society Association [BSA] at the start of 2017 suggested that over 65 year olds hold £21.1 billion of mortgage debt and that the figure will double by 2030. However, from the first home income plans in the 1980's/1990's to the shared appreciation mortgages in the mid 2000's, historic solutions have all suffered 'conduct risk' issues (as well as financial loss issues to both lenders and consumers). So where has it all gone wrong and can we learn from history?

The problem, as I see it, as an expert witness in cases that have ended up in litigation, is not one of market need; the problem is understanding the needs of the market and designing solutions that treat customers fairly. I am not one for re-inventing the wheel when it is not necessary so anyone looking to develop products or arrange solutions where the target market is at the older end of our population could start by studying the thought provoking output from the Financial Service Authority [FSA] of July 2007 titled *"Treating Customers Fairly (TCF) in product design"*. It can still be found in the National Archives via an internet search. The principles contained within the FSA document are important for any financial product, but especially one where the end user of the product could be identified as a 'vulnerable customer', such as elderly borrowers. Getting the benchmarking and oversight foundations of product design and sales are at the heart of sustainable lending solutions as the 'good practice' examples in the FSA output show.

So why might 2018 be the right time for long term solutions for this market need? Apart from the market need, the regulatory environment is evolving. The days when 'interest only' loans were labelled as 'ticking time bombs' appear to be over. The recent Financial Conduct Authority [FCA] paper on 'older lives' and the even more recent consultation paper on retirement interest only mortgages [CP 17/32] set the tone of the FCA current thinking. In the latter paper, the FCA highlights the differences between 'retirement interest only mortgages' and lifetime mortgages and recognises the different risks in the two distinctly different products. The proposals aim to redress the intended consequences of how the Mortgage Credit Directive [MCD] was implemented. Excluding 'retirement interest-only mortgages' from the definition of a 'lifetime mortgage' is a good first step, but to enable the market to fully open up, with appropriate long-term solutions, the FCA also needs to consider other regulatory changes, such as a relaxing the position in respect of the sale of home as an appropriate repayment strategy – MCOB 11.6.

So, the ground work is being put in place by the regulator and further movement is likely in 2018. To fully satisfy the market in a long term sustainable way lenders and advisers need to focus on designing products that satisfy customer's needs, recognising the vulnerabilities of the likely market and treating customers fairly. Now is the time to develop appropriate products and sales procedures to ensure this specific market is satisfied in a conduct and financial risk managed way.

Nick Baxter is a Partner with Baxters Business Consultants. Baxters Business Consultants is a business consultancy offering training, marketing and expert witness services within the lending industry

Are you a coach, a mentor, or a tormentor?

By **Paul Archer** from Archer Training

I heard a phrase the other day that stuck with me. ***Is your sales manager a coach, a mentor, or a tormentor?***

More importantly, as a sales manager yourself, do you regard yourself as a coach, mentor, or tormentor? I'm sure you don't regard yourself as the latter, but do check with your people just in case.

Here's a little checklist to test to see that you're not tormenting your team.

❏ Do you promise to coach but frequently run out of time, or other priorities take precedence and you're always apologetic?

❏ Do you find yourself managing your team purely through KPIs and other stats, and much of the time you just email them to your salesperson and ask for their comments?

❏ If a salesperson's results are down, do you email them at the end of the week for a telephone conversation to talk about the numbers?

❏ Do you constantly promote competition amongst your sales team?

❏ In sales meetings do you find much of the time is spent with each salesperson talking about their week/month in sales?

Only a short questionnaire, but if you found yourself answering more of these with yes rather than no, then you may be deemed as a tormentor even though you had no intention of this whatsoever but just lack time.

Don't double the self-talk when coaching

Sometimes I think wives are also replacement mothers for their husbands. I know because my wife is. She cares so much, that when I'm away on a business trip, she'll always keep reminding me:

"Don't forget two shirts, underwear for three days. Remember to take your washbag. You forgot once, didn't you? Alarm clocks, remember those, some nuts in the car in case you get hungry."

The only problem with this is that I've been travelling on business since 1989 and consider myself a road warrior, so I have my own routines and schedules to ensure I remember things. I say to myself things like:

"Okay, Paul, you're away three nights, so that's three shirts plus ties, belt, two suits, washbag. Put something to eat in the car in case . . ."

And hey, presto, I've got two voices in my head. One from me and one from my "coach", and I get all confused and mixed up with two voices talking to me from inside my head.

And as a coach, this is a dangerous place to be for your coachees and a prime reason why, as coaches, we mustn't ever tell our coachees what to do. If we do, we'll double their talk.

The best self-talk has to come from the coachee's head in their own voice. So, when coaching, just make sure you ask questions that encourage them to figure things out, to work out the answers. Don't put "tells" into their head; just ask questions to help them create the inner dialogue. That way they'll only have one voice, not yours, ringing in their heads.

And that's what I have, my wife's voice ringing in my head as I leave, which is wonderful really because I know she cares. Well, I think she cares. She does rather like it when I'm away. The house seems to run much smoother when I'm not there. Maybe she just likes giving me advice when I go away to encourage me to be away a whole lot more. Hmmm, I wonder…

Coaching and Your Satnav (GPS)

With a family funeral in the New Forest, we had a need to travel the two-hour journey from Gloucestershire to Hampshire on many occasions. On one return journey, I asked my nineteen-year-old son if he felt comfortable to make the journey himself.

"I could, Dad, but I'd have to have a satnav (GPS)."

"Yes, Lewis, they do help enormously, but once upon a time we used to make journeys like this without them."

"Like last century, Dad."

We drifted back into silence, and I started to think about what would happen if we didn't have satellite navigation in our cars.

And that made me think because not so long ago, I would use Google Maps to plot my route and imagine it through in my head, making a mental note of junctions and directions. When I was on the road, I would relate my previous thinking to the current route, checking road signs and keeping an eye on my milometer and the time.

We were much more focused on the actual route and concentrated more.

And we'd arrive safely enough with a copy of the map on the passenger seat just in case.

I thought to myself that satnavs replace all of this. They make us lazy, reliant on others, i.e. the software, and we have no ownership of the route.

In the same way, this is exactly what sales coaching does. As coaches, we ask questions and help our coachees to think things through in the same way we'd think through the route the night before. We don't tell the coachees what to do and how to do it. We help them figure it out and own the final solution. Satnavs tell us what to do, and we become so reliant on them.

How awful would it be if the satnav stopped working in mid-flight? How would we cope?

Lewis asked me that same question, and my horrific response motivated me to buy a £2.99 map-book at my next petrol stop

What is CDC and does it matter?

By **Henry Tapper** from First Actuarial

> “Undoubtedly there will be considerable scepticism within the pensions industry about whether a system where discretion is given to a manager and an actuary could be sustained over time.

A Collective Defined Contribution scheme pools the contributions and pays a variable pension to members from the common pool. Unlike a conventional DC scheme, there are no individual investment accounts which ring fence each member’s contributions and investments.

Collective Defined Contribution Schemes are back in the news. There are two reasons for this:

1. The Workplace and Pensions Committee have set up an enquiry into CDC
2. Royal Mail and the CWU intend to move to a CDC basis for pensioning 140,000 staff

Most readers will struggle to remember what all this fuss is about. The history of CDC in this country is as follows:

2009 The DWP concluded that the Government should take no action on CDC schemes.

2014 The DWP drafted a Pension Schemes Bill that included a section on Defined Ambition. This was enacted in the Pensions Schemes Act 2015, enabling CDC schemes in principle.

2015 Shortly after the passing of PSA15, Baroness Altmann, the new Pensions Minister announced that no further work would be carried out on the secondary regulations needed for CDC schemes to get going.

2017 Frank Field announces an inquiry into CDC following a recommendation by the independent mediator of CWU/Royal Mail’s pension dispute that Royal Mail adopts CDC.

From this timeline, it is clear that CDC is marmite. To its friends (and I chair the Friends of CDC working group) it can be useful in three ways

1. As a halfway house between DC and DB pensions – offering people scheme pensions without the onerous guarantees on employers
2. As a means for those saving through workplace individual DC pensions to spend their pension pot in an organised way (e.g as a non-guaranteed scheme pension)
3. As a means for people to aggregate DC pots, including the proceeds from CETVs and exchange them for scheme pensions.

These are the six criteria which the DWP considered before dismissing CDC in 2009:

1. The modelling results support the claims of enhanced performance on average from CDC schemes (criterion 1)
2. and of some increased predictability of outcomes compared to DC schemes (criterion 2).

3. However, there is significant doubt on the ability of such a scheme to manage risk successfully in a way which is fair to different generations of scheme members (criterion 3)
4. and doubt remains on the extent to which the stability of CDC schemes is dependent on a continuing stream of member contributions (criterion 4).
5. The legal implications of operating CDC schemes in the UK raise significant doubt on the potential for CDC schemes, as proposed, to exist in the UK given existing European legislation (criterion 5).
6. Finally, demand for CDC schemes from employers (criterion 6) is likely to be limited, but could involve some DC schemes opting for a potentially better pension outcome for their employees if CDC schemes existed, and especially if other employers in their industry also offered CDC schemes. However, employers (including DB scheme sponsors considering closing their schemes) seem to be reluctant to subscribe to a new type of pension scheme which their employees may not fully understand.

One of these criteria (5) falls away with BREXIT, however – the substantive issues (3), (4) and (6) remain.

Risk management within a CDC Scheme (3) needs care. The fundamental structure of a CDC scheme is that it converts defined contributions into a regular pension with monies invested on a collective basis – as they would be in a with-profits arrangement.

CDC schemes plan to spend the contributions and investment returns over their members' retirements. Obviously, investment performance and longevity will be different to that assumed in the planning, and the payment plan will need regular revision, say annually. The risk is that uneven investment performance could lead to poor pension increases for a period of time or, rarely, a pension reduction, leading to member dissatisfaction.

One actuary told me that if he ran the scheme he'd expect to be wrong 100% of the time but that he'd be over-distributing as much as under-distributing and never to a great extent. The optimistic view is that people can live with some degree of smoothing provided it's clear that no one group is discriminated against. Pessimists will point to past experience and complaints from perceived "losers" in countries where a form of CDC operates.

The other criterion against which CDC is believed to fall short is an alleged lack of employer support. This is a speculative criticism. Until CDC is introduced to the market place, we will not find out what the take up will be. There are many employers with closed DB schemes and open individual DC schemes for which CDC could be an acceptable replacement scheme for the employees in DB and a superior scheme for the employees in individual DC.

The situation at Royal Mail is an interesting counter to this view. Here the employer is acceding to a demand by 87% of members not for defined benefits but for "a wage for life". Terry Pullinger, the CWU deputy secretary conducting negotiations on behalf of members is clear that any settlement has to be based on a pension, but the security of that pension is negotiable.

Britain's adoption of pension freedoms in 2015 has opened demand for a new kind of CDC – one where there is no employer and the scheme is funded purely from member contributions – particularly from transfers.

Concurrently, the success of auto-enrolment has led to demand from the new master trusts to offer scheme pensions. Operationally, the payment of pensions would work as a pensioner payroll of a DB plan, but the annual level of pension would be set – not against an agreed formula such as CPI increases, but dependent on the scheme manager's discretion based on an actuarial valuation.

Undoubtedly there will be considerable scepticism within the pensions industry about whether a system where discretion is given to a manager and an actuary could be sustained over time. This brings us to final main objection – "whether a CDC scheme could maintain a continuing stream of member contributions".

This is an extremely hard objection to argue against as any view of the ongoing popularity of a pension system, is tarred with the brush of failure of such a system at some time or in some place.

Ironically, the best model to compare the current vision of CDC – at least in the classic sense, is the UK DB pension system before the imposition of stronger guarantees which started in 1984 and has culminated in the closure of almost all schemes to new entrants in recent years.

Sceptics will argue that the status of schemes before 1984 where benefits were promised and not "guaranteed" was intrinsically unsustainable. They will point to countries where pensions are set against what the fund can afford rather than a guaranteed amount as creating social discontent. Both viewpoints have some merit and the debate which is likely to play out over the coming months will no doubt be heated!

However, Friends of CDC – and I am one, will point to the fact that however many times CDC has been written off, it seems to bounce back again showing the kind of resilience needed from a pension product.

While some had thought that the introduction of Pension Freedoms would finally do for CDC, the concept seems to have been brought to life by the apparent failure of many people with large transfer values to find an obvious replacement for the annuity.

Despite the importance of providing moderated solutions to schemes such as Royal Mail, the revival of interest in CDC may ultimately lie in the need to give people "freedom from freedoms".

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Why are we monitoring?

By **Andy Snook** from Performance Evaluations

Monitoring different functions of individuals within a Training and Competence Scheme is usually a routine function. But how often do we stop and analyse why are we monitoring? Do we check that we monitoring the right things? Check that the outputs are beneficial? Do we challenge if we should adjust what we are monitoring? Or even should we stop monitoring something and change our focus to something else?

It's really important that we review each and every activity that we perform, whether as an adviser, a manager, a para-planner, an administrator, or a T&C person. If we don't challenge we won't understand how effective we are nor what we need to do to become more effective. Two words to consider here; "continuous" and "improvement", which must apply to everybody whether we think we need to improve or whether others think we need to improve. And yes, it's important that we understand what views the other people that we interact with, both inside and outside the business, have about our work. If we don't, then how do we know how effective we are?

I tend to fully review my monitoring activities every six months. That's not to say that I'm not constantly keeping an eye on these, just that this timescale gives any changes that I've made time to settle in before being reviewed again. The most important review is usually made before the end of each financial year and I block a day out for a full review of everything I do. Usually this is about two to three weeks before the year-end to give myself time to make the changes and to have everything ready to hit the ground running on day one of the new financial year. I can do the review at this point I time as I'm looking at the process, not specific results which can only be reviewed after the year end.

My monitoring covers a range of activities undertaken by a group of financial advisers, usually on a weekly basis or on activity demand such as pre and post competency assessments. What I want to achieve at each review is to understand which of the monitoring functions currently employed work, which need to be removed or changed, and what needs to be added, and most importantly why. If possible, I want to improve the overall effectiveness and reduce the time spent on monitoring to increase flexibility for other activities.

To give you some context in my last review I started with the monitoring of file check outputs, which have several independent but linked activities. For each activity I asked myself "why" to challenge the necessity and effectiveness of that activity. The first monitoring activity was to record, measure, and analyse any trends of file check outputs of the volume of files checked against the three possible outcomes being pass, pass with developments, or fail. There was also a linked monitoring activity designed to measure the first activity against specific Key Performance Indicators. This is where the challenging came in. Why I monitored both activities was obvious. The outputs were beneficial. But why would I perform two nearly identical activities didn't, on reflection, make sense. If I adapted just one of the activities I could achieve both monitoring outputs and save myself time.

> "Too often we acquire monitoring activities which have been already set up, continue to perform them, but fail to review them.

Another file check monitoring activity that I performed was to record, measure, and analyse the trend of action points raised from the file check outputs, specifically the pre-sale file check outputs, which were recorded by process error type and then split into specific error type. The why I would do this was again, very obvious since the monitoring provided a very useful trend analysis so I could understand where any training or coaching may be needed to be applied. But I was running two sets of analysis, one for the file check outputs which were categorised pass with developments, and one for those categorised as a fail. Again the why I monitored both activities was obvious. The outputs were beneficial. So again the challenge of why meant I could just run one and adapt it to split the two file check outcomes if required, again saving myself time.

Earlier I mentioned that it's important to understand the views of the other people that we interact with, in this case the individual people receiving the monitoring outputs, whether as a report to act upon, or benefitting from support through training and coaching applied. In the examples I have given there was actually no impact as there were no changes to the outputs. Had there been changes, however, then I would have run the proposed changes through with the recipients and agreed the changes before implementation. That said, before I started the review I did ask for feedback from all recipients as to whether the monitoring outputs still met their requirements, did they understand why the monitoring was being carried out, and also for any constructive feedback that I could use in my review.

Too often we acquire monitoring activities which have been already set up, continue to perform them, but fail to review them. Just as important is when we set up a monitoring activity we must review them to check they are still fit for purpose or even if they are still necessary. We work in an ever-changing environment so why wouldn't we review what we're monitoring and why we are doing that monitoring?

9 Reminders of what great coaching is

By **Paul Archer** from Archer Training

Match vigorously

Becoming like them will lubricate communication. Listen and use their language and key words. Note how much emphasis is put on their words and use these yourself. Some coaches note down just the key words on paper to use later.

Naturally you mirror their physiology, their energy, eye contact. What about pace and tone of voice, hand gestures, but only when you talk.

Create Presence

Start with a relaxed and open state, no barriers. When this state has been created, bottle the energy bubble and cloak it. Place the cloak over the two of you and this will allow you to block out any distractions even in a busy hotel bar.

Sharing your ideas

Many new coaches or very busy coaches find it painful to wait patiently and let their ideas percolate. Instead they like to give their ideas or opinions. Strictly speaking this is dangerous as the ideas become yours, not theirs and they become reliant on you. Leading questions are even more painful; just don't go there. Here's a few ideas:

Challenge a different person to come out with some ideas – how would your playful self answer or how would your mentor respond?

Mentally step out of the coaching bubble and offer your idea but give them an opt out clause. Let's step out of our coaching session for a moment as I've a couple of ideas to float past you. If they're not fruitful we'll go somewhere else.

"Can I offer you my line of thinking?"
"What would a courageous you say?"
"Let's step out for a moment, I do have an idea."

Then give them the opt out.

Would that work for you? If that's not a rich seam for you, where else would you want to go?

Read physiology, sense and challenge

Calibrate them immediately and observe leakage, when you see it, challenge it. For example, with a sudden sweep of the arms, ask if they want to move on or sweep away the idea. Watch their face closely and look for expression leaks and challenge them.

Endless curiosity

Which translates into brilliant listening, which all coaches do. It's not about active listening, it's about being in the present, not judging or solving the problem prematurely in your head. It's about being curious to find out more. Clear the mind, trust in your ability to listen and stop thinking. That's their job, not yours.

Truly wonderful coaches then summarise regularly. 25% of coaches summarise a little and paraphrase a lot. 25% of coaches just test their understanding but 50% of coaching effectiveness comes from doing both – summarising regularly and testing your understanding: *"Have I got that right?" "Is that where we are?"*

Mature questioning flexibility

Good coaches do ask short open questions with lots of sugar coating – using tone of voice and softeners such as – *"Tell me"*, or *"I'd be curious to know"*. Excellent coaches use a variety of question types in a funnel approach. Broad questions at the top of the funnel to light the fire, probes to keep them on the subject, closed questions to channel thinking and confirm.

Well paid coaches then stoke the fire. Tease conversation from them, never ever interrogate. Coaching is about asking questions but not continuously. Use your senses to channel, play devil's advocate, enjoy silence, let them think things through, watch their eye movement as this will show thinking. Give them space. Use nods both verbal and non-verbal to encourage their talk. Empathy statements work in showing an understanding of their conversation.

Actions that'll be actioned

We've all seen coaches using the words – *"I'll better do this" or "I ought to do it this way by next week or I'll be in trouble"*. When action planning at the end of the session – when, what, whom – test their dependability. On a scale of one to ten, how likely are you to do this? What do we need to do to get this nearer a ten?

Listen out for their motivational state – is it duty, drive or flow? Do they have to do it, do they need to do it or do they want to do it? – Flow.

Elicit strategies

Everyone with a few miles on their clock will have strategies to do things: methods or structures to handle most aspects of their lives. I call these strategies. So in the reality stage of the GROW model, explore how they would normally handle this kind of goal. How do they normally make decisions, what strategies do they normally use to brainstorm?

Belief systems around goals

During the reality stage, most coaches will explore what the person has done before, the current situation. Great coaches explore the belief system surrounding the topic since beliefs determine the action they'll take. Probe around their supporting and restraining beliefs. What's important to you around this topic? How do you feel about it? What do you believe around this area?