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T-C NEWS

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APRIL 2018

The Certification Regime – helping to avoid sleepless nights

By Richard Whittington from Unicorn Training

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As cybercrime hits record high, how can companies comply with the GDPR?
By Vivek Dodd from Skillcast

A smorgasbord of coaching reminders
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Financial wellbeing
By Kim Stephenson from Stephenson Consulting

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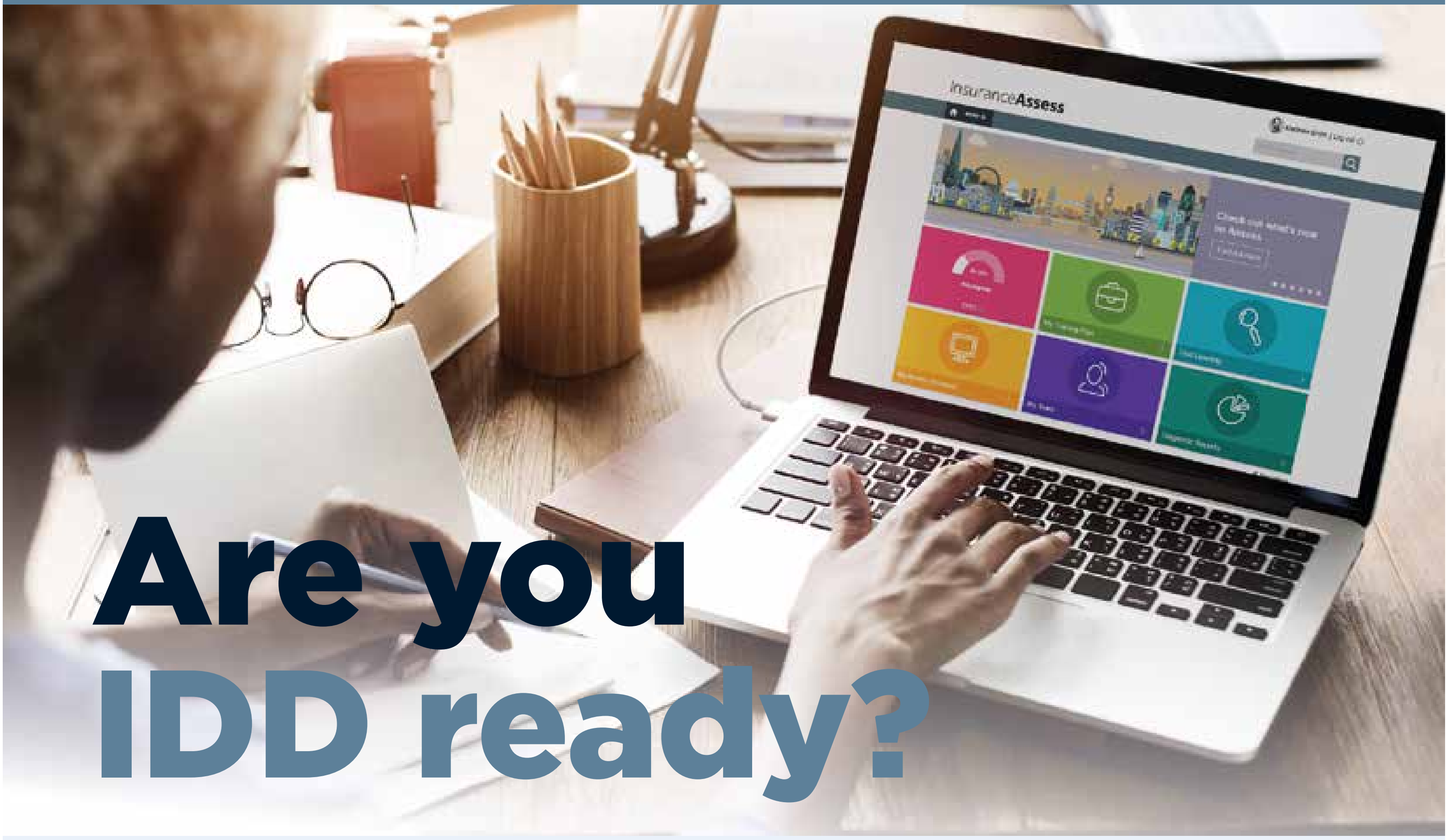

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APRIL 2018

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Welcome to the April edition of T-CNews. HM Treasury has announced that the Senior Managers and Certification Regimes will start for insurers on 10 December 2018. The time between now and then will disappear quickly. Other firms who will not be included within scope until 2019 may think that they have more pressing priorities such as completing MiFID II changes and dealing with GDPR and IDD Regulation. The key message from all of our specialists is START NOW and don't wait until the last minute. We also have a selection of articles to keep you abreast of other topical issues such as diversity and financial well being. Our panellists have contributed articles on their specialist topics all of which created a great balance and variety to this edition. Enjoy.

Jeff Abbott

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Starter for 10

Try our quiz. Answers are on page 38.

Answers are on page 38.

1. What is the cube root of a million?
2. The first Hilton Hotel, built by founder Conrad Hilton in 1925, is in: New York; Dallas; London; or Milton Keynes?
3. A trattoria is an informal Italian: Dance; Opera; Restaurant; or Wedding?
4. 'Dailies', raw footage shot/reviewed daily to check quality in film production, is also called: Fasts; Quicks; Rushes; or Hurries?
5. What is arguably the first globally popular rock musical, 1970/71: Starlight Express; Jesus Christ Superstar; Miss Saigon; or Cats?
6. The ocelot, caracal, oncilla, and margay are wild: Cats; Dogs; Pigs; or Horses?
7. Potable refers to (What?) that is safe to consume: Meat; Water; Bread; or Drugs?
8. What Indian-English word for a light lunch or afternoon tea is also a traditional confection of biscuits, syrup, cocoa, raisins and chocolate?
9. The world's largest arts festival, each August, founded 1947, is called/abbreviated the Edinburgh Festival: Border; Edge; Fray; or Fringe?
10. Russian/Bulgarian okrug/okrag, and German bezirk refer to an area of: Red brickwork; Nudist beach; Territorial administration; or Uncertainty?
11. Neapolitan ice-cream is traditionally which three of: Chocolate; Banana; Strawberry; Coffee; Vanilla?
12. What universal building construction/repair system derives its name from catafalque, Old French, a coffin support?
13. The expression 'Step up to the plate', meaning accept a challenge, derives from: Catering; Baseball; Railway; or Seismology?
14. A pachyderm refers to an animal of which two characteristics: Wings; Large size; Thick skin; or Several Eyes?
15. Murres, guillemots, auklets, and puffins are: Jewellery fastenings; Sea birds; Punctuation; or Cloud formations?
16. Which vast online non-profit organisation was launched in January 2001 by Jimmy Wales and Larry Sanger?
17. The mixed food of Near East/Balkans/Central Asia (Persian for 'taste or snack') is: Thali; Tapas; Meze; or Smorgasbord?
18. Capo and Gitano are terminology in which sort of music: Country; Flamenco; Opera; or Military marching?
19. Harvard and Yale Universities are respectively in: Massachusetts and Connecticut; Washington and New York; California and Arizona; or Texas and Alabama?
20. Attempting to make a person believe he/she is going insane by secretly moving/changing things is called (What?) after an Oscar-winning 1944 film?
21. What yellow-green gas element is most commonly/historically used in water disinfection?
22. An olfactometer measures intensity of or sensitivity to: Taste; Light; Smell; or Sound?
23. Metaphorical encouragement to take as much as you want, typically from a surprising plentiful availability, is "Fill your (What?)": Suitcase; Bags; Boots; or Trousers?
24. In the book publishing industry, unsolicited manuscripts from hopeful writers are informally called the: Cabbage leaves; Slushpile; Haystack; or Bin-tray?

Appropriate Qualifications…but which one?

John Reynolds from Expert Pensions

My business is pensions; technical pension consultancy and competence in pensions – through CPD and/or appropriate qualifications. That's what we do at expert pensions.

We help people understand what the right pension qualifications for them are and how to go about passing them, as well as helping those qualified to maintain, develop and demonstrate their competence.

I wrote an article a while back about 'appropriate qualifications' for those who wanted to be competent pension transfer specialists. Right now, this is a 'hot topic' and I suspect will be a hot topic for a while yet. So, it's important to understand what is the ''right" option for you, for your team and for your business.

The FCA has proposed changes concerning the Training & Competence sourcebook list of appropriate qualifications and the new qualifications and amendments to TC Appendix 4 2.4 proposing the adding of more appropriate qualification options, for activity 11 (pension transfers).

There are now several different ways to obtain the appropriate qualification for activity 11 (pension transfers) and each of the main examination bodies (who also provide SPS certificates) have their own route to being 'appropriately qualified' – and they are not all equal, or are examined in the same way and it's worth understanding how each work and the very important subtle differences: they are not all equal in the eyes of the FCA.

Let me go through each of the three main options for financial advisers:

1. CII AF3 Pension Planning exam

Standalone appropriate qualification can be used by any CF30 adviser (with any appropriate L4 RDR diploma qualification) to advise activity 11, through a business with the permissions to conduct that activity.

The standalone variety being the strongest and most flexible for any adviser, regardless of background or how they obtained their RDR compliant diploma.

This is the ''gold" standard exam.

2. CII AF7 Pension Transfers exam

Not a standalone appropriate qualification and cannot be used by any CF30 adviser: this 'appropriate qualification' can **ONLY** be used in conjunction with CII R01, 2 and 4 OR with CII Diploma.

Therefore, that stops all those advisers from a different background from the CII – you cannot mix and match your qualifications. You cannot use an IFS/LIBF diploma with the AF7 exam qualification on its own… Interestingly, there have been some interesting developments from the LIBF in this space since I last wrote on this subject.

3. LIBF PETR

The LIBF PETR (award in Pension Transfers) is now a twice-yearly exam, where 50% of the marks are based on a case study sent out **6 WEEKS BEFORE** the exam. It is a 3 hour written exam, focused on a case study and critical evaluation of a pension transfer case study.

This is Not a standalone appropriate qualification and cannot be used by any CF30 adviser: this 'appropriate qualification' can **ONLY** be used in conjunction with LIBF DipFA RDR compliant Diploma.

Our LIBF PETR exam support is in place for purchase on our website. We have 2 options available for the June 2018 exam:

Option 1: Case study analysis

Option 2: Case study analysis and 4-Day workshop

Access the link below for further details: https://expertpensions.co.uk/libf-pension-transfers-petr/

"It's important to understand what is the ''right" option for you, for your team and for your business.

4. CISI PTPA

There is also the Pension Transfer and Pension Advice (PTPA) exam from the CISI – which is a 3 hour exam made-up of MCQs, short technical questions and case study questions, offered twice a year.

This is a standalone ''appropriate" exam qualification. You are appropriately qualified for activity 11, with ANY RDR compliant diploma. That gives you maximum flexibility and portability.

As you can see there are now a number of different options to become appropriately qualified as a Pension Transfer Specialist. They each have their merits and there is a choice for all advisers – depending on your current RDR compliant diploma and/or your preferred learning styles.

Drop us a line anytime if you would like help with the maze of study options, to work out which one could suit you best.

MiFID II – Knowledge and Competence – Getting to grips with the new requirements

Peter Griffiths – Business Development Manager from Worksmart

> “Since the concept of T&C was introduced back in the 90’s the landscape of oversight for the competence of individuals has become more ‘crowded’ and, as a result, more complicated.

After what seems like an age, MiFID II finally came into force on 3rd January 2018. Although far reaching in certain areas, e.g. the need for greater auditability of client interaction and investment decisions, it could be one of the less ‘headline grabbing’ elements that may well have the most far reaching implications for firms.

We are all of course aware, MiFID II requires firms engaged in MiFID business to ensure, and be able to demonstrate, that individuals giving clients investment advice or information about financial instruments (or investment or ancillary services) possess the necessary knowledge and competence to fulfil their investor protection obligations.

The impact on each firm will of course be different and very much dependent on how the firm is structured and the tasks that each individual employee is involved in. The main change has been in respect of those employees giving clients information as these people are now caught by the detailed knowledge and competence requirements that MiFID II brings, and as a result firms have had to develop systems and controls around them.

As mentioned earlier, the type of individuals affected will be different across firms depending upon the composition of their job roles and how the business is structured. It is reasonable to expect that individuals such as Sales People, Customer Relationship Managers, Portfolio Managers and some Product Specialists are likely to have been affected.

Financial services firms have long since been subject to rules that ensure that Staff giving clients investment advice are properly overseen. This new requirement that extends to “Information Givers” seems more challenging for firms to implement and oversee.

So, why is that? Well, firms are well used to implementing T & C frameworks to manage competence and evidence it and those staff within it are also used to being overseen in this manner. However, those staff that do not provide advice, but “support the advice process” are less used to this kind of oversight.

In these instances where we have seen firms have the greatest success is where they have had a strong education programme that backs up the changes they have had to implement. Where individuals have grasped the reasons for the changes, together with the benefits that it will not only bring to them, their employers and their customers, then the road to implementation has seemed smoother.

But now that MiFID II has brought us “Knowledge & Competence requirements,” what actions have we found firms have been taking to embed these new requirements. That has been dependent on whether firms have been aligning them with the new "Certification Regime" for those already subject to SM&CR, or whether they have been preparing for future alignment when the Certification Regime applies to their firm.

Since the concept of T&C was introduced back in the 90's the landscape of oversight for the competence of individuals has become more 'crowded' and, as a result, more complicated. The most notable addition to the landscape, of course, is the introduction of the Senior Managers and Certification Regimes (SM&CR) in the banking sector in March 2016, and its roll out across all other areas of financial services in 2018-9.

A fundamental concept within the Certification Regime is the requirement for all identified staff, from the most senior to the most junior, to adhere to the highest standards of personal conduct and competence.

But that is no different than it should be now, I hear you say… And many will agree with you, but still even in 2018 when the concept of wider employee competence frameworks have been with us "in a regulatory sense" for over 25 years, there are still many firms out there that do not have robust frameworks and cannot evidence competence.

So, now we are in a regulatory landscape where we have individuals potentially subject to K&C, T&C, SM&CR and the wider Conduct Rules and firms and Senior Managers having the responsibility and accountability for providing oversight and assurance to the business.

And of course, all of this is expected to run alongside the process of performance management or appraisal, which usually has its own set of, HR derived, behaviours and competencies!

Until the introduction of SM&CR, T&C and performance management usually co-existed in, what always felt like, parallel worlds. However, with SM&CR and now K&C, there is a strong argument that this incongruity can't continue.

So, what should be done? Below is a simple six point plan for creating clarity and coherence around competence frameworks and measurements from the current, crowded situation;

1. **Stakeholder 'Buy In':** An old adage I know, but nothing will get done without senior manager understanding and buy in. Sell senior stakeholders the vision of a simpler, less risky, future and a project plan to review and rationalise the current, likely confusing, set of arrangements. Ask the stakeholders to nominate champions from the affected functions to be part of the project team with the aim of delivering one holistic framework that will allow competence to be not only measured but evidenced
2. **Competency Review:** By job role, conduct a review of the roles covered by K&C, T&C and the Certification Regimes. Analyse the qualifications, competencies and personal qualities currently defined as required in these roles and the assessment processes for each role. Once done, overlay the requirements from the performance management process on each role to gain to a view of the complete picture.
3. **Process Review:** Conduct a review of the processes (and the timing of these processes) used to assess each role. Also, understand what supervisory staff are involved and the capabilities expected of these individuals.
4. **Rationalise:** Look to consolidate the likely competing regulatory requirements for each role into a single coherent framework of oversight. Also, work to ensure the requirements for each set of roles builds into a firm-wide framework that can be understood and easily communicated. Once done, consider how these frameworks will be assessed, what records will be kept, who has the responsibility for the final decisions on individuals etc. Finally, define what systems and controls will be required to provide the necessary governance for these processes.
5. **Record Keeping:** Consider what system support could be provided for both individuals and supervisors to help them work through the assessment processes as effectively and efficiently as possible. If answers aren't provided to this question there is a real risk that records will be stored in different formats and / or systems, making oversight of the process and interrogation of the results very difficult indeed.
6. **Operationalise:** The new frameworks, and supporting assessment processes, will need to be carefully communicated to end users and their supervisors alike to ensure full understanding. To increase the chances of success, end users and their supervisors will need support and feedback (another reason to ensure that a record keeping system is at the heart of your competence framework
7. **Feedback:** Finally, as few things motivate like feedback and positive reinforcement, provide examples of best practice and recognise this best practice behaviour.

By reading this, if you feel motivated to raise the subject of a project to rationalise these various frameworks, don't be surprised if your enthusiasm is met with a strong dose of apathy. There has been so much change in the regulatory arena that to undertake another project, particularly one that isn't an out and out regulatory requirement, is unlikely to be top of your firm's 'change agenda'. However, the very strong argument for embarking on this project is that without it, there is a real risk of competing competency frameworks and assessment processes creating confusion and, with confusion, comes the risk of overall outcomes being diluted. And for firms, diluted outcomes in a regulatory environment poses a real risk of significant harm being done to the firm, customers or both.

Learning from a fool

By Len Horridge from The Skills Exchange

You won't have guessed this if you have trawled through any of these articles in my 108 years of contributing to this esteemed organ but I studied English at University (in the days when everything was black and white). It was great and I still love books, literature and colouring books.

When people ask, as they often do, on our training courses what books they should read to further their learning and development, especially about business and dealing with people, I will quote the obvious and the less obvious business books (*How To Win Friends and Influence People* plus *Manwatching* are just 2, if you want any more, be in touch) but I will also guide them towards literature. Yes, those books that aren't in the business bit of a bookstore.

Novels, of course, as they are normally written from the perspective of trying to explain and/or understand human behaviour, are one obvious source of knowledge but I do also guide people towards Shakespeare who had a grasp on human behaviour that has seldom been matched by the other distinguished writers that have followed him. Yes, he may have had some collaborators, for those of you who are interested, but who doesn't?

I could quote lots of parallels for business but, as I only have 400 words or so left, let's just look at The Fool, no, not the writer of this tosh but the character of The Fool in *King Lear.* (See the play: three hours that, for me, normally zips by.)

The Fool plays, in effect, the role of a coach/mentor and it's not a bad case study to use in helping develop people.

Here's your scenario: your leader has gone into a narcissistic fog and has made a great error of choice when it comes to selection of new leaders in the business, oops, country. Your role is to get him to realise his mistake and put it right whilst giving him emotional support in a time of great difficulty for an ageing man who is obviously losing his mind. (No, this is not the USA. Honest.)

What would you do? Well, the "action plan" of many in the play is to nod, agree and toady up to the now ex-king but, in this chaotic world, only one person sees through the fog and gives a clear picture of reality. This is The Fool; as Shakespeare once said "Jesters do oft prove prophets".

The Fool is, well, supposedly what his name suggests but he is just the opposite of the King's deluded yet loyal, supporters and is the one who, in a world falling apart around him, actually doesn't creep or suck up to the errant King but tells him the truth or, at least, a version of the truth.

It's a great feedback technique that coaches and mentors can learn from. The use of humour to lighten harsh truths also has a place.

Surprisingly, there is lots of evidence based feedback from him:

"Thou shouldst not have been old till thou hadst been wise."

This, in case you are not familiar with the play (and you should be), refers to the stupidity of the original decision by King Lear and is quite an insult coming from anybody else – but a coach/mentor should be able to tell the truth. And the insulting feedback goes on (given that Lear doesn't listen to the wise words of many, it's finding a way of getting your message across that The Fool uses):

> "The use of humour to lighten harsh truths also has a place in feedback.

"If thou wert my fool, nuncle, I'd have thee beaten for being old before thy time."

The Fool's approach eventually works (well, by the end of the first half of the play, the King sees his error and wants to put things right, so, job done, at the end of the first half, off toddles The Fool, his work done, with the words:

"And I'll go to bed at noon."

And this is also a key point. When your coaching is done, your coaching is done.

He's set his target (get the King to see the error of his ways), he's done what he needs to do and the job done he lets his mentoree/coachee get on with it, which is the role of the coach/mentor.

Okay, so it ends in tragedy but if it ended in Lear coming up with a management buy-out and Goneril and Regan setting up a subsidiary in Denmark (where there is something rotten) and Cordelia becoming MD, well, it may not have the desired dramatic impact of the original. Though I may pitch this to Channel4...

Literature gives us lots of opportunities to show examples which, whilst they make be fictional, paint accurate pictures to learn from. Why not think of suing them to help develop your people in a different, but quite rewarding, way?

Just a thought from a fool.

Focusing only on delivery deadlines for FCA regulatory requirements could be a costly strategy

By **Neil Herbert** from HRComply

> "Cobbling together solutions using legacy systems that don't communicate and reside within different business functions – has been a common response from many firms to Accountability 1. Many of those adopting such an approach have come quickly to the realisation that this just doesn't cut it.

The FCA still haven't confirmed timelines for SMCR/Accountability 2 for all Financial Services Sector firms (we now know insurers will be at the end of the year) and whilst that remains the case it seems that many firms - that will come in scope - are deferring plans and decisions in terms of their response to it.

As we know the actual dates for Accountability 2 will depend on the Treasury finding space to push the required legislation through and – as we also know – the legislative timetable and indeed HM Treasury are rather busy right now – with all things Brexit! Add to this the focus of many firms on MiFID II and GDPR (and in the Insurance sector IDD) and it is understandable that there may be slippage in focus on SMCR/Accountability 2. However, the requirements of all these significant slabs of regulation/legislation share many common requirements and – in particular – T&C implications and obligations. Given the more urgent deliveries around the first two it is worth exploring what these are.

MiFID II

If your firm is captured under MiFID ll you must ensure that you have implemented the requirements under Knowledge and Competence and that these were effective from 3 January 2018. There will be some tolerance for 'works in progress' – but it would be dangerous to rely too much on that.

The FCA have confirmed that they don't plan to expand existing TC guidelines around appropriate qualifications. However – under MiFID ll the range of roles impacted by Knowledge and Competence requirements has expanded to include both offering advice and providing information.

Broadly speaking the requirements to ensure that Staff are both qualified and competent are now more detailed and firms are required to define and measure Competencies and KPI's across a wider role base and should maintain robust evidence of this.

Together with the requirements on firms to certify their own staff under the Senior Managers and Certification regime – there is a need for better:

- ❑ Assessment of Knowledge, Competence and Conduct

- ❑ Setting of appropriate qualifications and KPI's
- ❑ Recruitment onboarding and probation processes and paths to competence
- ❑ Appropriate supervision
- ❑ Prompt proven remediation of risks and shortfalls

Firms must to do more to ensure compliance of staff and to identify and remediate Knowledge and Competence risks and breaches, lack of understanding of – or compliance with – Conduct Rules. It is considered by the FCA that implementation of appropriate processes, monitoring, assessment and MI under SM&CR will be enough to deliver this in the UK and the FCA are therefore making an assumption that ESMA rules will be delivered and adhered to under the new regime.

The date has already passed by which you must ensure that this assumption is correct for your firm!!

This means that you should be looking at - and implementing Knowledge, Competence and Conduct assessment and monitoring processes that are robust with appropriate MI, Senior Management accountability and risks management processes all defined and in place.

Most firms have already realised the scale of what is required and are exploring delivery processes, record keeping and/or technology solutions that can help them achieve full compliance with MiFID ll requirements and ultimately GDPR and SMCR as well. If the FCA expects them to deliver on MiFID II by complying with SMCR then by default – delaying appropriate SMCR responses might mean delays in delivering on MifID II as well.

Further – GDPR has brought into sharp relief the people risks associated with Performance, Compliance and Conduct. Delivering against internally set – and GDPR defined – standards of Information Security and processes that ensure compliance – has become a key objective. You should be ensuring that you monitor (and be able to evidence) standards - and set Delivery, Knowledge and Competence KPI's against all aspects of your staff's GDPR compliance

You can track, monitor and assess all of these in relation to GDPR – driving remediation and delivering effective risk management – where required.

Examples of how you could support and achieve this include processes that:

- ❑ Select and Assign – through pseudo random algorithms – file checks and assessments to designated Assessors for KYC, onboarding and AML processes – assessing against defined KPI's and competencies.
- ❑ Identify shortfalls and set remediation – i.e. training, new trackable remediation objectives, escalation procedures and reporting.
- ❑ Ensure policy is attested to and understood – through policy attestation and knowledge testing
- ❑ Ensure training is delivered and understood – outcomes tracked
- ❑ Create and automate - through multiple workflows and oversight hierarchies – appropriate processes to manage your risks around your staff's performance, competence and conduct re GDPR.

Many of the conversations we are currently having with existing and potential clients concern how appropriate T&C platforms and processes can achieve all of this and deliver the required solutions to all incoming legislation/regulation.

Firms must define paths to knowledge, competence and good conduct and ensure their delivery is maintained and recorded.

With this in mind and given the experience of firms captured under SMCR/Accountability 1 and the sheer scale of work, planning, consultation and change in culture that that involved – there is a lot to do!

As with all regulatory changes affecting staff performance and conduct – an accompanying change in culture is required. Buy in from staff – commitment and leading by example from Senior Management – training and awareness – all take time and this should be focusing the minds of all HR and Compliance professional as much as the target deadlines.

Cobbling together solutions using legacy systems that don't communicate and reside within different business functions – has been a common response from many firms to Accountability 1. Many of those adopting such an approach have come quickly to the realisation that this just doesn't cut it. When defining – or shopping for – an appropriate system solution every firm should be looking to deliver all aspects of Knowledge and Competence, T&C, responsibilities and reasonable steps, performance management and Certification (not to mention the associated risk management) through one product. Any such platform of course is only as valuable as the degree to which it is properly understood and utilised by the firm's staff and the quality of the content stored on it. This is why staff engagement and planning to shift that understanding and embed that required culture cannot – in my opinion – start too early.

All phase 2 captured firms should certainly be in their SMCR planning stage by mid-2018 with assigning of SMF's and training staff to enable that culture change and also reviewing and implementing appropriate systems by the end of the year, if they wish to be in a good place for a likely late 2018/early 2019 FCA deadline.

Private equity regulatory developments since 2017

Ashley Long FCSI, partner and CFO at GMT Communications, outlines some key developments in private equity

Republished with permission from the Chartered Institute for Securities and Investment (CISI).

> “This bifurcation in the market is not totally reflected in the scope of regulation, whereby small firms feel they do not always get their fair share of proportionality of application

We entered 2017 with the twin unknowns of a Trump presidency and Brexit and they continue to cast shadows of uncertainty and risk. European and UK anxiety is centred around the lack of clarity and progress with respect to Brexit and its transition. Nevertheless, the commercial world doesn’t stop and neither does regulation; it just gets more complicated and more expensive to implement, especially when trying to provide suitable options for an unknown EU future. The behavioural aspect of this cannot be underestimated as participants are concerned that valuable resources are being expended on systems, controls, planning and administration for regulation that might be redundant or have little real value in a European context in a comparatively short period of time. One also has to have sympathy for the UK regulators at this very difficult time.

Private equity continues to be an attractive asset class

According to current estimates, global fundraising in 2017 recorded the largest annual amount of private equity raised, with $453bn closed into 921 funds. Not surprisingly, North America raised the larger proportion with $256bn. This represents a substantial increase over the $310bn closed into 755 funds in 2016, with the average fund size increasing from $384 to $535m (all estimates are from Preqin Jan 2018). For each of the past five years, fundraising has been over $300bn, and the estimated assets under management for private equity stands at just under $3tn, with dry powder [undrawn cash available] to deploy at over $1tn. This weight of money has led to concerns that too much money is chasing deals which, together with aggressive debt financing available, is resulting in prices paid for assets that are too high. What is also evident is that there is very much a two-tier environment, with the large or mega funds raising ever more amounts quickly and investors having to fight very hard to get into those funds, while the rest of the pack are finding fundraising hard. This bifurcation in the market is not totally reflected in the scope of regulation, whereby small firms feel they do not always get their fair share of proportionality of application. Smaller firms and funds are using outsourced compliance firms or their fund administration service providers to cover this function – of course responsibility lies with the firm and individuals. However, first time funds are seeing the attraction of being structured as an appointed representative of one of the umbrella firms that provide full fund, administration and Alternative Investment Fund Managers Directive (AIFMD) services. This is now on the FCA radar.

ESMA principles on relocation from the UK

Private equity that raises funds from European investors and invests in Europe, the prospect of third country passports notwithstanding, is taking precautionary measures and starting to open or move parts of operations to other EU jurisdictions, with Dublin and Luxembourg being popular. Firms pursuing this course will have to bear in mind that during 2017, the European Securities and Markets Authority (ESMA) issued principles on relocations from the UK, with a focus on the investment management sector. Amongst these are no automatic recognition of existing authorisations; regulators' ability to verify objective reasons for relocation; substance requirements; avoidance of letter box entities; outsourcing; and delegation under strict criteria/principles. The final advice from ESMA on extending the marketing passport to non-European managers (so called 'third country passport') was issued in mid-2016 with no further progress since. This has been clearly impacted by Brexit and political manoeuvring from the EU. Thus, for non-AIFMD firms, the only avenue that remains for managers and funds located in these third countries to market in Europe remains the National Private Placement Regime (NPPR) and all its problems and inconsistencies.

Implementing all the legislation

The amount of legislation that continues to be issued is diverse and it would be impossible to round up all the relevant pieces, but it goes without saying that the updated Markets in Financial Instruments Directive/Regulation (MiFID II/MIFIR) and the FCA's gold plating are extensive pieces of regulation which have been time consuming in their implementation. Although not directly caught, private equity firms will have been snared by some aspects. This legislation was effective on January 3, 2018, although the FCA has acknowledged some leniency if firms were not completely compliant by this date, but firms would have to show that they have been diligent in meeting the requirements and are in the process of completing necessary steps to ensure best compliance. Firms authorised under AIFMD were in a better position. Those firms who have a traditional or 'Back to the future' structure of onshore advisor to an offshore manager/fund might have been caught and subject to the telephone call recording provisions. The British Private Equity & Venture Capital Association (BVCA) lobbied and a position has been agreed that recording should only be needed to record communications that are intended to result in the conclusion of a transaction. For example, if the investment committee was offshore or geographically spread, then its decision, if taken during that meeting, would need to be recorded. For those firms caught by MiFID II, some other aspects that would need adjustment include: product governance (identifying target markets and product compatibility); categorisation of local authorities as retail, not professional clients unless appropriately opted up; and transaction reporting. While non-EU managers and firms are not the focus of this legislation, if conducting business with a EU customer or investment firm/service provider they will need to assess the degree of interaction and potential areas of being caught. They should consider the need to obtain Legal Entity Identifier codes (LEI).

The FCA issued various changes to guidance and Annex IV reporting for AIFMD, including non-EEA AIFMs that market alternative funds via a feeder structure. Both the master AIF and feeder need to be reported quarterly.

The fourth Anti Money Laundering Directive (MLD4) came into effect in 2017 through the specific UK legislation of Money Laundering, Terrorist Financing and Transfer of Funds Regulation. A key requirement is that firms should adopt a more risk-based methodology to their AML procedures and this will require they conduct a risk assessment exercise for the types of business they undertake and types of customers. The FCA also published final guidance on politically exposed persons' (PEPs). policies.

To conform with MLD4, the 'persons with significant control' requirements has been expanded and now catches Scottish limited partnerships and Scottish general partnerships where the partners are corporate entities. These types of partnerships are frequently used as part of private fund structuring. There is also enhanced disclosure for UK companies and UK LLPs already subject to reporting.

Changes to limited partnerships

There have been reforms to the UK limited partnership regulation. The UK limited partnership is a popular investment and fund vehicle for private funds and has undergone changes over recent years as it improves its attractiveness versus similar vehicles in other fund establishment jurisdictions. The latest reform is that a limited partnership can be designated as a private fund limited partnership (PFLP) if it can fulfil two conditions: that it is constituted in writing and it is a collective investments scheme under s235 FSMA. It has the benefits versus other limited partnerships of introducing a 'White List' of activities that limited partners can undertake without losing their limited liability status, removing the requirement for a limited partner to contribute capital as well as other administration and filing benefits. Clearly this has been introduced to simplify law, reduce administration burden, flexibility, and keep both the vehicle and the UK as an attractive jurisdiction to locate Funds. Existing limited partnerships can convert.

However, competition doesn't stand still and the UK is not alone in development of its investment vehicles. The BVI is developing its limited partnership and Guernsey and Jersey have introduced their Private Fund initiatives which have the benefit of a fast track regulatory authorisation process for an offering or private placement to 50 or fewer professional investors and has a lighter touch regulatory regime.

Similarly, the EU commission reviewed the European Venture Capital Funds Regulation (EuVECA) and the changes apply from March 1, 2018. It allows registered managers under EuVECA and European Social Entrepreneurship Fund managers (EuSEF) to market their funds across the EU as well as broadening the types of managers that can set up such a fund and the types of companies to invest in. Fund managers with AUM greater than €500m are also now eligible.

The Institutional Limited Partners Association (ILPA) as part of its mission to represent limited partners and standardise reporting launched its second phase of the Reporting Template following the template it released in 2016 in respect of fees, expenses and carried interest. While take-up has been slow, general partners are completing it when requested. ILPA has also issued a model subscription agreement for private equity funds and more contentiously has also published guidance on the use of credit facilities. Credit facilities are used to finance/ bridge a deal or management fees prior to the calling of capital from investors. While this form of short-term financing is highly practical, it has been felt that it has transformed into something that benefits the general partner (GP) with the risks to limited partners not properly disclosed and the full benefits of reduced preferred return are not shared with the investors but benefits the GP. Clear down periods with institutions providing these facilities typically range from three to 12 months but with longer periods being available – three years is not unheard of – this topic has been pushed up investors' agenda. Part of an ongoing trend of limited partners at ensuring all aspects of costs and revenue are transparent and appropriately apportioned between them and the fund manager.

In terms of reporting, the tenth annual report by the Private Equity Reporting Group (PERG) set up to monitor the private equity sector's compliance with the Walker Guidelines, notes that compliance fell from 86% to 79%. It says that the decline stemmed from firms and their portfolio companies not incorporating the 2014 guidelines which mirrored the increased reporting standards of FTSE 350 companies, which is the benchmark for comparison.

Death and taxes

One piece of legislation from September 2017 that might have gone relatively unnoticed is the new UK corporate criminal offence of failure to prevent the facilitation of tax evasion. A general piece of legislation but nevertheless the financial services and asset management is considered a high-risk area. If breached, the only defence is that the firm had reasonable prevention procedures in place. Unlimited financial penalties and sanctions for this one and foreign businesses also caught as it is extra-territorial. Businesses should review their procedures and a risk review of service providers / suppliers, as well as offshore relationships in high risk jurisdictions. This review and identified controls should be tied into a firm's anti-bribery and corruption policies.

The only two certainties in life are death and taxes. Taxes we have mentioned above, now death! When a fund come to the end of its life it is not unusual for the general partner to be the liquidating trustee under the terms of the limited partnership agreement and with very little other detail provided except for how to deal with in specie distributions. While there will be some statutory responsibilities, guidance has been thin on the ground. Now, helpfully, IOSCO in November issued its final report on Good practices for the termination of investment funds. There are 14 good practices and they provide a useful guide in the absence of documentary provision at the inception of the fund. They also serve as a template for what should be there at inception!

A smorgasbord of coaching reminders

By **Paul Archer** from Archer Training

What Really is Good Coaching?

People often ask me this and why it's so effective. I heard a vivid quote the other day, I just had to share with you,

"Good coaching is helping people to get out of their own way."

That's astute don't you think?

The Responsibility Lies with the Coachee

When my son Euan was younger, he played for a junior rugby team and I helped to coach them alongside other keen and enthusiastic dads.

We were a reasonable team, not brilliant; I think the quality of the coaches was also in question. But we sought ways to improve. Serendipity provided the answer. Let me explain.

At the club's annual dinner, we were donated a rugby ball from Gloucester Rugby's 2005 winning team. An actual match ball used by top players. You know; felt, passed and caught by real players. The ball went into the auction as the top prize.

Let me fast-forward the story. We won the ball in the auction.

I thought that's it, at last we can play like winners, so I introduced the ball at our next training session and used it for the match against Kidderminster.

Did the ball make a difference? Not a bit. We lost handsomely.

A ball is not going to make any difference. Responsibility for performance lies with the players and the coaching team, we hadn't improved and a new ball wasn't going to make any transformation.

In the same way, responsibility in coaching lies with the coachee not the coach.

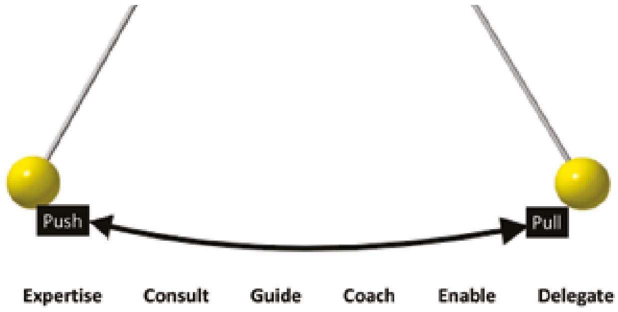
Do You Push or Pull in Coaching?

A good coach will move along the spectrum and be well paid if they do.

The spectrum is left to right – push and pull.

To push as a coach, you give but to pull, you encourage the actions to come from the client. Workplace coaching is all about flexibility and it's knowing what part of the pendulum to be on for any given moment, is the true skill.

To help you, here's the stages of the pendulum with the intervention to use.



The trick is to move along the spectrum gradually putting the responsibility for actions to the client.

Remember to Look for Leakage when Coaching

I read at the weekend about the famous rivalry between Boris Becker and Andre Agassi in the world of championship tennis. Agassi continually lost to Becker until he figured out his poker face. His body language "tell" for his serve.

Agassi learnt that when Becker stuck his tongue out to the left, he was going to serve wide, when his tongue was central, the serve went straight. This enable Agassi to win a long series of victories against Becker even though he deliberately lost serves to alleviate suspicion.

There's a "tell" for everything with humans. Learn to read your customer's physiology and you'll be able to read minds. Here's some reminders:

- ❑ **Peripheral vision.** Rather than use your foveal vision which involves focusing on one spot, practice peripheral which allows you to gaze at the whole picture. That way you'll pick up all the signals.
- ❑ **Calibrate normal.** When you meet your customer or coachee, take a good look at their "normal" so when they "leak" you might spot an issue or problem that you can probe.
- ❑ **Body language.** Re-learn the body signals. There's some great work on this all over the internet. Google a guy called Alan Pease, he's a master on the topic and rib ticklingly funny too.

Only upon his retirement in 1999 did Agassi confess. Naughty, but his skill earned him a lot of money. Remember, she with the greatest flexibility of behaviour, is the winner.

7 Essential Coaching Questions

If you've ever wanted to capture some questions on a piece of paper to use during a coaching session, well here's 7 essential ones:

1. "What's on your mind?"
2. "What're you taking away so far?"
3. "What's been most useful for you here?"
4. "What's the gold nugget here?"
5. "What's the first domino?"
6. "And what else?"
7. "Go on"

Worth keeping a note of in any coaching situation, these are worth their weight in gold.

10 Advanced Coaching Tips

Only use these if you wish to take your coaching to the next level.

1. Coaches get paid well to move effortlessly across the pull – push spectrum and know when to do so with coaching clients. Pull uses questions and push means giving ideas and guidance.
2. Don't get too "hung up" about clients having all the answers – that's nonsense. A good coach will have plenty of experience of the job involved and can come out of coaching mode to give ideas and suggestions. Just make sure your client knows you have moved outside of coaching temporarily to proffer proposals.
3. If you give an idea to the client, suggest it's just that and can be easily ignored if the client prefers. Some clients feel obliged to accept your offer especially if you hold rank over them.
4. When your client gives you some actions they're going to carry out, test that they are not just saying these to keep you happy especially if you hold rank. Try using the classic "out of 10, how likely are you to do that?"
5. Calibrate your client immediately. Clock their default posture, facial expressions, eye contact, skin colour and voice tempo. Keep an eye out for any physiology "leakage" i.e. when you spot a change in the photo you took at calibration stage.
6. Challenge any leakage that you see "I've noticed you seem a little uncomfortable?"
7. If you're using GROW and are exploring the Reality stage, try and dig a little deeper to assess their motivation and values around the goal not just tangible factors. Much of people's motivation is down to their values and inner drive.
8. In GROW, you may want to get to options quickly, but before you do so, explore any strategy behind the options to get a bigger picture. Chunk up any options "what's that idea part of?"
9. If you're in a busy environment such as a hotel reception area, try to cloak the two of you and block out all sounds and distractions. Put any wall behind you to prevent movement distracting your client.
10. Have a rescue question or two up your sleeve. "where are you now?" or "what's your next step" or "what's on your mind right now?"

Paul Archer is the founder and owner of Archer Training Ltd, a specialist training provider that brings practical sales and coaching skills to financial services firms. Paul has published eight books and is a regular blogger and YouTuber – www.paularcher.tv and can be contacted at paul@paularcher.com.

As cybercrime hits record high, how can companies comply with the GDPR?

By **Vivek Dodd** from Skillcast

Cybercrime just keeps on growing. According to the latest figures from the UK Office for National Statistics, there were 4.7 million incidents of fraud and computer misuse against businesses in the year to 2017. Some of these probably involved personal data – watch that number grow!

The reason is the General Data Protection Regulation (GDPR), which may turn out to be a bonanza for cyber criminals. The GDPR was designed by the EU to help individuals get some control back over their data. Under this law, which comes into effect on 25 May 2018, companies are expected to protect personal data, and fines for breaches can run up to 20 million euros or four percent of a company's global annual turnover.

Fine, that's the law, but it's hard to imagine that, even with huge investments in security measures, companies will make a significant dent in those cybercrime numbers overnight. What's more likely is that cyber criminals will tweak their business model to exploit the fear of GDPR non-compliance!

Consider the situation – a business gets hacked and the cyber criminals go straight for personal account details. However, whereas in the past they might have sold these for pennies, now they set their sights much higher. They get in touch with the business and make it an offer that it can't refuse: pay a ransom or we will put you in breach of the GDPR.

Under the GDPR, the business has 72 hours to notify the supervisory authorities and all the affected individuals. With the clock ticking, how would you react?

However, before you answer that question, consider what the responsibilities of companies under the GDPR are exactly. These are enshrined in six principles of data processing. As the UK Information Commissioner's Office (ICO) reports: "Data controllers shall be responsible for, and be able to demonstrate, compliance with these principles."

The ICO goes on to explain how businesses can demonstrate compliance. In relation to the security of the personal data, it advises organisations to implement: (i) appropriate technical and organisational measures, such as staff training, internal audits of processing activities and reviews of internal HR policies; and (ii) data protection by design and default, with measures such as data minimisation, pseudonymisation, and creating and improving security features on an on-going basis.

So, in our cyber-blackmail scenario, it's not the theft of the data that triggers the breach, but the lack of technical and organisational measures, and negligence in reporting the breach of personal data to the supervisory authorities and affected persons. A company that has implemented the necessary measures will not only improve its defence against cyber criminals, but also its legal defence against GDPR fines if it does get hacked and its personal data stolen.

So, what are these "technical and organisational measures" that companies can implement to defend themselves against GDPR breaches? The answer comes in two dimensions.

The first is the technical dimension, which encompasses the hardware and software systems offered by information security vendors and consultants, and the legal contracts, standard clause processor agreements etc that are proving to be a bonanza for legal firms.

The second is the organisational dimension, which at Skillcast we term the people dimension. This encompasses staff training, competency mapping, internal audits and staff decision support.

At Skillcast, we've been helping hundreds of businesses prepare for the GDPR, and for most companies, it's this people dimension that is most important in this preparation. Outside the world of internet giants such as Google and Facebook, it's not automated data processing, algorithms or data stores that present the information security risk, but small incidents such as a lost mobile, an incorrectly addressed email or an injudicious social media post.

The people dimension is not just about putting staff through a quick GDPR course, although training is certainly a critical element. Instead it requires a holistic approach - GDPR compliance will be a journey for most companies, rather than a one-off remediation exercise.

This journey should begin with internal audits of processing activities - as recommended by the ICO. These audits should be conducted using 360-degree assessments that capture the perspective of the employees at the front line of data processing as well as the top managers.

This should be complemented by mapping the knowledge, competence and behavioural instincts of employees across the organisation and, where possible, third parties, including temporary workers and consultants.

The obvious next step is staff training. This should include firm-wide awareness and knowledge building at regular intervals, additional training for managers and specialist training for certain roles, such as those who deal with consent, Subject Access Requests and international transfers.

However, training in itself is not enough. The best practice is evolving to include just-in-time resources and decision-support systems, preferably accessible via mobiles so that your staff can use them wherever they are. These can help employees make the right decisions when identifying special categories of data, dealing with the rights of individuals, notifying about personal data breaches etc.

> "What's more likely is that cyber criminals will tweak their business model to exploit the fear of GDPR non-compliance!

Of course, data breaches will still occur post-GDPR. Hackers will find ways to outsmart security systems. Employees will make mistakes – lose/erase/corrupt data. Some companies might even face ransom demands from cyber criminals. However, the businesses that embrace the people dimension of the GDPR and are able to evidence that they did and continue to do everything they can to be compliant will be better protected against potentially ruinous fines and sanctions.

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*

CARL REDFERN
REDLAND BUSINESS SOLUTIONS

NEIL HERBERT
HR COMPLY

JULIE PARDY
WORKSMART

CALUM GRANT
TRAILIGHT

Financial wellbeing

By **Kim Stephenson** from Stephenson Consulting

Do your staff, or clients' staff ever worry about money?

If so, you're in good company:

- Financial stress costs the UK economy £120.7 billion, and 17.5 million hours were lost because of absence from financial stress (Neyber 2016).
- 40% of employee's state money worries have caused them stress over the past year (Evans 2016)
- 19% of employees have lost sleep worrying about their finances (CIPD 2017)
- Disturbed sleep patterns contribute to lower employee productivity. Surveys at four US organisations estimated that fatigue-related productivity losses cost $1,967 annually per employee (Rosekind et al 2010).
- One in four workers report money worries have affected their ability to do their work (CIPD 2017)
- For every £1 million an organisation spends on payroll, it is estimated that it loses 4% of productivity due to poor employee financial well-being (Barclays 2014).
- 8% of the UK workforce admit to taking time off work because of financial stress (Neyber 2016).

It's costing you and/or your clients money and causing staff to be less engaged, less able to attend work and to be less focused and effective when they do work. What do you do?

Commonly, provide advice on finance, about pensions and benefits. Tell people how to handle money.

The Money Charity (2017) says that in September 2017 the average UK adult had debts of £30,176 – around 113.7% of average earnings. Is getting financial information helping, when the debt figure is going up, month on month?

In case you think that, because an organisation pays well, staff have no problems, the Daily Mirror, reporting on the CIPD & Close Brothers research (CIPD 2017) said: *"Nearly three in 10 (28%) earning less than £15,000 a year said money concerns got in the way of their work. But the problem extends up the pay scale – troubling one in five (20%) employees earning £45,000 to £59,999 and one in seven (14%) of those on £60,000 or more. Nearly a third (30%) of those earning £35,000 to £44,999 said financial worries affected them."*

It's not confined to the lower paid, everybody can worry about money.

Financial capability is now taught in schools and the Money Advice Service have a strategy to teach finance to everybody. Still, the problem is getting worse, not better. Inevitably, since the researchers from the LSE that the FCA asked to look into it a decade ago said: *"Overall, there is a lack of direct evidence that the National Strategy for Financial Capability will substantially improve long-term financial decision making. The indirect evidence from behavioural economics is that low financial capability is more to do with psychology than with knowledge."* de Meza et al (2008)

Despite this evidence, the idea persists that people simply need to be told to save more, avoid payday loans and put money into pension, to be rich and happy. And that all people need to change their behaviour (such as saving, not spending), control their emotional responses (such as being stressed, sleepless and depressed) and make good, long-term decisions about money is to be given financial information.

Actually, we knew that giving information about money wouldn't work, because information doesn't affect behaviour. If it did, "five a day" and other health campaigns would have reduced obesity, but obesity levels in the UK have tripled in the last 30 years (Driven by Health, 2017). And we knew it because, as Zeedyk et al, 2001, showed if you teach children road safety rules, they learn the rules and tell you what they ought to do to be safe. But when they leave training, they still run out in the road between parked cars and their behaviour doesn't alter, despite their knowing what they "should" do.

With food, safety, money and anything you name, human beings often know what they "ought" to do, in the same way that they know they "ought" to give up smoking, take more exercise, save more, and eat less sugar. They just don't do it!

What do you do about financial worries, then?

Some organisations provide counselling (such as EAP schemes) to help those who don't take the good advice to save more, defer gratification, buy needs not wants, avoid maxing out credit cards and so on, and who become ill with anxiety and depression. It's bolting the stable after the horse has gone, but OK.

Do you feel that suffering from depression or needing pills to get to sleep is the same as suffering from a dislocated joint and needing pills for the pain so you can sleep? There is a stigma about "therapy". There shouldn't be, but there is. Maybe that's why the take up on EAP schemes is so low – *"According to the EAP Association Market Watch report in 2013, about 10% of the workforce on average use their employer's EAP service. But in some cases, usage can fall as low as 2%."* (Blackburn, 2016). Compare that to the rate of stress from money worries alone.

Like it or not, people don't want to have "therapy", there's a stigma to it, they feel pathetic and don't want to be ridiculed. And your staff are likely to remain less effective while they're working out whether to have therapy.

Besides which, do you want your highest ambition to be stopping staff breaking down and becoming non-functional by helping them merely survive their anxieties – they aren't ill, but they certainly aren't well, happy or functioning effectively.

There is a better solution.

Prevention, rather than cure, together with tackling the actual problem with financial worries.

The problem with financial stress, poor decisions and illogical financial behaviour isn't money.

That sounds odd, because the common perception (that drives an ineffective National Strategy) is that anything "financial", including stress and wellbeing, is all about money.

But money doesn't get depressed, have retail therapy and spend itself. A coin doesn't go to Relate because it keeps arguing with its partner about itself. A pound note doesn't spend itself now and fail to save itself for retirement.

People make the decisions, take silly actions, get emotionally burned. People have feelings, cognitions and behaviours and their inappropriate actions, thoughts and emotions are what get them into financial trouble.

Money is knowable, and relatively simple. A good IFA can know 90-95% of what there is to know about money, for everybody – I used to be one. You can learn how to advise anybody, so a person's own finances (that won't usually include both basic saving and offshore trusts, for example) doesn't require extensive complex knowledge and it's all learnable.

Compare that to the requirements of managing stress, understanding how the brain works (how, for example, long term stress can contribute to type 2 diabetes, increased risk of heart disease, compromise of the immune system), managing emotions (such as emotional intelligence), clear decision making. The brain is the most complex single entity in the universe, nobody knows more than, say, 10% of what there is to know about managing emotion, behaviour and thinking.

And while there are textbooks and website full of sound factual information about money, there is very little totally reliable information on how to manage one's own thinking, feelings and behaviour.

Money is a tool – it can be a very useful tool, but it's only a tool. Like a hammer, it's great when it's appropriate, but given a hammer, humans tend to treat all problems as if they are a nail, even if the problem is a left-hand thread bolt. It's another example of how our behaviours and decisions are not always logical or what we think they should be.

A better way to deal with financial stress and help staff to attain wellbeing (financial and in other ways) is to start with the behaviours, emotions and thinking. Those are the elements that create the problems with finance. By tackling those, people are enabled to use their money as a tool. They lose some of the fear and that reduces the stress and increases the wellbeing. They get a greater sense of control that gives them confidence to set priorities and goals, so their decision making improves. And they start to act in accordance with their own values, and think in the longer term, instead of being pulled around by the desire to have more money, whatever the cost to them personally in terms of health. And a consequence is that they not only feel better, think more clearly and behave in a

"But money doesn't get depressed, have retail therapy and spend itself. A coin doesn't go to Relate because it keeps arguing with its partner about itself. A pound note doesn't spend itself now and fail to save itself for retirement.

more appropriate way, they also have more money to spend on what is important to them.

I'm currently piloting workshops to provide staff with the skills to manage their emotions, thinking and behaviour, and hence manage financial stress and create wellbeing. They're based on several years of individual coaching, a couple of books and about 50 years of psychological research into behaviour change, such as curing addiction, better decision making and emotional control.

If your organisation or clients would be interested in finding out more and preventing problems rather than waiting for a crisis to emerge, please get in contact.

Kim is unique in that he's qualified and experienced both as an IFA and a Chartered Psychologist. He can be contacted at kim@stephenson-consulting.co.uk, on 01344 421199 or via the website www.Stephenson-consulting.co.uk

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The Certification Regime – helping to avoid sleepless nights

Whether you're already working under the Senior Managers and Certification Regime (SMCR) or are a firm still preparing for your sector's looming deadline, how are you going to certify people? **Richard Whittington,** Product Manager at Unicorn Training, looks at what questions you should be asking.

Imagine this. Fast forward two years and you're a Senior Manager with your firm's prescribed responsibility for the performance of its obligations under the employee certification regime.

As that Senior Manager you're personally accountable for ensuring that each year everyone performing a role fulfilling a Certification Function role has been certified, or if they haven't aren't performing that certificated role.

This means you need to be able to evidence you took 'reasonable steps' to check and confirm each individual was *fit and proper* to do their job before a certificate was issued should the FCA arrive and start asking questions.

“Banks, building societies, credit unions and PRA-designated investment firms, to whom the SMCR has applied since March 2016, are now in the 'business as usual' stage. Yet many are still struggling with how to certificate people in a way that will satisfy the regulator.

No one is left in any doubt as to the consequences of a Senior Manager being held accountable for failings in their area(s) of prescribed or other responsibility, with managers personally facing fines, suspensions and bans. The financial, reputational and career implications of all this is enough to give you sleepless nights.

Banks, building societies, credit unions and PRA-designated investment firms, to whom the SMCR has applied since March 2016, are now in the 'business as usual' stage. Yet many are still struggling with how to certificate people in a way that will satisfy the regulator.

Meanwhile, with SMCR to be rolled out to insurers by 10 December 2018 and all other regulated firms in 2019, these businesses will need to work through how to capture the information they have on their staff, map it to the FCA's identified Certification Functions and figure out their process for issuing certificates.

So, to save you those sleepless nights, what questions should you be asking now?

1. Are your firm's job descriptions up to date?

Just as 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 for SMR, so this applies to Certification Functions as well.

Certification Functions apply to any employee who is isn't a senior manager, but still holds a position within the firm that could cause significant harm to the business or its customers if that person were to act irresponsibly.

The FCA has identified nine of these *significant-harm functions* – CASS oversight, benchmark submission and administration, proprietary trader, significant management, functions requiring qualifications, material risk takers, client dealing, algorithmic trading and managers of certification employees. But you may include other such roles too because of the implications to your business and customers.

How can you identify who might need certification under the new regulation if your job descriptions and role profiles don't make it explicitly clear what responsibilities or risk each position carries? And even if these are up-to-date now, jobs change and evolve so what processes are in place as to how and when they are updated?

You can't start on the Certification Regime until you have this point of reference.

2. How do you assess if someone is 'fit and proper'?

The Senior Manager is responsible for ensuring staff within the Certification Regime are competent and fit and proper to do the role they are employed to do.

This isn't just about an employee being financially sound and not holding a criminal record - when was their last DBS check, what CPD have they completed, what are their performance review ratings, what about observations and meeting records?

Firms need to consider how best to pull together the full gamut of information on qualifications, mandatory training, competence, CPD, personal characteristics and background checks to create a holistic fit and proper assessment so certificates can be issued annually to those who need them.

This comes down to your T&C system and having the right evidence to support that your employees are doing what they should be. After all, as Philippa Grocott from our partners FSTP told delegates at our latest Client Day in March, "If the regulator can't see it written down it didn't happen."

3. Will your firm's current T&C practices help or hinder certification?

Think about your T&C system. Where does all the information you need to create a fit and proper assessment currently sit? Is it offline on paper forms? Is it online but on different systems across HR, compliance and L&D? Is it a mixture of both?

One thing everyone going through SMCR has in common is the need for robust performance management and workflow systems, where recording, file checking and reporting against your T&C scheme is as effective and accessible as possible.

We've been building and integrating custom T&C systems and functions for a long time; helping firms bring their policies and procedures online to better manage and report around their T&C schemes. This not only includes access to a range of online or downloadable template forms, for example for role profiles, but integration with CPD schemes and individual activity logs and diagnostics to identify knowledge gaps.

Learning or activities to fill gaps are automatically deployed from a comprehensive Governance, Risk and Compliance (GRC) catalogue of role relevant, bite-size content or a firm's own in-house eLearning courses, depending on where the gap is.

Having everything in or drawn into one place makes creating and delivering fit and proper assessments much easier.

4. How are you actually going to issue certificates?

So your job descriptions are up to date, you know what you need to include in a fit and proper assessment, you know where the documents and records are enabling you to evidence someone competence, then what?

Certificates must be issued annually to people who need them. Meanwhile, certified individuals will leave firms with someone new acquiring their responsibilities, or an employee can gain new Certification Functions as their job role evolves. Keeping track of all this on Excel, however small your firm, is an administrative nightmare.

Being able to automatically populate the fit and proper assessment with data pulled in from across your firm, then issuing a certificate and allocating who needs to sign it off before printing and filing it might help? As could an at-a-glance dashboard so supervisors and Senior Managers can see who has and hasn't got the certificates they need, and the ability to set up registration rules and email reminders.

Our specialist Unicorn LMS SMR tool provides these solutions. And since the first tranche of SMCR regulations came into force, we've been working with a number of firms to streamline and automate the process of issuing certificates whenever they are needed from the tool. Automated certification is set to be live this autumn.

5. When are you going to start looking at your certification processes?

We can answer this one for you….now!

With deadlines for so many other pieces of financial services regulation either just passed or pending in the next 18 months - from MiFID II and PRIIPs to IDD and GDPR plus the ongoing unknowns of Brexit - you could perhaps be forgiven for certification not being at the top of your agenda if your SMCR deadline is later this year or next.

But having seen the steps that need to be put in place before you can even start to think about certification, hopefully it's clearer why so many firms who have already been through SMCR tell us they wish they started it earlier.

Getting these certification policies, procedures and processes in place, and feeling confident about what the regulator likes to know, and how to get your hands on that information and evidence quickly, will potentially save you many sleepless nights.

*Speak to us about how our Unicorn LMS SMCR tool could support your firm at www.unicorntraining.com

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Investment in people

By **Andy Snook** from Performance Evaluations

I read an article the other day that suggested that poor management was driving nearly half the UK workforce to seek a new job, citing the three main reasons as being getting better satisfaction elsewhere, getting better remuneration elsewhere, and that nearly a third felt their skills weren't valued by their current employer. That got me thinking about how management in financial services interacts with the workforce, and in particular how much time they spend with their people on an individual basis.

All successful businesses rely upon having the right people who have the necessary skills, aptitude, and attitude, but the people must also be provided with the right environment and tools to ensure that the work is done well. One of these tools is management investing time in the workforce as this is not just one of the primary ways of ensuring compliance but is more likely to identify individual skills that the business can use to both it and the employees' advantage. Unfortunately, over the years I have seen many managers invest very little time in individuals and often this has resulted in them not identifying skills and the employee feeling undervalued. So, the article I read came as no great surprise.

For those managers who are willing to invest time in their people there may also be an unforeseen bonus. Several years ago I remember an employee who had a tendency to deviate from a tried and tested prescribed process that he had to follow. This caused many issues for his colleagues who picked up his work and took it through the next stage.

The manager was a busy person. He had a large team of people to manage and spent a large part of his office time in meetings. Sound familiar? He had a very busy team leader who handled the high-volume day to day work but who physically did not have the time to spend dealing with individuals. In that particular environment the workforce was expected to learn their part of the process and deliver it, and those that didn't often ended up either being retrained, transferred elsewhere in the business, or as a final option were taken down the disciplinary route. Or, they left the business. However, despite his workload and time constraints this manager had different ideas. He'd noticed that this particular employee stood out from his colleagues, not just because he kept deviating from the process, but because of how he conducted himself. The manager decided to invest some of his time on this employee and having made the necessary changes to his diary he sat down with the employee, watched what he was doing, and asked him questions, so that he quickly identified the key points in the process where the deviations took place. The employee was obviously very capable of doing the work, but he didn't follow it to the letter when he felt that his way was better.

The manager noted that something in the employee's ideas of how it should be done that might be worth exploring. He took him over to one of his colleagues who picked up the next stage of the process so they could both see the amendments needed to correct the work. Whilst the principle reason was for the employee to learn why it was important not to deviate from the process, it also allowed the manager to conclude that the deviations the employee was making could actually benefit the process if other changes were made in the following stages, and ultimately when implemented a few weeks later these changes actually saved time.

> “He'd noticed that this particular employee stood out from his colleagues, not just because he kept deviating from the process, but because of how he conducted himself

In any firm a manager is a very busy person, and more often than not wear more than one hat, for example they might be both the Sales Manager and the supervisor, or they might have personal clients as well as a team to manage. However when it comes to Training and Competence it is important to understand that it is not just a tick-box exercise based on set criteria and standards, it's about bringing these to life in everyday work situations and even though it may be very difficult for managers to find the time to invest in the people it's really important, perhaps even vital, that the time is found and spent.

If the manager physically cannot find the time, then they need to find somebody who does have the time. In smaller firms the employees tend to work much closer together and therefore are more likely to be conscious of each other's working habits and any issues arising. Larger firms are more likely to have a Compliance team who perhaps might include a Training and Competence person. If you're a busy manager, and you haven't done so already, you should engage with the Training and Competence person and ask for their assistance. After all, it's not about whether or not you have the time or perhaps the skills, it's about ensuring that the people work to the best possible outcomes and, going back to that article, it's another way of recognising and valuing their skills. At the end of the day, and for that reason alone, it really doesn't matter who picks the investment of time in people up!

The diversity factor

By **Sarah Thwaites** from Thwaites Associates

A hundred years ago British women battled for and won the electoral vote through the Representation of the People Act of 1918. The Act granted the vote to men over the age of 21 and women over the age of 30 who met property criteria. It would take until the Equal Franchise Act of 1928 for women to achieve the same voting rights as men. Equality and diversity issues are still making the headlines across many sectors. Diversity and inclusion are increasingly on the corporate agenda, with research showing that it leads to better decision making and financial performance. A lack of diversity has contributed to financial scandals through the impact of 'group think' and the lack of challenge. Equally, firms who do not embrace diversity are missing out on talent and are less able to relate to their customers.

Diversity and inclusion have an impact on how the industry is perceived by customers, investors, staff, government, and regulators and therefore poses a reputational risk. Government sponsored reports have focused on this subject and HM Treasury's Women in Finance Charter has turned the spotlight on gender diversity in the financial services sector. There are initiatives including the 30% Club campaign aimed at increasing the number of women in executive positions. The campaign is asking FTSE 100 firms to commit to increasing the proportion of women in senior roles to 30% by 2020.

> "The latest research has indicated that the gender pay gap in financial services is significantly higher than the UK average

Risk and regulation

The risk caused by a lack of diversity in financial services has been recognised by the Financial Conduct Authority. In an interview with Financial News in December 2017 CEO, Andrew Bailey said "You can point to the experience of the last 10 to 20 years where problems have been exacerbated by a lack of diversity."

The Financial Reporting Council UK Corporate Governance Code (the Code), highlighted the importance of inclusion and diversity at board level. In proposed changes to the Code, detailed in the December 2017 consultation paper, FRC states "It is, therefore, essential for boards to be made up of competent, high-calibre individuals who, together, offer a broad mix of knowledge, skills, experiences, backgrounds, and personal strengths, including women and individuals from different social and ethnic backgrounds." The revised Code also encourages, for the first time, diversity across the workforce and the development of a diverse executive pipeline. Stephen Haddrill, Chief Executive of the Financial Reporting Council said, "A diverse workforce contributes to more integrity in business and the long-term success of organisations which in turn leads to sustainable growth in the UK economy. In our review of the UK Corporate Governance Code we are strengthening its diversity principles and provisions."

The gender pay gap reporting regulations came into effect 6 April 2017, requiring all organisations in Great Britain with over 250 employees to report on their gender pay gap publicly both on their website and on the Government site, by no later than 4 April 2018 for private and voluntary sectors. About 9,000 companies are expected to be required to report and the vast majority are yet to do so. Companies will be required to report annually to show trends. The UK government says it will also publish sector-specific league tables, highlighting companies failing to address pay differences between men and women.

According to Government statistics, women earn on average 18% less than men in the UK today. This is a measure of the difference between the average hourly earnings of men and women.

Gender pay gap should not be about pay, it is not about firms failing to offer equal pay for equal work, which has of course been unlawful since the 1970's, although firms will wish to continually review their data to identify and address any issues. It is possible to have a significant gender paygap while at the same time being fully compliant with Equal Pay legislation. It has been described as a "Gender Role Gap" and is the result of a number of factors, economic, cultural, societal and educational. Women tend to have more unpaid caring responsibilities and more often work part- time. In the UK there is also occupational segregation, which has a cultural element, for example in Russia over 30% of engineers are women; in the UK the figure is 11%. This disparity starts at an early age when girls drop out of STEM (Science, Technology, Engineering and Maths) subjects earlier than boys. According to the National Audit Office in 2016/17 50% of apprenticeship starts were female, but they accounted for only 8% of STEM apprenticeship starts. It seems likely that the gender gap in maths and technology is related to the under representation of women in financial services.

The latest research has indicated that the gender pay gap in financial services is significantly higher than the UK average. According to analysis by the Sunday Times of the figures published by early March, the pay gap in financial services was 27.1% and the bonus gap 55%; the highest of all sectors. These differentials are expected to increase once the sectors within financial services with traditionally low levels of diversity, such as investment banks, begin to report. Failure to tackle the gender pay gap will damage the industry's reputation both internally and externally and could potentially make it more difficult to attract women to the sector in the future.

Practical approach

The new reporting requirement will require additional work by companies but they also provide an opportunity to engage senior managers in the diversity and inclusion debate. Before looking at solutions it is important to know what the gender pay gap is within your company and what are the underlying causes. The starting point is an analysis of your data, in order to identify where within your firm are the biggest gender pay gaps.

In financial services the data is likely to reveal that women tend to occupy the less senior, lower paid roles. The challenge will be to address this, placing the focus on recruitment, retention and succession planning. Companies will need to review their talent management procedures and processes throughout the employment life cycle.

Recruitment

- Adopt new recruitment practices to address bias, introduce skill-based testing and structured objective scoring.
- Recruit through a wider variety of sources, non- traditional backgrounds and education, work experience, returner programmes
- Are you gender blind, are your job adverts gender neutral?
- If there are particular roles where you have a gender imbalance do you have plans to address this?
- Design jobs to be flexible- part-time, job share, home based.
- Monitor recruitment outcomes by gender, job level and job type.

Promotion and reward

- Review succession and leadership assessment criteria to ensure they are free from bias.
- Review performance rating distribution by gender.
- Ensure you have documented practices and training to support, performance. management, job evaluations, promotion criteria, job moves, development opportunities and pay.
- Introduce sponsorship schemes.

Culture and role models

- Consider your employer brand and highlight flexible working initiatives, mentoring programmes, reverse mentoring initiatives and work-life balance.
- Address the image of the industry and show case its social benefit to broaden its appeal as a career
- Introduce mentoring, sponsorship and development programmes.
- Champion flexibility by promoting role models in senior roles, both men and women

Retention

- Support individuals returning to the industry through returner programmes, including at senior levels.
- Consider flexible working practices and highlight the promotion of flexible workers.
- Review the support you provide to employees with caring responsibilities. Maternity and paternity leave.

Conclusion

Gender diversity is currently in the spotlight but going forward the discussion is likely to move to wider diversity and firms will need a strategy to keep pace with this, making the industry more diverse and building an inclusive culture. Firms are already reporting on their ethnicity pay gaps with the figures reflect a lack of ethnic minority staff in senior roles. We need to start from schools and continue to makes changes through to the workplace. We need to ensure that we have a workplace that works for a diverse workforce, helping everyone to reach their full potential.

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Homes in multiple occupation

Nick Baxter from Baxters Business Consultants

“The Residential Landlords Association predicts that the number affected by the new rules will exceed 170,000 homes

Buy to let investors are becoming used to attacks on their portfolios from a number of different government led actions. First, it was the treating of mortgage interest when calculating tax relief (those changes are beginning to bite as changes are phased in through to 2020). Those changes have made investing in buy to let properties less profitable. Next regulators took action to re-define ‘portfolio landlords’ and how lenders underwrite mortgage applications from such landlords. These changes are making remortgaging and/or buying a house to rent out more difficult. As a result, there are many borrowers who are now finding it difficult to remortgage to a new lender at the end of a fixed or discounted loan, again making the investment less viable. The next squeeze (finalised by government at the end of February this year) comes via a re-definition of a home in multiple occupation [HMO]. This change will lead to a number of landlords finding that they now have to comply with HMO licensing and regulations, which again will increase the costs of owning certain buy to let properties.

The main change appears to be minor, but in reality it will draw many thousands more buy to let landlords into a regime that could subject them to unlimited fines if the rules are not followed. The Residential Landlords Association predicts that the number affected by the new rules will exceed 170,000 homes, and therefore a substantial number of landlords.

At present, a HMO is defined as one that is rented out to at least 5 people who are not from 1 ‘household’, i.e., a family, but who share facilities such as a toilet, bathroom or kitchen. That remains, but the key issue is that the HMO rules only applied to properties that were at least 3 stories high. The rules will now apply to ‘shared’ homes irrespective of the number of floors.

Landlords will have to apply for a licence (which is valid for 5 years), renew their licence before it runs out and hold a separate licence for each HMO. At a high level, landlords new to the licensing regime will need to ensure that the property is suitable for the number of occupants in terms of size and facilities and they will need to ensure the the ‘manager of the property’, either the landlord or letting agent is considered ‘fit and proper’ to manage the property. This means that they must have no criminal record or have breached any landlord laws or codes of practice. All owners of HMOs have to submit an updated gas safety certificate annually to the local council, install and maintain smoke alarms and provide safety certificates for all electrical appliances when requested. Local councils are able to add additional conditions to individual licences – although there is an appeals process via Her Majesty’s Courts and Tribunal Service First-Tier Tribunal (Property Chamber).

Landlords, and those advising buy to let investors, need to consider the full requirements of the document, “Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (2006/371)”. The new rules come into effect from 1 October this year so there is around 6 months to prepare for the change. Many advisers who work with buy to let investors are beginning to contact clients to ensure that they consider the new rules and make the right timely applications if they do. With only 6 months to go it’s time for action.

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

IFAs and the defined benefit promise

By **Henry Tapper** founding editor of Pension Playpen

This article explores the relationship between IFAs and defined benefit schemes, one that has historically been uneasy. It argues that the polarisation of opinion between IFAs who see pensions as "pots" of wealth, and those who regard them as a "wage for life" has never been stronger. This polarisation is present in politics, demonstrated by the differing view on "pension freedoms" at the DWP and Treasury, and present in Regulation, with polarisation between the FCA and tPR's approach to these same issues.

This deep divide is philosophically between those who believe is that the management of financial assets should be a matter for the beneficiaries of those assets (the member) and those who think the creation of a lifelong income, a matter for collective endeavour.

And the fault lines created by these polarised positions are clear to see, wherever you look.

They are apparent from the Work and Pension Select Committee's inquiry into Pension Freedoms, which focused on the divisions in Port Talbot between BSPS members desperate to liberate the wealth in their pension scheme and the Trustees, who were (until recently) oblivious to the demand for "pension freedom".

The fault lines were equally apparent in the disputes between Royal Mail and its membership (represented by the CWU) and the current dispute between USS and its members (represented by the UCU). In both cases, the employer believed philosophically that it was doing the right thing by switching from DB to DC accrual, based on evidence that ordinary people value a pot of wealth rather than a wage for life.

Contrarily, members have said no to a DC pot and held out for a wage for life. In the case of Royal Mail's membership, this will mean an unguaranteed CDC pension and in the case of USS members, a continuation of guaranteed accrual from a DB plan.

An IFA, reading these paragraphs, has every right to be confused. Steel-workers are not normally considered as candidates for wealth management, but with average pots of c£400,000, they proved to be of great interest to a large number of IFAs. Meanwhile, the professors and lecturers who one would imagine financially capable, have gone out on strike, rather than be switched to a DC pension.

The polarisation of opinion cannot be defined on socio-economic lines, nor can it be defined in terms of education. In fact, the pension freedoms seem to be as popular on the streets of Tai Bach as in the City of London.

It now looks likely that once all transfers out of BSPS are completed (some time in April), around £3bn will have moved from “pensions to pots”. This is roughly the same amount that has been transferred out of the Lloyds Bank staff pension scheme and around 75% of the £4.2bn that Barclays have reported moving out of their pension scheme. It was not long ago that KPMG were estimating the total transfers from DB to DC in 2017 would be £6bn. What has happened?

The explosion of transfers that has happened from mid-2016 onwards, cannot be explained by the Pension Freedoms alone. Indeed, in its 2014 impact analysis, the Treasury saw no reason for the changes in the tax treatment of DC pensions as having little to no impact on DB to DC pensions.

Nor can it be considered a function of quantitative easing or the shift of DB assets from equities to gilts. While there may have been a marginal shift (major at BSPS), quantitative easing and the trend for DB pensions to “de-risk”, were established well before 2017.

What I believe has happened over the past eighteen months has had everything to do with adviser confidence, especially confidence in the IFA sector. Underpinning this confidence is the rise in world stock- markets which has seen equity-based wealth management solutions deliver fabulous returns to their customers for nearly ten years. There is a sense among many advisers I speak to, of invincibility in market forces and the power of investments in growth assets to deliver better outcomes than can be achieved from DB pensions.

The second factor that has given advisers confidence, is finding a mechanism to unpick the lock on the CETV, without creating disruption to their client’s cash-flows. I mean by this the practice of conditional charging. By putting the bill for advice at the back end of the advisory process, IFAs can achieve a painless transfer to their wealth management solution that enables them to be paid from a tax-exempt fund without concerns over VAT. It enables clients to release their “DB wealth” without reaching for their cheque book and it is a very elegant solution to the problems posed by the requirement of those wishing to transfer an amount above £30,000, to take financial advice.

There is nothing uncompliant about conditional charging and it is now widely used by the majority of Britain’s 2,500 transfer specialists. However, conditional charging is showing signs of stress. Ten firms have now “voluntarily” handed back their permissions to advise on DB transfers, leaving hundreds of clients orphaned from the transfer process and marooned in DB.

A recent article in the Financial Times, saw the Personal Finance Society’s Keith Richards, claim that Professional Indemnity Insurers were jacking up premiums for those remaining PTS’ and denying some cover. The practice of outsourcing pensions advice to specialist Transfer Value Analysts, has come under considerable pressure from the FCA.

All this is evidence of the deep divide between those who see a pension as a “pot of wealth” and those who regard it as a wage for life. Many advisers, such as John Mather, consider the defined benefit system, so broken, that engineering a route out of DB for clients, is the right thing to do. Meanwhile, the FCA insist that from their sampling in 2017, 53% of transfers examined, contained either questionable or wrongful advice.

The Pensions Regulator and the FCA are at last working together to produce a joint pension strategy. In a recent session of the Work and Pensions Committee, its Chair- Frank Field- suggested that advisers and trustees were living in “different countries”. The same criticism has been made of the two regulators.

> “What I believe has happened over the past eighteen months has had everything to do with adviser confidence

It remains to be seen where this will all end up, few believe that we have seen the end to the DB transfers. The results of SJP, Old Mutual, Prudential and many other providers, suggest that pension providers are now reliant on the massive flows of assets brought to them by advisers. Many advisers now seem as addicted to conditional charging as they were to commission and the FCA and Pensions Regulator, seem powerless to prevent CETVs becoming business as usual.

As always, the analysis of the issue, post-dates it. The transfer from pensions to pots will go on, till a point where either the available assets within DB schemes have been exhausted, or a proper brake has been put on the transfer process, most likely by a Government with the will to ban conditional charging.

In the meantime. we have to hope that those in charge of this new-found wealth, can deliver on their promises.

GDPR – assessing the impact in our world

By **Vince Harvey** from Compliance Cubed

Penalties of up to €20m or 4% of total worldwide annual turnover of the preceding financial year.

This may get the attention of the Board – now what does it mean for training and competence professionals?

The aim of GDPR is clear: Personal data must be processed according to the six data protection principles -

- ❑ Processed lawfully, fairly and transparently.
- ❑ Collected only for specific legitimate purposes.
- ❑ Adequate, relevant and limited to what is necessary.
- ❑ Must be accurate and kept up to date.
- ❑ Stored only as long as is necessary.
- ❑ Ensure appropriate security, integrity and confidentiality.

The key issue will be making sure staff are aware of what they can and can't do. Hopefully, procedures will have been created so that the firm's collection and processing of data is consistent and the privacy policy will have been reviewed. Remember that staff need to understand how the firm will demonstrate compliance with the GDPR. Typically, we're seeing the establishment of a governance structure with roles, responsibilities and detailed records of all data processing operations and procedures.

Larger firms are appointing a data protection officer and carrying out formal data protection impact assessments (DPIAs) others are taking a less prescriptive approach by attempting to answer four questions:

1. What personal information do we hold?
2. Why do we have it?
3. Who has access to it?
4. How long will we be keeping it?

Training – the rules require 'the appropriate data protection training to personnel having permanent or regular access to personal data'. EU regulators looking to enforce the rules will assess training as part of the company's overall commitment to data protection.

The starting point will be to understand the need to identify and document the lawful basis for any processing of personal data. The lawful bases are:

- ❏ Direct consent from the individual;
- ❏ The necessity to perform a contract;
- ❏ Protecting the vital interests of the individual;
- ❏ The legal obligations of the organisation;
- ❏ Necessity for the public interest; and
- ❏ The legitimate interests of the organisation.

Advisers facing clients therefore need to consider the way they frame the fact-finding process. It is likely that in most cases it will initially be the first or second – the fourth may kick in once advice has been provided as records have to be kept to meet regulatory obligations such as complaint handling. As part of the appointment making process or in the initial meeting time should be taken to explain what information will be requested and why – remember that pre-ticked boxes accompanying generalised statements simply will not do. An example of the second base would be someone asking for an insurance quote; they can be asked sufficient information to generate that quote.

They will also need to consider who will have access and explain this to prospective clients. Most providers will be UK based or at least in the EU. Firms need to be confident that, when sending data to other firms (especially in other countries), they have appropriate standards in place. The transfer of personal data outside the EU is only allowed:

- ❏ Where the EU has designated a country as providing an adequate level of data protection;
- ❏ Through model contracts or binding corporate rules; *or*
- ❏ By complying with an approved certification mechanism, e.g. EU-US Privacy Shield.

Would this be picked up in the product research process – does the screening identify firms in other jurisdictions and carry out sufficient due diligence?

Obtaining consent is typically the route where data is to be used for marketing purposes though I have read articles (written by cold calling organisations) arguing that they can use data to meet their legitimate interests. I think it will be clearer if firms are able to demonstrate that they have obtained explicit consent and that it was freely given. Staff need to be aware that information gathered to generate a quote cannot be added to a mailing list for future marketing without consent for that use being obtained. Staff also need to be aware of the right individuals have to withdraw consent at any time.

How do staff react when someone wishes to exercise their right to be forgotten or to correct data held about them? Social media platforms can expect to be bombarded with requests for embarrassing photo's taken while drunk to be removed but what about firms in the financial services sector who have information about an individual's physical or mental health as well as 'normal' data such as name and contact details? Advisers should be aware a right to be forgotten contrasts with a whole range of financial services specific rules, including MiFID II, which requires them to keep records. However, a request to be forgotten has to be considered and reacted to appropriately; the adviser may, for example, have to retain information pertinent to a past transaction but cannot email that person to market a new service.

> “Advisers facing clients therefore need to consider the way they frame the fact-finding process

Identifying a breach – the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data likely to result in a high risk to the rights and freedoms of individuals. This could be violation of dignity as well as physical, reputational, or monetary injury. Staff need to understand that the company only has 72 hours in which to notify the Information Commissioner's Office of a breach. Additionally, without undue delay the clients affected by such a breach have to be notified. Working through specific, firm relevant examples would form part of an effective training programme so that the concept of high risk is clear.

A request to be forgotten or allegations of a breach are likely to be preceded by a Subject Access Request (SAR). The firm and its staff need to be able to furnish information to individuals who request it and do so in a secure and clear format within 30 days (instead of 40 under previous regulations). Helping staff to understand and communicate when a fee may be incurred will be useful. Reasonable fees can only be sought where requests are manifestly unfounded or excessive. The other use you may experience with a SAR is where a client wants to save the time of completing a new fact find by providing a new adviser with a copy of the information they have already provided to another firm. Clearly you could find yourself on either side of this new right to portability of information.

It is clear that GDPR anticipates a lot more detail and engagement between advisers and clients.

How do you take your risk? – EIS?

By **Tony Catt**, Compliance Consultant

I have recently been involved with some Enterprise Investment Scheme (EIS) funds, which is a departure from my usual duties with IFA firms. That is one of the joys of working freelance. But it has given me the opportunity to get under the bonnet of EIS funds and to re-assess the attitudes of IFAs towards EIS funds.

Traditionally. IFAs have considered EIS funds as funds that involve the tax-efficiency tail wagging the investment dog. EIS funds have been considered to be too high risk for nearly all clients and even with the attraction of the tax relief on offer, the risk of loss was still too high to consider seriously for their clients.

So, what has changed? Actually,not a lot – yet. But with the lowering of pension annual allowances and lifetime allowance limits, more clients are reaching the point where they have to consider other tax efficient investments in order to take any tax advantages available. The attraction of EIS has been increased following the Budget with the doubling of the allowances for knowledge intensive based EIS qualifying companies.

> “EIS funds represent an excellent opportunity for EIS fund managers to renew their acquaintance with the IFA community.

Enterprise Investment Scheme

The Enterprise Investment Scheme (EIS) is a UK government tax-relief scheme launched in 1994, as the successor to the Business Expansion Scheme, to encourage private investment into early-stage unquoted companies. Since launch the scheme has promoted over £10bn of private investment and its success has been credited with the governments more recent introduction of the Seed Enterprise Investment Scheme (SEIS), which specifically targets companies in their first two years looking to raise that first £150,000 in funding.

With any EIS investment you can take advantage of the following reliefs on up to £1m of investment made into eligible companies per year:

Tax benefits

There are five current EIS tax reliefs available to investors in companies qualifying under the EIS, which are summarised below:

Income tax relief

- ❏ An individual with no more than a 30% interest in the company can reduce their income tax liability by up to 30% of the amount invested. An EIS qualifying investment must be held for no less than three years from the date of issue, or until three years from commencement of trade, if later.
- ❏ There is no minimum subscription per company and the maximum in respect of which a subscriber may obtain income tax relief in any year is £1m.
- ❏ Individuals may elect to treat their subscription for EIS shares, up to their maximum annual allowance, as if made in the previous tax year, thereby effectively carrying income tax relief back one year. In other words, up to £2m may be invested of which £1m could be applied to the previous tax year.
- ❏ Individuals each have an EIS allowance of £1m, so a married couple could invest up to £2m per tax year.
- ❏ Income Tax Relief is limited to the amount which reduces the individual’s income tax liability for the year to nil. Example

Capital Gains Tax (CGT) exemption

- ❏ No Capital Gains Tax is payable on the disposal of shares after three years, or three years after commencement of trade, if later, provided the EIS initial income tax relief was given and not withdrawn on those shares. However, the shares can be held for much longer, thus potentially permitting CGT free gain to accrue over a longer period. The opportunity for a CGT free gain can be an extremely valuable benefit from subscribing for shares in a successful EIS qualifying company.

Inheritance Tax (IHT) Relief

- ❏ Shares in EIS qualifying companies will generally qualify for Business Property Relief for Inheritance Tax purposes at rates of up to 100% after two years of holding such investment, so that any liability for Inheritance Tax is reduced or eliminated in respect of such shares. For a simple example of the impact of IHT relief.

CGT Deferral Relief

- ❏ Tax on capital gains realised on a different asset can be deferred for as long as the EIS qualifying shares are held or even indefinitely, where disposal of that asset was less than 36 months before the date of the issue of shares in the EIS investment or less than 12 months after it.
- ❏ Deferral relief is unlimited, in other words, this relief is not limited to investments of £1m per annum and can also be claimed by investors (individuals or trustees) whose interest in the company exceeds 30%.

Loss Relief

- If EIS shares are disposed of at any time at a loss (after taking into account income tax relief), such loss can be set against the investor's capital gains, or his income in the year of disposal or the previous year.
- For losses offset against income, the net effect is to limit the investment exposure to 38.5p in the £1 for a 45% tax payer, if the shares were to become totally worthless.
- Alternatively, the losses can be offset against Capital Gains at the prevailing rate 28% as applicable.

30% tax relief – what can go wrong?

Surely, if the investment is starting 30% up, it should be able to produce great returns. And indeed, it would need to lose more than 30% for the investor to start losing. However, we need to consider the nature of the underlying companies receiving the investment.

EIS funding is typically used by new companies starting up. More than half of new businesses do not survive beyond five years, with the UK tax system, a lack of bank lending and the cost of running a business cited as the top reasons for failure.

Once their businesses are up and running, owners are also struggling to plan for the long term. Some 61% of the 160 business owners surveyed (Telegraph 2014) said they lack confidence in their ability to achieve three years' consecutive growth.

I understand that some EIS fund managers are offering a support system for the companies receiving their money. This could be fund managers being represented on the company boards or even mentoring, marketing and other support functions to increase the likelihood of success of the fledgling companies. This is a positive development for EIS funds.

Past Performance

Strangely, although EIS has been in existence since 1994, there does not seem to any history of past performance for IFAs to be able to be confident to advise their clients to invest. By the nature of the early stage companies, EIS funds tend to be quite short-term.

Also, unlike Venture Capital Trusts (VCTs), there does not appear to be any dominant fund managers, like Octopus Investments for VCTs in the field of EIS. This lack of a dominant fund manager is unhelpful to IFAs, who may be less familiar with the EIS offerings. If there were a fund manager with acknowledged consistent success, then IFAs would be more comfortable.

Attitude to investment risk

On the basis that EIS funds represent a high level of investment risk, due to the nature of early stage investment in start-up firms and the risk of failure, how do advisers assess whether their clients are able to accept the risks involved?

I have seen attitude to risk questionnaires completed that show the clients' tolerance to be suitably high to invest in EIS. I guess that this could be a way of assessing their attitude for this particular tranche of money to into EIS. But what a painful waste of time for the clients. Filling in ATR questionnaire is painful as the questions are so generic, but complicated and unfocused towards the clients.

The main priority is to record that the clients understand the risks involved and can afford total loss on this part of their wealth. Since EIS should only be considered as part of a much larger and wider investment portfolio, this should be the cherry on top of the cake to spice up the portfolio rather than a major ingredient. Therefore, rather than a bland questionnaire, a nice file note outlining a genuine explanation and discussion would be far more in keeping with Treating Customers Fairly.

The time may be right

With the reducing levels of pension allowances, then clients will be looking at alternative tax-efficiencies. The increased allowances for knowledge intensive EIS funds represent an excellent opportunity for EIS fund managers to renew their acquaintance with the IFA community.

If the EIS fund managers can tell a good story of support to maximise the chance of success of the early-stage companies, then the risk may be considered to be lowered to levels that would be acceptable for the retail clients of IFA firms.

Preparing for the senior managers and certification regime

Ian Jerrum from Searchlight Insurance Training

> "Senior managers are expected to set an example, and should in turn expect to be made an example of if they don't set a good one!

The Senior Managers and Certification Regime(SM&CR) is currently expected to come into effect on 10 December this year for insurers.

In the last couple of years dual-regulated firms involved in banking and investments have, by necessity, become well versed in the ways of SM&CR, whilst those running and influencing insurance companies have had to adapt to living with SM&CR's somewhat eccentric cousin, the Senior Insurance Managers Regime(SIMR), which seeks to accommodate the senior management accountability requirements of Solvency II. Meanwhile solo-regulated firms – such as insurance brokers – have been left largely undisturbed to enjoy the cosy familiarity of the Approved Persons Regime (APR).

Clearly it makes little sense for the financial services sector to be running three accountability regimes concurrently, and it was probably inevitable that the regulators would want to bring all firms back onto a single track (or at least a version of it).

The upshot is that solo-regulated firms must start preparing themselves for life under SM&CR. Fortunately, the regulators have remembered the word 'proportionality.' So although all firms will come under SM&CR's banner, there will be different degrees of compliance according to the size and type of firm. For larger and more complex firms, an 'Enhanced Regime' will apply, with the remainder falling under the 'Core Regime'.

The Core Regime consists of three main elements. Firstly, there's the 'Senior Managers Regime'. Effectively this is APR given a make-over and retaining the requirement for those being appointed to Senior Management Functions to be pre-approved by the FCA.

So far, so good? Well, it does have a reassuringly familiar feel to it, although some of the finer details such as mandatory DBS checks and the requirement to provide FCA with details of a senior manager's roles and responsibilities are new to the game.

The big changes come when we look at the organisational hierarchy beneath those performing Senior Management Functions. Here we inevitably find a layer of managers and influencers whose jobs mean that they can have a big impact on customers, the firm and/or market integrity. Those who populate this space will come under the Certification Regime.

The Certification Regime brings with it the requirement for firms to certify the fitness and propriety of those performing Certified Functions, once a year. The FCA does not get involved in this process, nor does it pre-approve Certified Function holders when they are being appointed. From the feedback I've received from those contacting Searchlight for advice and assistance, Certification is the one part of SM&CR that is currently causing solo-regulated firms quite a few sleepless nights, as they grapple with the task of identifying who within their organisations will need to be certified.

Firms will need to keep the regulator fully informed and should be prepared to have their homework strictly marked – so proper governance around making and recording decisions is as important now as it's ever been.

As anyone who's been paying attention over the past few years will know, 'Conduct' and 'Culture' sit at the very heart of regulation today. So, we shouldn't be surprised that Conduct Rules form SM&CR's third element and can be seen as the binding agent that holds the rest of the structure together.

The Conduct Rules are made up of two tiers. Tier 1 applies to all staff at all levels above so-called 'ancillary roles' - such as cleaning, maintenance and reception staff. This brings with it a requirement to make sure that all relevant employees are familiar with, and obviously comply with, the regulator's expectations regarding standards of professional behaviour and conduct. Ensuring this knowledge is properly communicated and that awareness is maintained should be a key training priority for insurance brokers.

The more onerous Tier 2 rules apply only to Senior Managers and Certified Function holders. The regulator has been at pains to ensure that the burden of individual accountability falls squarely where it belongs: on the shoulders of those at the very top of an organisation's hierarchy, who should be actively promoting an appropriate business culture and setting the standards of professional behaviour that all employees should be required to meet. The FCA's message is clear - senior managers are expected to set an example, and should in turn expect to be made an example of if they don't set a good one!

At this stage, the definitive shape of SM&CR has yet to be buttoned down, although a good idea of its outline can be gained from the FCA's and PRA's respective output on the subject, covering those who are dual-regulated under the current SM&CR and SIMR regimes and those who are solo-regulated under the current APR.

So, if you're a solo-regulated firm what steps should you be taking now?

You will need to familiarise yourself with the FCA's output on the subject, then review your firm's current approved person arrangements in light of this. You should also pay close attention to the requirements of the Certification Regime, who within your firm falls within its scope, and why. You may conclude that the number of senior manager function holders (i.e. what were formerly Approved Persons) reduces. However, there will be a new layer of Certified Function holders who must be identified and administered accordingly. This is likely to have an impact on your systems and controls, particularly around maintaining HR and training records.

Careful thought should also be given to the awareness training that all relevant staff will need around conduct rules and what these mean to them in terms of their day to day role.

> “Certification is the one part of SM&CR that is currently causing solo-regulated firms quite a few sleepless nights, as they grapple with the task of identifying who within their organisations will need to be certified

Carillion: "It's just words, isn't it?" Lessons from an unintentional demolition

By **Phil Ingle** from Phil Ingle Associates

If you are involved in the biggest demolition job in over a decade, you can expect that it will take a while for the dust to settle. Since the liquidation of Carillion announced on 15 January, the cloud of dust still hangs over this corporate collapse, with considerable debate over the manner of its falling, the timing and the causes.

> "In 2018 this is what can happen for directors and non-executive directors everywhere in the face of failure

Like most corporate collapses, Carillion ultimately ran out of cash. With allegedly some £29 million of cash to meet some £1.5billion of liabilities, some might ask why the warning signs were not seen sooner. This situation had built up over a long period, and it would now seem that Carillion's history of bidding for contracts on thin margins, possibly endemic in the construction and services sector, combined with problems in receiving payment from troublesome contracts, has led to its downfall. But what lessons can be learned from the manner of its falling, and the way in which this corporate failure is now being assessed? In the immediate aftermath of the liquidation announcement, there was a predictable response in the media covering the undeniable hardship that this caused to employees and subcontractors. Failure in the construction industry is not new, and Carillion's payment terms had been lengthening over the last 18 months also. This was seemingly well known throughout the industry, yet there were also people who were unaware of the depth of Carillion's plight.

Yet some were anticipating of the seriousness of the situation. Some Institutional Investors were forecasting problems ahead, and its shares frequently featured in the most shorted shares throughout 2017, according to the weekly list compiled by Money Week magazine. Clever foresight or the opportunity for a quick buck in falling market?

The position with its banking covenants was publicly acknowledged, and reported in the Financial Times on 17 November 2016, when the company announced that it would breach of its banking covenants on 31 December. A clear warning sign, although not one much discussed outside the financial media.

Despite the awareness of the situation with some groups, many remained in the dark about the depth of the problem. In early December a participant in one of my finance training programs shared with us that they were a subcontractor to Carillion. When they noticed me turning a whiter shade of pale at that news, they asked what the problem was, as Carillion was a large company, they had worked with them for years, although they had recently taking taken to paying later than usual. At that time, they were waiting for payment on £120,000 of outstanding invoices, this for a company with a turnover of some £3 million. They were unaware of the news in the Financial Times. (I understand they received a payment of some of that money owing before 15 January, but they have still lost a significant sum.) Having worked with Carillion for a considerable period, they thought the size and regularity of the work, and nature of their payment was just normal. An expensive lesson, which for some subcontractors will be terminal.

If the view from the ground was somewhat cloudy, the view from the bridge (or at least the boardroom) appears little clearer. The appearance by former CEOs, FDs, a chairman and a remuneration chief in front of the MPs from the work and pensions and business select committees on 7 February, showed what appeared to be members of a board who had rarely met, let alone worked together to successfully run a business. This was arguably not helped by the MPs present sometimes looking as though they were point scoring for political purposes rather more then seeking an in-depth rationale for business failure. This may be understandable because by this stage there was little that could be done apart from apportion blame. As business select committee co-chair MP Rachel Reeves said, "All of you are sitting here, multi-millions of pounds of payment from the company over a period of years and you say how 'sad' and 'disappointed' you are, but what actions do you take to show that? It's just words, isn't it?"

This was matched by chairman Philip Green who accepted "responsibility, but not culpability". Here lies a lesson: the much-heard phrase about your actions, and how they look when spread across the front page of the Daily Mail. In this instance the reflection upon the Carillion board both past and present was not flattering. In 2018 this is what can happen for directors and non-executive directors everywhere in the face of failure. It is not just the failure that is the problem, but they desire for some sense of justice even where there is seemingly no criminal wrongdoing. As David Price from Construction News puts it the select committee hearing "feels more an exercise in justice being seen to be done, rather than anything actually being done."

Another elephant in the Carillion room is the role of the auditors, KPMG, who signed off Carillion's accounts without qualification. The issue of the accounts and the picture they have painted remains a painful one. Even some banks were taken in by the gloss which may have been applied to Carillion's situation, as several them have now confirmed that they have lost money because of the liquidation. The role of the auditor is now also receiving the attention of the Financial Reporting Council, and they too are now looking into possible miss conduct by former finance directors Richard Adam and Zafar Khan. Here a further lesson emerges: the problem the watchdog faces in not just barking, but administering a bite. And one of their perennial issues, namely that they can only apply a bite after an event, and rarely in anticipation, let alone prevention of the problem.

The FRC and arguably government will also consider the nature of the audit market, with a concentration of 4 large firms, all of whom have seen issues without auditors' warnings – not just Carillion but BT's Italian unit, and Steinhoff of South Africa, to name just the largest headline grabbers.

With the enormous cloud of dust still settling on the largest corporate collapse in the UK for over a decade, some could see the situation coming, but perhaps not those who were most vulnerable to it. The directors, and especially the finance directors, are firmly in the spotlight for either not sounding the alarm, or blindly carrying on in the face of warning signs. When failure occurs, it may not just reflect the culture of the company, but also a reflection of the way in which society needs justice to be seen to be done.

If you are a company director or a regulator, prepare for the decisions you take today to be seen in the light of the media spotlight tomorrow.

Starter for 10 – answers

1. What is the cube root of a million? **100** (100 x 100 x 100)
2. The first Hilton Hotel, built by founder Conrad Hilton in 1925, is in: New York; Dallas; London; or Milton Keynes? **Dallas**
3. A trattoria is an informal Italian: Dance; Opera; **Restaurant**; or Wedding? Restaurant
4. 'Dailies', raw footage shot/reviewed daily to check quality in film production, is also called: Fasts; Quicks; **Rushes**; or Hurries? Rushes
5. What is arguably the first globally popular rock musical, 1970/71: Starlight Express; Jesus Christ Superstar; Miss Saigon; or Cats? **Jesus Christ Superstar** (album 1970, Broadway debut 1971 – a few earlier rock musicals did not become globally popular – Separately, Godspell is c.1970/71 too and could be argued the first, depending on criteria)
6. The ocelot, caracal, oncilla, and margay are wild: Cats; Dogs; Pigs; or Horses? **Cats**
7. Potable refers to (What?) that is safe to consume: Meat; Water; Bread; or Drugs? **Water**
8. What Indian-English word for a light lunch or afternoon tea is also a traditional confection of biscuits, syrup, cocoa, raisins and chocolate? **Tiffin** (derived from the old word 'tiffing' = drinking, especially tea, being the English/colonial Indian custom at that time of day)
9. The world's largest arts festival, each August, founded 1947, is called/abbreviated the Edinburgh Festival: Border; Edge; Fray; or Fringe? **Fringe** (named 'Fringe' in 1948 referring to using many dissipated venues – the 2016 Fringe offered over 50,000 performances in nearly 300 venues)
10. Russian/Bulgarian okrug/okrag, and German bezirk refer to an area of: Red brickwork; Nudist beach; Territorial administration; or Uncertainty? **Territorial administration**
11. Neapolitan ice-cream is traditionally which three of: Chocolate; Banana; Strawberry; Coffee; Vanilla? **Chocolate, Strawberry, Vanilla**
12. What universal building construction/repair system derives its name from catafalque, Old French, a coffin support? **Scaffold** (or scaffolding)
13. The expression 'Step up to the plate', meaning accept a challenge, derives from: Catering; Baseball; Railway; or Seismology? **Baseball** (the plate is the home base marker on the ground where the batter stands to receive the pitched ball)
14. A pachyderm refers to an animal of which two characteristics: Wings; Large size; Thick skin; or Several Eyes? **Large size** and **Thick skin** (e.g. elephant, rhino, hippo)
15. Murres, guillemots, auklets, and puffins are: Jewellery fastenings; Sea birds; Punctuation; or Cloud formations? **Sea birds** (of the auk family)
16. Which vast online non-profit organisation was launched in January 2001 by Jimmy Wales and Larry Sanger? **Wikipedia**
17. The mixed food of Near East/Balkans/Central Asia (Persian for 'taste or snack') is: Thali; Tapas; Meze; or Smorgasbord? **Meze** (or Mezze)
18. Capo and Gitano are terminology in which sort of music: Country; Flamenco; Opera; or Military marching? **Flamenco** (a Capo alters the tuning of a guitar, and Gitano is a broad reference to the Spanish Romani gypsy/culture, which is the Flamenco origin and character)
19. Harvard and Yale Universities are respectively in: Massachusetts and Connecticut; Washington and New York; California and Arizona; or Texas and Alabama? **Massachusetts and Connecticut** (in Cambridge city, and New Haven municipality)
20. Attempting to make a person believe he/she is going insane by secretly moving/changing things is called (What?) after an Oscar-winning 1944 film? **Gaslight** (or Gaslighting – the film was called Gas Light – because the villain kept altering the gas lighting in the house, among other methods of perplexing the victim)
21. What yellow-green gas element is most commonly/historically used in water disinfection? **Chlorine**
22. An olfactometer measures intensity of or sensitivity to: Taste; Light; Smell; or Sound? **Smell**
23. Metaphorical encouragement to take as much as you want, typically from a surprising plentiful availability, is "Fill your (What?)": Suitcase; Bags; Boots; or Trousers? **Boots**
24. In the book publishing industry, unsolicited manuscripts from hopeful writers are informally called the: Cabbage leaves; Slushpile; Haystack; or Bin-tray? **Slushpile**

Unintended consequences

Julia Kirkland,
Partner in FSTP

> It is the most radical change in funds business since the introduction of the UCITS Directive back in the 1980's

In February the European Commission issued a number of public notices and letters to UK Asset Management businesses alerting them to the practical consequences of BREXIT on funds issued by banks, asset managers and insurance companies. These notices advised that from the 30 March 2019;

- ❑ UK UCITS funds and AIFs will become non EU AIFs (Alternative Investment Funds)
- ❑ UK UCITS management companies and AIFs will lose their passporting rights and will be treated as 'third country' AIFMs (Alternative Investment Fund Managers)
- ❑ UK AIFM/UCITS management companies will be treated as a branch of a non-EU AIFM

The EC's Directorate-General for Financial Stability, Financial Services and Capital Markets Union letter to asset managers said *"In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, stakeholders, including managers of investment funds and investors are reminded of legal repercussions which need to be considered when the United Kingdom becomes a third country."*

What does this all mean and is it important? I would venture, it is the most radical change in funds business since the introduction of the UCITS Directive back in the 1980's and yes it does matter.

Let's just take a step back for a moment. The UK funds business employees 90,000 people and contributes 1% to the national GDP; it is an important part of UK plc.

Currently under EU rules UCITS funds and their managers must be established and registered or authorised in the EU to manage and more importantly market funds to retail and professional investors across EU.

Will the decision to automatically treat UK UCITS funds and AIFs as third party AIFs impact UK retail investors? Well, if the EU investors withdraw their funds, I would suggest yes. Many significant EU pension funds are unable to invest in non UCITS funds, similarly many investors from the Middle East and Hong Kong have always sought to invest in EU UCITS funds (including those managed and authorised in the UK) because of the control over the investment and borrowing powers imposed by UCITS compliance. The potential withdrawal of these funds could, in some instances, have a significant impact of the funds.

The EU commission is already advising EU investors to review their own investment criteria and consider their compliance with the legal status of the funds they are invested in. The notices did point out that UK firms may still be able access EU investors through National Private Placement Regimes (NPPR), which allows firms to agree a deal with national regulators, on an individual basis, in order to access their markets. However, NPPRs were due to be withdrawn prior to BREXIT and now it appears individual EU member states will have discretion over whether or not to activate NPPRs. What we can say about this, is that it is not likely to be a priority in light of all the other decisions that member firms will need to take in relation to dealings with the UK in the future.

The Central Bank of Ireland is already reporting significant inflows of applications for new Irish AIFMs and UCITS management companies.

I don't know about you but I didn't see any of this written on the side of a bus in 4 foot high letters. Of course, thinking about this can we go back to feet and inches and pounds and ounces come March 2019?

fstp financial services training partners

How do you set your goals?

By **Jane Pitt** from RedTree Training

Like most of us, in the last couple of months you've probably been through the appraisal process. You know, that time when you sit down with your line manager and negotiate what rating you have achieved and then agree some goals for the coming year. For some of you, I expect this is a very natural process but for some, this can be more of a challenge. I know this, because I am one of those for whom setting goals is a real challenge.

> Did goals always have to be about the destination or could they be about the journey?

It never used to be that way. I can remember sitting in a training room on my first Financial Adviser course and being asked to set my personal goals for the next 5 years. I duly sat there and imagined myself in five years' time and visualised what was around me; what I wanted to achieve. This was quite easy for the 24-year-old me; I wanted to live in a detached house, drive a convertible car and have at least two foreign holidays a year. I then worked through how much I needed to earn each year to achieve this and broke down my five-year plan into smaller goals.

Fast forward nearly 20 years and to a discussion with a fellow consultant who was embarking on a different pathway. We were discussing how our two business could work together when he asked 'what are your goals; what do you want to achieve for your business from our partnership? For once, I couldn't provide him with an answer, but it was a lightbulb moment for me. I hadn't thought about my personal goals since I had achieved all of those I had set as a keen 24 years old. I had had some great development conversations and agreed objectives for many projects and contacts since then, but I hadn't actually thought about my personal goals. Worse still, when I sat myself down and tried to visualise where I saw myself in 5 or 10 years' time, each time a vision came into view, the veil of reality quickly followed. I realised that since achieving those early goals, life had just 'happened' to me. The pathways I had trodden weren't proactive steps towards achieving a goal but more reacting to events that had happened.

Now I know I'm sure I'm not the only one facing this problem, so I started to do some research on setting goals, but time after time it led back to the familiar instruction – start by thinking about what you want to achieve. That was my sticking point…I didn't know what I wanted to achieve. Did goals always have to be about the destination or could they be about the journey? A goal is defined as an idea of the future or desired result that a person or a group of people envisions, plans and commits to achieve within a finite time. Similar to a purpose or aim, the anticipated result guides the reaction. So, what about instead of starting by identifying what I wanted to achieve, I thought about what I needed in my life in order feel happy and fulfilled? Could these ideas still be defined as goals?

The good part of having to tread reactive pathways is that you do get to learn which ones you like enough to choose to walk again. I considered the following questions:

- ❑ What activities bring a smile to my face?
- ❑ What activities do I like to spend the most time on?
- ❑ What activities am I typically doing when I enter the zone?
- ❑ What are the ones I really have to force myself to stay focused?
- ❑ What environment works best for me?

Answering these questions was so much easier; thinking about the journey instead of the destination was so much easier. This way I could begin to assemble the different elements of my journey but instead of having a defined end point, I had a series of components that I would achieve, still within a finite time, but I wasn't defining my final destination. I could still create my vision board as I already had the pictures and words to represent the experiences, items and feelings I wanted to attract into my life. The pictures already spoke to me on an emotional level as they were what I needed in my life in order to feel fulfilled and happy. The whole picture was my goal instead of one or two specific destinations.

So next time you feel like the guy I observed in the office I have recently been working in, who said that if we couldn't find him at any point that day, we were to go look in the pond because defining three personal goals for the year ahead was driving him to distraction, maybe consider the journey instead of the destination. After all, a goal can be as simple as 'taking a 20-minute walk at lunchtime three times a week consistently for 90% of the working year'. It is after all still specific, measurable, achievable, realistic and timely, and it can be evaluated and reviewed. Therefore, in my book, it is still a goal. And just think, if we all managed to achieve this goal, how much we would improve our wellbeing – a subject I'll save for another time.

GDPR - The People Dimension

Digital training and compliance apps to help you protect your business

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Online compliance training designed to encourage the right behaviours. We can help you to reduce risk and safeguard your business. Created in partnership with industry experts, our training is designed to develop the right behaviours and deliver better outcomes for consumers.

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