For People Development and People Regulation Personnel within Financial Services

T-C NEWS

COMPETENCE • EXPERTISE • PROFESSIONALISM

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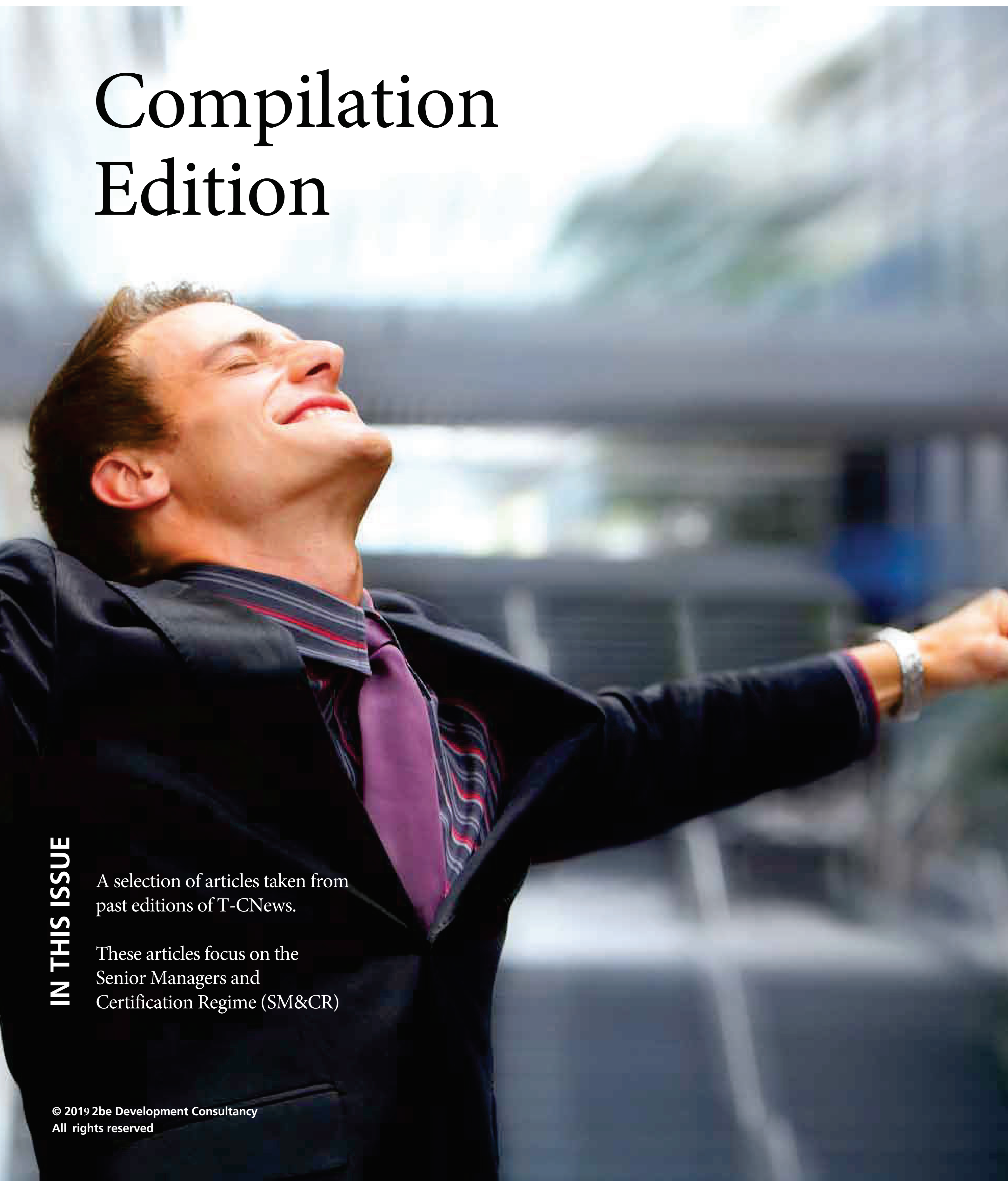


Compilation Edition

IN THIS ISSUE

A selection of articles taken from past editions of T-CNews.

These articles focus on the Senior Managers and Certification Regime (SM&CR)

Should we fear the arrival of SM&CR?

By **Vince Harvey** from Compliance Cubed

We're seeing a range of businesses offering courses and consultancy around the Senior Managers and Certification Regime. My view is that for larger organisations this may well be helpful but for most firms, if they are already reasonably well organised, there shouldn't be a great deal to change.

With implementation due by 9 December there are still a few months to identify any challenges and adopt some key measures – as usual watch out for the potential unintended consequences that may arise as you go through the implementation process.

> "One thing to be clear about is that SM&CR doesn't mandate additional reporting and monitoring mechanisms and certainly shouldn't lead to an increase in compliance or T&C costs. That is, for firms which are already well-organised!

1. Impact of statements of responsibility

Senior managers will have their names placed alongside specific responsibilities. Some people have concerns that this may change the way in which they work, particularly their interactions with those above and below them in the hierarchy. If they adopt a more focused oversight of areas for which they are accountable, there is a risk that those with previously devolved responsibility may find themselves in an environment where they have less autonomy.

Firms should look at what works currently and only bring in closer management or stricter processes where they serve a business purpose. Inappropriate changes and increasing bureaucracy, particularly with experienced staff, can lead to resentment if their scope for decision making is reduced.

I think it is helpful to remember that the SM&CR was originally brought in at a specific point in response to the financial crisis and applied to large organisation such as banks and insurance companies. It was felt that in many of these businesses there was a lack of accountability; when something went wrong it was too easy for senior managers to say that it wasn't their responsibility. Now there will be a document that confirms exactly who is responsible for what.

One thing to be clear about is that SM&CR doesn't mandate additional reporting and monitoring mechanisms and certainly shouldn't lead to an increase in compliance or T&C costs. That is, for firms which are already well-organised!

Calm down and carry on as the slogan goes. The senior managers of firms should already have a proportional approach which encourages people to build their knowledge and skills. The required training is to ensure that senior managers have an understanding of the Conduct Rules.

New Conduct Rules

A new two-tier set of conduct rules have been developed:

Tier 1 applies to all employees subject to the conduct rules, and they are as follows.

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

Tier 2 applies to senior managers in a senior management function, and they are the following:

- ❑ Rule 1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
- ❑ Rule 2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- ❑ Rule 3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- ❑ Rule 4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

Given that it takes seconds to read these I imagine that this training will take the form of a discussion rather than death by 'powerpoint'. For example: What does integrity look like in our business? Perhaps a more challenging debate will be had around 'reasonable steps' in three of the four rules for senior managers.

2. Impact on staff

I accept that there may be concerns here: do your employment contracts cover the issue of someone failing to maintain competence or meet the fitness and propriety requirements? Again, good firms have invested a lot of resource into building the quality of the team and shouldn't have major issues in this area. Does the outcome of a breach of the conduct rules need to be explained further – or documented in an amended employment contract?

Good firms will already have mechanisms in place to minimise the likelihood of unfair dismissal claims or challenges over the content of references – note more detail has to be provided under SM&CR than just job title and dates. As ever good record keeping is at the heart of this. T&C/compliance personnel should be having a conversation with their colleagues in HR to ensure a joined-up approach.

3. Impact on the firm's risk appetite

This takes us back to the training: how does the firm's overall view get reflected in the style and preferences of each manager? Given personal accountabilities, senior managers are closer to the business activities they are responsible for and are likely to be best placed to identify the key risks to them. The larger the business, the greater the effort to make sure senior managers and certified individuals are able to communicate in a way that builds and is aligned to the overall risk appetite framework.

The strapline of my business from its inception has been right people, right systems, right outcomes. SM&CR is built on this idea – clarifying that those people need to be in the right roles. In achieving the right balance firms should consider whether responsibility and accountability are spread across an adequate number of people. Some of my clients illustrate the humour generated by the FCA taking an idea that was built for very large organisations with multiple layers and applying it to one man bands – with a list of specified responsibilities to allocate: who gets to do what??

Summary

As I have tried to indicate regulated firms will have existing processes and procedures in place that can support SM&CR implementation and compliance. Many are doing what is required already – so use the existing infrastructure with a few tweaks rather than engage in massive disruption.

Remember proportionality, look at your own business and what reassurance you need that the firm is being well managed with the interest of clients at its heart. The rest is paperwork – have fun designing the certificate for each person covered by the certification regime.

INDUSTRY NEWS

FCA calls on consumers to act now as PPI complaints deadline pressure builds

With just over two months to go until the 29 August 2019 PPI complaints deadline, the FCA is urging all UK consumers to make a decision, before it's too late, about whether to complain about PPI.

As part of this final leg of the campaign, the FCA has recruited its own 'Pressure's on Panel' of ambassadors. The hand-picked panel come from a range of backgrounds and will be leading the charge in reminding consumers across the country that they need to make a decision on PPI before it's too late. The panel features 90s icon Mr Motivator, partners such as the Money and Pensions Service, personal finance expert Sarah Pennells, and expert bloggers like Skint Dad – all of whom will be providing support across the summer.

The campaign comes as FCA figures released today, show the regulator has had more than 3.9 million users access the PPI website and 44,000 calls to their dedicated contact centre. On top of that, a total of £334.3m was paid in April 2019 to customers who complained about the way they were sold PPI. This takes the amount paid since January 2011 to £35.3bn.

To emphasise how pressing the deadline is, the FCA has brought back the animatronic head of Arnold Schwarzenegger for the final time in a campaign that will run nationwide across the summer. These latest ads feature Arnie in a hydraulic press, urging people to take action on PPI before it's too late. As the deadline approaches, the series of advertisements will gradually reveal Arnie's fate.

Emma Stranack, FCA's PPI Deadline Campaign Lead, said: "With just over 10 weeks to go, time is running out to claim back money for PPI. Simply put, if you haven't complained to your provider by 29 August 2019, you won't be able to claim money back for PPI – so you should make your decision as soon as possible. Checking if you had PPI is simple and free. Don't worry about paperwork, you only need your date of birth and relevant previous addresses. Search FCA PPI or call 0800 101 88 00 to find out how."

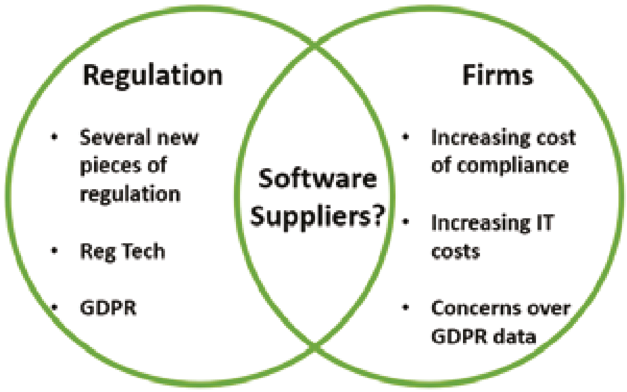
Personal finance expert and consumer champion, Sarah Pennells said: "The PPI deadline is fast approaching – so now is the time to contact your bank, loan or card company as soon as possible. You can complain to them directly for free and you can use the FCA's website for more information. You don't have to use a claims management company as providers are supposed to make sure that complaining about PPI is straightforward. I am working with the FCA to help remind consumers that now is the time to decide whether or not to make a complaint before the deadline on the 29 August 2019."

Consumers who haven't complained to their provider by 29 August 2019 won't be able to claim money back for PPI. FCA support is available online at fca.org.uk/ppi or by calling the FCA helpline on 0800 101 8800.

Which regulatory software suppliers should firms trust?

By **Andy Nightingale**, Managing Director, from Worksmart Limited

Extensive change has been happening and continues to happen in the world of compliance. Major new regulation has been 'landing' for several years now and with SM&CR, the regulatory net is spreading wider than ever by the end of 2019. As firms adapt their business models and compliance teams race to align their processes in line with these regulatory demands and business model changes there has been quiet, but equally powerful, change in the demands asked of firms supplying regulatory software to UK financial services. However, before I expand on these changes, let me explain a little bit more these regulatory pressures.



The market challenges

The regulatory change has increasingly been introduced over the last few years, starting with Mortgage Credit Directive (March 2016), Markets in Financial Instruments Directive II (MiFID II, January 2018) and Insurance Distribution Directive (IDD, October 2018). Running through this has been the Senior Manager & Certification Regime (SM&CR) regulation which came into force for banks in March 2016 and Insurers from December 2018, it will be extended across financial services later this year (December 2019). This has not only caused firms to review and adjust their business models several times over, inevitably it has increased the level and cost of the additional compliance oversight. Running alongside all this has been the General Data Protection Regulation (GDPR - May 2018). GDPR may not have had quite the same impact as the other regulation on compliance, but it has had a major impact on their IT teams as they work out the practical impact of the GDPR regulation and their responsibilities regarding the information they hold, their relationship to that information, (i.e. data owner versus data processor), and adjust their management of the information in line with the new rules. Not exactly headline news, but GDPR has had a significant impact on IT in the last eighteen months. Alongside this the FCA, aware of the increasing cost of compliance, has been focusing on and promoting Reg Tech (a new field in financial services which utilises information technology to enhance regulatory processes and reporting). The vision is that managing regulation and reporting on performance against that regulation should harness technology to simplify and reduce the cost of compliance.

Combined, these regulatory changes and the aspirations of Reg Tech ask serious questions for the firms providing regulatory software.

Software suppliers' ability to recognise these challenges and come up with clear and cost-effective answers will define which suppliers financial services organisations should partner with over the next few years.

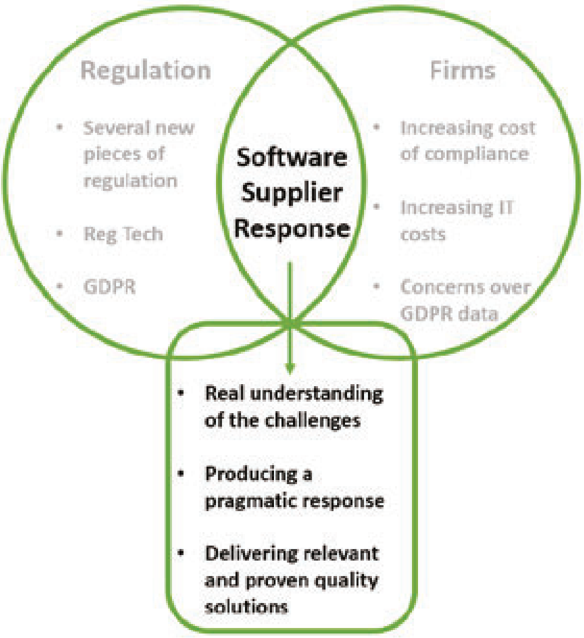
Software supplier's responses

In a competitive market, software suppliers have no choice but to 'front up' to these challenges. But what differentiates the average from market leading suppliers are three things; the understanding of these challenges, the commitment to producing a pragmatic response and the quality of solution in overcoming these challenges. Taking each in turn;

Understanding the challenges

It is easy for software suppliers to read the new regulation, make their own interpretations of what these rules mean in practice and adapt their products and functionality accordingly. The real challenge is to go far deeper and actively engage with both customers and trade bodies to understand how different financial services firms are interpreting the new rules and the challenges it's creating for them specifically. All firms have different operating models, different mixes of IT systems, different compliance and IT standards and so on. Good software suppliers need to demonstrate a true, empathetic understanding and be brave enough to challenge through real practical experience, asking the questions and be ready to accept the multiplicity of answers they will inevitably get back.

This is particularly the case in a post GDPR world as organisations, faced with rising internal IT costs, are increasingly attracted to cloud based regulatory software solutions. However, with this increased level of interest, software suppliers are faced with increasing expectations as they must take on the responsibilities of data processors. As a result, suppliers face an increasing level of scrutiny about their cloud/hosting capabilities and their own internal processes, standards and controls. Long gone are the days of 'install it on the customer's site and walk away'! That is why it's not about the software product anymore. Firms buying regulatory software are now interested in the solution and, as such, are as interested in things like the management team, regulatory understanding and expertise, implementation experience, product roadmap and infrastructure security and standards.



"The real challenge is to go far deeper and actively engage with both customers and trade bodies to understand how different financial services firms are interpreting the new rules and the challenges it's creating for them specifically

Producing a pragmatic, 'whole supplier' response

If software suppliers think deeply about these market driven challenges, it will inevitably lead to challenging themselves on a regular basis. These internal challenges will range from the quality of their regulatory expertise, i.e. 'do we really understand what the regulation is trying to achieve?', their products, i.e. 'are we delivering intuitive functionality underpinned by the latest, industry standard technology?' and, finally, their infrastructure, i.e. 'are our data hosting and internal security processes meeting the highest standards?'

Inevitably, these challenges will cause tension internally however the best software suppliers understand these challenges cannot be ducked and that these tensions are the signs of the reinvention necessary to stay at the front of the industry in support of their customers. Whilst tough, the prize for software suppliers is greater trust from customers gained through a demonstration of holistic understanding of their specific challenges resulting in a willingness to listen to suppliers' suggestions for innovative ways to deliver the regulatory compliance customers need in a frictionless, almost incidental, way.

Relevant and Proven Solution

And, at its simplest level, when launching new products and delivering product upgrades, continual focus needs to be given to;

- ❏ True practical understanding of what the software must actually deliver in very real and practical terms.
- ❏ 'Ease of use' i.e. the software must be easy to use for every type of end user, e.g. employee, line manager, central team and senior manager. Importantly, the software must be sufficiently intuitive that it can be navigated by end users even if they only log into the software on an occasional basis.
- ❏ Operational dashboards, i.e. management oversight at the 'touch of a button' plus simple drill down to case / incident level.
- ❏ Regulatory reporting, i.e. producing exactly what the regulator requires in a single click.

Finally, all this needs to be done whilst keeping the price at an attractive level to potential purchasers!

Moving forward

Make no mistake, these factors pose real challenges for software suppliers in the 'regulatory space'. However, I am in no doubt that the quality of the response to these challenges will separate the good, and ultimately, successful software suppliers from the 'also-rans'.

To succeed, suppliers will need to take a long-term view, to develop their relationships with customers and trade bodies as much as their product and be prepared to invest heavily in their infrastructure, their internal processes and, last but not least, their people.

As Bill Shankly, the famous Liverpool FC manager fifty years ago, once said; 'this is a marathon, and you can't sprint marathons'. Success will be an accumulation of thousands of small things over a sustained period of time.

In my view, that is what financial services firms should look for in their regulatory software suppliers.

SMCR: Getting buy-in from the buy-side

What's good for the sell-side is good for the buy-side explains **Andy Bennett**, Head of Regulatory Training at Fitch Learning.

As we know, the Senior Managers and Certification Regime (SM&CR) was introduced in the UK for the banks in 2016 as a regulatory response to the Parliamentary Commission on Banking Standards. Yet now the regulator is rolling this out to solo-regulated firms and it is bound to raise the question from many in those firms, "What does this have to do with us?". How can we get buy-in from the buy-side?

The first thing to identify is that harmonising the regimes around licensing individuals is a sensible thing to do. Having, for example, client dealing functions approved by the regulator as fit and proper in one part of the industry and certified by the firms in the other makes no sense. Bringing the solo-regulated firms into SMCR allows comparability and consistency of standards, it provides for easier movement of employees between firms and it creates a clear framework of governance that can be identified with throughout the financial services.

Another advantage for the solo-regulated firms is that this has been done before. This is not an ill-thought-out knee-jerk reaction to regulatory breaches. It is a well bedded in regime. The regulators have had time to identify what works well and tweak what possibly doesn't.

One notable improvement to the original regime is the introduction of the Directory to augment the Financial Services Register. At the moment, only approved persons are visible on the FS Register, which, under SMCR, excludes certifications functions. Many rightly feared that the removal of the huge number of existing CF30s, which would include advisers and investment managers, from public view would damage the credibility of and the trust in the financial services. The Directory solves this problem.

The Directory will be a searchable database of not only those who have been approved by the regulator, but also those who have been certified by their firm. This will allay the fears of a lack of transparency. It will also appease those individuals who wear their CF30 with pride and see their regulated visibility as a part of their professional qualification to deal with clients.

This leads to the main focus of the SMCR: individual accountability. With a financial services firm – as within any firm – accountability is a good thing. Ensuring that all those who make decisions or take actions on behalf of the firm have a satisfactory reason for making those decisions or taking those actions can only drive up standards. For those individuals who have always had satisfactory reasons, there will be no real change; for those who have not, there is probably a need to rethink those actions and decisions, creating an improvement for both customers and the firm.

Another major draw is how this accountability escalates with transparency through the firm, with each line manager assessing their team and being held to account for that assessment. The existing process of the regulator approving individuals from afar creates a disconnect between the individual being assessed and the assessor. The supervisors and managers that are engaging with employees on a day to day basis are better placed to affirm a person's honesty, integrity and reputation. In addition, this regular, and sometimes continuous interaction leads to a much greater level of visibility on what is going right and what could go wrong – before it goes very wrong. The opportunity to spot small problems and deal with them early before the regulator needs to get involved can only be a good thing.

Then there are the Conduct Rules. These tell us how we should conduct our behaviours (with Integrity and skill, care and diligence) and the results of that appropriate behaviour (fair outcomes for customers and market conduct), with the cooperation with the regulator acting as regulatory filter between the two. Looking around many of the solo-regulated firms we work with, these basic tenets of behaviour are already stated and adhered to within the existing business model through their values, ethos or codes and already applied to a much wider employee base than the Statements of Principle. If anything, the Conduct Rules should be seen as a vindication of the practices and attitudes that have been promoted by these firms for a long time.

> "Bringing the solo-regulated firms into SMCR allows comparability and consistency of standards, it provides for easier movement of employees between firms and it creates a clear framework of governance

As a final point, because this has been done before, the available expertise is also greater. Many L&D professionals from the banking sector who were involved in the first round of SMCR can now provide a valuable resource to solo-regulated firms. Training providers that assisted the banks and insurance companies have established resources to allow clear understanding of the regime and its implication to a range of staff in the firms from the senior managers, through certified persons to other conduct staff. The ability to draw on this expertise and experience will help the establishment and positioning of this regime in the run up to 9th December 2019.

The Senior Managers and Certification Regime – it's all about the preparation

From **Helen Dean**, Head of Technical Services, Thistle Initiatives

As everyone in the industry will be well aware by now, the Senior Managers and Certification Regime (SM&CR) for solo regulated firms comes into effect from 9th December this year, bringing with it new responsibilities for staff at pretty much every level of the business. The good news is firms have time to think through the implications of the regime, consider what changes and new procedures they may need to put in place and ensure they are fully prepared well in advance of the deadline.

As a reminder there are three key parts to the SM&CR; Senior Management Functions (Senior Managers), Certification Regime and the Conduct Rules. In this article we are concentrating on one part of the new regime, Senior Managers and, in particular, the responsibilities which a Senior Manager might hold and what firms need to think about when allocating responsibilities.

Under the new regime every Senior Manager will be required to have a Statement of Responsibilities (SoR). A SoR must set out what a Senior Manager is responsible and accountable for; it will have to be submitted when a Senior Manager is being approved and where there is a significant change to their role.

“An individual undertaking a Prescribed Responsibility needs the appropriate level of authority, experience, skills and knowledge

Duty of responsibility

The SoR is an aspect of the regime which, in our view, requires particular thought and preparation.

Why? Well, in part, this is because the new regime introduces the Duty of Responsibility – under FSMA every Senior Manager has a Duty of Responsibility. In its guide to the SM&CR for solo regulated firms, the FCA explains what this Duty means:

“If a firm breaches one of our requirements, the Senior Manager responsible for that area could be held accountable if they didn't take reasonable steps to prevent or stop the breach.”

So, where an individual accepts a particular responsibility, they are also accepting this Duty.

Which means the firm and the individual need to be confident that the Senior Manager has the right skills and the right level of authority to direct and control affairs and that there is an adequate infrastructure in place to provide sufficient oversight. Among other things, this could include having relevant MI which tells a story, with context, so the Senior Manager has adequate information available on which to base an informed view.

The Statement of Responsibilities (SoR)

Depending on what category a firm falls into (Core, Enhanced or Limited Scope), more or fewer Senior Managers will be captured by the new requirements. As the Core category will cover by far the largest number of solo regulated firms, we're focusing on the regime as it applies to them.

Current Approved Persons in Core firms will, by and large, automatically convert to Senior Manager Functions as part of the transition process and, in most cases, a SoR won't have to be submitted as part of the transition, nevertheless every Senior Manager must have a SoR and it must be kept up to date.

In order to complete a SoR, a firm will need to decide what Prescribed Responsibilities and what other key responsibilities sit with each Senior Manager.

Prescribed Responsibilities are those which the requirements stipulate can only sit with a Senior Manager; among other things these include responsibilities for the Senior Managers Regime itself, the Certification Regime, the Conduct Rules, countering the risk of financial crime, etc.

An individual undertaking a Prescribed Responsibility needs the appropriate level of authority, experience, skills and knowledge. They are taking personal responsibility for one or more of these key issues and can be held personally responsible for the firm's failure to comply.

In addition, a Senior Manager's SoR will explain what other responsibilities they hold. This could be anything not covered by their Prescribed Responsibilities; the FCA expects this will usually cover business functions and activities for which the individual is accountable, for example, sales, customer service, information technology, etc.

Why responsibility isn't always clear

During the course of our work, we sometimes see issues in the way in which firms allocate responsibilities, the most common include:

- ❏ Everybody on the Board being collectively responsible – the FCA is not expecting that Prescribed Responsibilities will be shared (except in very limited circumstances) so, for example, if you currently have the entire board sharing responsibility for countering the risk of financial crime, this is very unlikely to be acceptable in future. Now is the time, then, to decide who will be responsible for what, why they are a suitable individual and to make sure that they have an adequate infrastructure on which to call.
- ❏ One person being responsible for too much – guidance in SYSC is that a firm should avoid allocating such a wide range of Prescribed Responsibilities to one individual that "they are not able to carry out those responsibilities effectively". We do sometimes see situations where, in practice, one senior individual in a business directs and take decisions on a very wide range of matters. This has two implications: a) is the individual responsible for too much? and b) are they exercising practical control over a responsibility which might actually be formally allocated to someone else?
- ❏ A lack of clarity as to who is responsible for what – firms not having formally discussed and documented where responsibilities sit and, at times, confusion as to what sits with whom. We've been in meetings where such misunderstandings have led to the situation where one senior staff member has turned to another and said: "I thought that was your area, not mine" – fortunately such an occurrence is very rare these days, but it can still happen.

Even if your firm is clear about where current responsibilities sit, you will still need to consider the additional Prescribed Responsibilities which will apply to your business and to formally allocate these. In our view, it is prudent to take the opportunity that the SM&CR provides to revisit where accountabilities lie and to ensure that skills, authority, experience – and appetite – all match.

The FCA's Consultation Guidance, GC18/4, covers SoRs and Responsibilities Maps (the latter applies only to Enhanced firms) and includes questions for firms to consider when completing the Statements. We'd recommend that firms 'dry run' completing SoRs and see what, if any, issues this exercise throws up.

Make starting SM&CR a New Year's resolution

As the dust of IDD and GDPR is beginning to settle, this New Year feels an appropriate time to start SM&CR discussions, to consider what training, if any, might be needed and to put processes in place to strengthen oversight if required. This should help to ensure that everyone affected has a proper understanding of the implications and is fully in agreement with their role, well in advance of the December implementation date.

If there are any barriers to allocating responsibilities appropriately, particularly the Prescribed Responsibilities, it will be far better to identify these sooner rather than later while there is still ample time to address any issues.

Of course, the allocation of responsibilities is just one element of the SM&CR and firms will have to consider other key areas such as:

- ❏ Regulatory references and criminal record checks;
- ❏ Identifying Certification staff and developing an internal certification process to ensure initial and ongoing suitability;
- ❏ Understanding the Conduct Rules, identifying to whom these apply and being able to roll out training which will ensure that staff understand what they mean to them;
- ❏ Implementing a Conduct Rule breach reporting process.

Plus, additional requirements for Enhanced firms, such as Responsibility Maps; additional Prescribed Responsibilities; Handover Procedures and an 'Overall Responsibility' requirement.

So, we're not suggesting that dealing with the issue of allocation of responsibilities means the job is done, far from it, but it could be a very useful first step in making sure your business is fully prepared for the new regime.

How to conduct a FIT assessment

By **Tony Catt**, Compliance Consultant

The Senior Managers and Certification regime (SM&CR) was introduced in 2015 and has been in force for banks, building societies, credit unions and PRA-designated investment firms (Relevant Authorised Persons) since March 2016.

The implementation date for solo-regulated firms is 9 December 2019, subject to commencement regulations to be made by HM Treasury. The FCA also confirms a one-year transitional period for some aspects of the regime. However, the arrangements for Senior Managers and Certification Staff (except for the certification process) must be in place by 9 December 2019, and the Conduct Rules will apply from then to all Senior Managers and Certified Staff.

These new rules will increase the importance of the application of the Fit and Proper Test for Employees and Senior Personnel. More onus will be placed on firms to undertake the tests.

Firstly, firms will want to ensure that people appointed to undertake certain functions are fit and able to do the job. Firms will be setting out the Duty of Responsibility of their Senior Managers and need to be confident when allotting specific duties to individuals.

Secondly, the appointees will also want to be sure because in future they can be held personally responsible if things go wrong in their sphere of influence. The job holders will need to be vigilant to ensure that their Duties of

Responsibility are reasonable and manageable.

FIT applies to:
- ❑ A firm (including an SMCR firm);
- ❑ an applicant for Part 4A permission;
- ❑ an EEA firm or a Treaty firm that wishes to establish a branch into the United Kingdom using EEA rights or Treaty rights;
- ❑ or apply for a top-up permission;
- ❑ an approved person performing an FCA controlled function;
- ❑ a candidate for an FCA controlled function;
- ❑ a certification employee performing an FCA certification function; and
- ❑ a person whom an SMCR firm is proposing to certify to perform an FCA certification function.

The purpose of FIT is to set out and describe the criteria that:
- ❑ an SMCR firm should consider when:
  - assessing the fitness and propriety of a candidate whom the firm is proposing to put forward for approval as an FCA-approved Senior management Function (SMF) manager;
  - assessing the continuing fitness and propriety of a person approved to perform the function of an FCA-approved SMF manager, including for formulating an opinion about whether there are any grounds on which the regulator could withdraw the approval given to that individual to perform that function;
  - assessing the fitness and propriety of a person whom the firm is proposing to certify to perform an FCA certification function; *and*
  - assessing the continuing fitness and propriety of a person whom the firm has certified to perform an FCA certification function; *and*
- ❑ the FCA will consider when assessing the fitness and propriety of a candidate for a controlled function, including a designated senior management function, and may consider when assessing the continuing fitness and propriety of approved persons.

In assessing whether a person is a fit and proper person to perform an FCA designated senior management function or an FCA certification function, an SMCR firm must have particular regard to whether that person:
- ❑ has obtained a qualification; *or*
- ❑ has undergone, or is undergoing, training; *or*
- ❑ possesses a level of competence; *or*
- ❑ has the personal characteristics;

required by general rules made by the FCA.

The FCA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function.

In the FCA's view, the most important considerations will be the person's:
- ❑ honesty, integrity and reputation;
- ❑ competence and capability; *and*
- ❑ financial soundness.
- ❑ In assessing fitness and propriety, the FCA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates.
- ❑ An SMCR firm assessing the fitness and propriety of staff being assessed under FIT should consider:
- ❑ the nature, scale and complexity of its business, the nature and range of financial services and activities undertaken in the course of that business; and
- ❑ whether the candidate or person has the knowledge, skills and experience to perform the specific role that the candidate or person is intended to perform.

An SMCR firm is reminded that, in assessing a candidate for a position within the management body of the firm, the firm should ensure that the management body, as a collective, possesses adequate knowledge, skills and experience to understand the firm's activities.

> " The SM&CR should put an end to management passing blame or simply pleading ignorance when things have gone wrong

Summary

So FIT guidance is providing a basic set of considerations and some structure to firms to help with the appointment of approved persons and senior management.

It is interesting that this guidance is needed as, surely, it is the application of common sense to only appoint people into a role that they are able to perform.

Another side of this equation is that the appointees need to undertake their own due diligence to make sure that the duties that they are being allotted are manageable and reasonable.

The SM&CR should put an end to management passing blame or simply pleading ignorance when things have gone wrong. That has to be a good protection for consumers.

SM&CR Planning – 5 things you wished you knew, but didn't know you did not know!

By **Carl Redfern** from Redland Business Solutions

> "It is therefore essential to engage with and educate Senior Managers, particularly those who are sponsoring the SM&CR programme

To paraphrase the famous quote from Donald Rumsfeld (Feb 12, 2002).....

*"… as we know, there are **known knowns**; there are things we know we know. We also know there are **known unknowns**; that is to say we know there are some things we do not know. But there are also **unknown unknowns** – the ones we don't know we don't know…. And … it is the latter category that tend to be the difficult ones."*

In this article I will highlight some of the things that may qualify as 'unknown unknowns' within the Senior Manager and Certification Regimes, often referred to as SM&CR, or sometimes, Accountability.

This regime is being extended to include all (almost) financial services Regulated Firms on 9th December 2019, a little less than a year away. This extension has become known as Accountability II, because the regime commenced for Banking Firms in March 2016.

Insurers also transitioned into SM&CR, under Accountability II, with effect from 10th December 2018 and they now have until 10th December 2019 to assess and issue Certificates to all of their staff identified as subject to the Certification Regime.

In a recent analysis, at a mid-sized firm, they identified over 100 policies or processes that needed to be reviewed or created in order to comply with Accountability II, including employment contracts, appraisals, disciplinary processes, recruitment, supervision, competence assessment etc.

Incidentally, T-C News has published a lot of articles over the last few years about SM&CR, sharing insight and clarifications about the impact of the changes and the interpretations of the rules…… As an 'open question' to Jeff, perhaps it may be useful to publish a summary of some of them and allow people to request 'back issues'? (From Editor (Jeff) – All previous articles can be accessed via the web site www.t-cnews.com)

I will cover each of the 5 topics some more detail below.

1: Time and Risk

The real issue here is a slight challenge to Mr Rumsfeld's erudite phrase in that, I think he missed out the most 'difficult' category of knowledge –

namely, the **'Think you Know'** category!

Many banks subject to Accountability I, were certain how their governance arrangements worked until they tried to write them down, sign them off and publish them to the regulator. It was only then that they tried to review, re-document and potentially revise them and found it was a much more complex and time-consuming task than they had anticipated.

At a recent SM&CR briefing, FCA were asking "what can we do to promote early engagement with Accountability II from Chairs and CEOs of Solo Reg Firms?" They are concerned that despite trying to ease the burden of conversion for firms, by proportionate rules and automating a lot of the transition, with so many firms being affected (47,000) they need to mitigate the risk of 'last minute' confusion and failure.

The issue is that complying with Accountability II, looks at first sight, like 'business as usual' but for most firms it will be more difficult and take a lot longer than expected.

The second element of this is 'Risk'. By which I mean the **'Attitude to Risk'** of the Firm and its Senior Managers (not the risk of not complying).

Although many of the new rules of SM&CR are clear and absolute, for example, Senior Managers must have a Statement of Responsibility, a lot of what should be included on that Statement is subjective and contextual. There are also many rules, for example, the definition of 'employee' under Accountability II, which will require interpretation within the context of your business, there is no single 'correct' answer.

It is therefore essential to engage with and educate Senior Managers, particularly those who are sponsoring the SM&CR programme in order to define an appropriate 'Tone' and 'Approach' to tackling these questions. What will be the decision making forum within your programme for some of these choices?

In summary: Time and Risk

- ❑ It will be more difficult and take longer
- ❑ Senior Managers need to be fully engaged and educated in order to set the project's 'Tone'
- ❑ 'Attitude to Risk' of the Firm to the SM&CR programme is critical to timely decision making

2: 'Below the Line' regulation

This is a developing new challenge for many firms. One consequence of the new Accountability Regime is that it gives the Regulators significantly more flexibility over how they set the rules. Obviously, most rule changes are driven via the time honoured 'consultation paper' followed by feedback and Final Rules.

However, under Accountability, firms are being obliged to clearly define and document exactly who is responsible for everything in their firm. This 'sea change' gives the regulators the opportunity to mandate changes in behaviour, without having to change the underlying rules.

As an example of this, consider the FCA's focus on 'Cyber Security'. In a speech back in 2016, Nausicaa Delfas, Director of Specialist Supervision stated that

"… we expect 'a security culture', driven from the top down – from the Board, to senior management … by this I mean senior management engagement and responsibility …"

Under Accountability II, where Senior Managers must have documented Statements of Responsibility (SoR), even in a Core Firm, which of your Senior Managers will have 'Cyber Security' defined on their SoR?

There is no Prescribed Responsibility for Cyber Security, it is not part of any Senior Manager Function for a Core Firm (it is included within SMF24 for Enhanced Firms) but it is clear that FCA expect it to be clearly allocated to a Senior Manager, in all firms.

Similarly, the recent speech (19th Dec 2018) by Christopher Woolard, Executive Director of Strategy and Competition at the FCA, about 'Speaking Out: Diversity and Inclusion' made it very clear

"… How a firm approaches diversity and inclusion tells us a lot about its culture. And the way firms handle non-financial misconduct, including allegations of sexual misconduct, is potentially relevant to our assessment of that firm, in the same way that their handling of insider dealing, market manipulation or any other misconduct is … Non-financial misconduct is misconduct, plain and simple …"

This speech does not reflect any change in the rules of Accountability or other piece of regulation but it clearly does clarify FCA's expectations of behaviour, making it clear that Firms must prioritise these issues with some rigour. If I was writing Statements of Responsibility for my Senior Managers, I would carefully consider whether to include responsibilities for Diversity and Inclusion and / or Speaking Out policies etc.

These are both good examples of where FCA are expecting changes in behaviour by Firms and staff, without specific changes in rules or regulations – this is what I mean by 'below the line' regulation and it is increasingly being used, as a tool, by both FCA and PRA.

In summary: 'Below the Line' regulation

- ❑ Be aware that it is happening
- ❑ Develop strategy and policy to read everything and spot when it occurs
- ❑ Consider all publications from regulators with an 'impact on Accountability' lens

3: Some of the 'Hard Bits'

This is a simple list of the some areas of the rules that will be complex and challenging on most businesses. There is not enough room to cover these aspects in detail in this article but I would be more than happy to discuss these elements further, please feel free to get in touch. In addition, several of these complex areas are covered in Jeff's 'Certification' workshop, which I would recommend.

1. Client Dealing Function (note: FCA Regulatory Update on this function Dec 2018, commitment to further consultation in 2019)
2. Territoriality
3. Definition of Employee under SM&CR
4. Certification and Trainees and SPS
5. Significant Management Function
6. No Gaps Rule under CERT
7. Fitness and Propriety and Integrity
8. Certification and Multiple Legal Entities

In summary: The Hard Bits

- ❏ Ensure your plan identifies those that are relevant to your business
- ❏ Use a collaborative team (HR, Compliance, Legal, etc.) to work through the issues and impact
- ❏ Get Senior Managers on engaged early with clear decision and escalation processes

4: BAU, Maintenance and Change

Remember that the regulatory deadlines for SM&CR are commencement dates, not end dates. This may sound obvious but it caught many Banking firms out!

Many of the updated policies or processes will also have implications for BAU. Firms should focus on the 'target operating model' – specifically how and most importantly who will own these changes going forward?

Many banks found that there was a lot more frequent change to Responsibility Maps and Statements of Responsibility than they had expected (one bank I worked with update their Map 12 times in the 1st year and made more than 200 updates to SoRs, across 20 Senior Managers). The major challenge was that once the project team had stood down, much of the specialist expert resource moved on as well and the new 'operational' teams did not understand SM&CR well enough to cope.

On a specific point, the staggered deadlines for the elements of the regime caused issues in many firms. By the 9th Dec 2019, Solo Regulated Firms, need to identify all Senior Managers and write their SoRs, they also need to identify their Certification population.

Although the Certificate assessments don't need to be completed for a further 12 months, Movers, Leavers and Joiners to that CERT population will need to be managed from commencement. Again, this caught out many banks, who thought they need not worry about the Certification Regime for a year.

In summary: BAU, Maintenance and Change

- ❏ Ensure transition to BAU is planned out, including transfer of necessary expertise
- ❏ Think through 'operating model' implications and work out who owns what, going forward
- ❏ There will be more 'change' than you anticipate

5: Legal Entities

The SM&CR regimes apply at the Legal Entity level. This can create some complexity for Firms who have multiple entities within their Group.

At the 'governance' level, Senior Managers roles across the Group will need to be clearly defined and accurately documented in multiple Statements of Responsibility, without creating any gaps, overlaps or confusion. This can be much more difficult than it appears at first glance.

However, the Legal Entity question becomes even more complex for Certification staff, who act in roles across multiple entities within the Group. For many banks and indeed, more recently, Insurers, being able to define the links between staff, their roles and disparate Legal Entities proved very difficult, with many HR systems just not holding the necessary records.

If you have multiple entities within your Firm (Group), start to tackle these questions early in your plan.

In summary: Legal Entities

- ❏ Review and clear up any 'redundant' permissions and authorisations (both firms and staff)
- ❏ Address any 'structural' questions within the Group early on
- ❏ Review existing record keeping and systems to find any existing, useful, 'golden source' of records

It is thought that the term 'Unknown Unknowns' was first coined back in 1955, by two American psychologists, Joseph Luft and Harrington Ingham, who used it within their analysis technique. Donald Rumsfeld, in his memoir, cites NASA administrator, William Graham, as first using a variant of his classifications back in the 1990s.

I hope that this article provides sufficient to reclassify some of the SM&CR Unknown Unknowns, as Mr Rumsfeld so clearly said… "it is this category that tend to be the most difficult!!!"

What will the 'new directory' mean to your firm?

By **Vince Harvey** from Compliance Cubed

In July the Financial Conduct Authority (FCA) proposed creating a new Directory to help consumers and firms check the status and history of individuals working in financial services. Many see this as an improvement on the original proposal that post-SMCR only senior managers would be included.

The new directory will now include all those who hold Senior Manager positions requiring FCA approval and those whose roles require firms to certify that they are fit and proper and will include mortgage advisers for the first time. It will include details of where they work, what roles they hold and what type of business they are qualified to do.

> The obligation will be to report this information no later than the end of the individual's first business day performing the relevant role.

When announcing the proposal, Jonathan Davidson, Executive Director of Supervision (Retail and Authorisations) at the FCA, said:

"We've listened to feedback from firms and consumers about the importance of being able to check the status of financial services staff. Introducing the Directory will make it easier for people to be confident they can find the right people to deal with.

"Today's publications are all about making sure that consumers can interact confidently with financial services professionals by setting clear standards for the behaviour of those individuals and making available information about their fitness and propriety."

The hope is that the directory will be user friendly, practical and easy to understand – it is expected, for example, that consumers will be able to search by location to find local advisers. Importantly it will show the history of advisers which will limit the ability of 'bad apples' to move around without leaving a trail.

The SMCR requirement for regulatory references will reinforce this message: it will no longer be acceptable for firms just to confirm job title along with start and end date. If there are regulatory issues or questions as to someone's fitness & propriety, then these will have to be disclosed to the firm proposing to recruit an individual. Additionally, whether there are any regulatory sanctions or prohibitions against individuals will be shown on the register.

Apart from senior managers who will still be subject to individual approval, many people in client facing roles will require their employing firm to certify them. The new directory would mean that firms have to report certain information on these people, including any appointed representatives. This will not be to the same level of detail as currently required for authorisation and the firm won't have to wait for approval. The obligation will be to report this information no later than the end of the individual's first business day performing the relevant role.

When an individual ceases to perform a role covered by the directory, the firm is required to update the directory no later than one business day after they have left their role.

As usual when a new rule or procedure is introduced, the FCA have reminded firms that failure to comply could leave a firm open to enforcement action. T&C or compliance teams will need to work closely with their colleagues in HR (wonder how many people reading this are saying to themselves all those roles are mine??). In the recruitment process there will no longer be a delay between recruitment/induction and approval – I'm sure no one currently uses that gap to get any last bits of paperwork sorted.

One major challenge will be ensuring that robust records support the enhanced information in references. I anticipate fees to legal advisers rising, at least initially until firms have a pattern which they can use to provide the information without leaving the firm open to legal claims from departing employees. Some firms will be reviewing their tools for assessing fitness and propriety such as annual declarations and meeting observation tools to ensure that they provide evidence of the points required in a regulatory reference.

Anticipate specific questions such as 'Has the firm concluded that the person was not fit and proper' and 'Was any disciplinary action taken against the individual in regard to conduct rules'. The FCA's template goes on to include:

> Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:
>
> (1) occurred or existed:
>
> (a) in the six years before your request for a reference; or
>
> (b) between the date of your request for the reference and the date of this reference; or
>
> (2) is serious misconduct.

Is your current approach sufficiently robust?

Pragmatic and practical or disparate and dangerous? The opportunities and perils of SMCR

By **Emma Howell** from Worksmart

Like many of you reading this, I have been doing the rounds at several SMCR events focused on the extension of the Senior Managers and Certification Regimes of late and have picked up (as well as delivered) some useful insights into the good and the bad experiences across the banking sector and the similarities or otherwise of the effect it will have on the wider market.

I thought it would be useful to pull some of these lessons learned into a practical summary of some of the most common areas of concern. After all, we're all busy people, right?!

> "Think of SMCR as an opportunity to review your governance arrangements and how you manage the competence and culture within your organisation

Know why you're doing it

I've heard a number of analogies on governance and accountability, not least of which likening it to the armed forces or the mafia. In both cases, a failure to comply can lead to grim and untimely death. Fortunately, nobody is going to die as a result of SMCR, but it shouldn't be taken lightly. Regardless of your firm's shape or size, if you have senior managers and certified personnel the way you manage the regime can influence not just the organisation's performance of its obligations and the market's reputation and stability but the careers of those subject to the regime. Culture and individuals' attitudes towards their roles and responsibilities to both the firm and its customers is at the heart of the regime and should form an integral part of your implementation and BAU approach.

Expect the unexpected

When identifying your population for SMCR, be prepared to review and realign your supervisory models and really think hard about who is going to be "captured" under the regime. In the early days of planning in the banking sector, we engaged in discussions with a large retail bank. In our first meeting they had identified that they had 2000 certified colleagues but by the second meeting that had doubled to 4000! An extreme example I know, but it demonstrates just how important it is to understand and interpret the rules correctly and accept that it's a living thing. The more you learn the more you'll adapt.

Consider carefully the Certification Functions that apply to your organization and who is captured as a result; we hear of a lot of firms who are thinking hard about the influence of colleagues based abroad and elsewhere within group organisations for instance. Also think about your management and supervisory structures; if you currently have a situation where colleagues are managed by one person and supervised by another, don't forget that both manager and supervisor will need to be subject to the rules of Certification.

Be realistic – Don't throw the baby out with the bath water

Think of SMCR as an opportunity to review your governance arrangements and how you manage the competence and culture within your organisation, but don't be tempted to start from scratch! Let's face it, the majority of regulated firms already have numerous processes and systems in place for ensuring their people are the right ones and are doing the right thing. Look at the various activities you already manage across disparate IT systems, Excel spreadsheets or outsourced services and think. Think about where your gaps are. I'm a strong believer in "if it ain't broke don't fix it" so focus on fulfilling the missing elements and working out how you are going to evidence that you've done it in a clear and consistent manner.

Make your life easier when audit comes calling

Look at your Day 1 implementation with BAU in mind and through the eyes of both your internal audit team and the regulator. If they appeared on your doorstep tomorrow, how quickly would you be able to get your hands on accurate MI that demonstrates that you've carried out your obligations and that you can hand on heart say you've done everything you can to ensure an individual is fit, proper and competent for the role they carry out. This is where dedicated SMCR systems can really add value, driving robust processes and workflow and pulling together information from multiple sources to create a single point of truth and MI that you can rely on. The ability to centrally store and produce a dossier of supporting evidence (in whatever form that takes – documentation, video, minutes, background checks, testing outputs etc) alongside the headline MI is an absolute gift and its value shouldn't be underestimated!

Use technology to help you before, during and after implementation

Not only can technology be a godsend in the ongoing management of SMCR, but it can add real value in helping you with mapping your governance arrangements. The bulk of effort on an initial SMCR implementation typically happens ahead of technology being a consideration. We are however now seeing a shift, with our clients adopting the software early to utilise its drag and drop modelling capabilities to design a governance structure with built in capability to identify gaps in allocation of responsibilities, committee memberships and more. Don't underestimate how potentially dynamic and changeable your structure might be – consider the impact of joiners, leavers, role changes etc. We heard from a medium sized bank recently who had submitted over 30 revisions of the Governance map to the regulator in the two or so years they have been subject to the regime – along with hundreds of related bits of evidence, attestations, applications and validations. Don't underestimate all the modelling and maintenance required when the new regime settles into BAU.

Be sure that your supplier can evidence a strong SMCR client base and is willing to let you get hands on with the software before signing on the dotted line – if they push back, there's usually a reason!

I was heartened to hear the FCA's Head of RegTech speak at a conference recently on the progress the regulator is making in its pilot for automated reporting. We await the outcomes, but the potential to streamline the firm's MI with your submissions to the regulator is exciting and is something to keep abreast of in the coming months, especially considering possible changes to the FCA register and the potential that firms could find themselves responsible for updating it.

Don't procrastinate

The number one lesson from the banking sector has been not to underestimate the amount of time and effort is involved in preparing for SMCR. I have heard anecdotes, further evidenced by our own experiences, that on average an SMCR project takes somewhere in the region of 12 months – but, it's a project that shouldn't ever end. Despite the December implementation dates, Individual Accountability is for life, not just for Christmas!

The SM&CR and the Consumer Credit Sector

By **Neil Herbert** from HRComply

Firms have had some considerable now to digest the FCA's proposals to extend the Senior Managers & Certification Regime (SM&CR) to all regulated firms – although as everyone will be acutely aware – we still don't have a confirmed timeline on this! In my experience the proposals present specific and bigger challenges to the consumer credit industry compared to other sectors. Why? Well firstly - consumer credit firms are relative newcomers to FCA regulation (just over three years). As a result - their governance arrangements may well not be as well tried and tested as firms which have been regulated by the FCA for much longer.

Secondly, consumer credit firms are already coping with a particularly busy regulatory agenda. Among the proposals they're presented with are new affordability rules published by the FCA in July last year and the FCA's high-cost credit review. The FCA has already highlighted concerns within the rent to own, overdrafts, catalogue and home collected credit and motor finance sectors. Having worked with a number of consumer credit clients I have experienced directly the challenges they are facing.

I have seen some firms attempt to address each tranche of legislation separately and deal with them in different ways. This is almost always a mistake. Taking a cohesive and joined up approach to the T&C, Conduct and Culture in the context of compliance to multiple regimes – is the best way to address the challenges each new regime presents. The Consumer Credit sector can learn from their counterparts in the Wealth Management and Banking sectors in this respect. Developing separate processes, hierarchies and lines of assessment and supervision oversight for each means that you are reinventing the wheel each time – not benefiting from the gains made in other areas and potentially setting yourselves up to fail.

Expecting staff to adhere to different regime requirements and supervision in multiple systems and processes leads to unnecessary duplication of effort - regulatory overload and fatigue and makes compliance far harder. The different regimes all have common principles and required culture and conduct shifts. You should seek a common solution drawing on common systems and process responses. With records and audit trails captured in one place – not in silos of separate systems, processes and departments.

Addressing affordability in particular – in a recent speech to the industry – the FCA's Director of Supervision – Retail and Authorisations – had the following observations

- ❏ A firm whose business model is predicated on selling products to customers who can't afford to repay them is not acceptable, nor is it a sustainable long-term strategy.
- ❏ The financial situation for some is precarious, which means firms not only need to consider whether a customer has a history of repaying, but whether they are likely to be able to do so in the future.
- ❏ A successful business model relies on having a healthy firm culture.

It seems like common sense to ask and answer questions like:

- ❏ What might happen if rates rise?
- ❏ What might happen if the cost of living rises?
- ❏ Are there indicators that a customers' circumstances – for example their job situation – could change?

In response to these concerns he highlighted the five conduct rules of the SM&CR:

1. Act with integrity
2. Act with due care, skill and diligence
3. Be open and cooperative with the FCA, the PRA and other regulators
4. Pay due regard to the interests of customers and treat them fairly
5. Observe proper standards of market conduct

Taking a common-sense approach to implementing such standards of conduct across all activities of a consumer credit business – not affordability alone – will deliver compliance in multiple regimes' requirements. Adapting an approach to strategy and the business model to ensure that a firm develops a healthy forward-looking and customer-focused culture and approach is therefore key.

The FCA have noted for example that many firms are not doing affordability checks or just doing credit checks. Most consumer credit firms that sell products by phone will have a call monitoring system and these calls should be being assessed – at individual Adviser level – in terms of delivering high levels of integrity and conduct – affordability being one key benchmark. Where these are being found to fall short – whether at an individual level or across business teams – the firm must take appropriate remedial actions to correct this – for example through appropriate training. A clear audit trail based on objective assessment and the outputs/actions taken to correct conduct and competence shortfalls will go a long way to managing the requirements of the SM&CR. My point is that these areas along with wider performance management processes all feed into the requirements for good conduct and the benchmark cultural and performance standards of a firm as a whole. They should therefore be dealt with and managed through centrally aligned business processes and systems.

With so much going on, there's a risk around sufficient resources and time to prepare for the SM&CR. But it's vital that firms do so – not just because SM&CR is a significant undertaking, but because the regime underpins so much of the FCA's other work. If the FCA finds conduct failings at firms, it will almost always look at the strength of their regulatory governance arrangements. So – getting the SM&CR right will help firms meet the FCA's expectations in other areas.

In terms of other requirements of the SM&CR – what do consumer credit firms need to focus on in their preparations for the regime? They will need to submit Statements of Responsibility and Management Responsibility Maps, which set out who in the firm is responsible for what. Whilst proportionality is recognised, ensuring firms have the right level of quality and consistency across these documents could be a challenge for those in the consumer credit sector, given their management and governance arrangements overall may not yet be as developed as firms in other industries.

There is always a tendency to underestimate the amount of work to be done – regardless of which area of the three tier proportionate approach firms fall under. For instance, firms under the 'core' regime are not required to submit responsibility maps but they still need to carry out some form of internal mapping exercise in order to identify their Senior Manager Functions and submit Statements of Responsibility. Smaller firms will have less roles to define but they should consider that the FCA is likely to place an even greater focus on culture in such firms.

In summary then – my advice to consumer credit firms – considering their response to the SM&CR is:

- ❑ Instead of treating this as an entirely new regime to comply with – look across the business at existing processes where performance, conduct and compliance are measured and managed. Utilise these processes wherever you can. Don't reinvent the wheel!
- ❑ Seek to deliver an aligned and joined up approach to all aspects of T&C and conduct management whether through performance management, call quality and compliance, affordability, customer file checks etc.
- ❑ Identify existing supervisory hierarchies and seek to leverage off these rather than creating entirely new ones and risk duplication or silo-based management and record keeping
- ❑ Buy the right system that can deliver multiple solutions to multiple regimes
- ❑ Build a culture of performance conduct and competence that delivers the right outcomes across the compliance spectrum

It's that easy!! Well – obviously it's far from – but if nothing else perhaps this proves that – the sooner you get started the better!

> "Some firms attempt to address each tranche of legislation separately and deal with them in different ways. This is almost always a mistake.

Danger! Potent Conduct Rules – Handle with care

By **Carl Redfern** from Redland Business Solutions

At a recent SMCR conference that I attended, an interesting question was put to the speakers from FCA. They delivered a briefing about SMCR and consistent with all FCA speakers on the subject for the last 12 months or so, they started by talking extensively about the Conduct Rules.

FCA are stressing the implementation of the Conduct Rules above the other elements of the Accountability II Regime every time they give a talk.

First time round, everyone drew the triangle with SMR at the top, Certification in the middle and the Conduct Rules at the bottom.

However, now, they start with the Conduct Rules.

They described the new Conduct Rules as being the key to the improving customer outcomes and raising standards of behaviour leading to better cultures in Financial Service firms.

Jumping into the opportunity to ask FCA a question, one of the delegates asked:

> "You spoke about the ***potentially transformative effect* of the new Conduct Rules** but **I don't understand how you can *invest them with such potency*** when they are almost identical to the Principles for Approved Persons that we have now?"

FCA's response was noteworthy but in my opinion missed the critical point. They replied that the new Conduct Rules are:

> "Very similar, and that's entirely deliberate, the big difference is the scope. The current principles only apply to Approved Persons which is a small

subset of the people in the industry. The point of the CR is that they apply to everyone (almost). There are lots of people in firms who have significant influence over customer outcomes, for example, complaints, claims, underwriters, analysts, middle management, etc. Many of these roles have lots of discretion over how they interact with customers and the decisions they make and their actions are very very important.

The new Conduct Rules will apply to all these new roles and more, where the current APER Principles don't"

To paraphrase Heineken's advert from the 1980s, I guess they intend that the new Conduct Rules 'refresh the roles that other rules cannot reach'!

I agree with FCA about the transformative effect of the new Conduct Rules and their potency, but I think the biggest impact is the 'framework' of Accountability that the new rules are part of.

The Conduct Rules come in two parts:

Individual Conduct Rules

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

Under Accountability II, these will apply to everyone involved in the regulatory activity of the firm except for ancillary staff.

Senior Manager Conduct Rules

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

This second tier of rules will apply to all Senior Manager Function holders within the firm. This will be a very small population (intended to be Board and Exec only) but the impact of these rules will arguably be bigger and more significant on daily operations and activity than the 'Individual' rules.

The Conduct Rules are indeed very similar to today's 'Principles' under the Approved Persons Regime (APER) but they will be taken much more seriously because of how they fit within the new Senior Manager and Certification Regimes (SMCR).

The wide framework of SMCR is specifically designed to make it clear exactly ***'who is responsible for what'***

This is the explicit purpose of the new rules and all the brouhaha we've been focused on for over 4 years, since the first consultation papers were published.

> "Typical 'Performance Management' in many firms focuses on HR and Performance issues, with little that is an 'evidential' assessment of 'competence' let alone Knowledge, Skills or Capacity.

The objectives of SMCR are to:

- ❏ focus accountability on a narrower population of people, at the very top of firms
- ❏ encourage people in all roles within firms to take greater responsibility for their actions
- ❏ make it easier for both firms and Regulators to hold people to account

Part of the wider framework of Accountability is a new 'Prescribed Responsibility' (PR) for Conduct Rules training:

"Responsibility for the firm's obligations in relation to conduct rules for: (a) training and (b) reporting"

This must be given to a Senior Manager (Board or Exco) at all firms making them ***personally*** and ***individually responsible*** for ensuring that the firm has processes and procedures in place to embed the new Conduct Rules across all financial service roles in the business.

The 'Training' obligation it refers to obliges firms to ensure that all staff are notified of the new rules that apply to them and that the firm takes 'all reasonable steps (including provision of suitable training) to ensure that staff understand ***'how the rules apply to them'***.

There is a good degree of guidance and examples within the Conduct Rules part of the FCA Handbook book (CoCon) to help firms to determine what they need to do. Banking and Insurance firms have already been through this implementation, although this new Prescribed Responsibility, added as part of Accountability II, is potentially because of a lack of 'rigour' in implementing these rules in some of these firms.

This brings me on to Training and Competence.

For many firms the link between T&C and Certification is clear. In fact, I wrote an article for this magazine in March 2015, where I jokingly refer to it being the '1st edition of Certification News'. I think that in the new world, next year, when Accountability II is implemented for all firms, Jeff should perhaps consider renaming the magazine 'Conduct Rules News'. The interaction between what is 'traditional' T&C and the new Conduct Rules is a surprise for many.

The following is an extract of from the CoCon rulebook, providing guidance on Senior Manager Conduct Rule no.1 (SC1).

> **COCON 4.2.6** Senior conduct rules staff members should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has ***appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.***

I have highlighted a section of the text because of its significance.

The following are also extracts from the rulebook and are examples of what would be considered a 'breach' of Senior Manager Conduct Rules.

> **COCON 4.2.10 SC1**
> (4) Failing to take reasonable steps to ensure that ***suitable individuals*** are responsible for those aspects of the business under the control of senior conduct rules staff member, including the following:
> (a) ***failing to review the competence, knowledge, skills and performance*** of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable

> **COCON 4.2.21 SC3**
> Delegating the authority for dealing with an issue or a part of the business to an individual … ***.without reasonable grounds for believing*** that the delegate has the necessary ***capacity, competence, knowledge,*** seniority or skill to deal with the issue…

All of these extracts from the Conduct Rules rulebook refer to assessment of staff:

❏ Capacity

❏ Competence

❏ Knowledge

❏ Skill

❏ Performance

These requirements are a direct read across from Training and Competence. I think that when firms carefully consider the new obligations and implications of these powerful new Conduct Rules, many will want the control and assurance of processes very similar to T&C applied to the much broader population of roles and staff.

Typical 'Performance Management' in many firms focuses on HR and Performance issues, with little that is an 'evidential' assessment of 'competence' let alone Knowledge, Skills or Capacity. Under the new Accountability regime, 'performance' alone will not be enough.

Earlier this year, both the FCA and the PRA published their Business Plans for 2018/19 which reflect both regulators' continued focus on firms' culture and governance,

The FCA Business Plan lists "Firms' culture and governance" as the first of the FCA's seven cross-sector priorities for 2018/19 and it reiterates the FCA's continuing focus on promoting effective culture and governance including by ensuring ***"that firms have the right people in the right roles"***.

The Individual Conduct Rules create a ***'bottom up' pressure*** on firms to prioritise and focus resources and attention on people, behaviour and competence. The Senior Manager Conduct Rules impose a ***'top down' cascade effect*** that makes each senior manager responsible for the people, their behaviour and the assessment of their competence in their area of the business.

Many people consider the recent enforcement judgement against the CEO of Barclays to have been a damp squib for Accountability but how many senior managers in your firm would be pleased with a public denouncement for 'acting without due skill, care or diligence' (Conduct Rule 2) and having to dig deep into their own pocket to pay a fine?

The good news is that many firms seem to have understood the message and seen the writing on the wall. Despite the relative delays in the timing of Accountability II, many firms are considering how they will handle the new regime and specifically Certification and Conduct Rules and asking questions about how they assess and evidence competence today.

However, improving T&C policy and processes takes time and applying similar standards to the broad spectrum of new staff can meet with resistance, particularly if the process of an effective regime for monitoring and assessing competence is admin heavy and inefficient.

Firms who will soon be subject to Accountability need to start now to align all of these streams of change and to give their **T&C teams** time to equip them to handle these **'dangerously potent'** Conduct Rules safely.

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.

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

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

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

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

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

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

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

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

Don’t give in to it!

Lessons learned

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

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

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

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

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

Rewind

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

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

And 'culture' really is the key word here.

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

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

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

Breaking it down

So what are the questions you should be asking?

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

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

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

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

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

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

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

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

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

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

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

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

Does your culture support SMCR?

By **Philippa Grocott** from FSTP

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

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

The regulators' dilemma

Over the years the regulator has come to realise

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

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

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

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

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

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

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

Six cultural drivers:

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

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

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

Leadership

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

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

Strategy

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

Decision Making

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

Controls

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

Recruitment training and competence

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

Reward

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

If your firm:

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

You may want to question your culture further.

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

Intelligent Accountability – Reasonable steps to managing culture

By **Carl Redfern** from Redland Business Solutions

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

He went on to say. . .

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

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

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

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

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

But there are significant risks which need to be navigated.

Called to Account

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

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

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

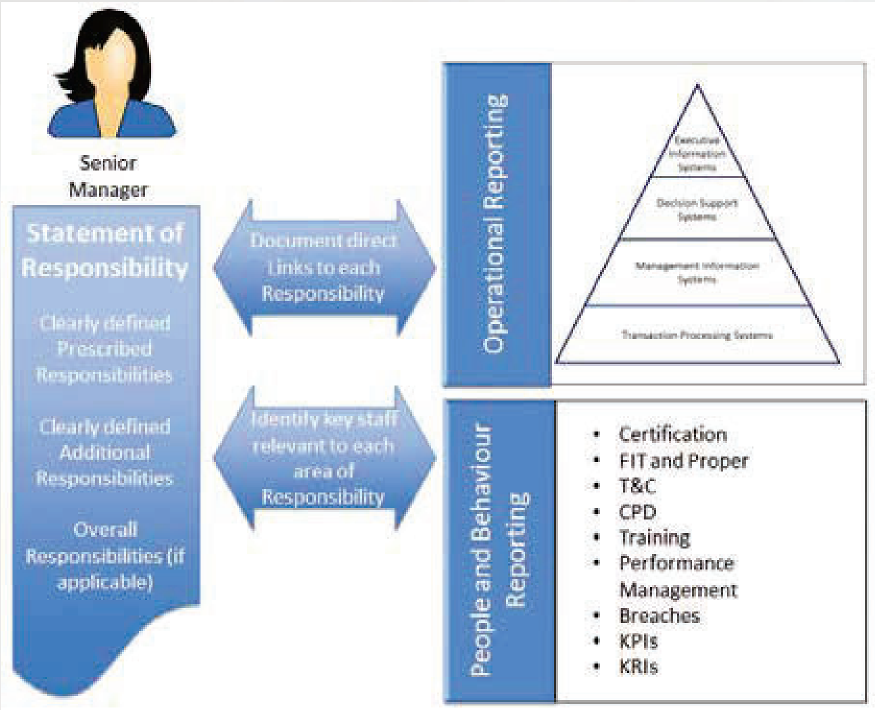
Looking even further back, one of Robert F Kennedy's venerated speeches at an election rally in 1968 addressed the topic 'How GDP failed', where he claims that GDP **"measures everything except that which is worthwhile"**. The full speech is on YouTube and worth listening to because it is an exceptional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

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

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

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

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



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

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

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

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

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

Pottage

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

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

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

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

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

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

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

Process Automation

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

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

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

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

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

FCA Briefing

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

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

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

Intelligent Account

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

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

Extending SM&CR – The devil in the details

By **Carl Redfern** from Redland Business Solutions

We have all now had a couple of months to enjoy the consultation papers published for Accountability 2, CP17-25 and CP17-26.

In this article I will highlight some of the key areas for firms to focus on when considering their response to these papers. I have avoided repeating a summary of the rules of the new regime, a lot of summaries have already been published but some areas are perhaps a bit less clear and deserve more attention.

I recently attended a briefing held by FCA for the benefit of professional services firms working with clients who would be impacted by the extension of the Accountability regime. This was a very useful session and similar (I understand) to the Regulated Firm briefings that FCA have also been running. I would strongly recommend attending one of these briefings near you, if at all possible.

For those who have not had chance to go to one, I will summarise below some of the useful clarifications and updates we received.

1) Send a Response

All the way back at the start of the Accountability initiative, the first formal Consultation Paper published was CP14-13, July 2014, which set out the concepts of Senior Manager Regime, Certification and Conduct Rules. We had to wait until March 2015, 8 months later, for the first draft of the resulting rules. The regulator received approximately 70 responses to the initial consultation paper and a further 17 responses to the Transitional Arrangements CP. Given that this significant new world was going to affect over 1000 deposit taking firms the volume of this response from the industry was pretty poor.

The extension of SMCR is going to significantly impact approximately 350 'enhanced' firms and over 13000 'core firms'.

At the briefing FCA vehemently stressed that more than anything else, what they wanted was feedback to the CP.

Even if you or your firm don't want to publish a formal response and document answers to all of the questions asked, you can send any queries over interpretation or implications to the Consultation Response team. It will be useful feedback for them that you simply draw attention to the areas which are not clear or need more guidance and you should receive at least some additional clarity to help in your planning.

2) Technical Transitions Consultation

FCA confirmed that the Transitions Consultation Paper, which will set out the 'how' of the implementation of the SMCR Extension, including the timetable, will be published later this year but definitely not before this current consultation closes on November 3rd.

One positive note however was that FCA stated their intention for most Senior Mangers to be automatically transferred over to the new regime, without the 'form based' Grandfathering process which Banks and Insurers had to go through for Accountability 1. There will be some exceptions, for example NEDs and some others, but for most firms this should remove a significant administration effort from the 'technical transition' project.

3) Appointed Representatives

At the same FCA Briefing, they confirmed that the current proposed scope of the new SMCR will not cover Appointed Representatives (ARs) and therefore the Approved Persons Regime (APER) will persist for them. FCA suggested this was because there was some doubt that the current legislation in the Financial Services and Markets Act (FSMA) granted FCA relevant powers to apply the new regime to Appointed Representative firms. They acknowledged that this was not ideal and that they were consulting further and seeking subsequent changes to FSMA to allow SM&CR to be extended to replace APER for ARs.

This is very unlikely to happen in the same timescale as the implementation for everyone else, therefore, for a while Principal Firms will be subject to SM&CR but APER will persist for their ARs. The responsibility for ensuring ARs compliance with the requirements of the regulatory framework will remain firmly with the Principals.

This means that for a while at least, the CF30 role will persist alongside Certification, just like we have today for Bank staff vs. other sectors.

The potential confusion in the industry as a result could be significant. For example, it not clear if AR CF30 staff will remain on the FCA Register, or how the implications for Regulatory References will be resolved. It should be remembered though, that Accountability will eventually be extended to cover ARs, so Principals firms would be wise to consider the extension when designing their own solutions.

If your firm will be impacted by this issue, please include comments about these issues in your responses to the Consultation.

4) For Core firms – PR6

If you expect that your firm is going to be a 'Core' firm, then you probably have already had some initial discussions about Prescribed Responsibility No.6:

PR06 - "Responsibility for ensuring the governing body is informed of its legal and regulatory obligations"

This is probably the most commonly asked question across the firms that I have been engaged with. Many Core Firms have been asking who is expected to take on this PR, with some citing that they have a Compliance Director who is not a lawyer and therefore not able to fulfil the 'legal' obligations.

At the FCA Briefing this exact question was raised and their response was very clear – they are **not** expecting firms to have or recruit formal legally trained resources in-house.

FCA went on to say ".....for Core Firms, looking at the probable populations of Senior Managers, it is likely to be someone like an Executive Director or one of the Partners, or it could be a Compliance officer who takes it on. We don't have a particular focus on who that role (the PR for Legal and Compliance) should be but it's got to be someone who can genuinely discharge that responsibility." "……it was not intended to be more 'onerous' than the corresponding obligations for Enhanced Firms"

> "At the briefing FCA vehemently stressed that more than anything else, what they wanted was feedback to the CP

For Enhanced Firms, they confirmed that the current 'status quo' of their forbearance regarding Legal Function and General Counsel would persist under the extension of SMR until the results of the Discussion Paper had been finalised. See the link below: https://tinyurl.com/FCA-Statement

FCA did take away that maybe more guidance around this particular PR would be welcomed but until then, it may be that 'Sharing or Dividing' this is a PR needs to be considered.

Getting the Senior Manager & Certification Regimes 'over the line' – Learning from the banking sector

By **Peter Griffiths** from Worksmart

The new SM&CR Regimes are aimed at bringing greater transparency and individual accountability into the wider financial services market place. It promises to deliver considerable change to firms across all the different sectors. As the industry tries to ready itself, it does so against a backcloth of uncertainty about the final rules or a fixed deadline to aim for. The banking sector faced similar challenges in 2015, although the start date of 7th March 2016 was known.

Worksmart has worked with a whole variety of banks of all shapes and sizes since 2015, helping them to get ready and implement the new rules. Since then, we have been busy helping firms already subject to SM&CR transition from paper based systems onto our software to enable easier management of the ongoing activities and provide accurate record keeping and 'point in time' reporting. So all in all, we have over two year's experience of helping firms transition to the new rules from a number of perspectives. In this article, we have distilled this experience into some key messages for a smooth and timely transition to the new regime.

My role in Worksmart has been to work with our 15 plus customers to implement our SMCR software. Practically, this has meant me working with customers to configure the software to replicate their Responsibilities Map and complement their business processes. Once configured, I train the different user communities ahead of launching the system. Finally, I continue to stay close to customers to iron out any teething problems and help embed the new software. Because of this, I have experienced a wide range of situations – not to mention a few challenges!

By now most firms in the wider financial services market will have started to think about the new regime But knowing the rules is one thing, translating them into an appropriate response for each firm (as every firm is different) is another. Putting in place a timely and efficient plan for implementation is an entirely different matter. In this article I would like to share with you the key things that I have learnt along the way.

Put Your SM & CR Regimes 'To Bed' Early

Sounds easy, but from the experience of the banks, this takes time – usually much more time than is originally thought. So what causes the time delays? Of course it varies, however, experience has taught me that the delays will fall into two areas;

- **Within the firm:** allocating SMFs and committee memberships is usually straightforward, however, working out which Prescribed Responsibilities are relevant to the firm can take time. Most firms will accept the definitions provided by the regulator for each Responsibility, however because business models vary, these definitions may need to be amended. Luckily, the proposed SMFs, Responsibilities and Control Functions for the wider financial services market are clearer, so should be easier to understand and allocate between the executive team. However things are seldom straightforward, and sorting out your Responsibilities and Control Functions will be no different.

  However, a task that is consistently underestimated involves senior executives scrutinising the detail of their proposed Responsibilities and reviewing, even renegotiating, their personal T&Cs in return for this greater accountability. As a Programme Manager in a major Building Society said "we've only just got agreement on what we proposed to the exec team a year ago". So be warned!

- **With the regulator:** once agreed internally, the second area of delay was with the regulator. Not only did banks suffer delays due to the backlog of submissions, they sometimes received unwelcome surprises particularly when executives, who were previously unregistered, had their applications for approval refused. Refusals had knock on effects into reallocating Responsibilities within the exec team, resubmissions and, sometimes, even external recruitment. So the message is clear, avoid delays by getting your submission in early. That way you will get decision ahead, not months after, the regulatory deadline.

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Clarifying Certification and Conduct Rules

If the message about getting started early with the SMR community, it is equally true of Certification. Many firms in the banking sector simply underestimated the amount of time it would take to define and gain agreement as to what roles were caught by Certification. When we ask customers how many members of staff are in their Certification Regime, we often got answers like, "anything between 40 and 250, we're still deciding". And of course, a second time delay is then allocating Significant Harm Functions (Certification Functions) to those roles. Again, the guidance appears clearer for the wider financial services market, but deciding what roles are caught by Certification and what roles fall into Conduct Rules should not be underestimated.

Once decided, planning the design and delivery of training activities for certification staff will take time. Not only will there be the need to design, organise and deliver the training to provide evidence of understanding of the conduct rules, following the regulator's guidance for training to be as role specific as possible, more specialised training also need to be designed. Experience over multiple implementations has taught me that training is often an afterthought on the project plan. If this is the case, then your training will probably be delivered late, leaving you exposed to the risk that staff are not fully aware of their responsibilities under the new regulations.

Finally, because the regulator's expectations are for competent, not just compliant, behaviour there will also be a debate about what evidence will you need to demonstrate competence. If your firm has a fully functioning performance appraisal process, then this may well be enough, (certainly this is the view taken by most firms). However, if your firm does not have a robust performance appraisal process in place, I suggest the new regulation should be the 'tipping point' to implementing one.

NEDs

This article would not be complete without recounting my experiences of working with NEDs. In short, I've found NEDs a challenge and I warn you to expect the same! For such a small group, they often take a huge amount of project time. The reasons are many but the most common are; they are part-time meaning they are difficult to get hold of. Secondly, they are busy and so difficult to gain their full attention. Thirdly, they are not employees and so they have to be treated on an individual basis when it comes to IT. For example, they usually do not have a company email address and in one company, the firm's IT security blocked external email addresses from accessing anything within their firewalls. Meaning they couldn't access their records and complete their activities. And if they are based outside the UK, e.g. based in India, the Middle East or Africa, the access problems are made worse and are compounded by culture. For example, one Worksmart customer had a NED based in India that was 'so important' that he simply 'did not have the time' to formally accept his Responsibilities or complete his annual Fit and Proper return. When challenged, the NED's offer was for one of his staff to complete his activities on his behalf! So be ready for NEDs when it comes to transitioning onto the new regulation.

Processes and Records Management

The new rules will challenge your record keeping and force rethinks in a number of areas. From experience, the most common areas are;

- **Job descriptions:** make sure your job descriptions are up to date and, for execs in the SMR, aligned to their new responsibilities.
- **DBS / credit checks:** be clear about the regularity of these checks, where you store these and who

has access to them. For example, most Worksmart customers store these checks against each user ('so everything is in the same place') and use the security within the software to control access.

- ❑ **References**: the process of obtaining positive work references for the last 6 years is mandatory. Ensure your internal processes don't slip up! Also, be prepared for reference requests from other firms and be able to supply these references quickly and easily.

> "By now most firms in the wider financial services market will have started to think about the new regime But knowing the rules is one thing, translating them into an appropriate response for each firm (as every firm is different) is another.

- ❑ **Competence**: because the regulator's expectations are for competent, not just compliant, behaviour there will also be a debate about what evidence will you need to demonstrate competence. If your firm has a fully functioning performance appraisal process, then this may well be enough, (certainly this is the view taken by most firms). However, if your firm does not have a robust performance appraisal process in place, I suggest the new regulation should be the 'tipping point' to implementing one.
- ❑ **Early implementation:** finally, in my experience the most savvy firms run their first cycle well ahead of the regulatory deadline. Whilst this creates pressure for the project team to complete preparations early, if anything untoward is identified, e.g. issues with an individual's F&P, these issues can be dealt with ahead of the deadline.

The last two years have certainly been interesting. I have worked with some very capable people and seen evidence of genuine best practice. However, if I could offer a single piece of advice, it would be to start early and don't expect things to be straightforward.

And this is just implementing the new rules in your firm. Finally, the whole subject of moving beyond simple record keeping and making the regulation what it is intended to be, i.e. an agent for culture change, will, I suspect, be the lessons for the next two years...

Who is wearing your Cultural 'Fitbit'?

By **Carl Redfern** from Redland Business Solutions

My 13 year old daughter recently celebrated earning her 'Skydiver' badge and is also a newly appointed member of the 'Hawaii Club'.

These 'awards' have been presented to her, along with weekly progress reports by the automated reporting of her new wrist worn fitness tracker. Out of interest, the Skydiver badge is handed out for climbing over 1000 floors of steps (claimed to be a similar height to that of a Skydiver) and the Hawaii club is awarded when you have walked more than 563 kilometres, apparently the length of the Hawaiian archipelago.

In truth, these measures and metrics and 'successes' are so much nonsense but, what is interesting is that they work!

Both my wife and my daughter have started wearing these fitness trackers and the constant monitoring and reporting of statistics and measures and these 'nonsense' rewards generates almost constant discussion in our house.

I fully expected that these wristbands would be a 5 minute wonder and very soon would be consigned to a drawer and forgotten but not at all. As time goes by, and the metrics and progress reports stack up, they are more and more engaged and committed, mini competitions spring up and friends are being roped in. Both are in real danger of getting fitter and healthier!

I am very aware that there is nothing new here. These devices and the linked 'Apps', automated emails, random positive reinforcement, continuous improvement monitoring, regular progress reporting etc. are tried and tested techniques with well-established track records.

But sometimes we forget about the obvious, we fail to think about methods that have worked in the past and become stuck in the new issues and the nature of the new problems.

In my previous article, I talked at length about Andrew Bailey's speech ""Culture in financial institutions: its everywhere and nowhere", where he spoke at length about what is Culture and what are the drivers that influence it.

Since then, on the 18th April, FCA have published their 2017/18 Business Plan. In which they set out their priorities for this year. The plan identifies six major 'cross sector' risks:

- ❏ Firms' culture and governance
- ❏ Financial crime and anti-money laundering
- ❏ Promoting competition and innovation
- ❏ Technological change and resilience
- ❏ Treatment of existing customers
- ❏ Consumer vulnerability and access to financial services

It also outlines specific target outcomes and identified issues in each of the seven individual sectors the FCA categorise, including specific links to 'Culture' in each of them, see below.

It is clear that 'Culture' is very much at the heart of the FCA agenda for this year. I don't think it is a coincidence that 'Firms' Culture and Governance' is listed first in the 'Priorities for the Year Ahead' section or that it is also referenced in John Griffith Jones' Chairman's Foreword:

"There is a clear link between poor culture and poor conduct, and industry must continue its work to achieve and embed its own cultural change."

It is also obvious that each of the cross sector risks have implications for 'Culture'. What does your Firm's 'AML policy' or your 'Vulnerable Customer Strategy' say about the culture of your business and how do they influence how your people behave?

The following are a few key extracts from the detailed section of the Business Plan that explains the Culture and Governance risk as FCA express it:

1. "Firms should own and manage their cultures at all levels and are responsible for identifying and managing the risks created by the drivers within their firms."
2. "... the way firms design their governance arrangements provides an infrastructure for how they are run, our focus is on the effectiveness of those structures."

3. "We expect them (Boards) to take responsibility for their firm's culture and its key drivers, ensure culture remains high on the agenda and that an appropriate culture is embedded throughout the firm at all levels."
4. "… we are interested in the direction of travel of firms' cultures and whether indicators suggest that progress is being made …"
5. "In 2017/18, we will continue to embed the SM&CR in our supervisory approach and processes, and focus on how the SM&CR is integrated into the running of deposit takers and PRA-designated firms."

The Business Plan also contains an interesting section on FCA Supervisory activities. They set out the principles of their supervisory engagement with Firms, which includes a focus of attention on "… the most significant drivers of behaviours, including senior management accountability and remuneration, and on firms improving their standards of conduct at all levels."

They also comment that "… SM&CR supports firms' development of a culture of responsibility to identify the harm developing from their behaviour and take steps to address the risk. We consider firms' systems and controls, governance arrangements and risk management capabilities and how these link to the firm's conduct."

One interesting observation is that despite the ongoing burden of regulation and particularly the rate and pace of regulatory change we are entering a new era of 'transparency' between Firms and the Regulators.

This year, the FCA Business Plan, incorporating their Risk Outlook, is about twice as long and much more detailed than ever before. They have recently released their new Mission Statement and for the first time, also published their 'Sector Views' which provide a detailed insight into FCA's thinking and approach for each of:

- ❑ Wholesale financial markets
- ❑ Investment management
- ❑ Pensions and retirement income
- ❑ Retail banking
- ❑ Retail lending
- ❑ General insurance and protection
- ❑ Retail investments

Together, these documents provide a more complete picture of the way FCA identify and assess risks in the sectors they regulate, and how and why they choose their Business Plan priorities, including the actions they intend to take in the coming year.

There is a strong argument that never before have regulated firms had the benefit of such a complete picture of the direction of travel and clear intent of the Regulators, with a good understanding of what is expected of them and how they should behave.

At the same time, FCA are in receipt of Management Responsibility Maps, containing clear and explicit detail of how a firm's Governance arrangements and Accountability works and fits together, covering all of the firm's activities and operations. They also receive Statements of Responsibility for each Senior Manager clearly defining everything they are personally responsible for.

They have never had such a wealth of information about each regulated firm before and it will probably take a little while for the implications and consequences of all this to filter through to Supervision relationships and Thematic activities.

Clearly much of the above, which refers to SM&CR, currently only applies to Banks and Deposit Takers and to a significant extent Insurers under SIMR. However, the direction of travel is clear and it is coming soon to a firm near you!

> "They have never had such a wealth of information about each regulated firm before and it will probably take a little while for the implications and consequences of all this to filter through to Supervision relationships and Thematic activities.

Obviously the delays to the anticipated Consultation Paper have frustrated many of us, and slowed or stopped many firms who have been doing the right thing and setting Accountability programmes in place.

We must be very cautious of allowing these delays to interfere with progress and planning though!

If you have recently reviewed the publications from PRA relating to SM&CR and SIMR, probably the biggest surprise is the speed and of the implementation deadlines. On 12th May PRA released PS12/17. This was a response to Consultation issued back in October last year, considering 'amendments and optimisations' for SM&CR and SIMR. It contained various changes, some of which came into immediate effect!

Others changes came into effect from 3rd July 2017, and a few more provisions have a date of 12th Sept 2017.

The Policy Statement also referred to a second consultation to consider a new Senior Manager Function and linked Responsibilities. This CP has also recently been published, CP8/17, which has deadlines for responses of 14th August and 22nd September 2017.

Adapting firms' culture to meet the needs of the FCA Certification Regime

By **Jerome Payne**, Financial Tutor at Fitch Learning

Introduction of the FCA's new Accountability Regime continues apace. The one-year Transitional Period for issuing certificates to affected staff has just expired. All dual regulated investment firms have now met the requirements of the new regime, and FCA-regulated firms are now preparing for implementation beginning in 2018. This is a good opportunity to take stock, reminding ourselves of the new accountabilities required of firms, senior managers, line managers and certified staff, and the cultural change it is intended to create.

With the advantage of hindsight, we can now better reflect on the changes seen and the experiences we have had in assisting firms adapt to this new culture; common concerns expressed in 2015/16 will enhance the understanding and communication of the new regime in the new firms captured. This continues to be a great opportunity for L&D professionals to link with HR and Compliance functions in the successful implementation of cultural change.

The new Regime holds individuals working at all levels within relevant financial services firms to appropriate standards of conduct, thereby helping reduce conduct risk in the future. Senior managers are held to account for misconduct that falls within their area of responsibility, something that has happened all too infrequently in the past. Line managers and staff also have new accountabilities, which are discussed in this article.

To be 'accountable' means that one has power, and one is held answerable to others about the way in which one uses this power. Ensuring and increasing this accountability for those working within firms is the fundamental idea behind the new regulatory regime. Adapting to the rigours of this new regime will require significant cultural change for many firms.

A major change for firms is in the way in which fitness and propriety of managers and staff is assessed. In the past, the regulator assessed all individuals seeking to perform controlled functions within all authorised firms. This process would be carried out once upon initial appointment, and would not be repeated unless the individual sought permission to move to a different controlled function.

The Certification Regime, however, puts the onus on line managers to assess the fitness and propriety of certification staff (employees in roles which could pose a risk of significant harm to the firm or any of its customers). The certificate, once issued, is valid for a maximum of 12 months (or until the employee transfers to a different certified role), at which point the line manager must repeat the assessment before issuing a new certificate. Certified staff remain accountable for ensuring they remain fit and proper once assessed as such.

Although daunting for line managers, the process makes sense. Line managers, after all, are in the best position to carry out such assessments, but the additional burden of the proper documentation of senior manager responsibilities, line manager assessments and other areas of compliance with the new regime is challenging.

Fitness and propriety

The assessment of fitness and propriety revolves around three key areas:

- ❑ Honesty, integrity and reputation
- ❑ Competence and capability
- ❑ Financial soundness

Certification staff are accountable for remaining fit and proper, and following the Conduct Rules. Line managers are accountable for assessing the fitness and propriety of their certification staff, and ensuring that this process is properly documented. Line managers need training in making such an assessment, and the documentation of evidence of assessment for all three areas.

The new regime splits the task of assessing senior managers and certification staff between the regulator and firms and, in doing so, frees up significant resource for regulators to scrutinise senior managers much more closely. Senior managers are still assessed by the regulator.

The new regime will give assurance that certified employees retain fitness and propriety on an ongoing basis. Line managers are personally accountable for the assessment of those they manage for issues that they are or ought to be aware of, and for properly documenting this assessment. Reassessment of fitness and propriety should be built into the performance management appraisal cycle of firms so that line managers can ensure this happens – with, of course, the ongoing support of their firm's L&D, HR and Compliance functions.

Line managers must adapt to their new responsibilities, and for some this requires a significant cultural paradigm shift. Old expectations of the FCA, or their Compliance team, performing the task of assessing fitness and propriety for their staff need to be replaced by line managers themselves performing this work. Additionally, this is no longer a 'set-piece exercise' carried out on recruitment but an ongoing process requiring planning, supervision and communication on a real-time basis; a culture change for both managers and staff. This suggests a greater understanding of cultural change would be helpful.

Cultural change is about behavioural change. For the vast majority, the natural human disposition to being told to change is to resist. This occurs either through burying our heads in the sand hoping the change will go away or rebelling against the change. Bringing people on board is key to any sort of success. This involves being creative in terms of translating the vision into actionable behaviours that can be observed and recognised.

Although many change models might be useful here, at Fitch Learning we like Dr Kotter's model of change. It has three clear stages; Planning, Enabling and Embedding.

Planning:

During this stage the climate for change is created. This means that when the required changes are initiated they are far more likely to be accepted. Skip this stage and any new culture is unlikely to be robust enough to withstand future challenges to it. Carrying out the Planning stage requires the creation of a sense of urgency, getting people excited about the forthcoming regime and the benefits it offers. This stage also requires sponsorship from senior management, showing leadership in adopting the cultural change and developing strategic initiatives to deliver the vision for change.

Enabling:

It is during this stage that the change is communicated and action to change begins. If the planning stage has gone well this stage can be hugely exciting as employees get involved in making the vision relevant to themselves and their roles. The enabling stage requires clear and consistent communication of the vision for change, explaining to line managers and certification staff what the vision requires, and giving them the resources (training, time etc.) to deliver the changes required.

Embedding:

This is when the new culture gets cemented into the fabric of the organisation. During this stage, initial excitement around new ideas has died down and the newness fades. 'Embedding' requires building upon the momentum established in the Enabling stage by extending the scope of the annual review process for fitness and propriety towards other performance management related areas, and by communicating the success of the new regime to all those involved in it. Ultimately assessment of fitness and propriety should become linked to performance appraisals during which a portion of the discussion can be around how these values have been demonstrated over the year with specific examples, and identifying tasks for next year for retaining fitness and propriety.

“Line managers must adapt to their new responsibilities, and for some this requires a significant cultural paradigm shift.

Naturally, in order to evaluate the success of the cultural changes made in delivering the new Certification Regime, measures have to be designed of the success of those changes. Although firms should develop measures that are relevant to their structure and business model, suggestions could include the speed or accuracy of the certification process, the number of breaches of conduct rules or company policy by certified staff, and so on.

The Individual Accountability Regime, and the cultural changes necessary to deliver it, will bring benefits to firms, their managers and staff. Ongoing and more diligent assessment of fitness and propriety should bring about fairer recruitment and remuneration processes by allowing recognition of high quality staff. The new focus ought to provide clear avenues for staff and managers to discuss targets and concerns, enhancing communications and allowing more proactive risk management, by allowing the recognition of potential issues before they turn into major problems. These benefits will be maximised by firms whose L&D professionals liaise with Compliance and HR to ensure that the correct plan for meeting the needs of the Individual Accountability Regime is developed and communicated effectively throughout all levels of their firm.

Creating a culture of compliance for the SMCR

By **Neil Herbert** from HRComply

What is culture? The Oxford English Dictionary defines it as – 'The philosophy, practices, and attitudes of an institution, business, or other organisation'.

> It is widely accepted that cultural shift is the most important response to regulatory creep.

Generally culture is something that develops naturally over long periods of time shaped as it is by so many factors – societal, demographic, political, social economic etc. It is certainly a very long period of time since the FCA started banging on about culture within financial services institutions – and their expectations in this regard. The FCA's message has been as unequivocal as it has been longstanding – that it is looking to hold senior management accountable for the embedding of compliant cultures and high ethical and conduct standards. To judge by increases in enforcement levels relating to conduct – one could be forgiven for thinking that this has fallen largely on deaf ears.

The result? The Senior Managers Regime – which aims to lead the reluctant proverbial horse to the water and then make it drink! New rules that hold senior UK-based managers of banks liable for their actions are deemed a necessity economically, socially and politically. It is not entirely to the industry's credit that they have been the one group apparently not to get this entirely. The regime, which finally kicked in on March 7 2016 -and through which those firms that were captured have just completed their first round of certification of staff - doesn't just put a financial firm's high-up employees in the firing line, but its culture too. For without an appropriate embedded culture led from above - the FCA argues – no institution can expect to achieve the standards and improvements that have so long been required. It is widely accepted that cultural shift is the most important response to regulatory creep. This will be the next challenge for the up to 60,000 firms captured in the 2nd round of SM&CR. Whilst final guidelines are still a way off - and everyone appears to be pinning their hopes on 'proportionality' to inject some restraint – it is pretty clear that the requirement to assign responsibilities to Senior Management Functions and hold them accountable to those responsibilities as well as the need to manage the Competence, Fitness and Propriety and Conduct of all certified staff will remain a given basic of the regime.

The Senior Managers Regime is designed to control irresponsible boards, bosses and risk-takers. All managers - or those with director-level oversight for a UK-based part of any banking business – are already captured and their sphere of influence defined, assigned and recorded. If a captured financial institution breaches regulation, the accountable person could face financial penalties or a ban from the industry. The most significant shift here is that the accountable person effectively shares accountability with those he or she oversees. Their actions create consequences for him/her and he/she must be able to prove they took all 'reasonable steps 'to ensure that their actions were compliant or that breaches should reasonably have been avoided. Such positions of responsibility suddenly seem less appealing! Indeed there is already a looming recruitment crisis for bank boards as the downsides and risks of such roles – along with the increased retention and control/clawback provisions for remuneration – make board roles more difficult to fill. The Treasury backed down slightly in the face of legal advice - and consequently jail time looks less likely - when it transferred the burden of proof for these rules from the bankers to the watchdogs. Further evidence for this relaxing of the new standards came when it emerged that the Financial Conduct Authority had dropped a review into banking culture.

However the spirit of the new regime remains undiminished according to Tracey McDermott who at the time was the acting head of the FCA and the SMR will force change in business practices. The biggest changes will be that Managers and firms will need to cover their tracks and maintain scrupulous records and audit trails. IT system and MI spend along with legal, compliance and risk management budgets are set to rocket.

The key will be education education education – to quote Mr Blair! The firm must educate and equip managers and staff alike to be competent and to understand what is required from an ethical and conduct point of view. They must then put in place the mechanisms to achieve this and the oversight infrastructure to monitor and record its delivery.

Many banks see this as unnecessary bureaucracy and intrusive regulation that slows down decision making – others see this as a necessary cultural and systemic shift. Either way - the impetus for such deep cultural change must now be driven from the very top of every organisation and be thoroughly embedded changing attitudes and processes at the same time through education, policy and process restructuring. Most ominously, regulators have signalled their willingness to catch managers by using the fuzzy notion of cultural deficiency to pin responsibility even where the company org chart suggests there isn't any. Lawyers accept that this is a grey area but one that banks would be foolish to ignore. Those that put profit above client interest are courting disaster those that don't must be able to demonstrate that fact.

There will be other shifts. The dilemma facing directors over whether to put regulators' or shareholders' interests first will intensify. Watchdogs will be much more tenacious in checking that a bank's culture is up to scratch, all staff down to the most junior will be scrutinized and institutions will need to pay attention to their T&C and development strategies to meaning institutions may have to do even more to ensure that their junior talent is on board, competent and happy.

In summary a cultural revolution, albeit a slow-moving one and one that's probably needed, is gathering steam. It's also an unstoppable one – as the FCA/PRA press on with consultation with to the rest of the industry – notably the wider wholesale and investment/asset management sectors – to broaden the regime's application to cover the entire industry. Many smaller firms in these sectors might find cultural change of this magnitude even harder and financially damaging to achieve.

Certification – sure you've done enough?

By **Philippa Grocott** from FSTP

Show us your policy and we will be on our way

By now everyone should be aware that the days of show us the relevant policy, we'll tick the box and be on our way are far behind us - the debacle with Northern Rock put pay to that.

> "Make sure, when the regulator lifts your carpets, you have swept beforehand – the FCA do like a nice clean floor.

The FCA has teeth and some of us know how hard they bite. The Senior Managers Certification Regime, SMCR, just makes it easier for them to chew their prey.

Those of you reading this will be in one of three positions:

- ❏ All your Certified staff are certificated – you are sitting pretty
- ❏ This is not relevant to us yet as our firm isn't affected until 2018 – plenty of time to address this
- ❏ Our Certified staff still aren't certificated yet – Oh xxxx – we are running out of time.

Lifting the carpets

Irrespective of what position your firm is in it may be useful to consider asking yourself the following question:

If the FCA were to lift the carpet in your firms premises, in other words ask you to take them through your assessment process for Certificated staff, would the process be robust?

What does she mean by robust I hear you say? (I don't really hear that – I'm just using it for affect).

Competence Assessment Standards

T & C in the FCA handbook states "Firms need procedures in place with clear criteria for individuals to be assessed as competent, so all parties involved understand when competence has been reached".

Has each of the job roles within your firm's certification regime got an aligned set of competence standards?

A number of the appraisal standards we have come across are not competence standards they are performance standards. For an appraisal to stack up as robust, performance standards need to be there – the regulator, although they don't express it, does realise you are a business – how else would you pay their annual fees! However those performance standards need to be accompanied by competence standards to ensure performance is not underpinned by a 'shed load' of risk.

How do you ensure there is consistency?

Are you a 'Finger in the air' method kind of a firm?

If it is down to the line manager to assess their member of staff as competent they need a method to measure. Experience may give someone the ability to gauge whether an individual is competent to do their job or not but experience is also subjective. The finger in the air method of assessment is a tried and sorely tested method. Believe it or not people in Financial Services are prone to bias. If there isn't a set of standards to assess someone's competence and performance against, emotions step in:

"I can't say Mandy is anything less than an A rated player as she is our top performer and I don't want to upset her – she may leave us"

"John really challenges me on the decisions I make – I'm not going to rate him as highly as Tony. Tony isn't as good at his job as John but he never gives me any bother".

So what do I mean by competence standards?

I may be teaching my granny to suck eggs but just for clarity (A stupid expression to use as I expect the majority of you reading this are younger than me):

The FCA defines competence as "having the skills, knowledge and expertise needed to discharge the responsibilities of an employee's role".

Having a set of competence standards will not necessarily ensure consistency. A set of competence standards are only as good if people understand how to use them. You also need to remember to give the poor individual that is being assessed a fighting chance by sharing the competence assessments with them – prior to them being assessed of course…and the most important thing – you have records (evidence) of how you assessed the individual against the standards that can be replicated on paper.

We advise firms to break down their assessment standards into 4 ratings:

❑ Competent

❑ Competent with development

❑ Non-Competent

❑ Competent plus – you should always want people to strive for the best.

Underneath those headings we then recommend identifying the key elements. The easiest way to demonstrate this is give you an example. Please bear in mind this is a high level example and yours would be more specific and bespoke relevant to your firm and the processes you adopt:

Competence	Competent Plus	Competent	Competent with development	Non-competent
• Initial contact with clients	• *All competence assessment criteria for competent plus Outlines all of the information required from the customer and the* ***reasons why***	• *Full name of firm given and genuine reason for call/ meeting explained* • *Business card given (only if new customer)* • *Explain regulated by the FCA to give advice* • *Explain that the firm only offers its own products* • *Explain that the firm will only advise and recommend the most appropriate product for the customer following a full assessment of needs and circumstance* • *Outlines at least 50%of the information required from the customer*	• *Full name of firm given and genuine reason for call/ meeting explained* • *Business card given (only if new customer)* • *Explain regulated by the FCA to give advice* • *Explain that the firm only offers its own products* • *Explain that the firm will only advise and recommend the most appropriate product for the customer following a full assessment of needs and circumstance* • *Omits to outline the information required from the customer*	• *Omits 1 or more of the following:* • *Full name of firm given and genuine reason for call meeting explained* • *Business card given (only if new customer)* • *Explain regulated by the FCA to give advice on products* • *Explain that the firm only offers its own products* • *Explain that the firm will only advise and recommend the most appropriate product for the customer following a full assessment of needs and circumstance*

As you can see it's not rocket science, but the above is just one of many competence assessment areas for that particular role. Consider your own situation:

How many different roles have you got in your certification regime?

If the SMCR is not relevant to you now – think about how many job roles you have in your organisation that could cause significant harm to the firm or its customers as those are the individuals that will need to be assessed as competent under the Certification regime.

If you haven't got competence assessment standards in place have you got the time and the resource to create them – March the 7th 2017 is on the doorstep?

If you don't come under the SMCR until 2018 use your time wisely - start reviewing job description and creating a robust assessment process for relevant individuals now.

As a firm that helps our clients satisfy the regulators requirements we are only too aware that you are not given uncapped budget to address the gaps in regulation you may have. So to help influence stakeholders to commit funds any additional benefits you can provide are always useful;

Competence Assessment standards as part of a robust Competence assessment process will:

❑ Ensure consistency – people will be assessed in an objective, fair way across the firm

❑ Lower risk – competence assessment coupled with performance ensures individuals carry out their role in the right way lowering the inherent risk.

Make sure, when the regulator lifts your carpets, you have swept beforehand – the FCA do like a nice clean floor.

Extending SM&CR to all Firms – how to tackle a 'Super Wicked Problem'

By **Carl Redfern** from Redland Business Solutions

Correctly identifying the nature of the challenge helps us to understand what we need to do and select appropriate strategies to succeed. In this article I will try to briefly explain what a 'Super Wicked Problem' is and some tactics for dealing with them.

A 'Super Wicked Problem' is a technical term used in the scientific and academic communities to describe a particular type of very complex problem.

Over 40 years ago, two scientists Rittel and Webber described the term 'Wicked Problem' in contrast to a 'Tame Problem', which was easily solvable.

A 'Wicked Problem' describes a problem that is difficult or impossible to solve because of incomplete, contradictory, and changing requirements that are often difficult to recognise. Moreover, because of complex interrelations, the effort to solve one aspect of a wicked problem may reveal or create other problems.

This concept was further developed by researchers such as Dr. Jeff Conklin, Director of the CogNexus Institute, who has consulted on the topic with the World Bank, United Nations, and NASA. The following is a paraphrase of some of the characteristics of 'Wicked Problems' below:

- **There is no definitive statement of the problem.**
  The problem is ill-structured and features an evolving set of interlocking issues and constraints
- **Wicked problems have no 'stopping rule'.**
  The problem does not 'end' – it will always require continuous management and monitoring and adjustment to the 'solution' – it is never solved 'definitively'
- **Solutions to wicked problems are not right or wrong.**
  Solutions are simply 'better or worse' – the determination of the quality of any potential solution is subjective
- **Every solution to a wicked problem is a 'one shot operation.'**
  All attempts to tackle the problem, including ignoring it or taking 'no action' has consequences which impact on the problem, potentially revealing or creating new complexities

The distinction of a '**Super**' Wicked Problem was made by a team of researchers at a scientific conference in 2007 and published in a research journal in 2012. They defined 'Super' Wicked Problems as also having the following key characteristics:

- Time is running out.
- No single central authority.
- Those seeking to solve the problem are also causing it.

The features that are common to a 'wicked problem' relate to the problem itself, but the characteristics that upgrade it to a 'super wicked problem' relate to the people (and organisations) trying to tackle it. Stakeholders have radically different perspectives and different frames of reference for understanding the problem.

Why is extending SM&CR 'Super Wicked'?

The Government, Treasury and the Regulators recognised major and significant issues with customer outcomes, successful operation of the markets and consumer trust, particularly in the Banking sector but also more widely across all financial services.

Various reviews and studies then looked at and found issues within firms and the ways firms interacted, identifying and blaming organisational Culture, Conduct and Professionalism shortcomings.

The introduction and subsequent extension of SM&CR is one of the major systemic changes being made, with the holistic intention of delivering material improvement across all of these complex areas.

Focusing on Culture, Conduct and Professionalism will (should?) deliver better consumer outcomes, restore trust etc.

I think most people would agree with the theory and applaud the intent but it cannot be denied that we are linking some very nebulous and subjective principles and concepts together and interlocking the most complex aspects of group and individual behaviour.

The extension of the SM&CR should demand a more consistent approach to behavioural standards across the financial services industry and help to reduce conduct risks. It should therefore help to effect a wider cultural change.

The regulators are creating a new Super Wicked Problem, and giving it to us to resolve!

What does SM&CR mean for Firms?

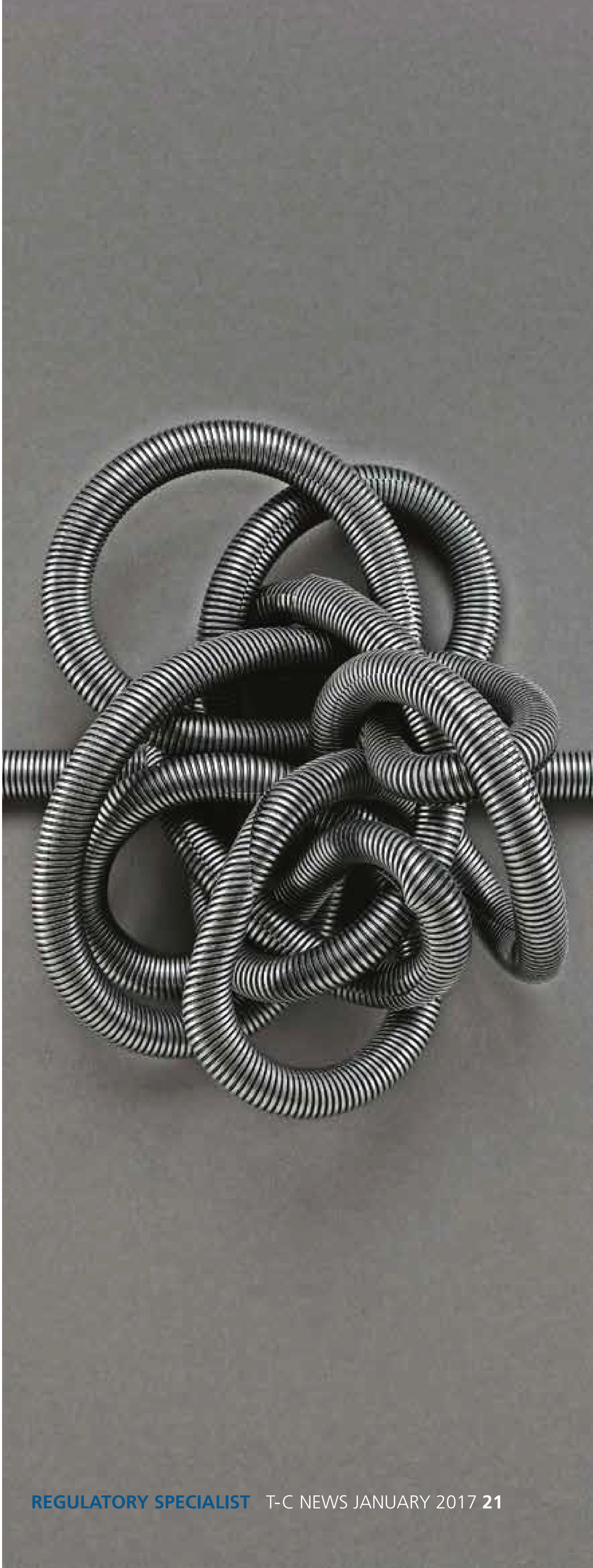
The current SM&CR for Banks and other deposit takers, came into force in March 2016 and introduced three new elements, described below. These three tiers will also be applied to all financial services firms under the new regime from 2018, but the actual details will be subject to the consultation process, which is expected to be published early 2017. It may even have started by the time you are reading this article.

1. **Senior Managers Regime (SMR)**
   This will directly replace the Significant Influence Functions under APER and will apply to the most senior staff in the firm, (primarily, Board and Executive committee roles) performing Senior Management Functions (SMFs). For the Banks, the regulators were clear, SMR was intended to apply to fewer people than APER and to very clearly define exactly who was responsible for what, covering of all regulated activity of the firm – there can be no gaps.

2. **Certification regime**
   This applies to a broader range of individuals; staff in roles identified by FCA or PRA as representing risk of 'Significant Harm' to the firm or its customers. These roles are known as 'Significant Harm Functions' (SHF), for example those giving investment advice. Firms will need to certify that a person is fit and proper, and competent, to perform a particular SHF at least annually. Critically, the onus of this assessment is all on the Firm and individually, the Senior Managers, within the Firm. Certified Staff will not be subject to regulatory approval (although they will be accountable to the regulators). Again, FCA has been clear that for Banking Firms, they expect the 'Certified' population to the bigger and include more roles than the current APER regime captures under the 'Controlled Functions' and they expect the annual F&P assessments to be more rigorous. Also, because Firms will now manage these staff, without regulatory pre-approval, the FCA Register for Certified Staff will disappear.

3. **Rules of Conduct**
   These high level rules are similar to the existing Statements of Principles (although there are important differences) and apply to senior managers, Certified staff and importantly, all other employees in the Firm apart from a defined list of ancillary roles, i.e. cleaners. Under the new Conduct Rules, Firms have new obligations to investigate and keep records of suspected 'breaches' of the rules and to annually report (at least) to the regulators.

Another key aspect of the new SM&CR will be 'Proportionality'. This will be a key part of the consultation process, and will be complex to



resolve because of the scale of difference between firms that will now be subject. However, it is very clear from the 'direction of travel' that all firms can expect the majority of the current SM&CR features to apply to them, when the regime is extended.

Probably all Firms will have to produce and maintain some form of 'Responsibility Map' and individual 'Statements of Responsibility' for all Senior Managers, who will also be subject to the new 'Duty of Responsibility'. Therefore, all Firms will have to review their current governance arrangements and document them and collate the necessary evidence that supports how and why their governance model is appropriate for their specific business.

> "Most people would agree with the theory and applaud the intent but it cannot be denied that we are linking some very nebulous and subjective principles and concepts together and interlocking the most complex aspects of group and individual behaviour.

The experience of many, possibly all, Banks was that this turned into a much more complex and challenging process than anticipated. It took longer and had significant implications for Senior Managers. Once they understood the details of what they were being asked to sign off, what they were personally and individually accountable for, in many organisations, it sparked some emotional debates about culture, conduct, authority and oversight. Particularly when, under SM&CR, Senior Managers proved to be in breach of their responsibilities could be subject to unlimited fines, remuneration claw back and lifetime bans.

How to tackle Super Wicked Problems?

The key to success is to remember the features and characteristics that make this into a Super Wicked Problem when developing plans and strategy.

❑ **Our Stakeholders will not have a consistent understanding of the issues or potential actions / solutions.**
Engage early with your Senior Managers and get them involved. Interestingly, one of the most common pieces of feedback in the Banking world has been that some Senior Managers felt that SMR was "being done to them" instead of "being done by them". Given their instrumental role, the potential implications for Senior Managers and the potential duration of the debate that will ensue, start the process of sharing SM&CR implications with them now.

❑ **The environment is constantly changing.**
Other regulatory change is also coming that will compete for time and attention and resources and change what you need to do, while you are doing it. MIFID II, PRIPS and many more are also being introduced in the same timeframe – get familiar with these other changes and ensure that the people working on these projects are familiar with SM&CR.

❑ **Complexity interacting with Complexity.**
Find tools / systems / solutions that will help to simplify and manage change.
There are many firms (such as Redland) that offer solutions to help Firms to comply with the new obligations of SM&CR. Have a look at some of them, they may offer ways to help, not only with delivering the final solution but also with the iterative process required to get there. Also, many of the solutions available are much less expensive than you might expect. (brief shameless plug – Redland's new InsightSMR OnDemand solution, is less expensive than Linkedin Premium and available for a totally free one month trial)

❑ **There is no single, right answer.**
Don't try to get everything perfect from the outset and don't wait for 'certainty' before taking steps or making decisions. Do things that will help to reduce risk and simplify complex area of your business – it will help in the long run and reduce the effort downstream.

❑ **Our People are part of the problem and the solution.** Expect to communicate and collaborate, many departments and roles will be instrumental in addressing SM&CR - HR, Legal, Compliance, Risk, L&D even good old T&C. If we can accommodate sharp differences in assumptions, knowledge and priorities it will be easier to make progress.

Key actions that can be taken right now include:

❑ Engage with senior managers and secure priority and support

❑ Identify stakeholders and form a working group

❑ Prepare information packs that set out SM&CR objectives and implications

❑ Review your existing governance arrangements and how they are documented

Collaboration, coordination and, where possible, simplification will be the key ingredients for success in ensuring that introducing SM&CR your Firms is successful. Success means delivering a compliant solution with the new obligations but also one that goes a long way towards raising standards and outcomes across the sector. Perhaps, collectively, we can 'tame' our new 'Super Wicked Problem'.

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You don't have to be 'Certified' to work here …

By **Carl Redfern** from Redland Business Solutions

This year in March, what has become known as the Senior Manager and Certification Regime (SM&CR) came into force for deposit takers in the UK. In the FCA Annual Report for year ending March 2016, they proudly proclaim this regime applies to "over 41,000 people working in over 1000 Firms".

It is now well known that this regime will be extended to cover all firms regulated under the Financial Services and Markets Act (FSMA) and when

it does it will apply to an estimated further 60,000 Firms and more than 150,000 more people.

The timetable for the extension of SM&CR in still unclear, when it was announced, the clearly stated intention was for it to apply by 2018. This date now looks very ambitious. There will need to be an extensive consultation process, which has not yet started. I don't know when the first CP will be published but I am certain we can expect it soon.

There are some big issues for the consultation to address and in this article I attempt to highlight some of them.

One of the biggest issues to address is probably 'Proportionality'.

This is undoubtable going to be a hot topic. To paraphrase one of the primary objectives of SM&CR, it is to make it very clear "exactly **who** is **responsible** for **what**". For many of the new firms that the regime will apply to, this is already apparent – in a small firm of 1 or 2 advisers with a few support staff, there is little opportunity for confusion. Will firms like this really need a 'Management Responsibility Map' or individual 'Statements of Responsibility' (SOR)?

The counter argument is that in smaller firms, producing this sort of governance collateral is not going to be difficult either and may be a good discipline. Making it easy and low cost to comply will be critical.

One of the biggest criticisms of both Regulators (FCA and PRA) today is the ever increasing cost of compliance, APFA published some survey results at the end of 2015 suggesting that small and mid-sized firms are spending up to 12% of their income on direct and indirect regulatory costs.

This is one area where applying technology can be an advantage. Innovations in recent years have combined to make IT systems much more affordable and easier to implement than they used to be. Many firms selling GRC (Governance Risk and Compliance) solutions, including my own – Redland, can now implement systems in weeks not months, with annual costs less than 50% of 1 FTE, not hundreds of thousands. These systems can generate material efficiency savings and risk reductions and are therefore worth considering.

Obviously for very small firms, systems may not always be appropriate but the 'event horizon' for ROI is much closer than is used to be. For example, we (Redland) are in the process of launching a new solution for automating compliance with Responsibility Maps and SORs (SMROnDemand) that can be switched on in a couple of days and will cost less than a subscription to LinkedIn Premium.

This example highlights that in today's world, with both regulators supporting and promoting innovation in 'FinTech' and 'RegTech', firms should try to keep up with developments because traditional assumptions of cost and scale and relative benefits are rapidly changing.

Another significant area to be considered in the SM&CR consultation will 'Appointed Representatives (ARs)'.

This will undoubtedly be a difficult topic to resolve.

The current SM&CR rules for Banks, try quite hard to avoid the subject of ARs altogether. In SYSC 5.2.22 (in the FCA Handbook) it says:

"A person who works for an appointed representative of a firm may fall into the certification regime. In practice, however, they may not meet the conditions for the certification regime to apply."

The exact conditions are in some area quite complex, for example the definition of 'employee' (SYSC 5.2.21) which requires that the individual a) provides services to the firm and b) is subject to supervision, direction or control by the firm.

I think that ARs and staff working for them will be subject to elements of the new SM&CR but the consultation will have a number of key questions to answer. The roles and positions of Senior Managers within ARs need to be tackled, including whether the AR Firm will need to create and maintain its own Responsibility Map. Are the Board and Executive of the Principle firm 'Senior Manager Function' (SMF) holders and everyone else subject to Certification or will the Senior Managers of the AR Firms also hold some form of SMF and have a place in a Map?

Certainly the FCA are currently focused on what they see as the 'risks' of the Appointed Representative business model.

All firms that have Appointed Representatives, should ensure that key staff engaged in T&C, HR, Compliance, Operations and Business Quality consider the findings of the recent Thematic Review published by FCA "Principles and their Appointed Representatives in the General Insurance Sector".

The key regulatory principle of 'Appointed Representatives' is that the Principle firm has regulatory responsibility for the AR and must put in place a written contract with the AR; anything that the AR has done, or omitted to do, is treated as having

been done, or omitted to be done, by the principal itself.

The review is pretty damming and draws lots of negative conclusions and has resulted in a 'Dear CEO' letter demanding that the CEO and Board of all Principles operating ARs in General Insurance "…consider the contents of the thematic report, and assess whether you can demonstrate how you are meeting our requirements in relation to your appointed representatives…."

The Appointed Representative business model is a significant sector within Financial Services.

The introduction to the Thematic Review states that there are approximately 400 insurers and 5,100 intermediaries, some of whom have accepted responsibility for over 20,000 ARs, which accounts for about 25% of all the ARs registered under the UK regulatory regime.

The FCA conducted an online survey of 190 principals operating ARs, seeking to gain insight into their business model and size, AR activities, governance structures, customer numbers, product types, sales methods and revenues. The 190 firms surveyed reported that they had over 6,000 ARs with 75,000 individual representatives operating at 15,000 locations, selling over 10 million policies and generating annual revenues of over £500 million.

They then went on to examine a sample of 15 Principle firms in more detail, using a risk-based approach to represent a diverse range of business models, products distributed, sales methods and sizes of AR networks. These 15 principals had 783 ARs with 10,594 representatives operating at 1,684 locations.

> "The roles and positions of Senior Managers within ARs need to be tackled, including whether the AR Firm will need to create and maintain its own Responsibility Map

The review draws many conclusions and the detailed finding are set out in the FCA paper 'TR16-06', along with the 'Dear CEO letter' and a useful slide deck of an FCA presentation of the results, all of which are on the FCA website. However, a sample of ten of the primary findings is set out below:

1. The majority of the principal firms could not demonstrate that they consistently exercised adequate control over their ARs' activities
2. Majority of principals lacked resources to effectively oversee their ARs
3. Insufficient staff with appropriate skills or regulatory knowledge
4. Absence of appropriate Monitoring framework or support for oversight
5. In over half of the firms there was no risk based approach to AR oversight
6. Lack of evidence of follow up and decisive action when issues identified at ARs
7. Most principles did not consistently exercise effective oversight of their ARs' sales practices
8. Less than a quarter of firms had put in place processes for assessing and improving customer outcomes
9. Most principals did not have sufficient MI to enable them to identify key risks and trends within their AR network
10. Quality of training and competence regimes varied widely - In many cases there was no effective quality assurance to assess understanding

All of the above are quite serious issues and based on the size of the sample investigated, may represent significant shortfalls across a wide number of firms within the industry. Obviously one consequence of a negative Thematic Review such as this, is that everyone gets a little bit 'tarred with the same brush'.

Because FCA have found 'disappointing' results, they will look harder at everyone else and be less tolerant of 'nearly good enough' from everyone else.

Most of the above samples relate directly to Governance, Risk and Compliance or specifically to T&C. So as T&C professionals we should be on top of these areas. If it's not specifically in our remit, we will be working closely with the teams who are responsible and under SM&CR individual Senior Managers will be allocated specific responsibility for these areas. This should help to improve our communication lines and help to enhance management interest in our work.

Interestingly, the review goes on to also say……

"While this review was focused on the general insurance sector, the findings may also be applicable to principals and ARs operating in other sectors of the UK financial services industry. We expect all principals to consider the findings in this report and to take appropriate action, where applicable, to address the issues that are relevant to them"

So even if your firm does not manage GI ARs, if you operate an AR model in other sectors, or even if you directly employ all of your staff, some of these 'control observations' are relevant and suggest that we all need to focus on these areas of our operations, risk frameworks and oversight controls.

To return to the topic of SM&CR and specifically the application of Certification to the wider FSMA firms, the impending consultation process will not result in the 'reduction' of standards or a relaxing of regulation. It will need a lot of debate and thought to get it right and make it effective, keep it proportional and manage the operational impact, not least the cost but……

Removing the added burden of liaison with the Regulator over Certified staff should actually help.

I think that in some form, in tomorrow's world, under SM&CR most if not all current ARs will need to be Certified as competent and assessed as Fit and Proper on an annual basis by the Principle Firm.

We are currently obliged to manage registers of staff subject to Approved Persons and keep on top of T&C and FIT and SPS etc. anyway.

In addition, we need to apply to FCA and keep records up to date on the FCA Register.

In the future, under SM&CR, we may need to apply more rigour to our record keeping and processes (and certainly address any potential 'gaps' highlighted by regulatory attention such as the AR Thematic Review) but there are systems to help with that!

You don't have to be 'Certified' to work here – but by 2018, it will help!!!

The stark reality of the SM&CR for HR Directors

The Senior Managers and Certification Regime (SM&CR) is a great opportunity for the HR profession to truly be part of the senior management team within financial institutions, but it undoubtedly raises new challenges and indeed legitimate concerns for many, writes **Neil Herbert**, Director of T&C software firm HRComply.

For some time now I have been raising the issue of advancing regulatory creep on HR departments across the financial services sector. Finally, and irrefutably, those implications have become a reality. The new SM&CR is already capturing banks and PRA-designated firms within its remit and is now set to roll out across the industry as a whole. The new rules place the responsibility for certification, competence, conduct and culture firmly within the accountability regime - and much of it firmly at the feet of the Head of HR.

That means that HR could at the very least become a certifiable function (as a Significant Harm function). Within some firms at least, Heads of HR may find themselves being accountable as an SMF accountable for much of the SM&CR's regulatory delivery and large elements of risk (primarily conduct based). This is at best a significant challenge and it is one that may well transform the HR function within the financial services sector.

Some of our HR Director clients are already designated SMFs with the prescribed responsibility attached i.e. significant portions of the SMR, Conduct and Competence Certification duties (and all the personal and business risks that these duties bear). Fine, you might say; Compliance and Risk Directors have long borne those requirements. Many HR professionals, however, may feel that they didn't sign up for those obligations. They might also fear that they simply don't have the scope of influence, the experience and the support of the senior team to be able to assume such responsibilities personally.

To be clear - should the SM&CR regime (the requirements of the new Conduct Rules and the competence and certification processes) not be managed correctly, then in the event of a conduct breach, a failure in culture or unacceptable levels of competence within the senior team (or indeed just generally poor performance and behaviour) the HR function could find itself being brought to account in a most unpleasant way. Recent enforcement by the regulator is increasingly focused on conduct issues, poor governance and a failure to instil compliance-based cultures and accountability across organisations.

The SM&CR (we are told) is a direct consequence of the banks' senior management previously being content to shift blame onto individuals and not to be held accountable for institutional failures. The Regime has now, though, become a major concern for anyone holding a senior role at a bank. These individuals face the risks of not taking 'reasonable steps' to ensure that correct governance, proper oversight, compliant and ethical conduct are core to their business. Unsurprisingly, they expect the firm they work for to ensure that they are properly equipped for this undertaking and many of our clients talk about the peace of mind that they seek through the implementation of robust systems and procedures. This, then, is a challenge for all at the top of our financial institutions – not just HR. As a consequence we are already seeing some reluctance to take up board roles, due to the greater risks and the diminishing returns ensured by increased remuneration control.

To fully deliver the requirements of the SM&CR, firms need to do far more than just create SMF's, assign responsibilities, produce a map and then just hope for the best. They must firstly also create the correct culture that will enable proper delivery and management of T&C and Conduct, then the required layers of governance and oversight. They must empower the individuals that are accountable with SMF responsibilities to take those 'reasonable steps' (and give them the oversight to ensure that they are being taken). It might help to actually define what those 'reasonable steps' are, as a starting point.

Firms must develop all those in SMR responsible roles to be able effectively to manage the assessment, analytical, team management and development issues that are now in their remit. They must also invest in the technology to enable ongoing monitoring and assessment processes and MI in order to identify risks or shortfalls and mitigate these quickly. They could start by clearly benchmarking conduct, training and competence requirements across the business, ensuring that every person in every role, from CEO right down to the front, desk clearly understands what is required of them. There needs to be a clear process of assessment, training and monitoring in place to track this.

It's not enough, for example, to simply deliver conduct-based training then assume everyone understands the concept and applies it. Every job should have clearly defined KPI's and Conduct competencies that people understand how to deliver through a clear T&C strategy; development of staff and process; and the assessment and monitoring of outcomes. How many firms can honestly say they are doing this properly?

> "To fully deliver the requirements of the SM&CR, firms need to do far more than just create SMF's, assign responsibilities, produce a map and then just hope for the best.

The challenges of SMR affect all senior managers in the financial services sector – so why am I singling out HR? Culture, training, competence and conduct are HR-based issues and the rightful place for their management is in the HR department, but again I would question how many boards of banks and financial institutions honestly regard HR as a Senior Management Function with responsibility for key risk factors? Until boards do so and invest prudently in the resources of the HR function and the tools at its disposal, there is always going to be a delivery and expectation gap and this can be a disaster waiting to happen.

The changes and initiatives required to deliver these significant cultural shifts must be led from the top. The Senior Management – the Executive Board – must be fully on board (pardon the pun). They need to take it very seriously indeed and they need to empower their HR function and invest it with the influence and respect required to achieve these challenges. That means higher salaries, better skills and generally the best people in the HR function rather than seeing it as a secondary, back office function.

Firms will also need to invest in technology and robust processes – based on assessment, monitoring and benchmarking to achieve the standards of excellence that the regulator is looking for and to ensure that the reasonable steps required of all SMF's are being taken – their responsibilities discharged satisfactorily.

Achieving cultural and procedural change in any organisation is never easy; I believe HR must be empowered to do so.

SMCR in Practice – Not as easy as it looks!

By **Julie Pardy** from Worksmart

A lot has been spoken, and for that matter written, about the new Senior Management Regimes in both banking and insurance. The majority of it has been very helpful especially when re-iterating the key elements of the legislation that has been implemented by both the PRA and FCA this year. However, when I was asked to write this article, I thought that now firms had overcome the "Day 1 Compliance" requirements of the regime, it was time to focus on the future and how firms might evidence their practical application and compliance with the regime, when asked to do it either via an invitation into a regulatory activity such as a Thematic Review, or via a Supervisory visit by either the PRA and/or FCA.

> "But it's fair to say that with any new piece of legislation there are always ***"unintended consequences."***

From a recent briefing that I attended at the Bank of England, both the PRA and the FCA were quick to point out that due to the volume of data/information that was being submitted by firms across every element of the new regime, there would be little time for qualitative assessment of a firm's submissions at the outset of the regime. They advised that the initial assessment would be of a quantitative basis only and that the qualitative review of a firm's implementation would come through interaction mainly with the supervision teams towards the end of 2016 and throughout 2017.

A logical approach for sure, but with this whole new piece of legislation, isn't it realistic for firms and the individuals responsible within them to want to know whether they had **"got it right"** sooner rather than later. And in the eyes of the regulator, if firms and individuals haven't then for sure they will want a quick resolution and response to any feedback given.

We all know exactly what the new Senior Managers Regime aims to achieve and, in theory, the changes that this new legislation brings to bear on firms should support what the regulator is looking for with regards to personal responsibility and accountability. But it's fair to say that with any new piece of legislation there are always **"unintended consequences."** The reality of implementation within firms especially around the internal Certification Regime is likely to find firms running multiple systems that all in some way touch on competence and capability, when in an ideal world they would just run one that would cater for all regulatory and internal HR and personal development requirements.

We know that (in brief – for fear of repeating what has gone before on this topic) the new regime(s) asks the following of firms:-

- ❏ Allocate the new SMF/SIMF function(s) to relevant personnel
- ❏ Develop a Responsibilities Map and keep it up to date at all times
- ❏ Allocate the Prescribed Responsibilities as required by the PRA/FCA and relevant to the type of business that you are
- ❏ Submit a Statement of Responsibility for each Prescribed Responsibility holder (SMR only)
- ❏ Identify those staff within the organisation that will fall into the newly created Certification Regime (SMR only)
- ❏ Implement a new Certification Regime for those staff classed as one of the 9 Significant Harm Functions that the FCA/PRA have identified
- ❏ Ensure that the new regime can evidence the Fitness and Propriety of those within it
- ❏ Annually certificate staff to evidence that they remain "competent" for the role that they undertake
- ❏ Apply the new Conduct Rules to the majority of staff from March 2016
- ❏ Train all staff in a "role relevant" manner in how the conduct rules apply to them
- ❏ Commence annual reporting on Conduct Rules breaches in addition to the breach reporting requirements that already exist for Senior Managers

This isn't of course an exhaustive list, but one that it is worth referring to, so we can remind ourselves of the complexity of the legislation that firms are being asked to implement.

Let's take a look at how new regulation, interwoven with existing legislation and a firm's in house desire to instil greater standards on its employee's can mean that firms end up with complex sets of systems, controls and processes all that deliver partial oversight of connected topics. Typically this usually comes with limited MI or MI that does not provide a firm with data that helps them manage the risks that they might have.

For the purposes viewing SMR and its impact on firms, let's look at a typical scenario in the banking world:-

A relatively mature banking institution that operates on a regional basis through a combination of branch offices and also a Call Centre operation for its mortgage and insurance sales has been wrestling with the conundrum of how to most effectively manage SMCR alongside existing regulatory requirements. Bearing in mind that the output they are looking for is personal accountability, effective people management, robust record keeping and last but not least effective, business centric processes that deliver what the regulator is looking for and what a firm must evidence.

The firm itself employs approximately 400 individuals across all sites and elements of its operation. The firm, through its network of offices and call centres provides mortgage and insurance advice to retail consumers, but it does not provide advice on investments, pensions and equity release.

The firm has registered 8 individuals as Senior Management Functions holders with the PRA/FCA. With regards to the Certification Regime, the firm have identified that they have 43 individuals that fall into this regime.

Of the 9 Significant Harm Functions, they have identified that they have individuals that fall into 4 of the 9 categories that have been identified by the FCA.

From a Conduct Rules perspective, the organisation has identified that 393 of the staff fall into the "Conduct Rules" category, but have decided that in their view it is appropriate to apply the Conduct Rules to all employees.

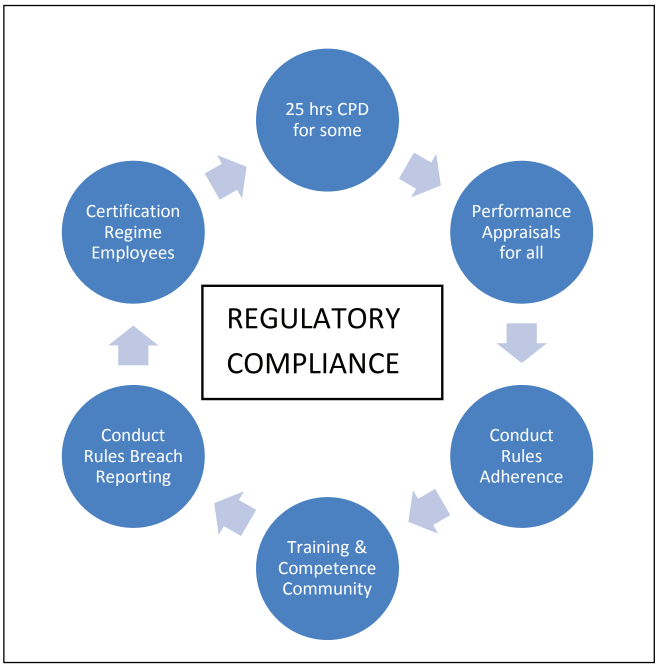
There has been much discussion within the organisation about how the new "Certification Regime" might be applied, as there has been concern about what cross over there will be with the current Training & Competence regime if a separate Certification Regime is introduced alongside existing T & C arrangements.

Currently the firm (whilst not needing to) apply a requirement to all staff that require qualifications for their role and/or manage other individuals, and that is that they must undertake, record and evidence at least 25 hours of CPD per year. The details of the CPD activities undertaken and further actions arising as a result of the CPD is recorded in a sub set of an existing HR system.

The wider challenge that this organisation faced in terms of SMCR management is as follows:-

They have a Training & Competence Scheme that covers some but not all of their staff. However the population covered under the Training & Competence Scheme does not align directly with the 43 individuals that they have identified as falling into the new Certification Regime. They have new Conduct Rules that they will apply to all individuals, and will need to commence breach reporting for this new population in March 2017. The final pieces of the jigsaw are that the CPD which is undertaken by only some individuals is recorded on a subset of the HR system and is not linked to the employee Performance Appraisal process. However there is consistency in the application of the Performance Appraisal element of employee competence and oversight as this is undertaken by all individuals within the organisation

This typical scenario of an organisation which has differing populations within it that require the application of slightly differing pieces of legislation is obviously a real challenge for firms. So, what might one do to help remove some of the complexity that a scenario likes this brings?



Well, one approach would be a long term investment in technology that could not only deliver a resolution to the typical conundrum laid out above, but would also add value to business processes and deliver real "people improvement" through implementation.

"That's just a pipedream I hear many readers say – But is it?"

Absolutely not! Technology platforms exist that can:-

❑ Apply either 1 or multiple T & C Schemes to differing populations within an organisation

❑ Apply a defined a time bound approach to T & C activities and/or

- Provide a risk based mechanism that allows each supervisor to undertake relevant development activities aligned to the individual need and not dictated by a “standardised approach to T & C”
- Undertake, record and track CPD to defined levels which could be different by population and which is exportable (where relevant) to align to awarding bodies requirements in order to produce SPS’s
- Run a Certification Regime that is not a separate system to your T & C regime, but is one that runs from the same platform that has activities which blend, and do not duplicate and ultimately allows for **“Annual Certification”** of individuals through a process that is in tune with your T & C regime and not opposed to it
- Manage the Annual F & P Process that is required for your certification staff and senior managers that is an integral part of your platform and allows you to undertake all regulatory applications for relevant staff
- Align the performance appraisal process within the organisation to have input from T & C activities and Annual Certification checks and complete and store in alignment
- Manage, support, store and on a daily basis be able to produce an accurate, time stamped Corporate Responsibilities Map

I could go on, but I know there is a limit to what can be shared in a short article of this nature, so I will stop here. But looking ahead, as we move towards 2018, when more than 50,000 firms will have this conundrum and not just the 800 + firms that have been affected by this first wave of SMCR regulation, it will be interesting to see just how many forward thinking SMF and Prescribed Responsibility holders there will be. Those that see the value in an amalgamation of their systems and controls to provide them with a 1 stop **“people platform”** that will help them manage and mitigate people risk. I suspect that those who are already subject to SMCR are already realising it’s a more complex task that many imagined at outset, with the greater complexity of business model adding to the complexity of implementing and managing SMCR.

Many of you that are yet to be affected will realise that the time to get started on your investigative journey into the art of “what’s possible” starts right now! Day 1 compliance for 2018 is imperative, but as I’ve heard many clients say “we focused on that, but did not have our eye on the long term implications of managing this new piece of legislation, if only we’d started our journey earlier . . . ”

Julie Pardy is Lead Consultant at Worksmart Ltd.

Code of Conduct – embedding your culture

By **Ian Ashleigh** from
Compliance Matters UK Limited

“Conduct risk is about the culture of the firm from top to bottom.

The financial crisis in 2007/08 threw regulation of the UK’s financial services industry into sharp focus. One of the outputs was the Banking Standards Review which reported in June 2013 and whose recommendations will be applied across the whole industry, not simply to the banks and larger firms which are dual regulated by the PRA and FCA. We have seen a new Code of Conduct section in the FCA handbook: COCON. There are five individual conduct rules and a further four rules that apply to the senior managers of a business:

Individual conduct rules

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

Senior manager conduct rules

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

In addition, an annex to chapter 1 of COCON contains guidance for Non-Executive Directors (NEDs). This guidance should be delivered by the T & C team to ensure that NEDs fully understand the FCA’s expectations that they should provide a challenge to the Board and Senior Management, and where appropriate, this challenge should be robust.

These rules are not necessarily new and will be familiar to anyone who has worked in financial services for any length of time, indeed they are restatements of the Principles for Business and applied to individuals. No-one could really not argue that they are an articulation of best business practice. The question is, how do we embed these into the culture of our businesses. What added value can T & C professionals bring to assist embedding a culture in which these conduct rules are an integral part of business as usual.

Depending upon the size of the firm, the T & C team is in a unique position in that, through its supervisory activity, it has access to every level of management and staff within the organisation. COCON contains an obligation to ensure individuals understand how the rules apply to them and in this way training can be used as a method of embedding the culture of the firm throughout the organisation. As with all aspects of a business, culture is driven from the top. The messages from the Board and Senior Management are key, training can only be effective if it is reinforcing the 'tone from the top'.

Application of the Code of Conduct ties in with the regulatory focus on conduct risk. Embedding a culture that addresses COCON also addresses the issue of conduct risk

Conduct Risk was brought to the top of the FCA's agenda in its 2013/14 Business Plan, section 2.1 being entitled 'Conduct risks to our objectives'. When the FSA first started discussing Conduct Risk, the industry questioned as to whether it was 'TCF on steroids or something new.' This was probably not an altogether unfair question, the FSA had not defined TCF and then did not define Conduct Risk. In reality, Conduct Risk goes much deeper than TCF. Where TCF looked at fair outcomes for consumers, the central principle for Conduct Risk is to answer: are the interests of customers and market integrity at the heart of how the business is run? This fits in with a definition of Conduct Risk as the risk to delivery of fair customer outcomes or to market integrity. Like all risks, the firm, through its Board and Senior Management needs to define its appetite for Conduct Risk, communicate it to the firm then oversee the business is managed within it.

Conduct risk is about the culture of the firm from top to bottom. How do the Board and Senior Management lead the firm, what is 'the tone from the top'? The effectiveness of leadership can be measured by MI: management information. There is an argument that information can be looked at and put in a drawer. To be effective MI should be Management Intelligence, i.e. acted upon and used to drive the desired culture and behaviours throughout the business.

It is said that suitability is the biggest conduct risk to the Financial Advisory community. Client files are presented as the advisory journey from factfind and identification of attitude to risk, to defining goals and objectives, through research to a personal recommendation to the client. This is completed by a suitability report that outlines why the financial solution meets the client's needs. There is the risk, for example, that advisers may not identify the client's real goals but fit them around their chosen solution.

For all firms, culture is a driver for the behaviour of management and staff. In 1976 Edward T Hall developed the iceberg analogy of culture, in that some aspects of culture are visible but the larger portion is hidden beneath the surface. The graphic below applies this analogy to a firm.

Above the water are the policies and procedures put in place to create a business in which the culture puts the customer at the heart of its activities and to manage and mitigate risks, including conduct risk. Below the water are the workarounds that staff use to shortcut the compliant processes. MI as Management Intelligence should alert Senior Management to these workarounds and cheats so they can be addressed through training and coaching. The supervisory regime puts the T & C team in an ideal position to identify where these shortcuts are regularly used.

Thus the principle of conduct risk is broader than the principle of TCF and serves to focus Senior Management on behaviours within the business as a whole rather than simply on staff who have a direct interface with customers. Conduct risk also impacts upon wholesale firms which can adversely affect the market and broadly saw themselves as buffered from TCF.

Conclusion

The Code of Conduct brings a personal responsibility for conduct of the firm to each individual. The culture of the firm is driven from and communicated by the Board and Senior Management. The T & C team can be the catalyst for embedding the desired culture throughout the firm.

Accountability regime: 4 months on

Four months into the new accountability regime for banks, how did the industry handle its arrival and what's next? **Simon Mercer**, ComplianceServe Product Manager at *Unicorn Training* puts the questions to **Philippa Grocott**, Partner, *FSTP*, and **Richard Whittington**, Training and Development Manager, *Shawbrook Bank*.

***SM*: So first thing's first; how has adjusting to the new accountability regime been for you?**

***RW*:** As a specialist savings and lending organisation Shawbrook is a niche bank; it isn't set up the same as bigger banks, so accountability for Senior Manager Functions and certificated individuals look quite different. That was a challenge as our first roadmaps looking at the individual roles to be assigned under the regime looked quite big and had so many people in them. But the business was going through a lot of change at the time – including a new CEO – so it was an apt time to look at roles and re-evaluate positions. We started considering what the structure should look like last summer, so we had a good lead-time to refine anything as we approached the deadlines to ask for permissions and submit paperwork to the regulator.

***PG*:** Certainly some firms were far more prepared than others. Some nearly left it too late and it was a last minute effort to get their documentation in as what they perceived to be a small task turned out to be far bigger. Aligning which prescribed responsibilities go with which Senior Manager Functions (and who should take them depending on the business structure) caused much debate between the Senior Managers in firms.

***SM*: Where did the major challenges arise for you (or for your clients)?**

***PG*:** There was inevitably reluctance from some people to take prescribed responsibilities under the new regime as, if you take them, you're accountable, and I suppose some were anxious about whether they knew enough to take a certain prescribed responsibility.

***RW*:** We found that particularly in the HR environment there was an awful lot that needed doing. For example, reaching out to companies we do employee checks with and asking could they take on the extra parts required under the regime. Then establishing whether we had the systems capable of logging and reporting on certain information – for example, disciplinary action around a regulatory breach. Then asking what department was going to own that – central compliance? HR? - and if so, which part? So we found ourselves with a lot of decisions to make about who was going to do what and where the responsibility sits.

***SM:* And did you find that anything needed extra attention – or at least, more maybe than you anticipated?**

RW: It's been really important to get an even balance between what the regulator says and what it means for individuals – particularly for those perhaps who work in IT, HR or even finance, who are not used to regulation and the requirements that come with their responsibilities under the new regime. Our challenge has been to find a way to support those individuals to ensure they are properly trained and competent to carry out their roles and are confident and comfortable doing it.

PG: I think from where we sit, areas of change such as Statements of Responsibility have proved most problematic for some. A Statement of Responsibility details how a prescribed responsibility works in a firm; but when the FCA said these weren't mandatory, many firms didn't do them. Now if a regulator is reviewing documentation that matches X person to Y prescribed responsibility with little more than a 'tick in a box', they're going to have to make assumptions about the way these responsibilities are being carried out; and whether they're being measured. Getting this documentation right has, for many, meant taking time to detail and submit far more detailed statements of responsibility than before.

***SM:* Obviously we know that the next step is to certify individuals falling within the Certification Regime as 'fit and proper', and training all other staff on the Conduct Rules by 7 March 2017. How prepared are firms?**

PG: Now firms have submitted their documentation the key thing is to decide *how* they are going to certify their people through an assessment process and collect the evidence of this in case there's a need to *prove* training processes to a regulator. As far as evidencing competency is concerned, CPD alone doesn't cut it; there has to be an amalgamation of observation, assessment etc, so it's a more complex need than before. Naturally, those firms that had procedures in place already will be more prepared than perhaps the challenger banks and smaller organisations who previously weren't subject to the same certification regime, but who will now come under the same scrutiny as, say, a financial planner or investment manager.

RW: I feel really comfortable as a training manager! We've been working with Unicorn to ensure the eLearning content we need is ready to roll out when we want to do the 'right time' learning so it's fresh in people's minds. You always want a blended approach, so using eLearning to get key messages across to the masses, but also face-to-face training – especially for those dealing with higher risk, or to whom being accountable under the FCA regime is new. My job is now to ensure that is all in place and we have the right resources to do it effectively.

***SM:* In what ways have you found the Senior Manager and Certification regimes have helped streamline policies and processes, especially around T&C?**

PG: Post SMR, we've seen a definite shift to ensure that firms understand the importance of highlighting the right competencies for prospective employees that will sit within the Certification Regime. Arguably it's going to get harder to recruit for Senior Manager Functions so firms will have to start 'growing their own'. A good job description helps in recruitment, but it also helps develop people as you can identify what needs to be done with an individual for them to fulfill a new role and develop their careers. It's also better for the business because you start looking at what people need to be 'board ready'; how they have to behave, what is expected of them, and what core competencies they need to have.

RW: The regime changes have helped us be more focused in our approach to individual aspects of T&C that sit within these: We've taken the approach of having an overarching T&C framework, and under that, a scheme for each business area plus one specifically for the Senior Manager and Certification regime staff members. If any changes are needed, it's easier to take a scheme and adapt it without having to change the whole framework. This has also allowed us to make sure our policies, processes, procedures and documents around all this are clear and succinct. Sticking to these schemes across the organisation gives us a huge amount of information that shows an individual is competent in that role –and also gives them information for when they are in board or committee meetings, for example, so they have a good idea about what they need to do to demonstrate their competence to others. For our T&C schemes we adopted the FCA recommendation of 35 hours CPD (21 of which is structured), and although that is only really for certificated individuals in certain roles, it's a good benchmark for the rest of the bank to aim for. On our ComplianceServe platform the CPD counter shows people how they are progressing against the scheme in a way that's visual and meaningful. There is still a bit of a paper trail, but through the platform we can manage all T&C centrally, with forms, CPD logging and reporting in one place.

***SM:* What's your key message for the rest of the industry facing the 2018 accountability deadline?**

RW: Sometimes it's easy to forget it's the individual who is accountable; it's down to them to provide the right information at the recruitment stage; and when they start, to take control of their own T&C needs, performance management etc. They need to work with their line manager, as

> "As far as evidencing competency is concerned, CPD alone doesn't cut it

well as training and HR business partners, to ensure they are fit to carry on in their role, and that if needed, suitable adjustments can be made.

PG: You cannot start soon enough! We ran an HR compliance event recently where we found some people who had gone through SMR already and others that hadn't – and their key message was 'give yourselves plenty of time!' A lot of our clients have started the process already and won't be in a panic; they will have plenty of time to really think how they are going to address it and hit what the regulator requires, in the most effective way for their business structure.

Whether you are a large organisation or a small one, one takeaway is certain – allowing sufficient time for your firm to adapt to the new regime is crucial. The challenges posed by the changes are shared by firms across the industry. Now half way through 2016, the uptake in behavioural change certainly seems positive; as for the future of accountability in this sector, you'll have to watch this space!

Performance Management of Certification

By **Carl Redfern** from Redland Business Solutions

The recent deadline of 7th March for implementation of the Senior Manager and Certification Regimes (SM&CR) has been subject to a lot of focus in the banking community.

By the deadline Firms subject to the new rules were obliged to submit a Responsibilities Map and draft individual Statements of Responsibilities for all Senior Managers, allocate Senior Manager Functions and prescribed Responsibilities and clearly document the Firm's governance arrangements.

However, of more particular interest, they also had to identify the population of staff within the firm who would be subject to the new Certification Regime.

Following the late changes to the scope of the Certification rules, which were extended to also encompass roles in the 'Wholesale Banking' industry, firms have been given a little more time to finalise the identification of Certification staff in those areas.

The 'Certification' timeline is set out below:

- ❏ Certified Persons, except Client Dealing function and Algorithmic Trading function to be identified by 07 March 2016
- ❏ Conduct Rules apply to Certified Persons (except as above) from 07 March 2016
- ❏ Client Dealing function and Algorithmic Trading function to be identified and Conduct Rules to apply from 07 September 2016
- ❏ All Certified Persons to be issued with Certificate by 07 March 2017

This 'transition' period (March 2016 to March 2017) for CERT has been explained as allowing Firms time to link the initial Fitness and Propriety assessment and resulting issue of the 1st Certificate to the timing of their Performance Management cycle.

This is interesting because there has been significant focus on the fact that under CERT, Firms will have to repeat the formal Fitness and Propriety assessment (F&P) for all identified staff at least annually.

The two primary obligations on firms under the certification regime are:

- ❏ to take reasonable care to ensure that no employee performs a "significant-harm function" unless the employee has a valid certificate issued by the firm (FSMA Section 63E); *and*
- ❏ not to issue a certificate to any such employee unless the firm is satisfied that the person is fit and proper to perform the function to which the certificate relates (FSMA Section 63F).

There are four key factors to consider when assessing the fitness and propriety of a person to perform a particular function:

1. honesty, integrity and reputation
2. competence and capability
3. financial soundness
4. personal characteristics

Last year, during the consultation process, both FCA and PRA promised to publish additional guidance regarding the application of the F&P assessment but that there would be no fundamental changes. However, to date no additional guidance has been issued and there is no timetable for it, so Firms will have to reply on current best practices.

Certainly the F&P assessment is a critical part of CERT and it needs to be repeated at least annually but there is a risk that linking it to existing annual appraisal processes is a mistake.

The F&P process actually needs to be a 'continuous and ongoing' assessment of an individual's appropriateness for their role – it is primarily about **behaviour** not an annual 'MOT'.

The annual MOT tests that a car is safe to drive but Certification needs to ensure that the car is being driven safely, every day!

The new SM&CR regime, taken as a whole, represents a fundamental change of responsibility for Firms. It moves the primary responsibility for compliance and risk controls from 2nd and 3rd line functions to the first line, operational function heads.

As a result of this change, although there will be a dedicated Senior Manager who is personally responsible for Certification, they will primarily be responsible for policy, process and procedure.

If there are Cert staff who are found to be 'misbehaving', first and foremost, it will be the operational line management and the Senior Manager accountable for the business area where the controls failed that will be held to account. Any issues with the 'policy' and 'process' of Certification will be tackled separately.

So one of the key questions to ask is whether your Performance Management systems will give you the necessary day to day 'behaviour' monitoring and oversight that will be required?

We should remember the history of T&C – it was born out of the need to control and reduce the incidence of 'sharp practice' and bad management – T&C has been called the 'illegitimate child of Compliance and Sales Management'.

In fact, T&C was introduced to improve and control 'cultural and conduct' failings. There was a good reason it was never part of the HR department. It is all about day to day man management and behaviour monitoring.

The required approach for a CERT solution is the same. It needs to monitor the actual day to day activity of Staff and Teams – are they doing the right things in the right way for the right reasons? This is the job of the team leader and operational line management. It is not a 2nd line HR function.

This is not 'Conduct Risk Management' either (that is probably happening over there in a new specialist department, who probably have a shiny new dedicated system), this is 'Conduct Management'. Actually getting on top of transactions and customer interactions and ensuring they are consistently delivering appropriate customer outcomes.

To achieve this efficiently, effectively and consistently, Firms should invest in a specialist system, one designed to do exactly this. The right solution will take away the increased admin and proactively automate the processes. It will collate all the KPIs and deliver actionable MI, in real time to the required audiences.

The system, the process and the admin should not be the focus of the conversation or the project within your Firm.

The focus needs to be people and management effectiveness.

> "The F&P process actually needs to be a 'continuous and ongoing' assessment of an individual's appropriateness for their role – it is primarily about behaviour not an annual 'MOT'.

Dedicated T&C systems could easily save more than 2 or 3 FTEs of effort across a CERT population of 50 -100 staff annually, significantly more than the License and Implementation costs.

Implement the right policy and solution and then **let your people focus on their people** – behaviours, objectives and outcomes.

For CERT to work, it has to be efficiently delivered, asking your managers to manage more effectively with better record keeping while taking on increased administration is going to be an uphill struggle.

Give them some good tools to do the job and then invest time and effort in the key competencies of supervisors and managers. It is these roles which will deliver effective Certification and it is these roles that will have the 'safety' of your Senior Managers in their hands!

If Certification is all about 'behaviour', then consistency is key and that means investing in the key managerial roles across the business –

- ❑ Do they all understand the policy clearly?
- ❑ Do they all apply it in the same way?
- ❑ Would they all reach the same consistent conclusion in a particular case?

❏ Do these key staff personify and champion the Culture and Conduct messages?

❏ What are the new KPIs required to monitor the new CERT processes?

Firms should be focusing on these questions and spending their time and effort investing in their middle and front line management teams, good old fashioned Team Leadership courses or Man Management training will pay dividends.

Specialist T&C Supervision courses exist which already cover the majority of the principles and skills needed to be an effective manager under 'Certification' and I am sure that soon, these courses will tailored to focus on the CERT regime.

It is likely that because of the 'no gaps' rule within CERT (one of the reasons to be Certified is 'managing Certified staff') there will be populations of management who will be Certified under the new rules who were never subject to the Approved Persons Regime and therefore will not be familiar with the concepts of 'supervision' under T&C. For these staff, training will be essential and equipping them with tools to manage the admin and record keeping, will allow them the 'space' they need to concentrate on applying the 'policy' consistently.

You will be relying on these managers to deliver your Certification policy and ensure that any issues are addressed and corrected before you reach critical renewal dates. Deciding not to issue a CERT will be a very serious decision and potentially career limiting for some.

The annual certification process will therefore need to be robust and well documented, showing a clear and transparent decision-making process, well supported by regular operational managerial evidence over time.

Firms who are not banks, should start to consider their SM&CR planning in earnest, given that it will apply the same elements (a Senior Managers Regime, Certification Regime and new Conduct Rules) to their business and most importantly their people.

The change away from the Approved Persons regime to a more structured and granular approach will impact your people more than any other element of your business, how you can apply the change to improve culture and, reduce conduct risk, will define your successful implementation.

Both FCA and PRA have regularly commented that they hope firms will embrace the spirit of the SM&CR, and use implementation as an opportunity to reinforce values and focus on outcomes.

In this context, Firms should begin thinking about the 'big-picture' and the implications for their staff. It is your staff who will actually make the wider SM&CR and particularly Certification perform.

Getting ready for the 'senior managers regime'

Nick Baxter from Baxters Business Consultants

> It could be that the pace of progress and the fact that the rules are being driven by a different regulator has 'spooked' some parties.

The Prudential Regulation Authority [PRA] news update on 7 March 2016 appeared rather stark and just a simple matter of fact, nothing important . . . move on. But the simple sentence *"The Senior Managers Regime and Senior Insurance Managers Regime have now been implemented"* hides the panic in certain circles. Fear seems to be the order of the day amongst senior managers and maybe those who aspire to be senior managers. As the Financial Times reported, *"New rules to make bankers more accountable already seem to be giving some of them nightmares."* As evidence of this a number of newspapers quote John Pain (head of conduct and regulatory affairs at Royal Bank of Scotland who was also Managing Director of Supervision at the Financial Services Authority (FSA) during the financial crisis (2008 - 2011)) as saying, *"This is [already] a difficult industry to recruit non-executive directors into . . . If you terrify them with that level of evidence; you make their job almost impossible."*

So why the panic? True, senior managers are to be accountable following the implementation of the new rules. True, the Treasury has recently announced the senior managers regime will be extended to all regulated firms at some stage during 2018 (including Claims Management Companies following the recent budget). True, the new rules are being driven by the Treasury/PRA and to some extent are side-stepping normal consultation processes. It could be that the pace of progress and the fact that the rules are being driven by a different regulator has 'spooked' some parties. However, is it not the case that new rules are often intended to simple formalise the processes and 'checks and balances' that responsible senior managers are adopting anyway? If so, what have competent senior managers really got to worry about; after all the most controversial provision (the *"reverse burden of proof"* provision) has been removed. I think it would be hard to find any lay person who would not find it strange that senior managers were unnerved by rules which scrutinised whether they were acting competently and that does not just apply to bankers: it applies to any senior manager in any part of our industry whether that be a bank, building society, insurance company, financial adviser, consumer credit business, debt management company or claims management company.

So what needs to be done to ensure compliance? Firstly firms need to develop a 'responsibility map' which sets out what each manager is responsible for. This might sound daunting, but frankly it is what every competent business should have in place anyway. However, I accept, of course, that the importance of these documents may need a compliance view and probably a 'third party oversight view' as they may be a scrutinised in any future regulatory action. Secondly firms need to consider the 'step change' shift in emphasis from the 'approved persons regime' to the 'seniors managers regime'. Firms can no longer hide behind the fact the staff were 'approved' by the regulator; it's the firms responsibility to certify that any member of staff that poses a risk to the firm or consumer is 'a fit and proper person' who is competent to deal with such risks. Furthermore, this will not be a once and only requirement, it needs to be considered annually.

So any internal rules and procedures have to be robust and 'fit for purpose' Two clichés spring to mind; one from the financial services world and one from the criminal litigation world. The first, if you can't prove you did what you say you did you didn't do it! And secondly any you write, say or do may be used in evidence (and it could be against you). So the message is clear (or it should be) firms need robust, fit for purpose procedures supported by good quality oversight. In respect of firms who are to come into the regime at some time in the near future the message is even clearer, the more work that is done now . . . the less a last minute panic will be needed in the future.

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

SM&CR – Responsibility Maps are just the tip of the iceberg . . .

By **Carl Redfern** from Redland Business Solutions

On 7th March this year, the Senior Manager and Certification Regime for Banks (SM&CR) and Insurance companies (SIMR) came into force. It has taken over 3 years but there is still plenty to do.

All banks and insurers had a deadline to submit a Responsibility Map to the regulators, the primary purpose of the Map being to clearly document exactly 'who' is responsible for 'what' and to evidence that there are no gaps in the firm's governance arrangements.

> "They must know how their firm's culture delivers desirable outcomes and have a clear picture of what is being done across the firm to promote competence and monitor conduct. Most essentially they must have an effective means of assessing whether 'what they are doing is having the right effect'.

Many firms have, quite rightly, been focused on defining the first draft of their maps and collating the necessary evidence to support this documentation of their governance arrangements, including drafting the equally critical 'Statements of Responsibility'.

Managing and maintaining their Responsibility Map is a critical part of complying with the obligations of the new regime. It is perhaps only now that some firms are picking up the challenge of what maintenance of the map might mean. For example,

- ❑ How many times a year do you expect to update your map?
- ❑ How will you maintain auditable, locked versions of each map over time?
- ❑ What will constitute material change vs trivial change?
- ❑ What is the 'sign off' process for updates to the map and is it different according to the extent of the change?
- ❑ How, as a firm, will you ensure continued 'sign up' to the contents and accuracy of the map by the whole senior manager team?

Your Responsibility Map (or for insurers, your Governance Map) and the accompanying Statements of Responsibility (SOR) are the most visible elements of your compliance with the new regime. Like the tip of an iceberg, they can be seen from all around and are, in themselves, significant and material things, but it must be remembered that they are part of a much more massive whole!

Interestingly, the 'tip' of a typical iceberg, usually represents approximately 1/10th of the volume of the berg, with the vast majority underwater. The shape of the underwater portion can be difficult to judge by looking at the surface. This has led to the expression "tip of the iceberg", for a problem or difficulty that is only a small manifestation of a larger problem, the total size and shape of which is really much greater and hard to define.

The largest iceberg on record was an Antarctic tabular iceberg measuring approximately 208 by 60 miles, making it larger than Belgium. It was sighted in the South Pacific Ocean, in 1956. Although the dimensions are only approximate, its size and mass under the water must have been genuinely enormous!

In more recent times, in March 2000, another truly massive iceberg, known as Iceberg B-15, broke off from Antarctica and drifted around, gradually breaking into smaller bergs, still huge, until well into 2006.

Returning to the analogy, and comparing the SM&CR regime to an iceberg, the Responsibility Maps and SOR represent the 'tip' and the wider implications and consequences of the new regime are the 9/10th under the water, perhaps not yet fully appreciated or measured but like Iceberg B-15, expected to be with us for many years to come.

This leads into the Treasury announcement in October 2015, when they (finally) confirmed the intention to replace the Approved Persons Regime by extending SM&CR across all of Financial Services.

The announcement can be found on their website - (https://www.gov.uk/government/publications/senior-managers-and-certification-regime-extension-to-all-fsma-authorised-persons). It is relatively short and makes some interesting references to the 'scale' of this iceberg – applying the new regime to approximately 60,000 firms and almost 150,000 people. Hidden within these numbers there are some insights into the challenge that this change will need to overcome.

Across the Banking and Insurance worlds, under APER, there were almost 1000 firms affected, excluding Credit Unions, with about 40,000 approved persons. Under SM&CR their estimate is that this will transform into about 7,000 Senior Managers and 33,000 Certified Staff – Regulators will only focus on the Senior Managers in the new world and make firms (and their senior managers) personally accountable for the 33,000 Certified staff – a good result, clearly 7,000 will be a lot less work for the Supervision teams than 40,000.

Getting SM&CR on its feet for Banks and Insurers has taken over 3 years and well over 30 different Consultation Papers, Feedback Statements, Policy Statements, Final Rules etc., and we're still not quite done yet.

I excluded Credit Unions from the summary above because of a key phrase which has been introduced during this process – 'proportionality'.

This new phrase has become increasingly important at both regulators and will be even more important when it comes to the application of SM&CR to all of the Financial Services and Markets Act (FSMA) regulated firms. The intention is to limit the impact and therefore the cost of compliance for smaller firms, for example Credit Unions. For most of them SM&CR is more simple and easier to implement and maintain. Although 'Small Firms' are still affected and still have an obligation to comply, so even 'proportionality' does not allow for complacency.

The Treasury paper sets out the timetable for extension of SM&CR, stating that it should "come into operation during 2018" and they estimate that it will apply to over 17,000 'traditional' financial services firms, including stockbrokers, securities and futures firms, asset managers, financial advisers etc. It will also apply to about 40,000 Consumer Credit firms although many of these will qualify as 'small firms'.

Until the consultation process gets underway we can not be certain of much, but it would be fair to assume that for many of the 17,000 'traditional' firms, some form of 'proportional' approach should reduce the impact somewhat.

However, with HMT expecting the 100,000 Approved Persons in these firms to reduce to about 40,000 Senior Managers, there will be a lot of firms (and executives) becoming much more personally accountable for the culture, competence and behaviour of their staff.

The Finance Bill to extend SM&CR to fully replace APER is not yet made into law, but the approach being adopted to achieve the extension is clear . . .

At the core of the current legislation, which applies to Banking firms, is the slightly complex definition of 'Relevant Authorised Person'. This doesn't mean 'people', instead it defines the 'firms' that the legislation applies to i.e. the Banks. In the new Bill, this complex definition is being materially simplified, to extend the SM&CR regime to wider traditional Financial Service firms and others, this definition is being changed to 'Authorised Persons' – which means all 'firms' regulated by the Financial Service and Markets Act – namely, all of us!

So, although I am sure we can expect a complex and involved consultation process, essentially we are all going to get what the banks (and insurers mostly) have got today – Responsibility Maps, Statements of Responsibility, codified Senior Manager Functions, Prescribed Responsibilities, Certification Regime, Conduct Rules, obligations for no gaps, Reasonable Steps, annual commitment for FIT and Proper, etc etc.

Interestingly, unless I am mistaken (which is more than possible and please anyone do shout and correct my opinion if I'm wrong – comments very welcome on the T&C Group on Linkedin Groups), this approach to extending the regime means that Insurers will shortly be subject to the Certification Regime as well, similar to the Banks.

Also on the horizon are the T&C changes being introduced by the Mortgage Credit Directive (MCD), which will apply from 21 March 2017.

MCD will introduce a broad set of knowledge and competence obligations to a wide new population of people involved at any stage of the Mortgage process, including product development. For Mortgage Advisers, specifically, the new MCD changes will need to be embedded into the Certification process because they will also be subject to the new Certification Regime under the extension of SM&CR. Therefore their performance and competence assessments will become the personal responsibility of a senior manager in each firm.

In addition to the MCD changes, the European Securities and Markets Authority (ESMA) has recently published (January 2016) the new set of guidelines for the assessment of knowledge and competence for investment firm staff, under the terms of MiFID II. The guidance will apply to all staff giving advice, staff providing information and staff providing 'ancillary services' to clients of the firm. These guidelines will come into effect on 3rd January 2017. In summary these guidelines will oblige firms to ensure that:

- ❑ All staff have the relevant training and qualifications and experience (2 tiers – provision of advice and provision of information / services)
- ❑ Obligation for an annual re-assessment of knowledge and competence
- ❑ Obligation to undertake relevant and appropriate CPD
- ❑ Obligation for appropriate record keeping and potential review of records by the regulator
- ❑ Obligation for supervision for trainees and minimum standards for supervisors
- ❑ Maximum time periods for achieving qualifications and acting under supervision

In essence, ESMA are applying 'regulated T&C' as we know it, to a wider population of individuals. There is some more detail on the distinction between providing 'advice', 'information' and 'service' contained in the final report - (https://www.esma.europa.eu/sites/default/files/library/2015-1886_-_final_report_on_guidelines_for_the_assessment_of_knowledge_and_competence.pdf).

We can expect consultation from FCA on this ESMA guidance in the very near future and at some point all of these changes (ESMA / MCD / SM&CR etc.) will need to come together into one set of standards and rules.

It is very clear from both UK regulators (and from the European bodies) that they expect firms to embrace these 'Accountability' changes and apply their new obligations to the genuine improvement of customer outcomes and that Senior Managers will be personally responsible in all firms for achieving this.

Board members and executive teams need to find solutions that will give them a clear, evidence-based picture of staff competence and staff behaviour, and the resulting 'reality' of the culture in their firms.

They must know how their firm's culture delivers desirable outcomes and have a clear picture of what is being done across the firm to promote competence and monitor conduct. Most essentially they must have an effective means of assessing whether 'what they are doing is having the right effect'.

The Board and Exco of all firms need useable and relevant information that will help them judge the extent to which they are achieving their objectives with respect to culture, conduct and competence in their firms; and to identify what is and isn't working; and whether resources are being prioritised in the most effective way.

Forcing firms to focus on the links between staff competence, capability, behaviour and conduct, and to prioritise developing how these elements define the culture of the organisation are the underlying objectives of SM&CR.

This is the body of the ice berg – it is the 9/10ths of the impact of the new SM&CR Regime currently on Banks and Insurers and soon on all FSMA firms.

Efficient and effective management, maintenance and monitoring of Responsibility Maps, including Statements of Responsibility and Certification will be critical in the next few years. In many ways this represents the tangible (visible above the water) components of the new world and with MCD and extended SM&CR on the horizon, all FSMA firms need a good solution that will deliver this.

However, for the Senior Managers of all firms, assessing what is coming 'under the water' and understanding how to navigate it will be increasingly, personally, individually imperative . . . Effective T&C teams and systems will probably be the ice-breakers that prevent accountability disasters . . . Do you think we should tell them?

“Managing these risks is our day job – from this perspective we are all risk professionals.

Individual Accountability Regime – What is the Risk?

By **Carl Redfern** from Redland Business Solutions

By the date this article is published, I will have spent over 300 working days focusing on the new Individual Accountability Regime!

I confess, it feels like it’s been coming for so long now that nothing about it feels ‘new’ any more.

In fact, it has been a topic of discussion across the industry for such an extended period that many of the fundamental principles and objectives seem lost in the past.

Don’t worry, I’m not intending to regurgitate all of the old reasons for change or the rationale for doing things differently – I am quite certain we are all sufficiently familiar them.

However, I do think that it is worth revisiting the new regime from the perspective of ‘Risk Management’. Without a doubt, the new regime adds a number of new, material risks to our businesses and amount of vigour to some of the existing ones.

Although ‘risk management’ is a regular agenda item for many of us, we are sometimes so busy with day to day operational management or coping with projects and change, that, the ‘risk’ perspective doesn’t receive the quality of attention it needs.

Many firms have dedicated risk management teams who concentrate on these things, particularly if you include ‘Conduct Risk’ within the umbrella. But, we should take a moment to think about the new risks . . . in the real world.

What do I mean by this? I will explain . . .

Risk Management professionals often consider ‘risks’ as ‘things’. A risk, once identified, needs to be documented, it needs an impact assessment, it needs a likelihood assessment, it needs mitigation actions identified and it needs contingent actions to be defined. Also, critically an identified risk needs an ‘owner’ – the person responsible for the preventing it from happening.

Usually when people refer to ‘risk management systems’, what they bring to mind are the tools for use by the risk professionals to manage all the stuff I’ve listed above, to give them a simple label – ‘risk registers’.

What I am more interested in considering are the systems and processes used by the operational business teams to help to prevent risks from occurring and creating issues.

PR	Description	Risk Notes
A	Responsibility for the firm's performance of its obligations under the senior management regime	New Risk that will impact: • Fit and Proper processes • Learning and Development • Training and CPD • HR • T&C • Recruitment & On-boarding • Operational MI and KPIs • Complaints • Breach Investigations and Reporting • Oversight and Governance
B	Responsibility for the firm's performance of its obligations under the employee certification regime	New Risk that will impact: • Fit and Proper processes • Learning and Development • Training and CPD • HR • T&C • Recruitment & On-boarding • Operational MI • Performance Management • Management Reporting and Escalation Procedures • Locum and Succession planning • Quality Assurance and Checking • Complaints • Breach Investigations and Reporting
C	Responsibility for compliance with the requirements of the regulatory system about the management responsibilities map	New Risk that will impact • New processes for oversight and maintenance of the Map • New processes for oversight and maintenance of the Statements of Responsibility • Record Keeping arrangements • Timeliness and accuracy of updates and changes • Audit
G	Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all persons performing designated senior management functions on behalf of the firm other than members of the governing body.	Not quite a new risk but a new focus on obligations which have always existed • Senior Management assessments and Performance Reviews • Robust record keeping • Documented 'Competence' policy • Monitoring of L&D plans and CPD and TNA – individual and collective • Monitoring and assessment of 'effectiveness' of induction and development
H	Responsibility for overseeing the adoption of the firm's culture in the day-to-day management of the firm.	Technically not a new risk but one that was probably not very explicitly assigned to specific Senior Managers Either in addition to or along-side 'professional standards' or 'culture' initiatives within firms, embedding 'culture' in daily activity will have direct impact on HR and T&C teams.
F	Responsibility for: (a) leading the development of; and (b) monitoring the effective implementation of; policies and procedures for the induction, training and professional development of all members of the firm's governing body.	See 'G' above. This PR is very similar but will have a different 'business owner' in the Senior Management team. It represents an 'opportunity' / 'risk' of a different perspective and interpretation which could vary the impact within the business. Although focused on a few individuals, the approach to this obligation should set a tone for development and monitoring of key staff and management.

Certainly risks need to be identified, tracked and monitored and specialist professionals and systems can help with this but if a risk is real, then it also needs to be managed within the day to day operational processes and activities of the business – otherwise it will manifest and affect customers and business outcomes.

In fact, in the 'real' world what a risk usually means is **"something that can go wrong with an activity or process"**

So, when we identify new risks (or review existing ones) it is essential that we link the risk to the operational activities that it impacts and especially the activities that give rise to the risk itself. As managers of teams and business activities, these are the things we are responsible for making work without mistakes – it is our job to prevent them from going wrong. Managing these risks is our day job – from this perspective we are all risk professionals.

Fortunately, the new obligations on firms under the Accountability Regime actually help to identify some of these risks for us and give us some clues about how to mitigate against them.

If you consider the Management Responsibility Map and the codified list of Prescribed Responsibilities, most either directly translated into new Risks or provide a 'focus' for existing risks to be considered afresh.

In the table on the previous page I list some of the new Prescribed Responsibilities (PRs) and some 'risk' notes about them. The new regime specifically identifies the member of senior management who is now personally accountable for these business activities. This gives us a clear ultimate owner for any new risks, although others in the business will be delegated the responsibility for delivering working policy and processes to manage them. In one way, or another, the PRs listed opposite will impact on Training and Competence and HR teams once the new regime comes into effect in 2016.

If we then look into the details of the new regime we can easily find many more new risks, which we will need operational processes to manage. Almost all of the 'changes' we have made in response to the new Accountability Regime could be added our risk registers because we've (hopefully?) made them in response to a new obligation, which we now need to comply with.

For example, within Certification, there is the new 'no gaps' rule. This states that managers of anybody who is a 'certification employee' are also performing a 'certification function', unless they are a Senior Management Function holder. Taken in isolation this seems relatively simple but when the implications for daily activities are considered, it potentially has a significant impact.

This rule means that processes for managing absence, locums, successors, promotions, leavers and joiners etc. all need to be updated to ensure we don't bring someone into a role who needs to be Certified and isn't, for example a Branch Manager covering a Supervisor's role for Mortgage Advice teams. Although there is an exception for 'temporary cover' for Certification employees, this only allows for up to 4 weeks, and then only if 'unforeseen'. If it does happen, we need to record and report a breach.

Therefore, all of these processes need to be reviewed, probably updated to include Certification 'checks' (mitigating actions) and then our daily, weekly, monthly MI and oversight controls need to be updated to ensure our systems tell us if it does occur. Linked processes for rapid Certification assessments and issue of Certificates, or the ability to temporarily allocate responsibility to alternative staff probably need to be in our 'contingency actions'.

Ideally, our systems will proactively tell us before the situation occurs to prevent the risk manifesting proactive – T&C processes, for example.

Another good example is the Regulatory References changes proposed under consultation papers, FCA CP 15/31 and PRA CP36/15. As headlines, this consultation introduces an obligation

1. To request references for CERT and SMF employees going back 6 years
2. Mandates the inclusion of specific information in the issued reference such as involvement in 'concluded' breaches

And crucially . . .

3. Mandates that the Firm **updates** any previous reference issued in the past 6 years, if new matters come to light

If these proposals are ratified, it will mean we need to update our record keeping for all references issued, including details of the firms we've issued them to and keep them for a minimum of 6 years. We will need a new process to issue updates to references and new processes to act on any updated references we may receive at any time up to 6 years after initial appointment, all with the associated 'risks' to be managed.

Over the recent months we have reviewed the functionality of our Insight GRC system in response to the Accountability Regime changes and identified a list of well over 100 regular operational processes that need to be reviewed and updated as a consequence. If anyone is interested in this list or any of the other SMR, CERT or Conduct Rules collateral I have spent some of the last 300 days (!!) compiling please do get in touch.

It would be a very useful action for everyone to review all of new regime obligations and process changes and to consider them from the perspective of the new risks they introduce –

- ❑ What could go wrong?
- ❑ How will I know?
- ❑ How will I fix it when I find out?
- ❑ What evidence will it need?
- ❑ Who does it need to be reported to?

While it could be a time consuming and arduous task, what's the risk?