

All T&C Roads Lead to Reasonable Steps

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

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

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

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

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

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

Examples of Relevant Prescribed Responsibilities	Examples of Reasonable Steps Considerations FCA PS17/9 & DEPP
<ul style="list-style-type: none"> • The firm’s performance of its obligations under the senior management regime • The firm’s performance of its obligations under the employee certification regime • Overseeing the adoption of the firm’s culture in the day-to-day management of the firm. • Training of a firm’s staff in the Conduct Rules and compliance with the FCA notification requirements • Developing and maintaining the firm’s business model. 	<ul style="list-style-type: none"> • Policies and Procedures • Appropriate Systems and Controls • Collective Decisions • Monitoring Governance and Operational Risk • Understanding and Informing around the Firms Activities • Following Procedures • Reasonable Care • Reasonable Conclusions • Knowledge of Regulatory Concerns • Dealing with Issues • Acting in Accordance with Obligations • Handover • Delegation

Good T&C frameworks delivering the right outcomes with the related MI and intelligence to back it up can help to minimise the likelihood of firms and their SMFs falling foul of the rules resulting in action by the regulator. This would include using these outputs to provide clear documented evidence around each of the above considerations. This is not just about one-off events but enabling them to regard and record reasonable steps as an iterative process where being able to schedule actions, tasks and follow up is vital. Done well, it would provide the appropriate records, audit pathways and evidence to defend any regulatory action.

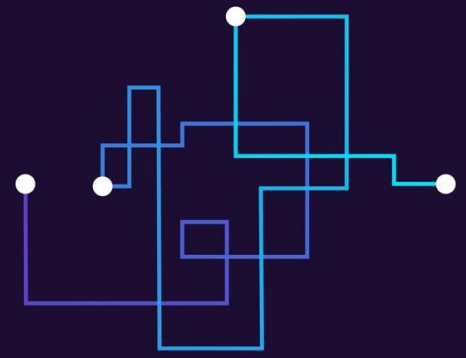
Back to Fitness and Propriety then. F&P assessments for senior managers and those holding significant harm functions need to be heavily reliant on robust data and evidence relating to, amongst other aspects, conduct, competence and capability. This would include; appropriate knowledge, qualifications, experience, meeting any relevant FCA training and competence requirements and whether the person has the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. It is obvious that recent specific competence related regulation needs to be taken into account and that the frameworks implemented in firms to address that regulation are connected into their F&P processes. Ideally this is relevant MI, records and evidence that will help firms answer the questions for each member of staff in scope.

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

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

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

About the Author



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