

T&C and HR compliance for FCA regulated firms

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The focus of this quarter's newsletter is CONDUCT!

The FCA (in its new supervisory model) has clearly flagged a shift towards a pre-emptive and judgement-based approach. Its brief is to focus on 'outcomes'. This means appropriate customer or market outcomes and achieving the highest

ethical performance of all customer-facing staff. By this it means primarily Conduct.



Regulators around the world are giving the management and mitigation of conduct risk the highest level of priority. Crucially, however, there is as yet no universally agreed definition of conduct risk. The FCA has acknowledged that it does not have a master definition of conduct risk. This is a deliberate policy. Why? The FCA says that conduct risk profiles are unique to every firm, making a one-size-fits-all approach impossible. Achieving appropriate customer, market and behaviour outcomes is dependent on a 'culture' that sees these interests as paramount. This approach enforces and reinforces appropriate behaviour, standards and outcomes by embedding a compliance culture from the top down.

This applies to **all** regulated firms - not just those in the wealth management / retail sector. There is a misconception in some areas of the wholesale and investment banking / management sector that this regulation doesn't apply to them. In a sense, however, it is even more important. At least the retail sector has relatively prescriptive frameworks surrounding T&C / Conduct to apply, whilst other sectors are left to follow guidelines.

If T&C and conduct policy and process fail to materialise into the delivery of compliant client, market and behavioural outcomes then the FCA will – in their judgement based approach – deem you to be failing to comply!

Drivers of conduct risk and the evolving risk landscape

The three main drivers for conduct risk are:

1. *Inherent factors, such as information asymmetries, biases and inadequate financial capability;*
2. *Structures and behaviours, such as ineffective competition, culture and incentives, and conflicts of interest;*
3. *Environmental factors such as economic, regulatory and technological trends and changes.*

The FCA will focus its reviews on: how firms adjust their strategic business models; whether they balance prudential soundness and profitability with good consumer outcomes; the alignment of market performance expectations and underlying fundamentals.

The foundation for every firm is to:

- *Assess the business model strategy and structure to ensure that it is putting the interests of the customer and the integrity of markets at the heart of what it does.*
- *Ensure that it has a culture that promotes: sound outcomes; establishing appropriate oversight and governance around the design and innovation of products and services; ensuring transparency with consumers and promoting consumer confidence by taking an active role in maintaining the integrity of the financial markets.*

This is all fairly conceptual (and is perhaps deliberately vague). How then should these concepts translate into practice: a process and structure to deliver the outcomes?

The Challenge for Compliance / Risk / HR and Senior Management

The single most important challenge is to create a culture that embeds and puts at the heart of all business activity these appropriate outcomes – integrity and trust.

The FCA assesses culture through factors such as: how firms respond to and deal with regulatory issues; what customers are actually experiencing when they buy products or services from front-line staff; how a firm designs its products; the manner in which decisions are made or escalated; the behaviour of the firm and its individual staff in markets; the remuneration structures; and ultimately by how a firm engages in and drives these areas of Conduct and ensures that they comply with regulatory expectations.

In order to do this, the Compliance, Risk and HR departments must understand and define with the Board what is acceptable in all of these aspects. In particular, in relation to conduct the Board must define the desired or acceptable levels of conduct expected in the multiple market, product and client environments in which that firm operates. This should in turn drive T&C policy and process.

The second biggest challenge will be to make this happen: to set benchmarks and expected levels of delivery; to design training to ensure that staff are competent to deliver to these benchmarks; to monitor and assess the degree to which they achieve this; and to identify any shortfalls and set appropriate remediation actions where they occur.

The key to all of this is to foster and embed a culture that encourages compliant behaviours and mitigates conduct risk. Firms should use these issues to shape, inform and influence their conduct risk appetite as well as their oversight activity during 2014. In this way they will ensure that they are proactively mitigating the relevant risks identified by the FCA to their business.

At the heart of this approach is:

- ***Distributing formal policy and process***
- ***Educating and training***
- ***Setting benchmarks and clear guidelines, ensuring that they are understood and reinforced by senior management. This involves embedding the highest levels of compliant behaviour and conduct***

HRCComply can work with you to:

- *Identify the key areas of conduct risk;*
- *Develop and embed policy and process;*
- *Shift cultural attitudes to educate the Board, client facing and market risk taking staff;*
- *Design and manage the processes for identifying those benchmarks for conduct and performance required to deliver these 'satisfactory outcomes';*
- *Automate the management, monitoring and assessment of these benchmarks;*
- *Define the requisite training and competence assessment / management required to deliver them;*
- *Log and monitor completion of training and levels of skill and knowledge and performance against benchmarks (in both real time and through regular formal online assessment);*
- *Identify risks and shortfalls and take appropriate remedial action to provide full and meaningful MI to inform Management decisions / policies / actions;*
- *Distribute policy and knowledge to ensure and keep audit trails of acceptance / compliance;*
- *Mitigate your regulatory / FCA risks across conduct, performance and competence;*
- *Ensure effective governance through appropriate oversight.*

This is done through a mix of consulting delivery and online subscription to our software - HRComplySoft. This software: automates, manages and records all the above; keeps all of your records and processes on one platform, eliminating paper; greatly reduces admin and control tasks.

Coming Soon

HRComplySoft is an advanced online assessment and record keeping software package that is constantly evolving with the real business needs of our clients.

New developments being delivered in 2014 are:

- *Improved dashboard navigation around the three main modules of HRComplySoft – **MyCompetence, MyPerformance and MyTraining**;*
- *New LMS - enhancing distribution, scheduling and monitoring of training / CPD;*
- *Enhanced real-time monitoring and assessment of quality of wealth management advice – through observations, file checks etc.;*
- *Improved notifications and alerts to staff and management;*
- *More flexible oversight structures and controls;*
- *Improved MI reporting.*

Chatter

Please look at our blog and News section of the website for recent articles and ideas - www.hrcomply.co.uk

Financial IT article on regulatory changes and their impact on T&C in 2014: [READ MORE](#)

Compliance Matters article on the necessary shift to compliance outputs: [READ MORE](#)

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