Getting ready for the Senior Managers Regime

By **Neil Herbert** from HR Comply

The Senior Managers Regime (SMR) is coming soon and firms across the financial services industry are beginning to focus seriously on the consequences of this new regulation and their required response.

The new rules are wide ranging but there are four main strands:

1. The new Senior Managers Regime
2. The new Certification Regime
3. A new set of Conduct Rules
4. New Fitness and Propriety requirements

Those firms that will obviously be subject to the regulation (UK banks, building societies, credit unions, PRA designated investment firms and incoming branches of overseas banks) should be well underway with their response by now. A much wider set of firms, however, must be aware of the proposals.

For those responsible for embedding and managing the implications and requirements of the regime, the true complexity is in deciding which parts apply to them. Such firms should decide where their focus should be in terms of interpreting and implementing the relevant parts. As is often the case with regulation, the reaction from the financial services industry will probably be to baulk at: the costs; the damage to competitiveness; and the amount of time and effort required in order to comply.

What is also clear (and unfortunately seems to date to have largely been ignored in the wider industry) is that consultation has already begun in the application of the SMR to a much wider swathe of the wholesale sector – particularly investment or asset management firms and hedge funds. Despite this fact, we still encounter many clients and potential clients who insist that 'this doesn't apply to us, therefore we don't need to do anything or worry about it'! Slightly depressingly, this continues to be the prevailing attitude across the industry.

After seemingly endless communications of the same message by the FCA (that it is looking to hold senior management accountable for the embedding of compliant cultures and high ethical and conduct standards), senior management still seem to take the view that unless they are being made to do it they don't need to do it.

Most of our clients already effectively self-certify: they test the competence of individuals to perform roles at least annually; they define key roles by competencies, tasks and responsibilities; they design assessments that ascertain any skills, knowledge, behavioural and competence gaps; and then they build, deliver and record prescribed training accordingly. They also run their own F&P assessments.

I would argue that these activities are what any good employer and/or business that wishes to build high levels of corporate governance and mitigate their strategic or operational risk should be doing anyway.

Apparently not. It still confounds me that firms operating at the most professional levels of one of the (supposedly) most regulated, skilled and highly paid service industries of all should continue to think that such straightforward controls and human resource management strategies are of little to no importance. The perception appears to be that in the absence of regulation forcing them to do so, they simply won't be implementing such measures any time soon. The direct and inevitable result of this continuing attitude has been that the FCA has been forced to impose the complex and costly SMR regulation and process. Anyone in the industry who doesn't think that this enforcement is also coming his or her way is surely in deep denial.

We continue to tell clients (from both retail and wholesale sectors) that implementing simple monitoring and control of staff competence, risk and conduct behaviours (and designing assessment and training structures that ensure this is well controlled) is the only way to stay ahead of the 'regulation curve' and out of trouble.

Of course, the biggest implication for both firms and individuals come from the presumption of responsibility – particularly for those occupying the newly prescribed Senior Management Functions (SMF). For many, this will effectively rewrite their contractual relationship with both their employer and the regulator. This in itself presents significant challenges for HR departments in terms of repositioning the responsibilities of individuals within their job descriptions and employment contracts. It will also present new recruitment challenges to senior and SMF posts.

A key pre-cursor for achieving this presumption of responsibility will be defining the firm's response. For anyone with prescribed responsibilities and presumed responsibility for key areas or business functions under the SMR, they quite naturally will want some clear guarantees from their employer that they will be supported in every possible way in fulfilling these responsibilities. Such individuals will also require clear oversight and sufficient QA/MI for functions involved with risks or problems clearly flagged so that they can be dealt with swiftly. Quite rightly, these individuals should expect their firm to have very clear T&C, conduct and risk management processes in place to enable this. In other words, has the firm got their backs and have Compliance, T&C, HR and the senior team of the firm committed sufficient resource, technology and analysis to allow them to sleep at night?

There is really very little in the SMR final rules infrastructure that should come as a surprise. Monitoring, assessment and clear MI around the key responsibilities and functions will become critical. Those firms already governed by the Retail Distribution Review should have many of the underlying processes involved (with regard to conduct, TCF, competence etc.) well under control already. It is the wholesale sector, however, that continues to be furthest behind the curve and indeed continues to resist such change. This sector will doubtless complain the loudest when the regulation is imposed upon it. And let's be clear: it will be.

The Human Resource, Compliance, Risk and T&C professional must first seek complete buy-in and leadership from the senior management structure of any firm. A seat at the board surely beckons for the Compliance, HR and Risk professional. Indeed this is a great opportunity to drive through real change and take responsibility for the implications and requirements that SMR imposes on the business, its governance and regulatory risks at the highest level. The message has been out there for a long time, the 'writing on the wall' for even longer.

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With the implementation of far-reaching, costly and onerous regulatory controls on businesses, the larger firms at least are forced to take notice and invest resources accordingly. For the smaller firms the requirements are equally onerous and costly, but they potentially lack the deep pockets or the indeed the clarity of purpose to make it all happen.

Nowhere is this statement more pertinent than for the incoming branches of foreign banks. They must drive cultural change and invest in the human and technological resources to ensure full compliance, balancing that against the fact that in most cases they are small entities with limited budgets. This will be a difficult balance to achieve; it will involve investment in sound technology that is simple enough to be cost effective yet complex enough to provide the assessment and monitoring tools required.