

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?

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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.



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