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!

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