



TISA Conduct Scenarios Concerning Senior Managers

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About TISA

The Investing and Saving Alliance (TISA) is a unique and rapidly growing membership organisation. Our mission is to work with our industry members to improve the financial wellbeing of all UK consumers to **deliver practical solutions** and devise innovative, evidence-based strategic proposals for government, policymakers and regulators that address major consumer issues.

TISA membership is **representative of all sectors** of the financial services industry: We have **over 200-member firms** involved in the supply and distribution of savings, investment products and associated services, including the UK's major investment managers, retail banks, insurance companies, pension providers, online platforms, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives (**TeX/STAR, Digital ID, MiFID II** and **Open Savings & Investment**). This reflects TISA's commitment to open standards and independent governance.



Conduct Scenarios - Introduction

The following conduct scenarios provide examples of situations where firms may need to consider if there has been a resulting Conduct Rules breach or Fitness and Propriety concern for different types of staff under SM&CR. It is intended to be thought provoking and show how far reaching the SMCR regime can be. It is also designed to assist firms with setting their Conduct Rules breach policies and to help firms when thinking about both how to handle situations but also to provide ideas for designing and delivering Conduct Rules training.

Please note that this is for information only purposes, does not constitute legal advice and cannot be relied upon in the event of a specific conduct rule breach.

1. The Unexpected Handover	Questions	Answers and Key Points
<p>An SMF colleague has appeared to you to be under increasingly severe stress and unable to cover all elements of their role in the run up to a regulatory visit. A month before the visit you are told that the SMF has been signed off with a heart condition and you are asked to step in to cover their SMF areas of responsibility. You do not have time to engage on the preparations for the FCA visit but are confident that the team knows what it is doing. There is no handover documentation available to you and you don't want to disrupt the visit preparation by having the team conduct a separate review.</p>	<p>What Reasonable Steps should you have performed when taking on the additional responsibilities?</p>	<p>The SMF Conduct Rule 1 requires the SMF to take reasonable steps to oversee the business for which they are responsible. Understanding the remit of the proposed role, any underlying issues that exist and the ongoing control environment are pre-requisites for any new SMF. In this case, the very fact that the previous SMF has suffered a stress-related condition should have been an indication that there could be underlying problems within the function. Regardless of whether a formal handover document was readily available, the SMF should have worked through each element of the function with the team and other SMFs (particularly the CEO and Compliance (and where applicable Risk and the INED Chair).</p>
<p>The visit goes badly and results in a s166 investigation and findings that the area is poorly organised and lacking skill care and diligence during the period from shortly before you took over the SMF responsibility.</p>	<p>How do we ensure that handover materials are up to date and available?</p>	<p>While the FCA does not mandate requirements for handovers (except suggesting that a summary may be required for Authorisations purposes), best practice would be to put in place a process by which materials in relation to the function (both static data on the set-up of the function and the role performed by the SMF, and dynamic data in relation to active issues) are regularly prepared.</p>
	<p>How should we support SMFs asked to take on additional roles at short notice?</p>	<p>Any firm that wishes to attract and retain staff holding SMF positions will need to support those holding such roles. The SMF who holds the Prescribed Responsibility for the SMR should ensure that protocols are in place to ensure any re-allocation of responsibilities is handled appropriately and that time and effort is taken to brief the new SMF to a level acceptable to them.</p>
<p>CONDUCT RULES POTENTIALLY BREACHED</p>		<p>SC1 (COCON 2.2.1) – see guidance in COCON 4.2.2</p>

2. The Personal Conduct Issue	Questions	Answers and Key Points
<p>You are aware that one of your managers has placed a junior member of staff on a Performance Improvement Plan and that their work has deteriorated to such an extent that termination of their employment is likely. You have known the employee for a number of years and wish to help turn the situation around. You offer to meet them in your office after hours. The meeting is inconclusive, but the following day the employee goes to HR with an allegation of inappropriate behaviour by you at that meeting.</p>	<p>What are your Reasonable Steps in this situation?</p>	<p>SMFs need to be sensitive to the potential HR / litigation threat arising from their behaviour. Meeting a junior member of staff after hours to discuss a sensitive HR issue without anyone else present is not advisable. In the event that any allegation is made about your behaviour as a SMF, you should immediately document your recollection of the meeting and seek advice from your HR/Legal team.</p>
	<p>Which other SMFs need to consider their own Reasonable Steps when addressing the situation?</p>	<p>The allegation of inappropriate behaviour could be considered as a whistleblowing incident. The SMF to whom HR reports would (as part of their own 'reasonable steps') need to consider how the allegation is addressed and should seek to protect the individual making the allegation. Depending on the firm's internal arrangements on whistleblowing, other SMFs may need to be informed and action taken (e.g. the SMF holding the Prescribed Responsibility for the SMR).</p>
	<p>What is the obligation of a firm to report to the FCA in such circumstances?</p>	<p>Principle 11, SUP 15 and SMF Conduct Rule 4 all detail the need to inform the FCA of material matters. However, any investigation into the matter will need to be concluded first unless the surrounding circumstances are such that immediate notification is appropriate. Due to the potential litigation risk, it is advisable to seek external legal advice where such matters occur.</p>
<p>CONDUCT RULES POTENTIALLY BREACHED</p>		<p>Conduct Rules 1 & 2 (COCON 2.1.1 & 2.1.2)</p>

3. Reliance on the Second/Third Lines	Questions	Answers and Key Points
<p>You are newly appointed to a role that results in you having SMF responsibility for a business unit that has recently undergone a series of reviews by Compliance and Internal Audit. While your previous interactions with the business unit cause you to have doubts about the controls within the function, the Audit and Compliance reviews make no adverse findings</p>	<p>To what degree is it reasonable for a SMF to rely upon reviews previously undertaken by Compliance and Audit?</p>	<p>As the SMF, you are responsible for taking reasonable steps to understand the profile and performance of the areas under your control. While reviews previously conducted may be helpful, they cannot be wholly relied upon. If, as in this case, you are aware of potential control failings, you should take action to address this immediately.</p>
	<p>If, as SMF, you feel that the second / third line is not being sufficiently rigorous, what would be your Reasonable Steps?</p>	<p>Where a SMF is aware of weaknesses in other functions, they should bring them to the attention of the relevant SMF. Where appropriate, this should also be discussed with the CEO and/or Chair.</p>
	<p>If you take your concerns to the second / third lines and no action is taken, will the SMFs for the second and third line have fulfilled their Reasonable Steps? Will you have fulfilled your own?</p>	<p>No; escalation to CEO and/or Chair may be appropriate. SMFs also need to consider whether disclosure to the FCA is appropriate in the circumstance and their own obligations under SMF Conduct Rule 4.</p>
<p>CONDUCT RULES POTENTIALLY BREACHED</p>		<p>SC1 (COCON 2.2.1) – see guidance in COCON 4.2.2</p>

4. Certified Pressures	Person/Time	Questions	Answers and Key Points
<p>Helena is a trader for a large broker. Recently she has been under significant time pressures and P&L pressures. As a result, she has opened a book and not notified Risk and Compliance of this fact. Over a series of months, Helena moves large losses from her ordinary trading book to the secret book. Helena does not provide any information on the book to her manager or Risk and Compliance. It has now accrued losses of approximately £1.2m.</p> <p><i>(Assumptions - Principal positions of the firm; £1.2m is not business critical (in the sense of capital))</i></p>		<p>What Conduct Rules has Helena breached?</p>	<p>There are a number of incidents here, which need to be dealt with separately:</p> <p>She opened a 'secret book' – misleading by omission the firm; over a period of time, she transferred losses to the 'secret book' – mismarking the value of the trading position; she has provided no information on the 'secret book' to management – falsifying trading records</p> <p>COCON 4.1 – Acting with integrity - the FCA Handbook sets out guidance on breaches of each of the conduct rules. In respect of the three incidents listed above, it can be said that Helena has breached Conduct Rule 1 (integrity) on three separate occasions.</p> <p>COCON 4.1 is quite clear that dishonesty (be it falsifying or concealing) is likely to be a Conduct Rule 1 breach.</p>
		<p>What should Helena do now?</p>	<p>Where breaches occur, and if possible, individuals should take steps to mitigate the impact of their actions.</p> <p>The trader should immediately inform her line manager and compliance of her actions.</p> <p>The ability of a trader to open a separate trading book and then transfer losses undetected is likely to be a breach of systems and controls which will need to be looked into and addressed (including considering any wider implications). The firm's management and compliance will need to consider and agree all risk impacts and a communication with the FCA, under principle 11 and CONCON senior manager conduct on disclosure to FCA.</p>
CONDUCT RULES POTENTIALLY BREACHED			<p>Conduct Rule 1 (COCON 2.1.1) – see guidance in COCON 4.1</p>

5. Non-financial Misconduct/ Financial Performance	Questions	Answers and Key Points
<p>George has worked for the firm for several years and is expecting a promotion at the end of the year which is what he has been working towards. The firm is aware he is highly profitable and are keen to ensure the promotion happens. During a work event, George has had too much to drink and become abusive with both colleagues and clients who are attending the event. George does not want this to affect his promotion so lies about the event and speaks to his line manager who is an SMF. He asks his line manager, Margaret, to back him still. Margaret says she will without investigating the incident and says that “boys will be boys”. <i>(Assumptions: George is an identified certified person).</i></p>	<p>What should George have done?</p>	<p>Where misconduct has occurred outside of the workplace, it can only be relevant for the purposes of assessing a conduct rule breach where the misconduct relates to the firm’s regulated business.</p> <p>For senior managers and certified staff members however, fitness and propriety is always relevant, and misconduct need not relate to regulated business solely relevant to a fitness and propriety assessment.</p> <p>Unless the work event was related to the firm’s business, George’s becoming abusive towards his colleagues is unlikely, in and of itself, result in a Conduct Rule breach. However, as George is a certified staff member, the event (if disclosed) could prompt an investigation into his personal characteristics and honesty and integrity is part of his Fitness and Propriety assessment. Margaret should refer the matter to HR.</p>
	<p>What should the firm be doing?</p>	<p>The internal HR policy may refer (and the direction of travel in the industry, is to promote this) to non-financial mis-conduct situations and the disciplinary steps that will be taken.</p> <p>The firm should be asking which clients attended witnesses complaints and thinking about its communication strategy. Also is there any history of previous misconduct of a financial or non-financial nature? Is George hiding anything?</p>
	<p>What should Margaret have done?</p>	<p>If Margaret proceeds on this basis – it is likely that she will herself have breached Senior Manager Conduct Rule 1, in that by promoting George, she will have failed to take reasonable steps to ensure suitable individuals responsible for aspects of the business under the control of senior conduct rules, particularly by giving undue weight to George’s financial performance.</p>
<p>CONDUCT RULES POTENTIALLY BREACHED</p>		<p>SC1 (COCON 2.2.1) – see guidance in COCON 4.2.2</p>

6. Front Running	Questions	Answers and Key Points
<p>Nicholas is an algorithm developer and a conduct staff member for a wholesale brokerage and is responsible for the production and dissemination of new algorithms. The algorithms are used to facilitate customer orders and direct customer orders. Nicholas, when developing the algorithm has discovered that it interacts with an algorithm that the firm uses for its own proprietary trading in a manner which means that front running of client orders occurs. This results in the client paying more. Nicholas does not tell anyone about this, as it provides additional profits for the firm.</p> <p>(Assumptions Nicholas is certified staff rather than a senior manager)</p>	<p>What Conduct Rules has Nicholas breached?</p>	<p>It is likely that Nicholas is certified staff rather than a senior manager and has breached a number of conduct rules. However, it is sensible to break this down into its component incidents. There are four incidents here:</p> <p>(1) Nicholas makes an error with respect to the production of an algorithm. Possible breach of Conduct Rule 2.</p> <p>(2) The algorithm has the effect of front running orders. Possible breach of Conduct Rule 1 as seems to be a deliberate act to front run.</p> <p>(3) The net effect of all of this is to deprive the client of funds –as it appears to be an act of not paying due regard to the interests of clients. There is no client disclosure of the nature of the risk or potential conflict of interest. Possible breaches of Conduct Rules 1 and 4.</p> <p>(4) Nicholas decides not to tell anyone.–Possible breach of Conduct Rule 1 in failing to inform the firm of the potential conduct risk of front running.</p>
	<p>What should Nicholas have done?</p>	<p>Nicholas should have informed his line Manager immediately and reported to Compliance to determine next steps.</p>
	<p>What should the firm do if they discover this is occurring?</p>	<p>Raise as material breach with the FCA. Investigate which clients have been unnecessarily penalised financially and provide redress. Test the systems to ensure that they are accurate and consider what changes could be made to prevent re-occurrence. The firm will need to consider whether Nicholas has breached Conduct Rules, the implications of this conduct on their assessment of his fitness and propriety and whether disciplinary action is needed.</p>
<p>CONDUCT RULES POTENTIALLY BREACHED</p>		<p>Conduct Rules 1, 2 & 4 (COCON 2.1.1, 2.1.2 & 2.1.4)</p>

7. Delegation/Misleading FCA	Questions	Answers and Key Points
<p>Christopher works in the firm's risk department. The FCA has recently asked for documentation detailing how the firm manages conduct risk. Christopher has been put in charge of communicating with the FCA in this particular regard whilst his line manager who is an SMF is away. Christopher is aware that this is an on-going project and no documentation has yet been produced. The FCA has recently criticised the firm for a number of other delayed projects, and Christopher does not wish anyone to get in trouble. As a result, he decides to create a conduct risk management framework and back-date it, as well as a conduct risk policy. Christopher provides this to the FCA without discussing it with his manager and without copying his manager in. The FCA now wishes to have a series of follow up meetings on the conduct risk framework.</p>	<p>What should Christopher do?</p>	<p>In response to an FCA request for documents and information, Christopher has decided to falsify a risk framework by backdating the document to give the impression that it was created earlier than it was.</p> <p>In doing this, Christopher has potentially breached Conduct Rule 1 (for the falsification of the documents) and Conduct Rule 3 (for failing to be open and cooperative with the regulator).</p> <p>Chris could have avoided a Conduct Rule 1 breach by not falsifying the documents. He could have also avoided a Conduct Rule 3 breach as an individual by looking to be open with the FCA about the possibility of a delay. However, the existence of a delay could still mean a possible Principle 11 breach for firm.</p>
	<p>What should Christopher's line manager do?</p>	<p>Chris's firm should open an investigation into Chris for Conduct Rule breaches and notify the FCA of actions promptly with resolutions.</p> <p>Conduct rule 3 requires you to be open and cooperative with the regulator.</p> <p>COCON 4.1.11 G sets out the following guidance in respect of what may constitute a breach of rule 3:</p> <p>The following is a non-exhaustive list of examples of conduct that would be in breach of rule 3.</p>

Delegation/Misleading FCA (continued)			Questions	Answers and Key Points
				<p>1) Failing to report promptly in accordance with their firm's internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the FCA.</p> <p>(2) Failing without good reason to:</p> <p>inform a regulator of information of which the approved person was aware in response to questions from that regulator; attend an interview or answer questions put by a regulator, despite a request or demand having been made; and supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement.</p>
CONDUCT BREACHED	RULES	POTENTIALLY		Conduct Rules 1 and 3 (COCON 2.1.1 and 2.1.3)

8. Delegation/Misleading FCA	Questions	Answers and Key Points
<p>Jenny is a consultant with a responsibility for contributing to the onboarding of new clients for the firm. The key contact at a new client is an old friend of Jenny's from university. The client does not have all the documents required for Jenny to undertake the AML/KYC due diligence checks but Jenny's friend assures her everything is in order. Based on her friend's assurances, Jenny decides to go ahead and complete the onboarding process without all the documents. Beth overhears the conversation that Jenny has with her friend. A couple of days later, once the KYC monitoring team raises queries with Jenny about the missing information, Jenny becomes concerned that she should not have onboarded the client without the documents.</p>	<p>What should Jenny have done before onboarding the client?</p>	<p>Jenny decides to onboard a client without being able to collate the relevant KYC information and instead relying on assurances given by his friend. In doing this, it is likely that Jenny will have breached Conduct Rule 2 by failing to show due care, skill and diligence, specifically failing to inform her Manager and Compliance that certain KYC information was missing.</p> <p>Anti-money laundering legislation and related guidance is clear on this issue: Jenny should not have onboarded the client without completing (and verifying) the relevant KYC. Whilst previous FCA cases would suggest that this would be a Conduct Rule 2 breach, an egregious failing in this regard (coupled with a knowledge of the relevant laws and guidance) could amount to a Conduct Rule 1 breach. Here the description suggests Jenny may not have known this though.</p>
	<p>Once Jenny becomes concerned, what should she do?</p>	<p>Jenny could well seek to remediate the breach by explaining what has happened, looking to obtain the missing KYC information as quickly as possible (and ultimately within a reasonably short time frame) and in the meantime asking for the transaction or on-boarding process to cease in the event that the missing information is not forthcoming.</p>
	<p>What should Beth do?</p>	<p>Upon hearing of Jenny's situation, Beth should have immediately spoken to their line manager. The line manager and the firm may need to consider why Jenny was apparently unaware of the importance of doing KYC and this may have implications for the senior manager with financial crime responsibility.</p>
<p>CONDUCT RULES POTENTIALLY BREACHED</p>		<p>Conduct Rules 1 and 2 (COCON 2.1.1 and 2.1.2)</p>

9. Personal Account Dealing Breach	Questions	Answers and Key Points
Christopher works in the investment firm's London finance team. Lila works in the same team. Christopher recently read in the FT that the Canadian stock market may present buying opportunities. He decides to make an investment into listed Canadian stock through a broker in Toronto. He knows that the firm's Group Securities Compliance Manual-Holding Procedure (which deals with personal account dealing) requires all employees to seek authorisation before they complete any share purchase transactions but thought this only applied to shares listed in the UK. In the canteen, he buys the shares. Lila sees that Christopher is buying shares and mentions the Policy. After the trade, Christopher reads the Policy again and sees that it applies to all shares listed anywhere in the world.	What should Christopher have done before buying the shares?	Christopher should have sought authorisation from the firm to buy the shares and now that he has seen the policy, he should report his actions immediately. In doing so, he may mitigate the severity of his actions to an extent. This could potentially reduce his misconduct to a breach of Conduct Rule 2 (failure to show due care, skill and diligence).
	Now that Christopher has read the Policy again, what should he do?	This is potentially a reportable Conduct Rule 1 breach. Christopher has purchased shares in breach of his own company's personal account dealing rules. COCON lists this as typically being a way in which Conduct Rule 1 (integrity) is breached. This is set out in chapter 4.1 of COCON. He should contact Compliance to explain what has happened.
	What should Lila do?	Refer this to her Line Manger and Compliance. Note the Conduct Rules apply to all employees (unless ancillary staff) and if she does not report it arguably, she may also breach Conduct Rule 1 or 2.
CONDUCT RULES POTENTIALLY BREACHED		Conduct Rules 1 and 2 (COCON 2.1.1 and 2.1.2)

10. The NED Problem	Questions	Answers and Key Points
As an INED holding the SMF9 Chairman position, you become concerned that a new sales incentive plan is likely to promote aggressive sales behaviour. You wish to raise the question with executive management and have trouble in getting key executives to engage with your concerns. In board meetings, the answers you receive are unsatisfactory.	As an INED what are your 'Reasonable Steps' in this situation?	The Chair should be able to pose any reasonable question to the executive management of the company and expect answers – fostering this environment and providing challenge is part of their reasonable steps. The NED should consider reminding the executives of this and ensure that each such effort to challenge is documented and that board minutes accurately reflect the discussion and questions raised. Where the answers received are unsatisfactory, the Chair should follow up and insist on the matter being addressed. If answers are still not forthcoming, they should consider whether they may need to report the matter to the FCA and, if appropriate, resign their position.
	What are your options when escalating the issue?	Where they do not receive appropriate answers from the executive SMF population, they should highlight this outside the board with the CEO (the SMF responsible for the oversight of the business of the firm and who likely has responsibility for compliance with the senior managers regime) and formally on the record at the Board itself. They may wish to make the board aware of their own personal obligations under the Senior Manager Conduct Rules and the position this puts them in. If answers are still not forthcoming, they may wish to take independent advice to consider whether they should report the matter to the FCA and, if appropriate, resign their position.
CONDUCT RULES POTENTIALLY BREACHED		If concerns are not addressed, the following rules could be breached: Conduct Rule 2 (COCON 2.1.2) and Conduct Rule 4 (COCON 2.1.4)

11. Handover – Example 1	Questions	Answers and Key Points
<p>The firm's Compliance Officer is under much stress at home. Six months ago, she was signed off work by her doctor for three weeks effective immediately. Although she did not come into the office during this period she was sending and replying to emails; her deputy (who is not a senior manager) stepped into her shoes for meetings. Following on from this 2 months later she was signed off again; this time she was not working at all and her deputy took over entirely. Two months later she resigns. There is no handover policy in place but during a brief handover to her successor notes that she was responsible for leading a major regulatory change project which is due to come into force next month. The project is not on track and the firm is not able to do sufficient to be compliant by implementation.</p> <p><i>(Assumptions: Firm is a core firm; the compliance officer is a senior manager, holding SMF16 function, but has no prescribed responsibilities allocated).</i></p>	<p>Which of the firm's senior managers is potentially implicated in the failure to be compliant?</p>	<p>Senior Management Function (SMF) who is responsible for allocation (if different to the CEO) is potentially implicated also.</p> <p>The 12-week emergency cover rule is helpful, and no prescribed responsibilities arise to be re-allocated to another SMF. Projects and other responsibilities can be re-allocated, query whether in practice this was done effectively?</p> <p>Activities can be delegated but the ownership for the activities still ultimately lies with the SMF while they retain the responsibilities. Draw out distinction between the first and second period of absence.</p> <p>SMF who is responsible for allocation (if different to the CEO) is potentially implicated also.</p> <p>Activities can be delegated but the ownership for the activities still ultimately lies with the SMF while they retain the responsibilities. Draw out distinction between the first and second period of absence.</p> <p>Given the importance of the regulatory change project and lack of completion (and compliance) by implementation time, will require attention (would be an individual personal risk if this also required awareness) by the board and potentially reportable to the FCA.</p>
	<p>Should the firm have had in place a formal handover procedure?</p>	<p>Handover documents are not required for core firms (but this example perhaps indicates why a reasonable steps document might be a sensible document to have in the potentially foreseeable event of a short notice handover is needed).</p>
CONDUCT RULES POTENTIALLY BREACHED		<p>SC1 (COCON 2.2.1) and SC3 (COCON 2.2.3)</p>

12. Handover – Example 2	Questions	Answers and Key Points
<p>The firm's COO (who holds the SMF16 role and has the PR for Conduct Rules training and breach reporting) unexpectedly hits their head on a night out over the weekend and suffers permanent brain damage such that they are unable to return to work. The firm is a small firm with no deputy and was reliant on an external compliance firm for purely compliance matters and ad hoc employment law advice on HR issues. It has no handover arrangements in place. It takes the firm 8 months to find a permanent replacement and get them approved by the FCA. During this period a number of potential Conduct Rules breaches are not escalated, assessed or reported and new staff have not been trained on the Conduct Rules.</p> <p><i>(Assumptions: Firm is a core firm, so handover record is not mandatory but advisory).</i></p>	<p>Should the firm have had in place a handover arrangement?</p>	<p>Handover documents are not required for core firms (but this example perhaps indicates why a reasonable steps document would be a sensible document, and appropriate to have in the event a short notice handover.</p> <p>The 12 week emergency cover rule may help (if there is someone to take on the role temporarily) but prescribed responsibilities cannot (outside of Covid-19) be allocated to someone who is not a senior manager and ultimate responsibility for an unallocated PR sits with the CEO.</p>
	<p>Who is potentially accountable for the Conduct Rules reporting and training failures?</p>	<p>COCON senior management rules breaches and COCON 2.3 in respect to providing training and ensuring that new staff how the conduct rules apply to them in their role</p> <p>With no deputy lined up, and evidently conduct breaches arising, not being assessed or reported and lack of conduct training being provided, that the CEO will face challenges from the FCA that duty of responsibility has failed. The FCA would need to demonstrate that:</p> <p>(1) there has been (or continues to be) a contravention of a relevant requirement by the <u>SMF manager's firm</u>;</p>

Handover – Example 2 (continued)	Questions	Answers and Key Points
		<p>(2) at the time of the contravention, the <u>SMF manager</u> (COO in this instance) was responsible for the management of any of the <u>firm's</u> activities in relation to which the contravention occurred; and</p> <ul style="list-style-type: none"> • <i>The <u>SMF manager's</u> statement of responsibilities, including whether the <u>SMF manager</u> was performing an executive role.</i> • <i>How the <u>firm</u> operated, and how responsibilities were allocated in the <u>firm</u> in practice.</i> • <i>The <u>SMF manager's</u> actual role and responsibilities in the <u>firm</u>, to be determined by reference to, among other things, minutes of meetings, emails, regulatory interviews, telephone recordings and organisational charts.</i> • <i>The relationship between the <u>SMF manager's</u> responsibilities and the responsibilities of other <u>SMF managers</u> in the <u>firm</u> (including any joint responsibilities or matrix management structures).</i> <p>(3) the <u>SMF manager</u> did not take such steps as a person in their position could reasonably be expected to take to avoid the contravention by the <u>firm</u> occurring (or continuing).</p>
	What should the firm have done differently to avoid this?	Appointed an interim Compliance professional. Notified the FCA and given likely timescales. Reported all breaches and what actions were being undertaken.
CONDUCT RULES POTENTIALLY BREACHED		For the CEO: SC1 (COCON 2.2.1) and SC3 (COCON 2.2.3)

13. Poor Performance & Whistleblowing	Questions	Answers and Key Points
<p>A firm's certified client facing advisor's performance has been poor since he joined. 3 months ago he was put on a performance improvement plan and each month his performance is assessed against targets. The last 2 month's feedback were not indicating any improvement and the 3rd month is looking likely to be the same. At the final meeting before the manager can deliver the feedback the advisor provides a copy of a written complaint he has sent to the board setting out his views that the firm does not take compliance seriously and is not meeting a number of regulatory requirements.</p>	<p>What should the manager do?</p>	<p>Ascertain facts e.g. timing of the feedback meetings vs board letter</p> <p>Stop the meeting with the advisor and inform them that this needs to be looked into and I as your manager HR will revert back with next steps.</p> <p>Communicate and set up meeting with SMF16 and head of HR.</p> <p>Assuming that the direct line of the manager is the SMF (on the board), reach out to them in the first instance. If not see SMF/HR first</p> <p>Manager should consider a closer supervision and coaching style with the advisor in the interim period (maybe already in place as part of 'route to green' monitoring of advisor performance improvement)</p> <p>HR should consider stopping the performance review until the compliance investigation establishes a link between performance process and complaint.</p> <p>Advise the advisor that they are 'protected' under the whistleblowing policy and remind them of options open to them.</p>
	<p>How should the firm deal with the complaint?</p>	<p>The SMF16 should review the complaint letter (is this the first time seen?) and review relevant board meeting minutes and then assess what steps are required in the investigation process. The nature of the investigation will depend on the exact detail of the complaint.</p>
	<p>What implications are there for the SMF16?</p>	<p>The SMF16 may need to consider external /specialist support to advice on a potentially complex and conflicting issue (e.g. are clients at risk from the advisor or indeed the alleged poor compliance controls or both).</p>

Poor Performance & Whistleblowing (continued)	Questions	Answers and Key Points
		<p>The SMF16 may need to consider a breach of conduct FCA report, where the relevant SMF responsible for the area of business is accountable for failings in compliance and evidence that the wrong culture standards are displayed. [It may be more embedded issue and the Board has not informed the SMF16 of the letter in the first place and demonstrate lack of compliance value].</p> <p>Review of complaint raised and nature of poor performance of the advisor – is there a link and is the advisor acting with integrity (positive or negative)?</p> <p>HR SMF16, ought to review the performance gap improvement programme to ensure follows policy & clients not put at risk appropriate engagement (manager / IND and with senior management) has taken place timely process financial performance checks (since joining)</p> <p>Report back to Board, with conclusions basis of this actions to take</p> <p>Record everything to protect SMF16 from any personal culpability risk</p>
CONDUCT RULES POTENTIALLY BREACHED		SC 1 and 2 (COCON 2.2.1 and 2.2.2)

14. Delegation	Questions	Answers and Key Points
<p>The CFO is responsible for ensuring certification requirements are met. In practice he has too much on his plate and so he delegates this to his HR team who have devised a template which they use. The HR team have misunderstood the scope of F&P requirements though and are therefore not considering any matters which have taken place outside of work. Had the CFO looked at it in detail he would have realised this, but he was busy as it was the firm's year end and only gave it a cursory glance. As a result of this policy, although HR have had it reported to them that Joe Bloggs (SMF) has a social media page in which he publicly posts racist and anti-Semitic opinions they have not factored this into their assessment. Two members of staff come forward with complaints alleging that they have been the subject of racial discrimination in relation to promotion opportunities and work allocation.</p>	<p>What responsibility does the CFO have for this failing? How could he have behaved differently? If the firm or are other SMFs implicated?</p>	<p>As the CFO is a SM with the Prescribed Responsibility (PR) for certification, even though he has delegated the day to day management of the process, he is potentially responsible for the failing. An SMF cannot delegate responsibility but can delegate the task if he takes the necessary steps to oversee it and has the MI needed.</p> <p>CFO should have taken reasonable steps to make sure that certification requirements are being adhered to and that delegation is effective. CFO should have made sure that the HR team understands the scope of the F&P requirements and that it should incorporate behaviour (personal characteristics). The CFO should have reviewed the template used by HR to make sure it was adequate. Training should have been delivered to HR, adequate policies should have been developed and implemented. In addition, the CFO should have had regular catch ups with HR to oversee and monitor the work on certification. There is also a question over whether PR for certification should have been allocated to the CFO in the first place given the workload and capacity which has contributed to the CFOs failure to oversee his delegated activities adequately.</p> <p>The SMF who has the PR for compliance with the Senior Managers Regime may have some responsibility here, as they should make sure that the responsibilities have been allocated appropriately, that SMFs have the appropriate resources and capacity and that there is an appropriate and consistent approach to taking reasonable steps. If the CFO "has too much on his plate" perhaps he should not have the PR.</p> <p>The SMF with the PR for conduct rules training may also bear some responsibility if they have not trained SMFs on the requirements under the SM conduct rules and individuals conduct rules.</p>

Delegation (continued)	Questions	Answers and Key Points
		The SMF who has responsibility for HR, if that is different to the CFO, could also have some responsibility for not making sure that the F&P assessments are adequate.
	Should HR have considered the information about Joe Bloggs' social media post? Could it make a difference to his fitness and propriety? On what ground?	HR should have considered the information about Joe Bloggs social media posts. Given that the posts involve discrimination, this is behaviour that may affect his fitness and propriety to act as a SMF of the Firm. F&P test includes honesty, integrity and reputation and should include an assessment of an individual's personal characteristics. This behaviour would be likely to affect JB's reputation. There could be repercussions and reputational risk for the Firm. In addition, two complaints have been raised by members of staff which tie in with the racist social media posts.
	If the complaints are found to be supported by evidence, what Conduct Rules or Fitness and Propriety concerns do they give rise to?	<p>SC1 – areas responsible for are controlled effectively</p> <p>SMF with PR for SMR: Failing to take reasonable steps to ensure suitable individuals are responsible for areas under that Senior Manager (JB is a SMF but not necessarily F&P)</p> <p>SC2 – areas responsible for are compliant with the rules; CFO with PR for certification has failed to take reasonable steps to make sure Firm is compliant</p> <p>SC3 – delegation; CFO did not oversee the delegation properly</p> <p>Relevant Individual Conduct Rules:</p> <p>CR1 JB failed to act with integrity</p> <p>CR2 JB failed to act with due skill, care and diligence</p>
CONDUCT RULES POTENTIALLY BREACHED		SC 1, 2 and 3 (COCON 2.2.1, 2.2.2 and 2.2.3) Conduct Rules 1 & 2 (COCON 2.1.1 and 2.1.2)

15. Business Continuity Planning	Questions	Answers and Key Points
<p>A virus starting in Africa is raising WHO concerns and there are rising rumours in the press of a possible pandemic. The (enhanced) firm has a number of major offices in Africa and members of the board and other sales staff regularly travel between the UK and Africa. National guidelines are issued recommending that all individuals who returned from Africa in the last 2 weeks should work from home. The firm has remote access set up for its staff but ordinarily most people come into the office. As a result of the guidelines nearly 30% of the UK firm is required to work from home. When it comes to it many are unable to login, IT support is unable to cope and it later transpires that the remote working technology was very outdated and not fit for purposes. As a result there were some customer service issues and the matter comes to the attention of the press and the FCA. The firm has a UK-based Head of IT who is approved as SMF23 but the remote working technology was purchased for the group by the group CTO who is not FCA authorised and is based overseas.</p>	<p>Which Senior Manager is likely to be held accountable here for the failings?</p>	<p>The UK based Head of IT approved as SMF23 will be held accountable, as they have responsibility for IT in the UK FCA authorised Firm.</p> <p>The technology may have been purchased by the group CTO some time ago, but the SMF23 should have taken steps to make sure that the remote working technology was fit for purpose for the UK firm. It should be tested and reviewed on a regular basis. If it is not fit for purpose, it needs to be updated so that it is made fit for purpose.</p> <p>The SMF with responsibility for customer service could also be held responsible for the failings because of the failure.</p> <p>The UK based SMF23 should take reasonable steps to make sure that the BCP is fit for purpose for the UK firm. This may involve the Group CTO providing management information and having regular catch up meetings with the SMF23. If the SMF23 is delegating to the Group CTO for the UK Firm's BCP, the SMF23 should oversee and monitor work to make sure that delegation is effective.</p>
	<p>Are there any regulatory implications for the overseas CTO?</p>	<p>If the Firm's view is that the Group CTO is responsible for the failing, it may have to consider whether the correct person is approved as SMF23. This may involve other SMFs, such as the SM with the PR for SMR holding some responsibility for the implementation of SMR and allocation of responsibilities.</p>

Business Continuity Planning (continued)	Questions	Answers and Key Points
	What lessons can the firm learn from this and improve?	<p>The FCA may look at the way the governance of the Firm works to see whether what is recorded on the Statements of Responsibilities and the Responsibilities Map is what is what happens in practice. It may also review how the UK SMFs and Group senior management interact with each other.</p> <p>All other risks that arise from such an incident and the mitigating factors or controls and processes needed should also be considered as part of the BCP, such as problems with customer service, reputational and regulatory risk.</p>
RULES POTENTIALLY BREACHED		SC 1 and 3 (COCON 2.2.1 and 2.2.3)

16. Personal Conduct	Questions	Answers and Key Points
The firm's HR department receive complaints that the CIO who is also director is bullying some of the fund managers. The investigations undertaken reveal a very dysfunctional team dynamic with some evidence of victimisation and bullying. The CIO has a stellar financial performance record	How should the firm handle this?	The conduct rules relate to regulated and unregulated financial services activities. As such bullying is not explicitly caught under the conduct rules and although such behaviour could be viewed as not acting with integrity, this does not specifically relate to financial services activity, therefore the CIO has not breached the integrity conduct rule.
	Is the CIO breaching any Conduct Rules?	However, a culture of victimisation and bullying is clearly an issue which the firm needs to address and this may well result in disciplinary action against the CIO and a finding that he is not fit and proper (rather than a breach of the conduct rules) because he is not behaving or acting with integrity.
	Is the CIO still fit and proper?	If other individuals holding SMF's are aware of the CIO's behaviour then clearly they have a duty to address it – as the senior individuals governing the firm they have a responsibility to promote a culture which promotes good behaviours and not victimisation or bullying. They should clearly document what they are doing to address it and how the firm's culture underpins ethical behaviour.
	What obligations are there on other SMFs in relation to how they handle this issue	The fact that the CIO has a stellar performance and track record should not detract from the fact that his bullying behaviour is unacceptable. His behaviour cannot be overlooked because of his performance in other areas.
CONDUCT RULES POTENTIALLY BREACHED		Conduct Rule 1 (COCON 2.1.1) and breach of Fitness and Propriety – see guidance in FIT 2.1

17. Outsourcing - Example	Questions	Answers and Key Points
<p>Processing work for a fund manager (firm A) is outsourced to a third party administrator (firm B). SLAs are not clear, and performance is not managed closely by the fund manager. Also, during a recent external audit there have been a number of regulatory breaches that have come to light that relate to the work conducted by the outsource provider (firm B). The firm to whom work is outsourced is FCA authorised.</p>	<p>Do both firms need to comply with the SM&CR?</p>	<p>As both firm are regulated by the FCA they would both have to comply with SM&CR but depending upon their size and permissions they could be classed as Enhanced or Core firms and would therefore need to comply with SM&CR accordingly.</p>
	<p>Where does the accountability lie for each firm in respects to the regulatory breaches?</p>	<p>The ultimate regulatory accountability lies with Firm A as they cannot outsource their regulatory responsibilities. However Firm A should have sufficient oversight of Firm B to satisfy themselves that the firm is governed and controlled effectively. Firm A should seek to revisit and firm up on the SLAs and should have a robust oversight and monitoring programme in place in respect of the work which is outsourced to Firm B. Ignorance of a process would be no defence for Firm A or its Senior Managers in the event of a serious regulatory breach.</p>
	<p>Should Conduct Rule breaches by Firm B be reported to Firm A?</p>	<p>Under SM&CR, Conduct Rule breaches need to be reported to the FCA but there is no requirement to report these to other associated businesses. Depending on the contract in place between Firm A and Firm B, high level detail around the number of conduct breaches may be included in the KPIs and Firm A, as part of their oversight, may want to understand how staff are trained on the Conduct Rules and the process in place for reviewing conduct breaches.</p>

Outsourcing – Example (continued)	Questions	Answers and Key Points
	Under SM&CR what does firm A need to do in respects to firm B's activity?	Firm A and the Senior Manager responsible for the outsourced functions, must be satisfied that Firm B is operating in a controlled and governed manner and that all the processes which Firm B performs are compliant. The Senior Manager at Firm A who is responsible for the outsourced activities must take all reasonable steps to understand the processes being performed by Firm B and to be satisfied that they are being carried out in accordance with regulation. This may include reviewing how SMC&R is structured within Firm B and the processes in place to assess fitness and propriety.
CONDUCT RULES POTENTIALLY BREACHED		SC 1 and 3 (COCON 2.2.1 and 2.2.3) for SM at Firm A who was responsible for outsourcing to Firm B

18. SMF Offshore Problem	Questions	Answers and Key Points
<p>You are the SMF of a business line that operates through a global operating model using third parties and offshore locations. Two years ago, a process operated from London was relocated offshore. Service levels have deteriorated over the last 12 months. Following a visit to a regulated client which has experienced multiple problems due to the poor service levels, the FCA asks you to explain how you (as the SMF) are addressing the situation?</p>	<p>What Reasonable Steps will you be able to rely upon to show that you have taken appropriate action to address the service level concerns?</p>	<p>When a function that a SMF is accountable for outsources elements of its work, they should make sure that appropriate arrangements are in place. This would include ensuring appropriate preparatory work, the establishment of a service level agreement and appropriate key performance and risk indicators to ensure oversight is maintained. In this instance, the SMF should have already been aware of the problem (through review of MI, Audit reports and service level meetings) and should have been addressing it.</p>
	<p>What do you do currently to demonstrate oversight of offshored activity in your area?</p>	<p>Elements of your function that you have delegated / outsourced / offshored should be documented in your Statement of Responsibilities. For oversight purposes, any formal service level or vendor liaison meetings should be documented, and actions agreed and followed up subsequently. Reporting to legal entity governance bodies will also evidence actions taken.</p>
	<p>How would you address poor performance in an offshore function where you do not have direct management of the offshore relationship?</p>	<p>In a matrix organisation, a SMF can find themselves dependent on others to ensure that global operational activities are carried out. In such circumstances, the SMF should have sufficient visibility to be able to ascertain that a deterioration of service is occurring and have in place a mechanism with their counterpart to ensure matters are escalated and addressed. Training of counterparts and their teams on SMF requirements may be necessary.</p>

SMF (continued)	Offshore	Problem	Questions	Answers and Key Points
			Do you have a clear understanding of who is working for you in offshore locations and appropriate MI on performance?	As part of the initial handover process the SMF should make sure that they are clear as to what lies within their function and, if elements are offshore, how those elements are overseen. As an initial step, the SMF should satisfy themselves that the performance and risk MI is appropriate and sufficient – this may involve asking for additional information to be provided if appropriate (and if allowed under the intercompany arrangements in place). As the accountable person, the SMF must make sure they understand all elements within their remit and have in place mechanisms to oversee them.
			What information do you receive on HR problems / disciplinary actions involving partners dealing with offshored activities for which you have responsibility?	The SMF should make clear what information they wish to receive on the offshored activity. This should include data on the conduct risks that the business is exposed to and the controls that are in place – HR disciplinary data should be included in such information to allow the SMF to fully understand underlying issues within the business area.
CONDUCT RULES POTENTIALLY BREACHED				SC 1 and 3 (COCON 2.2.1 and 2.2.3)

19. Reliance on Second and Third Lines of Defence	Questions	Answers and Key Points
<p>Recent compliance monitoring report and an historic internal audit report of the UK client relationship / sales teams have found no material matters to report on. The SMF responsible for that business area is concerned that the sales teams (specifically) is acting beyond their regulatory activity remit and advising their portfolio of wealth HNW private clients. Despite asking compliance to review this matter as part of monitoring, the findings are silent on the outcome of this risk. On further investigation by the SMF, it turns out that the compliance team are under-resourced and were behind in executing their monitoring plan, thus performing a basic and time constrained review, as a step to getting the plan back on track.</p> <p><i>(Assumptions: The internal audit and compliance team find no issues with a department in the firm and the SMF is of the opinion that there are some issues with that department).</i></p>	<p>What type, if any, regulatory breaches have been made?</p> <p>What actions should the Head of Risk and Compliance (SMF16) take?</p>	<p>There are several reportable breaches:</p> <p>COCON 4.1.3: Sales team failing to act with due skill care and diligence</p> <p>COCON 4.1.13: Sales team failing to pay due regard to clients or treat clients fairly</p> <p>COCON 4.2.13: SMF failing to take adequate and timely reasonable steps (from date of becoming aware of the concern to compliance being made aware)</p> <p>COCON 4.2.16: SMF16, failing to ensure resources are adequate to fulfil monitoring plan effectively</p>
	<p>What further action may be necessary?</p>	<p>On board an independent specialist to confirm sales process to confirm advisory activities are taking place.</p> <p>The same specialist will need to assess compliance resources and communication with the Board on this matter.</p> <p>Specialist feedback will need to be considered by the Board and senior management and appropriate actions taken in an agreed timely manner.</p>

Reliance on Second and Third Lines of Defence (continued)	Questions	Answers and Key Points
		<p>Consider sales team competencies and qualifications (needed vs have) when advising retail clients to date.</p> <p>Consider compliant advisory process to take into account suitability regulations to date.</p> <p>May require a remediation plan to be created and communication with FCA of the breach.</p>
CONDUCT RULES POTENTIALLY BREACHED		<p>Conduct Rule 2 (COCON 2.1.2) – see also the guidance provisions outlined above</p>

20. Client Assets (CASS) Protection	Questions	Answers and Key Points
<p>Gerard is the manager of the firm's Client Asset Operations Team. He reports into the Client Asset Operational Oversight Function. The team has received client money by way of cheque but this has been left un-noticed on the PA's desk for 3 days post receipt as the PA has been on annual leave.</p> <p>Gerard receives a call from the Investment Manager on day 3 on the back of a call from the client that their funds do not appear in their account.</p> <p>Gerard proceeds to advise the Investment Manager that all is 'fine' and that this is simply due to a delay in processing the cheque.</p>	<p>What should Gerard have done when he was advised of the missing cheque / funds?</p>	<p>Under CASS 7 Client Money Rules, Gerard should have immediately investigated the whereabouts of the cheque, where its receipt had been recorded, as well as establishing when the cheque had been received and / if it had been deposited same day as required under the rules.</p> <p>As holder of the CASS prescribed responsibility (z), Gerald is responsible for the actions of the team PA. Therefore, it is also incumbent upon him to speak to the PA as soon as possible to understand how the cheque was left un-noticed.</p> <p>Upon discovering the cheque, Gerard should have escalated the issue immediately to the CASS Operational Oversight Manager and Head of Compliance given the potential breach of CASS rules.</p>
	<p>What further action should Gerard take?</p>	<p>Gerard should do the following without delay:</p> <ul style="list-style-type: none"> - Escalate likely breach of the CASS Client Money rules to The CASS Operational Oversight Officer and Head of Compliance; - Establish impact to daily client money reconciliation and need to escalate to FCA; - Document the breach on the firm's breach log; - Establish location of cheque and arrange for it to be deposited without delay to the client money account, facilitating appropriate segregation of funds and client money protection; - Establish any financial impact to client and report on same;
CONDUCT RULES POTENTIALLY BREACHED		<p>Conduct Rule 2 (COCON 2.1.2) and possibly Conduct Rule 5 (COCON 2.1.5); SC1 (COCON 2.2.1) and SC2 (COCON 2.2.2).</p>



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