

### **Where are we now?**

Solo regulated firms have almost a year to implementation on 10 December 2019. Insurers have only just implemented on 9 December 2018 while PRA regulated deposit takers implemented back in 2016.

A year may sound like a long time but when you have to look at the governance, framework and structure of your business, review every role, responsibility, agree accountabilities, identify dependencies, review and amend procedures and possibly start to change your culture it seems like a much more daunting timescale.

### **What do our members say**

In a recent TISA member survey 60% of respondents indicated they had made little or no progress in their SM&CR implementation project, 20% do not know who will own the BAU process and 25% of key business contacts showed a low level of interest in SM&CR.

Engagement, understanding and resource were cited as the top internal barriers by firms with a clear call for sharing the experience of banking implementation to aid solo regulated firms and insurers.

### **What can we do?**

The top 5 things firms facing implementation can do is:

1. Don't underestimate the impact (SM&CR touches the parts other rules don't reach)
2. Start now
3. Draw on the benefits of experience
4. Use all resources available (e.g. FCA, PRA, TISA)
5. Start now!

### **What do people who have survived implementation say?**

In a recent TISA discussion panel event with experienced speakers on this very topic, the following key messages to firms in the sights of implementation were given:

**Preparation** – starting early with the project plan and setting up the team to take it to implementation is key. Think about what it will look like in practice and who is captured.

**Don't think of implementation as a project** – think about how this will work operationally post implementation and who will own BAU processes.

**Set the tone from the top** – to get buy in clear messaging must come from a senior level.

**Ensure there is Board ownership** – there should be ownership and sponsorship at a Board level to ensure buy in and a forward drive throughout the business.

**Remember it's all about culture** – the whole reason behind the SM&CR is to get the right culture in firms, make sure everyone is responsible for what they do and has a sense of being accountable. This is not a 'tick box' exercise.

**Early engagement with stakeholders across the business including Senior Managers** – making sure senior managers are aware of the impact to them and flush out any difficult questions early in the process and agree what they are accountable for. Think about and discuss scenarios to bring the changes to life.

**Responsibility or Accountability** – responsibility is what you do and accountability is what you are on the hook for. Ensuring Senior Managers understand that for SM&CR Responsibility is Accountability and talking to them in that language is key.

**Get Senior Manager sign off** – individual or small group conversations with Senior Managers to agree their responsibilities (accountabilities) and what they have authority for are imperative to ensuring that Statements of Responsibility are an accurate reflection of what happens in the business.

**It's not 'one and done'** – Statements of Responsibility are living, breathing documents and should be viewed as such. Any change in the business should be assessed and reflected (where relevant). True implementation is achieved when Senior Managers automatically consider this ahead of change.

**Who to certify** – firms need to think about identifying their certification staff within the Conduct Rules definition of an employee which is wider reaching than other regulation to cover those who are 'employee like'.

**Keep records from day 1** – banks made the mistake of not keeping records for certified staff from implementation of the SM&CR as, like solo regulated firms, they had an additional 12 months to fully implement the Certification Regime. This meant when they needed to be in a position to certify their staff they had little or no records to refer to for the last 12 months on which to base their assessment.

**Certify before you need to** – firms should follow their certification process for relevant staff in advance of implementation so there are no surprises. This allows firms to build in any required training or change roles before it becomes an issue.

**Certification is an ongoing process** - this isn't only an annual exercise, there should be an ongoing process to track fitness and propriety issues throughout the year, it touches all parts of the employee lifecycle.

**When you don't want to certify** – the certification process should contain information on what happens when a firm doesn't want to certify someone, the implications and the procedures that should be followed.

**Conduct Rule role specific training** – Conduct Rules training should have a 'what does this mean for me in my role' element. Some banks who started with an e-learning process are now re-thinking.

**Identifying a breach** – Conduct Rule breaches shouldn't be things that are accidentally done on occasion, think about intent and outcome. The most successful firms have a documented system and process in place with training in breach identification.

**Consistency of assessment** – because of the potential consequences of a Conduct Rules breach on the individual it is imperative that a fair and consistent decision making process is followed across the firm with many firms taking a 'conduct panel' approach to provide an independent assessment and recommendation on action to be taken.

**Reporting breaches** – to avoid under/over reporting, think of this as a 2 step process. Is there a Conduct Rule breach and has it resulted in a disciplinary action as defined in the rules – if the answer to both is yes then it should be reported to FCA.

**Distinguish between Conduct Rules and Fit & Proper** – COCON states that a Conduct Rules breach is only in relation to firms activity. Firms should take extra care to ensure only Conduct Rules breaches are investigated and reported as such.

**Standard references are no longer available** – gone are the days where managers can simply confirm a person worked at a firm between certain dates, a full and proper regulatory reference needs to be given covering all requirements.

**Deal with regulatory references early** – make sure there is a thought through process in place for implementation as references could be required from day 1.

**Consider the individual impact of references** – a bad or concerning reference could be career ending in the new regime. The intention is to stop rolling bad apples but many firms may treat any breach as a black mark against a potential interview candidate rather than looking at the circumstances and taking a risk based approach.

**Employment contracts** – it is likely that Senior Managers will want legal assistance to be included in their contracts though this may be covered in the D&O policy.