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Leading on Investments and Savings

**Approach to
Development of BAU (Business as
Usual) Best Practice in relation to
‘Reasonable Steps’**

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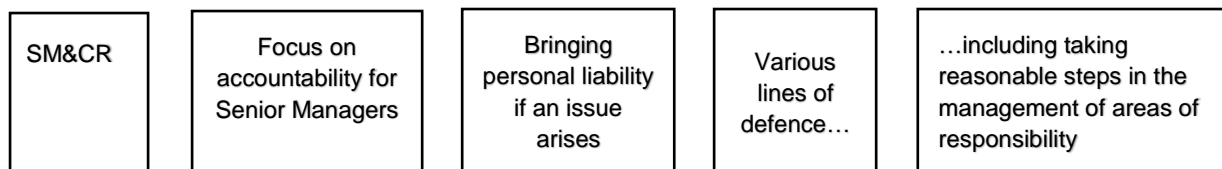


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1 Why this is important for Senior Managers

- The FCA expects Senior Managers under the Senior Managers & Certification Regime (coming into effect for all solo-regulated firms on 9 December 2019) to take ‘reasonable steps’ to manage, operate and control the areas of business under their responsibility.
- ‘Reasonable steps’ are defined as “such steps as a person in their position could reasonably have been expected to take to avoid a misconduct / breach / error occurring or continuing.”
- The taking and documenting of ‘reasonable steps’ form a line of defence for a Senior Manager against any personal liability in relation to FCA enquiries / investigations if issues arise in their areas of responsibility and are also relevant to showing compliance with the Senior Manager Conduct Rules at COCON 2.2.
- ‘Reasonable steps’ are not prescribed by the FCA and should rather be developed within each firm to suit their business and their Senior Managers.
- This Guide has been drafted to help firms develop ‘reasonable steps’ frameworks that are appropriate and proportionate for their size and structure.



2 Introduction

‘Reasonable steps’ is a significant line of defence for a Senior Manager if the FCA were to consider taking action against them for a breach of their duty of responsibility in relation to a breach in an area of the business or of a Prescribed Responsibility for which the Senior Manager is accountable. Key to defining the Senior Manager’s areas of accountability is their ‘Statement of Responsibilities’ and that Statement and the ‘reasonable steps’ being taken in relation to those stated responsibilities should be cross-referenced to ensure all areas are being covered.

‘Reasonable steps’ is not defined as such in the FCA Handbook Glossary but is referred to in a number of places in the near-final rules and related commentaries, in relation to the duty of responsibility and specifically within the Conduct Rules for Senior Managers at COCON 2.2: -

- You must take *reasonable steps* to ensure that the business of the firm for which you are responsible is controlled effectively.
- You must take *reasonable steps* to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- You must take *reasonable steps* to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

In addition, there is guidance provided within the FCA Handbook including at COCON 4.2, DEPP 6.2.9A-F and EG 2.11.1.

Whilst this Guide is primarily intended for UK-based firms, incoming EEA and non-EEA branches should also find elements of the Guide useful.

3 Scope

As stated above this Guide has been drafted to help firms consider and develop 'reasonable steps' frameworks in relation to their processes and controls that are appropriate and proportionate for their size and structure. This Guide does not consider 'reasonable steps' that Senior Managers might take in relation to their firm's culture and whether it could lead to harm as that is unique to each firm.

The Guide is not a definitive 'best approach' manual as TISA recognises that each firm has its own distinct characteristics and there is no 'one-size fits all' solution. Firms should consider the elements mentioned in the guide and modify them, and possibly introduce other practices, as suitable for their own specific circumstances.

This Guide has not been agreed with or endorsed by the FCA, it cannot be relied on by Senior Managers in discussions with the FCA and following it does not provide 'safe harbour'.

4 FCA expectations

As can be seen from the Senior Manager Conduct Rules quoted above the FCA expects a Senior Manager to ensure that the areas of the business for which they are responsible for to be:-

- effectively controlled;
- in compliance with regulatory requirements at all times; and
- where tasks are delegated, that they are delegated to a suitable person and that the performance of those tasks is overseen appropriately.

The FCA expects to see documentation of how these requirements are met and will be likely to refer to the following (as a minimum) when determining whether a Senior Manager is responsible for the management of the area of a firm's business where a breach or issue has occurred:-

- The Senior Manager's Statement of Responsibilities
- The firm's Management Responsibilities Map (prescribed only for Enhanced firms but Core firms may also find useful)
- How the firm actually operated and how responsibilities were undertaken in practice, rather than as described in the Statements of Responsibility and Management Responsibilities Map
- The Senior Manager's actual role and responsibilities in the firm, as determined by reference to, among other things, minutes of meetings, emails, regulatory interviews, telephone recordings, and organisational charts
- The relationship between the Senior Manager's responsibilities and the responsibilities of other Senior Managers in the firm (including any joint responsibilities or matrix management structures).

The FCA will compare its findings from any investigation with those decisions and actions which it considers would have been taken by a competent Senior Manager in the same position, with the same role and responsibilities, at that time, and in the same circumstances.

Whilst the focus is on the 'reasonable steps' being taken by an individual Senior Manager, it can be helpful for all Senior Managers in any given firm to take a similar approach to 'reasonable steps' to ensure a minimum standard which they can rely on in their colleagues' records, particularly where there are dependencies, e.g. dependence of the Investment team on IT systems.

A Senior Manager may gain reassurance from work performed in their area by Compliance or Internal Audit as part of their 'reasonable steps' but their focus should be on operating to their own 'reasonable steps' standards across the day-to-day business of their areas of responsibility.

5 Approaches to developing and documenting 'reasonable steps'

As noted above there are potentially many different ways to identify and document 'reasonable steps' and the approach will vary from firm to firm. It is important that a firm develops a framework that works for their Senior Managers and their firm, rather than sticking rigidly to a template which may not suit their business or be sustainable in the long-term as any discrepancies from the adopted template to actual practices could cause difficulties later with the FCA in explaining divergences.

The Guide considers 'reasonable steps' from three different angles of approach:-

- an overview table based on the Senior Manager Conduct Rules (section A below);
- a more operational list of some of the questions and areas a firm and their Senior Managers could consider when developing the approach for their business (section B below) you may wish to consider adding some examples of good and bad practice specific for your firm; and
- a review of the FCA's list of points they will consider when reviewing a firm's 'reasonable steps' (section C below).

These approaches, and the examples provided, are not exhaustive but should aid discussion and discovery in firms to identify and document the 'reasonable steps' measures most suitable to their specific circumstances.

Some example scenarios are provided at the end of the document to further aid discussion by helping to bring some of the 'reasonable steps' concepts alive.

Culture

Senior Managers may also wish to consider areas in which they would take 'reasonable steps' in relation to their firm's culture to prevent misconduct and resulting harm and how they would be recorded, such as:-

- ensuring an understanding of the firm's culture, business model and intended customer outcomes
 - considering whether this is appropriate and challenging where it is not
- testing intended customer outcomes are being achieved and are providing the right outcome
 - considering whether the outcome provided is 'best' for the customer
- monitoring, promoting and embodying good conduct



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A) Overview of possible ‘reasonable steps’ in a “Business as Usual” environment

Senior Manager Conduct Rules	Areas of responsibility defined	Knowledge of the regulatory requirements up-to-date	Operational processes in place	Risk management processes and controls in place	Clear delegation to, and oversight of, staff and external parties	Governance arrangements in place	Reporting received and provided
Senior Manager must take reasonable steps to ensure that:- 1) the business of the firm for which they are responsible is controlled effectively 2) the business of the firm for which they are responsible complies with the relevant requirements and standards of the regulatory system 3) any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively.	Organisation charts across business and through teams Statements of Responsibility Job descriptions across business and through teams	On-going training and updates (regulations, market, industry, business changes etc.) Competency sign-off Training records	Written up-to-date procedures for each area and working effectively Appropriate systems and working effectively Sufficient trained staff and implementing processes effectively	Risk management framework Appropriate decision-making and approval levels Error escalation and rectification processes Regular first line business, second line Compliance and third line Internal Audit monitoring and reviews to ensure operational procedures and risk management processes and controls are working effectively	Organisation charts Job descriptions for staff Contracts and SLAs with external parties Reporting back from staff and external parties on matters delegated	Governance charts and structure overviews, plus up-to-date terms of reference Membership of, and attendance at, appropriate boards and committees Adequate reporting to, and minutes of, boards and committees Evidence of review and challenge of meeting packs Appropriate delegation from board (i.e. to make decisions)	Team meetings 1:1 meetings Timely verbal reporting (including meetings with evidence of action points etc.) Timely KPIs Timely written reporting Evidence of review and follow-up / completion / escalation to Board, etc.



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B) Examples of questions Senior Managers should ask themselves to gauge whether the arrangements they have in place (and how they are documented) would constitute the ‘reasonable steps’ in Table A) above and how easily they could describe and evidence those arrangements to the FCA

No.	Question	Y/N/ partly	How evidenced / how to be explained?	What remediation action (if any) is required, who by and by when?	Red / Amber / Green (“RAG”) status
	Areas of responsibility (Apportionment of Responsibilities SYSC 2.1.1 and SYSC 3.2.2))				
1	Is it clear what you are responsible for?				
2	Are you comfortable that you have sufficient authority (including evidence of delegation from the board where relevant) and resources to manage the areas of the business you are responsible for without always having to refer to other Senior Managers, the CEO, the board etc.?				
3	Are you satisfied that other Senior Managers understand your responsibilities and how they interlink / handoff or not with your area(s) of responsibility?				
4	Where you are reliant on an area which falls under the responsibility of another Senior Manager (for example if you have responsibility for Investments but have a dependency on the Senior Manager responsible for IT), are you comfortable and able to monitor that the services being provided are satisfactory and manage the interlink / handoff?				
	Knowledge of regulatory requirements (SYSC 5.1.1)				
5	Can you describe and demonstrate how you evidence compliance with the main regulatory requirements and standards relevant to your areas of responsibility for the entity?				
6	Do you keep yourself (and others in your team) informed about changes to regulatory obligations and developments? How?				



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No.	Question	Y/N/ partly	How evidenced / how to be explained?	What remediation action (if any) is required, who by and by when?	Red / Amber / Green (“RAG”) status
	Operational processes (SYSC 5.1.13)				
7	Can you describe and evidence the key systems, processes and controls within your areas of responsibility?				
8	Do you have arrangements in place in the event a key system is not available and how often are these arrangements tested? Can you show and describe them clearly?				
9	Are the policies, processes and procedures for your areas of responsibility up-to-date? How do you identify needs to update them or is a regular review exercise undertaken?				
	Risk management process and controls in place (SYSC 3.2.10)				
10	Can you describe and evidence how risks within the entity are identified and prioritised?				
11	Can you describe and evidence the risk management framework? Is it by entity covering areas relevant to your role of Senior Manager (by function or as SM for Risk or CEO) or group-wide?				
12	Can you describe and evidence how the group wide risk appetite translate into your areas of responsibility for an entity? How is this communicated to staff?				
13	Can you describe and evidence the key risks and controls in your areas of responsibility at the entity?				
14	Do you ensure that you are informed of material changes to risks in a timely manner?				
15	Do you regularly assess the effectiveness of key controls?				
16	When there is a risk event, do you ensure its resolution is tracked to completion?				
17	Do you conduct a root-cause analysis when there has been a breach (or a near miss)? Every time or in certain circumstances?				



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No.	Question	Y/N/ partly	How evidenced / how to be explained?	What remediation action (if any) is required, who by and by when?	Red / Amber / Green ("RAG") status
	Delegation to and oversight of staff (SYSC 3.2.3, 3.2.13 and 3.2.18)				
18	Are you comfortable that satisfactory due diligence is done on new hires?				
19	Do you believe that your areas of responsibility are adequately resourced? Do you have the authority and / or escalation routes if you are concerned about the level of resourcing?				
20	Do you regularly assess the competence and performance of your direct reports? What records do you maintain of these reviews?				
21	Are you comfortable with how new joiners are inducted into the business and trained up on their roles?				
22	Are you satisfied that people in your areas of responsibility know and understand what they are responsible for?				
23	Are reporting lines within your areas clear and well understood?				
24	Are you comfortable that people in your areas of responsibility receive suitable on-going training to allow them to perform their job?				
25	Do you have processes in place to identify and handle any poor performance issues in your areas of responsibility?				
26	Are you comfortable that proper handovers take place between people in your areas of responsibility?				
27	Are you satisfied that you have adequate oversight over your direct reports? What records do you maintain of the performance of this oversight?				
28	Are you comfortable that your direct reports know what you need to be escalated to you?				
29	Can you describe and evidence the process you follow when you delegate responsibility for an area of the business that you are accountable for? How is this process documented?				



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No.	Question	Y/N/ partly	How evidenced / how to be explained?	What remediation action (if any) is required, who by and by when?	Red / Amber / Green ("RAG") status
30	Do you have records of your delegation process, the decision-making around whether delegation is appropriate (both in terms of the responsibility itself and the individual it is being delegated to)?				
31	Do you have processes in place for your delegates to update you on material developments and risks in relation to delegated matters? How are these processes documented?				
32	Are you comfortable that staff in your areas of responsibility have embraced the culture and values of the entity / group?				
33	Are you satisfied that conduct is given due weight in assessments of individuals' performance? How is that assessment recorded?				
34	Are you satisfied that people are not incentivized or pressured to unduly prioritise financial outcomes ahead of acting in customers' best interests (or to act unethically in other ways)?				
35	Do you monitor the level of understanding of your conduct expectations and the level of compliance and engagement with those expectations? How is this done and recorded?				
36	Are you a good role model for the sort of behaviours you are looking to promote in your areas of responsibility?				
37	Are you comfortable that people in your areas of responsibility are familiar with the mechanisms (including whistleblowing) through which they can escalate concerns if they are not comfortable speaking to you / their line manager?				
38	Do you know what to do if someone escalates a whistleblowing concern to you?				
39	Are you comfortable that the tone from the top is communicated to staff and not lost in translation?				



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No.	Question	Y/N/ partly	How evidenced / how to be explained?	What remediation action (if any) is required, who by and by when?	Red / Amber / Green (“RAG”) status
	Delegation to and oversight of external parties (SYSC 3.2.4)				
40	Do you use outsource providers to support your areas of responsibility? If so, how was the risk assessment and the decision on supplier approved and documented? *				
41	Are you satisfied that you can oversee and monitor the performance of outsource providers to ensure that they are working within the risk tolerances set by your entity? *				
	Governance arrangements (SYSC 4.1.1)				
42	Is it clear where you and your role fit within the general governance arrangements of the firm?				
43	How easily can you describe, and show evidence of, the overall governance framework for the firm?				
44	Do all boards and committees have clear terms of reference? It is clear which committees are decision-making committees and which are advisory only committees?				
45	Are you a member or attendee of all the boards and committees relevant to your role? Can you send an alternate if you are not able to attend a meeting?				
46	Do the meeting packs for the boards and committees which you attend contain MI and reporting relevant to your responsibilities?				
47	Are all the boards and committees of which you are a member minuted? Do you receive minutes whether you attend in person or not?				
48	Do the boards and committees of which you are a member or attendee encourage discussion and challenge to the content and proposals put forward? Are such discussions and challenges clearly minuted?				
49	Do all key decisions made for your area of responsibility get made in minuted board or committee meetings or are they made outside such meetings in which case how are those key decisions recorded and communicated?				

* TISAs SM&CR Outsource Considerations Discussions Paper may provide useful reference



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No.	Question	Y/N/ partly	How evidenced / how to be explained?	What remediation action (if any) is required, who by and by when?	Red / Amber / Green ("RAG") status
	Reporting received and provided (SYSC 3.2.11-3.2.12)				
50	Does the key MI you rely give you a clear overview of activity within your areas of responsibility and assist you in discharging your responsibilities as a senior manager?				
51	Is your MI forward looking as well as backward looking? Is it designed to identify possible future trends and risks?				
52	Is the amount of MI proportionate to the risks in the business?				
53	Does the MI contain commentary as well as raw data to put the numbers into perspective?				
54	Does your MI including the production and review of regular timely first line of defence monitoring of the business in your areas of responsibility to ensure activities are being performed as you expect?				
55	Is the MI entity-related (and so relevant to your role of Senior Manager for an entity) or group wide?				
56	Do you review and challenge the relevance, accuracy and completeness of the MI?				
57	Do you focus on trends and possible indicators for the future coming out of the MI rather than single historic incidents?				

C) The requirements at DEPP 6.2.9-E which the FCA will take into consideration when determining whether a Senior Manager has taken ‘reasonable steps’

No.	FCA point	Some suggestions as to possible steps
1	the role and responsibilities of the Senior Manager	Evidence via Statements of Responsibilities, job descriptions, Marketing bios, cvs, etc.
2	whether the Senior Manager exercised reasonable care when considering the information available to them	Evidence by receipt of information, evidence of consideration of information, evidence of querying that information, asking for more information, reassessing information received and frequency, etc.
3	whether the Senior Manager reached a reasonable conclusion on which to act	Evidence conclusion reached on issues / business decisions and how / grounds for conclusion
4	the nature, scale and complexity of the firm’s business	Evidence through MRM
5	the knowledge the Senior Manager had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities	Evidence through information received and reviewed in respect of regulatory concerns – specific to firm or to industry, regulatory developments etc. – through Compliance or Legal reporting and / or tailored meetings – together with any follow-up questions etc.
6	whether the Senior Manager (where they were aware of, or should have been aware of, actual or suspected issues that involved possible breaches by their firm of relevant requirements relating to their role and responsibilities) took reasonable steps to ensure that the issues were dealt with in a timely and appropriate manner	Evidence through what were aware of, through day notes, meeting notes, action points from 1-1, minutes of meetings, review and questioning of data and reporting being received
7	whether the Senior Manager acted in accordance with their statutory, common law and other legal obligations	Evidence through being kept up to date on, and reviewing and questioning if necessary, all relevant legal obligations
8	whether the Senior Manager took reasonable steps to ensure that any delegation of their responsibilities, where this was itself reasonable, was to an appropriate person with the necessary capacity, competence, knowledge, seniority and skill, and whether the Senior Manager took reasonable steps to oversee the discharge of the delegated responsibility effectively	Evidence through HR procedures, recruitment, training and competency sign-offs, fit and proper checks, review of breaches and complaints, disciplinary issues, compliance records, annual appraisals, on-going training, etc. Evidence through job descriptions, team organisation charts, etc. Evidence through meeting notes, review and questioning of reporting / MI received, etc.
9	whether the Senior Manager took reasonable steps to ensure that the reporting lines, whether in the UK or overseas, in relation to the firm’s activities for which they were responsible, were clear to staff and operated effectively	Evidence through team organisation charts, job descriptions, etc.

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No.	FCA point	Some suggestions
10	whether the Senior Manager took reasonable steps to satisfy themselves, on reasonable grounds, that, for the activities for which they were responsible, the firm had appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff to assess their suitability to fulfil their duties	Evidence through review of policies and procedures, through active involvement in assessment of staff members or of the oversight and final sign-off of assessments by line managers, etc.
11	whether the Senior Manager took reasonable steps to assess, on taking up each of their responsibilities, and monitor, where reasonable, the governance, operational and risk management arrangements in place for the firm's activities for which they were responsible (including, where appropriate, corroborating, challenging and considering the wider implications of the information available to them), and whether they took reasonable steps to deal with any actual or suspected issues identified as a result in a timely and appropriate manner	Evidence through review of governance, operational and risk management arrangements in place, including suggesting changes if relevant, and of on-going oversight through reviews of reporting / MI received and questioning where relevant. Evidence through awareness of escalation process and of recording of investigations and decisions taken after any reported incident.
12	whether the Senior Manager took reasonable steps to ensure an orderly transition when another Senior Manager under their oversight or responsibility was replaced in the performance of that function by someone else	Evidence of handover notes / manuals / meeting notes / briefing meetings / induction etc.
13	whether the Senior Manager took reasonable steps to ensure an orderly transition when they were replaced in the performance of their function by someone else	Evidence of handover notes / manuals / meeting notes / briefing meetings / induction etc.
14	whether the Senior Manager failed to take reasonable steps to understand and inform themselves about the firm's activities for which they were responsible, including, but not limited to, whether they:	-
a)	failed to ensure adequate reporting or seek an adequate explanation of issues within a business area, whether from people within that business area, or elsewhere within or outside the firm, if they were not an expert in that area; or	Evidence of receiving and reviewing adequate reporting and questioning that reporting. Evidence of seeking internal or external guidance if feel need expert assistance.
b)	failed to maintain an appropriate level of understanding about an issue or a responsibility that they delegated to an individual or individuals; or	Evidence of receiving and reviewing adequate reporting and questioning that reporting. Evidence of keeping up-to-date on, and questioning if necessary, regulatory requirements and industry best practice.



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No.	FCA point	Some suggestions
c)	failed to obtain independent, expert opinion where appropriate from within or outside the firm as appropriate; or	Evidence of seeking internal or external guidance if feel need expert assistance
d)	permitted the expansion or restructuring of the business without reasonably assessing the potential risks; or	Evidence of involvement in all business decisions, ensuring risks are assessed and assumptions / results challenged
e)	inadequately monitored highly profitable transactions, business practices, unusual transactions, or individuals who contributed significantly to the profitability of a business area or who had significant influence over the operation of a business area	Evidence of monitoring all such more unusual transactions and all business practices to ensure no harm to the business / clients. Evidence of challenging individuals who contribute or significantly influence the business to ensure no harm to the business / clients.
15	whether the Senior Manager took reasonable steps to ensure that, where they were involved in a collective decision affecting the firm’s activities for which they were responsible, and it was reasonable for the decision to be taken collectively, they informed themselves of the relevant matters before taking part in the decision, and exercised reasonable care, skill and diligence in contributing to it	Evidence of reviewing and challenging reporting and data in relation to any proposal, ensuring risks are assessed and assumptions / results challenged, to ensure they are properly placed to make a decision in the matter and to ensure no harm to the business / clients.
16	whether the Senior Manager took reasonable steps to follow the firm’s procedures, where this was itself appropriate	Evidence of following such procedures with explanation as any deviation.
17	how long the Senior Manager had been in role with their responsibilities and whether there was an orderly transition and handover when they took up the role and responsibilities	Evidence of experience and of the transition and handover of responsibilities
18	whether the Senior Manager took reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems and controls to comply with the relevant requirements and standards of the regulatory system for the activities of the firm.	Evidence of review of systems and controls on taking on responsibilities and of on-going involvement in subsequent changes to ensure maintain compliance.

EXAMPLE SCENARIOS

Could be used in group or 1-2-1 discussions

In the following scenarios who owned responsibility for the issue, were reasonable steps taken, and what additional reasonable steps could be taken going forward?

Scenario 1

A series of valuation and pricing errors has occurred in the firm's fund range after a period of three months. The CEO of the firm has been contacted by investors to provide an explanation of the cause and the steps being taken to rectify the situation. He turns for an explanation to the Operations Officer who is responsible for the pricing operations for the firm.

The Operations Officer asks his Head of Pricing to carry out an investigation and report back to him on his findings by the end of the following week. The Head of Pricing asks for more time to complete the investigation as his contact at the external firm which provides the pricing service is on holiday.

What might you be concerned about in relation to how this issue is being addressed?

Scenario 2

A new IT system is about to be implemented in your area. You delegated oversight of the project to one of your direct reports, who understands 'techy stuff' better than you do.

The project completes on schedule but it soon becomes apparent that there significant problems with the functionality of the system which is delaying business and causing problems with clients.

What might you be concerned about in relation to how this change was handled?

Scenario 3

The pack for the next product development committee meeting includes a paper, marked as 'Important & Urgent', from the Head of Sales entitled 'Opportunistic chance to expand investor base'. The Head of Sales is seeking approval at the meeting for the proposal as otherwise he states 'the chance will be snapped up by one of our competitors'.

On reading the paper, the proposal looks like a good opportunity, although it is described from a rather one-side view point with a detailed discussion of the possible gains to be made by the firm but little about the product itself, its intended market, or the related risks or costs.

What might you be concerned about the proposal and how it is being handled?