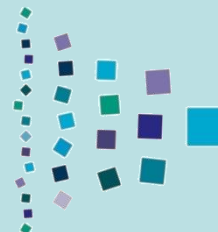


PROTECT

Legal and Regulatory Review

Knowledge and Ability

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1 October – IDD Day



The areas covered by the IDD

- Who takes responsibility for what?
- Pre contract disclosure
- Remuneration & commission disclosure
- Establishing demands and needs
- Cross selling
- Required knowledge and ability
- Complaints handling and redress
- Professional Indemnity
- Product information - including the IPID
- Conflicts of interest
- Product oversight and governance
- Organisational requirements relating to the protection of customers' money
- Professional requirements relating to the good repute of employees of insurance distributors

All covered by me in Protect Updates



Now the busy preparations!!



One area seems to be slipping under the
radar . . .



Knowledge and Ability



The current position

- All regulated firms are already required to establish, and maintain, systems and controls to ensure that:-
 - *the firm employs personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 3.1.6 or SYSC 5.1.1); and*
 - *when complying with this obligation, the firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business (SYSC 3.1.7 or SYSC 5.1.13)*
- GI firms are not subject to the requirements the Training and Competency Sourcebook (TC) but FCA say that they:-

“may nevertheless wish to take TC into account in complying with the competency requirements in SYSC”

The IDD on Knowledge and Ability



- The IDD requires that insurance distributors and their employees have “appropriate knowledge and ability” – no problem – this is a similar high level requirement to the current FCA position
- The IDD then goes on to:-
 - require that this knowledge and ability should be demonstrated by employees completing a minimum of 15 hours per year of CPD
 - set out (in some considerable detail) criteria for this minimum knowledge, which includes areas such as product and market knowledge

When looking at the IDD requirements . .

- Don't forget that the extension of the SM&CR regime to all regulated firms will include significant requirements regarding knowledge and ability
- That regime will require firms to:-
 - ensure that all persons subject to the rules (basically all staff other than non-insurance operational support) are notified of the rules that apply to them; and
 - take **all reasonable steps** to ensure that those persons understand how the rules apply to them
- The steps that a firm must take to ensure that its staff understand how the rules apply to them will include “the provision of **suitable** training”

Suitable Training

- Suitable Training” will be prescribed under the extended SM&CR regime as the training necessary to always ensure that those who are subject to the FCA’s rules have an **awareness** and **broad understanding** of:-
 - all of the rules; and
 - they also have a **deeper understanding** of the practical application of the specific rules which **are relevant to their work**
- Firms will need to make very sure that staff receive much more than “tick box” training – FCA will expect to see the “deep understanding” in staff as to how their conduct in their particular role(s) can affect consumer outcomes

So while, today, I will focus mainly on the IDD . . .

- You must also be planning for the even more rigorous requirements under the SM&CR
- Don't think of this as a separate tick box exercise . . .
- Having staff who are trained to have a deep understanding of what the FCA's objectives and required outcomes are, will help you:-
 - deliver; and
 - demonstrate

a culture, within your firm, which the FCA is demanding should exist within every regulated firm

Knowledge and ability – The IDD requirements



Implementation

- FCA have implemented the IDD requirements to apply to “relevant employees”.
- The identification of who is a “relevant employee” is set out in a new SYSC 28.1 which will, from 1 October 2018, state that the CPD requirements will only apply to:-
 - persons directly involved in the carrying on of the firm’s insurance distribution activities;
 - those, within the management structure, responsible for the firm’s insurance distribution activities;
 - persons responsible for the supervision of persons directly involved in the carrying on of the firm’s insurance distribution activities
- FCA indicate that the above would not include a function such as HR, but would include persons who undertake non-advised script based call centre sales. The term “employee” will be widely construed to include contractors

The core requirements

- SYSC 28.2.1 will require that each firm must:-
 - ensure that it, and each relevant employee, possesses **appropriate knowledge and ability** in order to complete their tasks and perform their duties adequately; and
 - ensure that it, and each relevant employee, complies with continued professional training and development requirements of 15 hours of professional training or development in each 12 month period - in order to maintain an adequate level of performance **corresponding to the role they perform and the relevant market**
- So, we are looking both at general knowledge and awareness and tailor made knowledge
- Let's find out more about this . . .

Meeting the core requirements

- SYSC 28.2.1 (4) will state that, to meet the core requirements, a firm must take into account **the role and activity carried out by the relevant employee** within the firm and **the type of distribution and the nature of the products sold**
- FCA has accepted that requirements need to be applied proportionately, e.g. as between the call centre employee, on the one hand, and a product or sales manager on another hand
- SYSC 28.2.2 will tell us that training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring
- SYSC 28.2.3 (1) will then set out the specific (IDD required) professional knowledge and competence which must be demonstrated in respect of general insurance contracts

Knowledge of GI to be demonstrated

- Terms and conditions of policies offered, including ancillary risks covered by such policies;
- Applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
- Claims handling;
- Complaints handling;
- Assessing customer needs;
- The insurance market;
- Business ethics standards; and
- Financial competence

That is a heck of list!!!!



In each case . . .

- SYSC 28.2.3 requires the knowledge to be demonstrated to be at least the “minimum necessary” taking into account the:-
 - role and activity carried out by the relevant employee within the firm; and
 - type of distribution and the nature of the products sold

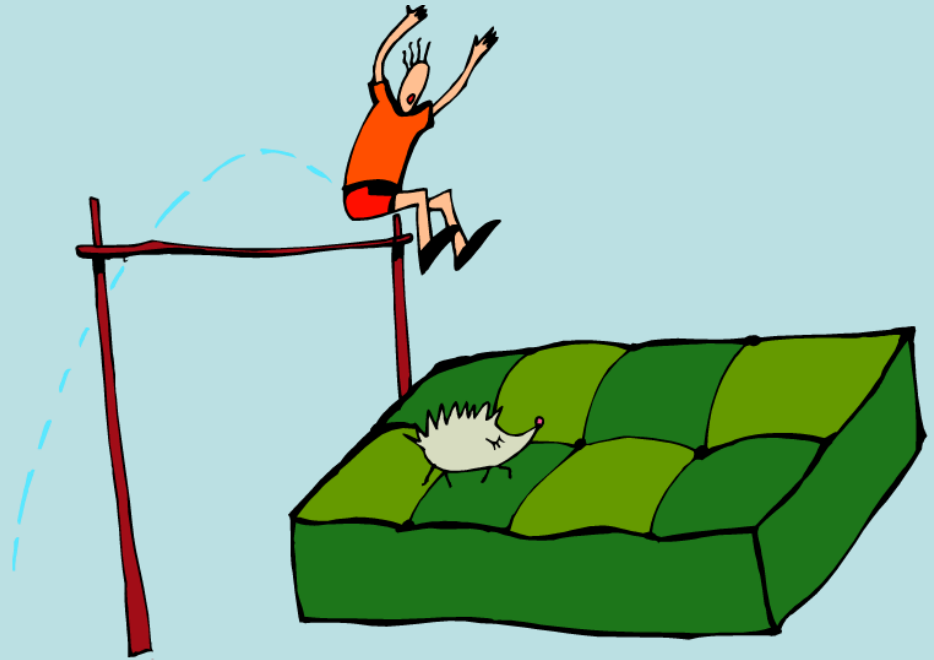


How to demonstrate compliance

- SYSC 28.4 will contain new requirements that your firm must:-
 - establish, maintain and keep appropriate records to demonstrate compliance; and
 - be in a position to provide to the FCA, on request, with the name of the person responsible for this record keeping requirement
- Your firm must:-
 - make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 month period;
 - retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and
 - be in a position to provide any version of the record to the FCA on request

Those are the requirements

- What will your firm need to do to meet them
- How high will your firm need to jump to deliver compliance?
- Where are the pitfalls?



Meeting the rules

RULES

Identify which staff are subject

- There are two regimes to comply with (post SM&CR)
- I suggest you prepare for both now
- The staff subject to each regime are different

IDD regime – applies to

- Persons directly involved in the carrying on of the firm's insurance distribution activities;
- Those, within the management structure, responsible for the firm's insurance distribution activities;
- Persons responsible for the supervision of persons directly involved in the carrying on of the firm's insurance distribution activities

The SM&CR regime applies to all staff unless they only act as . . .

- receptionists
- switchboard operators
- postroom staff
- reprographics/printroom staff
- property/facilities management
- events management
- security guards
- invoice processing
- audio-visual technicians
- vending machine staff
- medical staff
- archive records management
- drivers
- Corporate Social Responsibility staff
- data controllers and processors under the Data Protection Act
- cleaners
- catering staff
- personal assistants and secretaries
- Information Technology Support (i.e. helpdesk)
- HR administrators/processors

You will need to . .

- Precisely identify which staff are subject to both, or either, regime and ensure that you deliver training, awareness and knowledge to the levels required by that regime
- The IDD requires a level to deliver appropriate knowledge and ability in order to complete their tasks and perform their duties adequately – with prescribed minimum areas of knowledge to be demonstrated
- The SM&CR requires:-
 - an awareness and broad understanding of all of the rules; and
 - a deeper understanding of the practical application of the specific rules which are relevant to their work
- How should you do this?

Sample cases

- I will look at:-
 - An employee undertaking “non-advised script based sales”
 - A junior Marketing Assistant
 - An HR Assistant
 - An HR Director
 - A Product/Sales Manager

An employee undertaking non-advised script based sales



Which regime(s) will apply?

- The IDD regime will apply because the employee will be directly involved in the carrying on of the firm's insurance distribution activities
- The SM&CR regime will apply because the employee does not fall within the list of exempt “ancillary staff”

What training will be required?



IDD

- 15 hours of CPD per annum sufficient to deliver and demonstrate appropriate knowledge and ability in order to complete his/her tasks and to perform his/her duties adequately. The minimum necessary knowledge to be demonstrated must include (taking into account this role and activity):-
- Terms and conditions of policies offered, including ancillary risks covered by such policies;
- Applicable laws governing the distribution of insurance products, such as consumer protection law;
- Assessing customer needs;
- Complaints handling;
- Business ethics standards
- A basic understanding of the insurance market; claims handling and relevant financial competence

SM&CR

- Suitable Training on the “Conduct Rules” (see next slide) to ensure that the employee understands how the Rules apply to them
- “Suitable Training” will be the training necessary to ensure that the employee has an awareness and broad understanding of:-
 - all of the Conduct Rules; and
 - a deeper understanding of the practical application of the specific rules which are relevant to their work

What are the “Conduct Rules”?

- Rule 1: You must act with integrity
- Rule 2: You must act with due skill, care and diligence
- Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators
- Rule 4: You must pay due regard to the interests of customers and treat them fairly
- Rule 5: You must observe proper standards of market conduct



A Junior Marketing Assistant



Which regime(s) will apply?

- The IDD regime will only apply if the member of staff is directly involved in the carrying on of the firm's insurance distribution activities.
- This will be a matter of judgement, distinguishing non - proactive “backroom marketing administration” from any more frontline involvement with clients or with insurance distribution strategy
- The employee will fall within the SM&CR regime as the role does not appear on the list of exempt “ancillary staff” unless the role was limited to “events management”

What training will be required?



IDD (if applicable)

- 15 hours of CPD per annum sufficient to deliver and demonstrate appropriate knowledge and ability in order to complete his/her tasks and to perform his/her duties adequately. The minimum necessary knowledge to be demonstrated must include (taking into account this role and activity):-
- Terms and conditions of policies offered, including ancillary risks covered by such policies;
- Applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
- Claims handling;
- Complaints handling;
- Assessing customer needs;
- A good understanding of the insurance market and business ethics standards; and
- Basic financial competence

SM&CR

- Suitable Training on the “Conduct Rules” (see next slide) to ensure that the employee understands how the Rules apply to them
- “Suitable Training” will be the training necessary to ensure that the employee has an awareness and broad understanding of:-
 - all of the Conduct Rules; and
 - a deeper understanding of the practical application of the specific rules which are relevant to their work

What are the “Conduct Rules”?

- Rule 1: You must act with integrity
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- Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators
- Rule 4: You must pay due regard to the interests of customers and treat them fairly
- Rule 5: You must observe proper standards of market conduct



An HR Assistant



Which regime(s) will apply?

- The employee is unlikely to be directly involved in the carrying on of the firm's insurance distribution activities and accordingly the IDD regime will not usually apply.
- This will, however, still be a matter of judgement, as if the role includes e.g. obtaining references or disciplinary matters this could amount to involvement in matters directly affecting the regulation of staff undertaking insurance distribution activities - and thus direct involvement affecting those activities?
- The employee will not fall within the SM&CR regime as the role of "Human Resources administrators/processors" specifically appears on the list of exempt "ancillary staff"

What training will be required?



IDD (if applicable)

- 15 hours of CPD per annum sufficient to deliver and demonstrate appropriate knowledge and ability in order to complete his/her tasks and to perform his/her duties adequately. The minimum necessary knowledge to be demonstrated must include (taking into account this role and activity):-
- Very basic knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies
- Good knowledge of applicable laws governing the distribution of insurance products – especially relating to requirements imposed in relation to individuals undertaking that role
- Very basic knowledge of claims handling, complaints handling, assessing customer needs;
- Knowledge of the insurance market;
- Excellent understanding of business ethics standards; and
- Financial competence

An HR Director



Which regime(s) will apply?

- In respect of the IDD regime, the employee may not be directly involved in the carrying on of the firm's insurance distribution activities but he/she:-
 - is likely to be a member of the management structure, responsible for the firm's insurance distribution activities (unless the role is very narrowly specified);
 - will almost certainly be a person responsible for the supervision of persons directly involved in the carrying on of the firm's insurance distribution activities
- As an executive director the employee will fall within the SM&CR regime

What training will be required?



IDD

- 15 hours of CPD per annum sufficient to deliver and demonstrate appropriate knowledge and ability in order to complete his/her tasks and to perform his/her duties adequately. The minimum necessary knowledge to be demonstrated must include (taking into account this role and activity):-
- Knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies
- Excellent knowledge of applicable laws governing the distribution of insurance products – especially relating to requirements imposed in relation to individuals undertaking that role
- Knowledge of claims handling, complaints handling, assessing customer needs;
- Good knowledge of the insurance market;
- Excellent understanding of business ethics standards; and
- Excellent financial competence

SM&CR

- “Suitable Training” will be the training necessary to ensure that the employee has an awareness and broad understanding of:-
 - all of the Conduct Rules (applicable to Senior Managers – see next slides); and
 - a deeper understanding of the practical application of the specific rules which are relevant to their work
- So, we need to have a closer look at the Conduct Rules and the responsibilities affecting the role as a Senior Manager . . .

Senior Management Conduct Rules

- Senior Managers are subject to the same five Conduct Rules to which other staff are subject:-

What are the Rules?

- Rule 1: You must act with integrity
- Rule 2: You must act with due skill, care and diligence
- Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators
- Rule 4: You must pay due regard to the interests of customers and treat them fairly
- Rule 5: You must observe proper standards of market conduct



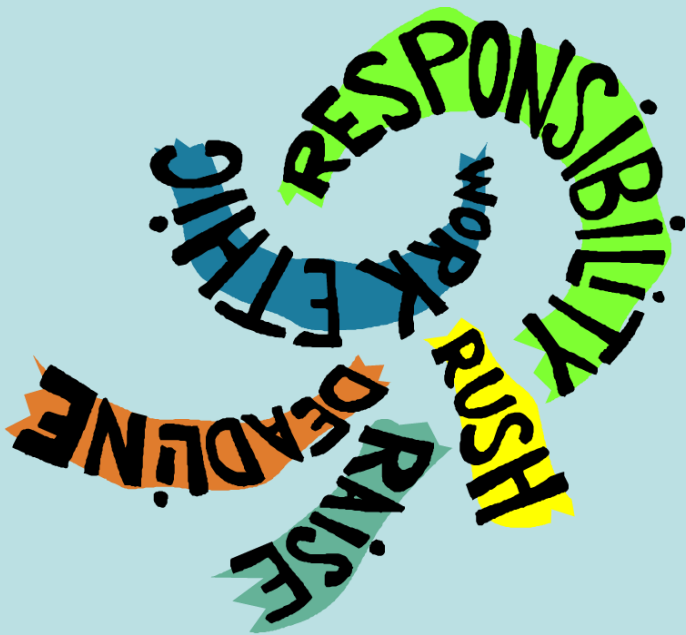
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- In addition they are also subject to . . .

Extra Senior Manager Conduct Rules

- Senior Managers must:-
 - take reasonable steps to ensure that the business of the firm for which they are responsible is controlled effectively;
 - take reasonable steps to ensure that the business of the firm for which they are responsible complies with the relevant requirements and standards of the regulatory system;
 - take reasonable steps to ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively; and
 - disclose appropriately any information of which the FCA or PRA would reasonably expect notice

Prescribed Responsibilities



- FCA will prescribe responsibilities which must be given to specific Senior Managers
- The responsibilities relevant to firms in the GI intermediary markets are:-

Prescribed Senior Manager Responsibilities

- Performance by the firm of its obligations under the Senior Managers Regime, including implementation and oversight;
- Performance by the firm of its obligations under the Certification Regime;
- Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules;
- Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime;
- Responsibility for the firm's compliance with CASS (if applicable); and
- Responsibility for ensuring the governing body is informed of its legal and regulatory obligations

Assigning Prescribed Responsibilities

- FCA say that each Prescribed Responsibility should be given to the Senior Manager who is *the most senior person responsible* for that issue. They will also need to have sufficient authority *and an appropriate level of knowledge and competence* to carry out the responsibility properly
- So most (if not all) Senior Managers will have one or more Prescribed Responsibilities assigned to them

Every Senior Manager . .

- . . whether or not assigned a prescribed responsibility will have a statutory duty of responsibility to the effect that, if his/her firm breaks an FCA requirement, the Senior Manager responsible for that area could be held personally accountable if they did not take “reasonable steps” to prevent, or stop, the breach
- So our HR Director is (even though not front line insurance distribution) is subject to awesome responsibility under the regime

Training and awareness

- As with all other staff subject to the SM&CR, firms will need to demonstrate that their Senior Managers have been (and on an ongoing basis are) duly trained as to how, why and to what purpose, the (full) Conduct Rules apply to them
- Remember, Senior Managers will also require training to deliver the appropriate level of knowledge and competence to carry out their **prescribed responsibilities** properly
- Also don't forget the additional training requirements, particularly upon Senior Managers, under the IDD (over and above CPD) for competence for product oversight and governance
- Training of Senior Managers cannot be tick box, online stuff. We are talking about deep understanding of the regulatory system and all its culture and required outcomes

Remember also . .

- One prescribed responsibility is:-
 - “Responsibility for ensuring the governing body is informed of its legal and regulatory obligations”
- This requires all Senior Managers to engage deeply with the regulatory regime
- That is why my Insurance Monitoring & Desk Top Guides are so important
- On the drip constant high quality briefings should put senior management at ease that they do have the whole picture

A Product/Sales Manager



Which regime(s) will apply?

- He/she will be subject to the IDD regime as he/she will be managing (therefore directly involved in) the products and sales comprised in the carrying on of the firm's insurance distribution activities
- The Product/Sales manager is not a Director and therefore not a “senior manager” under the SM&CR
- They will, however, be subject to higher level responsibility under the SM&CR regime because they undertake a certification function as a head of a business unit (Product and Sales)

What training will be required?



IDD

- 15 hours of CPD per annum sufficient to deliver and demonstrate appropriate knowledge and ability in order to complete his/her tasks and to perform his/her duties adequately. The minimum necessary knowledge to be demonstrated must include (taking into account this role and activity):-
- Excellent knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies
- Excellent knowledge of applicable laws governing the distribution of insurance products – especially relating to requirements imposed in relation to individuals undertaking that role
- Excellent knowledge of claims handling, complaints handling, assessing customer needs;
- Good knowledge of the insurance market;
- Excellent understanding of business ethics standards; and
- Financial competence

SM&CR

- Suitable Training on the Conduct Rules to ensure that the certified employee understands how the Rules apply to them
- “Suitable Training” will be the training necessary to ensure that the certified employee has an awareness and broad understanding of:-
 - all of the Conduct Rules; and
 - a deeper understanding of the practical application of the specific rules which are relevant to their work – which in the case of the Sales/Product Manager will especially be the fitness and capability of the person to perform their certified function

SM&CR training for a certified function

- Training should not only focus on the Conduct Rules but should heavily focus on the person's depth of knowledge to undertake their certified function
- In the case of a Product/Sales Manager we are talking about a person with a role precisely bisecting that of senior management and “the front line”
- In many cases the knowledge and ability at this level may have to be very high indeed – to ensure that not only high level ethics and culture requirements are understood – but also the “nuts and bolts” of compliance with specific FCA rules based requirements is very well understood
- That will involve intimate understanding of e.g. PROD, ICOBS, CASS, PERG 5 & 6 - and the ability to cascade that knowledge into genuine understanding and change within insurance distribution.

In a nutshell



Knowledge and Ability and Compliance

- Is no longer the role of the business prevention department
- It is a crucial criteria to be demonstrated for the lawful ongoing conduct of any authorised firm
- You are not going to meet these obligations via a quick few minutes here and there on the PC at lunchtime!!!
- Are you ready to plan what you will need to do?

Thank You

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