

# I'M A SENIOR MANAGER GET ME OUT OF HERE!

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You are a director in a UK deposit taker such as a bank, or a building society, or in a PRA-designated investment firm. Your Head of Compliance has just briefed you that the PRA/FCA's Approved Persons Regime (APR) under which you hold a significant influence function is to be replaced from 7 March 2016 by the Senior Managers Regime (SMR) where you are to exercise a senior manager function. You had read about the reforms. On 7 July 2015, the PRA and FCA finalised their rules on the SMR so, alas, any hope that the regime may not come to pass is forlorn!

You and your colleagues will now have to negotiate the allocation of 30 Prescribed Responsibilities as well as the allocation of overall responsibility for the firm's activities, business areas and management functions, in addition to your other duties. Your responsibilities, which must be clearly described in statements of no more than 300 words, will be represented on the firm's management responsibilities map, a dynamic document setting out the firm's governance arrangements, that will allow regulators to see at a glance who is responsible for what.

You ask what practical impact will this have? In future, you may be required to take sole responsibility for matters that are now shared with other senior managers and/or divisions or firms within the group. Although sharing responsibilities is still technically possible under the new regime, it is the intention of the regulators that a single senior manager should be responsible for Prescribed Responsibilities. Further, in principle, the regulator would consider each senior manager to be jointly liable for the shared function. You may ask how you can be responsible for functions when not all reporting lines come to you? Those dotted lines on the firm's organogram represent responsibility that rests unequivocally with you. You can still delegate "activities" but never "responsibility."

While disciplinary action against senior managers is currently an option for the regulators under the current APR, it becomes much easier under the SMR as once a contravention is proved against a firm there is a presumption of responsibility on the senior manager for that area. This means that in contrast to now, it is you, and not the FCA or PRA, who must prove that you took such steps that a person in your position could reasonably be expected to take to avoid the contravention occurring or continuing - this is a reversal of the burden of proof. If there is a contravention by the firm, the regulator is likely to tag-along the relevant senior manager and deal with them after it has settled with the firm. You will need to consider how and to what degree to document your actions to address regulatory risks and put in place compliant systems and controls including, in some circumstances, your reasons for not acting.

If you were thinking of moving on quickly should issues arise on your watch, think again, as the limitation period for regulators to take action against senior managers for a contravention has been extended from three to six years. This means that you could be held responsible for up to six years after you had left the role. And we all know that some breaches of regulation can seem worse with the benefit of hindsight especially from a regulator's perspective. Further, the Remuneration Code is being aligned with the new regime so your deferred remuneration will potentially be subject to claw back and malus provisions for up to 10 years.

When leaving a role you will be expected to co-operate in the production of handover notes and, potentially, the signing of a handover certificate to assist your replacement in understanding the risks in the business. While this might help to mitigate or explain away your responsibility for any inadequacies during your time as manager, it could also result in admissions which could subsequently be used against you. Although a handover certificate may not be a regulatory requirement, it might be a condition of your employment to at least co-operate fully with a handover including providing written notes.

Clearly, there is more at stake in terms of your own personal responsibilities than there was under the APR. You will want to consider how you can protect yourself. You will want to understand the circumstances in which your firm makes reports to the regulator in relation to your compliance under the new Code of Conduct (particularly given the breadth of the new questions in the amended form A). You will also need to understand the circumstances under which you continue to have access to the firm's files once you have left in order to defend yourself against enforcement action.

Indeed, you may want to seek legal advice in relation to any new responsibilities which you have to sign up to in your statement of responsibilities. You will take a much keener interest in internal audit reports and management information in your business area and will certainly want an initial review when coming into a role so you are fully briefed as to any existing issues; in fact you may require this assurance, or indeed indemnities, before you are prepared to accept the senior manager

role. Additionally, you should check that your employer has taken out D&O insurance to cover the costs of any investigation against you (although this cannot extend to the payment of any fines). There are a number of other contractual protections that you, and your firm may require.

As the meeting ends, the Head of Compliance emphasises that the purpose of the new regime is to change the culture and behaviour of firms by focusing the attention of senior management on key risks. Your Head of Compliance leaves; your thoughts turn to risk.

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