

The IHRIS Podcast – Regulatory Compliance

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KW: Hello, and welcome to another in the series of IHRIS podcasts. Today I’m delighted to be joined by my colleague Kay Godwin, who is a Business Manager in RWA Compliance. Kay, do you want to give the listeners a little more introduction around you and what you do in that space?

KG: So, I’ve been with RWA since November 2020, but I have had a long-standing relationship with the firm over the last 7 or 8 years. Really, I started my career in insurance a long time ago, 24 years ago, where I worked at Legal and General and I was there for 16 years and worked in various roles in customer service, training, and eventually underwriting and compliance. I got made redundant from there and then got a job in a medium-sized brokers. There were only about 12 people there when I started, and then I set up the compliance department there – compliance and complaints department – and I was there for 7 years and then took the role with RWA.

My main reason for doing that really was to help people in roles such as I was in, as a Regional Business Manager – so help them obviously navigate the choppy waters of compliance and help balance, you know, the business needs and compliance, which can be quite tricky.

KW: Great! Thanks Kay, that’s really useful and quite interesting with your background and the organisations that you’ve worked with. Looking specifically at the relationship between compliance and HR, I think from my perspective it’s almost a new thing over the last – I’m going to say – 5 to 7 years, that compliance has become a greater topic around the table when I’m with clients, and the focus has certainly been zoomed in on by the FCA. And it has changed considerably – regulations, the need to document things more precisely, the impact it has on the day-to-day operations of HR functions, the business as a whole... Are you seeing the same kind of shift with the technical compliance side you’re having to do as well?

KG: Yeah, absolutely so. I mean, navigating the actual rules and the sourcebook the FCA has is very difficult and a lot of the time a lot of firms will say, “Well, we do this” and “we naturally do this – or else, if we didn’t, we wouldn’t keep our customers”.

Often they don't see the importance of maybe having processes documented or written down and that's obviously where we come in and it's very similar to HR, where we'll say to them, if the regulator was to come and take an outside look looking inwards they would want you to be able to present your processes that you've got written down on paper, so you could demonstrate your rationale as to why you've come to those decisions and why you're following processes that way. So, it is very much in that direction where you do need to have things written down and documented. Yes, definitely.

KW: What's been the impact when you've seen companies that have fallen short, especially around the compliance aspects when we're looking at SM&CR regulations etc. From the FCA perspective, what's been their reaction to non-compliance?

KG: There's a couple of cases. There's been one recently which has been very much in the news of a very big bank/insurance provider where they haven't possibly complied with the rules and have received a massive fine. Now on looking at that on the surface – you would say, "Well how has such a big company made such an error?" And, you know, you would go back – if you were to look at that retrospectively - to see: "did they have the right compliance arrangements in place?" "Were they looking at their materials that they were sending out to customers, were they checking the words and phrases that they'd used?"

Because often that can be overlooked, and firms can sometimes make proclamations of being the best or 'the customer's getting best value' when there isn't actually anything to back it up. And that's when you need to make sure you've got your compliance department involved from the word 'go' on projects and material and stuff that's going out to the client to make sure that it is in the right place and you're not going to fall foul of the regulator's rules.

KW: You're saying "falling foul" of those regulatory rules – you're talking about fines that companies can get? Or is it – I think I've seen it, certainly with some organisations – that it can be prison terms in really extreme examples?

KG: Yeah, I mean, those are extreme examples. The things that companies need to be wary of is obviously getting fined and reputational damage because the FCA – and the other regulators, like the ICO – will publish those results. So, fines, reputational damage and also a hell of a lot of work if the FCA starts to investigate you. You know, you're going to have to pull a lot of information together over a long period of time which is very time consuming.

And also, for SM&CR and the responsibility being on Senior Managers – that can be career-ending for some people. If they do things that are serious enough, it could mean they could never work in the financial services sector again. So, it is very important to make sure that you've got the right compliance support and advice in place to help you avoid those pitfalls.

KW: Yeah, I think that's a really good point actually, around not being able to work ever again. I know that we're working with some clients at the moment who we're having to actually write their job descriptions for some of their SM&CR regulated roles and you suddenly realise the level of detail that you need to go into: "What is their responsibility?" "What's their ownership?" "What are they expected to do?" And this is certainly where I've worked with the likes of you, Kay, and your colleagues and actually structuring, "what is the fit and proper?" "What is the expectation?" "Where should they be doing their activities – how should they be doing it?"

Because all of that kind of stuff is what the FCA is looking at, isn't it? They're wanting to make sure the business is treating customers fairly, is adhering to their obligations – I think that's the way I'd put it, if that's correct?

KG: Yeah, exactly that. So, their main focus is customer outcomes, like you said, and SM&CR has brought in the accountability and the responsibility at the 'top of the tree'. What is encouraged, is that there is a real 'tone from the top' – so from top-down, from your CEO or board-level to the people that work on the frontline. And it's really important for people who work on the front line to see that the people at the top are caring about their customers and customer outcomes. And, you know, that's what SM&CR has brought in really – those people at the top can't shy away from their responsibilities and say, "I didn't know about that because it was happening in a different department". It really takes away that aspect, and really puts responsibility on the shoulders of the people that are in charge of the company.

KW: Kay, when I'm thinking around my clients and the work I'm doing with them, we've seen as part of having to structure their job descriptions when they're going for accreditation for the SM&CR side of it – we're looking at the first tier, the Individual Conduct Rules. It would be really useful, I think, for listeners for you to go through what those are because there are aspects of the integrity that they need to have, the open, honest and cooperative side... Can you talk through those from your experience as well?

KG: Yeah, absolutely. With the first tier Conduct Rules, which we know apply to all staff, including the Senior Managers – so all staff, apart from receptionists and cleaners and stuff like that – but everyone else. For those ones, the first one is 'Acting with integrity'. Now I think a good way of describing what that means is: 'how you act when nobody's looking'. So, integrity-wise – "are you doing the right thing?" "Is your moral compass in the right direction?" And they're all sort of interlinked, it's definitely interlinked with the second one which is you must, 'Act with due care, skill and diligence.' So for examples for that, which I often give to firms, is if you've got someone on the front line, call handling, for example, and that person feels under pressure because of the culture of the firm, to take a lot of calls – to get call stats up and stuff like that – there could be instances where

they answer a call, hang up the call, answer a call, hang up a call and then take the next call and do it properly.

Now obviously that isn't 'acting with integrity' nor 'acting with due care, skill or diligence'. So, there's an example of where firms or individuals could fall foul of those rules in particular. Obviously that links in with the fourth one as well, which is 'You must pay due regard to the interests of customers and treat them fairly.'

So, as we said previously, the whole FCA outlook and aim for the insurance industry and financial services is to provide good customer outcomes. So, you should be treating all of your customers fairly and the same, and making sure that you do everything you can to get them a good outcome.

Maybe [an example of not] 'treating customers fairly' could be – and, again, it links in with the first two, 'integrity' and 'due care, skill and diligence' – maybe you're finishing your shift and it's five minutes to five and you pick up a call and say to the customer, "Yes, we'll do your change of vehicle for you, get your new vehicle on cover" but you think to yourself "right, I want to go home now – I'll do it tomorrow". You go home, watch 'Love Island', have a great time and come back to work the next day – and you've totally forgotten about it. And then you don't put that customer on cover. That has bad consequences for the customer. They could be driving around with no insurance, for example.

So again, that's an example of those rules, where they could be breached.

KW: I think I'd have a real issue, as well, with someone watching 'Love Island.'

KG: [laughter] For sure! It's not my cup of tea, Katherine. But, you know, people seem to like it.

KW: Horses for courses. [laughter]

KG: Exactly!

So then, the other rules there are quite wide-reaching so the other ones are: 'You must be open and cooperative with the FCA and the PRA and other regulators' and 'You must observe proper standards of market conduct'. They're quite wide rules, and basically, they're saying you should have awareness of the rules that you need to follow if you work in financial services. That comes down to training within your firm as well, and also, it's probably unlikely that someone on the frontline is going to be contacted directly by the FCA. However, the FCA has said when they do go into firms to investigate, they will go and talk to people on the frontline to really see how they view the company and how they view how the people at the top run the company. So, you know, it is more and more that the FCA do want to really drill down to the culture of firms which is really what

SM&CR is about – promoting a good culture for staff, and therefore, for customers.

KW: When you reference the fact that the FCA will come in and they'll want to talk to frontline – I know I've seen it, certainly, in the banking environment – they often don't need to give you notice. They can often just come in. And, on that basis, you've got to have all your documents ready, you've got to be able to provide a very concise audit trail to this as well. That's where I see a lot of clients falling down. There's sort of a panic. It's a bit like when I was working back in industry, and I worked with unions. I'd say, the FCA, you've got to get them to be a friend, don't think of them as a foe because the minute you're on their radar, that's when you start incurring problems.

So, keeping records up-to-date, making sure you are compliant with their regulations; it just makes for an easier review period should you get the tap on the shoulder.

KG: Absolutely and that is what I say day-to-day to client firms because they often say, as I said before, "Well we do this in practice, why do we need to write it down?" but, you know, if the regulator was to come into your business and say "What's your approach to conflicts of interest?" and stuff like that, the first starting point would be for them to ask for your conflicts of interest policy for example. Or, we've talked a lot about SM&CR - they might say "can we see the statements of responsibilities for all your senior managers?". Now, if you can't put your hands on those at that point, you're already on the back foot with the regulator and straight away they're going to put recommendations in place to say "look, these regulations have been in place quite a while now, so why haven't you done the work?"

Although there has got to be a consideration for the size and complexity of the business, all firms need to really think about best practice and try and have as much of a belt and braces approach as they can. Keeping in mind the difference between a small broker with five staff and a firm with 200 staff, it's still really important to have those processes and procedures written down, for both HR and compliance.

KW: Yeah, you're spot on the money there. Linking back with the HR route, I say to people "the minute you employ one person you've got employment issues". Same principle if you've got five or six people and you're working on the insurance side, if you're working in compliance – you've got to start adhering to the rules. So, size does matter in some instances, and this is where it does, be it one, five, 500.

The other point – the second-tier senior manager Conduct Rules. From memory, it's SC one, two, three and four, is it? How do those impact? What kind of levels would those usually be attributable for, for businesses?

KG: So, those are going to be attributable to the firm's senior managers. Now, sometimes firms get confused when we use the phrase senior managers because obviously, when you work in a firm – say you work on the front line - you may refer to your team leader as a senior manager. What the FCA are referring to when they're talking about senior managers is those people who have been approved by the FCA to run a firm. So, maybe the CEO, the chief financial officer, the head of marketing, the head of I.T. - those kinds of people. These second-tier Conduct Rules apply to them, as well as the first set of Conduct Rules. Really, this is about good governance of the firm. So, they need to make sure, like we said before...

One of the most interesting of those rules is number three, which is about delegation of responsibility. Now, it could be that you've got a CEO that on their statement of responsibilities, they are in charge of compliance, but they don't actually do the day-to-day compliance. They may have a compliance manager or a compliance officer in place to do the day-to-day. Now what that senior manager can't do is say "I've delegated that to Kay" for example, if I was the compliance manager, and if something goes wrong, they can't wash their hands of it and say, "no that was all down to Kay, I didn't know anything about it". The rule about delegation is that you need to make sure that you're linking in with that person almost daily, maybe at least once a week, so that you've got proper oversight of what the people are doing that you've delegated responsibility to. Because ultimately, they are responsible for running the firm and making sure that the people they employ are competent to do that role and have got the right qualifications and experience. If they don't, then that's one of the examples of where they could fall foul of these second-tier Conduct Rules.

KW: Actually, on that basis, you could be looking at an FCA sanction but then you could also be looking at your internal disciplinary processes apportion to how that person's not met their responsibilities with the post that they're holding.

KG: Exactly, correct. So, normally the people that you're delegating the day-to-day responsibilities to will be, what we call, certified persons. Under the Senior Management Regime, there is a requirement for the certified person and the senior manager to be declared as, what we call, fit and proper, every twelve months, to make sure they are qualified and experienced enough and on a continual basis, able to carry out that role. Now that really links in with HR as well because a lot of the ways that you would measure that is by making KPIs, for example - Key performance indicators - and also, regular one-to-ones and annual appraisals. Obviously, HR are very much involved in formulating those kinds of plans for businesses. Also, training as well. HR get involved in that and so do compliance. So, it's really important that compliance and HR work together on these types of projects, such as SM&CR. Also, recently we saw GDPR back in 2018, which was very much a collaborative project as well between HR and compliance in the previous firm that I worked in.

KW: The quality of those performance appraisals needs to be far more effective than they usually are. We know as HR professionals that no one likes doing them. They can be very much cut and pasted from previous years. It's a five-minute conversation. It's held over the pub. It's sat outside with a beer. You know, they say "I think you've done really well old chap. Don't worry everything's fine. HR asked for a file and that's literally what it is". But, as I say to clients, get the evidence and make sure it's comprehensive because the minute you're having to actually disclose that information, you've got to be able to track what was said. You've got to be able to show that you have been accurately monitoring and managing the activities of your staff. And the legal process of having a performance review is a really good step in that stage.

Can you see, Kay, these rules changing anytime soon? I can't imagine that the Conduct Rules will be wiped out because they were brought in 2019, something like that. But can you see there being any changes that people should be thinking about in the next year, eighteen months, to two years?

KG: I don't think there'll be changes to these specific rules. They're not a million miles away from rules that already existed which were the eleven Principles of Business. If you read those, they're very similar. I think the biggest challenge for compliance and HR departments is - exactly what you said there Katherine - to get away from it being a tick box exercise and, unfortunately, I think a lot of firms still think that this is a tick box exercise which is exactly the opposite of what the FCA want this to be. You have got to get to the end of year appraisal and be able to really demonstrate that the people in those influencing roles do have the right skills to be in those roles. So, that's where both compliance and HR can really help firms.

Now, I know it's really difficult, and we've spoken earlier about whether the FCA are a friend or a foe. It is hard for businesses to see them as a friend, especially at the moment, they do feel quite bombarded with - I think we've had about four surveys from the FCA in the last four weeks, probably. Some of my broker clients are like "when can we just get on and do the business which we're supposed to be doing, which is servicing our clients - filling in all these surveys?". It is difficult for brokers because they do become frustrated and see it as red tape and that's where we can help them, from both a HR and a compliance perspective. Taking a step back and explaining, "well, this is why the FCA want you to fill out this survey", for example, and "this is why they're bringing in pricing practices rules". You know, take your broker hat off and put yourself in the customer's shoes. Once you get past that frustration and that barrier, then it's a lot easier to go, "okay, we've got to fill it in. Kay, how can you help me fill it in?"

So yeah, very similar to HR I would imagine, in that respect.

KW: Yeah, and I think it's certainly something that companies need to sit up and listen to – when you mention around KPIs. Looking at some clients they don't know how to set those up. You know, I'm sure like we do in HR, you've got templates of 'what does a KPI look like?' as it attaches to the first tier and second tier Conduct Rules – to give them an example. Because it doesn't need to be scary, but it does need to be factual, it does need to be exhaustive, it needs to be... trackable... measurable is probably the better word to use. Getting companies to sit down and think, "right, how do I structure a KPI?". You don't need to radically change your appraisal process. You know, there are so many different funky types around. I tend to keep it as simple as I can but having those key metrics in there is critical and between you and me, we can always give listeners that template of what does a good, sensible KPI look like. How do you measure it? What's the period of time that it should be running with?

KG: Yup, absolutely.

KW: Kay, thank you ever so much for your contribution today. That really has been enlightening, I'm sure, for a lot of our listeners. In terms of anyone who wants more information or more support on this, you can come directly to me and my team at IHR Solutions. You can contact us at HR help at IHR Solutions dot co dot UK [hrhelp@ihrsolutions.co.uk] or you can go on to our webpage on Insurance HR Solutions dot co dot UK [insurancehrsolutions.co.uk].

And Kay, specifically around the more technical side of compliance, where can they get hold of you for more advice and steer?

KG: Yeah, thanks Katherine. They can get in touch with us at RWA Consultancy dot com [rwaconsultancy.com] or they can email us at helpdesk at RWA Group dot co dot UK [helpdesk@rwagroup.co.uk].

KW: Brilliant! And for any of those people who are wanting to break from their work and go and watch 'Love Island', you can get help from hashtag get help.

KG: [laughter]

KW: Right, thank you very much indeed.

KG: Thanks Katherine! It's been great, thank you.

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