

The Catt's Eye View

Compliance, huh – what is it good for?

Compliance is the C word in financial services of which many people will have a rather negative view. On reflection, this is quite odd really, because it is compliance that keeps businesses operating. Compliance departments are often christened “Business Prevention Units”. This is actually a rather myopic stance. I would turn this around by asking “Why are you trying to undertake business in a non-compliant way?”

Compliance is the simple application of good habits and best practice. How difficult can that be? These good habits and best practice should be the foundation of any business. You will find that all of these are compliant. Therefore, operating compliantly should be the normal mode of operation. If compliance involves extra work, over and above what makes common sense, then it is not being implemented correctly.

For example, anti money laundering rules state that you need to identify the client, confirm their residence and ascertain as far as possible the origin of any money that is being invested, used as a deposit or paying premiums. Therefore, a form is completed to record these details for future reference and copies of documentation are retained as confirmation. It is common sense to identify the customer, the meeting may well have taken place at their home and they are likely to confirm affordability or the source of funds to pay for the service. AML duty has been done in common sense practice.

Records are kept of all business undertaken in order that it is possible to review business in the event of a complaint or simply as a quality control exercise. Therefore, it is important to be able to produce all relevant information that was used a part of the advice process. Client information is gathered to enable to assess needs. From that a discussion will take place regarding how to address those needs. Research is undertaken and then recommendations made. An audit trail through this process should provide a clear justification for the business being written. If it does not, the time to address this is before any application is made or at latest before the completion of the business. The case will be fresh in the adviser's mind and any gaps should easily be filled.

If incomplete files are kept, then it is not likely to be possible to prove the quality of advice given. The old maxim “if it is not written down, it did not happen” comes into play. People do not have clear memories for conversations and are even less clear about understanding. Then when this foggy recall is mixed with the thought of financial gain in the event of a retrospective claim, the only defence is clear record-keeping.

Keep good records. Maintain your permission to do business. Simple.

Compliance Officers

Please also remember that if an external compliance adviser is being used, the liability for the advice still falls on the regulated firm. The FSA or other claimant will not be interested whether the advice has been “passed as compliant”. Therefore, the choice of compliance provider is very important. Strangely, for such an important role, compliance is currently unregulated. There is currently no specific permission other than the FSA CF10 Compliance Officer and CF11 Anti Money Laundering Monitor, which is linked to each firm. So, unless the Compliance Officer offers to accept liability in the form of being the registered CF10 or CF11 officer, there will be no recourse. The FSA recommends certain qualifications, but they are not mandatory. Even if the compliance officer is qualified, this is not necessarily a guarantee that they would be suitable to monitor the business of a firm, if they have no experience of advising on a specific range of financial services needs or products.

Due Diligence is most certainly required. This can be done on the FSA register. If a compliance firm is registered, as with any firm, it will identify the specific office holders. Of course, if it is an individual who only takes up the CF10 and CF11 within various companies, the search would need to be an individual search. Once identified, it is then possible to see how many firms they are offering compliance services to and it is then possible to assess spans of control. This may well govern whether they are able to offer the level of service required by your firm. It may be prudent to contact some of their customers to try to ascertain how well they do their job and how well they work with their existing clients.

Ideally, the Compliance Officer should be a problem solver, rather than a problem generator. Incomplete files should be considered as “not yet compliant” rather than “non-compliant”. The Compliance Officer should be one of the first points of call, rather than simply a nuisance.

It all comes down to compliance being the sensible application of good habits and sensible advice practice, rather than something that causes extra work for advisers. If compliance is an extra duty, it will not get done. If it is an integral part of good practice, there is no reason to be non-compliant.