Compliance – not regulated – really? 25/08/2017

Advisers live in a world where regulation is king and many are almost paranoid about doing the right thing for their clients and providing evidence in this respect.

All advisers are subject to compliance and in regular contact with a compliance practitioner of some description. These compliance people can range from “tick-box” merchants through to “light-touch” practitioners. There is room in the world for all types of compliance consultant, dependant on the needs of each firm and the preference of the principals of firms.

The networks have whole departments covering the various elements of compliance – file checking, pre-approval of business, training, management information etc. However, this cast of thousands has still not made them any stronger than individual practitioners in many ways. Networks will often be quite prescriptive about the type of business undertaken and simply not allow some types of business to be transacted. Most recently, many of them have tried to force IFA advisers to operate on a restricted adviser basis. This is a lack of understanding of the true value of independent advice.

I worked with a network that introduced a new fact find for mortgage advisers. The document was rather lazily constructed, as it was obviously two documents stuck together. To the extent that about half way through, the questions reverted to basic information that had previously been covered. The network then made this form mandatory. This showed a complete ignorance of FCA stance that a fact find document is not a mandatory requirement. The mandatory requirement is “know your customer” and the easiest way of collecting information is with a set of pre-set questions, ie. a fact find. But if an adviser can evidence that they know their client, their evidence can be collected in whatever format they like. The back of a fag packet, if that works for them.

Recently, I have had some conversations with a prospective client about signing-off financial promotions. They had been advised that the financial promotions need to be signed off by an FCA registered compliance consultant. I checked this with the FCA as I wanted to be sure on this issue before I went back to the clients.

The guidance that I received was that the financial promotion would be covered by the client’s FCA permissions granted to their firm. So, if they are a fund manager, they would register with the FCA and then they can undertake all the controlled functions and the permission that has been authorised by the FCA. Anybody helping them would simply be providing guidance that they are staying within the boundaries of their permission.

I then discussed with the FCA about registering myself with them as a compliance consultant. There is no registration is this respect. I would need to set up a firm to provide regulated services, eg advice or fund management. Since I would not actually be writing business, my application would not be accepted as the FCA would have no business figures upon which it could base its fee structure.

So, the answer to that potential client was that they had been misled about the regulation of compliance practitioners. The firm that was offering compliance services was actually registered with the FCA because it undertook other regulated business and the authorisation had nothing to do with the compliance service that they offered, (at a considerable cost).

It is surprising that compliance is not a regulated activity as a lot of damage can be done by compliance people to firms. Most advisers treat the guidance that they receive from compliance people as gospel. Therefore, the advisers can be misled in the same way that they in turn can mislead clients.

The other end of that scale is that a good compliance practitioner can really help an adviser by enabling great quality business in what are often regarding as high-risk business types. The question to the compliance consultant changes from “can I do this?” to “how can I do this?” Thus, the adviser is able to provide good outcomes for clients in types of business that may not even be allowed by the networks.

The new Senior Managers and Certification Regime (SMCR) may go some way to compliance becoming a regulated activity in the future. The SMCR breaks down various aspects of business management and allots duties and accountability to the managers that are appointed. This could easily be extended to the compliance functions.

The SMCR is being introduced for IFA firms in 2018. It has been running for banks and large organisations for a while. It will be interesting to see whether this leads to better customer protection in the future.

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