

Conduct Rules Scenarios

The Unexpected Absence

Scenario

You are a Senior Manager with Quality Advice Ltd, a firm of independent financial advisors. Quality Advice Ltd is a core firm for SM&CR purposes.

The FCA is due to visit next month. Jane Doe, the Senior Manager with responsibility for the area of the business on which the FCA visit will focus is unexpectedly signed off on sick leave. You are asked to step in and continue preparations for the visit.

Unfortunately, Jane Doe has not left any kind of handover note. You have no expertise in this area. To make matters worse, you do not have any spare time to bring yourself up to speed with the preparations undertaken to date.

Jane Doe had a small team assisting her with preparations for the FCA visit. You decide to trust that the team is on top of the situation.

The FCA visit does not go well. The FCA finds that the area of the business for which Jane Doe has responsibility is poorly organised and lacks the controls necessary for a firm of the type and size of Quality Advice Ltd.

What conduct rules may have been breached?

- Senior Manager Conduct Rule 1: “You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively”.

Points to consider

General

The conduct in question does relate to the regulated or unregulated “financial activities” of the firm. As such, the conduct should be considered as being in-scope for the purposes of the Conduct Rules.

Bear in mind that, under COCON 3.1.3G, a person will only be in breach of a Conduct Rule where they are personally culpable. In other words, the person's conduct must have been:

1. Deliberate, or
2. Below the standard of conduct that would be reasonable in all of the circumstances.

Pursuant to COCON 3.1.2G, in assessing whether a breach of the Conduct Rules has occurred, the FCA will have regard to the context in which a course of conduct was undertaken, including:

1. The precise circumstances of the individual case,
2. The characteristics of the particular function performed by the individual in question, and
3. The behaviour expected of that function.

The FCA will also take into account whether the conduct in question (a) relates to activities that are subject to other provisions of the FCA Handbook, or (b) is consistent with the requirements and standards of the regulatory system (as far as it applies to the firm).

Pursuant to COCON 3.1.5G and 3.1.6G, in determining whether a breach of the Senior Manager Conduct Rules has occurred, the FCA will take into account:

1. Whether the Senior Manager exercised reasonable care when considering the information available to them,
2. Whether the Senior Manager reached a reasonable conclusion upon which to act,
3. The nature, scale and complexity of the firm's business (the smaller and less complex the business, the less detailed and extensive the systems of control in place need to be – and vice versa),
4. The role and responsibility of the Senior Manager as determined by reference to his/her Statement of Responsibilities, and
5. The knowledge which the Senior Manager had, or should have had, of regulatory concerns (if any) relating to their role and responsibilities.

Jane Doe

Senior Manager Conduct Rule 1 requires Senior Managers to take reasonable steps to ensure that the business of the firm for which they have responsibility is controlled effectively.

The FCA's guidance on **Senior Manager Conduct Rule 1** requires that Senior Managers ensure an "orderly transition" between a Senior Manager who ceases to perform the function in question and his/her successor. In this context, the importance of handover notes is emphasised.

In fairness, this part of the FCA's guidance seems to contemplate the scenario of a PLANNED handover of responsibilities, rather than a handover of responsibilities resulting from an UNEXPECTED absence. It is also true that handover notes are, strictly speaking, not required with respect to Senior Managers of Core Firms such as Quality Advice Ltd.

Nonetheless, handover notes (or good quality documentation and audit trails generally) are typically regarded as good practice for all firms and this scenario provides an obvious example of why this is the case.

The fact that Jane Doe's department is assessed as poorly organised and badly performing as part of the FCA audit AND the fact that Jane Doe has not adequately documented the way in which the department is organised or the controls which have been implemented, is suggestive of the fact that Senior Manager Conduct Rule 1 has probably been breached by Jane Doe. It seems difficult to conclude that Jane Doe has exercised reasonable care and skill, particularly in light of the relative scale and complexity of the firm's business.

It would also be necessary to give some consideration to the question of whether Jane Doe is fit and proper to perform her role as the head of this department. Essentially, this assessment would focus on whether she demonstrated sufficient "competence and capability". A detailed analysis of this aspect is beyond the scope of this document, but mitigating (and aggravating) factors would include

Your potential liability

As the Senior Manager who took over responsibility for Jane Doe's area of the business, it was not sufficient for you simply to trust that Jane Doe's existing team had the situation under control. Rather, it was incumbent upon you to find the time to understand the role in question and any issues that exist in relation to the particular area of the business. This would have necessitated you working through all relevant issues with the team. If necessary, you should have escalated particular issues to the CEO, to Compliance and/or to the non-executive Chairman. The FCA guidance on **Senior Manager Conduct Rule 1** makes clear that the FCA considers a Senior Manager to be in breach of **Senior Manager Conduct Rule 1** who fails to review the competence, knowledge, skills and performance of staff in their area of responsibility to ensure that they are suitable to perform their role.

Other points to consider

Potentially, the Senior Manager who has been allocated the Prescribed Responsibility for implementation of the Senior Managers Regime has failed to discharge his/her duty as you do not seem to have been provided the support necessary for an efficient and effective handover from Jane Doe to have taken place.

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