

For People Development and People Regulation Personnel
within Financial Services

T-C NEWS

COMPETENCE • EXPERTISE • PROFESSIONALISM

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What key Policy Decisions do I want before drafting a T&C Scheme?

Nick Smith from EAM Consulting



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Welcome to the first edition of *Certification News!*

By Carl Redfern from Redland Business Solutions

Obviously, this statement is ‘tongue-in-cheek’ but it does refer to a serious point. Under the new Individual Accountability Regime being introduced for banking firms, Training and Competence (T&C) potentially becomes a sub-set of Certification, so Jeff, perhaps, this July publication does deserve a name change ...?

☺ Mistakes (or failings) by an individual resulting in their certificate being withdrawn are potentially career limiting!

In this article I explore the implications of the new Certification Regime, within the context of the wider Individual Accountability changes and compare some of the new obligations with existing regulated T&C requirements. Hopefully it will help to highlight those areas where Firms should apply their time and effort and ‘thinking’ to facilitate compliance with the new rules.

In CP15-09, published 16th March 2015, FCA set a more detailed timetable for the journey to the new regime. We can now expect:

- ☐ Publication of final rules on Individual Accountability by both FCA and PRA – Spring / Summer 2015
- ☐ Potential consultation extending Certification to cover wholesale markets – Summer 2015 (followed by Policy Statement end 2015, if required)
- ☐ Publication of Policy Statement covering foreign banks (subject to approval for extension of the regime)
- ☐ Transitional Arrangements – to be confirmed as part of the final rules
- ☐ Deadline for Responsibilities Map and Statements of Responsibility – 8th Feb 2016
- ☐ FCA Register will show new Senior Managers by 7th March 2016
- ☐ Deadline for issuing Certificates under CERT Regime – 7th March 2017

Although currently the Individual Accountability Regime (IAR) focuses on deposit taking firms, there are also changes to the Approved Persons Regime for Solvency II firms, which introduces a very similar set of changes for Insurers (excluding the Certification layer) and even the current Approved Persons rules

are being modified to an extent, affecting Appointed Representatives and Investment Managers etc.

It is also perhaps very significant that FCA have released their latest Consultation Paper for IAR with a series of ‘related documents’ that include ‘GC15/1 Risks to customers from performance management at firms’ – which sets out findings from FCA work relating to performance management and leading from their work on ‘financial incentives’. It sets out examples of good and bad practice. It seems clear that as far as FCA are concerned, Performance Management is tightly linked to Accountability and will have implications for firms currently outside of IAR and CERT.

Certification (CERT) is a component of the new IAR with the intended outcome of forcing Firms to take the ‘Fitness and Propriety’ (FIT) assessments of their staff more seriously, with more rigour, underpinned with more (a lot more) consequences. CERT reinforces that the FIT assessment needs to be a continuous, ongoing process, applied to a lot more roles across the business than the current Approved Persons regime.

So CERT is the annual application of FIT, to a wider population, with a lot more rigour!

Both regulators have promised new guidance for the application of the FIT assessment, but also stressed that it will not be material change, the essence will remain the same, other than the inclusion of a new focus on ‘personal characteristics’.

The direct link within the CERT regime to regulated Training & Competence processes is clear.

The new rules under CERT define the following . . .
“when assessing the fitness and propriety of a person to perform a particular function the Firm must have regard to whether that person . . .

1. Has obtained a qualification
2. Has undergone or is undergoing training
3. Possesses a level of competence
4. Has the personal characteristics”

One of the significant consequences of the new CERT regime is that Firms will need to invest time in creating and documenting a ‘Certification Policy’ and ‘Certification Scheme’.

The TC source book, as part of the FCA Handbook defines ‘competence’ as:

“competence means having the skills, knowledge and expertise needed to discharge the responsibilities of an employee’s role, including a good standard of ethical behaviour”

Similar to existing (in many instances) T&C Schemes, organisations need to consider and define the following list, in respect of their Certification Regime obligations:

1. the roles and functions that will be subject to CERT
2. the 'route to competence' for each role
3. the 'maintenance of competence' for each role
4. the processes, tasks, activities and KPIs used to measure and monitor competence
5. a scale of remedial actions and development plan options for correcting performance issues
6. the supervisory policies and roles covering CERT functions, including
 - a. 'locum' arrangements
 - b. 'competent to supervise' assessments and maintenance
7. Links to 'Performance Management', Incentive schemes and HR policies

One of the questions frequently asked about the CERT regime is whether it is essentially 'regulated T&C' or essentially 'HR Performance Management'?

I suggest that the correct answer is 'both'.

For existing roles and staff subject to T&C today, the same (or very similar) T&C 'tools' will continue to apply. For many of the new roles and staff, using some of these T&C 'tools' will help to measure and monitor competence and fitness and propriety.

Examples of the 'toolkit' frequently employed within the T&C environment include:

- Documented Policy
- Documented Competence Standards
- Regular 1:1s – with documented outcomes
- Observations and Role Plays
- Formal KPIs
- Technical Knowledge Assessments
- CPD
- L&D Plan
- Remedial Action Plans or PIPs or similar
- Span of Control monitoring
- File Checks / Quality Checks
- Supervision Standards
- Risk Based Assessments

The primary objective of these tools, as applied within T&C schemes and day to day operations, is to identify where or if an individual might be 'slipping' against the relevant competence standards and take the appropriate action **before** a competence issue occurs, therefore preventing a 'breach'.

Obviously, under the CERT regime, this is significant – take the required corrective action and prevent the need to withdraw or 'not issue' a certificate and a material amount of administration effort, HR process, customer risk, conduct risk, reputation risk or financial risk to the firm is avoided. To say nothing of the professional implications for the individual involved – under the 'breach reporting' and 'regulatory reference' rules of the new regime, mistakes (or failings) by an individual resulting in their certificate being withdrawn are potentially career limiting!

A key difference is that Performance Management under HR is often a continuous process of review

between manager and staff in support of accomplishing the strategic objectives of the organisation. Performance Management tends to be 'analogue' – a sliding scale from under to over-performing, with the assessment based on 'relative values' across the business.

T&C tends to be 'digital' – Qualitative and Quantitative assessment as 'competent' at any given point in time or not, with the assessment being made against a set of documented standards.

The CERT regime requires the practical application of both, according to role, applied in a proportionate and appropriate manner.



Key to making this work will be the 'judgement' of experienced and professional staff (T&C and HR and probably Compliance people). The judgement of what is the correct approach for each role will need to be documented and collaborated with the 'buy-in' of Senior Management, hence the suggestion of a Certification Policy and Certification scheme which can be signed off and distributed to those involved.

If any significant roles are determined in your business not to be subject to CERT, the policy document should probably also contain an explanation as to why not. One of the challenges going forward into the new world will be how much difference there is in interpretation of the definitions of Material Risk Taker and Significant Harm Function. Clearly there will be differences from one organisation to the next and how we handle staff who move from one firm to another into a similar role, which now is or isn't subject to CERT needs to be considered.

The new Certification Regime can be compared to an MOT – formally tested and issued once per year, the owner of a car is responsible for ensuring that it is 'road-worthy' at all times.

The tools, elements, record keeping, evidence, policies and procedures of T&C have been developed and are used today to frequently monitor individual competence within day-to-day operations, in the context of the business of the firm – to continuously measure 'road worthiness' and fix issues **before** they become significant (reportable).

It is exactly these processes that will make the Certification Regime successful.

So while the next issue of *T-C News* will not be called *Certification News* it could reasonably include a 'glossy supplement' . . . ???

How do you manage conduct risk in your business?

In our experience this is not a simple question to answer, but in today's regulatory environment and ever more competitive market place, surely it is a question worth asking?

Perhaps consider the following;

Is your conduct risk model easy to define, distribute and evidence 

Can you utilise your existing systems to provide a real dynamic view of individual risk 

Is your T&C scheme forced to adopt a 'Sheep dip' supervision approach for all individuals 

Are you satisfied with your file checking model, capacity and flexibility 

Can you proactively identify trends, risks, issues and monitor their resolution 

Have you got a 'joined up' approach to managing T&C, Business Quality, Risk and Customer Outcomes 

We have delivered market leading solutions to these types of issues for our customers across the UK Financial Services market.

If cost effective conduct risk management across your business is important to you, why not talk to Redland to see if we can help?

If you would like an open discussion, on the needs of your organisation and how our Insight platform may be able to support your business, please call or visit www.redland-solutions.co.uk