Individual accountability: expectations of senior management in JFSC-regulated firms

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Internationally there has been an increasing focus by regulators on promoting individual accountability within financial services businesses, and it is reasonable to assume that the JFSC will take a similar approach. It is therefore important that senior management of regulated firms ensure they understand what is expected of them, and that they are alive to the (potentially serious) risks to which they are exposed if they fail to meet the JFSC's high standards.

What is expected of senior management?

While most regulatory obligations are imposed on the registered person (i.e. the firm), responsibility for ensuring compliance ultimately rests on the firm's officers and employees. This is because firms are legal fictions, and so in practice must operate through individuals.

Seen in this way, it is clear that senior management play a vital role in ensuring compliance with a firm's regulatory obligations. The expectations on senior management can arguably be distilled into two simple phrases: to be responsible and accountable for the activities under their control; and to ensure that they are at all times fit and proper for their roles.

So what does this mean in practice? Helpfully, a number of themes emerge from the JFSC's Codes of Practice (**Codes**) and Licensing Policies that give insight into what the JFSC expects of senior management. For example:

- responsibilities must be apportioned amongst the registered person's directors/partners, key persons, senior managers and employees in such a way that their individual responsibilities are clear
- the business and affairs of the registered person must be adequately monitored and controlled
- employees must be adequately supervised
- the registered person's directors, partners, senior managers and all other employees must be fit

and proper for their roles

Questions that senior managers should therefore be asking themselves on an ongoing basis include:

- Am I clear on what my own role and responsibilities are?
- Do colleagues for whom I am responsible have clear job descriptions that define clearly their responsibilities and authorisation levels?
- Where I delegate work, have I ensured that I have chosen someone who has the skills, experience and time to do that work properly? How do I ensure that I exercise effective oversight over their work (for which I remain accountable)?
- Have I set up clear lines of reporting up to me and, where appropriate, through to the Board?
- Am I confident that risk is being properly monitored and mitigated in relation to activities under my control?
- How do I satisfy myself that colleagues for whom I am responsible act with integrity and remain competent for their roles?

As part of their role, senior management should also challenge themselves on whether their firm has the right culture (it being commonly accepted that firms with good cultures are more likely to deliver good outcomes). Amongst other things, senior management should be asking themselves:

- Does the firm have a clear purpose (not just the 'what' and 'how' but the 'why'), which is understood and shared by staff?
- What is the 'tone from the top', and what part do I play in that?
- Are adequate governance structures in place to define, mitigate and monitor the risks faced by my business area?
- How do we ensure that we are incentivising the right behaviours (for example by way of remuneration)?

Asking and addressing these types of questions on an ongoing basis can help senior management show that they are performing their functions, and doing so with integrity and competence.

What tools does the JFSC have where a senior manager falls short?

The JFSC has a broad range of powers available to it if a senior individual fails to meet the standards expected of them. The use of such powers is a serious step, and can have potentially-severe consequences for an individual.

Broadly, the JFSC's powers fall into two categories, which might be described as: 'backwards-looking' tools that sanction past misconduct; and 'forward-looking' tools aimed at mitigating ongoing/future risks posed to the JFSC's objectives.

In terms of mitigating ongoing/future risks, options open to the JFSC include:

- taking into account the individual's conduct when asked to confirm that it has no objection to the individual being a principal or key person and
- imposing an order preventing the individual from performing functions for, or being employed by, regulated firms

In either case, the JFSC will have particular regard to the individual's integrity and their competence for the role. The JFSC has published guidance[1] on what these terms mean, but it is clear that the regulator has high expectations – and steps taken recently by the UK's Financial Conduct Authority[2] illustrate that (mis)conduct outside of the individual's professional role may well be relevant.

In terms of sanctions, the key tool available to the JFSC is the imposition of a civil financial penalty. The penalties that the JFSC can impose are substantial – up to £400,000, depending on the circumstances. However, the JFSC is presently only able to impose such penalties on principal persons (in broad terms directors and shareholders), and it must first show that:

- the registered person has, to a significant and material extent, contravened a Code
- this was (i) done with the consent or connivance of, or is attributable to the neglect on the part of, the principal person or (i) aided, abetted, counselled or procured by the principal person

The JFSC's power to impose financial penalties on principal persons was only introduced on 26 October 2018. Whilst the JFSC has yet to formally exercise this power, it is reasonable to assume that it will not hesitate to do so in appropriate cases.

Conclusion

With the increasing focus on individual accountability, it is important that each senior individual considers the role they play promoting a good culture within the firm and ensuring compliance with JFSC regulatory requirements. Doing so will not only help improve client outcomes, but should mitigate the risk of (potentially significant) action being taken against not just the firm but its principal persons.

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[1] Available here: https://www.jerseyfsc.org/industry/guidance-and-policy/integrity-and-competence/

[2] See the UK FCA press releases available here: https://www.fca.org.uk/news/press-releases/fca-bans-three-individuals-working-financial-services-industry-non-financial-misconduct and https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-against-jon-frensham-non-financial-misconduct"

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