Managing your relationship with the regulators

You might be surprised to hear that the PRA and FCA have over 200 different regulatory ‘tools’ at their disposal. Many of them are well known headline grabbers such as significant policy changes like the introduction of the Senior Managers Regime, banning individuals from the industry, as well as Enforcement fines. But the actual list of possibilities goes far beyond these to include some of the subtler regulatory practices – think information sharing with other regulators, business model and sectoral analysis to inform thematic work, and trends in consumer calls. Then there are the more firm focussed tools that many Senior Managers will be familiar with – skilled person reports, capital add-ons, restrictions on business, meeting with NEDs, attestations, visits, and file reviews to name but a few.

What’s important here is opening your eyes to the range of possible interventions (some of which go on behind the scenes). Invariably the regulator will look to a less intensive supervisory tool before heading towards the nuclear option. As a supervisor I identified some fairly awful practices from time to time, only to be told by Enforcement colleagues that the transgressions didn’t meet their referral criteria.

A personal perspective

One of the things I find intriguing when supporting Boards to be more effective is observing how firms approach their relationship with the PRA and/or FCA (whether consciously or otherwise). Most are savvy and proactive. Others are remarkably naïve, choosing to place blind trust in their belief that there will be nothing of interest for regulators should they come knocking on the door. Until eighteen months ago I’d only experienced the relationship from the regulator’s side of the fence. Now I appreciate more fully the art of managing this important stakeholder regardless of whether or not you have a named supervisor.

The regulatory perspective

Regulators are typically risk averse, they are trained to think of all the things that might go wrong, even if they are highly unlikely to occur in any given scenario. Remember how heavily criticised the FSA was for failing to contemplate the seizure of the wholesale funding markets in 2007 that ultimately led to the run on Northern Rock?

Smart regulators use firm interactions to gain an insight to your culture – how your firm behaves in a crisis, how seriously staff take compliance, the competence of senior management, etc etc. I recall the story of an investment firm that took issue with my letter referring to their poor regulatory history. When the Chairman rang me to complain and demand I retract the comments I pointed out that I was unaware of any compliant firm with no fewer than three Private Warnings in the previous 2.5 years. He continued to argue that there was no substance to them, but you can imagine how the conversation only served to reinforce my opinion of their negative attitude to compliance. Just to complete the story, although I moved sideways to another area within a few months of that call I wasn’t surprised to read about the Enforcement fine against them a couple of years later.

The likelihood of the ‘E’ word

On the subject of Enforcement, and despite what you might believe, it is relatively unusual to find your firm is such a position, even when there’s been a monumental and unambiguous failure. Most compliance consultants will tell you the possibility is very real indeed. And, to be fair, in some ways they are absolutely right because every Final Notice is a matter of public record. So, while credible deterrence is very much alive and well, it is a very expensive tool, used in narrow circumstances, often when other ‘softer’ tools have been ineffective or ruled out for whatever reason.
So, whilst Enforcement action undoubtedly has the potential to lead to catastrophic consequences, firms are much more likely to be the subject of a request for information, query on their financial returns, or asked to complete a thematic questionnaire. It goes without saying that you need to be at your best when faced with possible Enforcement action, but Senior Managers forget all too easily that they need to manage all seemingly unremarkable regulatory contact with a similar degree of care and attention. Prevention is most definitely better than cure because it only takes one ill-judged interaction to create a negative attitude from your regulatory counterpart.

For example, take the insurer that responded to a simple request regarding its solvency position by offering up the firm’s current solvency ratio. On the face of it, an honest answer to a straight question. Unfortunately not. Much to the firm’s surprise the PRA jumped on this new piece of information as a sign of prudential weakness. After all, the solvency ratio was significantly lower than that reported to them in the last return.

In short, the absence of any context around the number – the underlying cause of the downward trend, regular monitoring internally against strict limits/triggers, management actions already being taken - left the regulators to jump to their own conclusions. When that occurs it can be very difficult to gain control of the situation.

**How you can take a more proactive approach**

Quite simply, try to put yourself in the regulators shoes - what they would be worried about in the context of their statutory objectives when something comes to their attention. Then, try to think about what questions they might ask, and how you would respond. Or, even better, offer up the answers to those questions before they have even been asked.

It’s a bit like being a good chess player that thinks several moves ahead of their opponent in an effort to anticipate and nullify any potential threat. I’m not talking about being dishonest or subversive in dealing with the regulators, simply advocating a little bit of thoughtfulness and common sense.

Lucy McClements joined BP&E Global as a Director in the summer of 2016 after nearly two decades as a regulator where she supervised firms from both a conduct and prudential perspective across all sectors of financial services from asset managers, banks, insurers, retail intermediaries, and securities firms. Before leaving the Financial Conduct Authority Lucy spent five years as a Head of Department in the Authorisation Division overseeing thousands of applications for authorisation, variation of permission, cancellation, change in control, and approved person status.

As a qualified coach of the International Coaching Federation she combines her passion for leadership development with a deep insight of regulatory expectations to support Boards to achieve even greater effectiveness.