Four Compliance Tips

FOUR COMPLIANCE TIPS FROM OCTOBER 2013

Firms need to review their policies concerning inducements and bribery to ensure that the payments they make and hospitality and help they give do not operate against their clients' best interests and relate to enhancements to the services that they provide for the benefit of their customers.

- GC 13/5 raises a range of concerns about the money product providers and fund managers spend to persuade distributors to recommend or distribute their products. In the firing line are:
  - corporate entertainment that goes beyond anything that can benefit the end client since its cost will result in extra charges being made for the product,
  - IT help that is not specifically related to the delivery of the provider's offering; and
  - contributions to the cost of running conferences whose amounts that do not relate to the provider's active participation in the event.
- It remains unclear whether COBS 2.3's rule against inducements bans corporate entertainment such as golf days, boxes at Test Matches and journeys abroad to receive insights about a company which could be delivered just as easily at home. Even if they are not, such spending could be considered bribery under the Bribery Act 2010.
- Firms need to remember that bribery under the 2010 Act can involve conferring on somebody a benefit that has nothing to do with any public officials or administration. The crime of permitting bribery under section 7 of the Act has only one defence, namely that of having effective systems in place to prevent such behaviour.

When advising a client who is in serious ill-health about a pension transfer, advisers must be able to make their advice "conditional" or "based" on the client's understanding of his or her life expectancy, particularly if there is a risk that the customer will die before obtaining any precise estimate.

- Advisers cannot disclaim your responsibility for their advice. COBS 2.1.2R bans that. However, COBS 2.1.1R requires firms to act in the customer's best interests. So, the type of advice being given here seems to be justified if the transfer would be in the interests of the client's family.

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- It is vital that the advisers set out exactly what the customer is giving up and if possible the length of time that the customer has to survive for the advice to transfer his or her pension not to be a good idea.
- In all transfers, but particularly this type, it is essential to involve a pension transfer specialist at the earliest moment to ensure that all the information in the suitability report and the advice given is correct, at least as regards the customer's pension.

It is essential that firms which have in the past bought other businesses or their client lists keep easily accessible copies of the relevant sale and purchase agreements. Otherwise, if clients of the old businesses complain, the current firms have no way of knowing or showing whether they should be responsible for any compensation payments.

- Without records of the relevant agreements, the Financial Ombudsman Service (FOS) can uphold complaints against the current firm in this type of situation purely on the basis of the customer's recollection of what happened. This is particularly the case if the Financial Services register indicates that the old firm simply changed its name to the new or current one.
- Companies with histories of mergers and acquisitions should ensure that they keep a database of these transactions and ask the Financial Conduct Authority to correct the Financial Services Register if it leaves an inaccurate impression in this area.
- Broadly the same message applies where a firm has one or more appointed representatives. Some years ago, I had to persuade FOS after it had already issued a decision on liability not to make an award because the transaction was completed before the business recommending it became an appointed representative of the respondent firm. This was in spite of the fact that the FSA Register indicated otherwise.

Fund managers need to do an urgent check on their anti-money laundering and anti-bribery systems and controls in the light of the FCA's TR 13/9 paper.

- TR 13/9 found that many businesses in this area:
  - lacked sufficient senior management involvement in managing and monitoring the work;

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    - used procedures that contained inaccurate information about the relevant regulatory provisions
    - failed to document fully due diligence checks and the implementation of their results and
    - did not adequately review third-party payments for risks that they could be bribes or be used to pay them or operate as a means to launder money.
- This warning is not limited to fund managers. Insurers, banks, wealth managers and other operators exposed to money laundering are likely to be the subject of thematic reviews like this in the future.

Out and about

Dates for the diary are 18th, 19th and 24th February for the Infoline workshops that I am running in London on financial adviser fact-finding, giving suitable advice and complaint handling respectively.

Have a compliant winter

PS Many thanks to Chris Hamblin for his help in editing this.

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