

Labour and Employment Client Service Group

From Bryan Cave, London

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FSA Remuneration: Update

This briefing is primarily intended for small and medium financial services clients operating in the UK, who are regulated by the FSA.

The FSA's revised Remuneration Code (the "Code") took effect from 1 January 2011.

The deadline for compliance with the Code was 1 January 2011 for firms already in-scope of the Code, and 1 July 2011 for firms coming within the scope of the Code for the first time.

By now, most in-scope firms have undertaken the following:

- identified their "Remuneration Code Staff" and notified them of their status; and
- implemented new Code-compliant remuneration policies.

So, what next?

Remuneration Policy Statements

If they have not yet done so, now is the time for all in-scope entities to be drafting their Remuneration Policy Statements ("RPS"). Most organisations are doing using the FSA's suggested template questionnaire.

The RPS template published by the FSA sets out a series of questions which the FSA considers all in-scope firms should be able to answer and document, reflecting the steps each firm has taken to implement the Code.

The FSA's RPS template for small and medium in-scope firms (referred to as "tiers 3 and 4" firms by the FSA) can be found here: http://www.fsa.gov.uk/pubs/guidance/gc11_09_t3-4.doc.

Completing a RPS should be seen as a compulsory part of a firm's regulatory paper trail, though not necessarily in the FSA's suggested form (firms can adopt whatever form they feel appropriate, provided it covers the same information).

Most in-scope firms are adopting the FSA's template form, and we are recommending that our clients do so as well, for administrative convenience.

The deadline for completing an RPS is **1 September 2011**.

The RPS is not the same as a staff policy that may already have been issued internally. A lot of the information contained in the RPS will not be appropriate for publication to staff or to anyone outside management - it is only part of a firm's internal record-keeping process and should be kept on file in case the FSA questions the firm about its Code implementation.

Guaranteed Bonus Payments

The FSA's stance on guarantees is that they should only be given in exceptional circumstances, to buy out an existing bonus expectation, and the guarantee should be limited to the first year of new employment only.

The FSA has recently issued further guidance on guarantees, suggesting that a new employer should always match the terms of the old employer's bonus plan (which, on the face of it, would include any deferral and 'stock' arrangements). This has raised concerns in the industry because small to medium (i.e. "tiers" 3 and 4 entities) will not normally have the same bonus rules or structures as larger institutions, and will therefore not be able to meet this rule-matching requirement if they recruit from such an institution.

The FSA has also suggested that a new employer should verify bonus information with an old/current employer before offering to match the bonus. However, this will often not be possible given the usual confidentiality concerns around recruitment.

The FSA is expected to clarify its position on these two points in due course.

Disclosure of Code Staff Remuneration

For all in-scope entities, there is a new requirement of annual disclosure of aggregate (team) remuneration data for all Remuneration Code Staff - with the FSA's preferred form of disclosure being via a publicly-accessible website.

The FSA has, however, also published some further guidance on disclosure which contains both good news and bad news.

The good news is that the FSA appears to have accepted industry comments that UK data protection laws may prevent a firm from publishing remuneration data if to do so would inadvertently disclose the remuneration of individual staff members (because the pool of Code Staff is so small that aggregation offers no real privacy protection for individuals).

The question is - how small should the pool be, before disclosure becomes contrary to the UK's data protection legislation?

The emerging industry position seems to be there is no 'one size fits all' test, because it depends upon who the team members are (and how identifiable they are individually in the particular market) as well as the total number of individuals caught. By now, compliance officers will almost certainly be taking a lead on this, but HR advisers may be asked for their views.

The bad news is that the FSA is of the view that once a staff member is Code Staff, all of that individual's remuneration from the group must be publicly disclosed (even remuneration from

overseas group entities that are not otherwise in-scope). Whilst we hope the FSA will modify its view on this, we do not expect it to do so.

Please also note that the European Banking Authority (the new name for CEBS, the European umbrella financial services regulator to which the FSA reports) has today commenced a separate consultation on the manner in which disclosures must be made. The consultation period closes 2 September 2011.

Please get in contact if you would like to discuss any aspect of this briefing further, including the RPS process and whether there is scope to avoid disclosure obligations based on the UK's data protection laws.

To discuss this briefing further, please speak to your Bryan Cave contact, or to:

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