



Regulatory investigations and skilled persons reviews

Many firms consider skilled persons reviews mandated under s166 of FSMA to be time consuming, costly, intimidating and potentially a stepping stone into a regulatory enforcement process. However if managed effectively these reviews can prove to be a positive exercise in identifying and resolving areas for improvement in a collaborative way with FCA supervisors. Enforcement action following on from a skilled person report is actually quite uncommon.

Skilled Persons Panel

RPC has been appointed as one of only three law firms to the FCA’s Skilled Persons Panel for Lot 5: Conduct of Business. If we are appointed to act as skilled person for your firm we will deliver a focussed, rigorous and constructive review. We will deliver this through our ability, informed by our experience, to focus quickly on problem areas and we will ensure through regular engagement with you and the FCA that the scope is refined appropriately to reflect emerging findings and developments within the firm. There should be “no surprises”. The skilled person’s report will be presented to the firm and the regulator and there may be follow up remediation.

“Really has a sense of what works before the regulator.”

Legal 500

“Particularly adept in matters involving regulators and breaches of financial sanctions.”

Legal 500

Commissioned skilled persons reports

		2013/14	2014/15	2015/16	2016/17
LOTS	Conduct of business	17	17	16	25
	Other	35	35	26	21
Total		52	52	42	46

Source: Financial Conduct Authority

Independent investigations and reviews

Our appointment to the skilled persons panel complements the regulatory-focused investigations and reviews we already undertake on behalf of firms. We regularly help firms to tackle issues that the FCA has raised through a supervisory or thematic visit and we assist with pro-active remediation to address compliance or regulatory concerns. We also work with firms to assist them in identifying, assessing and addressing issues that can lead to s.166 reviews and other regulatory interventions.

“Shadow s.166s” and attestations

We can also provide assurance over your firm’s preparedness for a s.166 review or we can assist if you are “encouraged” by the FCA to undertake a voluntary review of your business (these are sometimes described as “shadow” S.166 reviews). This can be as part of a wider regulatory health check, or in isolation, and can include mock FCA interviews to assist key staff members.

The FCA may alternatively ask for an Attestation, usually from a senior manager, about the control effectiveness and standard of compliance across relevant areas of the business. We are also well placed to assist with responding to such a request.

Avoiding regulatory interventions or defending enforcement action

When firms identify systemic or recurring issues they are obliged to conduct root cause analysis. Firms find that by commissioning a third party to undertake an investigative review of their business they are able to demonstrate to the regulators that they are capable of managing the issues without intervention by the regulators, by showing “insight” and demonstrating “ownership”. In short firms are often given the “space” to get their house in order if they have taken proactive steps to identify issues and necessary remedial steps and they have notified the regulators in good time about their problems and their proposed solutions.

As a law firm with experience in this area we are able to assist firms to investigate parts of their business. Importantly we are able to conduct these reviews with the benefit of legal privilege; giving the commissioning firms the option to consider a privileged report that does not need to be disclosed to other parties, including regulators.

Remediation, past business reviews, customer contact and redress exercises

We also assist with remediation plans and implementation, past business reviews (PBRs) and customer contact and redress exercises. In our experience if the situation is proactively managed it is often possible to avoid some form of regulatory intervention even where a regulator has identified a problem or a risk has crystallised. If action is required by the firm of its own volition or to address issues identified by another skilled person, or by regulators, we advise on and implement remediation plans, or conduct appropriate and proportionate PBRs.

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