



Huntswood

“Skilled person reports are vital to identify when and where consumer detriment has occurred...”

FSA



Skilled person reports

Background

The skilled person report has its source in s166 of the Financial Services and Markets Act (FSMA). It is one of the many regulatory tools that the FSA has in its supervisory and enforcement toolkit. It requires a firm to engage a third party (the skilled person) to carry out a piece of work as scoped and requested by the FSA. The FSA will either appoint or approve the third party but the full cost of the report is borne by the firm.

A review of the draft finance bill shows that the s166 provision in FSMA will be strengthened in the new regulatory world. This, coupled with an increased appetite by the FSA to make greater use of the s166 provision, suggests that firms should now, more than ever, be aware of the s166 process and its implications. As experts in skilled person reports, we can enable your firm to learn from others in the industry how best to deal with such a review and report.

Uses for skilled person reports

The FSA can use the s166 provision either as a supervisory tool, or in the period after a firm has been referred to enforcement. There is guidance contained in chapter five of SUP within the FSA handbook regarding how and when the provision should be used. In summary, a skilled person report may be used:

- For diagnostic purposes to identify, assess and measure risks
- For monitoring purposes, to track the development of identified risks
- In the context of preventative action, to limit or reduce identified risks to prevent them from crystallising or increasing
- For remedial action to respond to risks when they have crystallised.

In general, s166 will be used when the FSA is unclear or uncomfortable with something it has discovered, or after a concern has been raised by a firm. The s166 provision can also be used when the FSA leaves meetings with senior management at a firm unconvinced by apparent regulatory rigour or when it requires an independent view of an issue and does not have the resources or expertise to conduct the work itself.

Possible outcomes

Skilled person reports have a number of possible outcomes:

- No further action: the report has provided sufficient comfort to the FSA that risks have not crystallised or areas for concern are not issues after all



- Further action needed by the firm: minor issues have been identified but have already been rectified by the firm or the FSA is satisfied the firm can resolve them
- **Further action needed to be overseen by the skilled person:** serious issues are identified, but the impact on customers is minor. The skilled person will be asked to oversee the actions and provide an opinion to the FSA regarding whether the situation will arise again
- **Significant issues have been identified and a referral to enforcement is needed:** this is the most serious outcome and is likely to result in a fine, remedial action and reputation damage.

Challenges for firms

Costs associated with skilled person reports can be high. For this reason choosing the right skilled person is an important first step for a firm. Firms should consider a range of factors including:

- The independence of the skilled person
- The potential conflict arising from a review by a firm's auditors
- The experience and expertise of the skilled person
- The level of resource available to conduct the review.

The need for a skilled person is normally associated with the identification of potential or crystallised risks within a firm. Notwithstanding this, there are steps a firm can take to ensure it achieves the best outcome from this regulatory intervention. The first step for a firm is to find someone with the experience and expertise to help them navigate the maze.

How Huntswood can help

Our consultants have experienced skilled person reports from all sides: internally at the FSA, internally at firms and externally as appointed skilled persons. Our team has the expertise and experience to guide your firm through the s166 process and to limit the need for fines, major intervention, and high costs.

In undertaking skilled person reports, Huntswood adopts the following approaches which it regards as good practice in this area:

- Clearly formatted reports linked to evidence
- Good communication with the FSA and the firm
- Good project management
- Delivery undertaken by high calibre staff.

We have extensive experience of skilled person reports and assisting firms in dialogue with the FSA. Through our engagement with clients and our on going dialogue with the FSA on regulatory hot topics, we are well placed to assist clients

Contact us

For more information on how Huntswood can assist you please contact:

Paul Scott

Director of Consulting
+44 (0)7809 391508
pscott@huntswood.com

Matt Hodey

Commercial Director
+44 (0)7584 587025
mhodey@huntswood.com

Head Office
Abbey Gardens, Abbey Street,
Reading,
Berkshire RG1 3BA
Telephone: 0844 875 0120
askhuntswood@huntswood.com
www.huntswood.com

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