



Front of mind Joanne Davis

Remote or hybrid working – the FCA’s working expectations for firms

Whilst many firms are looking to continue with remote and hybrid working due to the Covid-19 pandemic, the FCA have set out their expectation for firms to plan and meet their regulatory responsibilities.

These expectations may evolve in the future as more is understood about how firms intend to operate.

These expectations apply to:

- existing firms
- firms applying to be regulated
- firms proposing to submit further applications, such as a waiver, variation of permission, change of control etc as a waiver, variation of permission, change of control etc

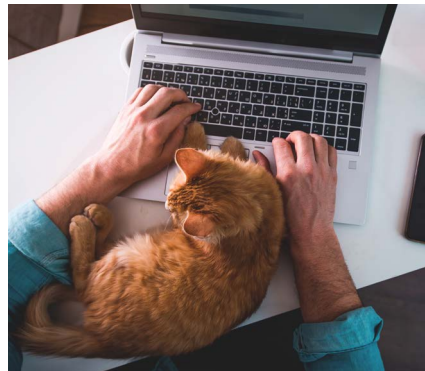
The FCA have been clear that International firms should continue to have an establishment or physical presence in the UK. More information can be found in their Handbook from February 2021 – “Our Approach to International Firms.”

Existing firms considering remote or hybrid working will be evaluated on a case-by-case basis.

Firms should consider the following:-

Firms should be able to prove that the lack of a centralised location or remote working does not or is unlikely to:

- Affect the firm’s location in the UK, or its ability to meet and continue to meet the threshold conditions for its regulated activities it has or will have permission for – or any equivalent requirements, where these do not apply.
- Prevent the FCA receiving information



about a firm.

- Reduce the accuracy of the Financial Services register for others if, for example, consumers are not able to contact the firm at the principal place of business shown on the FS Register.
- Affect the ability of the firm to oversee its functions including any outsourced functions.
- Cause detriment to consumers.
- Damage the integrity of the market.
- Increase the risk of financial crime.
- Reduce competition.

Planning

To ensure that remote or hybrid working does not pose risk or compromise a firm’s ability to comply with all the application rules, regulatory standards and obligations, the FCA expects firms to be able to prove they have conducted satisfactory planning in relation to a variety of specific issues, which the FCA do not consider to be exhaustive. The FCA lists as follows:

- That there is a plan in place, which has been reviewed before making any temporary arrangements permanent and is reviewed periodically

to identify new risks.

- There is appropriate governance and oversight by senior managers under the Senior Managers regime, and committees such as the Board, and by non-executive directors where applicable, and this governance is capable of being maintained.
- A firm can cascade policies and procedures to reduce any potential for financial crime arising from its working arrangements.
- An appropriate culture can be put in place and maintained in a remote working environment.
- Control functions such as risk, compliance and internal audit can carry out their functions unaffected, such as when listening to client calls or reviewing files.
- The nature, scale and complexity of its activities, or legislation, does not require the presence of an office location.
- It has the systems and controls, including the necessary IT functionality, to support the above factors being in place, and these systems are robust.
- It has considered any data, cyber and security risks, particularly as staff may transport confidential material and laptops more frequently in a hybrid arrangement.
- It has appropriate record keeping procedures in place.
- It can meet and continue to meet any specific regulatory requirements, such as call recordings, order and trade surveillance, and consumers being able to access services.
- The firm has considered the effect on staff, including wellbeing, training and diversity and inclusion matters.
- Where any staff will be working from abroad the firm has considered the operational and legal risks.

Firm’s engagement with the FCA and when to notify

Any material changes to how a firm intends to operate may need to be notified to the FCA to the first, consistent with Principle 11 of the FCA’s Principles of Business which requires firms to disclose anything of which the FCA would reasonably expect notice.

Firms should consider if their details on the FS Register need updating. For example, if your firm intends to use a private residential address as its principal place of business, it should

consider the effect on any individuals and get necessary approvals. This includes those living at the property who aren't employees.

The FCA should be able to access firms' sites, records and employees and its guidance emphasises the importance of firms being prepared and taking responsibility to ensure that employees understand the FCA's powers to visit any location where work is performed for regulatory purposes – including residential addresses.

Applications to be authorised or registered

For all the regulated activities which firms have or will have permission, they need to continue to meet the threshold conditions in Schedule 6 Part 1B of FSMA (or equivalent requirements, where these do not apply). The FCA recommended that firms see guidance on the threshold conditions in the COND sourcebook.

The application will need to cover in short;

- their arrangements for remote working;
- their consideration of the legal implications of such arrangements; how key functions will be performed and overseen, and where they will be based;
- the location of senior managers and their plans for oversight of the business;
- the duration of the arrangements in question (if they are not to be permanent); business continuity plans;
- the risk of information, such as home addresses, becoming out of date;
- systems and controls with regard to issues such as records and the location, security and access of physical documents; plans for communication with staff with regard to FCA visits to their homes; and plans for compliance reviews.

The above is an indicative and non-exhaustive list as the information needed will depend on business model and how the firm intends to operate.

In summary

In practice the expectations from the

FCA will have already been addressed by firms, such as their considerations for confidentiality, data protection and employment law issues arising from remote and hybrid working in line with their ongoing regulatory responsibilities, however the FCA's expectations emphasise firms need to engage in the detail. This is more in line with the legal, operational and practical aspects of remote and hybrid working. These expectations will encourage firms in not just demonstrating ongoing compliance, but also their practical implementation to a change in how they operate going forwards. ■

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Auxillias continues expansion

Auxillias has announced the recent hire of two experts which will enable the business to strengthen its legal, governance and compliance services offering as one solution to its clients.

Simon Brown is in as director of compliance and training and Carrie Stephenson joins as director of legal and governance.

Simon will shortly be launching Auxillias' compliance offering to work alongside its market-leading legal team by supporting the ongoing demand for compliance in the consumer credit and asset/motor finance sector. The team is seeing ongoing growth in instructions to support clients to help them respond to the ongoing compliance work off the back of the findings of the FCA's motor finance market study. Simon will also further develop Auxillias' training offering so more clients will be able to access high quality training materials via different channels and demonstrate the competence of their staff to the regulator.

Carrie will be leading Auxillias' commercial and governance functions. Her extensive knowledge and expertise will help ensure that clients are able

to balance both desired commercial outcomes and the need to integrate underlying principles of corporate governance and ESG into broader business strategy. As a corporate and commercial law specialist, she will also support clients on the key legal areas they navigate on a daily basis.

Simon has established a significant track record in delivering compliance solutions to consumer finance firms over the last twenty years and has worked in a head of compliance capacity at a number of companies including Non Standard Finance, Oakbrook Finance and Volkswagen Financial Services. He has extensive experience in working with firms to design, develop and enhance their compliance frameworks. Simon is an expert in the FCA's conduct rules for Consumer Credit as well as the methodology of running a successful compliance programme. With direct experience working on authorisations,

supervision and thematic reviews, he also develops and maintains effective relationships with the regulator on behalf of his clients.

Carrie has over ten years of experience operating as a member of the C-suite and as a legal, compliance and regulatory advisor to boards within the automotive, online retail and financial services sector. She joins Auxillias from Mitsubishi Motors UK, where she most recently held the role of general counsel and company secretary. Her role included head of legal and governance, data protection officer and chair of the risk and compliance committee with overall responsibility for the legal, compliance oversight, risk management and corporate governance functions. Previous roles include operating as a board trustee for a DB retirement benefits scheme and working for several national UK law firms specialising in providing general commercial advice and litigation. ■