

# Section 166 / Skilled Persons Reviews

## What is it?

Section 166 of the Financial Services & Markets Act 2000 gives the Financial Conduct or Prudential Regulatory Authorities (FCA & PRA) the power to commission an independent review into certain areas of a firm's activities that cause concern or where they deem that further analysis is required. These are commonly referred to as Skilled Person Reports, and they have become an important supervisory tool which is frequently utilised by the FCA, with over 50 reviews commissioned during 2015.

## What areas of the business can a Skilled Person review address?

The categories of Skilled Person Reports are referred to as Lots and cover the following areas:

- Lot 3 – Client Assets
- Lot 4 – Governance, Controls and Risk Management Framework
- Lot 5 – Conduct of Business
- Lot 6 – Data and IT Infrastructure
- Lot 7 – Financial Crime
- Lot 8 – Prudential (deposit takers and recognised clearing houses)
- Lot 9 – Prudential (insurance)
- Lot 10 – Prudential (investment firms, intermediaries and recognised investment exchanges)



“Should your firm become subject to a Skilled Person Review, Moore Stephens have the experience of undertaking reviews across each Skilled Persons Lot where we feature.”

## How is a Skilled Person appointed?

A Skilled Person can either be appointed by one of the UK regulators, or by the regulated firm. If appointed by the firm, then the appointment will require approval from the regulator. In both situations the regulator has ultimate control over the scope of the review, but the regulated firm is responsible for meeting the costs of all work undertaken by the Skilled Person and for meeting the requirements of the Supervision handbook, during the course of a Skilled Persons review.

## How do I appoint a Skilled Person?

The FCA & PRA have an approved panel of firms who they recognise as competent to undertake Skilled Person's reviews under each category/Lot above. The Skilled Persons Panels can be viewed via the regulators' website. Moore Stephens has been appointed to the Skilled Person Panel in respect of Lots 3, 4, 6, 7, 9 and Lot 10.

## How can I prevent a Skilled Person Review against my firm?

The important thing to remember is that the FCA won't just spring a Section 166 on your Firm, there will be a great deal of dialogue between the FCA and your Firm in respect of the issues identified. Often a Voluntary Requirements Notice (VREQ) is a pre-cursor to a Skilled Persons Review. A VREQ should be an indicator to firms that they should open a dialogue with a Skilled Person firm to prevent formal escalation and to seek advice about how to most effectively address the regulator's concerns. It is important that firms understand that the cost of a

Section 166 Report can be quite expensive. In 2013/2014 the FCA commissioned 50 Skilled Person Reviews which cost a total of £145.7 million.

### **Do the Regulators always instruct a Skilled Persons review?**

The regulators may also use other tools to seek an opinion on the adequacy of a firm's controls, or to test its compliance with regulatory expectations and sometimes instead of formally instructing that a Skilled Persons review take place they may ask a firm to undertake specific work, which may be referred to as a Shadow s166. Alternatively, they may ask for an Attestation, usually from a senior individual on the Board of a company about the control effectiveness and standard of compliance across the business. Where the Regulators instruct either of these courses of action, it is encouraged to seek professional advice and input.

### **How can Moore Stephens help?**

Should your firm become subject to a Skilled Person Review, Moore Stephens have the experience of undertaking reviews across each Skilled Persons Lot. We can also provide expertise and support when firms are being requested by the regulator to take voluntary action in respect of a firm's core business areas or critical support functions.

However, we all know that prevention is better than cure and therefore we would encourage firms to seek our assistance before regulatory action commences. Our Regulatory Consultancy Team have the knowledge, skill and expertise to provide ad-hoc, periodic, or regular reviews of the compliance and governance arrangements in place at your firm. Relevant services include:

- Skilled Person Reviews;
- Healthcheck Reviews;
- Past Business Reviews;
- Attestations;
- Risk Mitigation Programmes;
- Shadow Skilled Person Reviews;
- Remediation & Redress Projects;
- Ongoing Compliance Monitoring and Assistance; and
- Enforcement Advice (including Voluntary Requirements Notices [VREQs]).

If we can be of assistance, or if you would simply like a sounding-board about any concerns or regulatory contact that you may have received, then please contact Andrew Jacobs.

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