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The UK Financial Conduct Authority's continued focus on behavioural science and data-analytics

In September 2019, a speech made by Matthew Miner, deputy assistant attorney general in the U.S. Department of Justice's criminal division, announced that federal prosecutors will assess whether compliance officers make adequate use of data analytics in their reviews of companies that are under investigation (our alert with details of the speech is available [here](#)). This announcement comes at a time when both the UK and the US are looking at new and innovative ways to improve compliance. There is growing emphasis placed on the use of data analytics and behavioural science to achieve more effective regulation and enforcement, as well as encouraging cultural change in firms.

In the UK, the Financial Conduct Authority (the "FCA") continues to see poor firm culture as a root cause of conduct failures. In its 2019/2020 Business Plan, the FCA states that one of its key priorities is to "work with firms to promote and embed healthy culture, focusing on four drivers of behaviour – purpose, leadership, reward and managing people, and governance."¹

In order to bring about cultural transformation, the FCA is seeking to adapt its regulatory approach so as to incentivise positive cultural change within firms. Andrew Bailey, the Chief Executive of the FCA, has said that "the role of regulation in culture is not to attempt sweeping rules, but rather to use rules and supervision to create the right incentives and to provide tools to diagnose the key characteristics."²

In 2018, the FCA published the Transforming Culture Discussion Paper. In this paper, the FCA discussed what a healthy culture might look like, the role of regulation and regulators, how firms might go beyond incentives and how behaviour could be changed for the better. The key actionable takeaways for financial services include:

- using behavioural science to guide incentives and cultural change;
- looking beyond the role of leadership in effecting change;
- applying strategic focus to the continuous process for adapting culture;
- fostering environments of trust to encourage openness and learning; and
- applying a systems perspective in assessing both internal culture and external influencers.³

The FCA's focus on connecting behaviour with compliance is not new. Back in 2016 the FCA published an occasional paper titled "Behaviour and Compliance in Organisations". The paper suggested that improving the "choice architecture" within firms could supplement the regulators use of detection and punishment to ensure compliance. This would involve changing the situational factors that influence people's choices, thereby increasing the likelihood that their eventual decision would be to comply. An example of this would be to have employees abide by moral codes, and subsequently use reminders to ensure the salience of this commitment.⁴

¹ <https://www.fca.org.uk/publication/business-plans/business-plan-2019-20.pdf>.

² <https://www.fca.org.uk/news/speeches/transforming-culture-financial-services>.

³ <https://www.fca.org.uk/publication/discussion/dp18-02.pdf>.

⁴ <https://www.fca.org.uk/publication/occasional-papers/op16-24.pdf>.

The FCA's continued emphasis on improving culture appears to be filtering through to financial organisations. In September 2019, following the largest cultural survey conducted in the insurance industry, Lloyds of London announced that it was going to introduce a gender balance plan, a new standard of business conduct for employees, a 'cultural dashboard' to monitor progress against healthy culture indicators and an independent advisory group to bring about cultural transformation.

With 84% of respondents to a Ropes & Gray survey (available [here](#)) agreeing that a behavioural approach to compliance would be helpful or very helpful, there appears to be significant support for behavioural science strategies to be introduced that go beyond reliance on policies, procedures and other traditional compliance methods. It is helpful to know that the regulators are also considering a more innovative approach and that behavioural science could have a strategic role to play.

UPCOMING PODCAST SERIES

In December, [Amanda Raad](#) and [Rosemarie Paul](#) will be releasing a podcast series featuring **Richard Bistrong** of Front-Line Anti-Bribery LLC to discuss his personal experience and journey from violating the FCPA to becoming an anti-bribery consultant, with a focus on the role behavioral science plays in compliance.