

Skilled Persons Reports (Section 166 Reports)

Introduction

Skilled Persons Reports (SPRs) are also known as Section 166 Reports. The name comes from that part of the Financial Services and Markets Act, 2000 which gives the FSA the authority to request firms to seek specialist assistance.

Skilled Persons Reports are most often required as the result of an FSA visit to a firm. They are used to find out what further regulatory action may be needed and to see if there has been a breach of a rule or any failure of the firm's systems and controls; particularly where customer detriment is suspected.

The FSA may appoint a Skilled Person to produce a Report on a regulated firm

- ☐ To identify, assess and measure the risks it has identified itself
- ☐ To report and monitor the identified risks
- ☐ To suggest preventative action
- ☐ To propose any remedial action including any customer redress

The Reports may be part of a FSA disciplinary process or enforcement action. A firm will have had a FSA visit to review its conduct in matters such as quality of advice and treating customers fairly. This is followed by a Risk Assessment Letter from the FSA setting out any concerns. One outcome is that the firm may be required to carry out an independent review requiring the appointment of a Skilled Person.

As part of the FSA process it is important that the firm is seen

- ☐ To have a co-operative approach
- ☐ To have systems and records which provide the required information
- ☐ To be willing to provide the Skilled Persons Report
- ☐ To have the knowledge or expertise to work with the Skilled Person to provide the report

How we can help

The FSA will need to outsource this work to consultants who are employed by the regulated firm to act on behalf of the FSA during the investigation. Telos are specialist consultants for mortgage and general insurance and uniquely consists of professionals who have occupied senior management, advisory and regulatory positions within these sectors.

The Telos Compliance service is able to provide the reassurance that any Report is carried out not only by a person who understands mortgages and general insurance but by someone who has

spent years working in that sector. This is critically important where a detailed understanding of mortgage and general insurance products is needed to assess any customer detriment and redress.

Telos has developed several mortgage customer redress calculations to assist in the process.

FSA policy for Skilled Persons Reports

The detailed rules are set out in the FSA Handbook and SUP 5.5.1 describes the required contractual arrangements between the firm and the Skilled Person. The firm will be asked to nominate a Skilled Person subject to the conditions in the FSA's enforcement letter.

These are some of the contractual requirements of the Skilled Person

- ☐ To be qualified and experienced
- ☐ To be insured
- ☐ To co-operate and communicate
- ☐ To notify any rule contraventions
- ☐ To supply materially significant information
- ☐ To notify any risk of the firm ceasing to be a going concern
- ☐ To agree an exchange of confidential information
- ☐ To have a co-operative approach

At all times the firm must provide reasonable assistance to the Skilled Person.

During the process the FSA has other powers it could seek to impose under FSMA, sections 165, 167 and 168. These allow the FSA to seek information or to carry out further general or specific investigations. This is likely to happen where problems are identified which were not part of the original FSA risk concerns. Such work may be outsourced by the FSA to the Skilled Person.

The nominated Skilled Person has to be approved by the FSA and is further required to provide

- ☐ Interim reports
- ☐ Copies of source data, documents and working papers
- ☐ Copies of draft reports given to the firm
- ☐ Detailed planning and progress reports
- ☐ And where a problem has been identified the Skilled Person will be asked to propose the amount of customer redress

Cost

The cost of a Section 166 Report is paid by the firm to the Skilled Person as the FSA will have decided that a firm will benefit from this Report having explored other courses of action. The FSA will have agreed with the firm the scope of the Report, its likely cost and the identity of the Skilled Person. Other FSMA reports are paid for by the FSA.

Outcomes of the Report

These are likely to fall into two categories. Firstly there is likely to be remedial action to be carried out by the firm to its systems and controls which will reduce its exposure to risk. Secondly there may be a requirement for the Skilled Person to consider customer detriment, to agree redress and to communicate with the firm's customers.

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