

## REGULATORY INTELLIGENCE

## Hybrid working: new, not risk-free

Published 15-Oct-2021 by  
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Mixing the benefits of dispersed working with the cohesion and oversight of the office to form a hybrid has clear appeal. Many EU and UK firms are adopting a working week split between the office and home. As standards bodies and regulators have warned recently, however, the success of remote working during the pandemic may lead firms to forget that mass hybrid working is a new practice which is untested in ordinary business conditions.

"It's important any form of remote or hybrid working adopted should not risk or compromise the firm's ability to follow all rules, regulatory standards and obligations, or lead to a failure to meet them," the UK Financial Conduct Authority (FCA) said recently.

That statement was made in an October 11, 2021 [FCA notice](#) setting out the regulator's expectations of firms embarking on permanent remote or hybrid working, as it expected many to do. Within the previous fortnight, the Fixed Income, Currencies and Commodities Markets Standards Board (FSMB) and the Financial Services Culture Board (FSCB), previously the Banking Standards Board, had both issued reports on different aspects of the possible risks and downsides of hybrid working.

### Operational conduct risks

The FCA's expectations were grouped under two main headings:

- checking the impact of decentralised working; and
- conducting planning.

The FCA said firms should be able to prove that remote working is unlikely to affect their ability to meet the threshold conditions in [COND 2](#) of its Handbook, reduce the accuracy of the [financial services register](#) or prevent the FCA from receiving information. Firms must also be able to show that their new model does not affect oversight, harm consumers or market integrity, increase financial crime or reduce competition.

The planning expectations fleshed out the impact expectations with "an indicative and non-exhaustive" list of areas of concern. Before making temporary working arrangements permanent, firms must prove they have a plan that is reviewed periodically to identify new risks. Areas spotlighted by the FCA included maintaining senior managerial oversight, adequate and robust systems and controls, meeting regulatory monitoring requirements, checks on hybrid working's heightened data, cyber and security risks, and the ability to cascade anti-financial crime policies and procedures to remote workers.

"Working in a hybrid environment does not excuse poor practices and is not the same as the 'make do' approach taken at the start of the pandemic," said James Kaufmann, a partner at the law firm Howard Kennedy. "Firms, and their personnel, have to ensure proactively that all necessary preventative action is taken to mitigate any risks a hybrid model might present. All firms should have already carried out risk assessments, scoped out appropriate mitigations and communicated this clearly with all staff."

The FMSB's earlier [spotlight review](#) on future risk management for hybrid working in FICC markets, described in detail on Regulatory Intelligence [here](#), provided a more extensive and detailed list of potential conduct risks and their mitigants than the FCA document. The list of concerns in the FCA's expectations notice is non-exhaustive and the FCA says it will evolve when it understands more about how firms intend to operate, and some non-FICC firms may find the FMSB review worth reading.

The FMSB conducted the review because, although front-office FICC roles may revert to being predominantly office-based, there was a desire among firms to allow staff some flexibility to work from remote locations longer term, an FMSB spokesperson said.

"The extent of this flexibility will vary by firm and role, and the intention of the spotlight review is not to prescribe what such a model will or should look like," the spokesperson said. "It is to help support the adoption of hybrid working models in FICC markets in a controlled way, through identifying key conduct risks associated with such models and considering steps that firms can take to mitigate these risks."

### Cultural risks: diversity, inclusion and employee wellbeing

As well as operational conduct concerns, both the FCA and the FMSB raised the potentially detrimental impact that hybrid working might have on matters feeding into firms' cultures, such as training, staff wellbeing, diversity and inclusion. This was the aspect that the FSCB's recent "[Future of Workplaces](#)" study considered in depth. It was compiled using quantitative data from the FSCB's 2020 survey of its members' employees and qualitative data from a separate survey conducted this summer.



A common feature of the culture-related risks which accompany hybrid working is that it can become more difficult to maintain, or create for new hires, a bond between a firm and its employees once firms move away from the "everyone in the office" model. As the FSCB report observed, there is a difference between connectedness and collaboration, and the latter can suffer, especially with regards to such matters as innovation and developing junior employees. It also found that keeping an eye on employee wellbeing can be harder.

"Some line managers felt that without in-person interactions they couldn't accurately assess their team-members' wellbeing and have open conversations," said Jenny Robinson, senior behavioural scientist at the FSCB. "This was particularly called out in relation to the types of technology — like video calls — being used, and not being able to 'see' people who might be struggling with their mental health and choosing not to be visible or to disengage from difficult conversations."

Hybrid working's bonding problem is not as simple as those predominantly working at home feeling overlooked, or office staff feeling put upon, although those are factors. A team member in the office can feel isolated and a homeworker feel overburdened with demands because people who need to interact personally many not be in the office at the same time.

"The choices of some team members, for example, to work from home, can impact on the fulfilment of the needs of others for, say, social contact or learning opportunities," Robinson said. "There were also some, but not many, concerns voiced about how individuals were building their networks."

The FCA expects firms to foster "speak-up" cultures that encourage whistle-blowing and empower employees from diversity groups to raise concerns. In a [speech](#) last month, Sheldon Mills, the FCA's executive director for consumers and competition, said hybrid working could be a lasting and beneficial legacy of the pandemic but carried the danger of reducing avenues for speaking up and inclusion, a point the FSCB report also made.

Firms should think how to adapt channels so they remain open in the hybrid world, Robinson said.

### **Difficult balance**

The potential problems associated with hybrid working need not be insuperable. The FSCB report, however, contained troubling signs that remote working was effective during the pandemic because line managers handled considerable extra responsibilities. Their working hours increased, and workloads — particularly in commercial banking — were "unsustainable". Expecting line managers to make permanent hybrid working a success just because they coped during the emergency may be building a significant weakness into the new system. Overburdening them could also damage perceptions of a firm's culture.

"We were struck by how hard line manager respondents were trying to balance the needs of the organisation and their teams," Robinson said. "It was this group who talked about how hard it is to achieve this balance when there is little flexibility in workloads, or where circumstances were making existing workloads harder to fulfil. Employees' perceptions of culture can be influenced by the difficult balance line managers have to strike between workload and support. Line managers are people too, and need sufficient flexibility from senior leaders."

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Produced by Thomson Reuters Accelus Regulatory Intelligence

15-Oct-2021



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