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Firms' Surveillance Use Risks Squashing Positive Compliance Behaviour, Culture Change Gains

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REGULATORY INTELLIGENCE

ANALYSIS: Firms' surveillance use risks squashing positive compliance behaviour, culture change gains

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Firms' pervasive use of surveillance risks discouraging or squashing the positive behaviours that will ultimately drive improved compliance outcomes and successful culture transformation programmes, regulatory specialists said. Firms have invested billions in surveillance to monitor everything from market abuse and customer interactions, to communications and employee productivity.

Surveillance, driven partly by regulatory requirements, has "gone crazy" and can encourage "interesting behaviour" said Christian Hunt, founder of Human Risk and a former regulator. Hunt advocates for a behavioural science-led approach to compliance where firms identify and foster the kinds of behaviour they want and give people a sense of empowerment.

"Firms should be asking how they can get the best out of people. How do we promote doing the right thing?" he said.

Some forward-thinking regtechs are seeking to harness behavioural science techniques to promote and reinforce good conduct and culture rather than take a solely enforcement-led approach. It is a big departure from firms mainly using technology to detect bad behaviour and punish it. That is culture change by enforcement, rather than encouragement.

"If a technology is used to influence behaviour it can have a pretty dramatic effect on compliance, as you are building your systems around that reinforcement of the behaviours that you expect from your employees. That's why cultures are built. Why do companies build cultures and then try to reinforce them? They put up banners and [have their] mission and vision in place and constantly talk about it. Where they constantly talk about it and follow it, that's the culture they're building," said Evgeny Likhoded, chief executive at London-based ClauseMatch, a policy management technology company in London.

Bank employee feedback yields mixed culture picture

Recent UK Banking Standards Board [survey results](#) showed culture at banks improved during the COVID-19 pandemic. It attributed that improvement to banks doing more to support, trust and listen to their employees. Banks should aim to capitalise on the boost which an increase in listening, support and trust has brought to culture, rather than jeopardising gains with surveillance use.

"The problem with compliance is it is all about enforcement and punishment — or negative reinforcement. If you change the culture of a firm, you've got to look at positive reinforcement. The problem in financial services is we talk about rewards and incentives. It should be called rewards and recognition. For most knowledge workers, the best reward they can get isn't actually money. It's recognition from a peer," said John Byrne, chief executive at Corlytics, a regulatory analytics company in Dublin.

UK bank employees did not rate organisations highly across the board, however. Only 38% of BSB survey participants believed they were offered appropriate support to deal with work-related stress, and just 44% felt they were offered appropriate support for caring responsibilities. Only 33% reported feeling appropriately supported in terms of financial wellbeing.

The BSB survey, conducted in September 2020, compiled views from some 73,000 UK banking employees, but its overall positive outlook contrasts with other industry surveys conducted in 2020. Helix Resilience's July 2020 [survey](#) found 86% of 352 London-based financial services employees reported that working from home had taken a serious mental health toll.

Peakon, a people analytics and employee engagement company based in London, [found in May 2020](#) that financial services employees felt less positive about their employers' understanding of how the pandemic would affect their productivity, and were discouraged that employers assumed they would be less productive.

"It's then been exacerbated by employers installing monitoring solutions, which explicitly says, 'we don't trust you'," Phil Chambers, chief executive at Peakon, told Regulatory Intelligence at the time.

Peakon, recently acquired by human resources tech company Workday, aims to help employers gather better employee feedback and improve engagement. Used by several financial services firms, Peakon seeks to improve that "listening" metric highlighted in the BSB survey by engaging with employees more frequently with questions designed to produce meaningful and actionable feedback.

Heightened surveillance reported during pandemic

Sales of worker surveillance software (negative reinforcement) to all kinds of companies more than tripled at the start of worldwide working-from-home policies aimed at curbing the spread of coronavirus, said J.S. Nelson, associate law professor at Villanova



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University and senior fellow, Carol and Lawrence Zicklin Centre for Business Ethics Research at the Wharton School, both in Philadelphia, Pa.

"We know there was an initial management response to feel out-of-control of the situation. Out-of-control for all kinds of reasons — economic, whether their businesses would survive. But part of that feeling of not being in control was not having their workers report to a physical office and being [un]able to surveil them the way they had ... in the past," Nelson said on a [recent Human Risk podcast](#).

To take back control, many companies, including financial institutions, invested further in technology to track employees' every keystroke, see which files and contacts they accessed as well as how long they spent in applications. That level of surveillance will harm firms' culture and compliance efforts, however.

"If you want to have a culture and a company that's focused on doing the right thing, you've got to recognise great performance and say, 'you went out of your way to make sure we were compliant with AML in whatever ways possible'. The other way of seeing it is, 'there is going to be surveillance on this; I'm not doing something that's not in my job spec. I know it's the right thing to do, but the surveillance system could get confused. So, I'm not going to do it'," Byrne said.

Sinister legacy

New academic work has [uncovered](#) the 18th century roots of employee surveillance and productivity measures in the U.S. and Caribbean plantations worked by slaves, Nelson said. Firms need to move away from such [draconian practices](#), she said, but instead employers have ramped surveillance to collect more personal data. Some of it is intensely personal and irrelevant to the jobs they are employed to do. It promotes fear among the workforce, drives bad behaviour offline and discourages positive behaviour.

"The other thing surveillance will do is drive compliant behaviour. Th[is] behaviour is what they call discretionary behaviour where, at your discretion, you decide to do something fantastic. Compliant behaviour is where employees think, 'this is what the book says, and I'm going to stick to doing that. If there's an opportunity to do something better, I will absolutely not do that'," Byrne said.

Tech to nudge good compliance behaviour, reduce friction

Behavioural science has become a hot topic at some regulators and a few banks. There remains considerable resistance to the idea that certain biases should be challenged or that ingrained types of behaviour are impeding change. Even fewer firms are exploring technology options for the sole purpose of nudging employees toward positive behaviour by making it easier to be compliant by reducing friction.

Firms could use technology to empower employees to be active (discretionary), make it easier to comply with regulations and reinforce messages about the kind of culture they want to achieve. One way is to reduce friction in compliance. An example of technology designed to do that is ClauseMatch's Policy Portal, which centralises firms' policies and updates in a single up-to-date version accessible to employees. Inconsistent, outdated and conflicting policies are a long-standing barrier to good compliance outcomes. It is difficult for employees to be compliant if they are unsure about the rules and company policy. It is a particular challenge for large firms operating internationally that may have tens of thousands of policies.

"[Policy Portal] drives the harmonisation and the communication of what is the actual true policy within the organisation. The behavioural part, now, is quite simple, because we track who has accessed a policy, read it, attested to it," Likhoded said.

Policy Portal aims to improve policy understanding across firms to reduce confusion that can lead to non-compliance. More behavioural science-influenced processes — potentially nudging certain standards of behaviour — will be built into future Policy Portal iterations, Likhoded said.

Firms should not use tech, surveillance or otherwise, as a silver bullet for compliance and culture, says Hunt. They should look at other sources of friction for employees, such as removing irrelevant training and tailoring human resources activities to employees' job specifications in a way that shows they are understood and valued by the firm.

"If the business expects compliance to behave in a certain way--be boring, be bureaucratic, be tedious, be obstructive--they will respond in kind. Small steps from compliance--do things to make training more interesting, do things to show you care--because expectations are so low for the business prevention unit, even the slightest effort to be more empathetic will be well received. Then it becomes a cyclical thing, they will then help you to deliver. But compliance has got to take those first steps," Hunt said.

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