# Achieving and Evidencing Genuine Employee Compliance:

# The Challenges Facing Modern Compliance Officers

## Abstract

*This paper explores some of the critical drivers behind the failure of many regulated firms to ensure that their employees genuinely learn and retain the essential training material required for compliance ("Required Learning"). In other words, what are the necessary factors needed to ensure your employees are genuinely compliant? And how do you manage the associated risks and mandatory regulatory evidence with the same thoroughness and consistency?*

## Increasing Regulation & Complexity

To a large extent, irrespective of the regulated market in which you operate, the regulated landscape in its entirety is increasingly becoming more complex and the pressure now facing both Compliance Officers and employees is greater than ever before. Not only does it seem like every year more and more regulation arrives on the scene, it also appears that the regulators are becoming more demanding as the burden of proof becomes harder to fulfil.

The solution? With employees representing potentially the largest asset a company can have, compliant employees well-versed in the regulatory framework and mandatory material is essential to full compliance as well as increased productivity and output. However, the truth of the matter is that employee knowledge and regulatory compliance in most regulated markets are astonishingly low and companies are failing to address the root of this issue.

## Often Ignored First Principle

An employee cannot be expected to act on what they have been trained but *failed* to learn and retain. Whilst the obviousness of this statement is apparent, there is value to be had in exploring it in more detail.

It is unreasonable for an employer to expect any employee to be compliant with a process or procedure if they have failed to learn what training they received in this respect. While again this statement is obvious, how then is it that the vast majority of regulated firms invest next to nothing in ensuring that employees actually *learn* what they are trained?

It is apparent to most that the genuine learning value derived from the consumption of the annual 'required learning' module(s) is questionable. In fact, privately, many compliance professionals will admit that this annual sheep-dip approach simply does not deliver the required learning outcomes.

Evidence gathered by Elephants don't forget from over 50 million individual knowledge assessments of numerous regulated firms, indicates that the average level of knowledge in relation to the 'required learning,' of the employee is just 52 per cent. In other words, half of the questions posed are answered incorrectly. While distribution of knowledge is a relevant factor in this analysis, the distribution is worryingly consistent across all regulated markets with few employees scoring above 65 per cent and many scoring less than 50 per cent.

Thus, the cornerstone premise of this paper is that employees represent a huge compliance risk and that despite the obvious connection between needing to learn and the reduction of that risk - few employers effectively pursue a strategy that addresses this shortcoming.

### The Burden of Proof

It would appear that regulators from all markets are increasing the burden of proof and demanding better quality evidence of competency and continued competency. 'Swotting,' or cramming to pass a test is thus completely pointless if your genuine objective is to demonstrate a *continuously* competent workforce.

It is relatively easy for any firm, irrespective of size, to demonstrate that every employee has received training, provided, of course, that the firm in question keeps detailed and up-to-date records and ensures participation in mandatory training is indeed mandatory. Our experience has shown us that firms that use completion of training modules as a gateway to qualification for an annual bonus, variable reward, etc. have no problems in this respect. In order words, many firms use incentives, financial or otherwise to ensure that mandatory training is completed within the required time frame

Evidence of training delivered is therefore not a challenge except, perhaps, for the most poorly managed and administered firms. Moreover, buying in specialist content from one of the many reputable firms also ensures that employees receive the *correct, high-quality* training.

However, by far the greatest challenge facing every regulated firm is the evidencing of *continued competency,* especially if those firms approach training in a sheep-dip style manner. It simply does not matter how good the training material is—all the evidence (55 million interventions last year alone in our case) points to the fact that employees
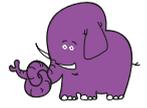
experience significant and concerning levels of knowledge fade in the days and weeks following the consumption of training material. The generally accepted data point, established by German psychologist Hermann Ebbinghaus over 100 years ago, states that 60 per cent of the knowledge acquired fades within the first 24 hours!

Quite frankly, providing evidence, using traditional methods, that training has been genuinely learned and that employees are competent and remain so, is an administrative nightmare. Indeed, we would go further and state what where we have deployed our AI on behalf of a client using this traditional strategy, we have proven beyond any doubt that their previous method was hugely ineffective.

Some firms will evidence regular call-listening, for example, as an effective strategy to demonstrate retained employee competency. However, the relative volume of calls reviewed versus the volume of calls fielded in a given period (e.g. two reviewed calls per month out of an agent's handling of 500 calls in that specific timeframe) simply does not work. Moreover, often the basis of the assessment is too narrow, simplistic and is not reflective of what the particular act requires.

Indeed, our deployment of AI on behalf of clients who have previously pursued the above strategy or one similar has resulted in employees initially continuing to present with an average competency of half of what is required. Furthermore, such a strategy costs a substantial amount of money, is a tedious task for the Quality Assurance (QA) team who inevitably become fatigued and thus further susceptible to making mistakes, all in a way that Artificial Intelligence does not.

Perhaps the most telling question one could ask a Compliance Executive is "do you think your employees genuinely know what you trained them 30 days after the training was consumed?" Without a doubt, the large majority would reply in the negative and thus, in these circumstances, proving genuine compliance is impossible.

## Learning Boring Material
Whilst every employee in a regulated firm should recognise the fact that compliance is not optional and is, in fact, critically important to their career and the success of their employer, the stark reality is that the content is usually dense, boring and highly unlikely to stimulate the genuine interest of your employees.

There is a large body of evidence that reinforces the fact that humans are particularly ineffective at learning and retaining information that they find dull or uninteresting. Indeed, you do not have to be a learning professional to know that the less the subject matter

resonates with the learner, the less likely they are to retain it without a considerable degree of assistance.

Moreover, this dilemma is exacerbated by the influx of Millennial and Gen Z workers whose immersion since childhood or even birth, in new ways of absorbing and learning content, presents a genuine teaching challenge to every employer. Without a doubt, the traditional ways of learning resonate less and less with an audience that has been raised almost entirely in the digital age and has become conditioned to a life that is an entirely personalised experience.

Undoubtedly, L&D has a role to play in making the training material as interesting as possible and to present in in such a format so that it encourages genuine participation amongst staff. However, it is dangerous to assume that by doing so you solve the larger issue.

## Compliance Fatigue

Irrespective of when the employee was born and their generation, increasingly employees are complaining of what has become known as 'compliance fatigue.' Quite simply, all of the above weighs increasingly heavily on the employee to such an extent that they become genuinely fatigued.

Ultimately, they 'check out,' or leave the industry entirely because they simply become too exhausted by the monotony and personally irrelevant emphasis on compliance. As the sheer volume and complexity of compliance continues to grow, so too will the increase in employee compliance fatigue.

Compliance professionals, thus, have no choice but to change and address these issues or they will inevitably face certain failures to comply.

## The Case for Artificial Intelligence

Ultimately, this comes down to how the brain functions and the fact that the brain, despite our learning preferences, does not learn like employers would like it to. Repetition is a critical component of learning and repetition is, in and of itself boring, time consuming and thus, expensive. Therefore, it rarely happens and certainly not to the extent that it is required to learn content, not to mention the fact that many employers and employees are negatively pre-disposed towards it.

Augmented Intelligence (a form of AI), used in conjunction with traditional training practices, holds the key to solving *all* of the above issues. The AI in our application, Clever Nelly, works out what each individual employee knows and does not know and uses the
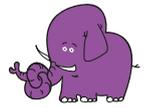
optimal mix of spaced learning, repetition and self-testing to guarantee that employees learn and retain what you need them to in order to ensure optimal compliance. Best of all, Nelly uses a micro-time footprint to do so and keeps perfect records to provide the very highest standard of evidence, accepted by every regulator.