



Senior Managers and Certification Regime

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Branko Ltd

FCA compliance consultants

- * BIBA/AMII Compliance Manual
- * Engaging Events
- * Tailored Solutions



Learning outcomes...

By the end of this briefing you will have gained an insight into:-

1. Why the need for change
2. SM&CR requirements
3. Certification requirements
4. Fit and Proper requirements
5. Conduct rules
6. What happens at conversion



Bear in mind...

- Today is not formal 'advice'
- It is an overview using my own words, those of the FCA and those of other professional services firms
- It should, at least, get you thinking!





SM&CR is coming.
Step up and lead the change for your business.

**SMCR is a catalyst for change
– an opportunity to establish
healthy cultures and effective
governance in firms by
encouraging greater individual
accountability and setting a
new standard of personal
conduct**

Huge interest!

- 1,800 firms watched the live webinar
- 260 questions were submitted
- 47,000 firms affected

Core firms

The following is a summary of the relevant checklists and the SM&CR Guide for solo-regulated firms (PDF), it is not intended to be exhaustive.

Identify:

- Who will be a Senior Manager at your firm.
- Whether you need to change any existing approvals, or add new ones, ahead of conversion
- Whether you firm has a Chair. If so, determine whether they are Executive or Non-Executive. If they are a Non-Executive Chair of a governing body you will need to submit a Form K to convert that individual from CF2 (Non-Executive Director) to SMF9 (Chair) under the new regime. Executive Chairs will need to apply for the SMF9 function using Form A.

Make sure that:

- You understand what you need to do, and which forms are required, to amend your approvals where appropriate.
- You know which of your current Approved Persons will no longer be approved (ie which Approved Persons Regime approvals will lapse).
- Each of your firm's Senior Managers has a Statement of Responsibilities.
- All the Prescribed Responsibilities applicable to your firm have been allocated to the relevant Senior Manager and clearly included in their Statement of Responsibilities.

If you have an Approved Persons Regime application in progress - that we haven't processed before SM&CR begins - you will need to submit a Statement of Responsibilities for your application by 16 December 2019. You should do this by sending a paper Statement of Responsibilities to your Case Officer (this form will be available in due course).



Preparing for the Senior Managers & Certification Regime

Overview

Title: FCA webinar: Preparing for the Senior Managers & Certification Regime

Duration: 59 minutes

Available On Demand

Register Now

[Already Registered?](#)

First Name*

Last Name*

Email*

Job Title/Role*

Organisation*

Firm Type*

Summary

We held a live webinar on 3 June 2019 on how firms should prepare for the Senior Managers & Certification Regime (SM&CR) which comes into effect on 9 December 2019. The SM&CR will replace the Approved Persons Regime for firms that are solely regulated by us.

We explain why the SM&CR is important and how firms should plan for and implement the regime. This was followed by a Q&A session with the speaker panel answering live viewer questions.

Speakers:

- David Blunt, Head of Conduct Specialists, FCA
- Anisha Acharya, Contact Centre, FCA
- Peter Ewing, SM&CR, FCA
- Alex Smith, Culture and Governance, FCA
- Robert Sinclair, Association of Mortgage Intermediaries

This webinar is an opportunity to learn more about the SM&CR, help you to prepare and ensure your firm is ready for the regime.

The SM&CR already applies to banks and insurers, and from December 2019 will apply to almost all the firms we regulate. The aim of SM&CR is to promote healthy cultures and effective governance in firms by encouraging greater individual accountability and establishing a new standard of

Inside FCA Podcast: Interview with Jonathan Davidson and Jayne-Anne Gadhia on Culture and SMCR


Type: Audio | File size: 30.31 MB | File added: 05/08/2019

   
Print page Share page

Listen to Executive Director of Supervision for Retail and Authorisations, Jonathan Davidson, and guest Jayne-Anne Gadhia talk to Ozge Ibrahim about the importance of achieving a healthy culture in financial services, and embedding the Senior Managers and Certification Regime (SMCR).



Inside FCA Podcast:
Interview with Jonathan
Davidson and Jayne-Anne
Gadhia on Culture and
SMCR

Related content 
Senior Managers and
Certification Regime

Inside FCA Podcast: Explaining Certification and Regulatory References for SM&CR


Type: Audio | File size: 19.67 MB | File added: 03/09/2019

   
Print page Share page

In this first of 2 bite-sized podcasts, FCA Head of Conduct Specialist in Supervision, David Blunt, explains the importance and relevance of certification and regulatory references, with practical tips for solo regulated firms converting to the SM&CR.



Inside FCA Podcast:
Explaining Certification
and Regulatory
References for SM&CR

Related content 
Inside FCA Podcast: The
Importance of Conduct Rules for
SM&CR

Some common misconceptions



SM&CR is owned by
Compliance

Minimal crossover and
linkage with other systems
and processes

SM&CR is just an iteration
of the Approved Person's
Regime

No involvement needed
from other business
functions

SM&CR does not involve
any sensitivities for
individuals

1. Introduction

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Changing Banking for Good - Parliamentary Commission on Banking Standards Contents

6 A new framework for individuals

The contribution of governance

537. The previous chapter considered the extent to which the problems of standards and culture in banks can be tackled through the improved operation of the market. This chapter, and the subsequent two, considers the degree to which those problems can be addressed through changes to the governance of banks, supported where necessary, by oversight. This chapter considers the current and possible future frameworks for individuals working within banks. Chapter 7 examines the formal collective structures within banks for their governance and control, and the more informal elements in play in helping to determine standards and culture in banks. Chapter 8 considers remuneration.

Taking individual responsibility

538. Chapter 3 examined the extent to which the underlying problems of standards and culture could be attributed to the structures and incentives affecting the behaviour of individuals. A common thread of that analysis was a pervasive sense, reinforced by much of the evidence, that a culture exists in banking which diminishes a sense of personal responsibility. The Commission expressed concern, in particular, about the "accountability firewall" which seems to have developed to prevent those in senior positions having a strong sense of personal engagement with and responsibility for failings and misconduct within their line of management. The collective nature of official decision-making has also served to insulate individuals from a sense of individual responsibility. We also noted that the ties of professional identity, which can serve to inculcate a sense of pride and personal responsibility,

“An awful lot of people in banks are not part of the Approved Persons Regime and so do not fall subject to its sanctions. For example, the people who submit LIBOR data and the people who are trading on the back of LIBOR data would not have been part of the Approved Persons Regime. That is why we said that one of the first things that we think needs to be looked at is expanding the regime to cover the sort of people you would expect to be covered by it and make it more public and visible.”

- “While the Commission’s recommendations relate to standards in the banking sector, they consider it plausible that the weaknesses of the approved persons regime affect not just the banking sector **but other parts of the financial services industry too.**”
- “The Government agrees with this and notes that many of the failures identified by the Commission were not limited to the banking sector.”



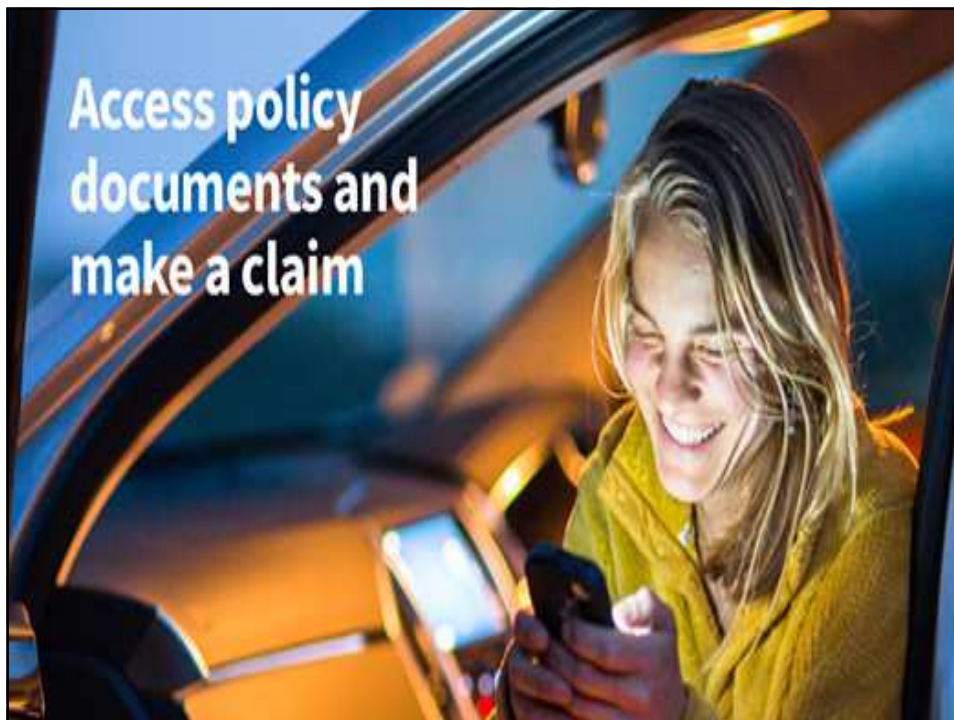
Enforcement

- 60% of fines levied against individuals
- Mainly against directors
- Average £570,000
- They were responsible
- Rode roughshod over processes or ignored them and colleagues
- Or simply had none
- Their “empire”...



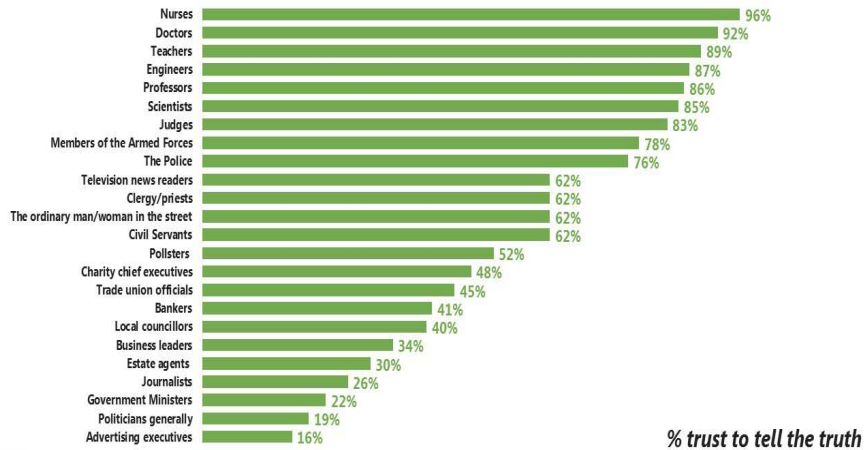
Consumer perspective

- Many do not feel that the literature provided helps them chose the right product, provider or cover best able to meet their needs
- Insurers command trust but not loyalty
- Understanding of price comparison websites varies by age (57% of 25-34 and over 65 23%)
- Regulation is driving increased accountability
- Differential pricing can cause harm
- Value should be expected
- Do elongated distribution chains add value
- Firms' poor compliance can also lead to harm



Veracity Index 2018 – all professions

“Now I will read you a list of different types of people. For each would you tell me if you generally trust them to tell the truth, or not?”



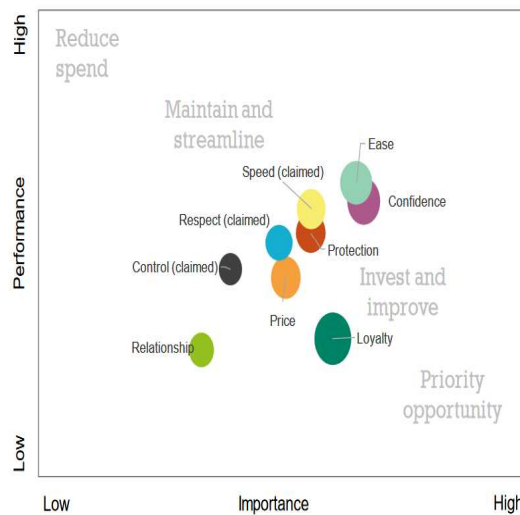
% trust to tell the truth



Base: 1,001 British adults aged 15+, fieldwork 12 - 21 October 2018

Overall Consumer themes

In comparison to 2018, Loyalty remains the number one consumer opportunity for the insurance industry, followed by Confidence and Ease themes.



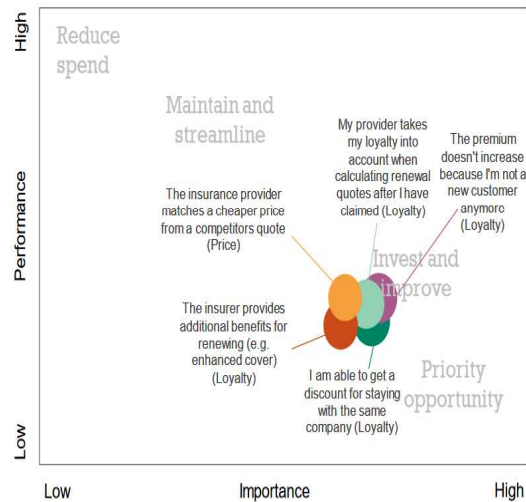
*The size of each theme bubble denotes the relative opportunity score in each case. The bigger the bubble the greater the opportunity to deliver improved service.

Switching insurance supplier is not among the top consumers' priorities and therefore they wish to be rewarded for staying with the same provider. Unfortunately, policy holders feel that their loyalty is not being acknowledged and hence big opportunities for insurers lie in this area.



Top 5 opportunity statements for Consumers

In comparison to 2018, Loyalty remains the number one consumer opportunity for the insurance industry, followed by Confidence and Ease themes.



*The size of each theme bubble denotes the relative opportunity score in each case. The bigger the bubble the greater the opportunity to deliver improved service.

Rewarding customer loyalty by offering discounts is the top opportunity in the insurance sector.

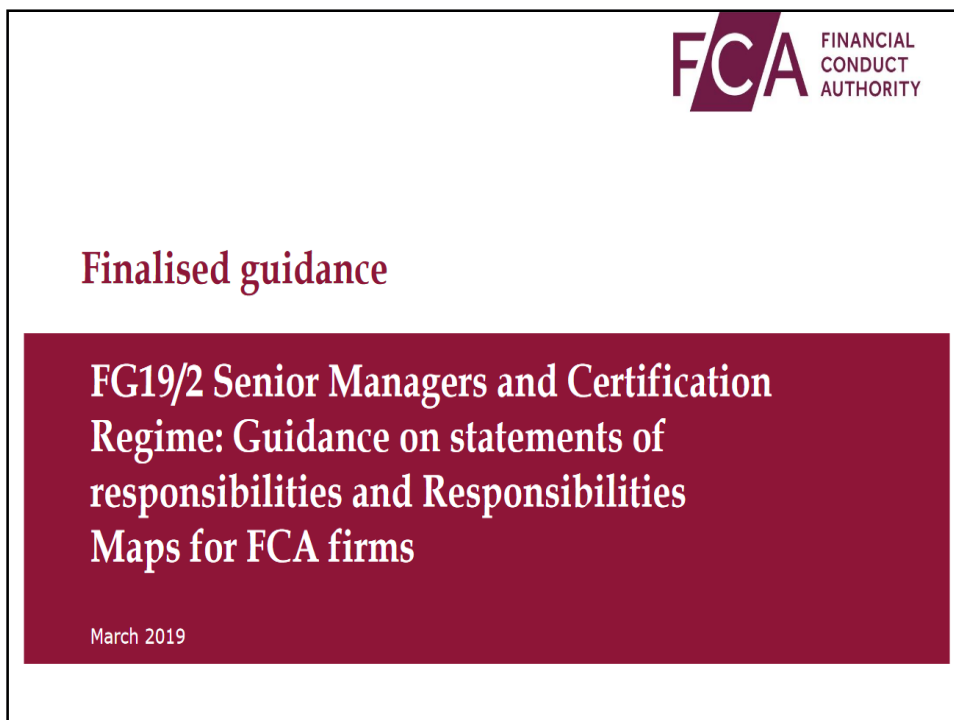
Avoiding dual pricing (new vs existing customers) is also important in order to feel that their loyalty is being acknowledged.

Policy holders would like to receive extra benefits if they are to renew with their insurer, while matching a competitors price is also key.



2. Overview





Preamble...

- FCA seek clarity of accountability and raising standards
- Senior Insurance Managers regime (March 2016) applies to insurers, reinsurers, Lloyd's and Managing Agents (applies to senior individuals)
- Senior Managers and Certification Regime also rolled out at the same time to banks covering virtually all employees
- Following the Bank of England and Financial Services Act 2016 will be extended to FCA solo-regulated firms (who only have the FCA as a prudential and conduct regulator) - 9 Dec 2019



- It replaces the current Approved Persons Regime, changing how individuals working in financial services are regulated
- Aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence.
- Further aims to:
 - create a speak up environment where staff are custodians of a firm's integrity
 - make sure firms and staff clearly understand and can demonstrate where responsibility lies
- Two CPs set out proposed approach to the extension of SMCR



- Accountability means the FCA have clarity as to who is responsible for what, and that SMs are responsible for ensuring all individuals within their areas meet the conduct standards and competency
- SMs set the tone from the top and articulate values/match words to actions
- The business will require formal measures to be in place re performance reviews/remuneration and promotion etc



Applicability?

- The proposals relate to all firms regulated by the FCA
- As well as the firms themselves, the proposals will affect everyone performing financial services roles at those institutions
- The proposals do not extend to approved persons and individuals at Appointed Representatives of affected firms



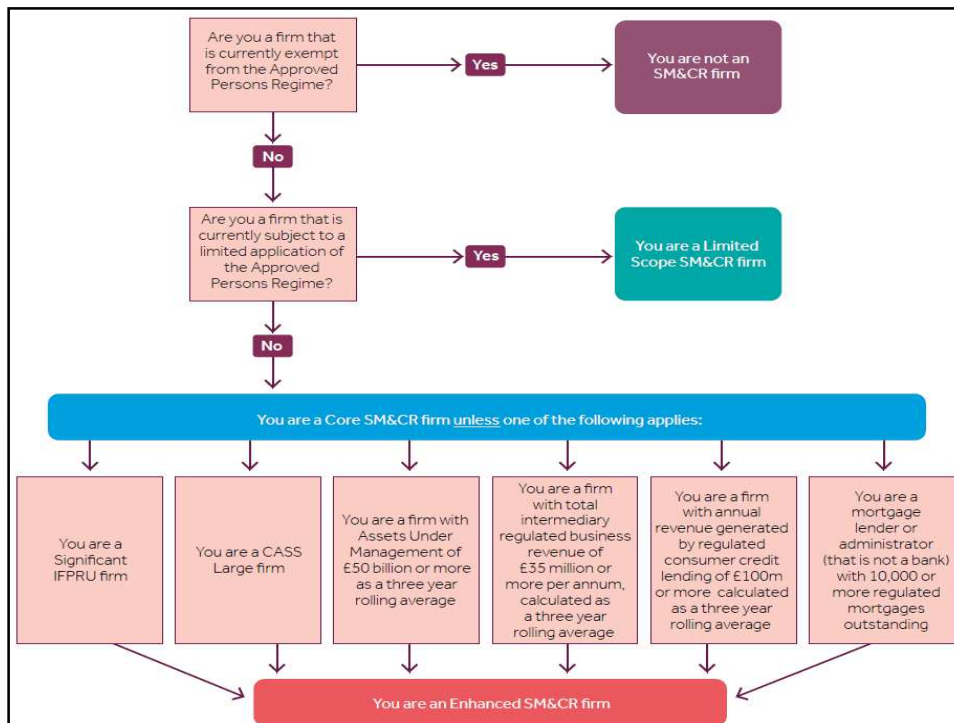
Scope

1. **Limited scope** firms (reduced set of requirements)
2. **Core firms (standard set of requirements)**
3. **Enhanced** firms (some 75 GI firms who have a regulated income >£35m) – some additional requirements

FCA to confirm your category



Firm type	Description
Limited Scope Firm	Firms that will be subject to fewer requirements than core firms. This covers all firms that currently have a limited application of the Approved Persons Regime, including: <ul style="list-style-type: none">• Limited Permission Consumer Credit Firms• sole traders• authorised professional firms whose only regulated activities in are non-mainstream regulated activities• oil market participants• service companies• energy market participants• subsidiaries of local authorities or registered social landlords• insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts• internally managed AIFs
Core Firm	Firms that will have a baseline of SM&CR requirements applied.
Enhanced Firm	A small proportion of solo-regulated firms that will have to apply extra rules.



The core regime

1. Senior Managers Regime
2. Certification Regime

Then 12 months after...

3. Conduct Rules (for all other staff)

a. Senior Managers



Senior Managers Regime

Focuses on the most senior people

Approved by the FCA

Duty of Responsibility

Statement of Responsibility

Regulatory References

Criminal Records Checks

Prescribed Responsibilities

Senior Manager Conduct Rules

Conduct Rules



Different Senior Management Functions (SMFs) and Prescribed Responsibilities (PRs) apply to different tiers



Senior Managers

- Exec directors (plus those 'acting' in that capacity), partners and the chair of a board
- Will incl those with overall responsibility for key activities and business areas (defined Senior Management Functions) along with certain Prescribed Responsibilities (17)
- Statement of Responsibilities (SoR) to set out all responsibilities



Senior Managers

What is a Senior Management Function

A Senior Management Function is a new type of controlled function under FSMA. It is defined as 'in relation to the carrying on of a regulated activity by a firm, [a] function [which] will require the person performing it to be responsible for managing one or more aspects of the [firm's] affairs, so far as relating to the activity, and those aspects involve, or might involve, a risk of serious consequences for the [firm], or for business or other interests in the United Kingdom'.

We call a person who holds a Senior Management Function a 'Senior Manager'. Senior Managers are the most senior people in a firm with the greatest potential to cause harm or impact upon market integrity.³

The purpose of making a particular function a Senior Management Function is so we know who a firm's most senior decision makers are, and to make sure firms clearly allocate responsibilities to those key decision makers.

The FCA decides which roles are Senior Management Functions.



Core SMFs

There are 6 SMFs within the Core SMR, and these are set out in the table below.

SMFs for Core firms

Function Name	Description
Governing Functions	
SMF1 – Chief Executive	This is the person(s) with responsibility, under the immediate authority of the governing body, for the conduct of the whole of the business (or relevant activities). Note: Although the Chief Executive is the most senior member of an executive team, it does not mean that a firm's governing body cannot allocate specific responsibilities to other Senior Managers.
SMF3 – Executive Director	A director of a firm, other than a Non-Executive Director.
SMF27 – Partner	A partner in a firm, other than a limited partner in a partnership registered under the Limited Partnership Act 1907.
SMF9 – Chair	The person with responsibility for chairing, and overseeing the performance of the role of, the governing body of the firm.
Required Functions²	
SMF16 – Compliance Oversight	This is the person responsible for the compliance function in the firm and reporting to the governing body on this.
SMF17 – Money Laundering Reporting Officer	This is the person who has responsibility for overseeing the firm's compliance with the FCA's rules on systems and controls against money laundering.

The SMF9 – Chair is the only approved function that can be held by a Non-Executive Director (NED). Other NEDs currently approved to hold the CF2 function under the APR will no longer need to be approved by us, and their existing approval will lapse at the start of the new regime.

These NEDs will, however, still be subject to our Conduct Rules, fit and proper requirements and regulatory reference rules, as set out in [Section 11](#).

Compare AP to SMCR

Current controlled function	Possible corresponding Senior Management Function(s)
CF1 – Director	SMF3 – Executive Director
CF2 – Non-Executive Director ⁶	SMF9 – Chair
CF3 – Chief Executive	SMF1 – Chief Executive
	SMF19 – Head of Third Country Branch
CF4 – Partner	SMF3 – Executive Director ⁷
	SMF27 – Partner
CF5 – Director of Unincorporated Association	SMF3 – Executive Director
CF6 – Small Friendly Society Function	SMF3 – Executive Director
CF8 – Apportionment and Oversight Function	SMF29 – Limited Scope ⁸
CF10 – Compliance Oversight	SMF16 – Compliance Oversight
CF11 – Money Laundering Reporting Officer (MLRO)	SMF17 – Money Laundering Reporting Officer (MLRO)
CF29 – Significant Management Function ⁹	SMF21 – EEA Branch Senior Management Function

Existing approved roles that end at Commencement of the SM&CR

A number of existing functions at Core and Limited Scope firms won't be automatically converted at Commencement of the new regime. This is because these roles will no longer require approval by the FCA. However, some of these roles will fall into the Certification Regime. The relevant functions are:

- CF2 – Non-Executive Director (NED) (with the exception of an SMF9 – Chair).
- CF10a – CASS Oversight Function
- CF28 – Systems & Controls Function
- CF29 – Significant Management Function (though this can be converted to the new EEA Branch Manager function for EEA Branches)
- CF30 – Customer Function

Individuals performing these functions won't be converted to a new SMF unless they also hold an existing mapped function, apply for an additional mapped function using Form A, or the firm submits a Form E to transfer them to one of these functions.



The Directory

- **FCA Register will continue but far fewer people on it**
- **All CF30s drop off**
- **Starts 9th Dec 2020**

Policy Statement

PS19/7

March 2019

i Statement of Responsibilities

- Needed for every SM and submitted to FCA at approval stage (not at conversion)
- Must be kept up to date and any significant changes have to be submitted to FCA (where prescribed responsibilities are added or removed or where responsibilities are shared amongst SMs)
- FCA has a master 19 page template (you will get a tailored GI one)



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number or IRN
(for FCA/PRA use only)

Senior Management Regime: Statement of Responsibilities

This form applies to UK relevant authorised persons. It does not apply to incoming EEA relevant authorised persons, third country relevant authorised persons, or appointed representatives of any relevant authorised person.

A statement provided under section 60(2A) of the Act (Applications for approval), including a statement revised under section 62A of the Act (Changes in responsibilities of senior managers).

For candidates for approval, this form **must** be submitted as an attachment to a Form A application or a Form E application

ii Duty of responsibility

- Every SM has a Duty of Responsibility under FSMA and this will enhance the FCA's enforcement powers against the firm and also the individual
- If a firm breaks a requirement then a SM (and/or firm) can be held accountable unless reasonable steps have been taken to prevent or stop that breach
- Down to FCA to prove



Reasonable steps.....?



1. **Be aware** of regulatory requirements and wider environment;
2. **Investigate & review** your area of responsibility;
3. **Implement, police & review** appropriate policies and procedures;
4. **Organise & control** day-to-day operations, and manage delegation;
5. **Obtain & monitor** appropriate internal management information;
6. **Raise issues** and follow them up;
7. **Take pre-emptive action** to prevent breaches and **respond** to any breach;
8. **Seek & obtain** appropriate expert advice or assurance;
9. **Deploy adequate resources**, especially for control functions;
10. **Keep a proper record** of actions, initiatives, decisions and remedies.

What does this tell us?



Reasonable steps =	
Chief Executive	<ul style="list-style-type: none">✓ Is really interested in all aspects of the business✓ Oversees and monitors delegates and does not just rely✓ Secures an effective risk function
Senior Managers	<ul style="list-style-type: none">✓ Considers and mitigates risks✓ Ensures risks are properly managed✓ Puts in place effective mitigation – policy / procedure✓ Oversees and monitors delegates and does not just rely
Control Functions (Certified Staff?)	<ul style="list-style-type: none">✓ Scrutinises and manages risk✓ Calls for resources when needed✓ Oversees and monitors delegates and does not just rely

The Board has a role in this ...

But responsibility is personal, not collective

iii Prescribed Responsibilities

- These are NEW – 17 in total (5 in GI)
- Must be given to a SM – the most senior for that area
- In addition to inherent responsibilities
- Should have sufficient authority, knowledge and competence
- Will apply to core and enhanced firms
- Can be shared

You need to allocate the following

1. Senior Management Functions (4)
 2. Prescribed Responsibilities (5)
 3. Shared Prescribed Responsibilities (5)
 4. Other Responsibilities (7)
- (Numbers indicate GI specific allocations)



Statement of Responsibilities - Core Functions

Senior Manager Name: _____
 Date/Version: _____

A. Senior Management Functions (SMF)
 Head the institution's SMF from Table A

SMF Reference	Description of SMF	Effective Date
SMF1	Chair	
SMF2	Chief Executive Officer	
SMF3	Chief Financial Officer	
SMF4	Chief Risk Officer	

B. Prescribed Responsibilities (PR)
 Head the institution's PR from Table B

PR Reference	Description of PR	Effective Date
PR1	Chair	
PR2	Chief Executive Officer	
PR3	Chief Financial Officer	
PR4	Chief Risk Officer	
PR5	Chief Compliance Officer	

C. Shared Prescribed Responsibilities
 Detail any shared PRs and provide further relevant information using the guidance in Table C

PR Reference	Description of PR	Effective Date
PR6	Chief Compliance Officer	
PR7	Chief Risk Officer	
PR8	Chief Financial Officer	

D. Other Responsibilities (OR)
 Head details of OR Responsibilities using the guidance in Table D

OR Reference	Description of OR	Effective Date
OR1	Chief Compliance Officer	
OR2	Chief Risk Officer	
OR3	Chief Financial Officer	
OR4	Chief Marketing Officer	
OR5	Chief Information Officer	
OR6	Chief Legal Officer	
OR7	Chief Human Resources Officer	

Table B - Senior Management Functions (SMF)

SMF	SMF Description	FCA's Regulatory Focus
SMF1	Chair	The person with overall responsibility for the institution's activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
SMF2	Chief Executive Officer	The person with overall responsibility for the institution's activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
SMF3	Chief Financial Officer	The person with overall responsibility for the institution's financial activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
SMF4	Chief Risk Officer	The person with overall responsibility for the institution's risk management activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.

Table C - Shared Prescribed Responsibilities (SPR)

SPR	SPR Description	FCA's Regulatory Focus
SPR1	Chief Compliance Officer	The person with overall responsibility for the institution's compliance activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
SPR2	Chief Risk Officer	The person with overall responsibility for the institution's risk management activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
SPR3	Chief Financial Officer	The person with overall responsibility for the institution's financial activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.

Table D - Other Responsibilities (OR)

OR	OR Description	FCA's Regulatory Focus
OR1	Chief Compliance Officer	The person with overall responsibility for the institution's compliance activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR2	Chief Risk Officer	The person with overall responsibility for the institution's risk management activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR3	Chief Financial Officer	The person with overall responsibility for the institution's financial activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR4	Chief Marketing Officer	The person with overall responsibility for the institution's marketing activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR5	Chief Information Officer	The person with overall responsibility for the institution's information technology activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR6	Chief Legal Officer	The person with overall responsibility for the institution's legal activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR7	Chief Human Resources Officer	The person with overall responsibility for the institution's human resources activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.

Table E - Other Responsibilities (OR)

OR	OR Description	FCA's Regulatory Focus
OR8	Chief Compliance Officer	The person with overall responsibility for the institution's compliance activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR9	Chief Risk Officer	The person with overall responsibility for the institution's risk management activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR10	Chief Financial Officer	The person with overall responsibility for the institution's financial activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR11	Chief Marketing Officer	The person with overall responsibility for the institution's marketing activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR12	Chief Information Officer	The person with overall responsibility for the institution's information technology activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR13	Chief Legal Officer	The person with overall responsibility for the institution's legal activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.
OR14	Chief Human Resources Officer	The person with overall responsibility for the institution's human resources activities and for ensuring that the institution complies with the law and the regulatory requirements of the FCA.

Partnerships

- All 'involved' partners to be SMs
- If partners have different roles then this should be reflected in their Statement of Responsibilities
- Approval needed for the role and then the roles being performed (not at conversion)



Chairman of the Board

- They WILL need to apply for approval using a Form K (Conversion Notification Form) as currently FCA only have them down as a CF2 (approved currently as a NED)
- From 8th Sept to 2nd Dec 2019
- They will then be an SMF9
- If an Exec Chairman then auto conversion to SMF3 but Form A will need to be submitted to add SMF9



b. Certification



Certification Regime

Roles that can have a big impact on customers, markets or the firm

8 'Certification Functions' set out in our Handbook

Not approved by the FCA

Annual certification by firm

Regulatory References

Conduct Rules



The Certification Regime applies in the same way to every tier





Certification


- Individuals (not senior managers) formally certified by the firm (not by the FCA) initially and on an ongoing annual basis (every 12m) to perform a function(s) where they have a significant impact on the firm and customers
- Certified staff will appear in the new FCA Directory
- For IFAs the SPS will continue
- For GI could incl head of unit effecting and administering contracts, processing claims, complaints handling and not just limited to commercial/revenue earning activities such as HR, legal, IT and operations
- Think of size of firm and what SMs are responsible for






R	Table: FCA certification functions	
	Function	Where defined
	(1) CASS oversight	SYSC 27.8.1R
	(2) Proprietary trader	SYSC 27.8.3R
	(3) Significant management	SYSC 27.8.4R
	(4) Functions requiring qualifications	SYSC 27.8.10R
	(5) Managers of certification employees	SYSC 27.8.13R
	(6) Material risk takers	SYSC 27.8.14R
	(7) Client-dealing	SYSC 27.8.18R
	(8) Algorithmic trading	SYSC 27.8.23R


 View SYSC 27.2 as PDF
Updated: 27/08/19

 View SYSC 27 as PDF
Updated: 27/08/19

 View SYSC as PDF
Updated: 27/08/19

More Resources:

-  Handbook Publications
-  Consultation papers, Discussion papers, Policy statements
-  Derivations & destinations



Basic requirements

SYSC 27.2.3 G Under section 63E(1) of the Act, a firm must take reasonable care to ensure that no employee of the firm performs an FCA certification function under an arrangement entered into by the firm in relation to the carrying on by that firm of a regulated activity, unless the employee has a valid certificate issued by that firm to perform the function to which the certificate relates.
10/12/2018

Fitness to act

SYSC 27.2.4 G Under section 63F of the Act, a firm may issue a certificate to a person only if the firm is satisfied that the person is a fit and proper person to perform the FCA certification function to which the certificate relates.
10/12/2018

SYSC 27.2.5 G Under section 63F of the Act, in assessing if a person is fit and proper to perform an FCA certification function, a firm must have regard, in particular, to whether that person:
10/12/2018

- (1) has obtained a qualification;
- (2) has undergone, or is undergoing, training;
- (3) possesses a level of competence; or
- (4) has the personal characteristics,

required by general rules made by the FCA.

<https://www.handbook.fca.org.uk/handbook/glossary/G430.html>

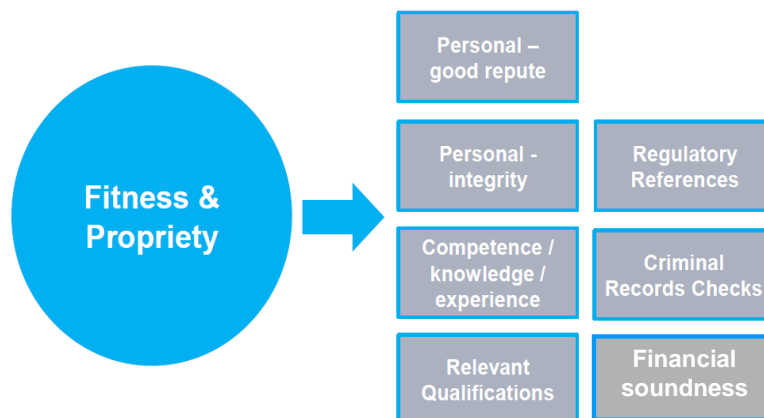
Sole Traders

- Limited Scope
- SMF16 Compliance Oversight will apply if no employees (if needed)
- SMF/certification/CR do not apply (will to relevant employees)
- Fit and proper assessments n/a (as above)
- References n/a
- Criminal records checks n/a
- IFAs - qualifications and SPS as before

c. Fit and Proper



Fitness & Propriety – what is it?



Fitness & Propriety applies to all Senior Managers and Certification Staff and to NEDs even if not Senior Managers

Fit and Proper

- Firms to assess whether SMs, NEDs and certified individuals are fit and proper (more onerous)
- All other relevant IDD staff have to be of “good repute” (less onerous)
- Annual assessment/sign off
- SMs and NEDs must have a criminal records check undertaken (DBS registration may be needed or use an umbrella body)



Criminal record check?

For SMs SUP10C.10.16R (2) imposes a requirement to conduct criminal record checks for new applications

‘Standard’ **good repute** is under SYSC 28.3.4R – “In considering a person’s repute the firm must at a minimum ensure:

(1) has a clean criminal record...in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and

(2) has not previously been declared bankrupt”

- unless they have been rehabilitated in accordance with national law.



Regulatory references

- Firms will need to request regulatory references going back 6 years
- Firms need to keep information going back 6 years about current and former staff so that they will be able to give fair and accurate references
- Standard FCA template to enable sharing
- To cover disciplinary action, complaints, etc
- No non-disclosure agreements
- A SM to be responsible for this
- Applies to SMs, NEDs and certified



SYSC 22 Annex 1 Template for regulatory references given by SMCR firms and disclosure requirements

10/12/2018

Part One: Form of Template

Guide to using this template:

Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.

In this template:

- "we" / "our firm" refers to the firm or firms giving the reference (as set out in either 1A or 1B below) ;
- "individual" refers to the subject of the reference (as set out in 2 below); and
- "your" refers to the firm requesting the reference (as set out in 3 below).

	Information requested	Response
1A	Name, contact details and firm reference number of firm providing reference; or	
1B	Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference	
2	Individual's name (i.e. the subject of the reference)	
3	Name, contact details and firm reference number of firm requesting the reference	
4	Date of request for reference	
5	Date of reference	

d. Conduct Rules



Conduct Rules

Act with integrity

Act with due care, skill and diligence

Be open and cooperative with the FCA, PRA and other regulators

Pay due regard to the interests of customers and treat them fairly

Observe proper standards of market conduct

4 additional rules apply to Senior Managers



The Conduct Rules apply to almost all staff in the same way to every tier



Sitting over the top...

- Staff will have to pay due regard to the interests of customers and treat them fairly (note already PRIN6 for the firm BUT now extends to all staff)
- SMs to disclose 'issues' to the FCA (again PRIN11 does this now)
- All relevant staff can be potentially fined



Who will be subject to them?

- SMs (in addition to SM CR)
- Certified Individuals
- NEDs
- All other employees (ex ancillary staff)
- Firm to make staff aware and train them



Key elements – Conduct Rules / Standards



1st Tier – Applies to (nearly) all staff – You must:

- Act with integrity
- Act with due care, skill and diligence
- Be open and honest with the regulators
- Pay due regard to the interests of customers and treat them fairly
- Observe proper standards of market conduct

2nd Tier – Senior Managers must take reasonable steps to ensure:

- The business of the firm for which you are responsible is controlled effectively
- The business of the firm for which you are responsible complies with the relevant requirements & standards of the regulatory system
- Any delegation of responsibilities is to an appropriate person and you oversee the discharge of the delegated responsibility effectively
- Disclosure of any information of which the FCA or PRA would reasonably expect to have notice *

* Applies to NEDs together with the First Tier Rules

Relevant Training

- SMs and CS will have had to have been trained and abide by the Conduct Rules from 9 December 2019
- Other staff have 12 months (to incl training and reporting requirements) from this date (by 8 December 2020)

e. Reporting



Reporting

- Where Conduct Rules are breached FCA to be notified within 7 days for SMs and annually for other staff
- Annual Gabriel RMAR reporting (from 08/20) even if no breaches have occurred
- To cover formal written warnings, suspension or dismissal, recovery/reduction of remuneration/commission clawback, etc



New documents summary

1. SMs, NEDs and certified staff confirm annually their honesty, integrity, reputation, fitness, propriety and financial soundness (DIY)
2. Employers assess the above plus competence and capability annually (DIY)
3. Other staff confirm annually good repute (DIY)
4. Statements of Responsibility for SMs (FCA/DIY)
5. Criminal records check for SMs and NEDs (DIY)
6. Annual certificate for all certified staff (DIY)
7. References for SMs, NEDs and certified (FCA)
8. Disciplinary notifications (Forms D or H)



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number
(for FCA/PRA use only)

The FCA and PRA have produced notes which will assist both the applicant and the approved person in answering the questions in this form. Please read these notes, which are available on the FCA and PRA's website at:

<https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex7.html>

www.bankofengland.co.uk/PRA

Both the applicant and the approved person will be treated by the FCA and PRA as having taken these notes into consideration when completing this form.

Form D Notification: Changes to personal information/ application details and conduct breaches/disciplinary action related to conduct

FCA Handbook Reference: SUP 10A Annex 7R

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

Senior Insurance Managers Regime - Applications and Notifications

Application number
(for FCA use only)

Form H - Notification of Disciplinary Action relating to *conduct rules staff (other than SMF managers) in SMCR firms*

FCA Handbook Reference: SUP 15 Annex 7R

10 December 2018

Name of firm
(as entered in 2.01)

Financial Conduct Authority
12 Endeavour Square
Stratford
London E20 1JN
United Kingdom

For each individual that is the subject of a notification under this Form, please provide the details requested below, in so far as applicable.

A	B	C	D	E	F	G	H	I	J	K	L	M
Title	Surname	Forename(s)	IRN <i>(See note 1)</i>	Date of Birth <i>(See note 1)</i>	National Insurance Number <i>(See note 1)</i>	Passport Number <i>(See note 1)</i>	Nationality <i>(See note 1)</i>	Job Title / Position And Department / Division	Has the person, at any time during the reporting period, been (a) certified to perform an FCA specified significant harm function? If yes, please specify which one(s) or (b) a standard non-executive director? <i>(see note 2)</i>	Please identify the relevant conduct rule(s) that have been breached which form the basis of the disciplinary action taken Refer to Conduct Rules	Please provide more information in relation to the conduct rule(s) breached. Please also state here whether the firm is updating a previous notification or is making a new notification. Free text description (2000 characters only. Anything greater than this please provide an attachment). <i>(See note 3)</i>	Please provide information as to the disciplinary action taken: <ul style="list-style-type: none"> issuing of a formal written warning suspension or dismissal of the person reduction or recovery of any of the person's remuneration Free text description (2000 characters only. Anything greater than this please provide an attachment). <i>(See note 4)</i>

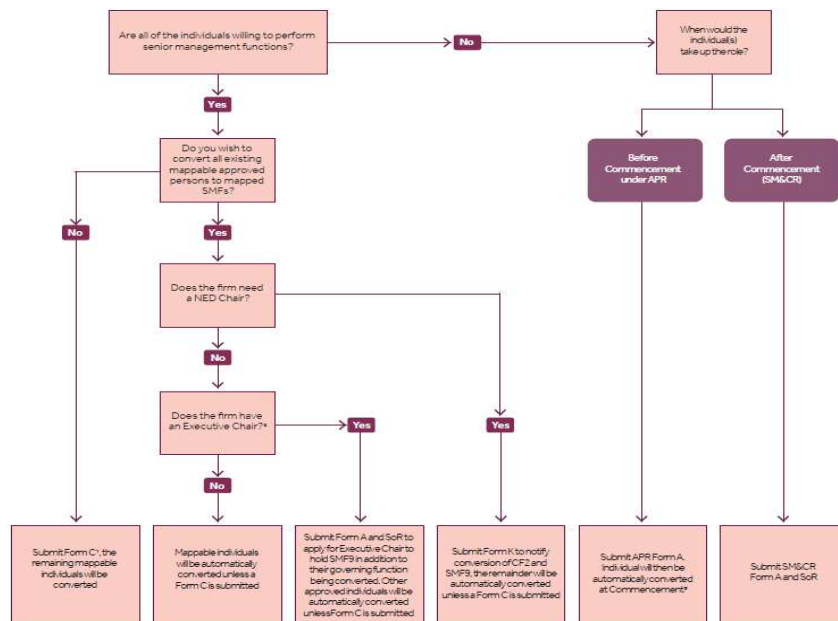
Note 1:
(a) If an individual reference number (IRN) is available for a person about whom a notification is being made, please complete column D but do not complete columns E, F, G or H.
(b) If an IRN is not available for a person about whom a notification is being made, but that person has a national insurance number, please complete columns E and F but do not complete columns G or H.
(c) If neither an IRN nor a national insurance number is available for a person about whom a notification is being made, please complete columns E, G and H.
Note 2: If the answer is Yes, please state which of the listed functions the person performed. The term "standard non-executive director" is defined in the Glossary.
Note 3: If the firm is updating a previous notification, please confirm this in this column but include the details in column M *(see note 3)*.
Note 4:
(a) If the person about whom the notification is being made is appealing against the firm's decision, please include details here.
(b) If the firm is updating a previous notification, please include the details in this column. This includes (1) any appeal made by the subject of the notification subsequent to a previous notification or (2) the outcome of any appeal previously notified.
(c) The firm should specify which of the listed types of disciplinary action it has taken.

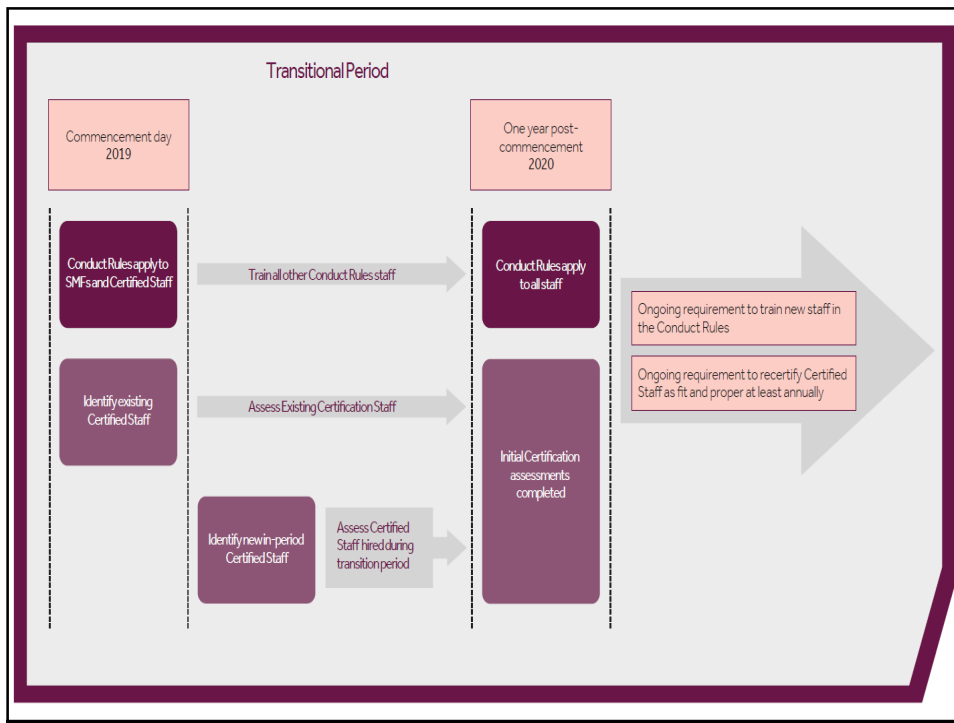
f. What next?



Core and Limited Scope firms: what do I need to submit?

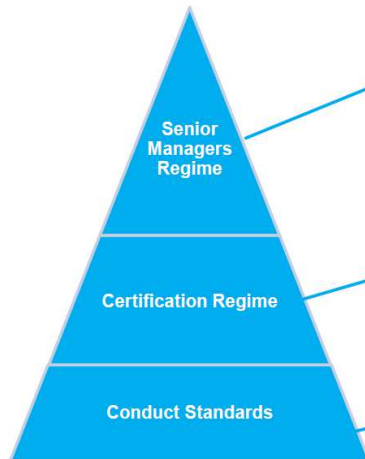
The diagram provides a non-exhaustive summary of the most common scenarios explained in this section.





3. Conclusion

The impact on individuals & firms



Senior Managers

- Training
- Updated employment contract
- Updated job description
- Fitness & Propriety attestation
- Ongoing screening
- Approval before doing the role
- Full handover on departure
- Learning & development

Certification Staff

- Training
- Updated employment contract
- Updated job description
- Fitness & Propriety attestation
- Ongoing screening
- Annual Certification
- Learning & development

Conduct Staff

- Training
- Awareness
- Ongoing assessment
- Learning & development

What should you be doing now?

- Project team – internal and external
- Board level engagement
- Workstreams
- Governance mapping
- Identify potential senior managers
- Review job descriptions
- Annual fitness and propriety checks
- Employment contracts
- IDD, GDPR and Brexit all sorted?

Learning outcomes...

By the end of this briefing you will have gained an insight into:-

1. Why the need for change
2. SM&CR requirements
3. Certification requirements
4. Fit and Proper requirements
5. Conduct rules
6. What happens at conversion



Thank you for your attention

**If you need help please
get in touch**

0800 619 6619

branko@branko.org.uk

