

# The Senior Managers and Certification Regime

A summary of the FCA's guide for solo-regulated advice firms

Following consultation with the industry over the last couple of years, the Senior Managers and Certification Regime (SM&CR) has been extended to almost all firms that provide regulated services from 9 December 2019. Larger financial institutions, such as banks, have been subject to the regime since 2016.

The SM&CR replaces the Approved Persons Regime (APR) and aims to strengthen market integrity by creating a system that enables firms and regulators to hold people to account. The goal is to reduce harm to consumers by encouraging staff to take personal responsibility for their actions, improving conduct at all levels and making sure firms and staff clearly understand who does what.

There are three main pillars to the SM&CR:

- **The Senior Managers Regime** – this applies to the most senior people within a firm, those with the greatest potential to cause harm or impact upon market integrity.
- **The Certification Regime** – this applies to people who are not in senior management functions but who can have a significant impact on customers, the firm and/or market integrity.
- **Conduct Rules** – these apply to all employees within a firm.

Here we summarise how the SM&CR may affect your firm (assuming that you are solo regulated and classified as either a 'Limited Scope' or 'Core' Firm). However, we recommend that you read the [FCA's full guide](#) to see how your firm may be impacted by the new requirements.

## Working out which type of firm you are

The FCA has issued three classifications under the SM&CR. Your first consideration is to establish which type of firm you are:

1. **Limited Scope Firms** – these firms will be subject to fewer requirements than those in the other two categories. They will typically be firms that currently have a limited application of the Approved Persons Regime. In terms of advice firms, these will include sole traders and authorised professional firms whose only regulated activities are non-mainstream regulated activities.
2. **Core Firms** – these firms will have a baseline of SM&CR requirements and most advice firms will fall into this category.
3. **Enhanced Firms** – a small proportion of solo-regulated firms will have to apply extra rules, although relatively few advice firms will come under this category. These

will typically be those with substantial assets under management (£50 billion or more as a three-year rolling average) or revenue (firms with a current total intermediary regulated business revenue of £35 million or more per annum calculated as a three-year rolling average). This guide will not consider the requirements for these firms.

A full table giving the description of firm types is contained within the FCA's guide.

The SM&CR is to be applied at a legal entity level. This means there will be groups containing firms in different tiers of the new regime. Some may choose to apply the highest tier to all entities in their group, although there is no requirement for firms to do this.

### Things to consider: which type of firm are you?

The FCA should have contacted your firm ahead of the 9 December 2019 implementation date with their assessment of your firm's status. This is an indicative assessment as all firms are responsible for assessing which tier applies to them.

You can work out your firm's type by using the [FCA's firm checker tool](#). Alternatively, the FCA's guide contains a decision tree which may help you establish your firm type under the SM&CR.

## The Senior Managers Regime (SMR)

A Senior Manager is someone whose role is defined as a Senior Management Function (as laid out below). They are the most senior people in a firm with the greatest potential to cause harm or impact upon market integrity. Senior Managers must be fit and proper to do their jobs (we cover this on page 5).

### Senior Management Functions (SMFs)

The FCA has classified particular roles as 'Senior Management Functions' so that they know who the most senior decision makers are within a firm, and to make sure responsibilities are clearly allocated to those key individuals.

- Anyone within your firm who performs a SMF needs to be approved by the FCA before they can start their role.
- Individuals at Limited Scope and Core Firms with existing APR approvals will be automatically converted by the FCA wherever possible, with no action required by firms (further details can be found in the FCA's guide).
- The SM&CR doesn't require your firm to change its governance structure or hire new people to fill specific roles. SMFs only apply if you have someone doing these jobs or the SMF is a 'Required Function' (as shown in the tables on page 3).
- It is possible for an individual to hold more than one SMF (the person will need to apply for approval from the FCA for each function).
- If you rely on a third party for operational functions, your firm is still fully responsible for carrying out all of its regulatory obligations.

## Senior Management Functions – Limited Scope Firms

There are three SMFs within this tier (please see the FCA guide and Handbook for full definitions):

- **SMF29** – Limited Scope Function (Required Function) – this was called the Apportionment and Oversight Function under APR
- **SMF16** – Compliance Oversight (Required Function)
- **SMF17** – Money Laundering Reporting Officer (Required Function).

## Senior Management Functions – Core Firms

There are six SMFs within this tier (please see the FCA guide and Handbook for full definitions):

**SMF1** – Chief Executive

**SMF3** – Executive Director

**SMF27** – Partner

**SMF9** – Chair

**SMF16** – Compliance Oversight (Required Function)

**SMF17** – Money Laundering Reporting Officer (Required Function).

### Statement of Responsibilities (SoR)

- A SoR is a succinct document that every Senior Manager should have. This will clearly set out the Senior Manager's role and responsibilities and what they are accountable for (it shouldn't contain unnecessary detail).
- If a Senior Manager holds multiple SMFs at your firm, they will only need one SoR.
- You will need to submit a SoR to the FCA when applying for a Senior Manager to be approved. You are also required to keep the SoR up to date and resubmit it to the FCA whenever there's a significant change to the Senior Manager's responsibilities.
- The FCA has issued [finalised guidance](#) (FG19/2) which gives firms practical assistance and information on preparing a Statement of Responsibilities.

### The Duty of Responsibility

Every Senior Manager will have a Duty of Responsibility. This means that if your firm breaches one of the FCA's requirements, the Senior Manager responsible for that area could be held accountable if they didn't take reasonable steps to prevent or stop the breach.

### Prescribed Responsibilities (PRs)

- PRs are specific responsibilities that a Core Firm must give to a Senior Manager (they don't apply to Limited Scope Firms). They are in addition to the responsibilities essential to a Senior Manager's role (PRs should be included within the Senior Manager's SoR).
- Each PR should be given to the most Senior Manager responsible for that activity or area. They will need to have sufficient authority and an appropriate level of knowledge and competence to carry out the responsibility properly.
- There are five PRs that must be given to Senior Managers (there is an additional PR for Authorised Fund Managers):
  - Performance by the firm of its obligations under the Senior Managers Regime, including implementation and oversight.
  - Performance by the firm of its obligations under the Certification Regime.
  - Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules.
  - Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime.
  - Responsibility for the firm's compliance with the FCA's Client Assets Sourcebook (CASS), if applicable.

## Things to consider: The Senior Managers Regime

- Does your firm have individuals who perform Senior Management Functions and, if so, have they been approved by the FCA?
- Does every Senior Manager at your firm have a Statement of Responsibilities and have these been approved by the FCA?
- Which Prescribed Responsibilities apply to your firm and have these been allocated to a Senior Manager?
- Are the Prescribed Responsibilities included within the relevant Senior Manager's Statement of Responsibilities?

## The Certification Regime

Certification covers specific functions that aren't Senior Management Functions, but can have a significant impact on customers, the firm and/or market integrity. The FCA won't approve these individuals, but your firm will need to check and confirm (certify) annually that these people are suitable to do their job.

- If a role is a Certification Function (covered below), your firm needs to make sure that anyone doing that role has been certified. You must check and confirm that the person is fit and proper to do the job, and issue them with a certificate at least once a year. You should take into account whether the individual:
  - Has obtained a qualification.
  - Has undergone, or is undergoing, training.
  - Possesses a level of competence.
- Certificates should:
  - State that the authorised person is satisfied that the person is a fit and proper person to perform the Certification Function.
  - Set out the aspects of your firm's business in which the individual will be involved.
- Staff performing Certification Functions will appear on a central directory (please see page 7).
- Certification Functions apply where your firm has individuals performing relevant roles. If your firm is very small, it's possible that no one will fall under the Certification Regime if you only have a handful of Senior Managers supported by administrative staff. If you are a sole trader with no employees, then the Certification Regime will not apply to you.
- The Certification Regime only applies to employees of your firm, including those seconded to you and contractors, but not Non-Executive Directors.

### Certification Functions

- Certification Functions include the following (a full list is shown in the FCA's guide):
  - Roles subject to qualification requirements, such as:
    - Mortgage advisers.
    - Retail investment advisers.
    - Pension transfer specialists.
  - Those responsible and accountable for all elements of CASS compliance (if this person is a Senior Manager there is no need to apply the Certification Function to them).
  - The client dealing function (which includes any person dealing in or arranging investments with clients).
  - Anyone who supervises or manages a Certified Function but isn't a Senior Manager.
- If someone performs more than one Certification Function, your firm must certify that the person is fit and proper to carry out each function.
- If a Senior Manager is performing a Certification Function that is very different to what they are doing as a Senior Manager, they must also be certified.
- The Significant Management Certification Function applies to people below Senior Managers who are responsible for business units that, because of their size, nature or impact, are considered significant by the firm. The FCA has set out more guidance on this in their Handbook.

## Things to consider: The Certification Regime

- Which Certification Functions apply to your firm?
- Which individuals within your firm need to be certified?
- The processes you need to put in place to ensure certification is conducted at least annually.

## Fitness and propriety

The FCA wants firms to take responsibility for their staff being fit and proper to do their jobs and so this is a key feature of SM&CR. Your firm therefore needs to make sure anyone performing a Senior Management Function or a Certification Function is fit and proper. This requirement also applies to Non-Executive Directors (NED) who are not Senior Managers, except in Limited Scope firms.

- Once someone is in a role as defined above, your firm must assess them on an ongoing basis (at least annually).
- The FCA's Fit and Proper test sets out detailed guidance as to what your firm should consider. This includes the person's:
  - Honesty, integrity and reputation.
  - Competence and capability, including whether they satisfy any relevant FCA training and competence requirements.
  - Financial soundness.
- Firms must collect extra evidence when assessing candidates for Senior Manager positions, Certification Functions or NED roles. This includes:
  - Criminal record checks for Senior Managers.
  - Regulatory references from all past employers in the last six years, including:
    - Details of any disciplinary action taken due to breaches of the Conduct Rules and any findings that the person was not fit and proper.
    - Any other information relevant to assessing whether a candidate is fit and proper covering the previous six years (unless it relates to serious misconduct, in which case there is no time limit).
- The application of the fit and proper requirements to Limited Scope firms is slightly different in some areas (please see the FCA's guide for further details).

### Things to consider: fitness and propriety

- How the new criminal record checks and regulatory reference requirements fit into your firm's recruitment processes.
- How the annual fit and proper checks fit into your firm's HR processes.

# Conduct Rules

The Conduct Rules apply to all firms. These are a new set of enforceable rules that set basic standards of good personal conduct, against which the FCA can hold people to account. They apply to all Senior Managers, Certified Functions, Non-Executive Directors who are not Senior Managers and all other employees (except ancillary staff such as receptionists, cleaners, security guards, etc.).

- There are two tiers of Conduct Rules – the first is a general list of rules applying to most employees while the second only applies to Senior Managers:

## **The Individual Conduct Rules are:**

- You must act with integrity.
- You must act with due care, skill and diligence.
- You must be open and cooperative with the FCA, the PRA and other regulators.
- You must pay due regard to the interests of customers and treat them fairly.
- You must observe proper standards of market conduct.

## **The Senior Management Conduct Rules are:**

- You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

- You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.
- Your firm is required to train staff on how the FCA's Conduct Rules apply to their role. A Senior Manager should be allocated the Prescribed Responsibility for this.

## **Conduct Rule breach reporting**

- You are required to notify the FCA when disciplinary action has been taken against a person for a Conduct Rules breach (within seven days for Senior Managers and through an annual notification system for all other individuals). Disciplinary action means:
  - Issuing of a formal written warning,
  - Suspension or dismissal of a person, or
  - Reduction or recovery of remuneration (clawback).
- Your firm will need to make an annual notification about Conduct Rules even if there haven't been any breaches.

## Things to consider: the Conduct Rules

- Which staff fit into which tier of the Conduct Rules.
- How and when staff should be trained on the Conduct Rules.
- The processes you need to put in place to ensure the FCA is notified of any breaches of the Conduct Rules.

## Timetable and transitional provisions

Firms affected by the changes will move to the new regime from 9 December 2019. However, there are two transitional provisions:

- Your firm has to identify Certification Staff by 9 December 2019, but you have 12 months from that date to complete the initial certification process.
- Senior Managers and Certification Staff need to have been identified and trained and abide by the Conduct Rules by 9 December 2019, but you have 12 months from that date to train your other staff on the Conduct Rules.

## The SM&CR and the Directory

The Directory is a new public register holding information on key individuals working in financial services. It replaces the current directory of authorised persons and allows users to search information on:

- All Directors and Senior Managers.
- All staff certified as fit and proper by their firm.
- Other important individuals who undertake business with clients and require a qualification to do so.

Firms can start submitting data as of 9 December 2019 following commencement of the SM&CR for solo-regulated firms. Further details can be found on the FCA's website.

### FundsNetwork's view on the Senior Managers and Certification Regime

We welcome any measures that help build consumer confidence in the financial services and advice industries and so the SM&CR is a positive step forward. It should also help reinforce trust in the ever-increasing professionalism of the advice industry through the extension of the fit and proper regime. However, we recognise that the SM&CR creates a further regulatory burden on advice firms at a time when they are adjusting to numerous other new regulatory requirements.

One of our goals is to help advisers understand the impact of regulatory change. Visit our Technical matters hub for more analysis on regulatory initiatives affecting the industry. [fundsnetwork.co.uk/technicalmatters](https://fundsnetwork.co.uk/technicalmatters)



### Important information

This document provides information and is only intended to provide an overview of the current law in this area and does not constitute financial advice, tax advice or legal advice, or provide any recommendations. This document represents a summary of our understanding of the relevant regulations at the date of its last review (December 2019). Regulations and guidance are often subject to change and may change in future. Individuals should check that rules and regulations have not changed.

