

# The Senior Managers and Certification Regime

a guide for consumer credit firms



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**T**he Senior Managers and Certification Regime is the most powerful financial services regulation to affect the consumer credit sector. Individuals will now be personally liable for their professional conduct and that of the people they manage.

This FCA regulation applies to nearly 47,000 UK firms, impacting their processes, culture and governance; with the main aim of reducing harm to consumers.

## **Practical guidance**

For many firms the Senior Managers and Certification Regime (SM&CR) can seem intimidating. There is a large amount of information to understand with far reaching implications for governance, culture and processes.

This guide will help firms break down SM&CR into manageable parts. It also offers the key considerations for successful implementation by 9th December 2019.

## **Introduction to SM&CR**

From 9th December 2019 all consumer credit firms must be compliant with SM&CR.

The main purpose of the new regime is to change the mindset of firms. Senior Managers will now be fully and personally accountable for the conduct of the firms they oversee.

SM&CR already applies to many other regulated financial services firms. A Senior Manager of one of the UKs leading retail banks has already received a hefty personal fine under the regulation. The consequences of not getting compliance right now press hard on individuals.

Meeting the requirements of SM&CR is a significant undertaking. However, as it underpins a large part of the FCA approach, getting SM&CR right will help firms meet the other regulatory expectations.



## THE KEY DATES

### 9th December 2019

SMFs and Certification Staff identified and trained under the Conduct Rules

### 9th December 2020

Certification Staff, certification process completed

All other employees trained under the Conduct Rules

## THE CRITICAL FCA DOCUMENTS

Accountability: Extending the Senior Managers and Certification Regime to all FCA firms

Consultation Paper, CP17/25, July 2017.

<https://www.fca.org.uk/publication/consultation/cp17-25.pdf>

CP17/25: Individual accountability - Transitioning FCA firms and individuals to the Senior Managers & Certification Regime

Consultation Paper, CP17/40, December 2017.

<https://www.fca.org.uk/publication/consultation/cp17-40.pdf>

Extending the Senior Managers and Certification Regime to FCA firms – Feedback to CP17/25 and CP17/40, and near-final rules

Policy Statement, PS18/14, July 2018

<https://www.fca.org.uk/publication/policy/ps18-14.pdf>

The Senior Managers and Certification Regime: Guide for FCA solo-regulated firms

July 2018

<https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>



## **SM&CR decoded**

SM&CR replaces the current Approved Persons regime. It comprises **the Senior Managers Regime, the Certification Regime and the Conduct Rules.**

**The Senior Managers Regime** applies to a new set of Senior Manager Functions (SMFs). To begin with firms will need to identify what type of business they are - limited scope, enhanced or core - so they can understand which SMFs are applicable. Once identified, previous functions under the Approved Persons Regime will need to be mapped across to the new SMFs. For all SMFs firms will need to produce Statements of Responsibilities (SoRs) and in some cases Management Responsibility Maps will be required. The objective of these documents is to detail exactly who does what. As well as being documented the FCA will expect that senior managers fully understand their responsibilities.

**The Certification Regime** applies to specific functions that are outside of SMFs but can still have an influence on customer outcomes or market integrity. Firms need to identify these 'Certification Staff', define their remit, ensure that they are competent and meet 'fit and proper' criteria.

**The Conduct Rules** apply to all employees, except ancillary staff, who are those who have no direct impact on customer outcomes. There are two tiers of rules, one that applies to all individuals and a second tier that applies only to senior managers. The conduct rules will apply to both regulated and non-regulated activities.

## **EXAMPLE SENIOR MANAGER FUNCTIONS**

- SMF1, Chief Executive
- SMF3, Executive Director
- SMF27, Partner
- SMF9, Chair
- SMF16, Compliance Oversight
- SMF17, Money Laundering Reporting Officer

## **EXAMPLE ANCILLARY STAFF (excluded from the conduct rules)**

Receptionists, Secretaries, Postroom Staff, Facilities Management, IT, Security, Drivers, Cleaners, Catering Staff

## Plan for success

Successfully implementing SM&CR is a significant and critical undertaking. Firms must review their structure, processes and culture. We provide **5 key areas of focus** that will help firms to start planning their approach.

**1. Get to grips with the structural elements of SM&CR.** By correctly identifying their firm type - limited scope, enhanced or core - the firm can determine how SM&CR applies. Core firms are subject to the baseline requirements of SM&CR, with limited scope firms having fewer responsibilities under the regime. Only a small number of larger more complex firms will find themselves in the enhanced firm category and having to observe extra rules.

Once the firm has identified its type they can then match the appropriate Senior Managers Functions (SMFs) to their business. This involves mapping current Approved Persons management functions to the new SMFs. Each firm type also carries 'Prescribed Responsibilities' which must be assigned to Senior Managers and reflected in their Statement of Responsibility (SoR).

Firms also need to identify other influential functions that will be 'certified' under the Certification Regime. For these functions there will need to be training plans and fitness and propriety tests.

As well as SMFs and Certification Functions, the Conduct rules also apply to all staff except for ancillary staff who have no influence over customers. By identifying ancillary staff firms determine, by exclusion, the extent of who the conduct rules apply to.

# Limited, Core or Enhanced

## - *what's your SM&CR firm type?*

**Page 7 of the FCA guide helps firms to work out their SM&CR firm type.**

<https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>

**2. SM&CR is a lot to do with culture.** Some requirements of SM&CR are prescriptive; a firm can demonstrate they have assigned SMFs and documented SoRs. However, the FCA expects more than a tick box approach to compliance. SM&CR embodies the principles of good conduct and it is up to each firm to establish a culture throughout the organisation that protects customers. This is often the biggest challenge for a firm as it may involve challenging the status-quo and overcoming cultural inertia at all levels.

Firms need to be honest about their culture, including their management behaviours. Only then can they start changing behaviours to those that foster the right culture. In practical terms this assessment may result in a review of existing governance practices.



## **SOME KEY QUESTIONS ABOUT CULTURE**

- *How will people respond to taking greater responsibility for their own actions?*
- *If they are not currently used to this how can they be empowered to do so?*
- *How can increased accountability be addressed without giving rise to fear?*
- *Are people comfortable to call out poor conduct and challenge up?*
- *Are strategic decisions made in a consultative and inclusive way?*

**3. Proportionality.** Under SM&CR the FCA expect that firms will take 'reasonable' steps to ensure good conduct. While the Conduct Rules set out basic standards, they are not prescriptive. Firms must thoroughly assess their business and put in place systems and controls that are proportionate to their activities, ultimately taking responsibility for the outcome of their actions.

Should a failure or breach occur firms can then rely on their systems and controls to evidence that they are taking reasonable steps.



## FCA EXPECTATIONS

- Consistent and objective risk assessment and control.
- Consistent and objective risk monitoring.
- An appropriate level of support and supervision.
- External analysis of market, best practice and regulatory changes.
- Adequate MI so that SMFs have visibility and can take effective action.
- Sufficient resources allocated to undertake regulatory responsibilities adequately.
- A proactive approach to 'outing' failures and seeking opportunities for improvement.
- A responsible attitude toward identifying and reporting breaches.

**4. On-going needs.** A firm's responsibilities under SM&CR do not stop after the implementation date; far from it. Firms should treat SM&CR as an on-going programme of change.

Firms must consider the on-going training and development needs of their people to ensure they can effectively carry out their responsibilities under SM&CR.

Fitness and propriety assessments and annual attestations are another on-going feature of SM&CR. Firms must make provision for existing staff and for onboarding new employees.

SM&CR also requires firms to monitor employee conduct and report to FCA when a breach of the conduct rules results in disciplinary action. For Senior Managers firms must report within 7 days of concluding the action and for all other staff reports must be made as part of an annual submission.

Firms must ensure that any changes in their business activity size are considered as this can have implications for their SM&CR firm type. Any re-structuring also needs to be considered against SM&CR. If any new roles are created, or existing roles changed, this can have an impact on SMFs, SoRs, the allocation of prescribed responsibilities.

**5. Start now and think ahead.** If you haven't already you should by now have started working towards implementing SM&CR.

A first step is to review the relevant FCA documents so that you can understand the extent of what's involved. You can then begin to allocate the necessary resources.

For most firms SM&CR is a significant project to undertake. It should be owned by a competent and dedicated lead, sponsored at the most senior level and the governing body of the firm must have oversight.

SM&CR is critical to get right and takes time. Leaving it until the last-minute or not assigning sufficient resources, may result in missing the deadline and failing to adequately meet the requirements.

# We're here to help you successfully implement SM&CR

CCAS is expert in supporting consumer credit firms with regulation.

We can guide you through this important transformation and ensure that you prepare your business for the future.

- Statements of Responsibilities drafting
- Initial set-up
- Annual review
- New joiner/promotion set-up
- Training for existing Approved Persons
- Training for all financial services staff
- Breach reporting



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