

SIGNATURE

SENIOR MANAGERS & CERTIFICATION REGIME

This document pulls together the four parts of the original SM&CR Guide issued prior to the implementation date of 9th December 2019.

It's purpose is to help you understand your responsibilities under the Senior Managers & Certification Regime through practical guidance.

Part 1 - A practical guide to prepare firms for the new regime

The Senior Managers & Certification Regime (SM&CR) has been designed to improve public confidence in financial services and build trust with consumers.

It seeks to:

- develop a culture of accountability at all levels;
- ensure that firms have the right people in the right roles, and;
- make it easier for the regulator to work out who is responsible if something goes wrong.

The regime already applies to banks, building societies, credit unions and providers, however, it is being extended to all authorised firms from 9th December 2019.

The most important aspect of SM&CR is to understand that this is not designed to change the structure of a firm or require it to appoint further staff to fill new roles.

From the very outset, the Financial Conduct Authority reminds firms that “the tone should be set from the top”. In other words, the behaviour of the most senior people within the business is likely to directly influence the culture of the organisation and therefore must meet expectations.

However, SM&CR does not just affect those at the top, but extends to staff at all levels. It introduces the concept that they should be individually accountable for their actions, whilst at the same time, expected to work collectively to achieve the outcomes required.

Senior managers should be the most senior people in a firm. In most cases, we expect this to be the principals of the business.

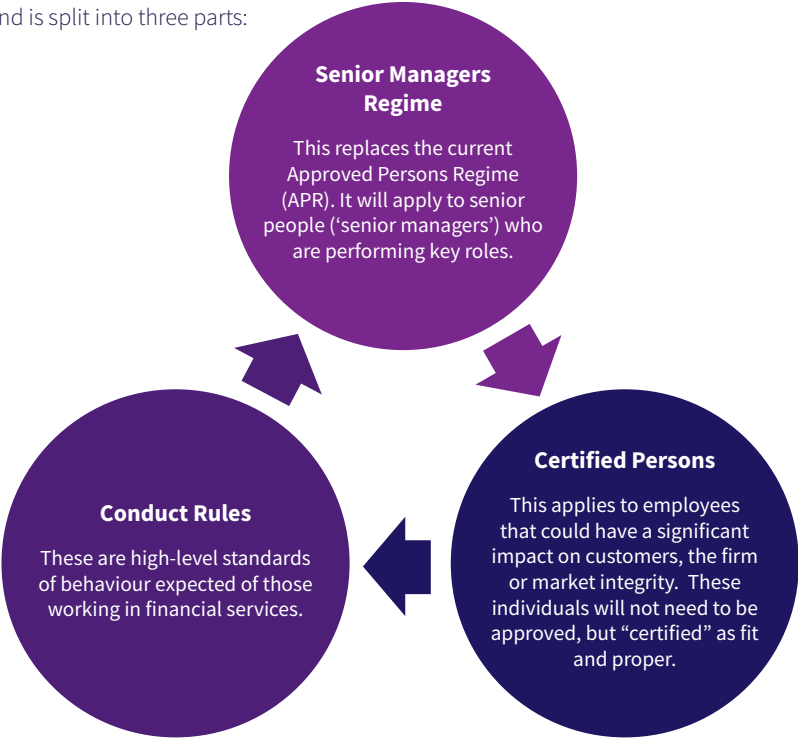
SM&CR should not represent a significant change for firms. You will notice that a lot of the concepts and phrases sound familiar. This is because it builds upon the existing foundations of the Approved Persons Regime. It is designed to remind and re-inforce fundamental compliance themes.

The regime creates a more detailed structure from which firms can improve upon their existing compliance processes. It should help staff understand and demonstrate where their responsibilities lie, and give them the confidence to take personal responsibility and speak up as and when required.

The ultimate goal is to build confidence in the financial services industry and raise standards within firms at all levels.

We believe firms will be well placed to deal with the challenges of this new regime.

The regime comes into effect on **9 December 2019** and is split into three parts:

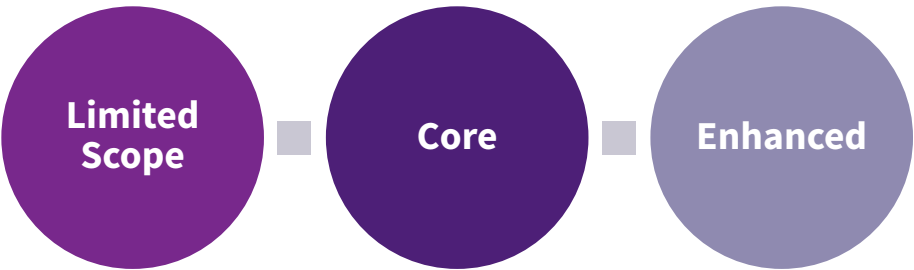


This guide is to assist firms with the implementation of the Senior Management Regime. We will issue separate guidance for individuals on the role of Senior Managers and Certified Persons, including the Conduct Rules.

Firm Types

The SM&CR is designed to be proportionate. The FCA has created three different categories of "firm type" to accommodate different sizes of firms and business models.

Firms will be categorised as either:



The information provided by SimplyBiz will relate to **Limited Scope firms** and **Core firms** only, as this is consistent with the type of firms to which we provide services.

The regime will apply differently depending on the firm's categorisation. Firms classified as "**Core**" will find that the requirements are slightly more onerous than those that are "**Limited Scope**". This reflects the perception that Core firms will present a greater risk to consumers and market integrity.

Determine Your Firm Type



■ If you need any help assessing what type of firm you are, please get in touch with us.

The New Senior Management Functions

Firms will continue to be subject to the Approved Persons Regime until 9 December 2019, however, from this date onwards, existing approvals will be converted automatically to Senior Management Functions (SMFs). This is known as 'mapping across'.

Below is a list of the all new Senior Manager Functions that **may** apply to Limited Scope and Core firms from 9th December 2019.

SMF	Role	Description
SMF 1	Chief Executive	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: We would not expect our typical firm to hold this function. This would be for firms of a significant size only.
SMF 3	Executive Director	A director of a firm, other than a Non-Executive Director.
SMF 9	Chair	The SMF regime will not cover Non-Executive Directors (“NED”). The only exception is where the NED is responsible for chairing, and overseeing the performance of the role of the governing body of the firm. A Chair tends to have the decisive vote. Note: We would not expect our typical firm to hold this function. This would be for firms of a significant size only.
SMF 16	Compliance Oversight	This is the person responsible for the compliance function in the firm.
SMF 17	Money Laundering Reporting Officer	This is the person who has responsibility for overseeing the firm’s compliance with the FCA rules on systems and controls against money laundering.
SMF 27	Partner	A partner in a firm, other than a limited partner in a partnership registered under the Limited Partnership Act 1907.
SMF 29	Limited Scope	The person that deals with the apportionment of responsibilities and establishes and maintains controls.

Please note the Senior Management Functions that will apply to a firm are dependent upon its permissions and activities. The above table is not firm specific. For example, if you are not currently required to have a Money Laundering Reporting Officer under the Approved Persons Regime, then you are not required to appoint one under SM&CR.

Approved Persons will be automatically mapped across to Senior Management Functions. The vast majority of firms will not need to submit any notification to the FCA as part of this process.

What Are The Main Differences?

Control functions that will no longer exist

The CF30 Customer Function (Investment Adviser) will not be converted to a SMF

Firms must register investment advisers as a CF30 under the current Approved Persons Regime. This control function will not be mapped across into a SMF. Investment advisers will not be senior managers, unless that person is a senior manager because of another role. The role of adviser will fall within the Certification Regime. There is no notification required to remove this function.

Non-Executive Directors (“NEDs”) are currently approved as a CF2 control function. Under SM&CR, NEDs will no longer be approved by the Financial Conduct Authority. There is one exception to this, which is outlined below. Again, no notification is required to remove this function.

The CF2 Non-Executive Director Function will not be converted to a SMF

A new Senior Management Function

The SMF9 is a new function that applies specifically to NEDs that are performing a 'Chair' function

There is one exception to the automatic conversion process.

This applies if the firm has a Non-Executive Director that performs a 'Chair' role, i.e. oversees all other NEDs and holds decisive voting powers. A new application is required for this SMF (known as a Form K). We believe, however, very few firms will have, or require, a NED 'Chair'.

If your firm does have a Non-Executive Director 'Chair' role please get in touch with us.

Please note, if your firm intends to appoint an individual as investment adviser (CF30) or non-executive director (CF2) up to 9th December 2019, the existing Approved Persons Regime will still apply and a Form A must still be completed.

Understanding the SMFs that may apply to my firm?

Below is a generic summary of SMFs that will apply to Limited Scope and Core firms from 9th December 2019. As stated above, firms will not have to re-apply and individuals will map across automatically.

At this stage, we would recommend that firms look at the control functions that currently apply to individuals at the firm by referring to their firm specific details on the FCA Register.

By referring to the tables below, firms should be able to work out what corresponding SMFs will apply after 9th December 2019, bearing in mind that the CF30 and CF2 control functions will be removed.

REMEMBER: The table below is generic. Not all the control functions and corresponding SMFs will apply to all firms, as this is dependent upon the specific permissions and activities of the firm.

Limited Scope Firms

Current controlled function	Corresponding Senior Management Function(s)
CF8 – Apportionment and Oversight	SMF29 – Limited Scope
CF10 – Compliance Oversight	SMF16 – Compliance Oversight
CF11 – Money Laundering Reporting Officer (MLRO)	SMF17 – Money Laundering Reporting Officer (MLRO)

Core Firms

Current controlled function	Corresponding Senior Management Function(s)
CF1 – Director	SMF3 – Executive Director
CF3 – Chief Executive	SMF1 – Chief Executive
CF4 – Partner	SMF27 – Partner
CF10 – Compliance Oversight	SMF16 – Compliance Oversight
CF11 – Money Laundering Reporting Officer (MLRO)	SMF17 – Money Laundering Reporting Officer (MLRO)

This conversion process will happen automatically. We would recommend that firms consider at this point whether the right people will fill the right Senior Manager roles. If not, changes should be made before 9th December 2019.

Do You Have Any Appointed Representatives (ARs)?

It is worth noting that the SM&CR will not apply to Appointed Representatives. The FCA has clarified that ARs are “outside of scope” and the relevant legislation does not give them power to apply SM&CR to these firms.

ARs will continue to be subject to the existing Approved Persons Regime. They will continue to be subject to the existing Statements of Principle and Code of Practice for Approved Persons as outlined in the APER section of the FCA Handbook, [here](#).

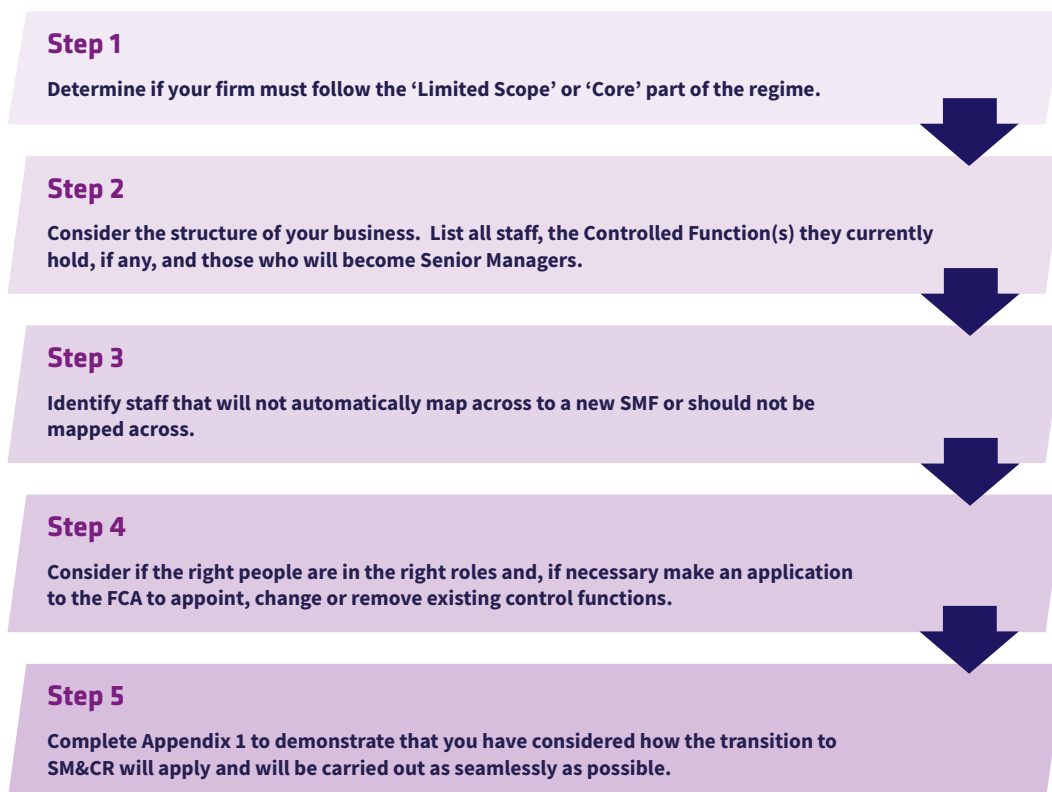
What Do Firms Need To Do?

The Approved Persons Regime (APR) will continue to apply in full until the start of the new regime on 9th December 2019. Up until this point, the FCA will deal with applications for controlled functions as normal.

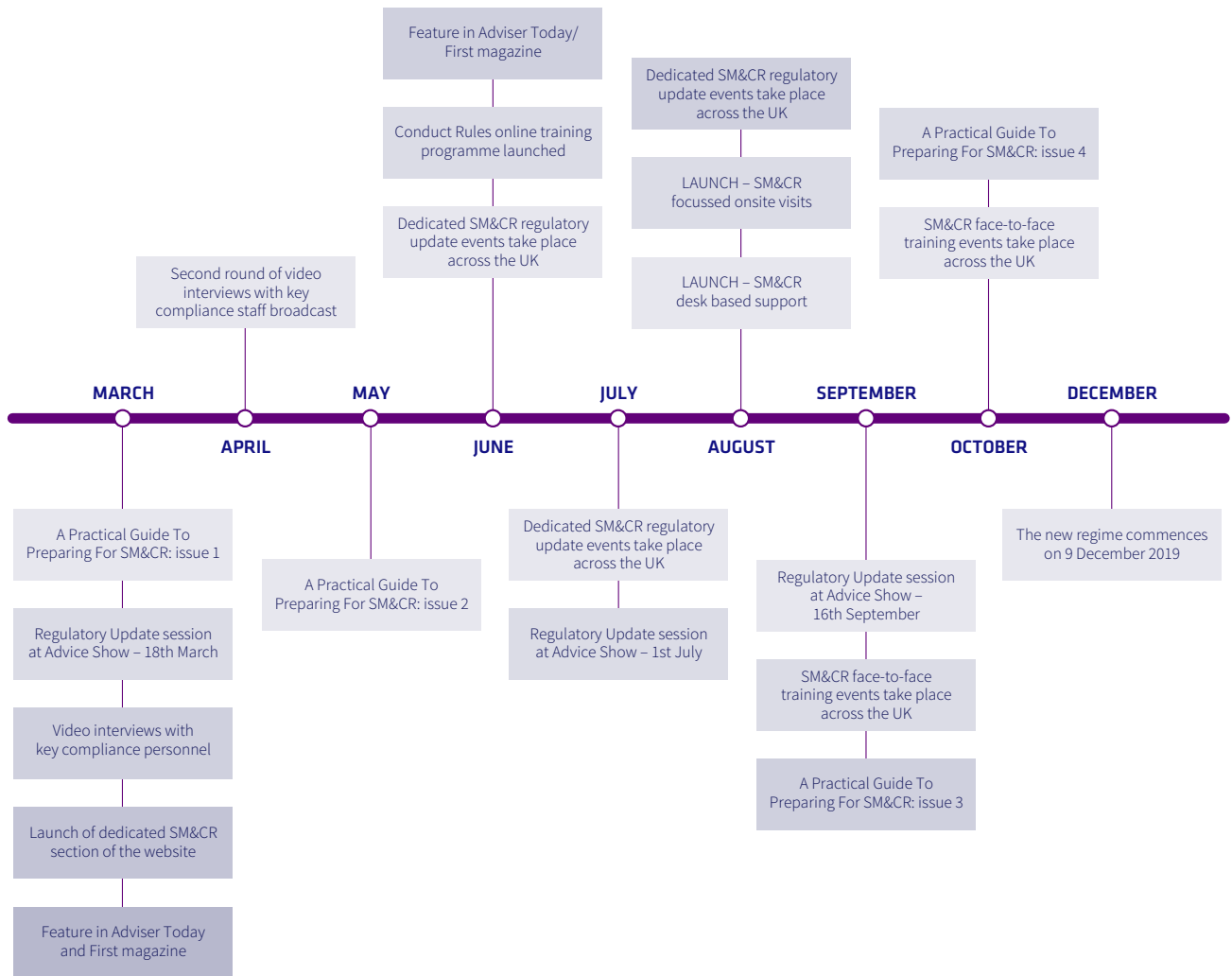
Most Core and Limited Scope firms will not need to take action ahead of conversion, however they may wish to change their approved individuals, in which case, they can use the existing process.

If an existing approved person application is not completed by 9 December 2019, the application will be converted to one for the relevant SMF.

In preparation you should follow the steps below:



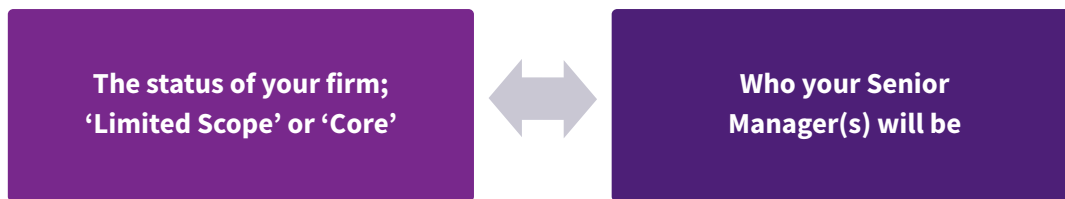
SM&CR Timeline



Part 2 - A practical guide to prepare individuals for the new regime

This is the second instalment in our series of guides to assist with the implementation of the Senior Managers & Certification Regime (“SM&CR”). This document focusses on how the SM&CR will impact upon individuals within ‘**Core**’ and ‘**Limited Scope**’ firms in the lead up to, and on implementation, of the regime.

In Issue 1 – ‘A practical guide to prepare firms for the new regime’ – we offered guidance on what firms need to do to transition themselves into the new regime. Following the steps laid out in that paper you should be in a position to identify:



The next step after establishing the status of the firm and its Senior Managers is to identify who will be subject to the ‘**Certification Regime**’. Persons covered by the ‘**Certification Regime**’ will be those that carry on a ‘**Certified Function**’ within the firm. It is possible to be both a Senior Manager and perform a Certified Function. Those carrying out a Certified Function, but who are not Senior Managers, will be known as ‘**Certified Persons**’.

A Certified Person is an individual within a firm whose role and actions could risk significant harm to the firm, its customers or market integrity.

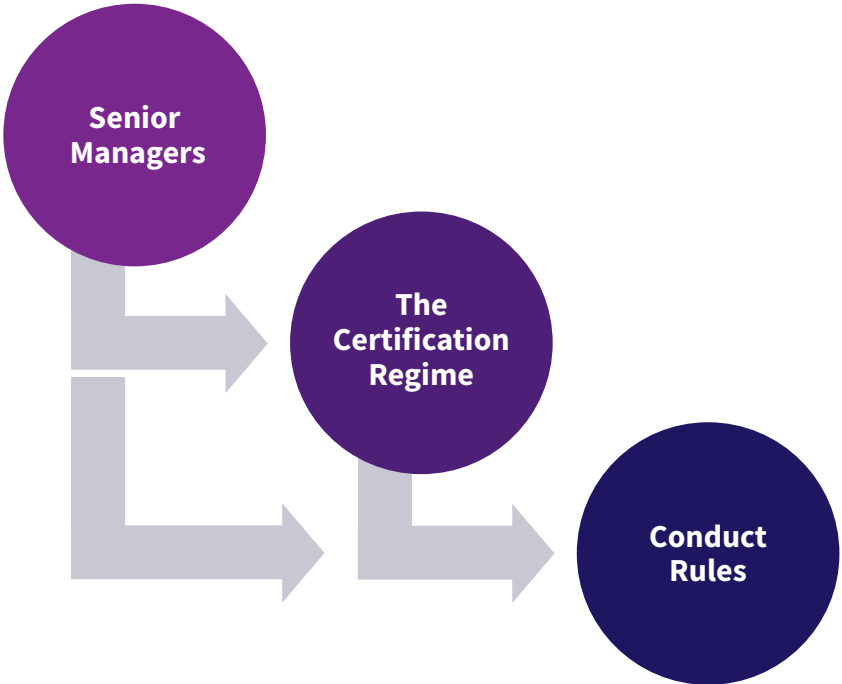
This guide focusses on what firms are required to do to ensure their **Senior Manager(s)** and **Certified Person(s)** meet the requirements set out in the new regime before commencement.

The new regime commences on 9 December 2019

The process of moving to the new regime may seem complicated at first, but in reality, it may be more of an administrative exercise. When considering how firms will meet these requirements, this guide will look at:

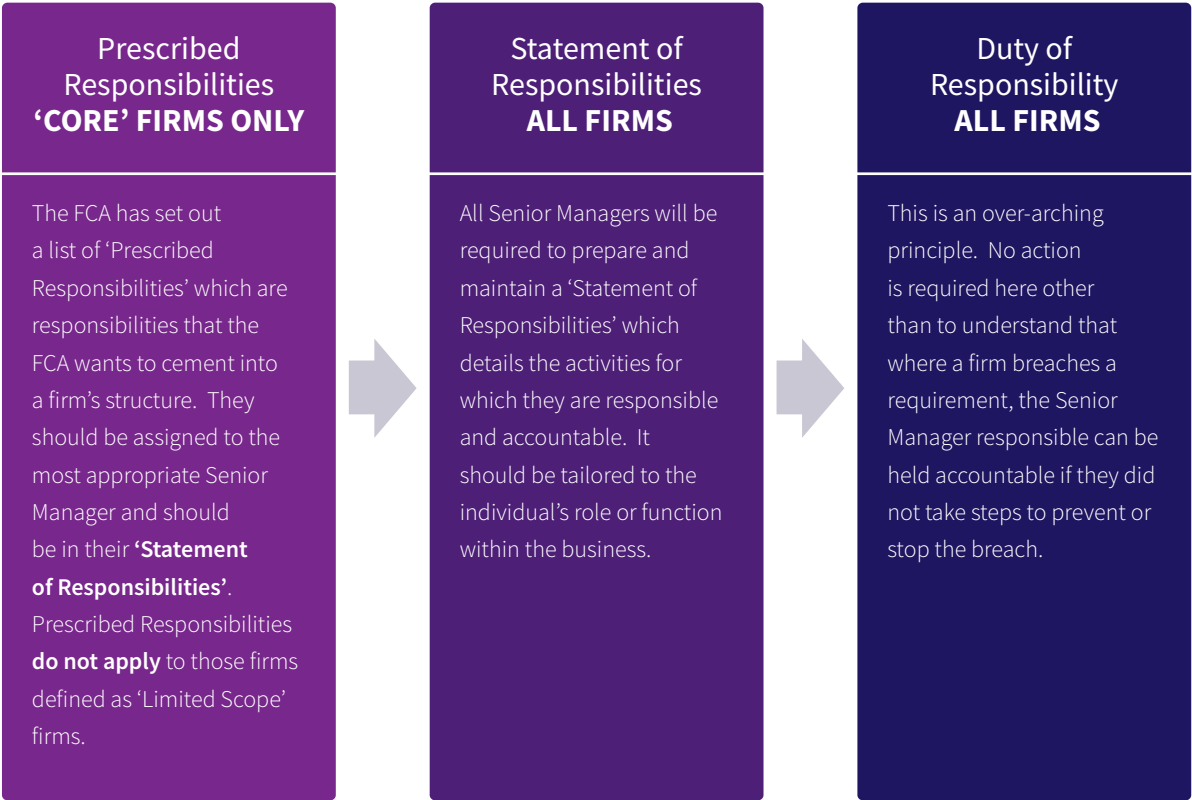
- the requirements for Senior Managers;
- Certified Persons and the Certification Regime; and
- the new Conduct Rules.

The Certification Regime will not apply to sole traders, a proprietorship and partnerships that do not have any employees.



Senior Managers

The new regime reinforces the message that Senior Managers, and those responsible for the running of a firm, must be responsible and accountable for not just their own actions, but the activities and conduct of those working within the firm. The regime imposes specific responsibilities on Senior Managers. These are:



Prescribed Responsibilities

There are four Prescribed Responsibilities a firm must allocate to its Senior Manager(s). A fifth responsibility applies if the firm is authorised to hold client money/assets (a CASS firm).

Firms should decide which Senior Manager is the best person to hold each Prescribed Responsibility ("PR"). This should be the person who has the required knowledge and competence to be responsible for that activity.

The expectation is that each PR is allocated to only one person, i.e. firms should not divide or share a particular PR unless there are exceptional circumstances e.g. a job share, as this can blur the lines of accountability.

All PRs must be allocated (except number 5 below unless it is relevant). It is possible for one Senior Manager to hold multiple PRs (please note this is different from sharing a PR). It is also possible for a Senior Manager not to hold any PRs, where these have been allocated to others within the firm.

The responsibilities that must be prescribed are:

1	Performance by the firm of its obligations under the Senior Manager Regime, including implementation and oversight.
2	Performance by the firm of its obligations under the Certification Regime.
3	Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules.
4	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime. Note: The firm's existing Money Laundering Reporting Officer (CF11) or Nominated Officer for financial crime matters should take on this responsibility.
5	CASS firms only: Overall responsibility for the firm's compliance with CASS. Note: We do not expect this to apply to our typical member firm. Only those firms that hold client money (e.g. for insurance mediation activities) will need to allocate this PR.

Prescribed Responsibilities apply to 'Core' firms only. They do not apply to 'Limited Scope' firms, e.g. sole traders or limited permission consumer credit firms.

Statement of Responsibilities

A Statement of Responsibilities ("SoR") is a single document that every Senior Manager will hold. This document will clearly set out and identify their role(s) and responsibilities.

The document must be:

- clear and easy to understand;
- succinct and not contain unnecessary detail; and
- self-contained and not refer to other documents, i.e. a single document.

All Senior Managers will require a 'Statement of Responsibilities'. However only Core Firms will need to allocate the specific 'Prescribed Responsibilities' set out by the FCA.

SimplyBiz have prepared templates for an individual's Statement of Responsibilities, see Appendix 4. This has been based on guidance from the Regulator.

The document must contain reference to:



‘Other responsibilities’ include business functions and activities that the individual is accountable for, which are not covered by Prescribed Responsibilities. These will vary from firm to firm but examples could include:

- Investment sales and distribution
- Mortgage sales and distribution
- Insurance sales and distribution
- Credit Broking / Lending / Arrears
- Marketing / Financial promotions
- Customer service / Support unit
- Staff training
- Customer complaints handling
- Human resources
- Business acquisition

This list is not exhaustive. Firms will have different business models and these responsibilities will need to reflect their individual activities.

A brief description should be made against each of the ‘other responsibilities’ listed within the Statement of Responsibilities. This will enable anyone looking at the document to understand what that individual is accountable for in the firm. The description should cover the responsibility of the role but not why the person has been appointed or the competencies required to undertake it. See Appendix 4 for examples of this.

Where other Senior Managers are responsible for the same area, there should be a clear distinction between their respective roles.

In certain instances, a Senior Manager may not have any ‘Prescribed Responsibilities’ or hold any ‘other responsibilities’ in the firm. For example, this may apply to a smaller firm with two directors, where only one director is involved in the day-to-day running of the business. This does not mean the other director will not have any responsibility, as all Senior Managers have general accountability for the activities carried out by the firm.

‘Prescribed’ or ‘other responsibilities’ should not be divided or shared as it can become unclear who is ultimately responsible for that area of the business. The exception to this would be a job share or as part of a handover process.

A statement of responsibility is not a job profile. It should simply focus on what the role holder is accountable for.

Duty of Responsibility

The Duty of Responsibility means that where the firm breaches one of FCA's requirements, the Senior Manager responsible for that area could be held personally accountable if they did not take the reasonable steps to prevent or stop the breach.

The burden of proof will lie with the FCA. When deciding whether to take action based on the Duty of Responsibility, the FCA will look at the circumstances of the case. The FCA may deem it appropriate to take action against a Senior Manager, or the firm, and sometimes both.

Final points

Preparing and maintaining an up-to-date 'Statement of Responsibilities' is a legal requirement for all those that are Senior Managers. Past versions of the Statement of Responsibilities are part of the individual's and the firm's records and should be retained.

If a Senior Manager holds multiple Senior Manager Functions (e.g. SMF3, SMF16 & SMF17) at the same time they will only need one Statement of Responsibility but this must clearly describe all their responsibilities.

SM&CR applies on a 'legal entity basis'. Where an individual is a Senior Manager in more than one firm, there should be a separate Statement of Responsibilities for each firm. This applies even if the firms are within the same group, but it does not apply to Appointed Representatives as ARs are outside of SM&CR.

It is possible to hold a Senior Manager Function at a Core Firm and not have any Prescribed Responsibilities. However the firm must ensure all Prescribed Responsibilities have been allocated to other Senior Manager Functions and there are no gaps.

The Certification Regime

Certified Persons

The Certification Regime covers individuals that perform a role that could have a significant impact on customers, the firm and/or market integrity. These individuals will be known as **Certified Persons**. The FCA will not approve Certified Persons. Instead it will be up to the firm to check and confirm (certify) at least once a year that these people are suitable to do their job.

Senior Managers **will not** automatically be Certified Persons. However, if an individual is a Senior Manager and carries out a Certified Function they will need to meet the requirements of both regimes. Unlike the Senior Managers Regime, there is no automatic mapping across and there is no pre-defined list of who within a firm will be a Certified Person. It will be for the **firm to determine**, however SimplyBiz will support this process.

The Certification Regime only applies to individuals that fall within the FCA definition of an 'employee'. This would include anyone who works for the firm on an employed or self-employed basis. It does not cover those appointed externally who provide support to the firm.

A Sole Trader (a proprietorship) and Partners within a Partnership do not fall within the FCA definition of an 'employee' and will not therefore be Certified Persons. If the firm has no other employees, it will fall outside of the 'Certification Regime' entirely, however the training and competence requirements will continue to apply.

This exemption however does not apply to Partners in a Limited Liability Partnership (LLP) or any other incorporated firm (Limited Company).

The effects of the above will be explained further in Issue 3 of our series of SM&CR guides.

In order to identify a Certified Person, the firm must consider whether they perform a Certified Function. All firms must identify the individuals that carry out a Certified Function before commencement of the regime.

Certified Functions

The FCA has created a list of certification functions. See listed below the functions that are most relevant, although they may not apply to all firms:

Function	Further examples / explanation
Functions requiring qualifications	<p>This will include:</p> <ul style="list-style-type: none"> • mortgage advisers • retail investment advisers • pension transfer specialists (PTS) <p>But also those that:</p> <ul style="list-style-type: none"> • advise on long-term care insurance contracts • advise and arrange equity release transactions • manage investments in a discretionary capacity • give personal recommendations on and deal in shares

Client-dealing function	<p>This function has been expanded from the current CF30 function under the Approved Persons Regime to include any person that is:</p> <ul style="list-style-type: none"> • advising on investments • dealing and arranging investments • acting as investment manager (discretionary permissions) • responsible for an automated solution • acting as Head of an Investment committee (note: This would only apply if a firm employs a specific individual to be responsible for a firm’s underlying investment strategy (e.g. the design of model portfolios) and this person is not otherwise captured by another certified function, e.g. as an adviser.)
Managers of certification employees	<p>Those that manage or supervise Certified Persons but are not themselves a Senior Manager. This ensures a clear chain of accountability between more junior certified persons and those senior managers at the top.</p>

Some firms may find that none of the Certification Functions above apply. If so, the firm will not have any Certified Persons and will not fall within the Certification Regime.

We believe this is most likely to be insurance brokers and consumer credit firms.

Where a Senior Manager is performing a Certification Function that is different from their Senior Management role, they must be certified. We believe this is likely to apply to most financial advice firms where the Senior Manager is principal of the business (e.g. SMF 3 – Executive Director Function) as well as performing a function that requires a qualification/a client dealing function. This individual will be subject to both the Senior Managers and Certification Regimes but the firm may choose to undertake a combined fitness and propriety assessment (details to follow in Issue 3 of this series of guides).

There has been some debate over whether administrators and paraplanners will fall within the definition of ‘client dealing function’, e.g. if their role involves ‘arranging’ investments. The latest FCA guidance leaves it up to the firm to decide whether an individual is performing a role that involves “significant skill” and “exercising discretion or judgement”. If so, they should be certified. However those that perform a role that allows for “no scope to choose, decide or reach a judgement” and do not need “to exercise significant skill” do not need to be certified.

SimplyBiz will be on hand to help firms that are struggling to work out if the Certification Regime applies to them or not.

The Directory

The FCA has decided to create a new central ‘**Directory**’ to contain details of individuals performing Certification Functions, along with certain others. This is an extension to the Senior Managers & Certification Regime. It will run alongside the existing Financial Services Register.

The ‘Directory’ is intended to empower customers by giving them a user-friendly tool to allow them to verify that those providing advice are fit and proper, suitable and have appropriate qualifications.

Firms have time to prepare. The deadline for uploading data to the Directory will be **9 December 2020**. Identifying who will be a Certified Person will go a long way to ticking the required boxes for the Directory.

SimplyBiz will provide more in depth support on the ‘Directory’ later this year as part of our timetable of SM&CR guidance.

The Senior Managers and Certification Regime does not apply to Appointed Representatives, as confirmed in Issue One. However, individuals within Appointed Representatives will, in certain situations, be included within the new ‘Directory’.

The Conduct Rules

All Senior Managers and Certified Persons must be trained on how the Conduct Rules apply to their role before implementation of the regime.

Overview

The Conduct Rules are relevant to **ALL** firms and almost all staff. They give the FCA the power to reach deep into a firm and take action. They underpin the fundamental goals of the SM&CR, i.e. to improve standards, encourage accountability and emphasise the importance of proper conduct.

The Rules will apply to the vast majority of staff. They are high-level principles and set basic standards of good personal conduct against which staff can be held to account.

They apply to anyone involved in any activity for which the firm is authorised, i.e. all those with the potential to cause harm. They do not however apply to “ancillary staff”, e.g. receptionists, post room staff, security guards, cleaners and catering staff.

The Senior Manager with responsibility for training (a Prescribed Responsibility within Core firms) must ensure staff are trained and abide by the Conduct Rules. The timelines will be as follows:

The deadline for training Senior Managers and Certified Persons
9 December 2019



The deadline for training all other staff
9 December 2020

How to deliver the training?

There is no formal method for delivering the training. However, a record will need to be kept to provide a clear audit trail.

To assist firms with this requirement, SimplyBiz intends to provide an online training programme to cover the Conduct Rules.

Two tiers of Conduct Rules

There are two tiers of Conduct Rules. The first tier applies generally to all staff (except for ancillary staff) including Certified Persons and Senior Managers. The second tier are rules that only apply to Senior Managers.

Individual Conduct Rules

First tier – Individual Conduct Rules	
1	You must act with integrity
2	You must act with due care, skill and diligence
3	You must be open and cooperative with the FCA and other regulators
4	You must pay due regard to the interests of customers and treat them fairly
5	You must observe proper standards of market conduct

We have provided more detail on the Individual Conduct Rules in Appendix 5.

Senior Manager Conduct Rules

Second tier – Senior Manager Conduct Rules	
SC1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
SC2	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
SC3	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
SC4	You must disclose appropriately any information of which the FCA would reasonably expect notice

We have provided more detail on the Senior Manager Conduct Rules in Appendix 6.

The second tier applies to Senior Managers only.

There is an exception. SC4 will also apply to Non-Executive Directors that are not Senior Managers. There is a proposal to extend this further to Non-SMF Directors at Limited Scope firms (e.g. a limited permission consumer credit firm), however we still await final clarification from the FCA.

What do firms need to do?

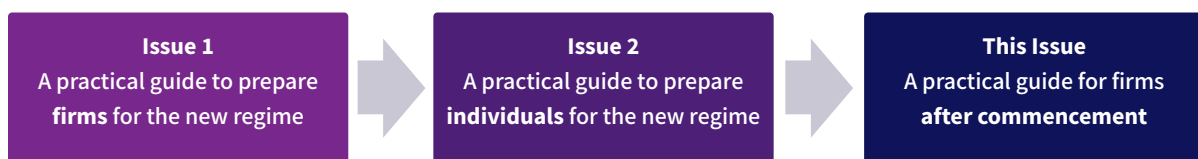
In preparation for the Senior Managers Regime, the Certification Regime and the Conduct Rules, you should follow the steps below before 9 December 2019:



Part 3 - A practical guide for firms after commencement - Existing individuals within the firm

Welcome to the third instalment in our series of guides to assist with the implementation of the Senior Managers & Certification Regime ('SM&CR').

You can access copies of Issues 1 and 2 through the dedicated SM&CR section of our website which sit within the 'Policies and Procedures' area. To recap:



This issue will look at the following features of SM&CR:

- A general overview of the Fit and Proper requirements ('FIT')
- FIT Assessments
 - Senior Managers
 - Certified Persons
 - Non-Executive Directors
 - Other Staff
- Non-Approval of FIT - Disciplinary Action - Conduct Rule Breaches
- Other Areas
- Supporting Documentation

The new SM&CR regime will commence on 9 December 2019. By this date, you should have identified your Senior Managers and Certified Persons and these individuals should have been trained on the Conduct Rules.

In the twelve months that follow, firms will be required to gather evidence and complete Fit and Proper assessments on Senior Managers and any Certified Persons or Non-Executive Directors. This process must be completed by **9th December 2020**.

In the following pages, we will look at the requirements for assessing fitness and propriety, who they apply to, and how we can assist with this process. From commencement of the regime, firms will be expected to carry out an assessment of fitness and propriety at least annually.

This guide focusses on the Fit and Proper requirements for **existing individuals** within the firm. Our next publication, Issue 4, will consider the assessment of new candidates joining the firm and those that are changing role within the same firm.

Who do the new Fit and Proper rules apply to?

Firms will be required to gather evidence to demonstrate that anyone performing a **Senior Manager Function** ('SMF') or a **Certification Function** is Fit and Proper for their role.

This requirement also applies to **Non-Executive Directors** ('NEDs') who are not Senior Managers (except for limited scope firms).

Limited Scope Firms

The Fit and Proper requirements apply differently

Sole Traders (proprietorships) without any employees will not need to perform Fit and Proper checks on themselves. Depending on the nature of the firm's activities, **T&C requirements will still apply.**

Non-SMF directors (both Executive and Non-Executive) **at limited permission firms**, will **not** be subject to the Fit and Proper requirements. This might typically apply to a limited permission consumer credit firm.

A general overview of the Fit and Proper (FIT) requirements

The reality is that firms should already have processes in place to assess the fitness and propriety and competence and capability of the majority of these individuals. This is a result of the so called 'Competent Employees Rule' and existing requirements under the FIT chapter of the FCA Handbook.

The SM&CR introduces new rules and guidance which firms must follow, however it is based on three familiar concepts:



In assessing whether a person is fit and proper to perform a **Senior Management Function** or a **Certification Function**, a firm must have regard to whether that person:

- has obtained a qualification; or
- possesses a level of competence; or
- has undergone, or is undergoing, training; or
- has the personal characteristics;

as required by the general rules of the FCA.

The firm should consider:

- the **nature, scale and complexity of its business**, the nature and range of financial services and activities undertaken in the course of that business; and
- whether the candidate or person has the knowledge, skills and experience to perform the specific role that the candidate or person is intended to perform.

The FCA has provided a **list of criteria** in the FIT part of their Handbook which should be applied in general terms in determining a person's fitness and propriety. This is not a definitive list, however it does provide useful guidance on the important matters when carrying out an assessment.

SM&CR has been designed to be flexible and allow firms to exercise judgement. The Fit and Proper assessment should focus on the requirements and standards of the regulatory system.

Firms should be well placed to meet these new requirements as most will already have processes in place to assess fitness and propriety, performance and suitability of their staff.

Honesty, Integrity and Reputation

Firms are expected to be aware of relevant matters in determining the honesty, integrity and reputation of Senior Managers, Certified Persons and (within 'core' firms) Non-Executive Directors ('NEDs').

Firms should consider each fit and proper assessment on a case by case basis. For example, a conviction for a criminal offence does not automatically mean an individual would fail a fit and proper assessment. The firm would be expected to consider the seriousness of and circumstances surrounding the offence, the explanation offered by that person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

In considering the reputation of staff, a firm should have regard to whether that person's reputation might have an adverse impact upon the firm for which the function is to be performed and the person's responsibilities.

Financial Soundness

Firms should be aware of the financial soundness of existing Senior Managers and Certified Persons and keep this under review. Financial stress presents one of the greatest risks in terms of misconduct.

It is SimplyBiz's view that financial soundness can be assessed by a combination of self-declaration and obtaining a formal credit check from an independent source.

Again, firms will be expected to exercise some discretion. For example, there may be situations where more frequent reviews would be prudent e.g. an individual has a previous history of debt problems / the firm has reason to be concerned.

It may also be considered appropriate to review bank statements at periodic intervals.

SimplyBiz will provide access to a credit check facility. Details will be provided in the SM&CR section of our website.

There is also a template on our website for a Fitness and Propriety (self) declaration.

Competence and Capability

In assessing competence and capability of an existing Senior Manager or Certified Person, a firm is expected to check that the individual:

- satisfies the FCA **training and competence** requirements;
- has the required **experience and training**; and
- has **adequate time to perform the function** (this is likely to be relevant to NEDs).

In many respects, this replicates the existing template Training & Competence service (T&C) we currently make available.

Firms will be expected to collate a body of evidence to record this process. For example, some of the data in our T&C record keeping templates were previously considered good practice, e.g. KPI/MI templates. It is SimplyBiz's view that these documents should now be considered mandatory in their entirety.

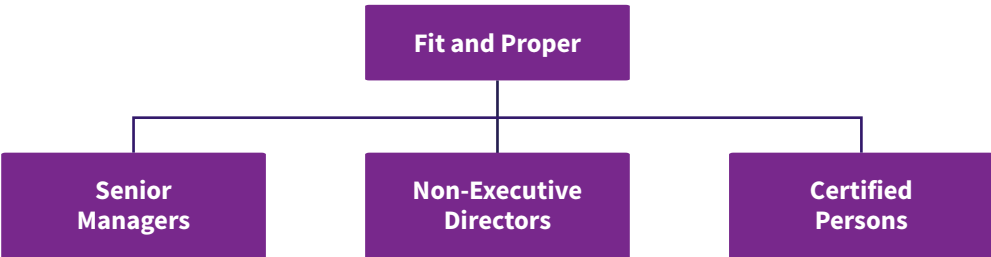
Even though the fit and proper assessment deadline is 9 December 2020, SimplyBiz strongly recommends that firms start the process of collating evidence to demonstrate competence and capability **at the earliest time possible**.

The nature of the competence and capability assessment will be dependent on the role and responsibilities the individual occupies within the firm. An assessment of a Senior Manager Function holder (e.g. an SMF3 that doesn't give advice) will be different to a Certified Person that has been certified under the qualification requirement. Similarly, a competence and capability assessment for a Non-Executive Director is likely to focus more on their background and ability to act as a voice of independent governance within the firm.

FIT Assessments

In the following pages we will give guidance on how firms should record that they have completed a fit and proper assessment on relevant individuals.

The document must contain reference to:



Senior Managers - FIT Assessment

SimplyBiz recommends that a firm should obtain a self-declaration relating to 'honesty, integrity and reputation' and 'financial soundness' from each Senior Manager as a minimum.

The obvious exception would be where the firm only has **one Senior Manager**, or where the fellow Senior Managers are family members (spouses, brother, sister, sons, daughters, etc.) as discretion may be exercised.

From 9th December 2019, it will be a regulatory requirement to carry out a criminal record check for any individual seeking approval for a Senior Management Function before submitting an application to the FCA. This only applies to new candidates joining the firm or existing staff that may be taking on a new Senior Management Function after commencement. This will be explained further in Issue 4.

It will not be a requirement to carry out a criminal record check on Senior Managers that map across automatically from the Approved Persons Regime.

Whilst not a regulatory requirement, there can be many benefits, particularly from a reputational risk perspective, of incorporating a criminal record check into the ongoing FIT assessment, where perhaps say every 3 years, a check is completed on each Senior Manager, noting the exceptions highlighted above.

A criminal record check is not required as part of an ongoing FIT assessment but it may be beneficial for a firm to obtain this at periodical intervals for all its Senior Managers.

We recommend that firms, as a minimum, obtain a self-declaration of 'financial soundness', and consider obtaining copies or sight of bank statements, for each Senior Manager on an annual basis. In most cases, it is likely to be in the interests of the firm to obtain a formal credit check to support this.

The exception would be where the firm only has one Senior Manager or where the Senior Manager is a spouse.

The final part of the fit and proper assessment is to identify the roles and responsibilities of each Senior Manager and ensure they have the time, knowledge and ability to carry out these functions.

This will include the qualifications they hold, if any, their experience and the effectiveness of how they perform their duties within the firm and the resource they have available to perform this e.g. the allocation of time accounting for the nature of the task and other roles they carry out. In addition, the firm should retain a copy of the individual's up-to-date job description.

For Senior Managers that have limited or no day-to-day involvement in the regulated business activities carried out by the firm, it is still important they attend regular board / management meetings and that these meetings and their attendance is recorded. This is due to the 'governing' senior management function they hold in the firm and the corporate governance duties for which they are accountable.

SimplyBiz recommends that evidence of competence for the holder of a Senior Manager Function should be documented as part of the minutes of the firm's Board Report and also referred to in the Compliance Officer's Annual Report.

Please refer to **Appendix 8** for a copy of our Senior Manager Fit and Proper checklist.

A Non-Executive Director holding the position of 'Chair' is a Senior Manager (SMF9) and therefore the above applies to that person. FIT also applies to other NEDs and is detailed below.

Non-Executive Directors – FIT Assessment

A 'chair' of a Non-Executive committee will be a Senior Manager (SMF9). All other NEDs will not, nor will they be Certified Persons. They will however be required to demonstrate fitness and propriety under the requirements of SM&CR but with one exception. The exception is those NEDs that sit within a 'limited scope' firm (please see Issue 1 for details of firm types).

Where a fit and proper assessment is required, it is recommended you apply the same assessment process for all NEDs that you would apply to a NED chair (as a Senior Manager) and as outlined in the section above.

Additionally, for a NED, we would expect firms to keep a clear record of attendance at Board Meetings and that the individual has the time and experience, considering their other commitments, to perform the role.

A template checklist can be found in **Appendix 9**.

Certified Persons – FIT Assessment

All firms should obtain a self-certified declaration of 'Honesty, Integrity and Reputation' and 'Financial Soundness' for each of their Certified Persons. A copy of this declaration will be available on our website.

For Certified Persons that do not require a qualification, e.g. managers of other certified persons, the output from their duties would be used to demonstrate their competence and capability under FIT.

For Certified Persons that do require a qualification, their competence and capability should be monitored against a set of pre-determined benchmarks. These would be set out within the firm's T&C standards and would include the individual's key performance indicators (KPIs) that form part of the firm's management information (MI). These would be set against the activities that an individual is authorised by the firm to carry out i.e. investment advice, mortgage advice, discretionary management, etc.

SimplyBiz has a full set of T&C template documents for the activities requiring a qualification. In short these are the same documents that require completion by a firm to ensure its advisers are competent under the Training & Competence rules within the FCA handbook.

A template checklist can be found in **Appendix 10**.

You can find our T&C schemes and supporting templates within the suite of Compliance Documentation on our website. For investment and mortgage firms they can be accessed by selecting the relevant area of the Operating Centre, clicking on Business Hub and then Training and Competence. For Consumer Credit Firms you will find these on the Consumer Credit Centre Hub under 'Plans and Templates'.

Paraplanners

FCA CLARIFICATION: Only paraplanners that exercise discretion or judgement in the role they undertake will be part of the Certification Regime. There may be occasions where their role does exercise discretion, however, SimplyBiz's view is that paraplanners in a non-discretionary advice firm would not fall under the Certification Regime. Where a paraplanner conducts research and builds a recommendation in line with the firm's centralised investment proposition or submits their recommendation to the adviser for 'sign off' prior to it going to the client, this would not be a certification function under the regime. In the event that total discretion is held by the paraplanner, it is likely they would also act as a supervisor/manager to the firm's investment advisers (under a Training & Competence role). Therefore, it would be that latter activity that would mean the individual would fall within the Certification Regime before considering whether the exercising of discretion also applies. We believe this would be very rare in practice.

Sole Traders (Proprietorships)

REMINDER: The Certification Regime does not apply to a sole trader set up as a proprietorship. However, these firms will still need to adhere to the existing Training and Competence Handbook requirements, including maintaining KPIs, holding appropriate qualifications and continuous professional development. Similarly, the existing FCA general notification requirements will continue to apply in relation to matters where the regulator would expect to receive notice.

This exception does not apply to firms that are incorporated (e.g. a limited company) where the only senior manager is also the only adviser in the firm. These firms will still be subject to the SM&CR Fit and Proper requirements as outlined in the pages above.

All Certified Persons must be issued with a certificate when carrying out the certified functions for which the firm has approved that person. Please see below for more details.

Combined Assessment of FIT

In some cases, an individual within a firm may perform both a Senior Manager Function and a Certification Function. An example would be a financial advice firm with a Senior Manager performing the function of SMF3 – Executive Director – and also a function requiring a qualification, e.g. investment advice or mortgage advice. The FCA has clarified that a combined fitness and propriety assessment can be undertaken in these circumstances.

Issuing a Certificate to Certified Persons

A firm should ensure that its employees only perform a Certification Function if they have a valid certificate issued by that firm to perform that function.

An exemption applies to existing employees appointed pre-9 December 2019. These individuals can continue to perform their role, but an assessment of FIT must be carried out, and a certificate must be issued, by 9 December 2020. Information on new recruits will be covered in Issue 4

A firm should only issue a certificate to a person where the firm is satisfied that the person is a fit and proper person to perform the Certification Functions to which the certificate relates.

The certificate will confirm the person is fit and proper to undertake the role(s) specified within it and for a period of no longer than 12 months. Please note, where the person undertakes more than one certified function, e.g. requiring a qualification to carry out a role and managing other Certified Persons, both can be confirmed within the same certificate.

A certificate must be issued to existing Certified Persons before 9th December 2020 and only after a full assessment of FIT has been carried out.

Please refer to **Appendix 11** for a template certificate along with ‘notes’ for completion. SimplyBiz will also be making an online tool available to produce bespoke certificates for all Certified Persons.

Renewing a Certificate for a Certified Person

When a certificate expires, a further assessment of FIT must be undertaken before a new certificate can be issued. Again, the period of the certification can last no longer than 12 months.

Record Keeping

A firm must maintain a record of every employee who has a valid certificate issued by it. Firms can use **Appendix 7**.

There are no specific record-keeping requirements for maintaining records of fit and proper assessments or past certificates issued to Certified Persons. SimplyBiz would recommend, however, that these records are retained for a minimum of 6 years. This is in order to satisfy the general requirements of the regulator. It also allows a firm to provide information for a regulatory reference if required. More information on regulatory references will be contained in Issue 4.

There may be situations where records around competence and capability should be kept for longer. For example, a pension transfer specialist is required to keep records indefinitely to demonstrate competency under the Training and Competence regime. Some firms may also take a view from an employment / HR perspective to retain records for longer.

Other Staff

Staff that are not Senior Managers, Certified Persons or NEDs are not subject to the FIT requirements, however, all staff that are involved in any aspect of financial services (paraplanners, administrators, etc) must carry out Conduct Rules training that is relevant to their role. Conduct Rules training for other staff must be completed by 9 December 2020. Further information on the Conduct Rules can be found in Issue 2 and we have also introduced online Conduct Rules training for our firms to use. This is available within the SM&CR - Additional Support area of the Compliance tab on our website.

Please visit the SM&CR section of our website for online Conduct Rules training that supports all job types within each type of firm.

Non-approval of FIT - disciplinary action - conduct rule breaches

Senior Managers

Withdrawal of approval from a Senior Manager

If, as part of the assessment process, or thereafter between annual assessments, a matter comes to the attention of a firm which suggests that a **Senior Manager Function** holder is **not** fit and proper, and the firm has taken the decision that they should cease performing that Senior Manager Function, the firm must notify the FCA using FORM C.

In the following situations, the firm must notify the FCA by email or telephone **in addition to** completing a FORM C, where the individual:

- has been dismissed, or suspended, by the firm
- has resigned whilst under investigation by the firm
- no longer meets the criteria required under FIT to be a Senior Manager and the firm is removing the individual's Senior Manager Function or the individual has left the firm
- has breached a Conduct Rule, the firm has taken disciplinary action and that person has left the firm.

The email or telephone notification must be made to the FCA within **one business day** of the firm becoming aware of the information, and FORM C must be completed no later than **ten business days** after the Senior Manager ceases to perform the function.

Notifications relating to Senior Managers including Conduct Rule breaches

Where a Senior Manager is continuing to perform a Senior Manager Function but the firm has:

- become aware of material information relevant to their assessment as fit and proper
- taken disciplinary action

the firm should submit a FORM D to the FCA within **seven business days**.

If there is a **Conduct Rule breach** that does not result in disciplinary action, firms should consider if this is 'significant' to warrant disclosure under Principle 11.

Certified Persons and other staff

Not Issuing a Certificate to a Certified Person

If, after having considered a person's fitness and propriety to perform a Certification Function or Functions, a firm decides not to issue a certificate to that person, the firm must give the person notice in writing stating:

- what steps (if any) the firm proposes to take in relation to the person as a result of the decision; and
- the reasons for proposing to take those steps.

Dependent upon the situation, the firm should consider if the circumstances warrant making a notification to the FCA.

Conduct Rules breaches by Certified Persons and other staff (except for Senior Managers)

This section applies where there is a breach of the Conduct Rules by Certified Persons or other staff involved in the regulated activities of the firm. Firms are subject to the Conduct Rules from 9 December 2019.

The firm must notify the FCA of any breach of the Conduct Rules, however, the method and timing will vary dependent upon the nature and outcome of the breach.

Any '**significant**' breach of the Conduct Rules must be notified to FCA as soon as the firm is aware of the breach or as soon as it becomes apparent that a breach may occur. To determine whether a breach is significant the firm should consider:

- Potential financial losses to its customers
- Its frequency
- Its impact on the firm's systems and controls (did the firm identify the breach at an early stage or were there delays in this).

For example, any act of fraudulent activity would constitute a '**significant**' breach.

The obligation to report a significant breach immediately is in line with the existing requirement under **FCA Principle 11** which states that a firm must deal with its regulators in an open and co-operative way and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.

Where a significant breach needs reporting, this should be made to the FCA in writing, most typically via a general 'Notification Form', and include:

- The circumstances relating to the breach
- The rule or requirement that was breached or the offence that occurred
- The steps the firm will be taking to rectify the breach and to prevent this from reoccurring in future.

A breach may not be significant but could still result in disciplinary action being taken against the individual.

Any Conduct Rule breach that results in disciplinary action must be notified to the FCA via an annual report which is submitted online via the GABRIEL system. This report will fall due at the **end of August**, except for limited permission consumer credit firms, where this is aligned with the firm's annual financial reporting period. Firms will have 2 months from the end of the respective reporting period to complete and submit the return. Please see the following section for more details.

Disciplinary action is defined as:

the issuing of a formal warning

suspension or dismissal

reduction or recovery of a person’s remuneration

When submitting the annual return, any disciplinary action will be confirmed by completing an electronic version of FORM H – Notification of Disciplinary Action, known as REP008.

Should it later transpire that matters have arisen which change the view to the outcome of the breach, or where the individual appeals or plans to appeal, the firm should still report the breach and then confirm the outcome, together with any change to that initial decision. Where there are matters arising that change the outcome or where the appeal is successful after submission of FORM H, this would need to be notified to FCA on the subsequent annual return.

Any disciplinary action taken where the breach occurred before 9 December 2019 does not need to be reported on FORM H, but firms will need to consider FCA Principle 11.

A significant breach followed by disciplinary action would require both types of notification to be sent to the FCA (immediate under FCA Principle 11 and via the annual return FORM H).

For reference, where there are no Conduct Rule breaches or resulting disciplinary action within the firm, the firm will be required to confirm a NIL return on the same annual return FORM H - REP008.

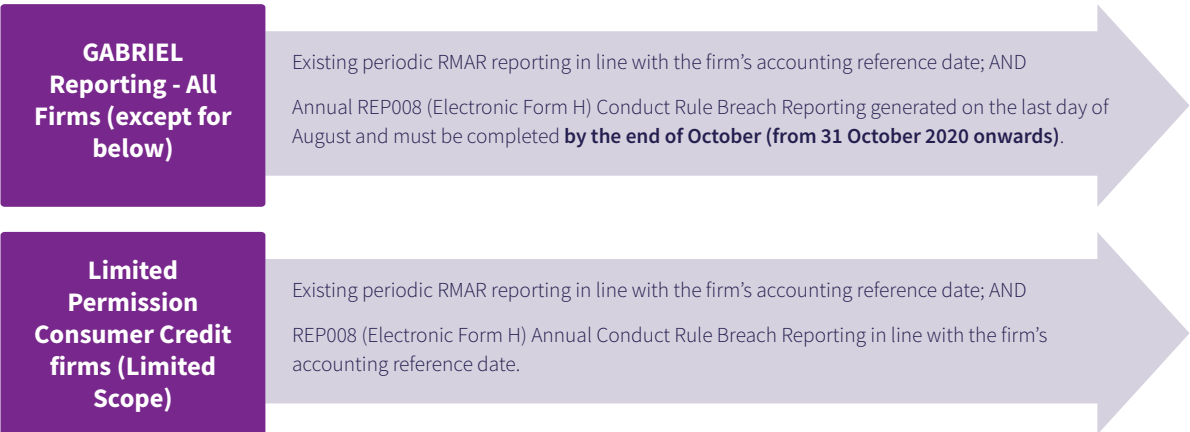
The Conduct Rules are listed in Issue 2, Appendix 5, and Conduct Rules training are available on our website by selecting the Compliance tab, SM&CR and Additional Support.

The New GABRIEL Notification – FORM H (REP008)

As outlined in the section above, firms will be expected to report a breach of the Conduct Rules to the FCA. For staff, other than Senior Managers, this will be done through a new return on the GABRIEL system known as FORM H - REP008. The return will cover a 12 month period, with the exception of the first return which will cover an abbreviated time period to align it with the dates below.

Most firm’s reporting date will fall due on the last day of August, except for limited permission consumer credit firms where the return will align with the firm’s accounting reference date. All firms must complete and submit the return within 2 months of the respective reporting date.

Additional post-SM&CR GABRIEL reporting can be summarised as follows:



The annual return FORM H – REP008 is in addition to any GABRIEL reporting you are already required to submit

Below are a number of scenarios to demonstrate when the notifications should be made:



X = disciplinary action with no appeal - notification made under annual return period 1



X = disciplinary action – notification made under annual return period 1

Y = outcome of the appeal – notification made under annual return period 1



X = disciplinary action (and appeal made) – notification made under annual return period 1

Y = outcome of the appeal – notification made under annual return period 2

Other areas

12 Week Rule – Senior Managers

This is an extension to the existing continuity provision that applies to the current Approved Persons Regime. Where a Senior Manager with a Prescribed Responsibility is off work, often due to an unforeseen circumstance or prolonged holiday, and where there is no ability to continue to adequately take part in the day to day activities of the firm, another Senior Manager can step into that role and carry out the required duties without having to be approved or hold a revised ‘statement of responsibility’.

Where a Senior Manager does not have any Prescribed Responsibilities, but does have ‘other responsibilities’, it is possible for an individual who is not approved as a Senior Manager to provide cover so long as they have the required levels of knowledge and competence.

The temporary appointment must be for less than 12 weeks in any consecutive 12-month period.

Periods Longer Than 12 Weeks – Senior Managers

Where a Senior Manager with prescribed responsibilities will be absent long-term or will not be returning to the firm, the firm can apply for a condition that allows any employee, with the appropriate knowledge and experience, to assume temporary responsibility for that Senior Manager’s function(s) until a replacement is formally appointed. This temporary appointment is time-limited up to 12 to 18 months and requires approval from the FCA by the submission of FORM I.

This would be considered an extremely rare occurrence and due to the complexities of such a scenario, we would recommend that should this situation arise, you contact our Compliance Helpdesk for support.

4 Week Rule – Certified Persons

It is possible for a firm to appoint an individual that is not themselves certified on a temporary basis to cover the work of a Certified Person. This rule does not however apply to Certified Persons who require a qualification, e.g. investment adviser/mortgage advisers.

This might be relevant to an individual that is a supervisor that manages Certified Persons but is not themselves a Senior Manager, where they are off work perhaps due to unforeseen circumstances or some other prolonged absence.

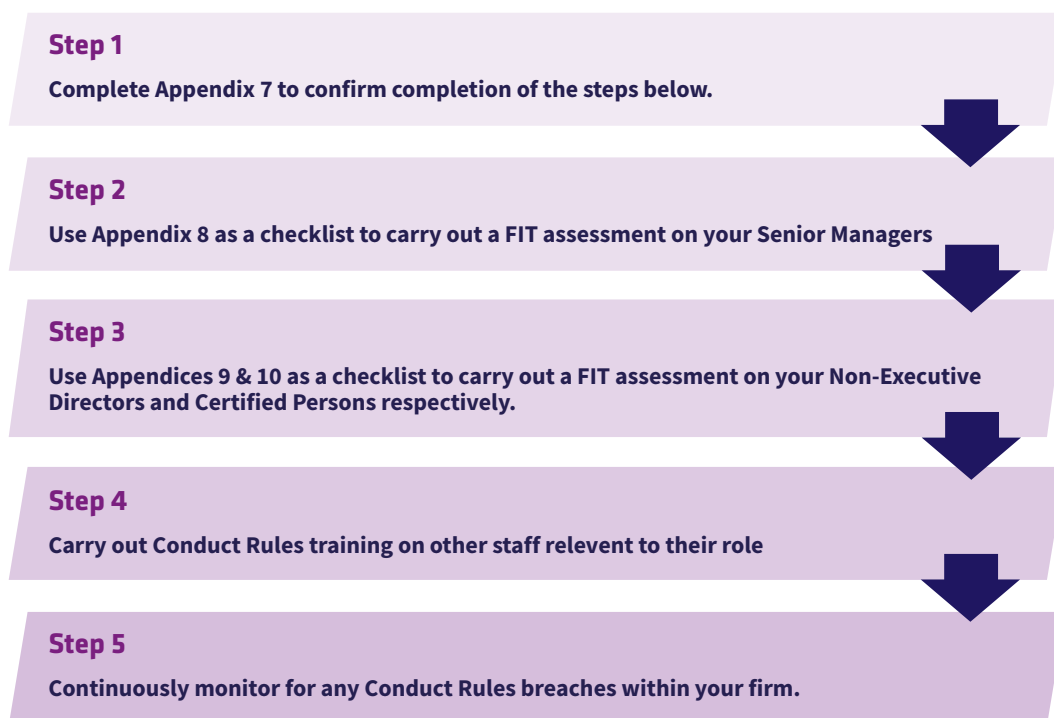
If a Certified Person performing a qualification function is absent for any length of time, cover would need to come from another person that is certified to perform the same qualification function. In other words, if a mortgage adviser is absent, cover needs to be provided by another appropriately certified mortgage adviser holding an up-to-date valid certificate.

30 Day Rule – The Temporary UK Rule

The Certification Regime will not apply to an individual that is based outside the UK and in a 12-month period does not spend more than 30 days performing a role that would be certified. This exception only applies where the individual is appropriately supervised by a Senior Manager or Certified Person. They should be accompanied on a visit to any customer in the UK. It is not available to those that are giving advice or performing related activities in connection with pension transfers, conversions or opt-outs. Training and Competence requirements may still apply.

What do firms need to do?

This guidance sets out the steps for firms during the new regime. You should already have completed similar exercises to this following the publication of Issues 1 & 2. To ensure your employees are FIT and you meet the requirements of the regime for each of your staff, you should follow the steps below:



Part 4 - A practical guide for firms after commencement - New staff and role changes

Welcome to the 4th instalment in our series of guides looking at the Senior Managers and Certification Regime (SM&CR).

This follows on closely from Issue 3, which focussed on how the regime impacts existing individuals within the firm and the Fit and Proper requirements. A copy of all our SM&CR guides and appendices are available within the dedicated SM&CR section of the Compliance tab on our website.

This issue looks at the processes a firm must follow when existing staff change their role(s) , or the firm recruits new staff to perform a function under SM&CR.

This quote from an 'Inside FCA Podcast' interview with the FCA's Head of Conduct Specialist summarises what the regulator is trying to achieve.

"What we want to do with this regime is to stop people who've got poor conduct histories simply moving from firm to firm, because the new hiring firm should be able to get the information they need to better understand the conduct history of their new hires."¹

Under the SM&CR, firms must collect extra evidence when assessing candidates for Senior Manager Functions, Certification Functions and NED roles (even if they are not a Senior Manager). This extra evidence is intended to add weight to the existing Fit and Proper (FIT) assessments and includes new requirements to obtain a regulatory reference, and have sight of a criminal records check, where appropriate.

In this issue we will consider the following:

- The procedure for changing roles within a firm
- Criminal records check requirements
- New Hires
- Leavers
- The new regulatory reference
- Other considerations
- Supporting Appendices
 - 12 – Change of Role – Senior Manager checklist
 - 13 – New hire of, or internal appointment to, a Senior Manager checklist
 - 14 – New hire or internal appointment of a Certified Person or change to a Certified Person's role checklist
 - 15 – Regulatory Reference template

SimplyBiz will have support mechanisms in place to assist firms with the new evidence requirements and the vetting of potential candidates.

¹Inside FCA Podcast: Interview with David Blunt on Certification and Regulatory References (SMCR).

Change of Role

The difference between a 'Change of Role' and a 'New Hire'

Where an existing Senior Manager or Certified Person is moving between two FCA authorised firms (that are not part of the same group), this is considered to be a new hire, even where similar duties will be carried out.

Where a person is promoted within a firm, for example, to a director of the firm, this would be considered a change in role.

Firms may find that the job role of a Senior Manager or a Certified Person changes from time to time, perhaps as a result of taking on or relinquishing new responsibilities, or a change in direction in the type of services or regulated activities carried out by the firm.

This section gives guidance on some common 'change of role' scenarios that a firm might encounter after commencement of the regime. We will consider in a later section the requirements when taking on new employees.

Whenever a firm adds or removes a Senior Manager Function from a Senior Manager, it must notify the FCA. This is done by completing either of, or a combination of, the following forms:

FORM A - Application to perform Senior Management Functions

FORM C - Notice of ceasing to perform controlled functions including Senior Management Functions

FORM E - Internal transfer of a person performing a controlled function

FORM J - Notification of significant changes in responsibilities of a person performing a Senior Management Function

Below, we consider a number of different scenarios and confirm which of the above forms would require completion and submission to the FCA, and where approval needs to be granted.

Senior Managers – Changing A Senior Management Function (SMF)

Where an existing Senior Manager is going to take over a Senior Management Function from another Senior Manager, the FCA must be notified of the change in role and approval must be granted **before** the change is implemented. The firm will need to complete **Form A** on behalf of the manager being appointed to the function and **Form C** for the manager removing the function. For example:

Existing Roles	New Roles
Person A	
SMF3 (Executive Director)	SMF3 (Executive Director)
SMF16 (Compliance Oversight)	
Person B	
SMF3 (Executive Director)	SMF3 (Executive Director)
	SMF16 (Compliance Oversight)

As **Person A** will need to complete a **Form C** to remove the Compliance Oversight Function and submit this with an updated Statement of Responsibilities which must be accompanied with a **Form J**.

Person B is already a Senior Manager, Short **Form A** is applicable

In circumstances where two Senior Managers are swapping Senior Management Functions within a firm, **Form E** should be completed on behalf of both parties and submitted for approval **before** the change of roles occur. **Form E** should only be completed where an individual is relinquishing a SMF and obtaining a new SMF. For example:

Existing Roles	New Roles
Person A	
SMF3 (Executive Director)	SMF3 (Executive Director)
SMF16 (Compliance Oversight)	SMF17 (Money Laundering)
Person B	
SMF3 (Executive Director)	SMF3 (Executive Director)
SMF17 (Money Laundering)	SMF16 (Compliance Oversight)

Submission of application to the FCA for approval (Form A & E)

When submitting either of the above forms, the firm will need to ensure a **criminal records check** has been obtained under the individual's name. This is not sent with the application, but it is required as part of the fitness and propriety (FIT) assessment of the individual to carry out that role.

When sending the application under either **Form A or E**, the application must be accompanied with a revised **Statement of Responsibilities (SoR)** which will include the responsibility of the function being applied for and, in the case of Form E, the function being removed. In addition to this, the FCA will also request other documentation specifically in relation to the role. For guidance on the latter, please seek further information from our Authorisations Team when completing your application.

* New roles should only be commenced after the FCA has granted approval.

All applications (Forms) should be submitted via the FCA's CONNECT system

Submission of application for removal of a Senior Management Function (SMF)

When an individual removes a SMF, a **Form C** must be completed. The removal will result in either of the 2 following scenarios:

- Other existing SMFs will be held or;
- No SMFs will held (e.g. to continue as a Certified Person only)

Where other existing SMFs are maintained, **Form J** will also be required. This is due to the fact that a significant change to that person's responsibilities will be made as a result of the removal of the SMF. A copy of the individual's revised **Statement of Responsibilities** must always be sent to the FCA with the **Form J**.

Form J is **not** required where, after submission of **Form C**, no SMFs will be held by that person.

Change to a Senior Manager's responsibilities but no change to their Senior Management Function

Where there is a significant change to an individual's responsibilities this should be confirmed in a revised **Statement of Responsibilities (SoR)**. **This will not require notification to the FCA, where a copy of the previous SoR has not been sent to them.**

Where a 'Statement' has previously been submitted to the FCA, **the revised 'Statement'** must be sent to the FCA with a completed **Form J**.

Firms are not required to submit the Statement of Responsibilities to the FCA for its Senior Managers on implementation of the new regime

What constitutes a significant change?

A significant change can include:

- The addition, re-allocation or removal of any of the five Prescribed Responsibilities (refer to **Issue 2** for more information on Prescribed Responsibilities).
- Any Prescribed Responsibility that becomes, or ceases, to be shared or divided.
- A change to the person responsible for insurance*, mortgage*, investment or credit distribution activities.

*This should be reflected on the Financial Services Register as the person responsible for insurance distribution and/or MCD intermediation.

Where there is a change that is **not** considered significant, the Statement of Responsibilities should be updated and retained on the firm's records. This would **not** need to be sent to the FCA.

CERTIFIED PERSONS AND OTHER STAFF

A Certified Person's change of role

A change of role that changes or includes further activities under a Certification Function, e.g. an investment adviser adding mortgage advice, would need to be assessed under the fitness and propriety (FIT) process for inclusion of that new role (please see Issue 3 for the requirements of FIT). Once assessed as competent to carry out the role the individual's certificate should be amended to include the new activity by the firm.

Appointment to a Senior Management Function

The individual will be expected to submit **Long Form A**. The process will then be the same for a change of Senior Management Function role, as identified under the above heading 'Submission of application to the FCA for approval'.

Where the existing employee is not currently performing a Certification Function the firm should consider, in addition to the above, whether it is appropriate to request any previous employer references based on the information obtained during the initial recruitment of that person. This may also be relevant to a Certified Person, if the original references from previous employers are not consistent with the information obtained through the new Regulatory References (please refer to this section later in this Issue).

Appointment to a Certification Function

As part of carrying out an initial assessment of FIT, the firm should ensure it has obtained suitable references previously for that individual which align with the requirements of the new Regulatory Reference. Once the requirements of FIT have been determined (please refer to Issue 3) the person should be issued with a certificate before carrying out the new function.

No approval is required from the FCA for this role as it is for the firm to determine.

Criminal Records Check

Obtaining a criminal records check when appointing a Senior Manager

From 9 December 2019, it will be mandatory when appointing a new Senior Manager, an existing Senior Manager to a new SMF or a Non-Executive Director (NED) to have sight of that person's criminal records certificate showing the checks against any criminal records. This forms part of the initial fitness and propriety assessment of any Senior Manager or NED. The only exception will be NEDs that sit within a limited scope firm.

Under the current Approved Persons application process, candidates need to declare if they have a criminal record. This continues for Senior Manager applications; however, it is bolstered by a new rule which will require firms to see sight of a criminal records check as part of each Senior Manager's application for approval. This will ensure the information the candidate gives to the firm, as well as the regulator, is accurate and complete.

What do I need to obtain?

According to the FCA, the criminal records check should contain:

“the fullest information that it is lawfully able to obtain about the candidate under Part V of the Police Act 1997 (Certificates of Criminal Records) and related subordinated legislation”.

For firms based in England and Wales, a firm will need to get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks).

There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI).

For Senior Manager approval, a criminal records check for **SPENT AND UNSPENT** convictions is mandatory and is permitted by statute.

Spent convictions are convictions that have reached a set period and are removed from an individual's criminal records. Unspent convictions are those records that have not yet reached this defined time and will appear on a Basic Criminal Records Check.

FCA guidance also states, where an applicant has spent time working overseas, it may be appropriate to carry out a criminal records check in that jurisdiction as well.

The procedure

The standard procedure would be for the firm to ask the candidate to fill in the form and return to the firm. The firm should then send the completed application form to the DBS or the firm's umbrella body.

The firm should then ask the candidate to show the firm the certificate, when the candidate receives it from the DBS or equivalent.

Please refer to the SimplyBiz website for details of our Criminal Records Check service, available soon.

The firm should **not** send a copy of the certificate to the FCA unless:

- The firm falls within the definition of a MiFID investment firm; typically this would be a firm that has permissions to manage investments on a discretionary basis, has passports to provide investment advice services in Europe, or holds client money.
- the FCA specifically asks for this as additional information.

The requirement to carry out a criminal records check only applies to new candidates applying for Senior Manager and NED roles after 9 December 2019.

It will **NOT** be a requirement to carry out a criminal records check annually thereafter as part of a FIT assessment, however, as highlighted in Issue 3, we recommend firms consider if it would benefit their business to obtain these at certain intervals (e.g. every 3 years) to satisfy the ongoing requirement of fitness and propriety within the firm.

Does this apply to Certified Persons?

A criminal records checks will **not** be mandatory for Certified Persons.

Firms that choose to carry out criminal records checks on Certified Persons should be legally allowed to do so. For example, a firm may wish to specifically include this as a requirement in their employment contract.

Great care also needs to be taken in terms of what information is being requested. It would be **illegal** to check or ask for disclosure of **SPENT** convictions for a Certified Person under Rehabilitation of Offenders legislation.

Firms that choose to carry out criminal records checks on Certified Persons must be aware that it is **ILLEGAL** to check or ask for disclosure of **SPENT** convictions for Certificated Staff under Rehabilitation of Offenders legislation.

New Hires

Senior Managers

Appointing a candidate to a Senior Manager Function

The process is in a lot of respects similar to the requirements under the Approved Persons Regime, however, there are two significant areas where additional evidence is required as part of a firm's fit and proper assessment. These are the Regulatory References and a Criminal Records Check.

Senior Manager	New Hire
Regulatory reference	✓
Criminal records check	✓
Fit & Proper assessment	✓
FCA APPROVAL REQUIRED BEFORE COMMENCING ROLE	

Regulatory reference

A reference must be obtained from the candidate's current employer, and any other previous employers, covering the previous 6 years. This should be obtained before the application for approval is submitted to the FCA.

In some situations, it may be difficult for a firm to obtain a reference before the application is submitted. A candidate applying for a Senior Manager Function can delay a request if the request might create a serious risk to the candidate not applying for the position in the first place, because it would reveal the proposed move to the candidate's current employer.

In this situation, the firm should obtain the reference as soon as possible thereafter. If a delayed reference raises concerns about the person's fitness and propriety, the firm will be expected to revisit its decision to appoint the candidate to the role.

The FCA may also consider that it needs to see the information in a reference before it reaches a decision.

Firms do not require a reference from a Sole Trader (proprietorship) as part of their FIT assessment, as it would be a reference by the Sole Trader on themselves.

Firms do not require a reference from a Sole Trader (proprietorship) as part of its FIT assessment, as it would be a reference by the Sole Trader on themselves.

Criminal Records Check

For Senior Manager approval, a criminal records check for **SPENT AND UNSPENT** convictions is mandatory and is permitted by statute. This will ensure that the information given to the firm and passed on to the regulator is accurate. Further details on the procedure for carrying out these checks can be found in the section above.

Fit and Proper Assessment

In addition to new regulatory reference and criminal records check, firms will be expected to review whether a Senior Management Function candidate is fit and proper to perform a function in a more holistic sense, as required by the FCA's rules, before making an application for approval. The firm should consider whether the candidate:

- has obtained a qualification (as required);
- has undergone, or is undergoing, training;
- possesses a level of competence; or
- has the personal characteristics.

In addition to the new regulatory references and criminal records check, we would recommend

Credit check

Companies House check

Conduct Rules Training

We have provided further guidance on fit and proper assessments in **Issue 3**.

FCA Application

A candidate must not perform a Senior Management Function (SMF) role without prior approval from the FCA. The SMF(s) you hold will depend on your firm type and whether you fall within the Limited Scope or Core regime – further details can be found in **Issues 1** and **2**.

An application for approval should be made by completing a new FCA SM&CR **Long Form A**.

All Senior Managers must have a **Statement of Responsibilities**. Firms will be expected to include this as part of an application for approval. To recap, this is a single document that clearly sets out and identifies the candidate's role and responsibilities.

Please refer to **Issue 2** for guidance on drafting this document and the templates in **Appendices 4** and **5**.

SimplyBiz will be on hand to support firms with applications for Senior Management Functions (SMF).

Certified Persons

The most noticeable difference under SM&CR is that a firm does not need FCA approval before certifying an individual to perform a Certification Function. This differs from the Approved Persons Regime, most notably for retail investment advisers who were previously approved by the FCA as CF30. It will now be up to the firm to take responsibility for, and to carry out relevant background checks to determine whether a candidate is FIT to perform this role. The requirements can be summarised opposite:

Certified Person	New Hire
Regulatory reference	✓
Criminal records check (unspent convictions)	Optional
Fit & Proper assessment	✓
FCA approval before commencing role	✗

Regulatory Reference

A reference must be obtained from the candidate's current employer and any other previous employers in the past six years.

Where a firm needs to fill a Certified Function at short notice, there can be circumstances where it may not be possible to obtain the reference(s) prior to issuing the Certificate. For example, if the firm's only supervisor is off work due to unforeseen long term illness, it may need to appoint someone immediately to ensure the firm continues to meet its regulatory responsibilities.

In this situation, firms should obtain the reference as soon as possible, given the circumstances. If a delayed reference raises concerns about the person's fitness and propriety, the firm will be expected to revisit its decision to appoint the candidate to the role.

Unless there are exceptional circumstances, all references must be received before a certificate of Fit and Proper is issued.

A firm is not required to obtain a reference from a Sole Trader as part of the FIT assessment

Fit and Proper Assessment

In addition to new regulatory reference and criminal records checks, firms will be expected to review whether a Certification Function candidate is fit and proper to perform a function, as required by the FCA's rules, before making an application for approval. The firm should consider whether the candidate:

- has obtained a qualification (as required);
- has undergone, or is undergoing, training;
- possesses a level of competence; or
- has the personal characteristics.

In addition to the new regulatory references, we would recommend:

Credit check

Companies House check

Conduct Rules Training

We have provided further guidance on fit and proper assessments in Issue 3.

Criminal records check - OPTIONAL

A criminal records check is **NOT** mandatory for a Certified Person, although firms may still opt to carry out such checks. However, firms doing so should be aware that they must be legally allowed to do so. As mentioned previously, great care also needs to be taken in terms of what information is being requested. It would be **ILLEGAL** to check or ask for disclosure of **SPENT** convictions for Certificated Staff under Rehabilitation of Offenders legislation.

FCA Approval – NOT REQUIRED

As outlined above, the FCA does not require approval for Certified Persons from 9 December 2019 onwards. Certified Persons will no longer appear on the Financial Services Register, however they will be listed on the Directory, which will go live in December 2020. We will provide further information on the Directory in a separate guidance paper. All Certified Persons must be issued with a certificate before they carry out a Certification Function – please see **Issue 3** and **Appendix 11**.

Non-Executive Directors

Appointing a new Non-Executive Director (NED)

Under the existing Approved Persons Regime, a firm is required to apply to the FCA for approval before appointing a NED. From 9 December 2019, the requirement to apply for approval will be removed and instead the firm will be responsible for determining whether the NED is FIT to perform the role. The process can be summarised opposite:

Non-Executive Director*	New Hire
Regulatory reference	✓
Criminal records check	✓
Fit & Proper assessment	✓
FCA approval before commencing role	✗ (unless holding the role of SMF 9 Chair)

*An exception applies for Limited Scope firms, as these individuals are not subject to the fit and proper requirements, including regulatory references and criminal records checks.

Regulatory Reference

A regulatory reference should be obtained from the candidate's current employer and any other previous employers in the past six years prior to appointment. However, where this is not possible, it should be obtained as soon as possible afterwards.

Criminal Records Check

A firm should carry out a criminal records checks on a NED for **SPENT AND UNSPENT** convictions. This is mandatory and is permitted by statute. Further details on the procedure for carrying out these checks can be found in the section titled **Criminal Records Checks** above.

FCA Approval – NOT REQUIRED UNLESS SMF9 'CHAIR'

The FCA does not require approval for NEDs from 9 December 2019 onwards. The only exception will be where the NED holds the role of 'chair', i.e. oversees all other NEDs and holds decisive voting power. In this situation, FCA approval will be required. We do not expect this to apply to a typical smaller firm.

Other staff

There are no formal fit and proper requirements for staff that do not fall under the Senior Manager or Certification Regime. However, it is a regulatory requirement that all staff performing a role relating to financial services receive training on the Conduct Rules, upon joining the firm. Further details on the Conduct Rules can be found in **Issue 2** and we have dedicated Training Modules and Case Studies available on our website.

Leavers

Removing a Senior Management Function (SMF)

A firm must notify the FCA when a SMF holder has departed their role. This would typically be done using FCA **FORM C**, no later than 10 working days from when they cease to perform the role.

If the individual is taking on a new SMF within the firm or it will require reallocation of a SMF to another Senior Manager, please refer to the Change of Role section above.

Where the leaver has been allocated **Prescribed or Other Responsibilities** within their **Statement of Responsibilities**, these will need to be reallocated and updated in that person's Statement of Responsibilities. Allocating new Prescribed Responsibilities to a Statement of Responsibilities will require notification to the FCA under **Form J** (please see 'Change of Role' section), as this would be considered a significant change. Where Other Responsibilities are reallocated, only where they are **significant**, will it require notification to the FCA. Again, please refer to the Change in Role section for further guidance.

The departure of a Certified Person or a Non-Executive Director (non-chair)

There is no formal notification process for informing the FCA if one of these individuals leaves the business. Instead, the firm should undergo an internal leaver protocol. SimplyBiz will include a template checklist on its website before implementation of the new regime.

FIT

If the departure is related to a Fit and Proper concerns, then please refer to Issue 3 and the section entitled 'Non-approval of FIT'.

Temporary Appointments

If the departure may lead to continuity concerns, please refer to Issue 3 – pages 12/13.

The obligation to give references

A firm must respond to a request for a regulatory reference from another firm that is appointing someone to perform a Senior Manager Function, a Certification Function or a Non-Executive Director role.

The FCA states that this should be done as soon as reasonably practicable and expects that this should not take any longer than 6 weeks.

The obligation to give a reference applies regardless of how the employment ended, whether that be by resignation, redundancy, dismissal, fixed term work, secondment or temporary work.

This applies to employees and ex-employees. The firm is only required to disclose something that occurred or existed:

- in the six years before the request for the reference;
- between the date of the reference request and the date the reference is sent; or
- in the case of serious misconduct, at any time.

Firms will not need to revisit disciplinary action that happened before the referencing requirements come into effect.

Regulatory References

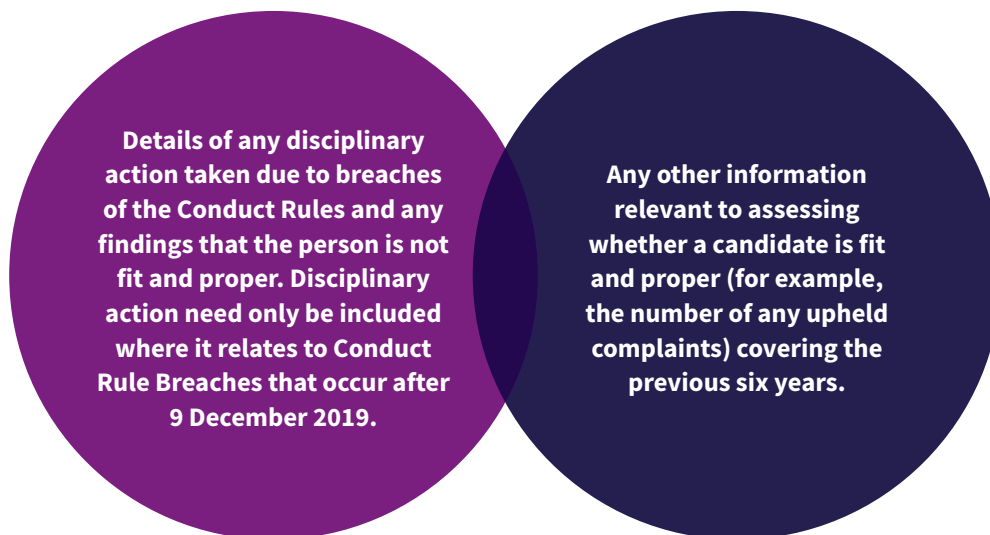
What is a Regulatory Reference?

A regulatory reference is a new standard template that provides a structure to allow firms to share information with each other when employees move from one firm to another. From the 9th December 2019, firms must request a regulatory reference from past employers, when appointing a new member of staff to perform a **Senior Management Function, a Certification Function or a Non-Executive Director**.

The aim is for firms to make better informed decisions about candidates. These requirements build on existing obligations placed on firms to provide all information relevant to the fit and proper assessment of a hiring firm.

An appropriate reference must be obtained from the candidate's current employer and any other previous employers in the past six years.

Firms will be expected to share information using a standard template known as a **regulatory reference**. The information contained within the reference will include:



The obligation to obtain a reference does not apply when appointing someone that has previously been trading as a sole trader (a proprietorship). This is due to the fact that a firm is only required to request a reference from a previous employer and a sole trader is not their own employer.

One of the Senior Managers in the firm will have this responsibility and be accountable for the firm's reference obligations. We outlined the Prescribed Responsibilities for Senior Managers in **Issue 2**.

This has been designed by the Financial Conduct Authority. A copy can be found in **Appendix 15**.

Remember – There is no requirement to obtain a reference for any period of time, whilst the candidate was authorised as a sole trader

Getting a reference

The obligation to obtain references going back six years applies regardless of the candidate's previous employment history.

An FCA authorised firm will be required under the rules to respond using the standard regulatory reference template.

However, the requirement to request a reference also extends to non-regulated firms that are outside the financial services industry. The FCA expects firms to take reasonable steps to obtain a reference, however, the FCA does acknowledge that the non-regulated employer is not obliged to provide any information. Rather than a regulatory reference, which is unlikely to mean very much to a non-financial services firm, the expectations would be to request a generic reference focussing on the individual's fitness and propriety.

Asking for a reference to be updated

In some situations, an existing reference may need to be updated, where an individual already working for the firm is taking on a new Senior Manager or Certification Function, and existing references on the individual's recruitment file are insufficient, or do not cover off the required parts of a regulatory reference.

Drafting a Regulatory Reference

Upon receipt of a reference request from another authorised firm, it will be necessary to use the standard regulatory reference template set out in the FCA Handbook to provide the required information. The fact that a template must be used does not prevent a firm from including additional information where this might benefit the firm making the appointment.

Accuracy

When giving a reference, a firm should provide as complete a picture of the employee's conduct record as possible to their new employer. A firm should be careful to ensure that all information provided can be verified.

Fairness

Any firm supplying a reference should be aware of its duties under general law to its former employee and to the recipient firm to exercise due skill and care in preparation of the reference. A firm may give frank and honest views based on documented factual information. In some cases, this may include giving the employee the right to comment on allegations for example through disciplinary proceedings.

Missing or incomplete information

If a firm's records do not cover the full period required, or if information is not available, then this must be made clear in the reference.

Serious matters extending the six year limits

In considering what is a 'serious matter' a firm should consider how important the information is to the firm requesting the reference, how long ago the matter occurred, fairness, whether the conduct was deliberate, reckless or dishonest (e.g. a small one-off case of dishonesty many years ago, may not be sufficiently serious to require disclosure).

Non-Disclosure Agreements

The rules do not allow a firm to enter into agreements which affect a person's ability to disclose information in references or agreements to suppress or omit relevant information as part of a negotiation.

Criminal records checks

A firm giving a reference need not include information from a previously carried out criminal records check. It is the recruiting firm that should carry out a criminal records check, if necessary (further details contained on this above).

We will be updating guidance on this area in the Operating Centre of our website, however, firms will need to be aware that in difficult cases, it may be necessary to obtain legal opinion from an employment lawyer.

Revised References

If a firm subsequently becomes aware of **new, significant information** that relates to the fitness and propriety of the individual that, with hindsight, would have changed the way they drafted their reference, the firm will be expected to take reasonable steps to update the individual's current employer with the changes.

This updating requirement will apply for six years from the date the individual left the firm. However, it only applies where the individual is still employed by the firm that originally requested the reference. It also only applies to references given after commencement of the regime.

Matters of serious misconduct that occurred more than six years ago, but which came to light within six years from the date the individual left the firm, may also require disclosure.

The new reference requirements only apply to new candidates starting roles after 9 December 2019. They do not apply to existing employees who will be performing the same role after the start of the new regime.

Other Considerations

Record Keeping and Data Protection

Firms will be expected to retain records that will allow them to comply with the referencing requirements. This means keeping records relevant to Fitness and Propriety, Conduct Rules and disciplinary issues for a minimum of six years. For matters relating to serious misconduct, the time period will be longer.

The FCA states in Policy Statement 18/14 that the requirement to provide regulatory references should not contravene any aspect of the Data Protection Act 2018 (also known as GDPR) because:

- the information employers are required to give is proportionate;
- storage of the information is for an appropriate amount of time (6 years); and
- it is appropriate to comply with regulation.

Firms are only required to disclose information that has been properly verified. **Appendix 15** sets the minimum criteria that a firm must disclose according to the FCA's reference template. A firm can choose to provide additional information, however, it should also be aware of duties under general law to the former employee and to the firm requesting the reference.

SM&CR Appendix 1

Is my firm “Limited Scope” or “Core”?

Does my firm have the correct individuals in the correct roles?

Firms may wish to draft a structural chart to illustrate that consideration has been given to whether the correct individuals will hold the correct SMFs after conversion.

List all staff holding a controlled function or that will need to hold a SMF to identify any impact when mapping across is carried out.

Staff Member	Current CFs	New SMFs	Change required prior to implementation?
e.g. John Smith	CF30	Not Applicable	No
e.g. Mavis Riley	CF1	SMF3	No
e.g. Adam Scott	CF1, CF10, CF11	SMF3	Yes – as planning to reduce hours – relocate CF10 and CF11 before commencement of SM&CR

Do I need to add individual control functions prior to commencement, perhaps with a view to these employees automatically mapping across to a Senior Manager Function? An “Approved Persons Regime FCA Form A” should be completed. This applies to the following employees:

Do I need to cancel individual control function(s) prior to commencement? An “Approved Person Regime Form C” should be completed. This applies to the following employees:

Do I need to change an individual’s control function, e.g. an individual is going to give up a control function and take on a new convertible control function prior to commencement. An “Approved Person Regime Form E” should be completed. This applies to the following employees:

Do I need to add SMF9 (Non-Executive Director as Chair person) by using Form K?

Please refer to Appendix 2 for further details on the forms to use when amending existing approvals ahead of SM&CR commencement.

Review carried out by (Name):

Date review completed:

Action required: (Yes/No)

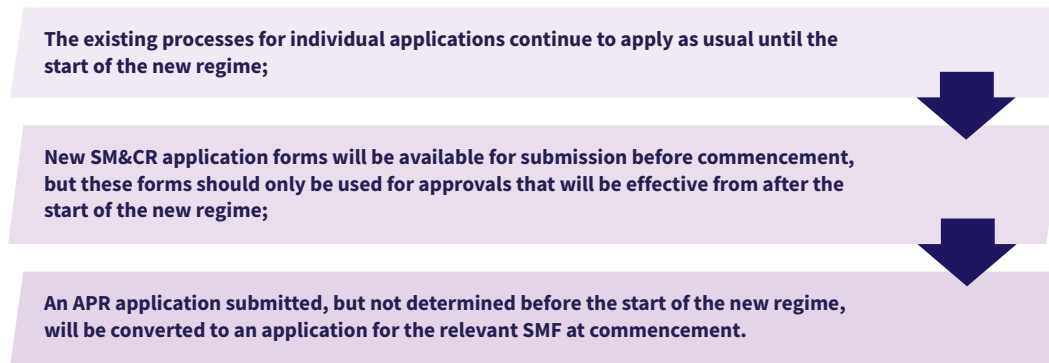
Date completed:

FOR VISUAL REFERENCE ONLY

SM&CR Appendix 2

Which forms do I need to use to make changes prior to commencement on 9 December 2019?

Most Core and Limited Scope Firms do not need to take any action ahead of conversion but, if firms wish to change their approved individuals, the following principles apply:



The following table summarises which FCA forms are required in a number of different scenarios, however, it is not exhaustive.

Scenario	Action Required
Convert approved individuals to their mapped SMFs.	No action is required for these individuals.
An approved individual in a mapped SMF is not to be converted to the corresponding SMF (for example, they have resigned).	Form C (Notice of ceasing to perform controlled functions including Senior Management Functions) needs to be submitted for that individual.
An individual is performing the CF8 (Apportionment & Oversight function) for a firm that will be classified as Limited Scope under the new regime.	No action is needed as this function will be converted to the new SMF29 – Limited Scope function at commencement.
A CF2 – Non-Executive Director is also currently acting as ‘Chair’ and wishes to continue in that role under the new regime.	Form K (Conversion notification form) needs to be submitted for the individual to become the Chair.
An approved individual is going to give up an existing controlled function that will lapse at the start of the new regime (e.g. CF30) and take up a new convertible controlled function (e.g. CF10) prior to commencement , with the intention that they will be converted to the relevant SMF (SMF16).	In such cases the APR Form E (Internal transfer of a person performing a controlled function) needs to be submitted.
The firm is seeking approval for a new individual with immediate effect, so they can be converted to a mapped SMF after commencement.	An APR Form A should be submitted.

Should you need further guidance on which form to use, please get in touch.

Appendix 3

All red text is for information only and should be amended or deleted

Allocation of 'Prescribed Responsibilities' – **Core firms only**

Prescribed Responsibility	Senior Manager responsible
Performance by the firm of its obligations under the Senior Manager 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	
Overall responsibility for the firm's compliance with CASS Note: We <u>do not</u> expect this to apply to our typical firm unless they hold client money.	

Allocation of 'Other Responsibilities' – **All firms**

Responsibility	Senior Manager
Investment sales and distribution	
Mortgage sales and distribution	
Insurance sales and distribution	
Marketing / financial promotions	
Customer service / Support unit	
Customer complaints handling	
Dealing with customers in arrears	
Human resources	
Business acquisition	
Other	

'Statement of Responsibilities'

Have all 'Statements of Responsibilities' been distributed to Senior Managers	
-------------------------------------------------------------------------------	--

SIGNATURE

List all the individuals who will carry out Certified Functions and the nature of their role. Once identified, ensure they undertake training on the new Code of Conduct rules.

Individual	Role / Function(s)	Tier 1 Code of Conduct Training Complete
		Y/N
		Y/N
		Y/N
		Y/N
		Y/N
		Y/N

Have all Senior Managers completed training on both Tier 1 and Tier 2 Code of Conduct rules?	Y/N
Comments	

Review carried out by (Name):

Date review completed:

Action required: (Yes/No)

Date completed:

FOR VISUAL REFERENCE ONLY

Appendix 4 - Core Firms Only

All red text is for information only and should be amended or deleted

Name of Senior Manager:

SMFs held	Description	Effective date
List all functions held e.g. SMF3, SMF1, SMF16, SMF17, SMF27	The title of each should be recorded e.g. for SMF 3 this will be 'Executive Director'.	Date of commencing the role(s).

Prescribed Responsibilities (PR)	Is the PR shared?	Further Details
Record each of the PRs held e.g. Responsibility for the firm's performance of its obligations under the Senior Managers regime	Yes /No	If the responsibility is shared, how does this work (if applicable)? Any other details relevant to the role should also be recorded
Responsibility for the firm's performance of its obligations under the employee certification regime	Yes / No	

Other Responsibilities	Details
List here the 'Other Responsibilities' allocated. You can use the examples in this guide to help identify these e.g.	Provide a brief but clear description of the responsibility that is easy for someone that is not familiar with the business to understand. Where other senior managers are responsible for similar areas, the distinction should be clear (see example below). Where a role is shared / divided this must be clearly explained.
Mortgage sales and distribution	Responsible for all aspects of mortgage advice and sales apart from mortgages on commercial properties.
Customer service	Responsible for providing services to existing mortgage customers, including responses to queries and processing alterations to existing mortgages, liaising with providers as necessary.
Staff training	I am responsible for the staff's competence and technical knowledge to advise on mortgage and insurance products.
Supplementary Information Include any supplementary information where relevant.	

Appendix 4 - Limited Scope Firms Only

All red text is for information only and should be amended or deleted

Name of Senior Manager:

SMFs held	Description	Effective date
List all functions held e.g. SMF29, SMF16, SMF17	The title of each should be recorded e.g. for SMF 29 this will be 'Limited Scope Function'	Date of commencing the role(s)

Other Responsibilities	Details
List here 'Other Responsibilities' allocated. You can use the examples in this guide to help identify these (see below for examples)	Provide a brief but clear description of the responsibility. It should be easy for someone that is not familiar with the business to understand. Ideally, these responsibilities should not be shared or divided, but where other senior managers are responsible for similar areas, the distinction should be clear (see example below). Where a role is shared / divided this must be clearly explained.
Mortgage sales and distribution	Responsible for all aspects of mortgage advice and sales apart from mortgages on commercial properties.
Customer service	Responsible for providing services to existing mortgage customers, including responses to queries and processing alterations to existing mortgages, liaising with providers as necessary.
Insurance sales and distribution	I am responsible for the insurance sales and distribution in the firm.
Financial Promotions	Responsible for all marketing communications issued by the firm.
Supplementary Information	Include any supplementary information where relevant.

Appendix 5 - Individual Conduct Rules

Individual Code of Conduct Rules (Tier 1) for NAME

These are non-exhaustive examples taken from the FCA Handbook to illustrate the types of activity that would breach the Conduct Rules. Training on the Conduct Rules should be tailored to the role of that person.

Rule 1: You must act with integrity

(1) Misleading (or attempting to mislead) by act or omission:

- a client; or
- the firm for whom the person works (or its auditors); or
- the FCA.

(2) Falsifying documents.

(3) Misleading a client about:

- the risks of an investment;
- the charges or surrender penalties of products;
- the likely performance of products by providing inappropriate projections of future returns.

(4) Misleading a client by informing the client that products, require only a single payment when that is not the case.

(5) Mismarking the value of investments or trading positions.

(6) Procuring the unjustified alteration of prices on illiquid or off-exchange contracts, or both.

(7) Misleading others within the firm about the credit-worthiness of a borrower.

(8) Providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.

(9) Providing false or inaccurate information to:

- the firm (or to the firm's auditors); or
- the FCA.

(10) Destroying, or causing the destruction of, documents (including falsified documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a client, the firm for whom the person works, or the FCA.

(11) Failing to disclose dealings where disclosure is required by the firm's personal account dealing rules.

(12) Misleading others in the firm about the nature of risks being accepted.

(13) Recommending an investment to a customer, or carrying out a discretionary transaction for a customer where the person knows that they are unable to justify its suitability for that customer.

(14) Failing to inform, without reasonable cause:

- a customer; or
- the firm for whom the person works (or its auditors); or
- the FCA.
- of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, including, but not limited to, deliberately failing to:
 - disclose the existence of falsified documents; and
 - rectify mismarked positions immediately.

(15) Preparing inaccurate or inappropriate records or returns, including, but not limited to preparing:

- performance reports for transmission to customers which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);
- inaccurate training records or inaccurate details of qualifications, past employment record or experience; and
- inaccurate trading confirmations, contract notes or other records of transactions or holdings of securities for a customer, whether or not the customer is aware of these inaccuracies or has requested such records.

(16) Misusing the assets or confidential information of a client or of their firm including, but not limited to, deliberately:

- front running client orders;
- carrying out unjustified trading on client accounts to generate a benefit (whether direct or indirect) to the person (that is, churning);
- misappropriating a client's assets, including wrongly transferring to personal accounts cash or securities belonging to clients;
- wrongly using one client's funds to settle margin calls or to cover trading losses on another client's account or on firm accounts;
- using a client's funds for purposes other than those for which they were provided;
- retaining a client's funds wrongly; and
- pledging the assets of a client as security or margin in circumstances where the firm is not permitted to do so.

(17) Designing transactions to disguise breaches of requirements and standards of the regulatory system.

(18) Not paying due regard to the interests of a customer.

(19) Acts, omissions or business practices that could be reasonably expected to cause customer detriment.

Rule 2: You must act with due skill, care and diligence

Due skill, care and diligence are required, especially where activities might affect customers or the integrity of the financial system.

(1) Failing to inform a customer, or their firm (or its auditors), of material information in circumstances where the member of conduct rules staff was aware, or ought to have been aware, of such information, and of the fact that they should provide it, including the following:

- failing to explain the risks of an investment to a customer;
- failing to disclose to a customer details of the charges or surrender penalties of investment products;
- mismarking trading positions;
- providing inaccurate or inadequate information to a firm or its auditors;
- failing to disclose dealings where disclosure is required by the firm's personal account dealing rules.

(2) Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where they do not have reasonable grounds to believe that it is suitable for that customer.

(3) Undertaking, recommending or providing advice on transactions without a reasonable understanding of the risk exposure of the transaction to a customer, including recommending transactions in investments to a customer without a reasonable understanding of the liability (either potential or actual) of that transaction.

(4) Undertaking transactions without a reasonable understanding of the risk exposure of the transaction to the firm, including trading on the firm's own account without a reasonable understanding of the liability (either potential or actual) of the transaction.

(5) Failing to provide adequate control over a client's assets, including:

- failing to segregate a client's assets; and
- failing to process a client's payments in a timely manner.

(6) Continuing to perform a function having failed to meet the standards of knowledge and skill in the Training and Competence sourcebook (TC) for that function.

Acting with due skill, etc. as a manager

It is important for a manager to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

It is important for a manager to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.

Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the firm beyond those reasonably anticipated, a manager should require explanations from those who report to them. Where those explanations are implausible or unsatisfactory, they should take steps to test the veracity of those explanations.

Where a manager is not an expert in a business area, they should consider whether they (or those with whom they work) have the necessary expertise to provide an adequate explanation of issues within that business area. If not, they should seek an independent opinion from elsewhere, within or outside the firm. This includes:

(1) Failing to take reasonable steps to ensure that the business of the firm for which the manager has responsibility:

- is controlled effectively;
- complies with the relevant requirements and standards of the system applicable to that area of the business; and
- is conducted in such a way to ensure that any delegation of responsibilities is to an appropriate person and is overseen effectively.

(2) Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible, including:

- permitting transactions without a sufficient understanding of the risks involved;
- permitting expansion of the business without reasonably assessing the potential risks of that expansion;
- inadequately monitoring highly profitable transactions or business practices, or unusual transactions or business practices;

- accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and
- failing to obtain independent, expert opinion where appropriate.

(3) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the manager has delegated to an individual or individuals (whether in-house or outside contractors).

Acting with due skill, etc. as a member of the Board

This applies to a director (whether executive or non-executive) when taking part in the activities of the Board, other governing body or of its committees. This includes, for example, participating in meetings, preparing papers or other submissions for meetings and reporting to the body or committee.

Rule 3: You must be open and cooperative with the FCA and other regulators

For the purpose of this rule, regulators other than the FCA, are those which have recognised jurisdiction in relation to activities to which the conduct rules apply, and have a power to call for information from the firm or from individuals performing certain functions in connection with the regulated activities of the firm. This may include an exchange or an overseas regulator.

There is no duty on a person to report information directly to the regulator concerned unless they are one of the people within the firm who are responsible for reporting matters to the regulator concerned. However, if a person takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the appropriate regulator will, in respect of that information, view them as being one of those within the firm who has taken on responsibility for deciding whether to report that matter to the regulator concerned. This includes:

(1) Failing to report promptly in accordance with their firm's internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the FCA.

(2) Failing without good reason to:

- inform a regulator of information of which the approved person was aware in response to questions from that regulator;
- attend an interview or answer questions put by a regulator, despite a request or demand having been made; and
- supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement.

Good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court or complying with an obligation imposed by law or by a regulator.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

This rule applies to all conduct rules staff, regardless of whether that person has direct contact or dealings with customers of the firm. Persons subject to the code of conduct rules should consider how their actions (or their failure to act) can affect the interests of customers or result in customers being treated unfairly. This includes:

(1) Failing to inform a customer of material information in circumstances where they were aware, or ought to have been aware, of such information and of the fact that they should provide it, including the following:

- failing to explain the risks of an investment to a customer;
- failing to disclose to a customer details of the charges or surrender penalties of investment products; and
- providing inaccurate or inadequate information to a customer about a product or service.

(2) Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where they do not have reasonable grounds to believe that it is suitable for that customer.

(3) Undertaking, recommending or providing advice on transactions without a reasonable understanding of the risk exposure of the transaction to a customer, including recommending transactions in investments to a customer without a reasonable understanding of the liability (either potential or actual) of that transaction.

(4) Failing to provide adequate control over a client's assets, including:

- failing to segregate a client's assets; and
- failing to process a client's payments in a timely manner.

(5) Providing a customer with a product which is different to the one applied for by that customer, unless the customer understands the differences and understands the product they have purchased.

(6) Failing to acknowledge, or seek to resolve, mistakes in dealing with customers.

(7) Failing to provide terms and conditions to which a product or service is subject in a way which is clear and easy for the customer to understand.

Rule 5: You must observe proper standards of market conduct.

A general consideration about whether or not a person's conduct complies with the relevant requirements and standards of the market, is whether they, or the firm, comply with relevant market codes and exchange rules. Compliance with relevant market codes and exchange rules will tend to show compliance with this rule.

Manipulating or attempting to manipulate a benchmark or a market, such as a foreign exchange market, or a benchmark is an example of failing to observe proper standards of market conduct.

(1) Markets include relevant markets as defined in section 1F of the Act (Meaning of "relevant markets" in strategic objective).

(2) Markets are not limited to regulated markets or formal markets such as one on a stock exchange.

(3) Nor are markets limited to markets for professionals (such as the wholesale foreign exchange markets) or ones that involve tradeable and transferable assets.

(4) Therefore markets include consumer markets (whether for products, services, credit or otherwise).

Declaration

I have read the Conduct Rules in this document and have discussed how these apply to my role within the firm. I confirm I understand my responsibilities and accountabilities to the firm and the regulator.

Signed

Role within the firm

Date

.....

Training carried out by:

Name

Signed

Role within the firm

.....

Appendix 6

Senior Manager Code of Conduct Rules (Tier 2) for NAME

These are non-exhaustive examples taken from the FCA Handbook to illustrate the types of activity that would be considered to be a breach of the conduct rules.

Rule 1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

A SMF manager's role and responsibilities are set out in the statement of responsibilities.

Strategy and plans will often dictate the risk which the business is prepared to take on, and high-level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, senior conduct rules staff members (SMF managers, employees of SMF managers that perform the function of a SMF manager, or non-executive directors) should bear this in mind.

- Strategy and plans for the branch in the United Kingdom of an overseas firm will often be set by those parts of the firm which are based outside the United Kingdom.
- If an overseas firm proposes a significant strategy or change in strategy ('the proposal') for its branch in the United Kingdom, particularly to enter higher risk areas, the senior conduct rules staff member responsible for the matters likely to be affected by the strategy should assess its impact on the branch in the United Kingdom.
- The senior conduct rules staff member should ensure that they take reasonable steps to implement the proposal in a way that complies with the regulatory system.
- If the firm proposes to implement the proposal and the senior conduct rules staff member considers that it is likely to be non-compliant with the regulatory system, the senior conduct rules staff member should promptly inform the appropriate regulator (FCA).

To comply with the obligations of Rule 1, senior conduct rules staff members may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.

The organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff. Where staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.

Where members of staff have particular levels of authorisation, these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which they are aware.

Senior conduct rules staff members should take reasonable steps to satisfy themselves that, on reasonable grounds, each area of the business for which they are responsible has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

If an individual's performance is unsatisfactory, the relevant senior conduct rules staff member should review carefully whether to allow that individual to continue in their position. In particular:

- If the senior conduct rules staff member is aware of concerns relating to the compliance with requirements and standards of the regulatory system (or internal controls) of the individual concerned, or of staff reporting to that individual, the senior conduct rules staff member should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.

- An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The senior conduct rules staff member should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the regulatory system.

As part of organising the business, a senior conduct rules staff member should ensure that there is an orderly transition when another senior conduct rules staff member under their oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set of handover notes for their successor. Those notes should, at a minimum, specify any matter that is ongoing which the successor would reasonably expect to be aware of to:

- perform their function effectively;
- ensure compliance with the requirements and standards of the regulatory system; and
- ensure that the individual with overall responsibility for that part of the business of the firm maintains effective control.

In organising the business, a senior conduct rules staff member should pay attention to any temporary vacancies which exist. They should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The senior conduct rules staff member should assess the risk to compliance with the requirements and standards of the regulatory system as a result of the vacancy, and the higher the risk the greater the steps they should take to fill the vacancy. It may be appropriate to limit or suspend the activity if adequate cover for responsibilities cannot be arranged. To the extent that those vacancies are for controlled functions, they may only be filled by persons approved for that function. This includes:

(1) Failing to take reasonable steps to apportion responsibilities for all areas of the business under the approved person's control.

(2) Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated, which includes establishing confusing or uncertain:

- reporting lines; or
- authorisation levels; or
- job descriptions and responsibilities.

(3) In the case of a manager who is responsible for dealing with the apportionment of responsibilities, failing to take reasonable care to maintain a clear and appropriate apportionment of responsibilities including:

- failing to review regularly the responsibilities which have been apportioned; and
- failing to act where that review shows that those responsibilities have not been clearly apportioned.

(4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of senior conduct rules staff member, including the following:

- failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable;
- giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role; and
- allowing managerial vacancies which put compliance with the requirements and standards of the regulatory system at risk to remain, without arranging suitable cover for the responsibilities.

Rule 2: 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.

A senior conduct rules staff member must take reasonable steps to ensure their firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

Senior conduct rules staff members do not themselves need to put in place the systems of control for the business, unless it is within their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems with well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

Where a senior conduct rules staff member becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory system within their area of responsibility, they should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

If an issue raises questions of law or interpretation, senior conduct rules staff members may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.

Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the senior conduct rules staff member responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the issue to be addressed and the cost of the improvement. It will be reasonable for a senior conduct rules staff member to carry out a cost benefit analysis when assessing whether the recommendations are reasonable. This includes:

(1) Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system for the activities of the firm.

(2) Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system for the activities of the firm in question.

(3) Failing to take reasonable steps to inform themselves adequately about the reason why significant breaches (suspected or actual) of the relevant requirements and standards of the regulatory system for the activities of the firm may have arisen (taking account of the systems and procedures in place). This would include failing to investigate whether systems or procedures may have failed and failing to obtain expert opinion on the adequacy of the systems and procedures where appropriate.

(4) Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (suspected or actual) of the relevant requirements and standards of the regulatory system relating to the activities of the firm, including:

- unreasonably failing to implement recommendations for improvements in systems and procedures; and
- unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.

(5) For a manager with responsibility for overseeing the establishment and maintenance of appropriate systems and controls or the apportionment of responsibilities, any failure to take reasonable care to ensure that those obligations are discharged effectively.

(6) For a money laundering reporting officer, failing to discharge the responsibilities imposed on them by the firm for oversight of its compliance with the FCA's rules on systems and controls against money laundering.

(7) For a senior conduct rules staff member who is responsible for the compliance function, failing to ensure that:

- the compliance function has the necessary authority, resources, expertise and access to all relevant information; or
- a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance; or
- the persons involved in the compliance functions are not involved in the performance of services or activities they monitor; or
- the method of determining the remuneration of the persons involved in the compliance function does not compromise their objectivity; or
- the method of determining the remuneration complies, where applicable, with the Remuneration or, for a Solvency II firm or a small non-directive insurer, other relevant requirements in relation to remuneration.

Rule 3: 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.

A senior conduct rules staff member must take reasonable steps to ensure their firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

An SMF manager may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

A senior conduct rules staff member should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.

The FCA recognises that a senior conduct rules staff member will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The senior conduct rules staff member will not be in breach of rule 3 unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fail to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem then, although they cannot delegate to the FCA the responsibility for dealing with the problem or issue, they can speak to the FCA to discuss his approach.

Senior conduct rules staff members will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The FCA will look to the senior conduct rules staff member to take reasonable steps to ensure that systems are in place to ensure that issues are being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.

Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate has the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business indicates a failure to comply with this rule.

Although a senior conduct rules staff member may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that person's responsibility to ensure that they receive reports on progress and question those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, the senior conduct rules staff member may need to challenge the explanations they receive and, if necessary, take action personally to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, senior conduct rules staff members should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities. This includes:

(1) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the senior conduct rules staff member has delegated to an individual(s) (whether in-house or outside contractors) including:

- disregarding an issue or part of the business once it has been delegated;
- failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated; and
- accepting implausible or unsatisfactory explanations from delegates without testing their accuracy.

(2) Failing to supervise and monitor adequately the individual(s) (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated including any failure to:

- take personal action where progress is unreasonably slow, or where implausible or unsatisfactory explanations are provided; or
- review the performance of an outside contractor in connection with the delegated issue or business.

In determining whether or not the conduct of a senior conduct rules staff member complies with the rule, the factors which the FCA would expect to take into account include:

- the competence, knowledge or seniority of the delegate; and
- the past performance and record of the delegate.

Rule 4: You must disclose appropriately any information of which the FCA would reasonably expect notice

For the purpose of rule 4, regulators in addition to the FCA are those which have recognised jurisdiction in relation to activities to which conduct rules apply and have a power to call for information from the relevant person in connection with their function or the business for which they are responsible. This may include an exchange or an overseas regulator.

Rule 4 applies to senior conduct rules staff members in addition to rule 3 of the individual conduct rules. Although, the rules have some overlap, they are different. Rule 3 normally relates to responses from individuals to requests from the regulator, whereas rule 4 imposes a duty on a senior conduct rules staff member to disclose appropriately any information of which the appropriate regulator would reasonably expect, including making a disclosure in the absence of any request or enquiry from the appropriate regulator. A senior conduct rules staff member is likely to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the appropriate regulator would reasonably expect notice.

Where a senior conduct rules staff member is responsible within the firm (individually or with other senior conduct rules staff members) for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of Rule 4.

(1) If a senior conduct rules staff member comes across a piece of information that is something of which they think the FCA could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities. For an SMF manager those responsibilities will be set out in that person’s statement of responsibilities.

(2) If it does, then they should ensure that, if it is otherwise appropriate to do so, it is disclosed to the appropriate regulator. If it does not fall within the scope of their responsibilities then, in the absence of any reason to the contrary, they might reasonably assume that its disclosure to the appropriate regulator was being dealt with by the senior conduct rules staff member with responsibility for dealing with information of that nature. If a senior conduct rules staff member was not sure that the matter was being dealt with by another senior conduct rules staff member, or if they were not sure whether this was in their area or not, the FCA would expect them to make enquiries to inform themselves, rather than disregard the matter.

In determining whether or not a person’s conduct complies with Rule SC4, the factors which the FCA would expect to take into account include:

- whether it would be reasonable for the individual to assume that the information would be of material significance to the regulator concerned;
- whether the information related to the individual themselves or to their firm; and
- whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

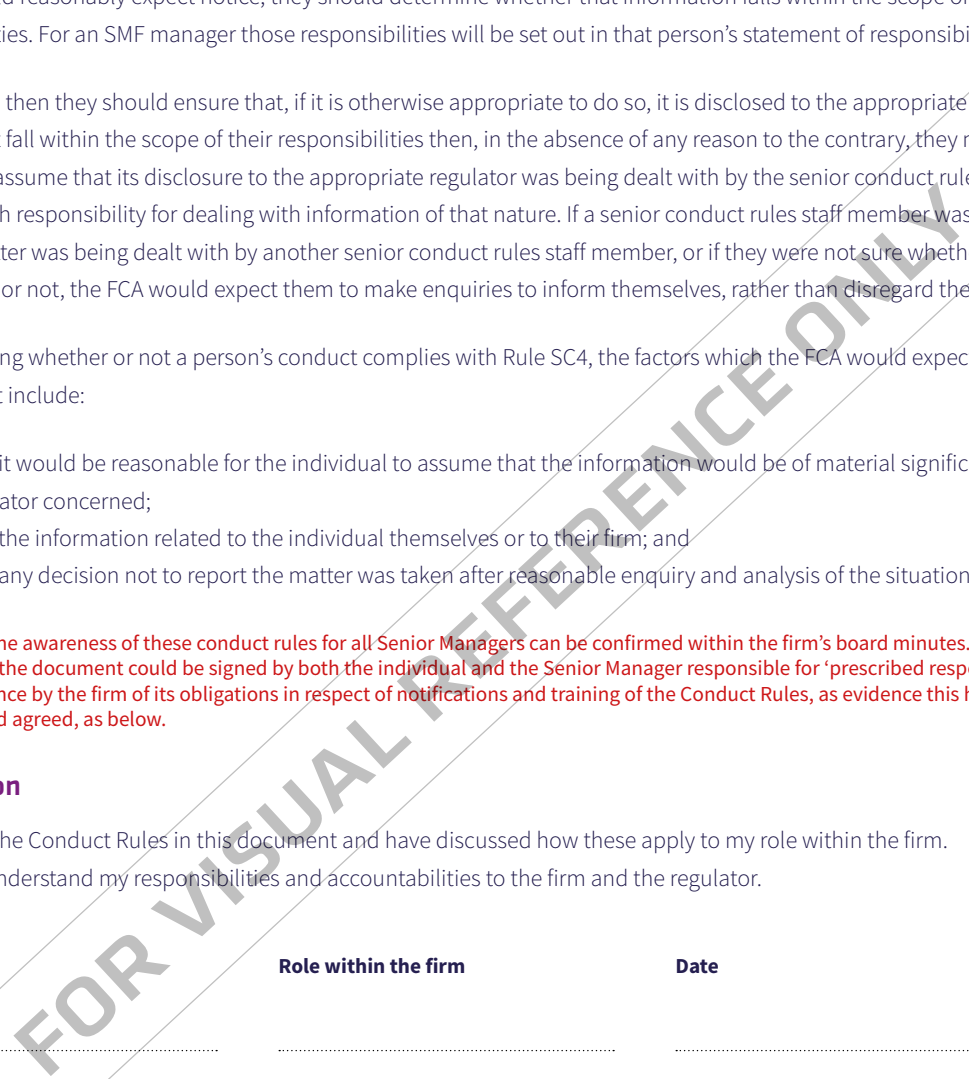
Evidence to the awareness of these conduct rules for all Senior Managers can be confirmed within the firm’s board minutes. Alternatively the document could be signed by both the individual and the Senior Manager responsible for ‘prescribed responsibility 3’ - Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules, as evidence this has been discussed and agreed, as below.

Declaration

I have read the Conduct Rules in this document and have discussed how these apply to my role within the firm. I confirm I understand my responsibilities and accountabilities to the firm and the regulator.

Signed	Role within the firm	Date
.....

Training carried out by:		
Name	Signed	Role within the firm
.....



Appendix 8

FIT assessment for Senior Managers.

Name of Senior Manager and functions		
FIT Review	Yes - No - N/A	Comments
Criminal Records check viewed		
Credit check obtained		
Declaration of Fitness and Propriety including any supporting documents		
Companies House check made		
Are responsibilities relevant to the role		
Competencies demonstrated through the firm's MI		
Have responsibilities changed		
Conduct Rules training completed		
Have any breaches of the Conduct Rules occurred*		
Board Meeting Attendance		
Any other matters of concern arising		
Does this assessment cover certified persons activities		
If so, have individual KPIs been reviewed against the role		
Have the Certified Functions changed?		
Any other comments		

*explain in here how competency has been attained/maintained.

Date:

Signed off by:

Appendix 9

FIT assessment Non-Executive Directors.

Name of Non-Executive Director		
FIT Review	Yes - No - N/A	Comments
Criminal Records check viewed		
Credit check obtained		
Declaration of Fitness and Propriety including any supporting documents		
Companies House check made		
Competencies demonstrated when carrying out the role		
Board Meeting Attendance		
Any other comments		

FOR VISUAL REFERENCE ONLY

Date:

Signed off by:

Appendix 10

FIT assessment for Certified Persons.

Name of Certified Person and role		
FIT Review	Yes - No - N/A	Comments
Credit check obtained		
Declaration of Fitness and Propriety including any supporting documents		
Companies House check made		
Competency demonstrated through the individual's KPIs		
Have responsibilities changed		
Conduct Rules training completed		
Have any breaches of the Conduct Rules occurred*		
Any other matters of concern arising		
Have the Certified Person's activities changed?		
Any other comments		

*explain in here how competency has been attained/maintained.

Date:

Signed off by:

Appendix 11

The Certificate

All red text is for information only and should be amended or deleted

Certificate

FIT AND PROPER

awarded to

In recognition that this individual is fit and proper to carry out the following Certification Functions:

- Functions requiring qualifications including
 - Pension Transfer Specialist
 - Retail Investment Adviser
 - Mortgage Adviser
 - Equity Release Adviser
 - Advising on long-term care insurance contracts
 - Managing Investments in a discretionary capacity
 - Advising and Dealing in Securities
- Client-dealing function
 - Paraplanner (**exceptional circumstances only**)
- Managers of certification employees
 - Supervisor (**not themselves a Senior Manager (SMF)**)

In the capacity of their role as [insert job role] at [firm name],
which involves providing [insert regulated activities] to retail clients.

Name of Senior Manager: _____ Date: _____

Next renewal date: _____

(NB* Certificate should be signed by the Senior Manager that holds
the prescribed responsibility for the Certification Regime)

Notes for completion:

- A firm should not permit an employee to carry out certification functions unless it has issued them with a certificate, with the exception of existing employees on commencement of the new regime, where the certificate must be issued by 9th December 2020.
- The certificate is only valid for 12 months. The firm will have to renew it if the employee is to carry on performing the function.
- It is not possible to draft a certificate to last more than 12 months.
- It is possible to draft a certificate for a period of fewer than 12 months if appropriate.
- A firm may not issue or renew a certificate unless it is satisfied that the person is fit and proper.
- A certificate must state that the individual is fit and proper to perform the function to which the certificate relates.
- It must set out the aspects of the affairs of the firm in which the person will be involved in performing the function.
- A firm need not issue multiple certificates for one of its employees even if they perform several FCA certification functions as part of the same job (e.g. they are a mortgage adviser and they also supervise other mortgage adviser but are not themselves a senior manager).
- A firm need not issue multiple certificates for one of its employees who performs a FCA certification function that is made up of a number of different parts (e.g. investment adviser/mortgage adviser/equity release etc)
- In cases where a certification employee's role changes to involve a new FCA certification function part way through the 12-month period for which their certificate is valid, the firm may need to reissue the certificate.
- A firm must maintain a record of every employee who has a valid certificate issued by it.
- A certificate may cover functions that a certification employee is not currently performing, if the firm has assessed the employee's fitness for these additional functions.
- The FCA state a physical certificate must be issued. This however allows for an electronic copy to be sent and stored, provided it can be printed off at any time

Appendix 12

Change of Role - Senior Manager

Name of Individual(s)		
	Yes - No - N/A	Details
Is an SMF being relinquished?		
If yes, does this require reallocating?		
Have Prescribed or Other Responsibilities changed?		
Have new Statements of Responsibilities been written?		
Are any changes significant and require notification to the FCA?		
Is a criminal records check required and seen?		
Is a regulatory reference required?		
Has the firm assessed the new role holder(s) as FIT?		
Will notification be required via CONNECT and by which Form(s)?		FORM A, C, E and/or J
Is FCA approval required?		Date sent
Has approval been received?		Date
Has commencement of the new role been confirmed?		Date
Any other comments		

Signed off by:

Date:

Appendix 13

New Hire of, or internal appointment to, a Senior Manager Function (including NEDs)

Name of Individual(s)		
	Yes - No - N/A	Details
Is a new SMF being applied for?		
Has a criminal records check been seen?		
Is a regulatory reference required?		
Has a Statements of Responsibilities been written?		
Has all Conduct Rules training been completed?		
Has the firm assessed the new role holder(s) as FIT?		
Has the FCA been notified via CONNECT?		Date sent
Has approval from the FCA been received?		Date
Has commencement of new role been confirmed?		Date
Any other comments		

Signed off by:

Date:

Appendix 14

New Hire or internal appointment of a Certified Person (CP) or change to a CPs role

Name of Individual(s)		
	Yes - No - N/A	Details
Is this a new or internal appointment?		
Has the CP's role changed?		
Is a regulatory reference required?		
Will the firm be requesting a criminal check?		
Are qualifications required and verified?		
Has the relevant Conduct Rules training been completed?		
Has the firm assessed the person FIT for the role?		
Has the CP been issued with a certificate?		Date
Does the firm's Directory listing require updating?		Date
Has commencement of new role been confirmed to the CP?		Date
Any other comments		

Signed off by:

Date:

Appendix 15 - Regulatory Reference

Template Standard Reference

	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	

FOR VISUAL REFERENCE ONLY

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference.

Question A

Has the individual:

- (1) performed a Certification Function for your firm; or
- (2) been an approved person for your firm.

Answer:

Yes

No

Question B

Has the individual performed one or more of the following roles in relation to your firm:

- (1) notified non-executive director;
- (2) credit union non-executive director; or
- (3) key function holder (other than a controlled function).

Answer:

Yes

No

Question C

If we have answered 'yes' to either Question A or B above, set out the details of each position held below, including:

- (1) what the controlled function, Certification Function or key function holder role is or was;
- (2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;
- (3) whether any potential FCA governing function is or was included in a PRA controlled function; and
- (4) the dates during which the individual held the position.

Answer:

Question D

Has the individual performed a role for your firm other than the roles referred to in Questions A and B above:

Answer:

Yes _____

No _____

If 'yes', we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

Question E

Have you concluded that the individual was not Fit and Proper to perform a function:

Answer:

Yes _____

No _____

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.

If 'yes', and no associated disciplinary action was taken as a result, please set out below the facts which led to your conclusion.

FOR VISUAL REFERENCE ONLY

Question F

We have taken disciplinary action against the individual that:

- (1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:
 - (a) apply or applied to the individual; or
 - (b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules (including if applicable, PRA rules in force before 7 March 2016); or
- (2) relates to the individual not being fit and proper to perform a function.

Answer:

Yes

No

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

Question G

Are you aware of any other information that you reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that you will only disclose something that:

- (1) occurred or existed:
 - (a) in the six years before request for a reference; or
 - (b) between the date of the request for the reference and the date of this reference; or
- (2) is serious misconduct.

Answer:

Yes

No

If 'yes', please provided the relevant information below.

The FCA Handbook provides definitions for terms used at SYSC 22 Annex 1 – Part Two.

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