



# Senior Managers and Certification Regime

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### FCA compliance consultants

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



## Today/Learning outcomes...

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

1. SM&CR proposals
2. Certification requirements
3. Fit and Proper requirements
4. Conduct rules
5. Conversion



## Bear in mind...

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



# Today...

1. Introduction
2. Overview of
  - a) Senior Managers
  - b) Certification
  - c) Fit and Proper
  - d) Conduct Rules
  - e) What next?
3. Conclusion



## Some common misconceptions



SM&CR is owned by  
Compliance

Minimal crossover and  
linkage with other systems  
and processes

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

No involvement needed  
from other business  
functions

SM&CR does not involve  
any sensitivities for  
individuals

# 1. Introduction



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**Changing Banking for Good - Parliamentary Commission on Banking Standards Contents**

## 6 A new framework for individuals

### The contribution of governance

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

### Taking individual responsibility

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

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



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



## Enforcement

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



## Are we trusted?



## Sector Views

## Consumer perspective

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

## Harm indicators

1. Market abuse, unreliable performance, disorderly failure;
2. Buying unsuitable or mis-sold products; customer service/treatment;
3. Important consumer needs are not met because of gaps in the existing range of products, consumer exclusion, lack of market resilience;
4. Prices too high or quality too low;
5. Risk of significant harmful side-effects on wider markets, the UK economy and wider society, e.g. crime/terrorism;
6. Customers with unsuitable cover/invalid cover;
7. Customers not being provided with appropriate information;



## Cont...

8. Customers unaware of high excesses – potentially unaffordable business placed with unsuitable insurers;
9. Customers not being treated fairly when they complain;
10. Vulnerable customers;
11. Sales culture that is not in the interests of customers;
12. Pressure selling leading to poor outcomes for customers;
13. Lack of effective governance, e.g. independent NED board challenge;
14. Lack of due diligence when selecting insurers for panel;
15. Failure to understand requirements around customers' demands and needs.







## General Insurance Pricing Practices

Terms of reference

**Market Study**

MS18/1.1

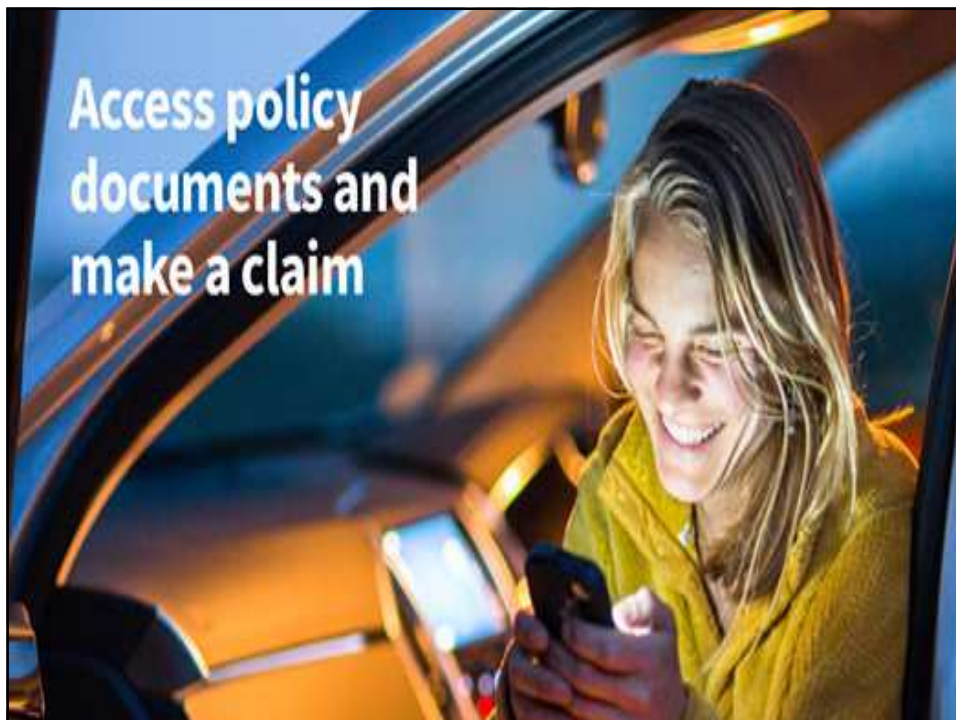
October 2018

discussion paper on fair pricing in financial services. General insurance pricing practices remain an FCA priority.

During the review, we identified the following issues regarding firms' pricing practices that could cause significant harm and poor outcomes for consumers.

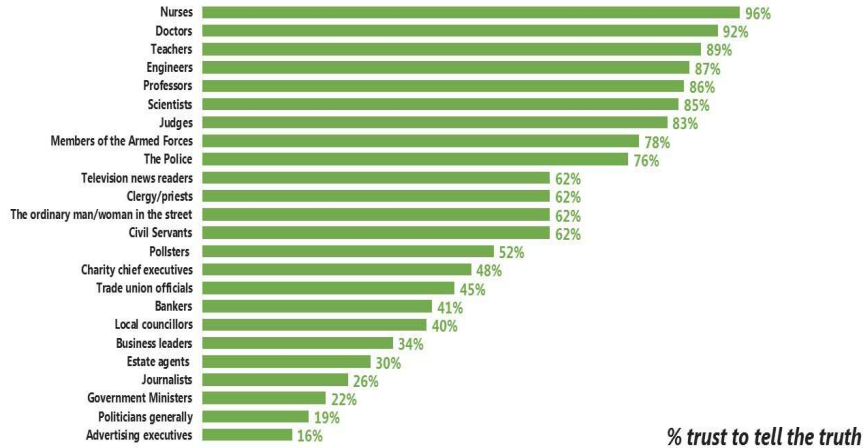
- i. Firms failing to have appropriate and effective strategies, governance, control and oversight of their pricing practices and activities, such that they are unable to reliably assess and evidence whether they are treating their customers fairly.
- ii. Differential pricing leading to some identifiable groups of consumers paying significantly higher prices than other identifiable groups of consumers with similar risk and cost to serve characteristics.
- iii. The risk of discriminating against consumers through using rating factors in pricing based (directly or indirectly) on data (including third party data) relating to or derived from protected characteristics.

We view pricing by general insurers and relevant intermediaries as a key business activity. There is a



## Veracity Index 2018 – all professions

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



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

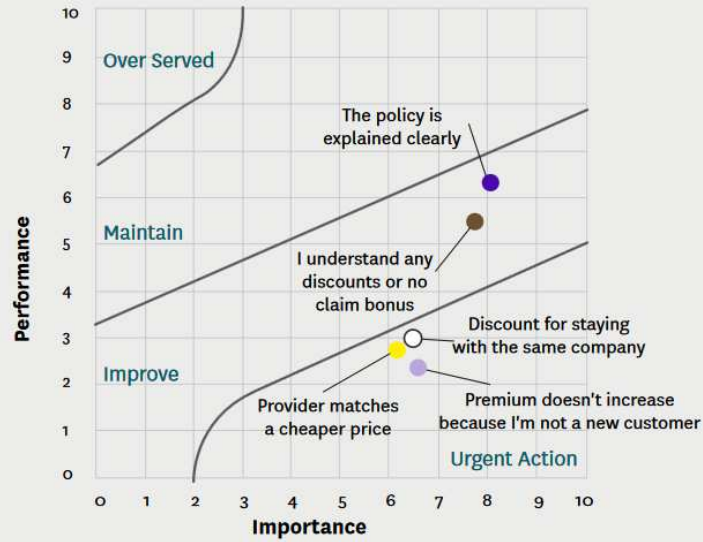
## OVERALL THEMES FOR CONSUMERS

Loyalty is the key opportunity, with customers feeling that they are forced to switch providers every year or face being ripped off

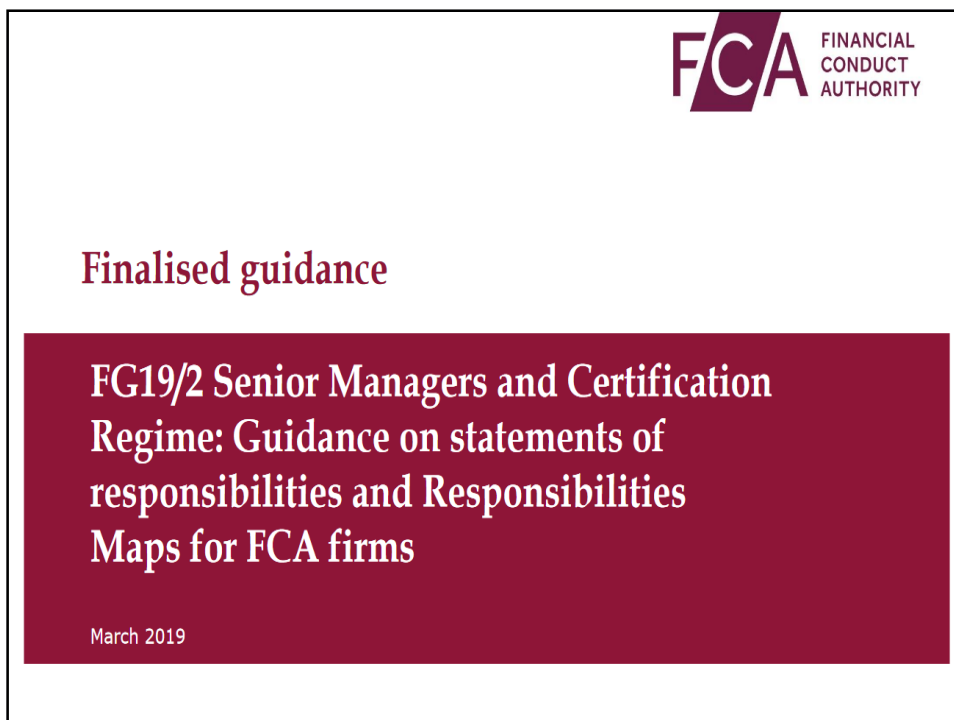


## TOP FIVE OPPORTUNITIES FOR CONSUMERS

Overall the biggest opportunities show that customers want to stay with the same insurer, but don't believe that their insurer recognises or values their loyalty



## 2. Overview



## Preamble...

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



- It replaces the current Approved Persons Regime, changing how individuals working in financial services are regulated
- Aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence.
- Further aims to:
  - encourage a culture of staff at all levels taking personal responsibility for their actions
  - make sure firms and staff clearly understand and can demonstrate where responsibility lies





- Accountability means the FCA have clarity as to who is responsible for what, and that SMs are responsible for ensuring all individuals within their areas meet the conduct standards and competency
- SMs have a very close link to the culture of the business - tone from the top/influence.
- The business will require formal measures to be in place re performance reviews/remuneration and promotion etc



## Applicability?

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



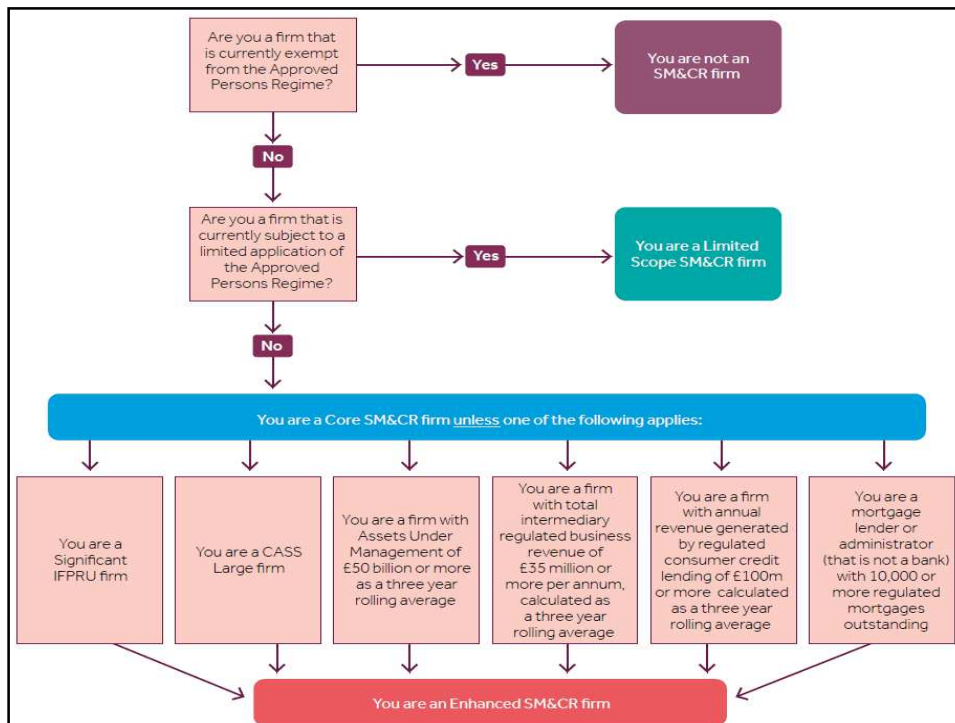
# Scope

- 1. Limited**  
reduced set of requirements
- 2. Core**  
standard set of requirements
- 3. Enhanced**  
where regulated income >£35m  
– additional requirements



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





## The core regime

1. Senior Managers
2. Certification
3. Conduct Rules

# a. Senior Managers



## Senior Managers Regime

Focuses on the most senior people

Approved by the FCA

Duty of Responsibility

Statement of Responsibility

Regulatory References

Criminal Records Checks

Prescribed Responsibilities

Senior Manager Conduct Rules

Conduct Rules



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



# Senior Managers

- Only exec directors and partners and the chair of a board (or snr ind dir)
- Will incl those with overall responsibility for key activities and business areas (Senior Management Functions) along with certain Prescribed Responsibilities
- Statement of Responsibilities (SoR) to set out responsibilities and all SMF holders to have Duty of Responsibility
- Annual certification by firm re suitability



## Core SMFs

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

### SMFs for Core firms

Function Name	Description
<b>Governing Functions</b>	
SMF1 – Chief Executive	This is the person(s) with responsibility, under the immediate authority of the governing body, for the conduct of the whole of the business (or relevant activities). Note: Although the Chief Executive is the most senior member of an executive team, it does not mean that a firm's governing body cannot allocate specific responsibilities to other Senior Managers.
SMF3 – Executive Director	A director of a firm, other than a Non-Executive Director.
SMF27 - Partner	A partner in a firm, other than a limited partner in a partnership registered under the Limited Partnership Act 1907.
SMF9 - Chair	The person with responsibility for chairing, and overseeing the performance of the role of, the governing body of the firm.
<b>Required Functions<sup>2</sup></b>	
SMF16 – Compliance Oversight	This is the person responsible for the compliance function in the firm and reporting to the governing body on this.
SMF17 – Money Laundering Reporting Officer	This is the person who has responsibility for overseeing the firm's compliance with the FCA's rules on systems and controls against money laundering.

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

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

## Compare AP to SMCR

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

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

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

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

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

## i Statement of Responsibilities

- Needed for every SM and submitted to FCA at approval stage (not at conversion)
- Must be kept up to date and any significant changes have to be submitted to FCA (where prescribed responsibilities are added or removed or where responsibilities are shared amongst SMs)
- FCA template – what are they responsible and accountable for



## ii Duty of responsibility

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



## Reasonable steps.....?



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

## What does this tell us?



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

**The Board has a role in this ...**

**But responsibility is personal, not collective**

### iii Prescribed Responsibilities

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



#### Statement of Responsibilities

##### 3.1.2 Senior Management Functions

Senior management function	Description of senior management function	Tick SMF applied for or held					Effective Date
		Core firms			Enhanced SMCR firms		
		Limited scope SMCR firms	UK core SMCR firms	EEA core SMCR firms		Third country branches	
SMF 3	Executive Director		<input checked="" type="checkbox"/>				09/12/2019

##### 3.2.1 Prescribed Responsibilities

Ref	Prescribed Responsibility (Applicable to UK Core SMCR firms)	Does this Prescribed Responsibility apply?	Is this Prescribed Responsibility shared?
a	Responsibility for the firm's performance of its obligations under the senior managers regime	Yes	No
b	Responsibility for the firm's performance of its obligations under the certification regime	Yes	No

### 3.4.1 Other Responsibilities

Please provide a title for this other responsibility	Please provide further details of this other responsibility	Is this other responsibility shared? If 'Yes' please provide, the name(s), IRN(s) and/or job title(s) of the individual(s) you are sharing this responsibility with (where known)
Mortgage sales and advice	Responsible for all aspects of mortgage advice and sales apart from mortgages on commercial properties.	No
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. This includes mortgages on commercial properties	No
Business upgrade	Responsible for the business change programme 'Cosmos'; Cosmos is a project up-scaling our Mortgage Unit, ending in August 2020.	No

## Partnerships

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



## Chairman of the Board

- They WILL need to apply for approval using a Form K as currently FCA only have them down as a CF2 – approval as a NED
- They will then be an SMF9



## b. Certification



## Certification Regime

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

8 'Certification Functions' set out in our Handbook

Not approved by the FCA

Annual certification by firm

Regulatory References

Conduct Rules



The Certification Regime applies in the same way to every tier



## Certification

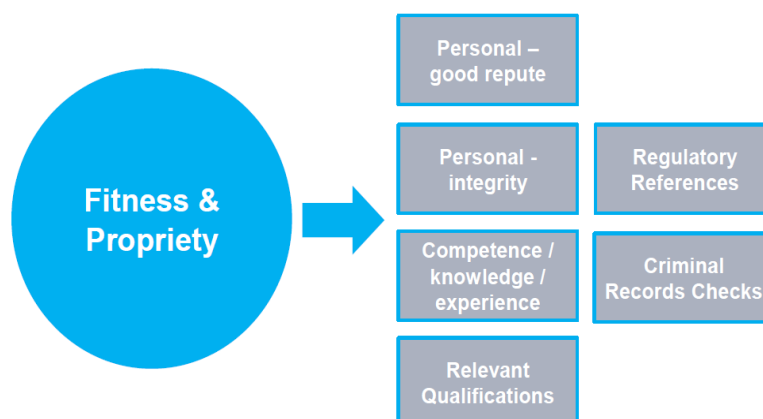
- Individuals (not senior managers) certified fit and proper by the firm initially and on an ongoing basis to perform a function(s) where they have a significant impact on the firm/customers
- Those in legal, compliance and audit could be in scope (do you have any CF28/29s now?) and those that oversee CASS and any supervisor or manager of someone who is a certified person
- If roles do not currently apply you don't need to apply the Certified Regime
- Current CF30s (customer function)?



# c. Fit and Proper



## Fitness & Propriety – what is it?



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

## Fit and Proper

- Firms to assess whether SMs, NEDs and certified individuals are fit and proper
- Don't forget firms still have to ensure that all staff are of "good repute" as per IDD
- At least an annual assessment
- SMs and NEDs must have a criminal records check undertaken and DBS registration may be needed/umbrella body
- References will also be needed for SMs, NEDs and certified individuals



## Criminal record check?

SYSC 28.3.4R - In considering a person's repute the firm must at a minimum ensure:

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

(2) has not previously been declared bankrupt,

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



# Regulatory references

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



The screenshot shows the FCA Handbook website interface. At the top left is the FCA logo (Financial Conduct Authority). To the right are navigation links: FCA Website, PRA Rulebook, Glossary, Useful Links, and Contact Us. Below these is a search bar labeled 'Search the Handbook' and an 'Advanced Search' link. A secondary navigation bar includes 'Home', 'FCA Handbook', 'What's New', 'Instruments', 'Forms', and 'Guides', along with 'Join Up' and 'MyFCA' links. The breadcrumb trail reads: Home >> FCA Handbook >> SYSC >> SYSC 22 >> SYSC 22 Annex 1 Template for regulatory references... The main content area has tabs for 'Table of Contents', 'Content', and 'Instruments'. The 'Content' tab is active, showing a 'Previous' and 'Next' button. The article title is 'SYSC 22 Annex 1 Template for regulatory references given by relevant authorised persons and disclosure requirements'. The date is 07/03/2017 and the section is 'Part One: Form of Template'. A 'Guide to using this template:' box states: 'Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.' The left sidebar contains options for 'Latest', 'Browse by topics', 'Show timeline', 'Content Options' (with 'Rules' and 'Legal Instruments' selected), and 'Add to favourites'.

## d. Conduct Rules



### Conduct Rules

Act with integrity

Act with due care, skill and diligence

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

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

Observe proper standards of market conduct

4 additional rules apply to Senior Managers



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



## Sitting over the top...

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



## Who will be subject to them?

- SMs
- Certified Individuals
- NEDs
- All other employees (ex ancillary staff)
- Firm to make staff aware and train them
- Where Conduct Rules are breached FCA to be notified within 7 days for SMs and annually for other staff (but PRIN 11 still applies)



## Key elements – Conduct Rules / Standards



### 1<sup>st</sup> Tier – Applies to (nearly) all staff – You must:

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

### 2<sup>nd</sup> Tier – Senior Managers must take reasonable steps to ensure:

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

\* Applies to NEDs together with the First Tier Rules

## Relevant Training

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



## Reporting

- Annual notification will be needed even if no breaches have occurred (an annual report via Gabriel made in October)
- Formal written warnings, suspension or dismissal and recovery/reduction of remuneration/commission clawback will need to be reported

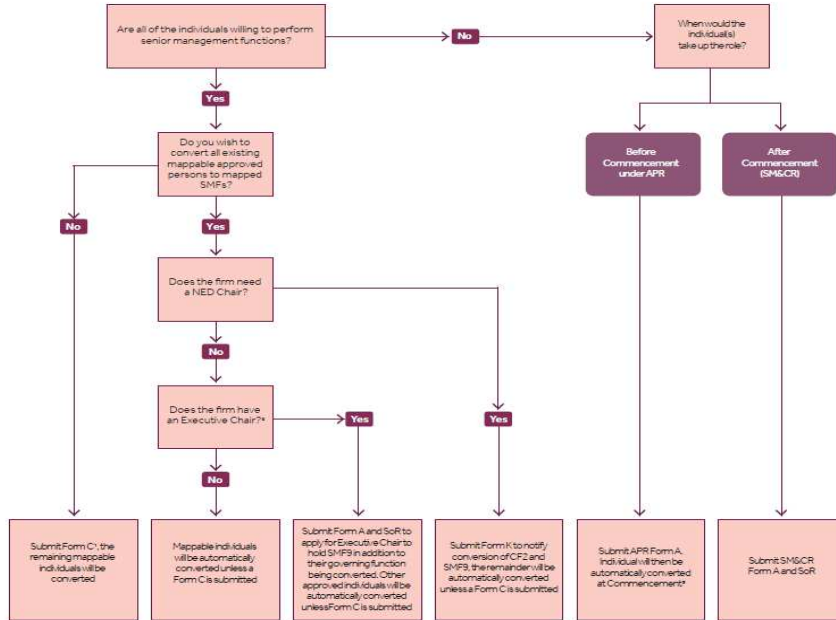


**e. What next?**

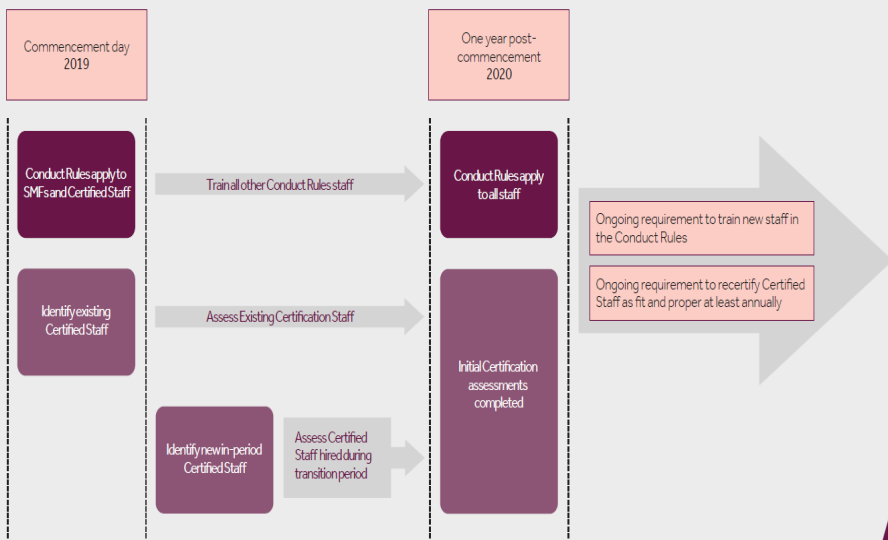


### Core and Limited Scope firms: what do I need to submit?

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



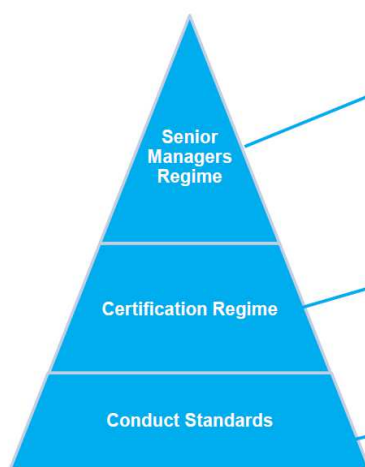
### Transitional Period



# 8. Conclusion



## The impact on individuals & firms



Senior Managers	
<ul style="list-style-type: none"><li>• Training</li><li>• Updated employment contract</li><li>• Updated job description</li><li>• Fitness &amp; Propriety attestation</li></ul>	<ul style="list-style-type: none"><li>• Ongoing screening</li><li>• Approval before doing the role</li><li>• Full handover on departure</li><li>• Learning &amp; development</li></ul>
Certification Staff	
<ul style="list-style-type: none"><li>• Training</li><li>• Updated employment contract</li><li>• Updated job description</li></ul>	<ul style="list-style-type: none"><li>• Fitness &amp; Propriety attestation</li><li>• Ongoing screening</li><li>• Annual Certification</li><li>• Learning &amp; development</li></ul>
Conduct Staff	
<ul style="list-style-type: none"><li>• Training</li><li>• Awareness</li></ul>	<ul style="list-style-type: none"><li>• Ongoing assessment</li><li>• Learning &amp; development</li></ul>

## What should you be doing now?

- Project team
- Board level engagement
- Workstreams
- Governance mapping
- Identify potential senior managers
- Review job descriptions
- Annual fitness and propriety checks
- Employment contracts
- Also IDD, GDPR and Brexit to consider?



## Today/Learning outcomes...

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

1. SM&CR proposals
2. Certification requirements
3. Fit and Proper requirements
4. Conduct rules
5. Conversion



**Thank you for your attention**

**0800 619 6619**

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