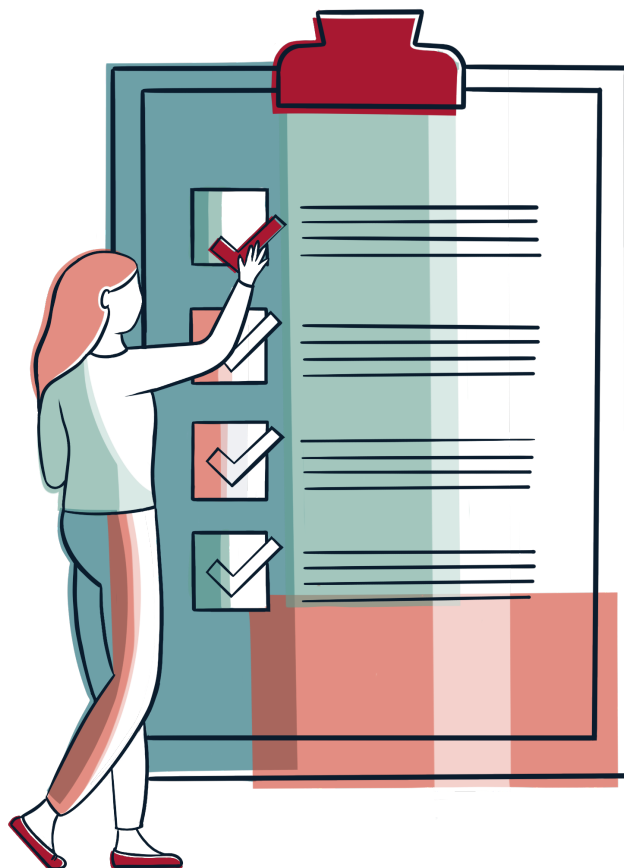


SMCR & Conduct Rules

Read time: 10 mins



Hello,

The Senior Managers & Certification Regime (SMCR) and Conduct rules are seen by many as a response to the financial crisis of 2007/2008.

The FCA believes that the financial crisis was a failure of culture as individuals were rewarded for producing very high short-term returns with no thought about what may happen in the medium to long term. It is the FCA's view that to reduce the risk of any similar event in the future, they need to change the culture at firms by making the senior people accountable for the behaviour in their firms.

Therefore, the Senior Managers & Certification Regime (SMCR) was implemented for 'solo-regulated firms' on 9 December 2019, and the Conduct Rules for all staff came into force on 31 March 2021.

This guide will explore the regulations and obligations under the Senior Managers & Certification Regime (SMCR) and Conduct rules.

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SMCR & Conduct Rules

Background

The overarching aim of the Conduct Rules and the SMCR is to reduce harm to consumers and to strengthen market integrity.

The Conduct Rules and the SMCR set out basic standards of personal conduct for all those who work in the financial services sector.

ALL people in firms are responsible and accountable for their conduct, actions and competence. The FCA can hold staff at any level personally accountable for breaches.

Three primary 'levels' determine how intensively the SMCR will apply to a firm - Limited Scope, Core or Enhanced.

Each level will be bound in some form or another to the main features of the SMCR:

1. The Senior Manager Regime
2. The Certification Regime
3. The Conduct Rules
4. Fitness and Propriety

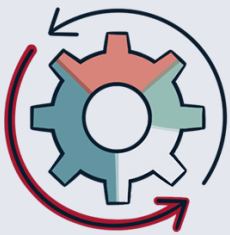
SMCR & Conduct Rules

Scope of Regulations



Limited Scope Firms

These firms are, generally speaking, very small firms or Claims Management Companies and will be subject to fewer requirements than Core firms. (This covers all firms that currently have a limited application of the Approved Persons Register.)



Core Regime Firms

The Core Regime applies to most solo-regulated firms that will have a baseline of SMCR requirements applied.



Enhanced Regime Firms

Enhanced regime firms will usually be large intermediaries with significant lending or funds under management and must apply additional rules.



SENIOR MANAGER Regime

Senior Manager Regime

Regulations for all firms

Most senior decision-makers in a firm will be approved by the FCA, with firms also having a responsibility to ensure they are suitable for their role (with a review at least once a year).

The number of senior manager functions and their scope will depend upon the firm type.

Statement of Responsibilities

Senior managers must have a statement of responsibilities; this is a single document that clearly sets out what each director is responsible and accountable for.

It must be a self-contained document that doesn't refer to any other document and be succinct and clear without unnecessary detail.

- » These are submitted to the FCA upon appointment as part of the approval process for directors.

Duty of Responsibility

Senior managers will be required to have a duty of responsibility. So, if something goes wrong in an area they are responsible for, the FCA will consider if they took "reasonable steps" to stop it from happening.

Senior Manager Regime

Prescribed Responsibilities Core and Enhanced firms

For Core & Enhanced Regime firms, the Senior Manager prescribed responsibilities are as follows:



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 of the firm in relation to the conduct rules



Responsibility for the firm's policies and procedures regarding countering the risk of the firm being used for financial crime



Responsibility for the firm's compliance with CASS (as applicable)



Responsibility for value for money assessments, independent director representation and acting in investors' best interests

Senior Manager Regime

Prescribed Responsibilities Enhanced firms

Enhanced Regime firms have additional prescribed responsibilities:

- » Compliance with the rules relating to the firm's Responsibilities Map
- » Safeguarding and overseeing the independence and performance of the internal audit function
- » Safeguarding and overseeing the independence and performance of the compliance function
- » Safeguarding and overseeing the independence and performance of the risk function
- » If the firm outsources its internal audit function, taking reasonable steps to ensure that every person involved in the performance of the service is independent of the persons who perform the external audit, including:
 - supervision and management of the work of outsourced internal auditors
 - management of potential conflicts of interest between the provision of external audit and internal audit services
- » Developing and maintaining the firm's business model
- » Managing the firm's internal stress tests and ensuring the accuracy and timeliness of information provided to the FCA for the purposes of stress-testing

Senior Manager Regime

Overall Responsibility Enhanced Firms

An Enhanced firm must ensure that every activity, business area and management function has a Senior Manager with overall responsibility for it.

This prevents unclear allocation of responsibilities and issues falling between the cracks.

Overall Responsibility means a Senior Manager

- » has ultimate responsibility for managing or supervising a function
- » briefs and reports to the governing body about their area of responsibility
- » puts matters for decision about their area of responsibility to the governing body

Having overall responsibility doesn't mean that the person needs to have day-to-day management control of that function.

They need to be the most senior person responsible for managing the area overall and be sufficiently senior and credible, and with sufficient resources and authority, to be able to exercise their management and oversight responsibilities effectively.

Each Senior Manager's Statement of Responsibilities must set out what they're responsible for in a clear and accurate way.

Senior Manager Regime

Responsibility Maps Enhanced firms

Enhanced firms must prepare and maintain a Responsibilities Map.

This is a single document that sets out the firm's management and governance arrangements.

This includes, for example,

- » how the Prescribed Responsibilities have been allocated,
- » details on who has overall responsibility for the firm's activities, business areas and management functions,
- » details of individuals' and committees' reporting lines,
- » how any responsibilities are shared or divided between different people.

Responsibilities Maps are designed to give a collective view of the allocation of responsibilities across a firm and to ensure that aren't any gaps in the Senior Managers' Statement of Responsibilities.

They help the FCA identify who to speak to about particular issues and who is accountable if something goes wrong.

Senior Manager Regime

Handover Procedures Enhanced firms

Enhanced firms must take all reasonable steps to ensure that a person taking a Senior Manager role has all the information and materials they could reasonably expect to have to do their job effectively.

One way of doing this could be for the predecessor to prepare a handover note.

Every enhanced firm must have a policy explaining how it complies with this requirement and maintain adequate records of the steps it has taken.





CERTIFICATION

Regime

The Certification Regime

The Certification regime applies to all firms and covers people who are not senior managers but whose jobs mean they have a significant impact on customers, markets, or the firm (these are known as “significant harm functions”).



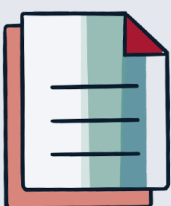
Roles in scope

These roles include proprietary traders, CASS oversight function, functions subject to qualification requirements, client dealing functions, algorithmic traders, material risk-takers, and any supervisor or manager of a certified person.



Approval by Firm

These individuals will not be approved by the FCA; they will be approved by their firm. Their firm will have to “certify” they are suitable (fit and proper) to carry out their job (with a review taking place at least once a year).



FCA Directory

They would also appear on a new FCA directory so that customers can check the details of these critical people. Firms must have first assessed the fitness and propriety of their Certified Staff by 31 March 2021.

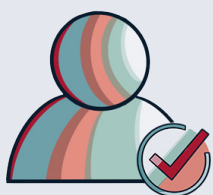


CONDUCT

Rules

The Conduct Rules

The Conduct Rules apply to almost all people working in financial services. They are as follows:



You must act with integrity.

- » Integrity is the quality of **being honest** and having **strong moral principles**.
- » Be honest in your dealings with customers, colleagues and the regulator.

“Doing the Right thing, even when no one is watching.”

C. S. Lewis.



You must act with due care, skill and diligence.

- » Ensure you act within your remit and authorisation levels.
- » If you are unsure about anything: **Ask – don’t guess!**
- » Take care in getting things **Right First Time**.
- » Following your organisation’s agreed processes.



You must be open and cooperative with the FCA, the PRA and other regulators.

- » You must ensure that any requests for information from the regulator(s) are responded to honestly, thoroughly and in a reasonable timeframe.

The Conduct Rules



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

- » Ensure you understand the principles of Treating Customers Fairly.
- » Listening and understanding your customers' needs.
- » Providing customers with the necessary information.
- » Supporting vulnerable customers.



You must observe proper standards of market conduct.

- » Proper standards of Market Conduct ensure that the behaviours and actions of an individual do not result in the abuse of the market.
- » Follow the rules and standards of the market.
- » Understand your obligations under your organisation's Conflict of Interest Policy:
 - In particular, obligations under hospitality and gifts.
- » Do not attempt to manipulate the market to gain an advantage.

The Conduct Rules

Senior Managers

Additional conduct rules will also apply to Senior Managers:

1. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
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.
3. You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee this effectively.
4. You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.



Conduct Rule Breaches

Notifying the FCA

The Conduct Rules mark a 'step change' in FCA regulation; the FCA can now hold staff **at any level personally accountable** for breaches.

The FCA would hold an individual accountable where they have done something **knowingly wrong** and **deliberately engaged in systemically wrong activities**.

There will be increased oversight as firms must **notify the FCA** when **disciplinary action** is taken against an individual for a **Conduct Rules breach**.

The FCA consider disciplinary action to be:

- » Issuing a formal written warning
- » Suspension or dismissal
- » Reduction or recovery of remuneration

Breaches involving non-senior managers are notified annually via FCA's reporting system.

The FCA must be notified of breaches involving Senior Managers within seven days using the relevant form.



FITNESS & Propriety

Fitness & Propriety

Background

A vital feature of the SM&CR is to reinforce that firms need to take responsibility for their staff being fit and proper to do their jobs; this applies to all firms.

The FCA requires firms to make sure anyone performing a Senior Manager Function or a Certification Function is fit and proper for their role.

This requirement also applies to Non-Executive Directors who are not Senior Managers, except in Limited Scope firms.

Once someone is in such a role, firms must assess them on an ongoing basis and at least once a year.

FIT sets out detailed guidance about what firms should consider when assessing a person's fitness and propriety. This includes:

- » honesty, integrity and reputation,
- » competence and capability,
- » financial soundness.



Fitness & Propriety

Criminal Record Checks

Under the SMCR, firms must collect additional evidence when assessing candidates for Senior Manager Positions, Certification Functions or Non-Executive Director roles.

Firms and candidates for SMFs need to declare if a candidate has a criminal record (to the maximum extent allowed by law).

Firms must also undertake a criminal records check as part of each Senior Manager's application for approval.

Criminal records checks won't be mandatory for Certification Functions, but firms may choose to conduct these checks for other staff where they are legally allowed to do so.



Fitness & Propriety

Regulatory References

Firms must request a reference from Senior Manager and Certification Function candidates' past employers – known as regulatory references.

This will also apply to Non-Executive Directors who aren't Senior Managers. The regulatory reference rules require firms to:

- » Request a reference from all previous employers in the past six years for people applying for Senior Manager, Certification and non-approved Non-Executive Director roles.
- » Share information between firms in a standard template.
- » Disclose certain information going back six years.
 - * This includes details of any disciplinary action taken due to breaches of the Conduct Rules and any findings that the person was not fit and proper.
- » Disclose any other information relevant to assessing whether a candidate is fit and proper covering the previous six years, e.g., the number of upheld complaints.)
 - * Unless it relates to serious misconduct, in which case there is no time limit.
- » Retain records of disciplinary and fit and proper findings going back six years.
- » Update regulatory references where new, significant information comes to light.

Fitness & Propriety

Limited Scope Firms

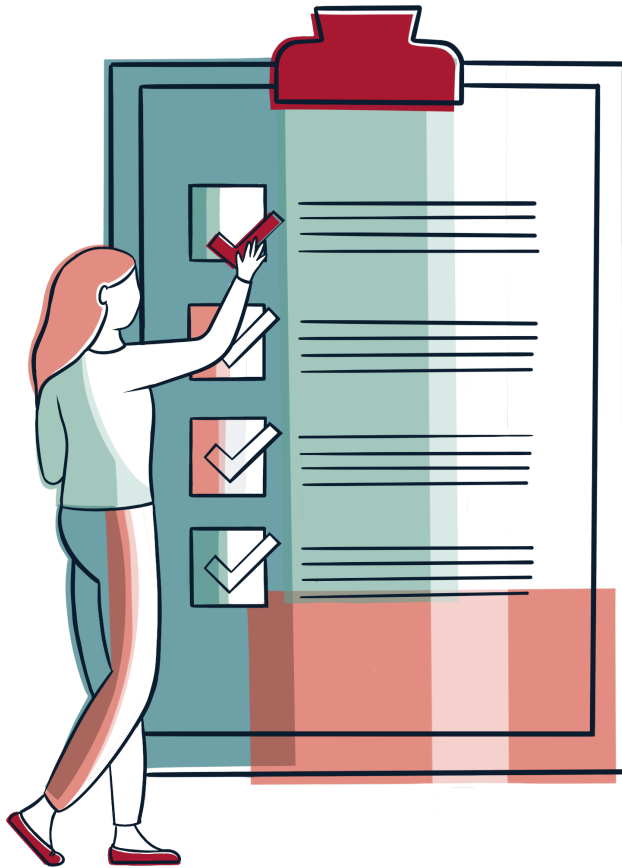
The application of the fit and proper requirements to Limited Scope firms is slightly different in some areas:

Sole traders are not required to seek regulatory references or criminal records checks for themselves, even where they also hold a Senior Manager Function.

Sole traders with employees should consider whether any of these individuals meet the definition of a Senior Manager or perform one of the Certification Functions. If so, the fit and proper requirements apply.

Non-approved board directors (both executive and non-executive) at Limited Scope firms are not subject to the fit and proper requirements, including regulatory references and criminal records checks.





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