



# Guide to Senior Managers and Certification Regime for Limited Scope Firms

**PUBLIC**

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## Change History Record

| Version | Description of Change | Approval   | Date of Issue |
|---------|-----------------------|------------|---------------|
| 1.0     | Initial document      | Sam Osborn | Dec 2019      |
| 2.0     | Update of document    | Sam Osborn | 2/3/21        |



**The information provided is for guidance only. It is not legal advice and must not be relied upon as such. You are solely responsible for ensuring you meet the regulatory requirements for your business.**



The Financial Conduct Authority (FCA) applied the Senior Managers and Certification Regime (SM&CR) to solo regulated Consumer Credit firms from 9th December 2019.

The FCA have introduced SM&CR as a catalyst for change:

‘An opportunity to establish **healthy cultures** and effective governance in firms by encouraging greater **individual accountability** and setting a new **standard of personal conduct.**’



Drive to improve culture, governance and accountability



Improve individual accountability



Aim to deter misconduct



Increase awareness of conduct issues across firms

# Check the type of firm

This document is for guidance for limited scope firms specifically. It does not incorporate firms that have been categorised by the FCA as either Core or Enhanced.

The new regime aims to be proportionate and flexible to accommodate different business models and governance structures of firms.

There are 3 categories of firms under the SM&CR:



## Sole traders

Sole traders are Limited Scope firms.

- The only Senior Management Functions (SMFs) that normally can apply are:
  - SMF29 (the Limited Scope Function)
  - SMF16 (the Compliance Oversight function)

### If you are a sole trader with no employees:

- Only the SMF16 Compliance Oversight function will apply. This function is only required if other rules require it.
- The Certification Regime does not apply to you as you have no employees.
- You will not need to conduct a fit and proper assessment on yourself.
- Sole traders are not required to seek regulatory references or criminal records checks for themselves, even where they also hold a SMF.
- The Conduct Rules do not apply to a sole trader as an individual unless they hold an SMF.

### If you are a sole trader with employees:

- If you have a governance structure the same SMFs apply as for firms in the Core category.
- Consider whether any of your employees meet the definition of a Senior Manager.
- Do any of your employees perform one of the Certification Functions. If so, the fit and proper requirements apply.
- Sole traders are not required to seek regulatory references or criminal records checks for themselves, even where they also hold a SMF.
- The Conduct Rules do not apply to a sole trader as an individual unless they hold an SMF.
- The Conduct Rules will apply to employees of sole traders (unless they perform one of the excluded ancillary roles).

# What you should have done so far

## 1 Review the FCA register <https://register.fca.org.uk/>

- Make sure your details are accurate and up to date.
- Are details of your Senior Management Functions up to date?
- You are expected to review the register annually.

## 2 Make sure you have an up-to-date Statement of Responsibilities (SoR)

- Each Senior Management Function (SMF) needs their own 'Statement of Responsibilities' (SoR) that sets out what they are responsible and accountable for. This does not have to be submitted during the current FCA conversion process. However, you need to keep the SoR up to date, and you must be able to provide a SMF Statement of Responsibilities to the FCA on request.
- Even if you have only one SMF, the FCA expect you to have completed this, outlining your responsibilities.
- SoR will also be required for SMFs submitting a new application for approval as SMF under the SM&CR in the future.
- The FCA will hold SMFs accountable for business failings, and can take action against the firm and the individual SMF responsible for the area in question.
- **We have included a template you can use at the back of this document.**

## 3 Identify any Certified Individuals (CI)

- Do you have any individuals within your firm whose role could cause 'significant harm' to the firm or to its customers? If so, these will be 'Certified Individuals' (CIs).
- You should consider if they are responsible for a large number of staff, a lot of the business profit, etc.
- Certified staff need to be added to the FCA directory before the 31st March 2021 and you must have assessed them as fit and proper as detailed below.

## 4 Fit & Proper

- **If you have any Certified staff, you must assess their fitness and propriety annually, taking into account:**
  - The personal characteristics required for the function (including good reputation, honesty, integrity and financial soundness).
  - Consider carrying out criminal record and/or credit checks to help you to determine whether or not the individual satisfies this test. If you do undertake these checks, you must do so in compliance with data protection legislation. You do not need to complete this on yourself if you are a sole trader.
  - Does the individual possess the appropriate level of competence, knowledge and experience?
  - Has the individual undergone or are undergoing all the training required to enable them to perform their role effectively and in accordance with any relevant regulatory requirements?
  - You must retain evidence of the above being carried out, that the FCA can see on request.

## 5 Prepare certification processes



- Each person must be issued a certificate to them to confirm they have been assessed as fit and proper, by the deadline. You must have a process in place to move any certified individual who is not fit and proper from his or her current role into a different and more suitable role.
- If you have a HR department, they should be involved in helping you to meet these new requirements.
- If you have a request or need to provide a 'regulatory reference' to/from firms when you/they recruit a certified individual or a Senior Management Function who has worked in a regulated firm, the regulatory reference must be completed using the FCA's template and must be provided within 6 weeks of a request. Further detail as to what is required can be found in the FCA's Handbook in SYSC 22.



## Prepare to submit data to the FCA's directory

- The FCA directory is a new facility open to public view where details of SMFs and certified staff for regulated firms can be seen.
- Upload is via the FCA's Connect system.
- You will need to provide the FCA with the Directory Persons' name, NI number (or passport number, where the NI number is not available), date of birth, their role, and the start and end dates for each role.
- If the individual already has an FCA individual reference number (because they were previously an Approved Person or Certified Individual), this should also be provided.
- You must keep the Directory up to date with details of any new or departing Directory Persons being reported within **7 working days** of joining/leaving.



### Directory Persons will include;

- Certified individuals;
- Directors, who are not SMFs (both executive and non-executive);
- Other individuals who are sole traders or;
- Appointed Representatives where they are undertaking business with clients and require a qualification to do so.

**The Directory went live on 9th December 2019; the deadline for upload of data is 31st March 2021.**

For more information on the directory of certified and assessed persons visit:

<https://www.fca.org.uk/firms/directory-persons>

# Appropriate Conduct Rules Training

All staff involved in financial services activities should be trained on the Conduct Rules. The Conduct Rules are divided into two tiers. SMFs must comply with both tiers; other staff must comply with the Tier 1 'individual conduct rules' only.

Certified Staff and SMFs must now have received tailored training on the Conduct Rules. All other Conduct Rules staff must have received training on the Conduct Rules by 31st March 2021.

## Individual Conduct Rules:

### **You must act with integrity.**

This is the expectation that individuals will deal honestly with their colleagues, with customers and the regulator.

### **You must act with due skill, care and diligence.**

This is the expectation that individuals will act with the skill and care that would reasonably be expected of a competent individual performing the role which they are engaged to follow.

### **You must be open and cooperative with the FCA, the PRA and other regulators (ICO etc).**

This is the expectation that individuals will respond fully and honestly to any enquiries made of them by regulators.

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

This rule expects that individuals will treat customers fairly and act in their interests. This rule is about individual accountability and enables the FCA to take action against any individual who does not meet this expectation.

### **You must observe proper standards of market conduct.**

This is the expectation that individuals will follow the rules and standards of the markets in which they operate. In particular that individuals will not try to manipulate these markets to achieve an advantage.



# Senior Management 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 or PRA would reasonably expect notice.



## Reasonable steps

The Senior Management Conduct Rules require SMFs to evidence that they have taken “reasonable steps” to discharge their responsibilities effectively and in accordance with their regulatory obligations. Whilst businesses differ in size and complexity and whilst the list below might seem excessive oversight for some, based on the FCA’s recommendations, SMFs should consider the following:



Does your business model ensure that customers are treated fairly?



Is decision-making in line with the Statement of Responsibilities for each individual?



Has your regulatory business plan been updated in light of SM&CR to show who is responsible for which responsibilities?



What committee do you hold to ensure that matters are appropriately escalated for discussion and decision?



Does your business plan reflect the risks and controls associated with the business model, including those raised in the FCA’s motor finance review?



How is decision-making recorded?



Do you have up-to-date policies and procedures in place, and what management information do SMFs review to ensure that policies and procedures are being adhered to with any remedial action taken where necessary?



What steps did you take to implement the SM&CR?

You also need a process in place for Breach Reporting. The process would lay out how you will inform the FCA of any breaches of the Conduct Rules (annually for most staff; SMFs within seven days).

## Summary & Timeline

|  |                                  |  |
|--|----------------------------------|--|
| Check your firm type.                      | Review regulatory business plan. | Prepare a Statement of Responsibilities. |
| Review and update policies and procedures. | Identify Certified Individuals.  | Conduct rules training.                  |
| SMFs understand their responsibilities.    | HR processes updated.            | Update contracts of employment.          |

**Dec**  
2019

- **December 2019**  
The SM&CR regime came into force.

**Mar**  
2021

- **March 2021** (and annually thereafter)  
They must have made first assessment as to the fitness and propriety of CIs, issued a certificate, and uploaded Directory Persons' details to the FCA Directory.

## Useful links

<https://www.fca.org.uk/firms/senior-managers-certification-regime/solo-regulated-firms>

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

<https://www.handbook.fca.org.uk/handbook/SYSC/25/Annex1.html>

<https://www.handbook.fca.org.uk/handbook/SYSC/27/7.html>

# Appendix 1

– Statement of Responsibilities Template



Senior Management Regime

## Statement of Responsibility

|            |  |
|------------|--|
| Individual |  |
| Job Title  |  |
| Date       |  |

|   |                                    |                          |
|---|------------------------------------|--------------------------|
| <b>Role Holder</b>  |                                    |                          |
| <b>Add SM Function</b>                                    | <b>Add title</b>                   |                          |
| <b>Ref</b>  | <b>Prescribed Responsibilities</b> | <b>Shared</b>            |
| Add prescribed responsibilities from responsibilities map |                                    | N/A<br>N/A               |
| <b>Ref</b>  | <b>Overall Responsibilities</b>    | <b>Shared</b>            |
| Add overall responsibilities from responsibilities map    |                                    | N/A<br>N/A<br>N/A<br>N/A |
| <b>Ref</b>  | <b>Other Responsibilities</b>      | <b>Shared</b>            |
| Add job description elements                              |                                    |                          |
| <b>Supplementary Information</b>                          |                                    |                          |
|   |                                    |                          |
| <b>Committees</b>   |                                    |                          |
| Add committee details                                     |                                    |                          |