



The UK **Senior Managers and Certification Regime (SMCR)** is being extended to all financial services firms during 2018

- PRA and FCA proposals for insurers build on the **Senior Insurance Managers Regime (SIMR)** although the transition to the SMCR is complicated by the need to satisfy overlapping **Solvency II requirements**
- The rules described in this guide are set out in PRA [CP14/17](#) and FCA [CP17/26](#). They will apply to Solvency II firms and large non-Directive firms (**NDFs**) i.e. insurers that fall outside the scope of Solvency II but with an asset value of at least £25 million

KEY ELEMENTS OF THE SMCR

DIFFERENCES FROM SIMR

1. Senior Managers Regime

- Individuals (**Senior Managers**) who perform **Senior Management Functions (SMFs\*)** must obtain regulatory approval before taking up their roles
  - A number of **Prescribed Responsibilities** must be specifically assigned by firms to a Senior Manager
  - Each Senior Manager must be given a “**Statement of Responsibilities**” or “**SoR**” (previously known as a “Scope of Responsibilities” document) setting out their areas of responsibility
  - Rules on **fitness and propriety** and regulatory references apply
- \*The term “SMF” is used in FSMA and by the FCA for all types of firm, but the PRA applies the term “S(I)MF” to insurers



- The FCA’s Approved Persons Regime (**APR**) is being replaced, with the introduction of **FCA-designated SMFs** for the first time
- Expanded list of **Prescribed Responsibilities**
- A new “**duty of responsibility**” imposed on Senior Managers aims to make them **individually accountable** for the performance of their duties
- “Governance Maps”, which describe a firm’s governance and management arrangements and how responsibilities are allocated to individuals, will become “**Responsibilities Maps**” (FCA) or “**Management Responsibilities Maps**” (PRA)

2. Certification Regime

- Applies to individuals who are not Senior Managers, but whose role means that they could expose the firm or its customers to **significant harm**:
  - **PRA** – Key Function Holders (**KFHs**) who are not also Senior Managers, and other “Material Risk-Takers” (**MRTs**), will be caught.
  - **FCA** - Designated functions include “significant management” roles that can seriously impact the way in which the firm conducts its business
- **Annual certification** (by firm) of **fitness and propriety**
- Rules on regulatory references apply



- Extending the Certification Regime to insurers for the first time is the **area of greatest** change for insurers
- Certification Regime is likely to catch **many more members of staff** than fall within the SIMR
- Implementation of the new rules, including the annual review of an individual’s fitness and propriety for the role they perform, is likely to have a **significant impact** on HR processes within firms
- **Early planning** for this aspect of the new regime is particularly important

3. Conduct Rules

- Conduct Rules will apply to **all staff** other than those performing ancillary roles



- **Significant increase** in number of persons who are directly accountable to the regulators for compliance with Individual Conduct Rules.





# EXTENDING THE SMCR TO INSURERS

## A GUIDE TO THE PROPOSED REGIME

### 1. SENIOR MANAGERS REGIME

#### SENIOR MANAGEMENT FUNCTIONS

- PRA will keep its current list of Senior Insurance Management Functions (**S(IM)Fs**)
- **FCA-designated SMFs** replace Controlled Functions (**CFs**) currently applying under the APR
- In general, firms will have **fewer FCA-designated SMFs** than CFs – current approved persons who fall outside the new categories of SMF are likely to fall into the Certification Regime
- The “Other Overall Responsibility” SMF introduced by the FCA applies on a “**no gaps**” basis. Firms need to identify every activity, business area and management function (including those carried out from a branch overseas) and allocate responsibility for them either to an existing SMF or to an “Other Overall Responsibility” SMF (of whom there may be more than one)
- The scope of the **Compliance Oversight function** has been widened to cover all FCA regulatory requirements

PRA S(IM)Fs					FCA SMFs		
S(IM)MF 9 – Chairman	S(IM)MF 10 – Risk Committee Chairman	S(IM)MF 11 – Audit Committee Chairman	S(IM)MF 12 – Rem Committee Chairman	S(IM)MF 14 – Senior Independent Director	SMF 13 – Nominations Committee Chairman	SMF 15 – With Profits Committee Chairman	Non-exec
Board Non-executive							
S(IM)MF 1 – Chief Executive Function	S(IM)MF 4 – Chief Risk Function	S(IM)MF 5 – Head of Internal Audit	S(IM)MF 2 – Chief Finance Function	S(IM)MF 24 – Chief Operations	SMF 3 – Executive Director		
Board Executive							
Other insurance Senior Executive				Compliance			Executive
S(IM)MF 22 – Chief Underwriting Officer	S(IM)MF 23 – Underwriting Risk Oversight	S(IM)MF 20 – Chief Actuary	S(IM)MF 21 – With Profits Actuary	SMF 16 – Compliance Oversight			
Group/Overseas					SMF 17 – MLRO	SMF 23b – Lloyds Conduct Risk	
S(IM)MF 7 – Group Entity Senior Manager		S(IM)MF 19 – Head of Third Country Branch					
Business areas with total assets > £10 billion or 20% of gross revenue					SMF 18 – Other Overall Responsibility		
					Other business areas		

■ New function or scope widened

#### PRESCRIBED RESPONSIBILITIES

- Prescribed Responsibilities must be assigned to Senior Managers
- Three **new Prescribed Responsibilities** (which are to be “shared” by the PRA and the FCA) cover:
  - the firm’s performance of its obligations under the Senior Managers Regime
  - the firm’s performance of its obligations under the Certification Regime
  - compliance with the firm’s obligations in relation to its Responsibilities Map
- The FCA proposes to introduce three new Prescribed Responsibilities (which are not “shared”) covering:
  - the firm’s performance of its obligations under the FCA Code of Conduct (COCON)
  - compliance with CASS
  - prevention of financial crime
- SoRs are required for all Senior Managers and other KFMs (as under the current regime)

#### DUTY OF RESPONSIBILITY

- In the event of a **regulatory breach**, the Senior Manager responsible for the area in which the breach occurred could be **held accountable** if they did not take reasonable steps to prevent or stop it.
- **Burden of proof** lies with the PRA or FCA to show that the Senior Manager did not take the steps that a person in their position could reasonably be expected to take to avoid the breach.
- In bringing enforcement action, the PRA and FCA will consider the individual’s **Statement of Responsibilities** and the firm’s **Responsibilities Map**.
- PRA guidance on enforcement of the duty reproduces the equivalent guidance for banks; the FCA “expects” that the guidance that it has given to banks will also apply to insurers, but that it will consult on this later in the year.
- In practice, it is not clear what additional obligations Senior Managers incur under the duty of responsibility that they have not already held under the SIMR.



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### 2. CERTIFICATION REGIME

- Regulatory pre-approval is not needed, but firms will need to certify, on an annual basis, that staff falling within the **Certification Regime** are “fit and proper”
  - All **KFHs**, as defined by the PRA under the SIMR, will be within scope unless they are Senior Managers
  - MRTs** i.e. individuals whose professional activities have a material impact on the firm’s risk profile will also be covered (again, to the extent that they are not already SMFs or KFHS)
- Other FCA-designated certification functions include (in addition to MRTs):
  - significant management** - roles that can seriously impact the way in which the firm conducts its business (current CF29)
  - functions that are subject to **qualification requirements**
  - anyone who **supervises a certified person** – this is designed to put in place a clear chain of responsibility between more junior certified employees and the Senior Manager ultimately responsible for the relevant area, and every person in that chain will need to be certified
  - persons **performing a client dealing function** - any person dealing with clients, including retail and professional clients and eligible counterparties.
- Whilst the PRA and FCA note that their regimes are co-extensive, there does seem to be some degree of overlap in the functions designated by them, in particular, with regard to the interaction between KFHS, MRTs and "significant management" functions

### 3. CONDUCT RULES

- Currently, only individuals who carry on a SIMF or CF can be made **directly responsible** to the regulators for compliance with Conduct Rules
- Under the SMCR, the PRA will apply “**Individual Conduct Standards**” and “**Senior Manager Conduct Standards**” to Senior Managers, Notified NEDs (i.e. NEDs who are not performing a S(I)MF) and KFHS
- The FCA intends to apply the Individual Conduct Rules to all non-ancillary staff working at a firm, including all **Certified Employees**

Rule/Standard	Regulator	SMFs	Notified NEDs	KFHs	Certified Employees and other employees, except ancillary staff	
<b>INDIVIDUAL CONDUCT RULES</b>	1. Act with integrity	PRA & FCA	✓	✓	✓	✓
	2. Act with due care, skill and diligence	PRA & FCA	✓	✓	✓	✓
	3. Be open and cooperative with the FCA, PRA and other regulators	PRA & FCA	✓	✓	✓	✓
	4. Pay due regard to the interests of customers and treat them fairly	FCA only	✓	✓	✓	✓
	5. Observe proper standards of market conduct	FCA only	✓	✓	✓	✓
<b>SENIOR MANAGER CONDUCT RULES</b>	6. Take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively	PRA & FCA	✓		✓	
	7. Take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system	PRA & FCA	✓		✓	
	8. 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	PRA & FCA	✓		✓	
	9. Disclose appropriately any information of which the FCA or PRA would reasonably expect notice	PRA & FCA	✓	✓	✓	
	10. Pay due regard to the interests of current and potential future policyholders in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits	PRA only	✓	✓	✓	

NB: The PRA uses the term “Conduct Standards”; the FCA uses “Conduct Rules”.



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### SUMMARY APPLICATION OF THE NEW REGIME

Category of person	Senior Managers Regime	Certification Regime	Regulatory References	Fitness and Propriety	Conduct Rules
Senior Managers, including NEDs performing an SMF	✓		✓	✓	✓
Notified NEDs			✓	✓	✓
Certified Employee* (incl a KFH who is not also a Senior Manager)		✓	✓	✓	✓
Other, non-Certified Employees performing a key function (PRA only)				✓	✓
All other employees (except ancillary staff**)					✓

\* **Certified Employee** – Employees who are not Senior Managers or Notified NEDs but whose role may nonetheless have an impact on the firm’s business. Includes KFHS and MRTs

\*\* **Ancillary staff** – Employees not covered by any aspect of the regime, such as cleaners and receptionists

### SOURCES OF INFORMATION

PRA CP14/17 [“Strengthening individual accountability in insurance: extension of Senior Managers & Certification Regime to insurers”](#)

FCA CP17/26 [“Individual accountability: Extending the Senior Managers & Certification Regime to insurers”](#)

### WHAT NEXT FOR THE REGULATORS?

#### PRA and FCA

- The consultation period for both CP14/17 and CP17/26 closes on Friday, 3 November 2017
- The PRA and FCA intend to publish final policy during 2018
- The extended regime is expected to come into effect some time in 2018

#### PRA

- The PRA expects to issue a further CP in Q3/Q4 2017 with proposals to align its terminology more closely with the current banking regime and for updating forms that apply to both sectors.
- This CP may also include proposals for transitional measures
- A separate consultation on other consequential changes may follow in Q1 2018

#### FCA

- The FCA will consult later in 2017 on how existing FCA Approved Persons will transition to the new regime

### WHAT NEXT FOR FIRMS?

Our experience of working with our clients on the SMCR and the SIMR suggests that **projects to implement the SMCR should begin now** rather than waiting for the outcome of the PRA and FCA’s consultation

Early steps that can be taken include:

- Identify **expertise** needed to facilitate delivery, including legal, compliance, risk, audit, training and development, and human resources
- **Brief** the board, board committees, and executive management
- Plan approach to **internal communications** during implementation phase
- Plan **training programmes** for Senior Managers and Certified cohorts and on Conduct Rules compliance for all relevant staff

Please contact a member of our team if you would like to discuss any of the issues raised by the PRA/FCA proposals further

