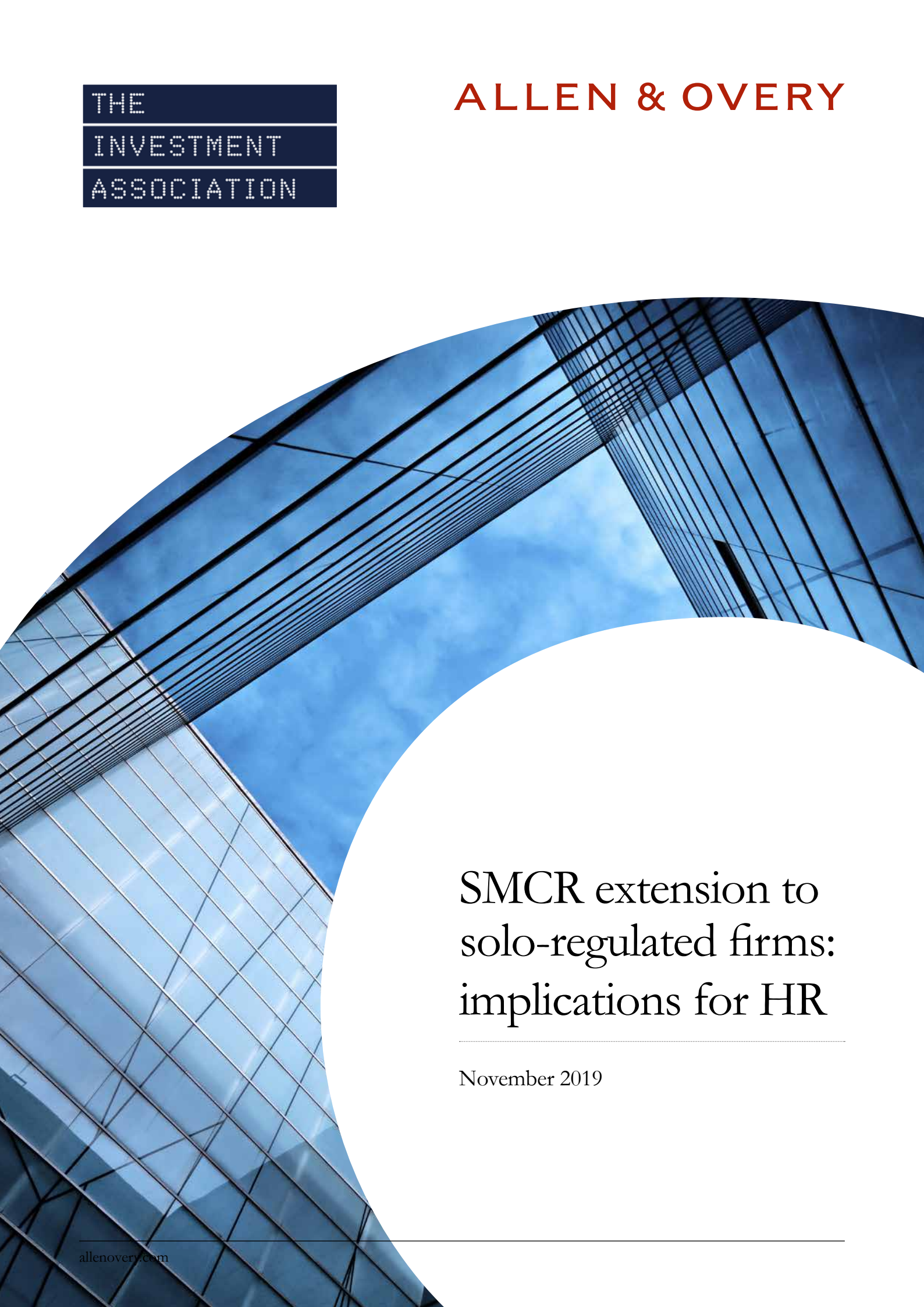


THE
INVESTMENT
ASSOCIATION

ALLEN & OVERY



SMCR extension to
solo-regulated firms:
implications for HR

November 2019

Glossary and Abbreviation Box

BSB	Banking Standards Board
FCA	Financial Conduct Authority
SMFs	Senior Management Functions replace senior influence functions under the Approved Persons Regime
SMCR	Senior Manager and Certification Regime

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Responsibility shift

At the heart of the Senior Managers and Certification Regime (SMCR) is a framework to hold firms and senior individuals in financial services to account.

In order to do this, there has been a shift in the balance of responsibilities between the regulator and the regulated, in that firms will be required to take a more active role in their regulated workforce. Firms are being transformed into mini-regulators, taking on a much greater responsibility for standards of employee conduct.



Challenges for HR

There is no getting away from it: more responsibility does mean more work, not only in the implementation period but also as the new regime beds down and the operational effectiveness is stress tested and reviewed. Given the focus of SMCR on firms' employees, it is unsurprising that firms' HR functions have a leading role to play, both in relation to the implementation of SMCR and its operation in practice.

One of the main challenges for HR is to become a key stakeholder in the design and implementation of systems and controls to support the new regime. When SMCR was being implemented by banks and building societies, the transition was often led by Compliance with HR taking a subsidiary role at best or, in a worst-case scenario, not being consulted at all, or too late in the process to make any difference.

As traditional guardians of systems and processes, guidance and training for the entire life cycle of an employee (whether regulated or not), HR is well-placed to play a pivotal role in the new regime, acting as close advisers to the Senior Managers. Its expertise in the implementation of processes, and in embedding expected standards into objectives, training and appraisals will be invaluable to Senior Managers who will inevitably have to delegate operational matters to experts they can trust. An opportunity to align HR with the business and Compliance at the highest levels is there to be taken.

Our experience with other financial institutions going through the process is that where preparations for transition to the new regime have been made with all the relevant stakeholders, the outcomes are better as less is likely to fall through the gaps, and most contingencies have been thought of in advance.

The good news for HR

Although the landscape is changing with new rules and responsibilities, much of it will be familiar from its predecessor, the approved persons regime. It is not necessary to start everything from scratch. Many of the firms that will be transitioning to SMCR in December 2019 will not have significant resources to dedicate to redesigning everything, nor should this be necessary.

A better approach is to build upon existing processes to fit the new regime. It may involve a reiterative process, tweaking aspects to be more effective or to mirror market practice after SMCR comes into force. It is a long journey that will take in a number of stops and diversions along the way.

Senior Managers

Firms will be required to assign Senior Management Functions such as Chief Executive, Executive Director, Partner, Compliance Oversight and Money Laundering Reporting Officer to their most senior executives.

This will be a small population of individuals, who will be known as Senior Managers. The FCA will continue to approve Senior Managers in much the same way as under the previous regime.

HR is likely to be a first port of call for prospective Senior Managers who have questions about the SMCR and what it means for them.

In our experience, HR (along with other functions, such as Compliance) has continued to receive a steady stream of SMCR-related questions from Senior Managers and other employees who will be subject to the SMCR post-implementation.

We suggest that HR produce a document covering FAQs for Senior Managers to cover those questions, which are likely to be asked again and again. The nature of these questions will depend on each firm but could include:

What is SMCR?

Focus on the regulator's objective of holding individuals accountable for regulatory failings

Who will become a Senior Manager?

Senior individuals carrying out Senior Management Functions and who would be considered by the FCA to have the greatest potential to cause harm in the market

What are Senior Management Functions?

These replace Significant Influence Functions

What difference will SMCR make for Senior Managers?

- Continued scrutiny by the FCA
- Additional documentation to set out responsibilities and reporting lines
- Compliance with the Code of Conduct (both Individual and Senior Manager Conduct Rules)
- May be required to undertake a formal handover of their responsibilities (depending on classification of firm)
- Mandatory training

Is any liability that an individual may face by virtue of their position as a Senior Manager covered by D&O Insurance?

- Depends on policy
- Insurance cannot cover a fine that is imposed on a Senior Manager by the FCA

Are Senior Managers personally liable for regulatory failings?

The FCA can take enforcement action against Senior Managers personally, including withdrawal of approval, fines and public censure

Will I be paid more for the additional responsibility?

Remuneration is a matter for each firm

Will the Statements of Principle and APER still apply?

No. A new Code of Conduct will replace the previous regime with a tier of rules that specifically apply to Senior Managers

Does my service agreement need amending?

Contractual arrangements are a matter for each firm, but service agreements may require amendment

Who determines whether I am a Senior Manager?

Criteria set by the FCA

Territorial limits

There is no territorial limit to the SMCR which means that Senior Managers based outside the UK may be in scope depending on the kind and extent of their involvement in the operations of an FCA-authorized entity in the UK. It can be more of a challenge for HR getting this population on board with SMCR because these individuals may well be immersed in their own local regulatory regimes and responsibilities, and are likely to be subject to local employment laws.

To the extent that your firm will have any individuals who are not based in the UK as Senior Managers, keep in mind that there is likely to be less noise around SMCR outside the UK (especially if their local regulator does not have its own individual accountability regime) and therefore knowledge of SMCR should not be assumed.



Suggested contractual documentation for Senior Managers

It will be a matter for each firm to tailor its existing documentation to the new rules. Reflecting best practice, this may include:

- Service agreements, membership agreements or side letters should contain relevant provisions for Senior Managers including that employment or membership is conditional upon obtaining FCA approval as well as the requirement to maintain approval and F&P status
- Tie duties to relevant documentation including Statement of Responsibilities and Responsibilities
- Map and make clear that duties include complying with FCA Code of Conduct, both Individual and Senior Manager Conduct Rules
- Link termination provisions to non-compliance with regulatory obligations
- Require on-going assistance with regulatory investigations during and after employment

Certified Persons

Certified Persons are defined as employees who, although not Senior Managers, may still cause significant harm to their firm or their firm's customers.

A number of employees who will become Certified Persons will currently be approved by the FCA under the approved persons regime. However, when these employees become Certified Persons, they will no longer be subject to FCA approval. Instead, each firm will be responsible for "certifying" the fitness and propriety of each of its Certified Persons to perform their role on at least an annual basis.

The amount of work involved in transitioning from the approved persons regime to the SMCR should not be underestimated, especially when it comes to the Certification Regime. Whilst we would recommend adapting existing infrastructure rather than starting afresh, the overall regime is multi-dimensional, crossing numerous work streams and various points in the life cycle of a regulated individual from hire all the way through to post-termination.

This means that systems, controls, processes and procedures need to be integrated, with responsibility for every single aspect clearly defined.

For HR, this is an area requiring considerable thought, resources and time to implement and stress test. If Compliance is taking a lead on implementation, it is critical that HR be involved early in the process as there are numerous HR processes which may need to be adapted/reviewed to ensure overall regulatory compliance, including:

- Hire and onboarding
- Disciplinary process
- Appraisals
- Promotions
- Training
- Exits
- Provision of references



Suggested contractual documentation for Certified Persons

Existing contractual documentation should be reviewed to identify any gaps or areas that need modification or clarification. This may include the following:

- Contractual documents should contain relevant provisions for Certified Persons and employment should be made conditional upon maintaining fitness and propriety status and compliance with the FCA Code of Conduct, Individual Conduct Rules
- Link termination provisions to non-compliance with regulatory obligations
- Require on-going assistance with regulatory investigations during and after employment

Code of Conduct (COCON)

When the SMCR comes into force, the FCA will abolish its current Statements of Principle and Code of Practice for Approved Persons (APER). In its place, the FCA will introduce a new Code of Conduct which is split into two tiers. The first 'tier' will apply to almost all individuals working for this firm with the exception of ancillary staff (eg catering and security staff).

The second 'tier' will apply only to Senior Managers. The provisions of the COCON are very similar to the provisions of APER. The one addition that is not already reflected in APER is a personal obligation on individuals to treat customers fairly (Individual Conduct Rule 4).

Individual Conduct Rules applicable to individuals

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

Senior Manager Conduct Rules, which apply only to Senior Managers

SC 1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
SC 2	You must 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
SC 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
SC 4	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

Fitness and propriety

Firms will be obliged to certify that Certified Persons are fit and proper to perform their role at the point they start to perform their role (whether that be at the point of hire or promotion) and thereafter on at least an annual basis. Firms may also be required to carry out ad hoc assessments where a Certified Person's conduct is called into question, for example, as a result of a whistleblowing allegation, a grievance, an investigation, or a disciplinary issue.

Fitness and propriety is of course not a new concept for HR. Under the approved persons regime, all approved persons are required to be fit and proper to perform their roles. The FCA must be notified if this changes and, if so, this is something that would be factored into whether the FCA decided to withdraw an approved person's approval or imposed a prohibition order on them. The on-going requirement for an employee to be fit and proper continues under the SMCR for Senior Managers and Certified Persons but it is now the responsibility of the firm to decide whether a Certified Person is fit and proper to perform their role and remains as such.

As under the approved persons regime, there are three components to the fit and proper test (FIT): honesty, integrity and reputation; competence and capability; and financial soundness. The FCA has produced guidance with examples to assist firms in interpreting the FIT. This should be a starting point for firms. Any training and guidance should be layered with examples that are relevant to the business and the firm so that Senior Managers and Certified Persons are clear about what it means to be fit and proper.

It is common in financial institutions which have been through SMCR to require Senior Managers and Certified Persons to make annual self-attestations that there have been no changes in the year that would impact on their fitness and propriety.

Completion and return of self-attestation forms should be mandatory, and it should be made clear that failure to provide accurate information may result in disciplinary action. These forms can include any questions but we would recommend including questions like:

- **Have you complied with all company policies [specify relevant policies]?**
- **Have you been adjudged bankrupt?**
- **Have your assets been sequestered?**
- **Have you been the subject of any investigation which has led or may lead to disciplinary proceedings?**
- **Are you currently party to any civil proceedings?**
- **Have you been given a caution in relation to a criminal offence?**

The firm may be aware of some of this information but it acts as a safeguard to ensure all relevant information is captured in a single place and can be relied upon if matters subsequently come to light that differ from the contents of the self-attestation.

We would also recommend that templates are created for those assessing fitness and propriety on an annual basis and/or ad hoc assessments to make the process easier, relevant, and consistent. The outputs will also act as evidence should the regulator scrutinise how an assessment was carried out, the criteria applied, and the rationale behind any decision made.



Fitness & propriety documentation

- Where the fitness and propriety assessment process sits is a matter for each firm. The impact point is that appropriate guidance is produced for those who have the responsibility for assessments
 - This can be a simple checklist broken down into the three components of honesty, integrity and reputation; competence and capability; and financial soundness.
 - Produce end-to-end process mapping of the data entry points to ensure that all relevant data is included
- Include guidance on how to deal with more difficult cases such as where the misconduct takes place outside the workplace, non-financial misconduct or where the individual has left prior to conclusion of the assessment process

Fitness and propriety and misconduct outside work

Senior Managers and Certified Persons are often surprised to learn that conduct outside of the workplace may impact on fitness and propriety.

The determining factor will be whether conduct that takes place outside the workplace will impact on a regulated individual's ability to perform their Senior Manager or Certified Person roles.

EXAMPLES



Being cautioned for a criminal offence outside the workplace.



Being charged with/found guilty of a criminal offence outside the workplace.



Being declared bankrupt in relation to a person's personal finances.

Fitness and Propriety and non-financial misconduct

In the wake of the #Metoo movement, the FCA has taken a keen and very public interest in what it calls 'non-financial misconduct'. Although the FCA's focus started with sexual misconduct in the financial services industry, it has rapidly expanded to cover other forms of personal misconduct, such as bullying, and discrimination particularly relating to favouritism, exclusion and intimidation.

A frequently asked question is whether non-financial misconduct can have a bearing on an employee's compliance with the Code of Conduct and/or impact their fitness and propriety.

The thinking and practice on this issue has moved on significantly in the post #Metoo climate. This has been predominately driven by two factors:

- The high profile comments from the FCA making it clear that non-financial misconduct is relevant to fitness and propriety of the individual. It doesn't stop there as the way firms handle non-financial misconduct (including sexual misconduct) may be relevant to the FCA's assessment of the firm.
- The focus by the FCA on the culture within organisations. From the regulator's perspective, a firm which does not take allegations of sexual misconduct, discrimination or bullying seriously, particularly where this is influenced by the seniority of the perpetrator or his or her revenue-generating ability, says a great deal about the culture of the organisation.

From a HR perspective, this means that that the processes that manage misconduct of this nature, eg the disciplinary process and speak-up arrangements, should capture and triage the behaviour for regulatory purposes.

“In our judgement, the way a senior manager approaches issues around diversity may be relevant to our assessment of their competence and character.

“And the way firms handle non-financial misconduct, including allegations of sexual misconduct, is potentially relevant to our assessment of that firm, in the same way that their handling of insider dealing, market manipulation or any other misconduct is.”

Christopher Woolard, FCA Executive Director of Strategy and Competition

Training on sexual misconduct and dignity at work

Sexual misconduct allegations are a sensitive area for all firms, not only those in financial services. However, in male-dominated sectors where there are fewer women in senior positions to challenge inappropriate conduct or to influence the norms in the workplace, there is more work to be done in terms of training on dignity at work. Training should be specific to the population being trained. For example, the emphasis when training Senior Managers and other employees is to set the correct tone from above – in other words to reinforce the message that they are the culture-setters and culture-carriers. They also need to realise that non-financial misconduct may impact on their fitness and propriety as well as the Certified Persons and Conduct Rules staff within their area. The training considerations for Certified Persons will differ but may also cross over as many will be line managers too.

These should include:

- the need to be vigilant with team dynamics;
- being mindful of favouritism, whether real or perceived;
- recognising bullying and harassment in all its forms;
- being an active listener when line reports raise concerns, whether informally or formally; and
- never dismissing any concerns on the basis that the victim is too sensitive.

Whether or not sexual misconduct will amount to a breach of the Conduct Rules and/or have an adverse impact on the individual's fitness and propriety will be fact-specific. For example, this assessment will depend on factors such as the severity of the misconduct, whether it was a one-off incident or a repeated offence, and how it impacts on their regulatory role. Negative determinations can be career-ending which places the bar high in terms of conducting a thorough investigation, and involving all relevant stakeholders in the decision-making.

What is the right approach when managing performance and conduct issues of regulated individuals?

We are frequently asked what other peer firms are doing in terms of approach and infrastructure when managing the performance and conduct issues of Senior Managers and Certified Persons. Unfortunately there is no silver bullet: one size does not fit all firms, because firms have a range of systems and controls to manage this population. Common approaches during the first wave of SMCR firms include:

- Conduct rules breaches and fitness and propriety issues being managed as part of the disciplinary process as this streamlines the process and avoids several processes running simultaneously.
- Oversight panels which sit above the disciplinary process are common – these can either act as an escalation channel or a regulatory decision-making panel once the investigation has been conducted via the disciplinary process. The panel will ensure consistency with code rule breach and fitness and propriety decisions. These panels are usually made up of members from the firm's Legal, Compliance and HR teams, and help to ensure that the appropriate degree of regulatory context is taken into account when considering these issues.
- Cohorts of disciplinary hearing managers with regulatory expertise are being used for regulated individuals.

Can a fitness and propriety finding be made if the individual leaves before conclusion of the investigation?

This is an issue that continues to challenge those responsible for determining conduct rules breaches and fitness and propriety assessments. A regulated individual may resign before the commencement or conclusion of an investigation into misconduct in the hope that the firm is no longer in a position to make adverse findings. Where possible, stipulate that the individual should work their notice and during the notice period complete the investigation in order to make determinations. Similarly, if the individual is on garden leave, the investigation should continue with the individual's cooperation. Otherwise, the firm has two options:

- Continue the investigation in the individual's absence.
- Terminate the process and make no finding as to conduct rule breach or fitness and propriety.

At the point of resignation, it should be made clear to the individual (and reinforced in training and guidance materials) that resigning before conclusion of an investigation is not necessarily a “get out of jail free card”. The allegations and any information known will be included in regulatory references. Where there is evidence of wrongdoing that would have been pursued through further investigation or disciplinary proceedings, the BSB in its Statement of Good Practice 2 (see Box on page 19) advises that a firm should consider referring to this unverified evidence and/or the fact that it had been unable to complete the investigation or initiate disciplinary proceedings before the individual left.

This would not be the case where a firm considered the allegations of misconduct to be frivolous or vexatious, and would not have been investigated further. In the circumstances, the BSB suggests that it would be good practice to exclude this from the reference.

Conduct rules and notification

Under the new Code of Conduct, which is loosely based on the old APER principles, different rules will apply to different categories so, for example, second tier rules apply only to Senior Managers. In addition to regulated individuals, the FCA is extending the application of its Code of Conduct to a potentially very wide population of employees – basically everyone other than ancillary staff who performs a role that is not specific to financial services (eg receptionists and security guards). The thinking behind the extension to unregulated individuals is to bring about the culture change at all levels together with a deeper understanding of what is and is not acceptable behaviour.

Breaches of the Code of Conduct by Senior Managers need to be notified to the regulators within seven business days. This is another red flag area as the timeframe within which to investigate and come to a preliminary conclusion is very short. It may well be that the initial report is inconclusive to buy more time to complete the regulatory/employment investigations. This is why it is essential for all the stakeholders (eg HR and Risk) not only to be aligned and working seamlessly but also to be supported by crisis management procedures which can “kick in” immediately.

Regulatory references

The basic concept of regulatory references is one that will be familiar to all firms as, under the approved persons regime, all firms in financial services have been required to provide (where requested) a reference which includes all information which is relevant to the assessment of fitness and propriety of the individual. Under SMCR, the FCA has introduced new rules relating to the requesting, the giving and the updating of regulatory references.

The new regime is tougher and is designed to prevent “rolling bad apples” moving from firm to firm with ease. The FCA is also more prescriptive in relation to the type and amount of information provided as well as the mandatory template (with minor tweaks permitted) on which the information should be provided.

There are three circumstances in which firms are required to request regulatory references:

Hire

When hiring a Senior Manager, a Non-Executive Director or a Certified Person, a firm must request a regulatory reference from their former employers going back six years. The request must be made in good time but certainly before the individual starts to perform the role or is issued with a certificate of fitness and propriety.

The timeline is different where the potential candidate's role is a statutory director of a listed company due to market sensitivities and legal requirements on mandatory disclosures. In these circumstances, before candidates tell their current employer that they are planning to take up a role with another firm, the new firm must obtain the regulatory reference prior to the end of the three-month period that the FCA has to approve the individual.

Updating references

There is a continuing obligation to update a reference that has already been given as soon as reasonably practicable if matters come to light that would mean that an earlier reference would be drafted differently and the differences are significant in terms of fitness and propriety. The obligation also applies if, since the reference has been given, the firm has concluded that the individual is not fit and proper or has taken disciplinary action on that basis. As this is a completely new element in SMCR, not found in the Approved Persons Regime, firms should ensure that employees are made aware that references may be updated.

Intra-group transfers

Where an individual has worked in another group company, or is moving from a non-certification function to become a Certified Person, a full regulatory reference covering six years will still be required unless the group entities share and have access to the same data source covering the relevant information about the individual. This is often the case where group entities share a centralised HR system.

Regulated references task list



Mandatory policy

Establish, implement and maintain a regulated reference policy and procedures to ensure compliance with SMCR (mandatory requirement)



Retention of records

Extend the retention of records showing employment history from five to six years or indefinite in the case of serious misconduct



Intra-group transfers

Where an individual has worked in another group company, or is moving from a non-certification function to become a Certified Person, a full regulatory reference covering six years will still be required unless the group entities share and have access to the same data source covering the relevant information about the individual. This is often the case where group entities share a centralised HR system



Contractors

Amend processes and procedures to cover contractors who fill certified positions and may require references



Templates

- Use mandatory regulatory reference template: minor changes are permitted to formatting but not substance
- Design a template for obtaining references from non-regulated firms explaining what information is required and why
- Review termination/settlement templates to ensure that there is nothing which restricts a firm's obligation to provide, give and update regulatory references



Training

- Provide guidance and training to those who are responsible for operating the reference policy
- Include regulatory reference implications in training for Senior Managers and Certified Persons so that they understand fully the ramifications of adverse fitness and propriety findings and disciplinary action taken in relation to Code Rule breaches
- Provide training for line managers who may be the first port of call for requests to ensure they are familiar with the firm's process for responding

Whistleblowing

A new whistleblowing regime was introduced in September 2016 as part of SMCR package to encourage in firms a culture in which individuals feel comfortable raising concerns and challenging poor practice and behaviour. This required substantial infrastructure changes to existing whistleblowing arrangements, which included the appointment of a whistleblowers' champion and the putting into place of systems and controls that would protect the whistleblower and track and record the raising of concerns from disclosure through to resolution.

The new rules will not apply to extension Firms that will be subject to SMCR from December 2019 firms. However, the FCA made it clear that the rules will act as non-binding guidance to all of the firms that it regulates. Therefore, the rules should be of interest to all extension firms as they represent the benchmark of best practice and act as a useful guide to regulator expectations in relation to whistleblowing arrangements.

At a minimum, firms should review their whistleblowing arrangements to identify weaknesses in critical areas and take remedial action.

THE KEY ELEMENTS OF SMCR WHISTLEBLOWING ARE

- The requirement to appoint a whistleblowers' champion with the responsibility of ensuring and overseeing the integrity, independence and effectiveness of whistleblowing arrangements, paying particular attention to the protection of whistleblowers from victimisation/retaliation.
 - Wider scope of disclosures (referred to as "reportable concerns") which include not only the Public Interest Disclosure Act aspects and regulatory disclosures but also any kind of misconduct, from breach of the firm's policies and procedures to behaviour that harms the reputation or well-being of the firm.
 - Wider scope of who can be a whistleblower: the new category includes any individual who has disclosed, or intends to disclose, a reportable concern to the firm or regulator.
 - Firms are required to tell whistleblowers that they are entitled to approach regulators directly if they wish to report a concern, whether or not the individual has raised the concern internally.
 - Whistleblowing arrangements must be able to handle reportable concerns, including by making provision for confidential and anonymous reporting, and by allowing disclosures to be made through a number of channels. Arrangements must also facilitate effective triage and escalation of reportable concerns, provide feedback where feasible, and protect the whistleblower from retaliation.
 - Maintenance of appropriate records of reportable concerns, how these were managed and the outcome. A report must be presented to the firm's governing body on an annual basis on the operation and effectiveness of the whistleblowing systems and controls.
 - The FCA must be notified promptly where the firm loses an employment tribunal case where the claim was based in full or part on detrimental treatment or unfair dismissal as a result of making a protected disclosure.
 - Training must be provided for all UK-based employees, managers of UK-based employees and employees responsible for operating the firm's whistleblowing arrangements, eg HR, Compliance and/or Legal.
- The consequences of subjecting a whistleblower to a detriment are significant for both the firm and anyone requiring fitness and propriety certification. This is because the rules make a link between detrimental treatment of a whistleblower and the fitness and propriety of the firm and the individual involved in detrimental treatment. Evidence of retaliation could be relevant to the firm's suitability status or the certification of the individual.
- Where the identity of the whistleblower is known, managers need to take extra care that management is not interpreted as retaliation by ensuring, for example, that any discretionary decisions around remuneration, promotion etc are carefully documented to show that the decisions were made on an objectively justified basis.

BSB Statement of Good Practice 2

Certification Regime: Regulatory References

This Statement is intended to help firms implement SMCR regulatory references requirements, providing high-level principles and good practice guidance. It does not impose legal or regulatory obligations but the BSB's view of best practice. Below we set examples of their suggested best practice.

The three key principles for providing, revising and using regulatory references are fairness, proportionality and consistency:

Fairness

- Ensure the individual's perspective is considered
- Provide a factual account of uninvestigated allegations relevant to F&P that would have been pursued if the individual stayed at the firm
- Ensure individuals are aware of the content of a reference, and are informed during internal processes where a negative outcome will be recorded in a reference
- Talk to prospective employees about negative information, and have a balanced decision-making process that does not automatically exclude individuals with impaired references

Proportionality

- Have a clear policy on what information on mitigating circumstances is included
- Provide an explanation to the requesting firm, when it does not consider the firm's request for additional information to be fair or proportionate and therefore does not propose to supply further information
- Ensure key teams know to escalate allegations of poor conduct against former employees for the purposes of updating references

Consistency

- Use consistent messages to individuals at appropriate points including recruitment, disciplinary proceedings and on exit
- Have a process in place to ensure relevant information is gathered consistently and systematically from around the firm
- Have a process in place that seeks further information from the providing firm, if necessary

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