



# *Senior*

## MANAGERS AND CERTIFICATION REGIME



## KEY CONTACTS

We hope that you find this summary document a useful and accessible alternative to trawling through the many pages of PRA and FCA consultation papers and draft rules. If you have any questions at all on your firm's implementation of SMCR, please get in touch - we'd be delighted to hear from you.



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Department Managing Partner for Litigation & Corporate Risk, and leader of the firm's Financial Regulation practice, Nathan specialises in complex regulatory issues for financial institutions and individual members of senior management. He conducts internal investigations, represents clients in regulatory investigations by the PRA, FCA, PSR and other enforcement agencies, defends enforcement proceedings and litigation.



**Adam Jamieson**

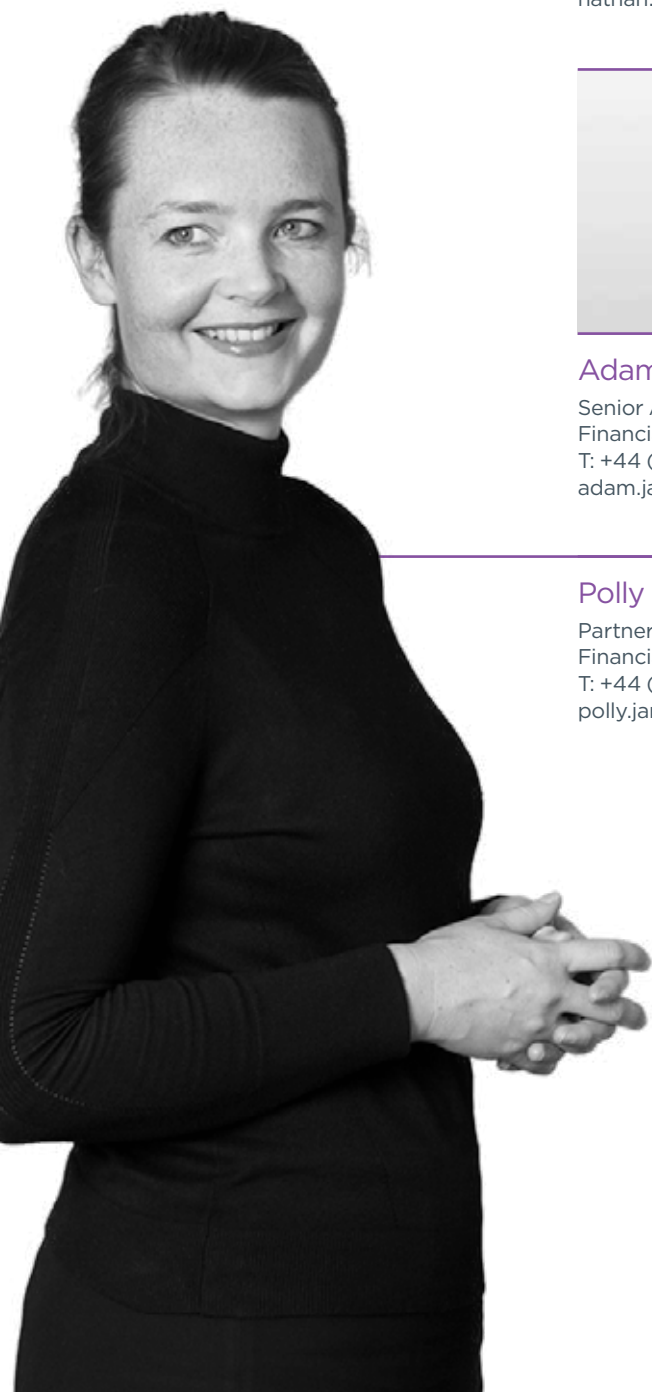
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Adam specialises in advising financial institutions and their senior management in regulatory investigations and related litigation. He has experience of working for the regulator, having spent over a year on secondment to the FCA's Enforcement & Financial Crime Division.

**Polly James**

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Polly specialises in financial services law and regulation, advising both firms and individuals on contentious matters and the management of regulatory risk more generally. Having spent time on secondment to the FSA's Enforcement Division, she has a close understanding of how the regulator works in practice.



SENIOR MANAGERS AND CERTIFICATION REGIME:  
INSURERS – SOLVENCY II & LARGE NDFS

**Key:**

- ✓✓✓ Applicable to Solvency II firms & large NDFs
- ✓✓ Applicable to EEA branches
- ✓ Applicable to Non-EEA branches

Senior Managers	<p><b>FCA Senior Insurance Management (S(I)MF) Functions</b></p> <div><div>✓✓✓ SMF 3 - Executive Director</div><div>✓✓ SMF 13 - Chair of Nominations Committee*</div><div>✓✓ SMF 15 - Chair of With-Profits Committee*</div><div>✓✓ SMF 16 - Compliance Oversight</div><div>✓✓✓ SMF 17 - Money Laundering Reporting Officer</div><div>✓ SMF 18 - Other Overall Responsibility</div></div> <div><div>✓✓ SMF 21 - EEA Branch Senior Manager</div><div>✓✓ SMF 22 - Other Local Responsibility</div><div>✓✓ SMF 23b - Conduct Risk Oversight Officer (Lloyds only)</div><div>✓✓ SMF 27 - Partner</div></div>	<p><b>PRA Senior Insurance Management (S(I)MF) Functions</b></p> <div><div>✓ SMF 1 – Chief Executive</div><div>✓ SMF 2 – Chief Finance Function</div><div>✓ SMF 4 – Chief Risk Function</div><div>✓ SMF 6 – Head of Key Business Area</div><div>✓ SMF 7 – Group Entity Senior Manager</div><div>✓ SMF 9 – Chair*</div><div>✓ SMF 10 - Chair of Risk Committee*</div><div>✓ SMF 11 - Chair of Audit Committee*</div><div>✓ SMF 12 - Chair of Remuneration Committee*</div></div> <div><div>✓ SMF 14 - Senior Independent Director*</div><div>✓ SMF 20 – Chief Actuarial Function</div><div>✓ SMF 21 – With-Profits Actuary</div><div>✓ SMF 22 – Chief Underwriting Function</div><div>✓ SMF 23 - Underwriting Risk Oversight Function (Lloyds)</div><div>✓ SMF 24 - Chief Operations (currently under consultation)</div></div> <div><div>*Non-Executive roles</div></div>	<p><b>Impact</b></p> <div><div>✓✓✓ Firms must vet fitness and propriety upon appointment</div><div>✓✓✓ Regulatory pre-approval required</div><div>✓✓✓ Regulators can attach conditions and/or time limits to approvals and can vary approvals</div><div>✓✓✓ Duty of responsibility applies</div><div>✓✓✓ FCA and PRA conduct rules apply and firms must provide training on these</div><div>✓✓✓ FCA and PRA must be notified of any breach of FCA and PRA conduct rules within seven business days (if disciplinary action taken)</div></div> <div><div>✓✓✓ Regulatory references and criminal records checks required</div><div>✓✓✓ Firms must have Management Responsibility Maps setting out governance arrangements and allocation of responsibilities, keep it updated, and retain each version for six years</div><div>✓✓ Handover procedures required for Senior Managers</div></div>
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Prescribed Responsibilities	<p><b>FCA &amp; PRA Shared Prescribed Responsibilities**</b></p> <div><div>✓ A – Responsibility for the firm's compliance with the Senior Managers Regime</div><div>✓ B – Responsibility for the firm's compliance with the Employee Certification Regime</div><div>✓ C – Responsibility for the firm's compliance with the requirements for a Management Responsibilities Map</div><div>✓ F – Responsibility for leading the development of, and monitoring effective implementation of, policies and procedures for induction, training and professional development of all members of the firm's governing body*</div></div> <div><div>✓ G – Responsibility for monitoring the effective implementation of policies and procedures for the induction, training and professional development of all other persons performing designated senior manager functions and key function holders</div><div>✓ J-2 – Responsibility for providing an effective internal audit function and overseeing the performance of the function (only applicable at firms that outsource the internal audit function to a third party)</div><div>✓ N - Acting as the firm's whistleblowers' champion*</div></div>	<p><b>PRA Prescribed Responsibilities</b></p> <div><div>✓ AA – Responsibility for the management of the firm's risk management processes in the UK</div><div>✓ EE – Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the firm to the governing body and/or management body (or where appropriate, the parent undertaking or holding company of the firm's group)</div><div>✓ FF – Responsibility for the firm's compliance with the UK regulatory system</div></div> <div><div>✓ BB – Responsibility for management of the firm's systems and controls in the UK</div><div>✓ H – Responsibility for overseeing the adoption of the firm's culture in the day-to-day management of the firm</div><div>✓ I – Responsibility for leading the development of the firm's culture by the governing body as a whole</div><div>✓ M-1 – Responsibility for overseeing the development and implementation of the firm's remuneration policies and practices*</div></div> <div><div>✓ O – Responsibility for management of the allocation and maintenance of the firm's capital and liquidity</div><div>✓ Q – Responsibility for the firm's production and integrity of the firm's financials and its regulatory reporting</div><div>✓ T – Responsibility for the development and maintenance of the firm's business model by the governing body</div><div>✓ T-2 – Responsibility for the performance of the firm's Own Risk and Solvency assessment (ORSA)</div></div>	<p><b>FCA Prescribed Responsibilities</b></p> <div><div>✓✓ U – Responsibility for ensuring the firm complies with the requirement that every person who performs a key function is fit and proper, and regulatory references are provided and obtained</div><div>✓✓ X – Responsibility for the firm's outsourced operational functions including systems and technology (currently under consultation)</div></div> <div><div>✓✓ B-1 - Responsibility for the firm's obligations in relation to the conduct rules for training and reporting</div><div>✓✓ D – Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime</div><div>✓✓ Z – Responsibility for the firm's compliance with CASS</div></div> <div><div>*These prescribed responsibilities should be allocated to Non-Executive Directors</div><div>**Note that the numbering is the proposed reference lettering in the FCA's CP17/26 and/or in the draft FCA Handbook text in Appendix 1 of the FCA's CP17/26</div></div>
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Certification Functions	<p><b>FCA Certification Functions</b></p> <p>Applies to functions that are not SMFs but deemed to pose a risk of “significant harm” to the firm or its customers.</p> <div><div>→ Significant Management Function e.g. managers in complaints-handling or underwriting units</div><div>→ Proprietary traders</div><div>→ CASS oversight function</div></div> <div><div>→ Functions subject to qualification requirements</div><div>→ Client Dealing function</div><div>→ Algorithmic Traders</div><div>→ Material Risk Takers</div><div>→ Anyone who supervises or manages a person performing a Certification Function</div></div>	<p><b>PRA Certification Functions</b></p> <div><div>→ Key Function Holders e.g. claims management, investment management, underwriting and pricing of products, operational systems and controls</div><div>→ Material Risk Takers (for large firms*)</div><div>→ Individuals who are managing a Material Risk Taker</div></div> <div><div>* Firms with annual premium income (gross of reinsurance) of more than £1 billion in each of the last three financial years.</div></div>	<p><b>Impact</b></p> <div><div>→ Firms must vet fitness and propriety (for each separate certification function) upon appointment and annually thereafter</div><div>→ If a person performs a key function, the firm must ensure that they are fit and proper on an ongoing basis</div><div>→ If a firm cannot certify an individual as fit and proper to perform their role, the firm must remove the individual from the role</div></div> <div><div>→ FCA and PRA conduct rules apply and firms must provide training on these</div><div>→ FCA must be notified of any breach of FCA conduct rules annually (if disciplinary action taken)</div><div>→ PRA must be notified of any breach of PRA conduct rules within seven business days (if disciplinary action taken)</div><div>→ Regulatory references required</div><div>→ No regulatory pre-approval is required</div></div>
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Conduct Rules	<p><b>Conduct Rules Staff</b></p> <p>All other staff are also subject to the FCA conduct rules, except ancillary staff (i.e. staff that do not perform a role specific to financial services).</p> <div><div>✓ Business staff</div><div>✓ HR team</div><div>✓ Compliance team</div><div>✓ Risk team</div></div> <div><div>✗ Receptionists</div><div>✗ Switchboard operators</div><div>✗ Post room staff</div><div>✗ Reprographics/print-room staff</div><div>✗ Property/facilities management</div><div>✗ Events management</div><div>✗ Security guards</div></div> <div><div>✗ Invoice processing</div><div>✗ Audio visual technicians</div><div>✗ Vending machine staff</div><div>✗ Medical staff</div><div>✗ Archive records management</div><div>✗ Drivers</div><div>✗ Corporate social responsibility staff</div></div> <div><div>✗ Data controllers/processors</div><div>✗ Cleaners</div><div>✗ Catering staff</div><div>✗ Personal assistants/secretaries</div><div>✗ IT support</div><div>✗ HR administrators/processors</div></div>	<p><b>Impact</b></p> <div><div>→ New FCA conduct rules apply and firms must provide suitable training on these</div><div>→ FCA must be notified of any breach of conduct rules annually (if disciplinary action taken)</div><div>→ Conduct rules applicable in relation to the firm's regulated and unregulated financial services (including any related ancillary activities)</div></div> <div><div>→ If a person performs a key function, the firm must ensure that they are fit and proper on an ongoing basis</div><div>→ No regulatory pre-approval is required</div></div>
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### Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

### London

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### About BLP

Berwin Leighton Paisner is an award-winning, international law firm. Our clients include over 50 Global Fortune 500 or FTSE 100 companies. Our global footprint of 14 international offices has delivered more than 650 major cross-border projects in recent years, involving up to 48 separate jurisdictions in a single case.

The Firm has won eight Law Firm of the Year titles, is independently ranked by Chambers and the Legal 500 in over 65 legal disciplines and also ranked in 'the top 10 game changers of the past 10 years' by the FT Innovative Lawyers report 2015.

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- Private Client
- Projects & Infrastructure
- Real Estate
- Regulatory & Compliance
- Restructuring & Insolvency
- Tax

Clients and work in 130 countries, delivered via offices in:  
Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong,  
London, Manchester, Moscow, Paris, Singapore, Tel Aviv and Yangon

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