

SMCR Countdown

26th September 2019



CITY HR

SMCR: Regulatory References, FCA's SMCR Banking Stocktake and Countdown

Learnings from SMCR Phase 1

26 September 2019



The View from the FCA

- Banking Stocktake Report (August 2019)
- UK Finance: SMCR – Evolution and Reform (September 2019)
- Feedback Statements (September 2016)

Banking Stocktake Report

Key points to note:

- | | |
|-----------------------|--|
| SM's | <ul style="list-style-type: none">- the role of NED's on the Board- meaning of "reasonable steps" |
| Certification | <ul style="list-style-type: none">- problem with demonstrating effectiveness of assessment approach and approach and consistency- sufficient change to performance assessment particularly for managers of certified staff |
| Regulatory references | <ul style="list-style-type: none">- more work to do – quality/timing/consistency (conduct rule breaches) |
| Conduct Rules | <ul style="list-style-type: none">- training not sufficiently tailored- need to map conduct rules to firm's values- consider what conduct rule breach looks like in context of firm's business- increase of supervisory focus |

Banking Stocktake Report

- SM's**
 - “reasonable steps” issues
 - SM pack
 - management of responsibilities
 - what does “reasonable steps” mean for them
 - firm support available

Banking Stocktake Report (cont'd)

Certification: importance of demonstrating effectiveness of assessment approach, and consistency

Conduct rules: need to be tailored to job roles
firm values need to align with conduct rules
how to articulate a conduct rule breach?
FCA to increase supervisory focus

Culture: how to measure?

“Unintended Consequences”

- Conduct rules and the impact of # Metoo and the Megan Butler letter
- General broadening of F+P test and cultural impact
- Recruitment
- Notification
- References
- Conduct
 - is “zero tolerance” the new norm?

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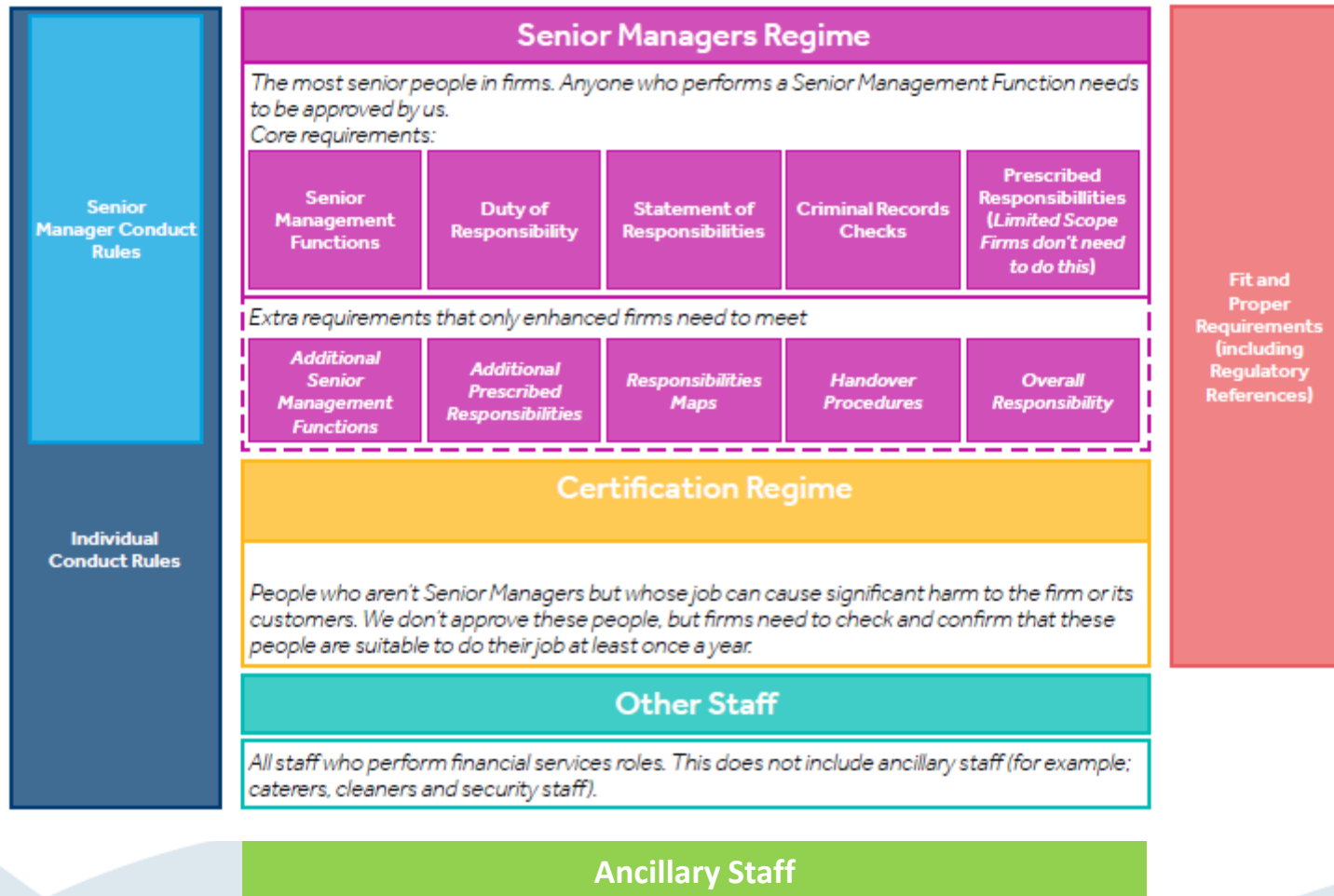
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The Countdown for Solo-Regulated Firms: Ensuring compliance by 10 December 2019

Peter Wright

26 September 2019

Overview



Regulatory timeline

9 December
2019

- Implementation deadline
- Arrangements for Senior Managers and Certification staff (except the certification process) to be in place
- Conduct Rules now apply to all Senior Managers and Certified Staff

9 Dec 2019-8
Dec 2020

- Train all other Conduct Rules staff (i.e. non-SMF holders, non-Certification staff, non-ancillary staff) in preparation for when the Conduct Rules apply to them on 9 December 2020
- Assess Certification Staff as to their F&P

9 December
2020

- Conduct Rules now apply to all staff (other than ancillary staff)
- Have completed the initial Certification assessments

Post-9 Dec
2020

- Annual re-certifications of staff as F&P
- Training of new staff
- Continuous training of existing staff, as appropriate

Firm timeline

Q1 2019

- Establish a SMCR project plan and implementation team
- Prepare a memorandum of advice (as a compliance record), addressed to the Senior Management Function Holder(s)
- Identify and categorise SMCR employees (SMF, Certification staff, Conduct Rule, ancillary)

Q2 2019

- Hold internal discussions with stakeholders about the SMCR
- Provide training on the Conduct Rules, Certification Regime, and Regulatory Reference rules
- Prepare key SMCR documentation (framework maps, statements of responsibility, F&P policies)
- Review and update employment contracts and the firm handbook

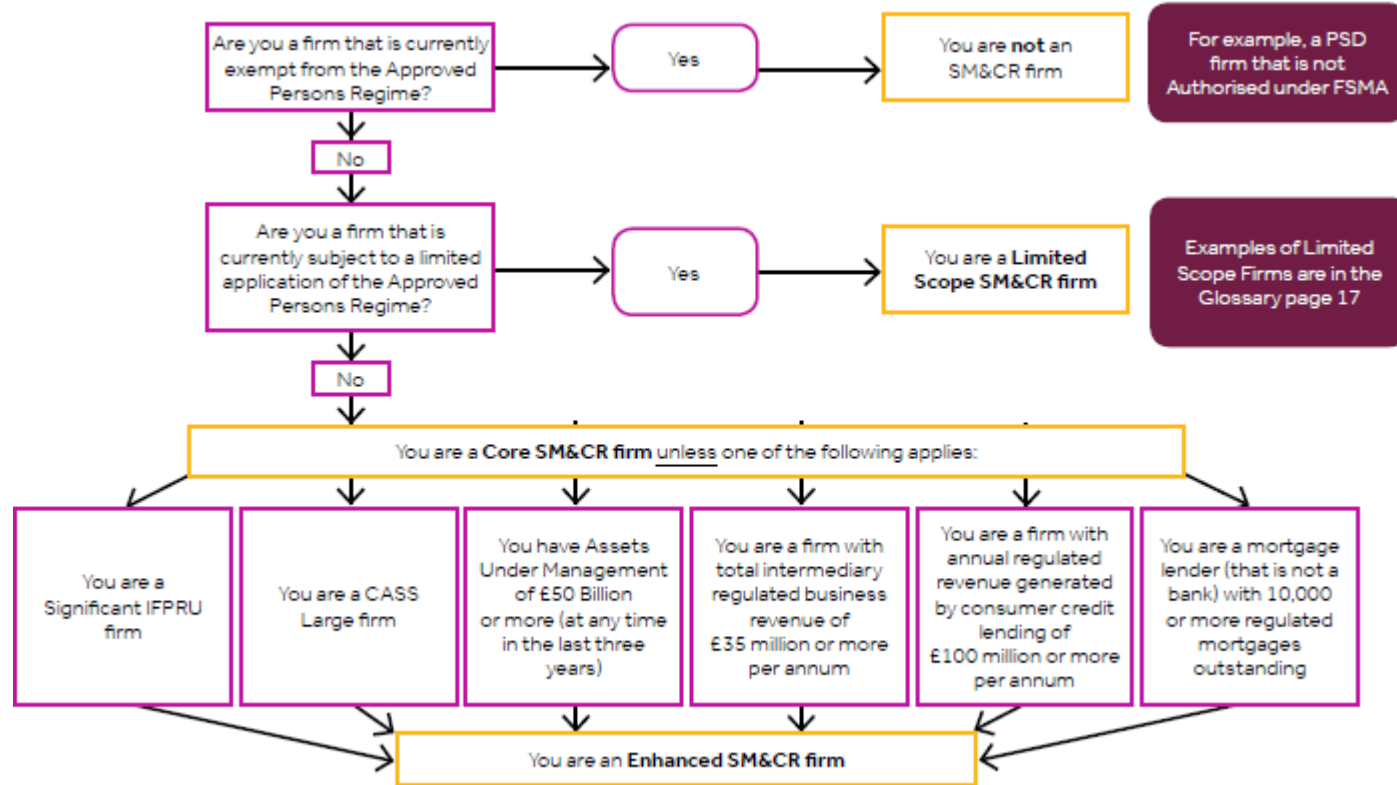
Q3 2019

- Review and finalise key SMCR documentation
- Implement new contracts and the new firm handbook
- Draft policies for delegation, references, handover, and whistleblowing
- Draft processes for Regulatory References
- Provide training: for those involved in the Certification process; tailored Conduct Rules training
- Communicate changes to staff

Q4 2019

- Deliver tailored conduct rules training
- Consider the F&P process
- Submit documentation to the FCA (as required)

Step 1: what type of firm are you?



FCA CP17-25

Step 2: (a) categorise staff (b) allocate responsibilities

- Four categories:
 - Senior Managers
 - Certification function employees
 - Other staff
 - Ancillary staff
- The prescribed responsibilities
- The duty of responsibility

Step 3: documents, policies & processes

- Documents and policies might include
 - Statements of Responsibilities
 - Responsibilities Map
 - Updated employment contracts & staff handbook
 - A Fit & Proper policy
 - A whistleblowing policy
 - An enhanced document retention policy
- Processes probably include
 - Giving and getting regulatory references
 - The annual fit and proper assessment & certification

Step 4: communication & training

- Training might be in several parts
 - Conduct rule training for SMFs
 - Conduct rule training for CFEs
 - Conduct rule training for other staff
 - Training for SMFs / line managers on the annual F&P assessment

SIMR transition

- SIMR to SMCR transition
- Insurers/Reinsurers who are Dual-Regulated
- F & P Certification Round – 10 December 2019
- Conduct Rules Only Staff - Training

Enforcement & Litigation under the SMCR

What to avoid

Jane Mann and Peter Wright

26 September 2019

Introduction – developing risks

- Employee/Employer Litigation
 - Challenges to Appointment – SMF Application & Certification
 - Removal of Certification
 - Contentious Disciplinary & Investigation Processes
 - Regulatory Reference
- Regulatory Intervention & Enforcement

Giving regulatory references

- Accuracy of reference
 - evidence
 - investigation
 - fair process – opportunity to comment
- Reference – non-negotiable
- Disclosure of issues
- Confirmation of fitness and propriety – on current knowledge

Receipt of qualified reference

- New firm's ability to make its own assessment of fitness and propriety notwithstanding information from old firm
- Inconsistency in the industry regarding qualified references
- Zero tolerance – by some but not all firms

Settlement agreements

- Ongoing external/internal investigation
- Access to documents
- Mutual co-operation including disclosure of information
- Indemnity in respect of legal fees
- Disclosure of confidential information to new firm
- Privileged information held by old firm
- Assurance as to fitness and propriety by old firm

Potential areas for litigation

- Early tribunal litigation
- Radia v Jefferies International Ltd
- Credibility of witnesses covered by the regime
- Unfair dismissal
- Breach of contract including loss of awards
- Negligent regulatory references
- Improper failure to certify
 - Borderline situations
- Suspension – employment and awards

Whistleblowing grievances

- Reporting obligations
 - internal
 - external
- No retaliatory action
 - tribunal claims
- Dealing with a grievance
- Multi-faceted response
- Was wronging revealed – what action was taken?
- Should any further action be taken?

Whistleblowing grievances

- Was the employee subjected to detrimental treatment?
- Outcome of the grievance
- Remedial action/settlement agreement
- Does disciplinary action need to be taken in relation to those who received the disclosure?
- Regulatory implications of dealing with a grievance

Regulatory intervention and enforcement

- SMCR as part of the Supervisory Toolkit
 - Interviewing SMFs
 - Thematic Visits – AML
 - Skilled Person Reviews
 - Use of Undertakings
- Individual Conduct Investigations & MoA
 - COCON Investigations
 - Section 66A – Condition “C”

Thank you



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