

SENIOR MANAGERS AND CERTIFICATION REGIME (SMCR)

CHECKLIST OF POLICIES AND PROCEDURES

NOTES TO CHECKLIST

- 1.1 This checklist sets out a suggested list of key policies and procedures that firms will be required to either: (i) put in place; or (ii) review and update, as part of their SMCR implementation project. Some policies (for example, handovers) are mandated by the rules. Others, while not mandated as such, nevertheless will be required in practice.
- 1.2 Some of the below policies and procedures may be combined, but we have separated out considerations below for completeness.
- 1.3 It should be noted that whilst these policies and procedures will need establishing, or reviewing and updating, at the implementation stage, they will also need to be reviewed and updated periodically or continually as part of a firm's ongoing compliance with the SMCR.
- 1.4 Obviously, it will be important for all policies and procedures to obtain the requisite sign-off / approval by the appropriate committee / body within the firm's governance framework.
- 1.5 Note that the below lists policies and procedures as distinct from employment contract considerations. HR departments should separately consider any contractual / employment law updates that may also be required, as well as any related changes to, for example, job descriptions.
- 1.6 Firms should assess whether any overseas policies and procedures also require updating. For example, in respect of the application of the Certification Regime to overseas employees, or in respect of any Senior Managers located overseas.
- 1.7 Firms should ensure that, where required, there are appropriate links and cross references included within the documents. For example, the Disciplinary Procedures will need to link to the Notifications Policy, and the Fitness & Propriety framework may need to link to training procedures.

Policy / Procedure	What is it?	Why is it required / Why does it need updating?
Employee lifecycle		
Recruitment procedures	Procedures that outline the firm's policy in relation to the recruitment of new employees, including Senior Managers and Certified Persons.	Recruitment processes should be reviewed and may need to be modified – for example, to allow time to request and consider regulatory references. It may be helpful to prepare a protocol for the handling of any "mixed" references received.
Induction policy / programme	The induction policy / programme for new-joiners.	Existing induction policies / programmes will need to be reviewed to ensure that they appropriately encapsulate all relevant SMCR requirements. For example: initial Conduct Rules training, fitness and propriety expectations and disciplinary process / policy, and internal notification / escalation requirements.
Fitness & Propriety (F&P) assessment and certification framework	<p>Procedures used to assess the fitness and propriety of staff covered by the Senior Managers and Certification Regimes – both at the recruitment phase and on an annual basis thereafter. The framework should include, amongst other aspects, the fitness and propriety assessment criteria and the general expectations of those who will be responsible for making certification decisions (typically, line managers).</p> <p>The framework should also cover any related FCA notification requirements, and the responsibility for making any such notifications.</p>	<p>Firms will need to ensure that existing F&P frameworks have been reviewed and updated, as necessary, to reflect the requirements of the SMCR. Importantly, firms will need to ensure that F&P decisions are properly informed by appropriate data feeds (e.g. from Compliance, HR, the business), and made by reference to each of the F&P criteria.</p> <p>To ensure that F&P certification decisions are being made on a consistent and properly-informed basis, it will be advisable to prepare some practical F&P assessment guidelines for certifiers, supplemented by periodic training. This might usefully include (amongst other things): guidance regarding "difficult" individual cases, escalation routes and process, and a record-keeping / documentation protocol.</p> <p>The F&P workstream is likely to be one of the more onerous in practice, and may well have IT systems implications, which will also need to be considered.</p>

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Employee lifecycle		
Appraisal and Performance Management procedures	Procedures governing the appraisal of all relevant staff – on the basis of an appropriate “balanced scorecard” (which will meaningfully reflect conduct / compliance issues as well as financial / revenue metrics).	In practice, this process will often be linked (to some degree) to the annual F&P assessment. In turn, this will require close on-going coordination between HR and other functions (most obviously, Compliance). For example, it will be important for any adverse observations emanating from an appraisal to be taken into account, as appropriate, when determining F&P (and vice versa) – otherwise firms will run a real risk of (potentially inexplicable) inconsistency.
Disciplinary procedures	Procedures that set out the firm’s approach to disciplinary matters (as defined under the SMCR).	Firms should use the SMCR as a prompt to review these procedures. For example, any disciplinary action taken may trigger a notification to the FCA (and so should link to the notification procedures), and will need to feed into appraisals (and so should link to broader performance management procedures) and into F&P assessments. In determining whether an individual case is specifically notifiable to the FCA ¹ , a determination will need to be made as to whether any disciplinary action taken relates to a breach of the Conduct Rules. Accordingly, the procedures will need to provide for a mechanism through which such Conduct Rule breach assessments are to be made (for instance, through an <i>ad hoc</i> committee comprising stakeholders from HR, legal, the business, Compliance etc.).
House Policy – approach to negotiated exits	The firm’s approach to “bad leavers” or staff exits where there is an element of negotiation.	Firms should use the SMCR as an opportunity to review procedures related to negotiated / bad leaver exits (including its approach to settlement / compromise agreements) to ensure consistency with the SMCR and FCA expectations. It will also be vital to ensure consistency of approach / message across: reference wording, qualified Form C wording, any other related notifications made to the FCA, internal communications, and settlement agreement provisions. Ideally, these would be centrally coordinated, so as to minimise the risk of inconsistency.
Regulatory References policy / protocol	Under the SMCR, firms must request a reference from Senior Manager and Certified Person candidates’ past employers. This will also apply to NEDs who are not Senior Managers. The policy / protocol should cover both the provision of references as well as the requesting of references (and timeframes).	Firms should ensure this covers the requirements of the SMCR. It should set out, for example, the process for reviewing background checks and references received, the process for providing and updating references, and the system the firm will use for updating regulatory references where new relevant information comes to light. The policy / protocol should also legislate for the receipt of “mixed” references, and how these are to be escalated and dealt with internally.
Senior Managers²		
Senior Manager on-boarding policy	This policy should cover the manner / process through which Senior Managers will be “on-boarded” – covering, say, their first 100 days in post.	The policy would typically cover, amongst other things: record-keeping protocols, delegation frameworks, reasonable steps assurance frameworks, regulatory relations update, and key second line of defence contacts.
Delegation framework / policy	Under the Senior Manager Conduct Rules, Senior Managers must take reasonable steps to ensure that any delegation of responsibility is to an appropriate person, and that they oversee the discharge of the delegated responsibility effectively.	Firms may wish to consider a delegation framework that sets out for Senior Managers, amongst other things: when delegation is appropriate (and inappropriate), what can (and cannot) be delegated, and the degree of oversight that should be applied. Clearly, this cannot be overly prescriptive, but it could nevertheless provide Senior Managers with a good sense as to what should be deemed appropriate in any given set of circumstances.

¹ Aside from a firm’s general Principle 11 notification obligations.

² Firms may wish to consider internally the approach they will take to certain issues that may arise under the SMCR in respect of Senior Managers. These points may not be covered in specific policies, but are included in this list for completeness as matters that firms may wish to consider (and document): (i) approach to requests for access to information by departed Senior Managers (firms may be asked for access to certain firm information / records after the Senior Manager has left the firm (and data protection / confidentiality requirements may need to be taken into account)), (ii) approach to payment for legal representation for Senior Managers (firms may be asked / expected to cover legal costs of Senior Managers who may require their own legal advice as part of the implementation project and beyond), and (iii) stance on Senior Manager indemnification (Senior Managers may ask about the protections a firm has in place should their conduct be called into question at any point – along with the D&O Policy, a firm may want to consider its approach to company indemnification for Senior Managers).

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Senior Managers²		
Reasonable Steps framework	<p>While the FCA technically can pursue an individual for misconduct through different channels, it will, in any case, be important for an individual under investigation to be able to demonstrate that they took reasonable steps in the circumstances.</p> <p>Senior Managers are very likely to want to understand, as far as practicable, what “reasonable steps” look like in practice for the purposes of demonstrating that they have discharged their duty of responsibility.</p> <p>Again, this cannot be overly prescriptive – but nevertheless can provide Senior Managers with a strong intuitive “feel”.</p>	<p>Most firms will provide (or arrange for) reasonable steps workshops for Senior Managers – to help them understand what the requisite “reasonable steps” might look like in practice.</p> <p>Some firms will also prepare a reasonable steps self-assessment framework – by reference to which Senior Managers can routinely benchmark their conduct and actions.</p> <p>Link also to Personal Record-Keeping protocol (see below).</p>
Handover policy	<p>Handover procedures must be maintained by Enhanced firms to cover situations in which one Senior Manager is replaced by another.</p> <p>Handover procedures would also be useful for Core firms voluntarily adopting the handover requirements (as some will indeed do).</p>	<p>Enhanced firms must take all reasonable steps to ensure that a person taking on a Senior Manager role has all the information and materials he or she could reasonably expect to do his or her job effectively. In practice, it is likely that the firm will require contractually that the predecessor prepares a handover note.</p> <p>Additionally, an Enhanced firm must have a policy explaining how it complies with this requirement, and maintain adequate records of the steps that it has taken.</p>
Personal Record-Keeping protocol	Protocol for Senior Managers setting out the general principles in accordance with which they should consider making records / notes.	<p>Senior Managers may well wish to understand what types of decisions and events they should be documenting “for the record”, and how far these need to go in practice.</p> <p>It can be helpful for firms to prepare a record-keeping protocol for Senior Managers – as a practical guide to help determine whether (and, if so, to what extent) notes and records should be kept.</p>
All employees		
Employee Handbook	This sets out the rules and regulations with which all employees need to abide in the workplace.	Firms should review and update employment-related policies and procedures to ensure that they will be consistent with SMCR requirements, processes etc.
Whistleblowing policy	This sets out the firm's whistleblowing arrangements.	
Ethics / Conduct Code	This code outlines the ethical principles governing everyday behaviour and decisions by employees of the firm.	
Training and Competence policy	Firms should ensure that this accounts (amongst other things) for the fact that tailored training must be provided to Senior Managers, Certified Persons and Conduct Rules Staff. Firms must make sure that all such individuals are aware that this is the case and are aware of the rules applicable to them. Firms must also take all reasonable steps to ensure that individuals understand how the rules apply to them and their role. In practice, this will require suitably tailored training, which should ideally include an assessment component. Attendance should be monitored and recorded.	<p>Conduct Rules training must be provided both initially (ideally, during induction) and on a regular ongoing basis.</p> <p>The policy should cover (amongst other things): the need for suitably tailored content, an assessment component, monitoring / responsibility for oversight (and MI to be generated), a non-compliance protocol, any qualification, training or competence requirements for Senior Managers and Certified Persons.</p> <p>Link to F&P assessment and appraisal frameworks.</p>

Policy / Procedure	What is it?	Why is it required / Why does it need updating?
All employees		
Breach Notification policy	<p>This sets out the firm's policy around notifying the FCA of breaches of the Conduct Rules by both Senior Managers and Certified Persons / Conduct Rules Staff.</p> <p>The Breach Notification Policy should deal with both the internal reporting of breaches as well as the reporting of breaches (where required) to the FCA under the SMCR. The Policy must ensure such notifications are made within applicable time limits (see next column). This should also include, for example, the rationale for reporting / not reporting disciplinary action taken, and the criteria the firm will consider when deciding whether or not there has been a breach of the Conduct Rules.</p>	<p>Firms must notify the FCA when disciplinary action (broadly defined, and including the issuing of a formal written warning, the suspension or dismissal of the individual, or the reduction or recovery of the individual's remuneration) has been taken against a person as a result of a breach of the Conduct Rules or Senior Manager Conduct Rules. For Senior Managers, this notification must be made within seven days of the firm becoming aware of the matter. For others (Certified Persons and other Conduct Rules Staff), the notification must be made annually.</p> <p>The Policy should also provide for the mechanism through which assessments are made as to whether or not a Conduct Rule breach has occurred. In practice, this may be via an ad hoc committee, comprising representatives from HR, Legal, the business and Compliance. Terms of Reference will also need to be prepared.</p> <p>Firms must also remain cognisant of their separate obligations under Principle 11, which might necessitate a speedier notification.</p>
Governance		
Compliance Monitoring / Internal Audit		Compliance monitoring and internal audit plans should be reviewed and updated to reflect SMCR obligations.
Management information		Firms may wish to use the SMCR as an opportunity to consider what management information is being produced currently, their approach to the production and dissemination of management information, its substantive content, and its use. Even if a firm opts not to have a specific policy on management information, firms will need to consider, for example, what their policy will be on whether bespoke solutions to management information requests could be accommodated, in particular for international businesses where control over data may not always be within the gift of the UK.
Governance framework & reporting lines		Firms may need to assess the extent to which the SMCR requirements will align with existing risk, control and governance frameworks. Firms should review existing arrangements and consider if any adjustments are required. The SMCR may impact areas such as: board and committee size and composition, terms of reference, committee structure, oversight mechanisms, management information and flows, approach to minutes, and the firm's record keeping protocol.
D&O liability insurance policy		Firms may want to use the SMCR as an opportunity to review (and revise if needed) their D&O insurance policy. Senior Managers may want to know what cover is in place, and whether it is sufficient.
Record Retention policy		Firms should review their record retention policy and consider whether any updates are necessary due to the SMCR requirements.