



SMCR

F&P Framework: A Practical Guide

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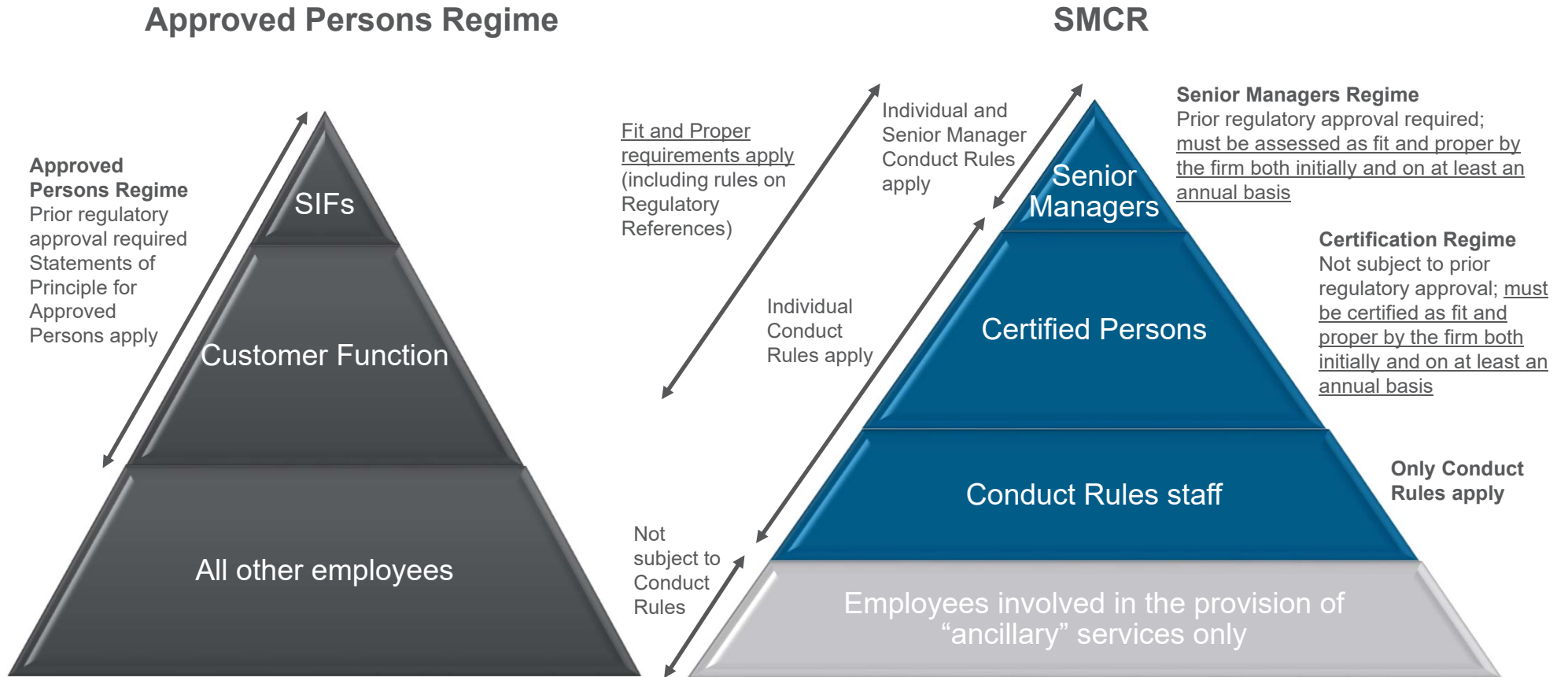
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- SMCR – brief recap
 - F&P standards and framework
 - F&P monitoring and assessments
 - Some common questions / issues
 - Practicalities
 - Useful reference guides
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OVERVIEW OF THE SMCR

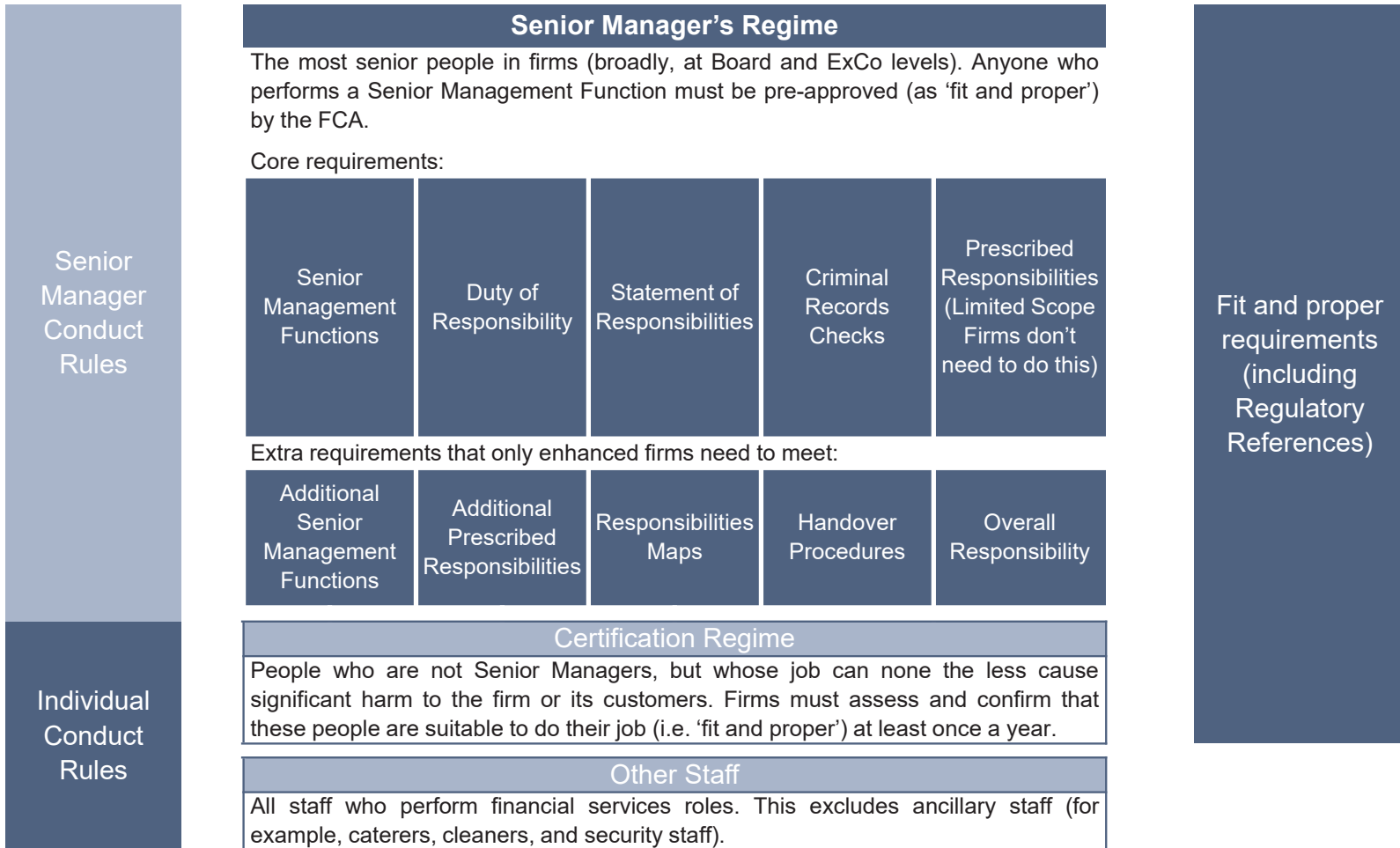
The new regulatory framework for individuals (replacing the Approved Persons Regime), comprising of **three** key elements:

1. **The Senior Managers Regime** – approval regime for individuals performing “Senior Management Functions” (broadly, roles (potentially) involving a risk of serious consequences for the firm or business)
2. **The Certification Regime** – firms solely responsible for assessing the fitness and propriety of employees who could pose a risk of significant harm to the firm or its customers
3. **The Conduct Rules** – basic conduct standards applicable to most employees of the firm (save for purely administrative staff)

APPROVED PERSONS REGIME V SMCR (BEFORE & AFTER)



SUMMARY OF THE REGIME



THE CERTIFICATION REGIME

Code Staff under the Remuneration Codes

Anyone performing a Significant Management Function

Anyone performing the CASS oversight function

Certain proprietary traders

Individuals performing client-dealing or algorithmic trading activities

Individuals in customer-facing roles that are subject to qualification requirements

Anyone who supervises or manages a Certified Person directly or indirectly (if not a Senior Manager)

F&P STANDARDS AND FRAMEWORK

Firms need to assess F&P in relation to:

- Senior Managers
- Non-Executive Directors (who are not otherwise Senior Managers)
- Certified Persons

An assessment needs to be made both initially and on an ongoing basis (at least annually – and on an *ad hoc* basis if a material issue comes to light)

New roles – F&P trigger?

F&P STANDARDS AND FRAMEWORK

What is new?

- Firms must assess F&P in relation to a broader range of individuals
- Firms will be solely responsible for assessing F&P in relation to Certified Persons
- Firms will need to perform regular F&P assessments (including in relation to Senior Managers)

Transitional arrangements mean that firms will have one year from commencement to complete certification of the existing population of Certified Persons (new joiners during this period will need to be certified before commencing their role)

Note: SMFs and Certified Persons will also need to be trained on the Conduct Rules prior to 9 December 2019

F&P STANDARDS AND FRAMEWORK

The Fit & Proper “pillars” – no change *per se*

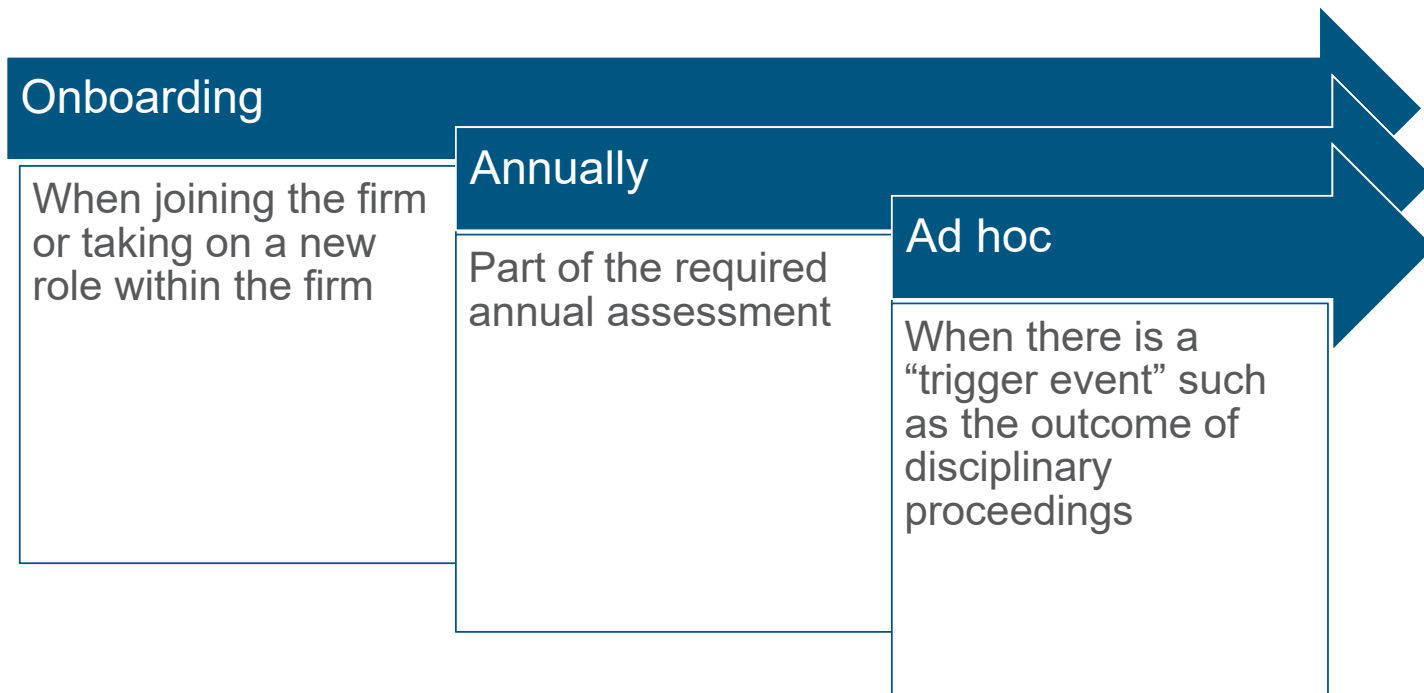
- Honesty, integrity and reputation
- Competence and capability
- Financial soundness

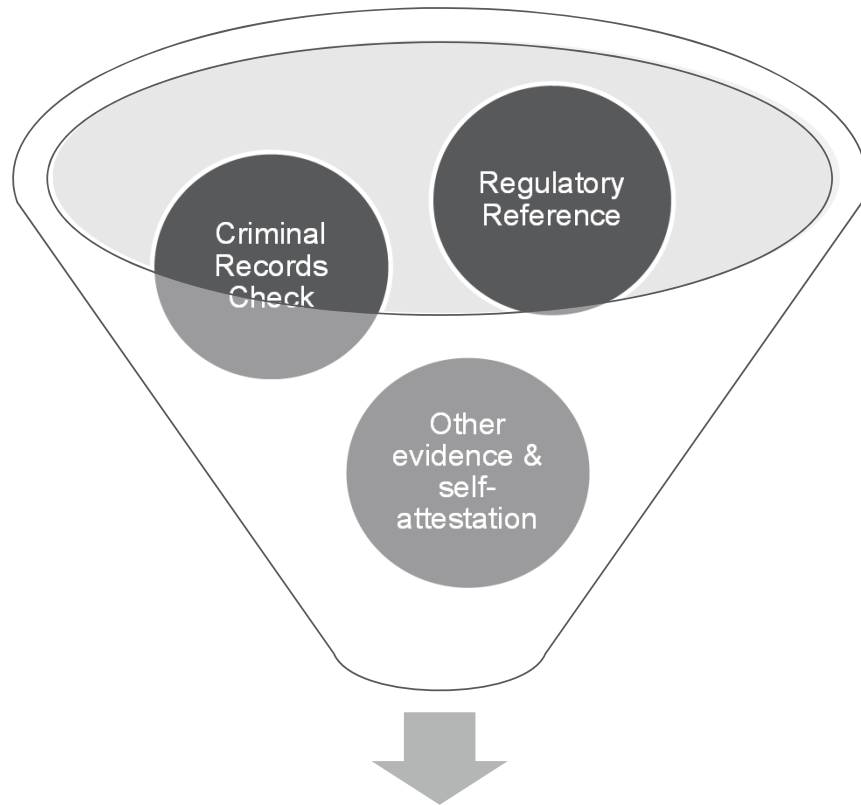
Some illustrative examples

- See FIT 2
- Banking Standards Board’s Supporting Guidance to Statement of Good Practice 1 offers suggested definitions of the 3 pillars

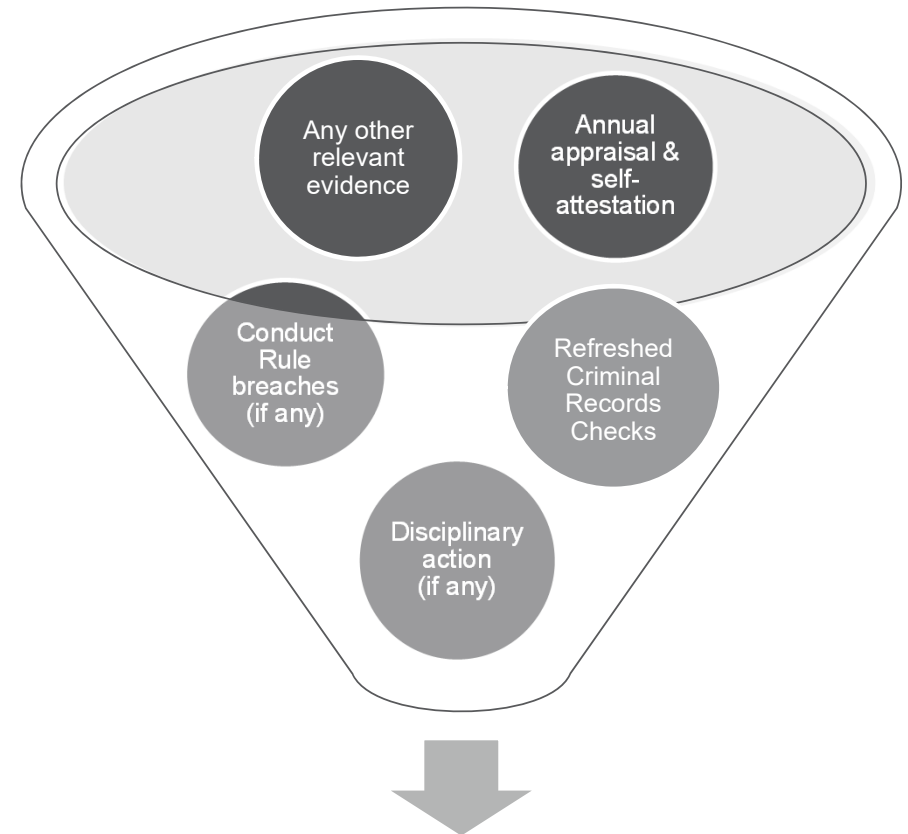
Note: FCA’s recently published views on the relevance of non-financial misconduct

When to conduct an F&P assessment





Initial F&P assessment



Ongoing F&P assessment

F&P MONITORING AND ASSESSMENTS

How do we assess F&P?

- FCA requires that a firm must have particular regard to whether the individual:
 - has obtained a qualification; or
 - has undergone, or is undergoing, training; or
 - possesses a level of competence; or
 - has the personal characteristics;
 - required by general rules made by the FCA.
- Firms should also consider:
 - The nature, scale and complexity of the business, the nature and range of financial services and activities undertaken in the course of that business; and
 - Whether the individual has the knowledge, skills and experience to perform the specific role that the individual is intended to perform.
- Firms also need to think about focusing on positive qualities and behaviours – not just looking for absence of negative behaviour

F&P MONITORING AND ASSESSMENTS

Ongoing monitoring

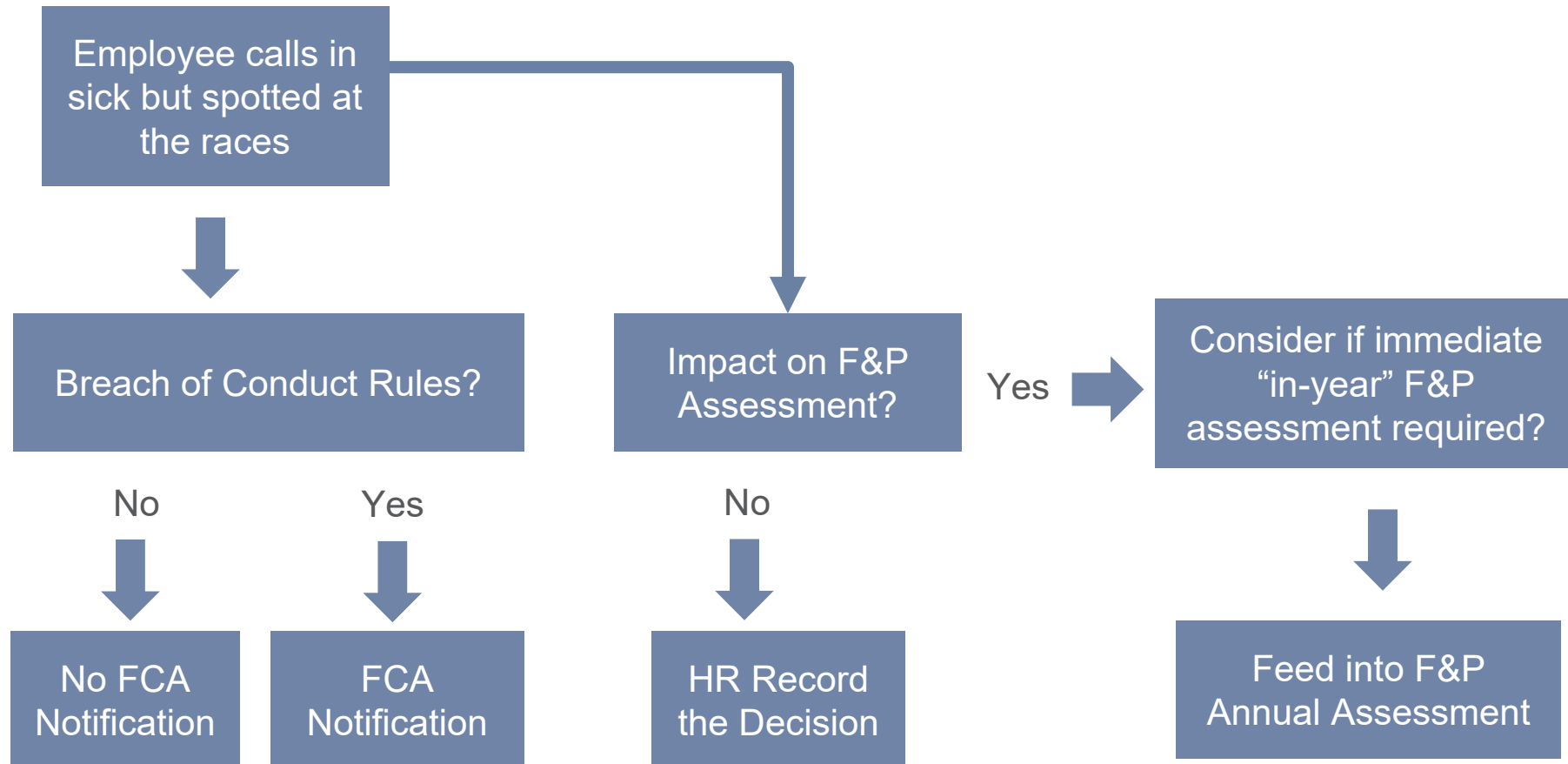
- F&P assessment typically will dove-tail with the annual appraisal process. However, F&P must be considered on a continual basis – and should be revisited if material concerns come to light
- Firms must ensure there are processes / protocols in place so that relevant “triggers” prompt an additional F&P assessment

F&P MONITORING AND ASSESSMENTS

Notification obligations

- A firm is required to notify the FCA (as soon as practicable – ideally, within 1 business day of the firm becoming aware) if it intends to submit a qualified Form C – which circumstances include the firm having information which reasonably suggests that it may affect the FCA’s assessment of a Senior Manager’s F&P (SUP 10C.14.7R(2)(c))
- If a firm becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of a Senior Manager, it must inform the FCA as soon as practicable and, in any case, within seven business days (SUP 10C.14.18R)
- Firms have an obligation to notify the FCA when they take disciplinary action as a result of a breach of the Conduct Rules (Section 63C FSMA) – the timing of the notification differs depending on whether the action concerns a Senior Manager or Certified Person (annually)
- Firms will also need to consider whether they need to make a notification under Principle 11
- If an investigation reveals an issue that also relates to individuals who have left the firm, the firm must consider whether it needs to update any regulatory references it has previously provided

WORKED EXAMPLE – DISCIPLINARIES AND F&P



SOME COMMON QUESTIONS / ISSUES

- Who should perform an F&P assessment?
- Systems capabilities
- Coordination is key (especially between Compliance and HR)
- Importance of consistency across:
 - FCA forms submitted
 - Regulatory references
 - FCA notifications
 - Any relevant public statements
- Alignment with existing processes (e.g. disciplinary and appraisal)
- Need to avoid any potential for bias / conflicts of interest

PRACTICALITIES

- F&P policy / protocol
 - Consistency (pass / fail criteria)
 - Comprehensiveness of data feeds (must cover all 3 pillars)
 - Guidance on significance
 - In-year assessment triggers
 - Legislating for grey / difficult scenarios (escalation process, appeals)
- Periodic assessor training
- Internal Audit F&P framework effectiveness reviews
- Use of self-attestations
 - Scope of coverage
- On-going monitoring of Certified Person population – must remain up-to-date

SUMMARY OF REQUIREMENTS



Information

- Ensure appropriate information feeds into the F&P process
- Ensure processes are joined up and that an assessment is triggered in year if necessary



Assessment

- Ensure assessors are properly trained and know how to evaluate the information
- Establish a framework to ensure that decisions are consistent and fair



Records

- Record sources of information used and rationale behind all decisions
- Ensure information is kept to feed into regulatory references

USEFUL REFERENCE GUIDES

- Banking Standards Board (BSB): Statement of Good Practice 1 (28 February 2017)
- BSB: Supporting Guidance to Statement of Good Practice 1 (28 February 2017)
- BSB: Supporting Guidance to Statement of Good Practice 1 (20 February 2018)

