

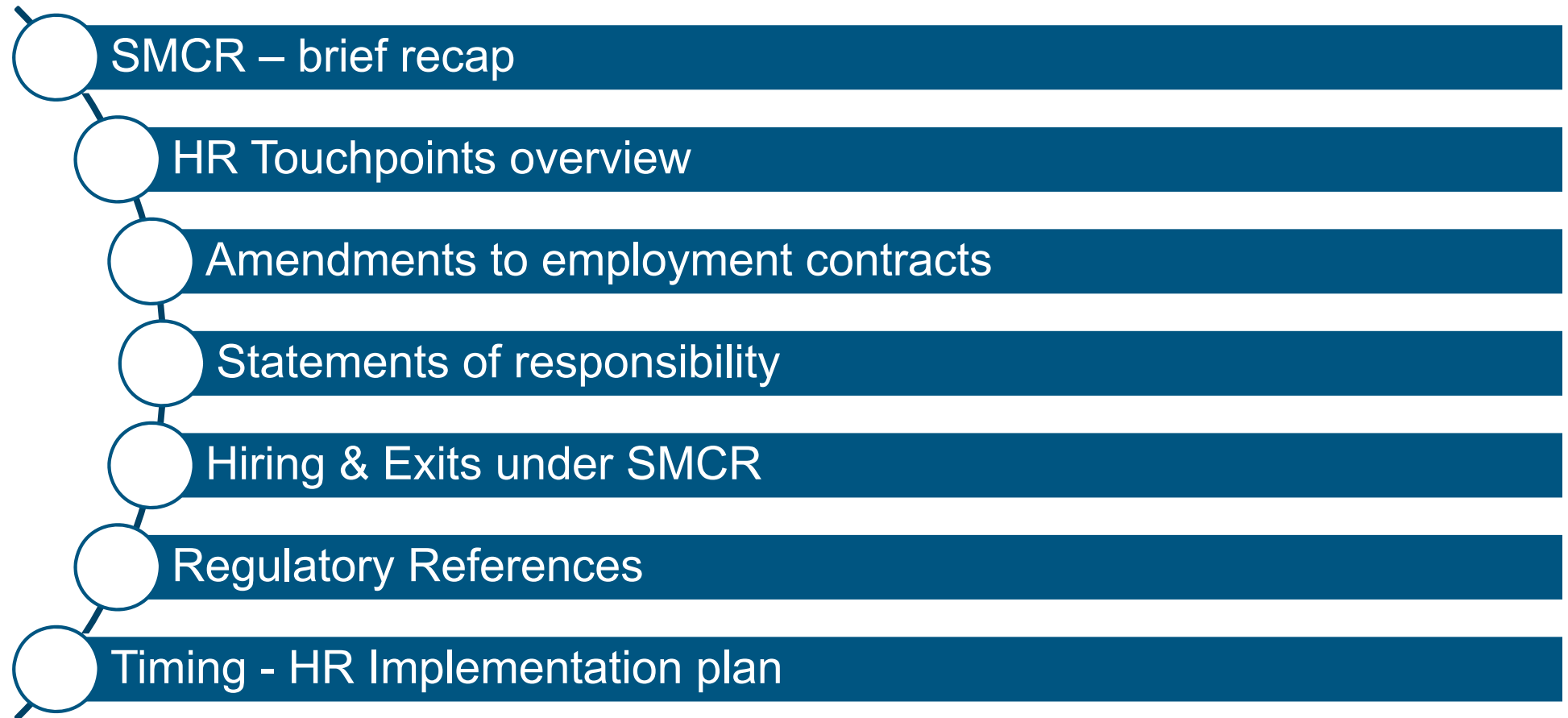
**SMCR**

**HR Touchpoints**

**LATHAM & WATKINS**

# OVERVIEW

---



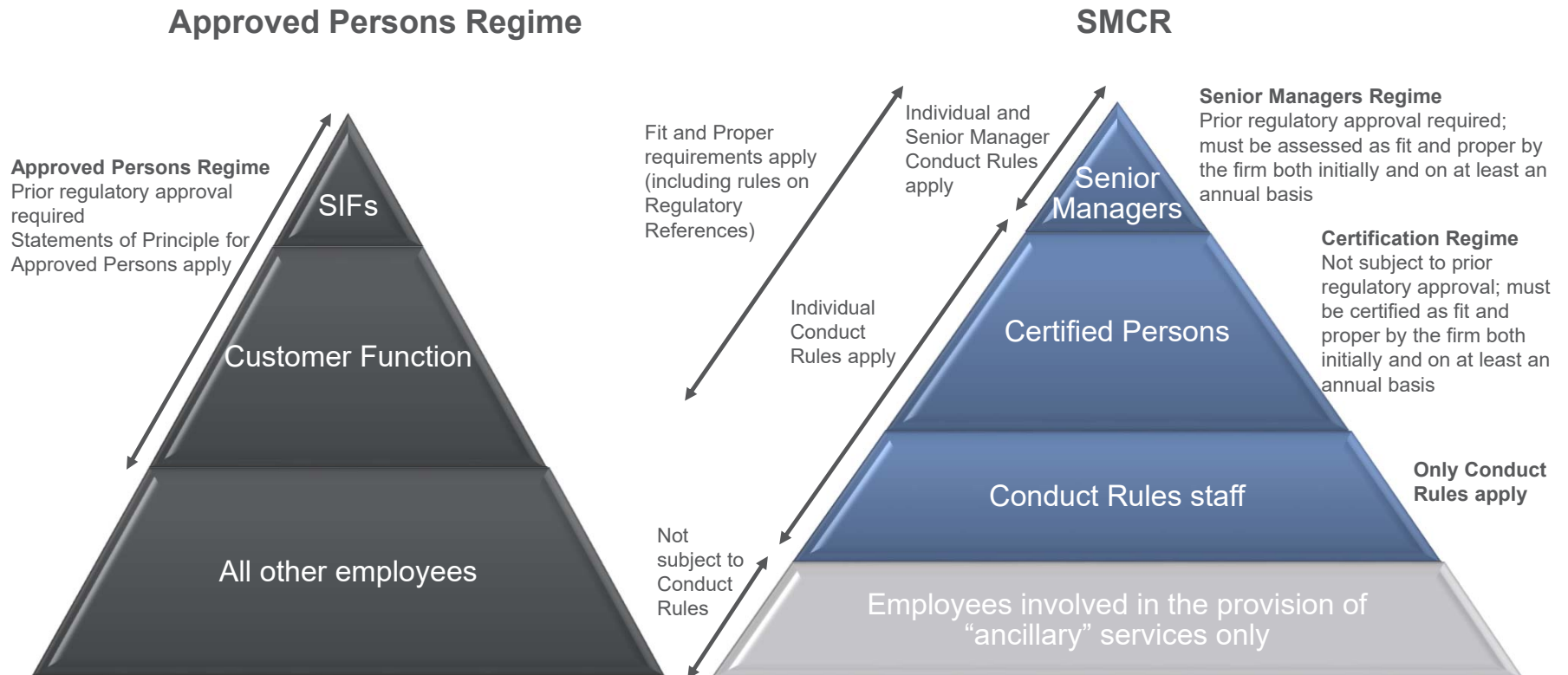
## OVERVIEW OF THE SMCR

---

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 PERSON REGIME V SMCR (BEFORE & AFTER)



# SUMMARY OF THE REGIME

Senior Manager's Regime							Fit and proper requirements (including Regulatory References)
Senior Manager Conduct Rules	The most senior people in firms (broadly, at Board and ExCo levels). Anyone who performs a Senior Management Function must be pre-approved (as 'fit and proper') by the FCA.						
	Core requirements:						
	Senior Management Functions	Duty of Responsibility	Statement of Responsibilities	Criminal Records Checks	Prescribed Responsibilities (Limited Scope Firms don't need to do this)		
	Extra requirements that only enhanced firms need to meet:						
	Additional Senior Management Functions	Additional Prescribed Responsibilities	Responsibilities Maps	Handover Procedures	Overall Responsibility		
Individual Conduct Rules	Certification Regime						
	People who are not Senior Managers, but whose job can none the less cause significant harm to the firm or its customers. Firms must assess and confirm that these people are suitable to do their job (i.e. 'fit and proper') at least once a year.						
	Other Staff						
	All staff who perform financial services roles. This excludes ancillary staff (for example, caterers, cleaners, and security staff).						

# SENIOR MANAGEMENT FUNCTIONS (UK FCA FIRMS)

Senior Management Functions		Core	Enhanced
Chief Executive	SMF1	X	X
Chief Finance	SMF2		X
Executive Director	SMF3	X	X
Chief Risk	SMF4		X
Head of Internal Audit	SMF5		X
Group Entity Senior Manager	SMF7		X
Chairman*	SMF9	X	X
Chair of Risk Committee*	SMF10		X
Chair of Audit Committee*	SMF11		X
Chair of Remuneration Committee*	SMF12		X
Chair of Nomination Committee*	SMF13		X
Senior Independent Director*	SMF14		X
Compliance Oversight	SMF16	X	X
Money Laundering Reporting	SMF17	X	X
Other Overall Responsibility	SMF18		X
Chief Operations	SMF24		X
Partner	SMF27	X	X
Limited Scope Function	SMF29		

\* SMF ideally should be performed by a NED.

# PRESCRIBED RESPONSIBILITIES (UK FCA FIRMS)

Prescribed Responsibilities	Core	Enhanced
Responsibility for the firm's performance of its obligations under the SMR	X	X
Responsibility for the firm's performance of its obligations under the employee certification regime	X	X
Responsibility for compliance with the requirements of the regulatory system about the management responsibilities map		X
Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime	X	X
Responsibility for the firm's obligations in relation to conduct rules for: (a) training; and (b) reporting	X	X
Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of, the internal audit function in accordance with the internal audit requirements for SMCR firms		X
Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of, the compliance function in accordance with the compliance requirements for SMCR firms		X
Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of, the risk function in accordance with the risk control requirements for SMCR firms		X
Responsibility for the firm's compliance with CASS	X	X
Responsibility for taking reasonable steps to ensure that every person involved in the performance of the firm's internal audit function is independent from the persons who perform external audit, including: (a) supervision and management of the work of outsourced internal auditors; and (b) management of potential conflicts of interest between the provision of external audit and internal audit services		X
Responsibility for the development and maintenance of the firm's business model by the governing body		X
Responsibility for: (a) managing the firm's internal stress tests; and (b) ensuring the accuracy and timeliness of information provided to the FCA and other regulatory bodies for the purposes of stress testing		X
The responsibilities allocated under COLL 6.6.27R or 8.5.22R (Allocation of responsibility for compliance to an approved person)	X	X

## WHO IS CAUGHT UNDER 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)

---



# HR TOUCHPOINTS OVERVIEW

---



# AMENDMENTS TO EMPLOYMENT CONTRACTS

## Conditions to employment/appointment to SMF or Certified Role

- FCA approval for Senior Managers
- Criminal record checks
- Satisfactory regulatory reference from former employer
- Passing the firm's F&P assessment
- Completion of SMCR related induction programme
- Self-declaration of no previous, current or pending disciplinary investigations or actions (or other matters relevant to F&P)

## Duties

- Senior Managers: Perform duties specified in Statement of Responsibility & any Proscribed Responsibilities
- Maintain F&P assessment
- Attend all mandatory training
- Comply with applicable Conduct Rules and internal policies and procedures
- Notify the Firm of Conduct Rule breaches
- Comply with the Firm's handover policy

## Termination provisions

- Up date summary dismissal / termination "for cause" to include:
- Receipt of negative updated regulatory reference
- Failing firm's annual F&P assessment
- Breach of Conduct Rules which compromises F&P (in Firm's assessment)

## Post-Termination

- Co-operate with the Firm in relation to regulatory investigations post-termination
- Any commitment by firm to provide former SMs with access to records

# HOW TO IMPLEMENT CHANGES TO CONTRACTS?

---

- Update new joiner contracts
- Obtain employee agreement to contractual changes
- Risk of constructive dismissal claims

## Consent



- Tie in with SMCR education /training
- Build into annual appraisal
- Allow time for questions / negotiation

## Appraisal



- Year end bonus payment conditional on entering into new contract/contract addendum

## Incentive



# STATEMENTS OF RESPONSIBILITY

---

---

Requirement for Senior Managers

---

FCA guidance on content ***FG19/2: SM&CR: Guidance on Statements of Responsibilities and Responsibilities Maps***

---

Overlap with job description – but different

---

Must be signed and filed with FCA

---

Allow time for discussion with Senior Manager

---

Independent legal advice?

---

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

---

# STATEMENT OF RESPONSIBILITY – FCA FG 19/2 EXAMPLES

**Example 4: SMF1 – CEO in a Core firm**

Senior management function	Description of senior management function	Tick SMF applied for or held					Effective Date
		Core firms					
		Limited scope SMCR firms	UK core SMCR firms	EEA core SMCR firms	Third country branches	Enhanced SMCR firms	
SMF 1	Chief Executive		<input checked="" type="checkbox"/>				09/12/2019

Ref	Prescribed Responsibility (Applicable to UK Core SMCR firms)	Does this Prescribed Responsibility apply?	Is this Prescribed Responsibility shared?
a	Responsibility for the firm’s performance of its obligations under the senior managers regime	Yes	Yes
b	Responsibility for the firm’s performance of its obligations under the certification regime	Yes	Yes
b-1	Responsibility for the firm’s obligations for: (a) conduct rules training; and (b) conduct rules reporting.	Yes	No

Ref	Prescribed Responsibility	Further Relevant Details
a	Responsibility for the firm’s performance of its obligations under the senior managers regime	This responsibility is shared with Maria R (IRN12345) who is the departing CEO, as part of the handover.
b	Responsibility for the firm’s performance of its obligations under the certification regime	This responsibility is shared with Maria R (IRN12345) who is the departing CEO, as part of the handover.

This is an appropriate use of sharing a responsibility because it is shared between the departing and incoming senior managers (CEO in this example) working together temporarily as part of a handover. The rationale for sharing is explained.

**Example 8: SMF9 – Chair in a Core firm**

Senior management function	Description of senior management function	Tick SMF applied for or held					Effective Date
		Core firms					
		Limited scope SMCR firms	UK core SMCR firms	EEA core SMCR firms	Third country branches	Enhanced SMCR firms	
SMF 9	Chair		<input checked="" type="checkbox"/>				09/12/2019

Ref	Prescribed Responsibility (Applicable to UK Core SMCR firms)	Does this Prescribed Responsibility apply?	Is this Prescribed Responsibility shared?
N/A			

Please provide a title for this other responsibility	Please provide further details of this other responsibility	Is this other responsibility shared? If 'Yes' please provide, the name(s), IRN(s) and/or job title(s) of the individual(s) you are sharing this responsibility with (where known)
Whistleblowing	I am responsible for the firm’s whistleblowing policy, ensuring that staff are aware of the policy and that the whistleblowers are protected and their names remain confidential.	No
Audit committee	I am responsible for chairing and overseeing the Audit Committee, providing oversight of the company’s financial reporting and control framework and selecting and overseeing the auditors.	No

This is an appropriate presentation of a non-executive Chair’s responsibilities in a Core firm including roles in other committees and other areas of responsibility. No Prescribed Responsibilities are required to be allocated to the Chair of a Core firm.

# HIRING AND EXITS UNDER SMCR

---

## Hiring

---

- Pre-employment checks
- Check regulatory reference
- Criminal record check
- FCA approval for SMs only

## Terminations

---

- Handover policy
- Settlement agreement
- Regulatory reference
- On-going assistance
- FCA Notifications

## Co-ordination

---

- Consistency is key
  - Ensure co-ordination between HR and compliance
  - After a SM departure – reallocate SMF or PRs
  - Revise Responsibilities Map (if applicable)
  - Revise job descriptions?
  - Update regulatory reference?
-

## REGULATORY REFERENCES

---

- Hiring firms must obtain a regulatory reference on the proscribed form covering the past six years of employment for SMF and Certified Staff hires - even if former employer was not a regulated entity
- Upon request firms must provide a reference for former employees covering the past 6 years of employment (and any prior breaches of Conduct Rules or the Code of Practice for Approved Persons)
- Firms must respond to requests for regulatory reference within 6 weeks
- Regulatory reference must cover all information relevant to hiring firm's F&P assessment
- Settlement agreements must not contradict the regulatory reference rules
- Firms must retain records of former employees' conduct and F&P information for 6 years following termination
- Firm must update references issued in the past 6 years if new information comes to light which could impact the former employee's F&P assessment
- Firms must put in place policies and procedures to comply with regulatory reference requests and to update references previously issued

# REGULATORY REFERENCE TEMPLATE – SYSC 22 ANNEX 1

SYSC 22 : Regulatory references Annex 1

---

**Template for regulatory references given by SMCR firms and disclosure requirements**

**22**

**Part One: Form of Template**

Guide to using this template:  
 Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.  
 In this template:  
 • "we" / "our firm" refers to the firm or firms giving the reference (as set out in either 1A or 1B below);  
 • "individual" refers to the subject of the reference (as set out in 2 below); and  
 • "your" refers to the firm requesting the reference (as set out in 3 below).

Information requested	Response
1A	Name, contact details and firm reference number of firm providing reference; or
1B	Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference
2	Individual's name (i.e. the subject of the reference)
3	Name, contact details and firm reference number of firm requesting the reference
4	Date of request for reference
5	Date of reference

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

**Question A**  
 Has the individual:  
 (1) performed a certification function for our firm; or  
 (2) been an approved person for our firm.  
Answer:  
 Yes  
 No

**Question B:**  
 Has the individual performed one or more of the following roles in relation to our firm:  
 (1) notified non-executive director;  
 (2) credit union non-executive director; or  
 (3) key function holder (other than a controlled function).

■ Release 37 ● Mar 2019 [www.handbook.fca.org.uk](http://www.handbook.fca.org.uk) SYSC 22 Annex 1/1

SYSC 22 : Regulatory references Annex 1

---

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

Answer:  
 Yes  
 No

**Question C:**  
 If we have answered 'yes' to either Question A or B above, we set out the details of each position held below, including:  
 (1) what the controlled function, certification function or key function holder role is or was;  
 (2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;  
 (3) whether any potential FCA governing function is or was included in a PRA controlled function; and  
 (4) the dates during which the individual held the position.  
Answer:

**Question D:**  
 Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:  
Answer:  
 Yes  
 No  
 If 'yes', we have provided summary details of the other role(s), e.g. Job title, department and business unit, below.

**Question E:**  
 Have we concluded that the individual was not fit and proper to perform a function:  
Answer:  
 Yes  
 No

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.  
 If 'yes', and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

**Question F:**  
 We have taken disciplinary action against the individual that:  
 (1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:  
 (a) apply or applied to the individual; or  
 (b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under PRA rules (including if applicable, PRA rules in force before 7 March 2016); or  
 (2) relates to the individual not being fit and proper to perform a function.  
Answer:  
 Yes  
 No

SYSC 22 Annex 1/2 [www.handbook.fca.org.uk](http://www.handbook.fca.org.uk) ■ Release 37 ● Mar 2019

SYSC 22 : Regulatory references Annex 1

---

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

**Question G:**  
 Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:  
 (1) occurred or existed:  
 (a) in the six years before your request for a reference; or  
 (b) between the date of your request for the reference and the date of this reference; or  
 (2) is serious misconduct.  
Answer:  
 Yes  
 No  
 If 'yes', we have provided the relevant information below.

**Part Two: Definitions used in Part One**  
 Section One of Part Two of this annex defines terms used in this annex.  
 Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
B	B refers to the employer or ex-employer giving the reference as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.
P	P refers to the employee or ex-employee about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.
A finding or conclusion by B that P was not fit and proper to perform a function (see questions (E) to (F) of the template)	This means a finding or conclusion by B where: (a) B assesses the continuing fitness and propriety of P as an approved person in accordance with the requirements of the regulatory system, including when carrying out this assessment under section 63(2A) of the Act (annual assessment of approved persons by an SMCR firm); or (b) B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the Act (Certification of employees by SMCR firms) for P. Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed.
Individual conduct requirements	Individual conduct requirements mean any of the following: (a) COCON; (b) APER; (c) the PRA's Individual Conduct Standards or Senior Manager Conduct Standards in:

■ Release 37 ● Mar 2019 [www.handbook.fca.org.uk](http://www.handbook.fca.org.uk) SYSC 22 Annex 1/3



# REGULATORY REFERENCE TEMPLATE – SYSC 22 ANNEX 1

SYSC 22 : Regulatory references Annex 1

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
	(i) Chapter 3 of the Part of the <i>PRA Rulebook</i> called Insurance – Conduct Standards; (ii) Chapter 3 of the Part of the <i>PRA Rulebook</i> called Large Non-Solvency II Firms – Conduct Standards; and (iii) Chapter 2 of the Part of the <i>PRA Rulebook</i> called Non-Solvency II firms - Conduct Standards; or (d) the <i>PRA's</i> Individual Conduct Rules or Senior Manager Conduct Rules in: (i) Chapters 2 and 3 of the Part of the <i>PRA Rulebook</i> called CRR Firms: Conduct Rules; and (ii) Chapters 2 and 3 of the Part of the <i>PRA Rulebook</i> called Non-CRR Firms: Conduct Rules.
Function (as referred to in questions (E) to (F))	A function means a function as an <i>approved person</i> or <i>certification employee</i> .
Disciplinary action	Disciplinary action has the same meaning as in section 64C(2) of the Act (Requirement for authorised persons to notify regulatory of disciplinary action), which is: (a) the issue of a formal written warning; or (b) the suspension or dismissal of P; or (c) the reduction or recovery of any of P's remuneration. This definition applies even if B is not an <i>SMCR firm</i> .
Notified non-executive director, credit union non-executive director and key function holder	These terms have the same meaning as they do in the <i>PRA Rulebook</i> .
Certification function, approved person, controlled function and PRA controlled function	These terms have the same meaning as they do in the <i>Glossary</i> .
Potential FCA governing function	Potential FCA governing function means a function: (a) that would have been an <i>FCA controlled function</i> but for: (i) SUP 10A.11 (Minimising overlap with the PRA approved persons regime) (when that section was in force); or (ii) SUP 10C.9 (Minimising overlap with the PRA approved persons regime); (b) but instead is included in a <i>PRA controlled function</i> under the parts of the <i>PRA Rulebook</i> listed in SUP 10C.9.6G.
Section Two: Supplementary requirements	Supplemental requirements
Item of template for which supplemental requirements apply	Questions (E) and (F)
Questions (E) and (F)	if: (a) the finding or disciplinary action was reached or taken by another member of B's group with the authority to do so; and

SYSC 22 Annex 1/4 www.handbook.fca.org.uk ■ Release 37 ● Mar 2019

SYSC 22 : Regulatory references Annex 1

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
	(b) the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not <i>regulated activities</i> ) by B; this question applies to such finding or disciplinary action in the same way as it does to findings or disciplinary action made or taken by the <i>firm</i> itself.
Question (F)	This question is subject to SYSC TP 5.4.5R and SYSC TP 7.4.4R (where there is no need to disclose disciplinary action that took place before certain dates if the <i>firm's</i> records do not show whether there was a breach of individual conduct requirements).
The whole of Part One of this annex	The template to be used by a <i>firm</i> in giving a reference consists of everything in Part One of this annex except for the "Guide to using this template" paragraph.

■ Release 37 ● Mar 2019 www.handbook.fca.org.uk SYSC 22 Annex 1/5

## POLICY AND PROCEDURE UPDATES

---

- Recruitment procedure
- Induction programme
- Appraisal and performance management
- Regulatory reference policy/ protocol
- Whistleblowing policy
- Ethics & conduct policy
- Disciplinary policy
- Handover policy
- Personal record keeping policy?
- “Reasonable Steps” assurance framework?
- Breach notification policy
- D&O / indemnification policy

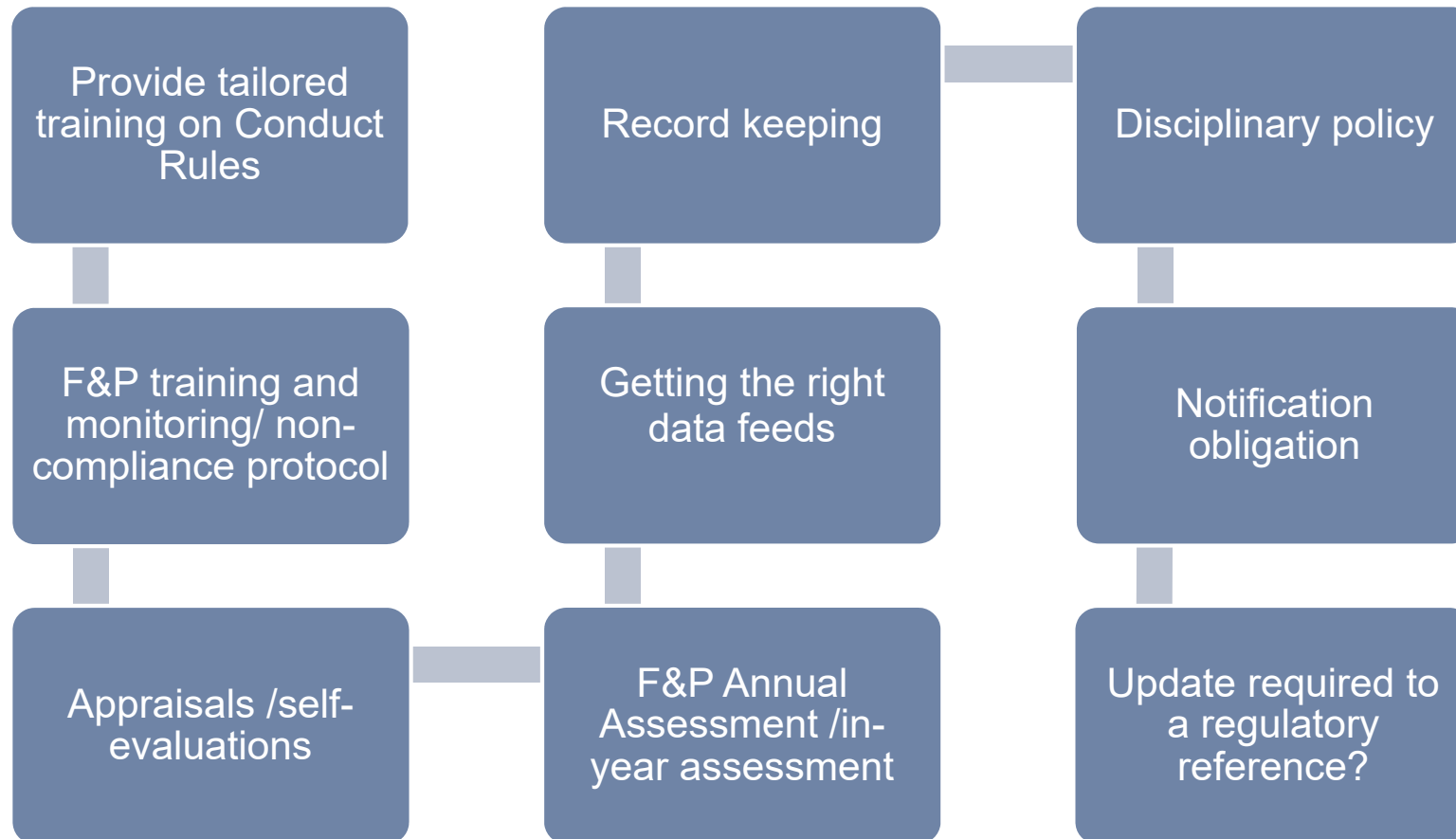
# HANDOVER POLICIES

---

- Requirement on Enhanced Firms to take all reasonable steps to ensure that a person taking over an SM role has all the information and materials they would reasonably expect to discharge their duties and do the job effectively
- Firm should implement a handover policy requiring SMs to attend handover meetings & create handover notes for their successors
- Core firms are not required to do this – but could be helpful?
- What should the handover policy cover?
  - Responsibility for ensuring handovers are effected, reviewing handover notes, maintaining records
  - SM's responsibility to create a handover note/attend handover meeting(s)
  - Guidance on handover note content
  - Timing
- What should handover notes cover?
  - Tailored to the SM's specific role /responsibilities
  - Practical issues - not just a record of past events
  - Assessment of what issues should be prioritized going forward
  - Judgement and opinion, not just facts and figures

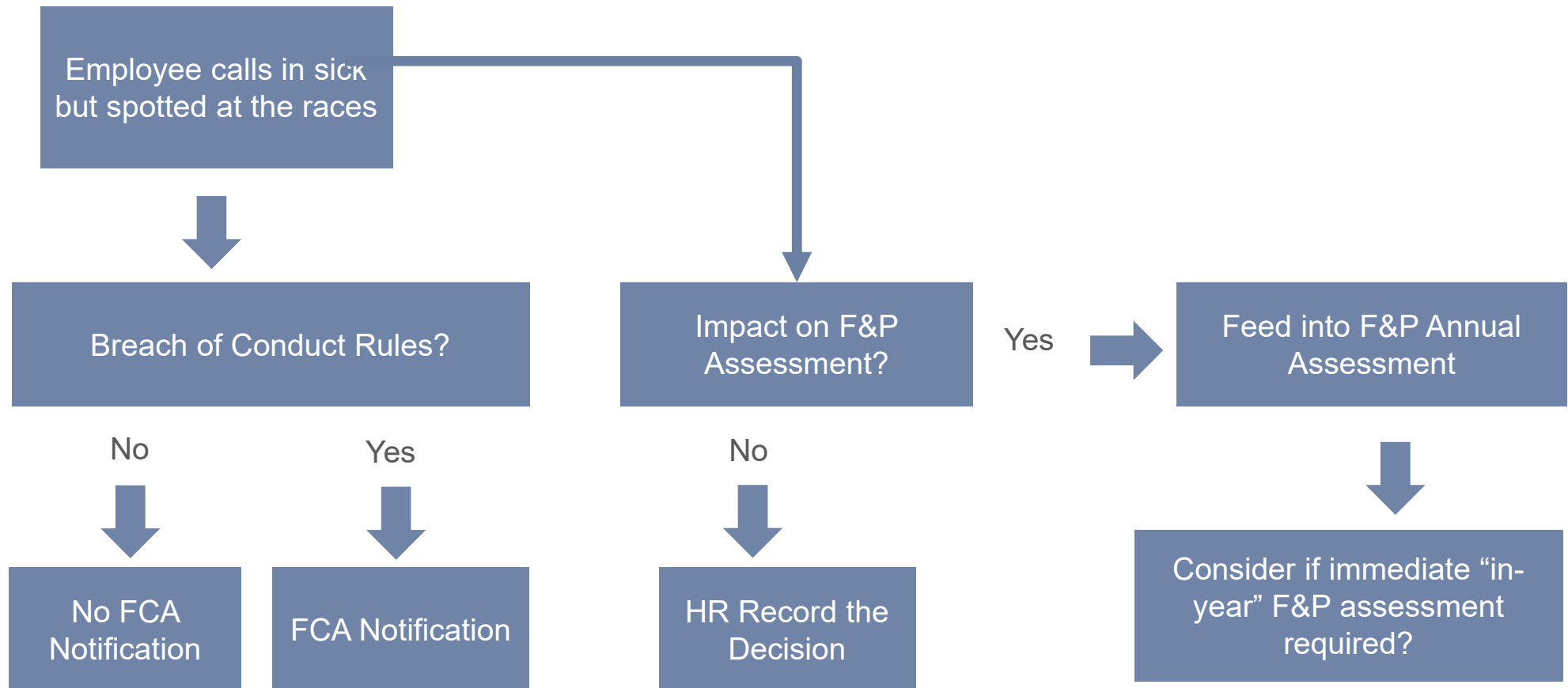
## HR ONGOING COMPLIANCE WITH SMCR

---

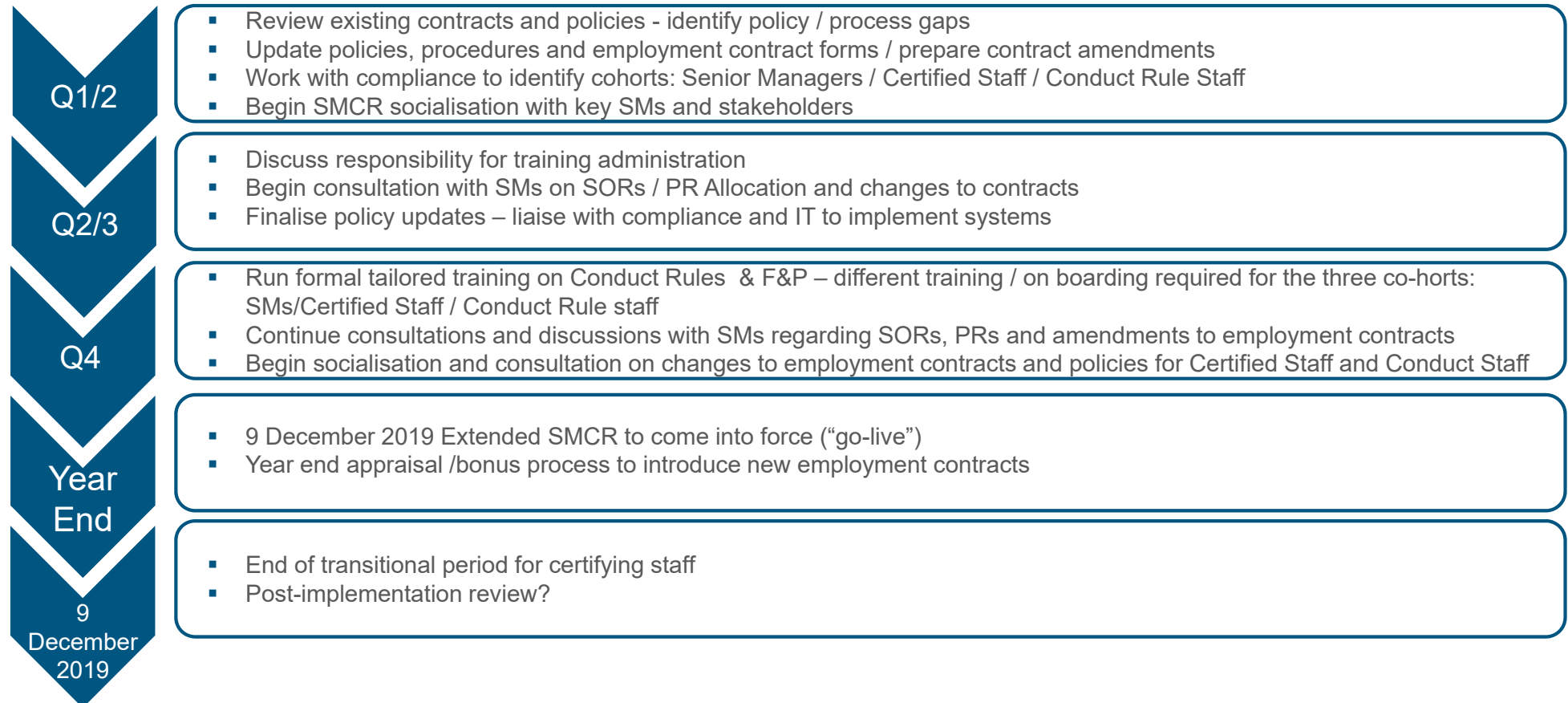


## WORKED EXAMPLE – DISCIPLINARIES AND SMCR

---



## TIMING – HR IMPLEMENTATION PROJECT PLAN



## WHAT ABOUT...DIFFICULT QUESTIONS

---

- Overseas senior managers – local employment law overlay
- What if someone refuses to sign a new contract?
- Availability of (paid) legal advice?
- Job shares
- Reasonable steps guidance
- Access to records post-employment
- D&O/ indemnification policy
- “Grey” references received
- Formulating a house stance: breach notifications, in-year F&P assessments, who administers the F&P process?

# QUESTIONS

---

