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5b SENIOR MANAGERS & CERTIFICATION REGIME

5b.1 Introduction

The SM&CR applies to all FCA solo and dual-regulated firms authorised under the Financial Services and Markets Act 2000 (FSMA), as well as EEA and third-country branches. Firms that are not authorised under FSMA (for example payment services firms) are not covered by the SM&CR.

SM&CR applies to the Firm but does not apply to ARs, who continue to be subject to the Approved Persons regime (see Chapter 5a).

The FCA has provided a [guide for solo-regulated firms](#).

There are 3 key parts to the SM&CR regime:

1. The Senior Managers regime.
2. The Certification regime.
3. Conduct Rules that apply directly to all staff within an in-scope firm except ancillary staff (e.g. cleaners, receptionists, etc).

The SM&CR aims to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold people to account. As part of this, the SM&CR aims to:

- Encourage staff to take personal responsibility for their actions.
- Improve conduct at all levels.
- Make sure firms and staff clearly understand and can clearly demonstrate the allocation of responsibilities/ business areas amongst senior personnel.

Please refer to Appendix A of this Manual for a list of Senior Managers and Certified individuals at the Firm.

PART 1 – THE SENIOR MANAGERS REGIME

5b.2 Types of SM&CR Firm

What firms are required to do under the SM&CR depends on whether they are classified as ‘limited scope’, ‘core’, or ‘enhanced’. Most firms will be core, however there are a small number of firms that would be regarded as a limited scope (due to the nature of activities that they perform) or enhanced where additional compliance requirements exist on a risk assessed basis. Core firms could move to enhanced firm status if the size of their organisation meets one of 6 criteria based on a size threshold. Further details are available in the FCA’s guide for solo-regulated firms on when this could apply.

Midmar is classified as a core firm.

5b.3 Senior Manager Functions

Senior Manager Functions (SMFs) are held by the most senior people in a firm with the greatest potential to cause harm or impact upon market integrity. As with the previous Controlled Function regime, an SMF holder needs to be approved by the FCA before they can start their role. An exception to this is under the 12-week rule, where a person may cover for a Senior Manager without being approved, where the absence is temporary or reasonably unforeseen, and the appointment is for less than 12 consecutive weeks.

However, for an individual to continue to perform the function(s) after 12 weeks, FCA approval of the individual for the function(s) in question needs to have been received.

A person may hold more than one SMF role and a single application can be used to apply for more than one SMF, e.g. SMF27 Partner and SMF16 Compliance Officer. A single Statement of Responsibilities per SMF is also acceptable. However, the FCA will consider the candidate's suitability for each function separately. If an individual is applying for an additional SMF role, although a Short Form A may be applicable, the FCA will review the competencies for the new responsibilities in isolation of existing approval(s).

The SMFs applying to a firm will depend on whether the firm is limited scope, core or enhanced. For a UK-based core firm such as Midmar, the SMFs that apply are as follows and some (SMF3, SMF27) will depend upon whether the entity is a limited company or partnership.

Brief description of function	Function number
Governing functions	
Chief Executive Function	SMF1
Executive Director Function	SMF3
Chair of the Governing Body Function	SMF9
Partner Function	SMF27
Required functions	
Compliance Oversight Function	SMF16
Money Laundering Reporting Function	SMF17

One point to note about the SM&CR is that it does not require firms to change their governance structure or hire new people to fill specific roles. SMFs only apply if a particular role is actually performed by an individual or the SMF is a required function that a firm must have in place as set out in the rules.

5b.4 Duty of Responsibility

Every Senior Manager has a duty of responsibility under s.66 of FSMA. This means if something goes wrong in an area that a Senior Manager is responsible for, the FCA will consider whether the Senior Manager took reasonable steps to stop this from happening. In other words, if a firm breaches any FCA requirement, the Senior Manager responsible for that area could be held accountable if they did not take 'reasonable steps' to prevent or stop the breach.

In July 2018, the FCA published a Policy Statement ([PS18/16](#)) – Final Guidance: the duty of responsibility for insurers and FCA solo-regulated firms. The guidance states, amongst other things, that under the duty of responsibility, Senior Managers are accountable for their individual contributions to collective decisions and their implementation insofar as they concern any of the firm's activities for which they are responsible.

The burden of proof will lie with the FCA to show that the Senior Manager did not take the steps a person in their position could reasonably be expected to take to avoid the firm's breach occurring. Therefore, it is advisable for Senior Managers to ensure they create and maintain clear audit trails on management decisions to demonstrate what action they took, when and why. If a Senior Manager is in any doubt about what action would be considered reasonable, the Senior Manager is advised to seek appropriate guidance, such as from the Compliance Officer.

When deciding whether to take action against someone based on the duty of responsibility, the FCA will look at all of the circumstances of the case. This will include the seriousness of the breach, the person's position, responsibilities and seniority, and the need to use enforcement powers effectively and proportionately (as set out in the FCA's Decision Procedure and Penalties sourcebook ([DEPP](#))). The FCA states that sometimes it will be appropriate to take action against a Senior Manager, sometimes against a firm, and sometimes against both. These decisions will be made on a case-by-case basis, applying the criteria set out in DEPP.

5b.5 Fitness and Propriety

Senior Managers (and also Certification staff and non-executive directors (NEDs)) must be fit and proper for their role and firms must employ/contract with personnel with the skills, knowledge and expertise necessary for the proper discharge of responsibilities allocated to them. When considering the fitness and propriety of these persons, the 3 main criteria considered are:

- Honesty (including being open about disclosing information)
- Integrity and reputation
- Competence and capability
- Financial soundness

The FCA sourcebook [FIT](#) sets out the guidance for these criteria.

Extra evidence collection over and above the Firm's standard requirements may be needed in certain situations, such as when assessing new candidates for these positions. Guidance on these additional evidential requirements is contained in the FCA's SM&CR guide for solo-regulated firms. The table below (from this FCA guide) summarises some of these requirements.

Summary of fitness and propriety requirements			
	New hire	Internal hire (including intra-group hires)	Annual assessment
Senior Manager			
Regulatory reference	✓	✗	✗
F&P assessment	✓	✓	✓
FCA approval before commencing role	✓	✓	✗
Criminal record check	✓	✓	✗
Certification Function			
Regulatory reference	✓	✗	✗
F&P assessment	✓	✓	✓
Certificate for function	✓	✓	✓

5b.5.1 Criminal Record Checks

For Senior Managers and NEDs, there is a mandatory requirement to conduct a criminal record check as part of the approval process for that role. This applies to both external applicants and existing staff applications. Although not a requirement for Certification Functions, the Firm may choose to conduct these checks as it sees fit where they are legally allowed to do so.

The Firm conducts standard criminal record checks on individuals applying for Senior Management roles and basic criminal record checks on Certification staff. The Firm has started to refresh these checks every two years.

5b.5.2 Regulatory References

Another check that is required for new externally hired Senior Managers, Certification Functions and NEDs is a regulatory reference in line with the template under [SYSC 22 Annex 1](#). The Firm has its own template based on this. Under this requirement, firms need to request from past employers, covering the past 6 years, information relating to disciplinary action in relation to Conduct Rule breaches, and any findings that the person was not fit and proper. Firms providing a reference are also required to disclose any other information that may be relevant to assessing whether a candidate is fit and proper (e.g. number of complaints) covering the previous 6 years (unless it relates to serious misconduct, in which case there is no time limit).

Firms should use the FCA's standard regulatory reference template as a basis for sharing information.

Firms will also need to update regulatory references where new, significant information comes to light. Therefore, firms will need to keep a clear record of the regulatory references it has previously provided.

The Banking Standards Board has issued [guidance](#) on regulatory references, which the Firm will consider when providing a regulatory reference.

It is important to note however, that a record of the disciplinary action in this context only applies from when SM&CR was introduced for solo-regulated firms on 9 December 2019.

To ensure appropriate oversight for regulatory references, the Firm will have in place one or more Senior Managers with Prescribed Responsibilities (a) and/or (b) covering this area, which includes a Regulatory References Register on Leo – see 5.7 below.

5b.6 Statement of Responsibilities

Each SMF holder is required to have an individual Statement of Responsibilities (SoR) clearly setting out their role and responsibilities. It is recommended these are signed, dated, and reviewed at least annually. A SoR should set out what they are responsible and accountable for, but not how they carry out those responsibilities. In addition, a SoR must be self-contained and not refer to other documentation. The FCA has published guidance on their expectations of such statements, [FG19/2](#), and the Firm follows this guidance in its approach to its SoRs.

For persons with more than one SMF role, only one SoR is required, but this must detail and describe all the responsibilities held under these roles clearly and succinctly.

The SoR will need to be submitted to the FCA when applying for a Senior Manager to be approved. This should be submitted in the format prescribed at [SUP 10C Annex 10D](#). SoRs also need to be kept up to date internally and resubmitted to the FCA when there's a significant change to a Senior Manager's responsibilities (see [SUP 10C.11](#) for guidance on what is considered a significant change).

5b.7 Prescribed Responsibilities

The FCA has set out specific Prescribed Responsibilities (PRs), defined in [SYSC 24](#) of the Handbook, relating to key conduct and prudential risks where accountability must be assigned. These PRs are in addition to the inherent responsibilities that are an essential part of a Senior Manager's role. These PRs will also be captured within a Senior Manager's SoR.

PRs only apply to core and enhanced scope firms, and not limited scope firms.

Each PR should be given to the Senior Manager who is the most senior person responsible for that area or activity. This is again where the FIT rules apply in that the Senior Manager must have the appropriate level of knowledge and competence to undertake the responsibility properly.

A key point to note is that whilst assigning a PR to a Senior Manager does not require FCA approval, moving a PR from one Senior Manager to another Senior Manager will require an updating of these managers' SoRs, and these in turn must be submitted to the FCA for recording.

PRs should not be shared or divided between Senior Managers. If these situations are unavoidable then the Firm will need to demonstrate why this is justified and that no gap is left. SoRs for the Senior Managers involved must clearly explain how the responsibilities are shared or split, but accountability will remain jointly held.

The PRs for a core firm are as follows:

Handbook PR ref	Description
(a)	Responsibility for the firm's performance of its obligations under the SMR, including implementation and oversight.
(b)	Responsibility for the firm's performance of its obligations under the Certification Regime.
(b-1)	Responsibility for the firm's performance of its obligations in respect of notifications and training of the Conduct Rules.
(d)	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime.
(z)	Responsibility for the firm's compliance with CASS (if applicable).
Authorised fund managers (AFMs) only	
(za)	Responsibility for an AFM's assessments of value, independent director representation and acting in investors' best interests.

Due to the Firm's activities, responsibility (za) does not apply to the Firm and (z) only applies in a limited manner.

PART 2 – THE CERTIFICATION REGIME

5b.8 Overview

The Certification Regime covers specific functions that are not SMFs but may still have a significant impact on customers, the Firm, and/or market integrity. Details of the Certification Regime including specified roles are found in the Handbook under [SYSC 27](#). Those performing Certified roles do not require approval from the FCA, instead firms must internally ensure and evidence that individuals are and remain fit and proper to fulfil role requirements. These individuals should also have the necessary qualifications, and have completed, or are undergoing, relevant training. All of this needs to be checked and certified by the Firm at least annually.

Whilst there is no prescribed format to the certificates that a firm must issue to Certified staff, the certificate should make clear that the authorised firm is satisfied that the individual is a fit and proper person to perform a Certification Function. The certificate should also set out the aspects of the firm's business in which the individual will be involved.

An individual may hold more than one Certification Function. Where this is the case, a firm must assess the fitness and propriety of that person to carry out each function and the necessary competencies to do so. However, this can be done as a single assessment. The certificate should list all relevant roles per person.

5b.9 Certification Functions

The Certification Regime only applies to employees of firms, individuals seconded to the firm and contractors - it does not apply to NEDs, for example. The following table sets out the various Certification Functions that apply or could apply to the Firm. However, there are other functions that are captured in the Certification Regime as defined in [SYSC 27.7](#). Certified staff should be added to the FCA's Directory of Certified Persons, via Connect.

	Certification Function	Description
1.	Significant Management Function	<p>This function applies to firms that have personnel in place who, whilst not Senior Managers, are responsible for areas of the business, which due to their size, nature or impact, are considered significant by the firm.</p> <ul style="list-style-type: none"> • The size and significance of the firm's business in the UK. • The risk profile of the business area. • The business area's contribution to the firm's capital requirements. • Its contribution to the profit and loss account. • The number of employees, Certification Functions or Senior Managers in the business area. • The number of customers served by the business area.
2.	The client dealing function	<p>This function applies to any person dealing in or arranging investments with clients, including Retail and Professional Clients and Eligible Counterparties.</p> <p>This will include:</p> <ul style="list-style-type: none"> • Financial advisers. • People who are involved in corporate finance business. • People who are involved in dealing or arranging deals in investments. • Investment managers. <p>This does not include individuals who have no scope to choose, decide or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant skill.</p>
3.	Functions subject to qualification requirements	<p>The full list is set out in the FCA's T&C sourcebook, but includes mortgage advisers, retail investment advisers, and pension transfer specialists.</p>

4.	Supervisors or managers of a Certified Function, who are not a Senior Manager	This will make sure that people who supervise Certified employees are held to the same standard of accountability. It also makes sure a clear chain of accountability between junior Certified employees and the Senior Manager ultimately responsible for that area. For example, if a firm employs a customer-facing financial adviser, every manager above them in the same chain of responsibility will have to be certified (until the Senior Manager approved under the SMR is reached).
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5b.10 Senior Managers and Certification Functions

Senior Managers who perform a Certification Function will also have to be certified if this role largely differs from the role they do as a Senior Manager. This is considered most relevant in relation to the Client Dealing Certification Function and where such individuals used to be CF30 approved advisers. In this situation a combined fitness and propriety assessment may be carried out which covers the requirements for both roles.

PART 3 – THE CONDUCT RULES

5b.11 Overview of the Conduct Rules

The Financial Services (Banking Reform) Act 2013 updated FSMA 2000 to give the FCA new powers to write Conduct Rules and apply them to all employees – not just Senior Managers or Certified individuals – within all authorised firms in a staggered roll-out spanning a number of years. The Conduct Rules are 9 enforceable rules that set basic standards of good personal conduct in relation to employees' performance of functions in the carrying on of activities by an in-scope firm such as Midmar. The FCA will use the Conduct Rules as a measure against which they can hold people to account. The rules can be found in the [COCON](#) chapter of the FCA Handbook.

As the Conduct Rules apply to staff directly, they are intended to, and will hopefully help, shape the culture, standards and policies of firms as a whole and promote positive behaviours that reduce harm from the top down and the bottom up.

They represent a meaningful change in the standards of conduct the FCA expects from those working in the industry, and by applying the Conduct Rules to a broad range of staff the FCA's aim is to improve individual accountability and awareness of conduct issues across firms. Conduct Rules apply to all firms, i.e. enhanced, core and limited scope firms.

5b.12 Application of the Conduct Rules

Application of the Conduct Rules is across a firm's regulated and unregulated financial services activities (including any related ancillary activities, i.e. an activity carried on in connection with a regulated activity). This differs from the previous standards of FCA Statements of Principle and Code of Practice for Approved Persons, (still applicable to ARs) which applies only to regulated activities.

The Conduct Rules specifically apply to:

- All Senior Managers.
- All Certified Functions.
- All NEDs who are not Senior Managers.

- All other employees, except ancillary staff (i.e. people who do not perform a role specific to financial services – see below).

In this case, the FCA has adopted a broad definition of employee, which extends beyond the traditional employment law definition of the term to include secondees, as well as contingent and temporary workers. However, there is an exception for those performing specified ancillary functions such as receptionists, security staff, cleaners and catering staff, (where their role would be the same whether this is at a financial services firm or not), who are not subject to the Conduct Rules. At the Firm, Conduct Rules are deemed to apply to all members of staff.

5b.13 Conduct Rules Tiers

There are 2 tiers of Conduct Rules in place. The first tier applies to all relevant employees, but the second tier only applies to Senior Managers. The rules are set out in the following table together with the Handbook COCON reference:

First tier - Applies to ALL employees – Individual Conduct Rules COCON 2.1	
1	Act with integrity.
2	Act with due skill, care and diligence.
3	Be open and co-operative with the FCA and other regulators.
4	Pay due regard to the interests of customers and treat them fairly.
5	Observe proper standards of market conduct.
Second tier - Senior Managers only Conduct Rules COCON 2.2	
SC1	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
SC2	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
SC3	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
SC4	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

Examples of behaviour that the FCA considers could breach the rules are included at [COCON 4.1](#) for all staff and [COCON 4.2](#) for Senior Managers.

For UK firms, the Conduct Rules apply in 2 situations. They apply to activities carried out from the UK. They also apply to activities carried out from outside the UK, but only if the activity involves having contact with UK clients. This means that if a person based overseas does not deal with UK clients, the Conduct Rules will not apply to them.

Firms are also required to train relevant staff on how the Conduct Rules apply to their role and a Senior Manager must be allocated the PR for this. This should be done as part of induction for new staff and at

least annually for existing staff. If a breach of the Conduct Rules becomes apparent, the Senior Manager must ensure this is notified to the FCA.

To ensure the effective operation of these processes, firms must put in place procedures to comply with Conduct Rules training and breach reporting requirements, which is a Prescribed Responsibility.