



DP1/23 – Review of the Senior Managers and Certification Regime (SM&CR) FCA & PRA’s discussion paper

FLA RESPONSE

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance, mortgages, and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes.

In 2022, FLA members provided £114.6 billion of consumer credit to consumers, accounting for over a third of total new consumer credit written in the UK. This included £40.7 billion of new finance to help households and businesses purchase cars. 84% of all private new car registrations in the UK were financed by FLA members. And in Asset Finance, our members provided £33.8 billion of finance to the business sector and public services, representing almost a third of UK investment in machinery, equipment and purchased software in the UK last year.

Introduction

As with a lot of regulatory change, SMCR was an opportunity for renewed focus on governance and accountability matters which were much needed at the time of its introduction.

The principles upon which SMCR is built do not, in our view, require change at this stage. SMCR has overall been good for industry conduct and individual responsibility etc. It has led in many cases to positive cultural change within financial service firms which have taken SM&CR seriously and properly embedded it. That being said SMCR has meant an increased administrative burden for firms and the processes, when engaging with the FCA, can be challenging at times.

For example, we have received the following feedback:

- Processing times of Senior Management Functions (SMF) applications have regularly run far in excess of the regulatory requirement of 90 days, although some improvements have been noticed in recent months but are beginning to slip again.

- Requests for further information on applications are often on information already supplied.
- Where firms also have a large population of certified role holders there is a greater administrative burden.
- For groups that include a number of regulated entities, these processes can be even more laborious.

We would also like to see if the FCA can make the regime easier for smaller and medium sized firms. For example, the FCA's approach to supervision document says they assess the risk of firms via portfolios. For firms that are fixed or dedicated supervision then these are the higher risk and there should be an expectation of higher scrutiny for the key Senior Management Function (SMF) role appointments. However, for other firms in portfolios we think that there could be a way for the FCA to assess SMF applications based on the risk posed.

We would also like to see more guidance in areas such as what is meant by 'reasonable steps' and types of roles that should fall into the certification regime. This would be helpful for some financial service firms.

Finally, firms would find it useful to have examples from the regulators where they have seen shortcomings and therefore where improvements can be made. This should help prevent the need for enforcement action to be taken by the regulators.

Questions

Q1: To what extent do you agree or disagree that the SM&CR has made it easier to hold individuals to account?

Agree. SMCR has been largely successful as it allows Senior Managers and other individuals within the business to have a clear understanding of their responsibilities, and consequently it makes it easier for firms and regulators to hold individuals to account.

Q2: To what extent do you agree or disagree that the SM&CR regime has improved safety and soundness and conduct within firms?

Agree. It holds all employees to high standards of personal conduct.

Q3: To what extent do you agree or disagree that the fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles?

It's no significant change from the previous regime, however the additional guidance for those holding SMF 16 and 17 roles has been useful.

The financial soundness checks as part of the fit & proper assessment may capture a significant number of employees (where the certified population is large) and may potentially act as a deterrent to potential applicants. Whilst we agree that financial soundness checks can be an important element in assessing suitability and risk in

certain appointments, we would encourage the FCA to take a risk-based and proportionate approach on this.

FCA guidance to help firms describe in communications to employees and future employees the fit & proper assessment checks required and how they will be used and interpreted would be helpful. This should help provide clarity and reduce any anxiety employees and applicants may feel. More detailed clarity on expectations for firms to drive further consistency across the industry would also be helpful here.

Q4: Please provide any suggestions that can help ensure that appropriately qualified individuals are not deterred from taking up relevant Senior Manager roles.

A clearer set of guidance regarding “reasonable steps” would help to encourage and support those individuals taking on SMF roles for the first time and who are seeking to do the right thing. There is a risk that a lack of clarity creates a barrier to new individuals seeking out these roles, as they could be concerned around the impact of negative regulatory references or penalties should they inadvertently make mistakes.

Q5: To what extent do you agree or disagree that the SM&CR has made it easier for firms to hold staff to account and take disciplinary action when appropriate against them?

We agree that the ‘fit and proper’ assessment and ‘conduct rules’ encourage Senior Managers to hold themselves to a high standard. However, additional guidance / examples on conduct rules and the appropriateness of disciplinary action for conduct rule breaches for lower level non SMF/certificated roles, would be beneficial. We would also like to see better guidance on conduct breaches, particularly in relation to non-financial personal conduct.

Q6: To what extent do the specific accountabilities of individual directors established by the Senior Managers Regime work in ways that complement the collective responsibility of the board of directors or decision-making committees? Are there ways this could be improved?

Firms do need to invest a significant amount of time ensuring that they balance committee vs individual decision making to meet the standards of the Senior Manager Regime. However, this element of the regime is useful when it comes to ensuring appropriate individual accountability.

Q7: To what extent do you agree or disagree that the prospect of enforcement promotes individual accountability?

Agree, although greater guidance regarding “reasonable steps” would be useful for all SMF holders.

Q8: How could our approach to enforcement be enhanced to better support the aims of the SM&CR?

Please see response to Q7 above. Greater up-front guidance would help ensure clarity regarding standards.

Q9: To what extent do you agree or disagree that the scope of the SM&CR is appropriate?

Agree.

Q10: Are there actions the regulators could take in respect of the SM&CR that would help enhance competition or international competitiveness?

Greater levels of guidance regarding reasonable adjustments may be helpful here. However, putting this aside, we do not believe that SM&CR is affecting London's competitiveness. Indeed quite a few other jurisdictions are mirroring this approach.

Q11: To what extent do you agree or disagree that the SM&CR is applied proportionately to firms and individuals?

The Core vs Enhanced status approach allows for proportionality, with the following proviso. The enhanced regime captures a huge range of firms within its scope, many of which are very small in comparison with the large banks. We are not sure that this is proportionate and causes a significant administrative burden for these smaller firms, many of which may not have all of the roles to easily fill the required SMFs. We think there could be benefit in reassessing the boundaries and giving consideration to removing smaller firms from the enhanced regime, on the basis of proportionality. In addition, the regime captures a high number of individuals within the certification regime, which is excessive, and we feel this would benefit from being reconsidered and further guidance being issued to support interpretation.

Q12: How could the process for SMF approvals be further improved?

The current length of time for SMF approval from the FCA takes too long. This is sometimes down to case officer turnover, so the regulators may want to look at this aspect of the process. An example of a problem this can cause is when employees are on three-month notice periods. This inevitably leads to firms having to use the 12-week rule to bridge the gap between leavers and joiners.

We think there could be the potential here for a more risk-based approach where some applications meeting certain criteria could be fast-tracked e.g., where an individual is taking on an identical role or is already an SMF and potentially automatically approving Form J's where they relate to changing responsibilities.

Q13: To what extent do you agree that the process for obtaining criminal records and notifying these to the regulators is effective in supporting the aims of the SM&CR?

Agree with this statement regarding the 'fit and proper' assessment process. However, organisations commonly perform criminal record checks as part of onboarding procedures and in the absence of other evidence, we consider a further check unnecessary for existing employees taking up senior management functions.

Q14: To what extent do you agree or disagree that the 12-week rule sufficiently helps firms to manage changes in SMFs?

As alluded to above, the 12-week rule doesn't always work. Perhaps there is a need for a longer period as the FCA decision can take up to 12 weeks. For example, we would like to see a broadening of the 12-week rule to cover foreseen changes and where applications have already been submitted but not yet processed. In addition, for the majority of SMFs, they are working longer notice periods and the handover window can often be challenging to manage and adhere to regulatory timescales.

The timescale for the approval of applications being such, it can cause issues where employees are on three-month notice periods. This inevitably leads firms to use the 12-week rule to bridge the gap between leavers and joiners.

Q15: To what extent do you agree or disagree that the regulators have in place a. an appropriate set of Senior Management Functions to achieve the aims of the SM&CR?

b. an appropriate set of Prescribed Responsibilities to achieve the aims of the SM&CR?

Agree to an extent regarding both Senior Management Functions (SMFs) and Prescribed Responsibilities. But some firms feel these seem somewhat rigid. For example, given that the enhanced regime captures lots of small firms too this can be challenging to allocate them as appropriate.

Q16: To what extent does the Duty of Responsibility support:

a. personal accountability?

b. better conduct of Senior Managers?

We agree that it creates an appropriate level of focus.

Q17: To what extent do you agree or disagree that Statements of Responsibilities and Management Responsibilities Maps help to support individual accountability?

The Statements of Responsibilities are a useful means of allocating and tracking individual accountabilities within the firm. However, it is administratively burdensome, so a review of what is required would be helpful here.

Q18: To what extent do you agree or disagree that the Certification Regime is effective in ensuring that individuals within the regime are fit and proper for their roles?

Greater guidance here on the types of roles that should fall into the Certification regime would be useful e.g., in the form of non-handbook guidance.

Q19: Regarding the Directory of Certified and Assessed Persons, to what extent do you agree or disagree that:

a. it captures the appropriate types of individuals?

b. the requirements for keeping it up to date are appropriate?

We mostly agree we these statements, although the 7-day rule for advising of certificated staff changes is onerous & out of proportion in relation to SMFs reporting periods.

Q20: To what extent do you agree or disagree that regulatory references help firms make better-informed decisions about the fitness and propriety of relevant candidates?

Agree.

Regulatory references are a useful source of information as part of the recruitment process; however, they create some challenges when firms experience delays and non-receipt. This may just be a case of the FCA reminding firms of their obligations. References also create a legal risk concern for firms, especially if they feel obliged to outline details of disciplinary action that has commenced but not concluded because an individual resigned.

Q21: To what extent do you agree or disagree that the Conduct Rules are effective in promoting good conduct across all levels of the firm?

Agree.

Q22: Are there other areas, not already covered in the question above, where you consider changes could be made to improve the SM&CR regime?

The FCA's Guidance can be open to interpretation, which can make it challenging at times to have confidence that firms are doing the right thing. As a result, firms may potentially try to cover all bases and go above and beyond the FCA's expectations, which can increase workloads and cost. Greater guidance in relation to how the rules apply to different types of firms may be beneficial.

Finally, on an administrative point, management of the regime can be time consuming in terms of keeping the responsibilities map and statements up to date. Firms would welcome improvements being made to Connect to improve the system functionality and general user friendliness.

FLA

31 May 2023