

Insights

SMCR UPDATE – WHAT BEST PRACTICE LOOKS LIKE

Sep 10, 2020

SUMMARY

The FCA has recently updated its Senior Managers and Certification Regime (“SMCR”) webpage for FCA solo-regulated firms (<https://www.fca.org.uk/firms/senior-managers-certification-regime/solo-regulated-firms>).

In particular, by reference to a list of positive/negative “indicators”, the FCA has set out further details on its expectations of firms in relation to fit and proper assessments and Conduct Rules training programmes.

Full details of the relevant indicators are set out below.

BCLP comment

This update sets out important (non-handbook) guidance on the FCA’s expectations in relation to SMCR implementation. SMCR implementation is likely to be a key area of supervisory focus for the FCA in the coming years and may result in the FCA visiting firms to assess their level of compliance.

Although the guidance is focussed on FCA solo-regulated firms (who are yet to come fully into scope for the purposes of the regime), in our view the indicators are equally relevant for PRA/FCA dual-regulated firms who may be reviewing their SMCR compliance frameworks. For smaller firms, the FCA accept that they may need to interpret some of the indicators in a proportionate way, but smaller firms should still give thought to the intention behind the indicators.

If firms do not get SMCR implementation right then there is the risk that the FCA may take disciplinary action. Such enforcement action would likely focus on not just the firm, but also on the Senior Managers with the prescribed responsibilities relating to SMCR.

We would suggest that all firms review their processes against these indicators, and make any improvements that may be necessary.

FCA expectations in relation to fitness and propriety

Positive indicators	Negative indicators
F&P checks identify new issues with staff – some staff members fail the checks.	F&P checks identify nothing new; a 'rubber stamp' exercise.
Relevant SMFs actively oversee the F&P process and ensure appropriate reporting.	Relevant SMFs have delegated the F&P process and cannot demonstrate adequate oversight and reporting.
Competence assessment demonstrates that thought has been given to each specific role (including managers).	Competence assessment is perfunctory and/or cannot be evidenced as being objective.
Development plans are put in place as a result of F&P assessments.	No development needs are identified.
Managers are adequately trained in the firm's approach to F&P and understand what is expected of them.	Managers are poorly trained and/or have inadequate guidance as to what is expected of them in terms of F&P.
A detailed F&P process has been introduced and integrated into existing HR/performance management processes (it covers what happens if someone fails F&P).	F&P is considered (without review) to already be covered by pre-existing HR/performance management processes and/or there is no process for dealing with someone who fails F&P.
F&P panels – which include senior managers - are convened to consider marginal cases.	Process for considering marginal F&P cases either does not exist or is rarely convened.
Firm has appropriate criteria and a robust process for identifying certification staff on an ongoing basis.	Identification of certification population is ad hoc and/or a burdensome manual process.
Regulatory references disclose misconduct/relevant concerns and are produced in a timely manner.	Regulatory references fail to provide the necessary information and/or are not available promptly.

FCA expectations in relation to the Conduct Rules

Positive indicators	Negative indicators
Relevant SMF can demonstrate appropriate involvement/oversight of training.	Relevant SMF has limited knowledge of training approach and/or has delegated with limited oversight.
Training is interactive and uses realistic scenarios.	Simple computer-based training only – with little attempt to tailor to role.
Examples/scenarios draw out nuances of how the rules apply to each type of role.	Training only gives obvious examples of breaches – for example, fraud or not attending mandatory training - which do not draw out nuances.
Line managers are involved in training delivery, not just HR or the project team.	Training is delivered by a HR, compliance or the project team with no line management involvement.
Training is reinforced regularly and built into on-boarding.	Training is a one-off exercise and/or not built into on-boarding.
Effectiveness of Conduct Rules training is assessed.	No measures of the effectiveness of Conduct Rules training.
Training is put in the context of the overall regime.	Training is not put in context of the overall regime.
Regime/Conduct Rules are presented as a step change in regulatory expectations.	Regime/Conduct Rules are presented as nothing new, simply 'what we do already'.
Conduct is linked to F&P and performance assessments.	Conduct rule not linked to F&P or performance assessments.

If you need assistance with SMCR policy reviews, or require Conduct Rules training, then please do get in touch.

RELATED PRACTICE AREAS

- Investigations

MEET THE TEAM



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