

# SM&CR Forum. 1 Month to Implementation

## Q&A Summary from the closing panel session prepared by [TISA](#) and [Worksmart](#)



Following on from this successful event, the teams at Worksmart and TISA have collected the questions asked during the closing panel session and prepared outline answers which we hope will be helpful and informative. For more information contact [TISA](#) or visit [www.worksmart.co.uk](http://www.worksmart.co.uk)



**Are activities listed in TC App 1 which are "Overseeing" roles required to be certified?**

Within the categories for Certification, there is a category for those that supervise or manage a Certified Function (either directly or indirectly) and therefore if your employees are effectively overseeing others, then it is likely that they will be caught under this categorisation.

**Could a certified person be fined personally or be banned from the industry (aside from the regulatory reference impact)? Could they potentially be sent to prison? Or in these circumstances would it actually be the firm (and thus the SMF) who were liable, given that they 'approved' the person for their role?**

A certified person whilst not requiring regulatory pre-approval comes under the oversight of the regulator in respect of the newly introduced Conduct Rules. Should they breach these rules, then in theory the FCA could undertake an investigation and choose to ban/fine them directly, however as Certification is identified as an "internal regime" for firms, it is likely that the FCA would expect the firm to choose the punishment. A certified individual cannot be sent to prison under the terms of SM&CR however if they were involved in fraudulent activity, then they could be investigated for this by the police which of course could give rise to criminal charges, however they cannot face criminal charges for breaching SM&CR related rules.

**Does the SMCR require a firm to change its governance structure?**

No, SMCR does not require a firm to change its governance structure, however experience from both the Banking and Insurance Sectors suggest that many firms have made adjustments/improvements as a result of a review undertaken in order to become SMCR compliant.

**Does a contractor fall under SMCR?**

A contractor will be an employee of the firm and therefore is likely to fall under the scope of SMCR especially if undertaking prescribed responsibilities.

**Would a person heading up a HR department based in the UK be an SMF18 or Significant Management Function (certification) where they do not carry on of a regulated activity?**

SMF 18 is the Other Overall Responsibility Function and as such only applies for allocation within Enhanced Firms. This function only applies where a senior manager is the most senior person responsible for an area of the firm's business but they don't perform any other SMF. It is only expected to be used in the largest of firms and many firms won't use this as those people ultimately responsible for everything the business does will already be captured by other SMF's.

**How would the Temporary Cover - 12 week rule apply under SUP 10C?**

The 12 week rule in SUP allows for a firm to appoint an individual to effectively cover an SMF role without having regulatory approval for that role. This can be used for temporary cover that is reasonably unforeseen. At the point at which a firm realises that the individual is likely to need to cover the role for more than 12 weeks, then regulatory approval should be sought for the specific SMF role.

**"What would happen if an individual leaves a firm before an investigation has been concluded and what should the firm include in the regulatory return form question G?"**

In this instance it is up to the firm to decide the level of detail they are prepared to give. Bearing in mind at this point, you would be expected to give factual information and if the person is subject to investigation and it has not been concluded then you are unable to confirm that the person is not fit and proper. The firm must make its best endeavours to identify the organisation that the individual is currently at and share with them the updated reference information. This information should be on file as the firm would have prepared a reference for the individual at the point of request.

**Can the main shareholder in a business not be required to hold a Senior Manager (SM) position if they do not want to make any decisions and have any influence within the day to day running of the firm?**

This is possible, however it depends on the firm and the individual. Those that hold SM Functions are those that are responsible and accountable for the governance and strategic direction of the firm. If the main shareholder in a business is not managing and overseeing the business on a day to day basis then it may not be necessary for them to hold the appropriate function.

**Does it not make sense to include all staff now under the conduct rules rather than wait until 2020?**

Many firms have chosen to train all their staff on the conduct rules prior to 2020 and this is a resourcing decision that is up to the firm to make. This would be considered as best practice especially given that the conduct rules already are part of the Financial Services Markets Act 2000.

**With a CF29, could they be allocated to that of a SMF18? and map over using FCA form K or will it be necessary to submit a new SMF application.**

Under the FCA's Guide to SMCR it does indeed allow for a CF29 function holder to map directly across to either the SMF18 or SMF24 role without the need for a new SMF application (assuming the firm is an enhanced firm). Firms will need to define on their Form K as to which mapping they are looking for. Any firm wanting to move a CF29 into another SMF that is not identified as a direct mapping will need to undertake a new SMF application.

**Can information givers be considered to be certified persons?**

The FCA has given very specific guidance on this point as a result of concerns raised in consultation. Detailed guidance can be found via the following link <https://www.fca.org.uk/firms/senior-managers-certification-regime/client-dealing-function> and by visiting SYSC 27.8.19 where there is a table entitled "Activities covered by the client-dealing FCA certification function"

**Where a firm currently has a body corporate as a Director and this will map over to the SM&CR, what are the requirements for accountability, training etc? Would the individuals who own/run the body corporate be required to be registered as SMFs?**

It is possible to register a body corporate as a Director and this is a feature of the current Approved Persons Regime. This will be no different under SMCR. It will be a nominated individual within the firm that will hold the relevant SMF and they will need to be appropriately trained and oversighted in the role no different to an SM within the main firm.

**Can you give a feel for where you've seen the CF10a role land in terms of either becoming a standalone SMF Role, or Certified Role?**

In the FCA's guide for solo regulated firms it identifies that a current CF10a will fall into certification and that the CASS Operational Oversight Certification Function covers oversight of the operational effectiveness of a firm's systems and controls for client money and assets and is expected to sit within the Certification Regime. There is of course a Prescribed Responsibility for CASS that will need to be allocated to one of your Senior Managers, but it is not necessarily expected that the SM that holds the PR will be involved in the operational effectiveness of the controls at a granular level

**In a BAU situation, how regularly do changes have to be communicated to the regulator? Does it differ for SMs and CPs?"**

This is dependent on whether the firm is Core or Enhanced. An Enhanced Firm has to re-submit their MRM to the FCA (and any associated changing SOR's) each time there is a significant change within the governance arrangements of the business. For example a new SM or movement of PR's and Accountabilities. The rules have not changed with regards to regulatory notifications around competence and capability of Senior Managers under this regime. With regards to Certification, this is an internal regime and there are no reporting requirements for the FCA.

**Does anyone that joins after 9<sup>th</sup> December (certification population) have to be immediately certified upon joining? Or in December 2020 along with our existing employees?**

Individuals joining a firm after 9<sup>th</sup> Dec 2019 and going into a Certified role will need to meet the same time period for certification as other staff already employed when SMCR comes into being (9<sup>th</sup> Dec 2020), however an individual joining after 9<sup>th</sup> Dec 2019 would need to have the regulatory referencing rules applied to them as required under SMCR.

**How do you handle new staff into a Certified Role who are still obtaining "role competence", do you certify them temporarily subject to training plan and supervision or is this not permitted?**

Individuals within Certification can be certified for up to a year. Shorter term and interim certification can be applied at the discretion of the firm. As an individual cannot perform a role without a valid certificate to act, then it is likely that as part of the induction sign off process, firms will initially certify individuals for a short period of time while they achieve full role competence and are being overseen with tighter supervisory control.

