

Claims management companies: how we propose to apply the Senior Managers and Certification Regime

Consultation Paper

CP18/26***

September 2018



How to respond

We are asking for comments on this Consultation Paper (CP) by 6 December 2018.

You can send them to us using the form on our website at: www.fca.org.uk/cp18-26-response-form.

Or in writing to:

Governance & Professionalism Policy
Strategy & Competition
Financial Conduct Authority
12 Endeavour Square
Stratford
London E20 1JN

Email:

cp18-26@fca.org.uk

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1 Summary

Why we are consulting

- 1.1** We will regulate claims management companies (CMCs) from April 2019. All firms regulated by the FCA and authorised under the Financial Services and Markets Act 2000 (FSMA), along with individuals performing regulated activities, need to comply with our rules on professionalism, conduct and governance. We call these rules the Senior Managers and Certification Regime (SM&CR)¹.
- 1.2** An independent review into CMCs found evidence of harm to customers, including harassment, aggressive sales tactics and business practices that reward the firm at the expense of its customers². It also highlighted issues with the fitness and propriety of senior managers within CMCs. Our proposals aim to reduce misconduct in CMCs, by raising standards of governance, management and professionalism in the claims management sector. They will make individuals accountable for their actions and decisions.
- 1.3** This Consultation Paper (CP) sets out the draft rules and guidance for CMCs relating to the SM&CR. The proposed rules would apply to CMCs serving customers in, or constituted under the laws of, England and Wales or Scotland.

Who this applies to

- 1.4** Who needs to read this document:
- CMCs serving customers in, or constituted under the laws of England and Wales or Scotland, including those who deal with Section 75 claims under the Consumer Credit Act 1974 (CCA)³
 - organisations affected by CMCs, such as those that use CMCs to generate leads
 - trade bodies representing CMCs, or trade bodies representing firms that receive claims about their products/services from CMCs
 - bodies representing customers' interests
 - other bodies currently involved in regulating businesses that provide claims management services, for example, the Information Commissioner's Office (ICO)

1 We are extending the SM&CR to all FCA authorised firms. These rules came into force for some firms in 2016 and replaced the old rules, called the Approved Person Regime. By 9 December 2019, all FCA authorised firms will be subject to the SM&CR.

2 [Independent review of claims management regulation](#), March 2016.

3 Under section 75 of the Consumer Credit Act 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the retailer or trader.



1.5 Who else might be interested in this document:

- customers who use, or are considering using, firms that provide claims management services

The wider context of this consultation

1.6 The Financial Guidance and Claims Act 2018 (FGCA) transfers the regulation of CMCs to the FCA from the existing Claims Management Regulator (CMR)⁴. It will also extend regulation to Scotland and includes CMCs dealing with section 75 claims. We consulted on how we propose to regulate CMCs in CP18/15, published in June 2018. We outlined high-level standards and rules relating to conduct of business, supervision, reporting, prudential management, wind-down procedures, client money, dispute resolution and enforcement. We did not include detailed proposals relating to the SM&CR in CP18/15, because we had not published the near-final SM&CR rules that will apply to firms regulated solely by the FCA⁵. Near-final rules for these firms were published in July 2018 (PS18/14).

1.7 The SM&CR was created following the financial crisis, when the Parliamentary Commission on Banking Standards recommended that we develop a new accountability system that was more focused on senior managers and individual responsibility. We applied this to banks, building societies, credit unions and Prudential Regulation Authority (PRA) designated investment firms from March 2016. It will apply to insurers on 10 December 2018 and all FCA-authorized firms on 9 December 2019⁶.

1.8 The SM&CR replaces the Approved Persons Regime (APR), which is how we have previously regulated people working in financial services⁷.

What we want to change

1.9 There is evidence of misconduct among some firms in the CMC sector, which is harming customers⁸. This includes harassment and aggressive sales tactics.

1.10 There is evidence that some CMCs have poor governance arrangements and do not have competent staff who understand the regulation the CMC is subject to⁸. For these firms, it is more difficult for them to provide an appropriate service to their customers because the systems and controls required to effectively support this are not in place.

4 The Claims Management Regulator is part of the Ministry of Justice.

5 Banks, building societies, credit unions, insurers and major investment firms are regulated by the Prudential Regulation Authority (PRA), as well as the FCA. These firms are referred to as "dual regulated" firms. Firms that are regulated by the FCA, but not the PRA, are known as "solo regulated" firms.

6 The Government amended the Financial Services and Markets Act 2000 (FSMA) through the Bank of England and Financial Services Act 2016. We consulted on the extension in CP17/25 and CP17/40. We issued the near-final rules in PS18/14. Insurers were subject to some of the SM&CR rules through the Senior Insurance Managers Regime (SIMR). The SIMR will be replaced by the SM&CR from 10 December 2018.

7 Appointed Representatives will remain subject to the Approved Persons Regime and are not affected by the change.

8 This was highlighted in the Brady Review, the Citizens Advice's Review of claims management regulation and the Legal Ombudsman's (LeO) annual reports.

1.11 Although the CMR can ban sole traders, they do not authorise key role holders before they start their role. This means that individuals who are not fit and proper to lead a CMC may close down one CMC and move to another, without fulfilling their obligations to customers. If a director does this, eg by taking over an existing authorised CMC, it is known as 'phoenixing'. The CMR reported 30 possible examples of phoenixing between 2015 and 2016.

1.12 The SM&CR aims to reduce harm to consumers and strengthen the integrity of the claims management market, by creating a system that enables regulators, and encourages firms, to hold individuals to account. The regime seeks to:

- encourage staff to take personal responsibility for their actions
- improve conduct at all levels
- make sure firms and staff clearly understand and can demonstrate who does what

Senior Managers Regime

1.13 We propose making a small number of senior roles within CMCs Senior Management Functions (SMFs). People doing these jobs will need to be approved by us and maintain a document that says what they are responsible and accountable for (a 'Statement of Responsibilities').

1.14 Senior Managers will have a 'Duty of Responsibility' – which means that, if something goes wrong in an area that they are responsible for, we will consider whether they took 'reasonable steps' to stop this from happening. We give further details in Chapter 4 and in our guidance on the Duty of Responsibility, published in PS17/9.

1.15 The SMFs that apply to CMCs will depend on whether a CMC is a 'Class 1' CMC, 'Class 2' CMC or other firm that is not a Class 1 CMC (such as a lead generator)⁹.

Certification Regime

1.16 For individuals who aren't Senior Managers in CMCs, but who could have a significant impact on customers or the firm, we propose applying the Certification Regime. We give further details on these requirements in Chapter 5.

Fit & Proper Requirements

1.17 At least once a year, CMCs will need to make sure that the individuals performing Senior Management Functions and Certification Functions are 'fit and proper' to do their jobs. We give further details in Chapter 6.

Conduct Rules

1.18 We propose to introduce standards for the conduct of nearly everyone who works in a CMC. These are basic rules that will apply to almost every person who works in a firm regulated by the FCA. The Conduct Rules are about improving the behaviour of all staff. We give further details about these requirements in Chapter 7.

⁹ In CP18/15, we proposed classifying CMCs with annual total income of £1 million or above as 'Class 1' CMCs. All other CMCs would be Class 2. We explained the details of this distinction in CP18/15.



Measuring success

- 1.19** The SM&CR will create a step-change in standards relating to individual accountability and governance. The intended outcomes of the SM&CR are that:
- the most senior people know what they are responsible for
 - there is a focus on skills, capability and conduct within the firm – and a commitment to ensuring staff are fit and proper to carry out their roles
 - the Conduct Rules set a basic foundation for how individuals behave
 - there is a sense of accountability throughout the firm – individuals speak out when they see harm or potential harm
 - improved systems and controls mean that the FCA can easily assess the suitability of senior management

Next steps

- 1.20** We want to know what you think of our proposals. Please send us your responses to the consultation questions in this paper by 6 December 2018. Use the online response form on our website, email us at cp18-26@fca.org.uk or by writing to us at:

Governance & Professionalism Policy
Strategy & Competition
Financial Conduct Authority
12 Endeavour Square
Stratford
London E20 1JN

- 1.21** We will review all responses and publish our feedback, including the final text of the rules proposed in this consultation, in a Policy Statement, which we will publish in Q1 2019.

2 The wider context

The harm we are trying to reduce/prevent

- 2.1** Many CMCs help to secure redress for customers, including those who might otherwise not have made a claim. Our Financial Lives survey indicates that 67% of customers who used a CMC over the last 3 years to make a financial services claim wouldn't have done so without using a CMC¹⁰.
- 2.2** But a number of harms in the sector have been identified. These come from various sources, including an independent review commissioned by the Ministry of Justice (the Brady report), complaints data on the sector, our own Financial Lives survey and consumer body reports including from Citizens Advice¹¹.
- 2.3** The key harms the SM&CR aims to stop happening are:
- **distress caused by poor service and delays** – some customers have received poor service from CMCs, including poor communication, poor record keeping and issues caused by staff who don't have the necessary training or competence
 - **customers locked in to services that are unsuitable or priced unfairly** – some CMCs have business models or practices that reward the CMC at the expense of the customer. This includes unfair fees, a lack of care taken to explain their services or the availability of alternative services, which are often free. We expect all firms to consider customers' interests and treat them fairly
 - **harassment and aggressive sales practices** – despite previous efforts to reform practices, CMCs continue to bombard customers with unwanted calls and text messages¹². To customers, especially vulnerable customers, these marketing, selling and cold calling practices can constitute harassment and intimidation

How it links to our objectives

Consumer protection

- 2.4** Our proposals should strengthen protections for customers who use CMCs. They aim to ensure that customers can access redress, but are not harassed or intimidated. They will ensure that individuals working in CMCs are personally responsible for considering their customers' interests and for treating them fairly. Also, by strengthening governance and competence within the sector, customers can have greater assurance that the firms they are dealing with are managed well.

¹⁰ www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults.

¹¹ See the Brady report, the FCA's Financial Lives, the Legal Ombudsman's (LeO) annual reports and reviews conducted by the CMR.

¹² The CMR has issued fines and bans against firms in violation of Client Specific Rule 3 – A business must not engage in high pressure selling. Evidence has also been drawn from consumer body reports, including from the Citizens Advice Bureau and ICO complaints data. Our Financial Lives survey found that 69% of the UK adult population (or around 36 million people) have between them in the last 12 months received approximately 2.7 billion unsolicited calls, texts or emails from CMCs.



Wider effects of this consultation

Unintended consequences of our intervention

- 2.5** Some firms and individuals may consider higher standards of governance and conduct too burdensome or costly for them to operate. As a result, the number of firms operating in the claims management sector may decrease, either because they withdraw voluntarily or we refuse them permission.
- 2.6** A reduced number of players in the market could make it more difficult for customers to identify an appropriate CMC for their claim. But we do not consider a lack of services to be a likely outcome.

What we are doing

- 2.7** All CMCs will need to follow certain rules. We set out these rules in the FCA Handbook¹³. The following chapters describe which rules within the SM&CR we propose applying to CMCs.
- 2.8** We recognise that these changes mean additional costs for CMCs. But, overall, we believe these changes will benefit customers by improving the quality of services CMCs provide and increasing customer confidence. So we think that the costs of our proposed rules are proportionate to these benefits. Over time, the changes should bring a greater level of professionalism to the CMC market and enhance the sector's reputation.

Equality and diversity considerations

- 2.9** We have considered the equality and diversity issues that may arise from our proposals. We provide our Equality Impact Assessment (EIA) in Annex 4. This assesses the impact of our proposals on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation).
- 2.10** Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 2.11** We welcome any views on our EIA.

3 Firm tiers

3.1 This chapter sets out how we propose to apply the SM&CR to CMCs.

Overview of the SM&CR

3.2 For firms regulated only by the FCA, a firm can fall into one of 3 tiers when applying the SM&CR: Limited Scope, Core or Enhanced.

3.3 There are different tiers because we regulate many different types and sizes of authorised firms. Some authorised firms are large asset managers and operate globally, while others are sole traders. The SM&CR is proportionate and flexible enough to accommodate the different business models and governance structures of firms. Our aim is for the regime to be simple for firms to understand and implement, and for us to regulate.

3.4 The requirements relating to the Senior Managers Regime differ depending on whether a firm is a Limited Scope, Core or Enhanced firm. While the Senior Managers Regime differs, nearly all firms have to apply the Certification Regime and the Conduct Rules in the same way.

Firm types under the SM&CR

Firm type	Description
Limited Scope Firm	<p>Firms that are subject to fewer requirements than Core firms. This covers all firms that currently have a limited application of the Approved Persons Regime (APR), including:</p> <ul style="list-style-type: none"> • limited permission consumer credit firms • all sole traders • authorised professional firms whose only regulated activities are non-mainstream regulated activities • oil market participants • service companies • energy market participants • subsidiaries of local authorities or registered social landlords • insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts
Core Firm	Firms that will have a baseline of SM&CR requirements applied
Enhanced Firm	A small number (fewer than 1%) of solo-regulated firms, whose size, complexity and potential impact on consumers warrant more attention



Categories of CMC

3.5 In CP18/15, we proposed classifying CMCs into two groups based on their annual reported turnover in the year ending on its accounting reference date¹⁴:

- Class 1 CMC – a CMC with annual total income of £1 million or above, and
- Class 2 CMC – a CMC with annual total income below £1 million

Our proposals

3.6 We are proposing to treat CMCs that do not carry on any other type of FCA-regulated activity as Limited Scope Firms (firms that are subject to fewer requirements than other firms in scope of the SM&CR)¹⁵. This means that the SM&CR will apply to these firms in the following way:

- **the Senior Managers Regime** – every CMC (except sole traders with no senior managers or staff coming within the certification regime) must have someone performing the 'Limited Scope Function'. This person will be a Senior Manager, who must be approved by us, as 'fit and proper' to do their job and will be responsible for assigning responsibilities under SYSC 4.4.3 R and establishing and maintaining controls under SYSC 4.1.1 R. Class 1 CMCs will also need to have a Compliance Oversight Function, who will also be a Senior Manager. These proposals are set out in Chapters 4 and 6
- **the Certification Regime** – this means that the firm must make sure that anyone who could have a significant impact on customers or the firm, is fit and proper to do their job. This is set out in Chapters 5 and 6
- **the Conduct Rules** – high-level standards of behaviour that will apply to almost all employees. Additional Conduct Rules only apply to Senior Managers. These proposals are set out in Chapter 7

3.7 CMCs that are constituted in Northern Ireland and not serving customers in Great Britain will be outside our regulatory remit¹⁶. We explain how this impacts our proposals in Chapters 4, 5 and 7.

14 CMCOB 7.2.5 R (2) states that 'A firm which carries on no regulated claims management activities other than seeking out, referrals and identification of claims is neither a Class 1 firm nor a Class 2 firm, and its prudential resources requirement is specified in CMCOB 7.2.10R'. Under the draft rules in CP18/15, lead generators will be subject to the same requirements as Class 2 firms for the SM&CR – see the amendments in the draft instrument to SUP 10C Annex 1 7.1 R (9).

15 CMCs that have other regulatory permissions should refer to PS18/14 and [The Senior Managers & Certification Regime: Guide for FCA solo-regulated firms](#) to determine their firm's classification. Firms with multiple regulatory permissions will need to comply with all relevant rules.

16 In accordance with proposed secondary legislation governing CMCs, we expect that our regulatory remit for CMCs will be limited to firms that are either constituted in Great Britain, or in the case of an individual, ordinarily resident there. It will also extend to CMCs that are dealing with claimants or potential claimants in Great Britain.

CMCs with other regulatory permissions

- 3.8** Some CMCs are already regulated by the FCA, because they are authorised to perform other regulated activities. If your firm's permissions place it in a different tier of the SM&CR (ie Core, Enhanced, insurance or banking SM&CR firm), then your firm will continue to be subject to the rules of that tier (ie it will be subject to the higher standard). These rules are outlined in PS18/14 (for solo regulated firms), PS18/15 (for insurers) and PS16/5 (for banks).
- 3.9** It is possible that, once claims management becomes a regulated activity, a firm authorised to perform other regulated activities, which would otherwise have been classified as a Limited Scope SM&CR firm, may now be subject to the higher standards of Core SM&CR firms. This is unlikely to affect many firms, particularly as our draft rules state that insurance intermediaries and limited permission consumer credit firms would continue to be classed as Limited Scope.

Q1: Do you agree with our proposed approach to classifying CMCs when applying the SM&CR? If not, please explain why.

Applying the SM&CR to groups

- 3.10** We are required by FSMA to apply the SM&CR at a legal entity level, but some CMCs may be part of a group corporate structure. Some groups may contain firms in different tiers of the SM&CR regime.
- 3.11** If a group wishes to apply consistent SM&CR arrangements to some or all of their legal entities, our rules allow Limited Scope SM&CR firms to opt-up and agree to be subject to the rules for Core or Enhanced firms. These are higher tiers of the regime and firms would need to abide by the extra rules. There is no expectation or requirement for firms to do this.
- 3.12** We propose allowing CMCs to opt-up into the Core or Enhanced tier of the SM&CR. This is consistent with other firms solely regulated by the FCA.

Q2: Do you agree with our proposal to allow firms to 'opt-up' to the Core or Enhanced tier? If not, please explain why.



4 Senior Managers Regime

Overview of the SMR

- 4.1** This chapter sets out our proposals for how the Senior Managers Regime (SMR) will apply to CMCs. It covers:
- who will be a Senior Manager
 - what firms and staff will need to do under the SMR
- 4.2** The FCA makes some senior roles 'Senior Management Functions'. This means that the people doing these jobs need approval from us before they can start their job. Once approved, firms need to make sure, at least once a year, that their Senior Managers are 'fit and proper' to do their jobs. We describe our rules around fitness and propriety in Chapter 6.

Who will be a Senior Manager

- 4.3** We propose the following Senior Management Functions for CMCs that do not carry out other regulated activities:
- Limited Scope Function – the holder of this function is responsible for ensuring that significant business responsibilities are clearly and appropriately divided among the directors and senior managers of the firm and overseeing the putting in place and maintenance of systems and controls
 - Compliance Oversight Function – the holder of this function is responsible for overseeing the firm's regulatory compliance and for reporting to the governing body. We propose that the largest CMCs, Class 1 CMCs, will need to appoint a separate Senior Manager into a Compliance Oversight Function. We think this is appropriate to reflect the complexity and risks posed by these larger firms
- 4.4** In line with our approach for all other Limited Scope firms, we propose that CMCs will not need to allocate 'Prescribed Responsibilities' to their Senior Managers. These are specific responsibilities we have defined in our Handbook and which Core and Enhanced SM&CR firms must give to appropriate Senior Managers.
- 4.5** If a firm is not carrying on claims management activity in Great Britain, as defined by the Regulated Activities Order, the Senior Managers Regime would not apply¹⁷.

¹⁷ In accordance with proposed secondary legislation governing CMCs, we expect that our regulatory remit for CMCs will be limited to firms that are either constituted in Great Britain, or in the case of an individual, ordinarily resident there. It will also extend to CMCs that are dealing with claimants or potential claimants in Great Britain.

Sole traders

- 4.6** Sole traders may not need to be approved as a Senior Manager for the Limited Scope Function if they have no senior managers or Certified staff. If they are categorised as a Class 1 firm, however, they will need to have an individual approved as an SMF16 – Compliance Oversight.

Q3: Do you agree with our proposed Senior Management Functions for CMCs? If not, please explain why.

What CMCs and Senior Managers need to do

- 4.7** If a person will be performing a Senior Management Function, the CMC will need to:
- satisfy themselves that the candidate is suitable, or 'fit and proper', to carry out that Senior Management Function (see Chapter 6)
 - apply for that individual to be approved by the FCA, and receive the FCA's approval, before they take up their role
 - send us a Statement of Responsibilities as part of the application. This is a single document that clearly sets out the Senior Manager's role and what they are responsible for. This is required under FSMA.

Statement of Responsibilities

A document that every Senior Manager needs to have that sets out what they are responsible and accountable for. This needs to be updated and submitted to us when a Senior Manager is being approved and when there is a significant change in their Senior Management Function responsibilities.

- 4.8** After a Senior Manager has been approved, the CMC will need to:
- update and resubmit Statements of Responsibilities to us whenever there is a significant change to a Senior Manager's responsibilities
 - assess that all their Senior Managers are fit and proper to carry out their job at least once a year
- 4.9** Anyone who is a Senior Manager will have a 'Duty of Responsibility'. This means that if a firm breaches our rules, the Senior Manager responsible for that area could be held accountable through enforcement action if they did not take 'reasonable steps' to prevent the breach or stop it from continuing. The burden of proof lies 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 or continuing. Senior Managers should understand what this means in the context of their job. We provide guidance on the Duty of Responsibility in PS17/19.



- 4.10** Senior Managers must ensure that their Statements of Responsibilities are accurate and up to date.

- 4.11** There are Conduct Rules that will apply to Senior Managers. We explain these below. Senior Managers will need to understand and comply with all the Conduct Rules that apply to them (see Chapter 7).

5 Certification Regime

5.1 This chapter sets out our proposals for how the Certification Regime will apply to CMCs. In particular, it sets out:

- who will be in the Certification Regime
- what firms need to do under the Certification Regime

Overview

5.2 The Certification Regime applies to people who perform certain roles – these are known as Certification Functions. They are involved in aspects of a firm's affairs that involve, or might involve, a risk of significant harm to the firm or any of its customers.

5.3 We set out which roles are Certification Functions in our Handbook. These include:

- Significant Management Function – this applies to someone with 'significant responsibility for a significant business unit' (ie people below Senior Managers, who are responsible for business units that – because of their size, nature or impact – are considered 'significant' by the firm)
- anyone who supervises or manages a Certified Function (directly or indirectly), but isn't a Senior Manager
- roles that need a qualification (as set out in our Training and Competence Sourcebook)
- Client Assets Sourcebook (CASS) oversight function – if a CMC is a CASS firm, the responsibility to oversee the firm's compliance with CASS will be a Certification Function

5.4 The roles above are likely to be most relevant to CMCs, but there are other Certification Functions. These are detailed in SYSC 5.2 of our Handbook¹⁸.

5.5 The current rules for the SM&CR apply a territorial limitation. For firms in the UK, the Certification Regime is limited to people performing a Certification Function who are either based in the UK or, if based outside the UK, are dealing (including having contact with) with UK clients. This means that if a person based overseas does not deal with UK clients, but would otherwise have been carrying out one of the functions listed, the Certification Regime won't apply to them.

¹⁸ In our near-final rules published in PS18/14 and PS18/15, these functions are detailed in SYSC 27.



- 5.6** If a firm is not carrying on claims management activity in Great Britain, as defined by the Regulated Activities Order, the Certification Regime would not apply¹⁹.

What firms need to do under the Certification Regime

- 5.7** Firms will need to:
- identify employees who perform a Certification Function
 - assess whether those employees are fit and proper to perform their role – at the point of recruitment (or before a person performs a Certification Function) and on an ongoing basis, at least annually (we discuss the fit and proper assessment in more detail in the Chapter 6)²⁰.
 - only issue a certificate to the employee if the firm is satisfied that they are fit and proper to perform that Certification Function
 - not allow an employee to perform a Certification Function if the firm has not issued them with a certificate

Read more about how to assess someone as fit and proper in Chapter 6

- 5.8** The certificate needs to:
- set out which Certification Function(s) the individual is performing
 - state that the firm is satisfied that the person is a fit and proper person to perform the function the certificate relates to
- 5.9** If the firm completes a fit and proper assessment and then decides not to issue a certificate to someone, the firm must give the person a notice in writing. This should set out:
- what steps (if any) the firm proposes to take in relation to the person because of the decision
 - the reasons for proposing these steps

Q4: Do you agree with our proposed approach to applying the Certification Regime? If not, please explain why.

¹⁹ In accordance with proposed secondary legislation governing CMCs, we expect that our regulatory remit for CMCs will be limited to firms that are either constituted in Great Britain, or in the case of an individual, ordinarily resident there. It will also extend to CMCs that are dealing with claimants or potential claimants in Great Britain. CMCs that are constituted in Northern Ireland and not serving customers in Great Britain will be outside our regulatory remit.

²⁰ Firms only need to certify someone if there is someone performing that role. In practice, very small firms may not have anyone in the Certification Regime. If a sole trader has no employees, then the Certification Regime won't apply to them.

- 5.10** In CP18/19, we consulted on proposals to introduce the Directory – a new public register and user interface. The Directory would make information publicly available on a wider range of individuals than would appear on the Financial Services Register following the extension of the SM&CR to insurers and solo-regulated FSMA firms. This would include all Certification staff and certain other individuals such as directors who are not Senior Managers. This would make public certain high-level information on individuals, including their name, role, start and end dates of each role, the types of business the individual is qualified to undertake (if requiring qualification), details of any regulatory sanctions, and their workplace location if holding a customer-facing role.
- 5.11** We propose that CMCs are subject to the same requirements relating to the Directory as other firms subject to the SM&CR. We set out full details of our proposals for firms and individuals in scope of the Directory in CP18/19.

Q5: Do you agree that CMCs should be included within scope of the Directory? If not, please explain why.



6 Fit and proper requirements

6.1 This chapter explains how CMCs should assess whether the following staff are fit and proper to do their job:

- Senior Managers
- Certification staff

6.2 In particular, it summarises the fit and proper test and the evidence we expect firms to gather when making their assessment.

6.3 A key feature of the SM&CR is to ensure that firms take responsibility for their staff being 'fit and proper' to do their jobs. Firms need to ensure that anyone performing a Senior Management Function or a Certification function is fit and proper to do so. Firms will need to assess people in these roles on an ongoing basis, and at least once a year.

6.4 When making these 'fit and proper' assessments, firms must have regard to any general rules that we have about the qualifications, training, competence and personal characteristics required of an individual for that role.

6.5 Guidance in our Handbook sets out the factors that firms should look at when assessing people as fit and proper²¹. This includes factors like a person's honesty, integrity and reputation; their competence and capability; and their financial soundness.

Criminal records checks

6.6 As part of the fit and proper requirements under the SM&CR, we propose requiring CMCs to collect certain evidence when assessing candidates for Senior Management Functions. All SM&CR firms are subject to these requirements.

6.7 We propose requiring firms to undertake a criminal record check as part of each Senior Manager's application for approval. The Disclosure and Barring Service (DBS), and the equivalent agency in Scotland run these criminal record checks. Firms will have to register with the DBS. Smaller firms may need to use an umbrella organisation as an intermediary.

6.8 We also propose that, where a candidate has spent a considerable amount of time working or living outside Great Britain firms should consider undertaking an equivalent check with the appropriate overseas regulatory body where available²².

21 'FIT' – The Fit and Proper test for Approved Persons and specified significant-harm functions
<https://www.handbook.fca.org.uk/handbook/FIT.pdf>

22 In accordance with proposed secondary legislation governing CMCs, we expect that CMCs that are constituted in Northern Ireland and not serving customers in Great Britain will be outside our regulatory remit.

- 6.9** We do not propose requiring CMCs to undertake criminal record checks for Certification Functions, but CMCs may choose to conduct these checks for other staff where they are legally allowed to do so – this is for CMCs to decide.

Regulatory references for Senior Managers and Certification Functions

- 6.10** We propose to require firms to request a reference from Senior Management and Certification Function candidates' past employers – known as Regulatory References.
- 6.11** These references will help firms to make better informed decisions about candidates. The proposed new rules require CMCs to:
- request a reference from all previous employers in the past six years for people applying for Senior Manager and Certification roles
 - share information between firms in a standard template
 - disclose certain information going back six years, including details of any disciplinary action taken due to breaches of the Conduct Rules and any findings that the person was not fit and proper
 - disclose any other information relevant to assessing whether a candidate is fit and proper, such as the number of complaints which have been upheld (this information must cover the previous 6 years – unless it relates to serious misconduct, which has no time limit). Firms will need to use their judgement when considering what is relevant, on a case-by-case basis
 - retain records of disciplinary and fit and proper findings going back six years, as described in our Senior Management Arrangements, Systems and Controls sourcebook, SYSC 22
 - not enter into arrangements that conflict with their disclosure obligations, such as non-disclosure agreements
- 6.12** CMCs will also need to update their regulatory references where new, significant information comes to light.
- 6.13** A CMC's compliance with the regulatory referencing requirements will also need to be consistent with its common law duties and other relevant legislation, such as those about data protection and the rehabilitation of offenders and spent convictions.
- 6.14** These proposed rules are consistent with those applied to all FCA-authorized firms.

Q6: Do you agree with our proposed fit and proper requirements, including criminal record checks and regulatory references? If not, please explain why.



7 Conduct Rules

7.1 This Chapter sets out a summary of the Conduct Rules, and who they apply to. This also describes the training and notification requirements linked to the Conduct Rules.

7.2 As part of the SM&CR, we propose applying Conduct Rules to a broad range of staff. This is aimed at driving up standards of individual behaviour and improving individual accountability and awareness of conduct issues across firms. The table below sets out the key conduct rules that would apply. The second tier applies to Senior Managers in addition to the first tier.

First Tier – Individual Conduct Rules	
1.	You must act with integrity
2.	You must act with due care, skill and diligence
3.	You must be open and cooperative with the FCA, the PRA and other regulators
4.	You must pay due regard to the interests of customers and treat them fairly
5.	You must observe proper standards of market conduct
Second Tier – Senior Manager Conduct Rules	
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

7.3 We propose to apply the Conduct Rules to regulated activities and some unregulated activities. For most CMCs, this means anyone involved in or supporting claims management activities.

7.4 We propose to apply the Conduct Rules to:

- all Senior Managers
- all Certified individuals
- all Directors, who are not Senior Managers (as well as the individual Conduct Rules in the previous table, we also propose to apply SC4 – the Senior Manager Conduct Rule to 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice' – to Non-Executive Directors) and
- all other employees, except ancillary staff (ie people who don't perform a role specific to financial services, who are listed below)

- 7.5** Our rules set out an exhaustive list of roles to which the Conduct Rules will not apply. It includes roles such as receptionists, switchboard operators, post room staff, reprographics or print room staff, security guards, vending machine staff, drivers, cleaners, and catering staff.
- 7.6** We have proposed applying the Conduct Rules to most employees working in CMCs that are constituted in in England, Wales and Scotland. This is because our statutory objectives, particularly protecting customers and potentially market integrity, can potentially be affected by a broad range of staff.
- 7.7** It is a legal requirement, under FSMA, for firms to make individuals who are subject to the Conduct Rules aware that this is the case, and train them in how the rules apply to them.

Conduct Rule breach reporting

- 7.8** CMCs will be legally required to notify us when disciplinary action has been taken against a person for a Conduct Rules breach.
- 7.9** Disciplinary action means:
- issuing of a formal written warning
 - suspension or dismissal of a person, or
 - reduction or recovery of remuneration (clawback)
- 7.10** We propose to require CMCs to report Conduct Rule breaches within the following timeframes:
- for Senior Managers, within 7 business days of concluding disciplinary action, using Form D (or Form C where the individual will no longer be approved)
 - for other individuals, every year using REP008 on our electronic reporting system, GABRIEL, in line with the CMC's reporting year, alongside their annual return
- 7.11** A CMC will need to make an annual notification about Conduct Rules breaches, even if there haven't been any breaches. This is to make sure CMCs correctly monitor and identify Conduct Rule breaches.
- 7.12** These are in addition to the obligations that will apply to CMCs to report concerns about an individual's conduct under other rules and principles. This includes for example, FCA Principle 11, which requires a firm to deal with us in an open and cooperative way, including appropriate disclosure to us of anything relating to the firm of which we would reasonably expect to know.

Q7: Do you agree with our proposed approach to applying the Conduct Rules to CMCs? If not, please explain why.



8 Transitional arrangements

8.1 This Chapter describes how and when CMCs will become subject to the SM&CR.

Overview of when CMCs will be authorised by the FCA

8.2 As described in CP18/15, all CMCs that are currently regulated by the CMR and those which will be regulated for the first time by the FCA will be entitled to obtain a temporary permission. They will need to do this before 1 April 2019, by submitting their details to us on the form we will make available and by paying any relevant fee.

8.3 After 1 April 2019, all CMCs will need to apply for re-authorisation. There will be two application periods and each CMC will be allocated to one of these application periods. They will either need to submit their application for authorisation during that period or, failing that, cease to carry out regulated activities altogether.

8.4 New CMCs entering the market after 1 April 2019 will also need authorisation: they will not be entitled to a temporary permission and will need to apply to the FCA for authorisation.

Changes to the way the FCA authorises individuals

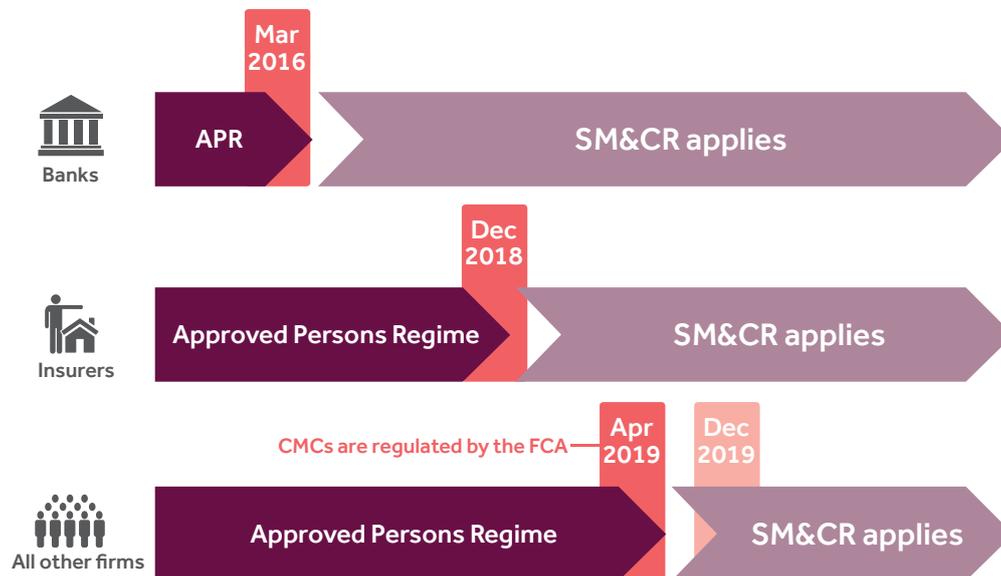
8.5 In addition to firm authorisation, we require some individuals to be approved by us before they start their role. For firms subject to the SM&CR, this means they have to apply for anyone performing Senior Management Functions to be approved. For firms subject to the Approved Persons Regime (APR), this means they have to apply for anyone performing a Controlled Function to be approved. Examples of controlled functions include:

- customer functions
- being a director of a regulated firm
- overseeing the firm's systems and controls
- being responsible for compliance with our rules

8.6 As described in Chapter 1, most firms already regulated by the FCA are still subject to APR, but will be regulated under the SM&CR from 9 December 2019²³. This is when the rules for 'solo regulated firms' (ie firms that are not jointly regulated by the PRA) take effect. As CMCs will be solo regulated, the SM&CR rules will also apply to them from 9 December 2019.

²³ This excludes Appointed Representatives, which will continue to be subject to the Approved Persons Regime.

Figure 1: SM&CR commencement dates for different firm types



Commencing approvals for individuals

- 8.7** Although we will begin authorising CMCs as firms from April 2019, we propose that we will not begin authorising individuals in these CMCs until the SM&CR begins for solo regulated firms on 9 December 2019. This is because we think it is disproportionate to require these CMCs to implement the Approved Persons Regime for a short period of time, before transitioning to the SM&CR.
- 8.8** We think it is more beneficial that CMCs are provided with more time to understand the SM&CR and what they need to do. This means they can be assured they have taken the appropriate action and will not be in breach of our rules. We would retain the power to prohibit individuals who are not fit and proper from the industry.
- 8.9** If possible, we plan to give firms the option to submit all application forms at the same time (ie the application forms for the firm to be authorised, plus the application forms for individuals to be authorised as Senior Managers). This would allow firms to use one application window, unless something changes (for example, the individual who applied to be a Senior Manager left and they must apply for a different individual).

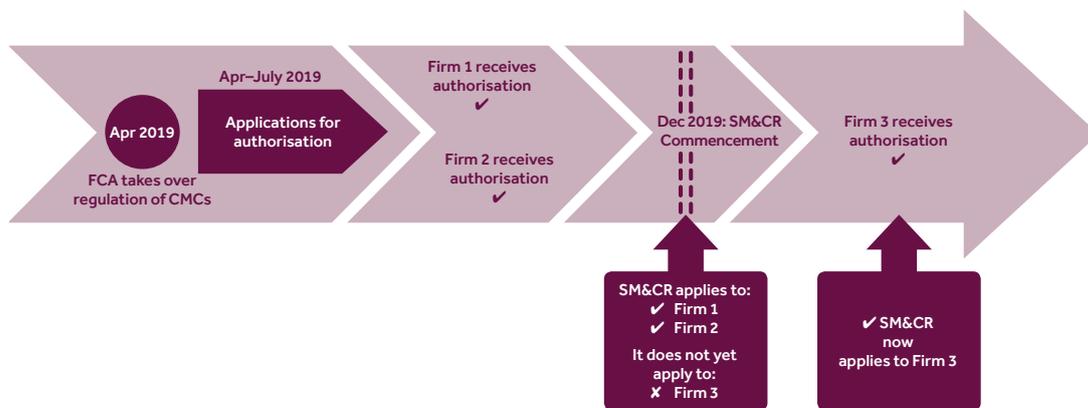
Firms still under Temporary Permissions in late 2019 (after SM&CR Commencement)

- 8.10** We propose that we will not require CMCs that do not carry out other regulated activities and have not yet received FCA authorisation (ie they are still in the Temporary Permissions regime) to apply the SM&CR. This is because we do not think it is proportionate that we require firms to implement the SM&CR when there is a possibility that they may not apply for, or be refused, authorisation.

8.11 Our proposals mean that firms in the Temporary Permissions regime would not be required to obtain regulatory references for new employees who will be starting Senior Manager or Certified roles. However, we think that some of our general rules and guidance on references should be applied to these firms and that they should be required to:

- provide a reference when requested, as soon as is reasonably practicable. Our rules and guidance on providing references are explained in SYSC 22.2.2 and SYSC 22.5
- have policies and procedures in place for providing references, as explained in SYSC 22.8

Figure 2: Proposed Commencement dates for CMCs



Transitional period

8.12 HM Treasury will make commencement regulations for CMCs. For the draft rules included in this Consultation Paper, we have assumed that these orders will state that CMCs (that do not have other permissions) will have 12 months to complete fitness and propriety assessments and train staff in the Conduct Rules. This period will commence:

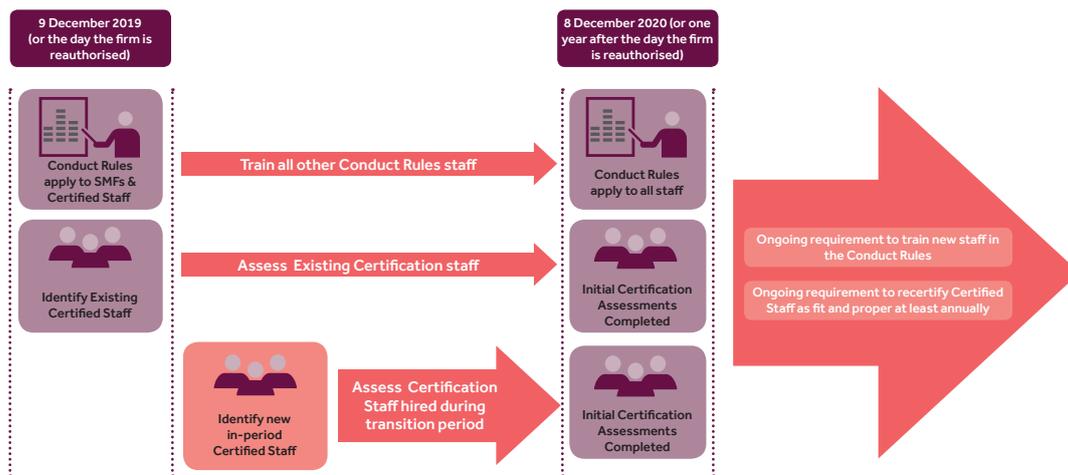
- on 9 December 2019, if the CMC received authorisation before on or before this date ("SM&CR Commencement")
- from the date the CMC receives full authorisation, if this is later than 9 December 2019

8.13 Firms will therefore be required to:

- comply with the Senior Managers Regime as soon as the SM&CR comes into force, or as soon as the firm is fully authorised (that is, when its temporary claims management permission becomes a full permission), whichever is later
- have identified anyone performing Certification Functions as soon as the SM&CR comes into force, or as soon as the firm is re-authorised, whichever is later

- have assessed anyone performing a Certification Function as fit and proper within one year of the SM&CR coming into force, or within one year of the firm being re-authorised, whichever is later, and
- train all other staff (who are not performing a Senior Management or Certification Function) in the Conduct Rules within one year of the SM&CR coming into force, or within one year of the firm being re-authorised, whichever is later

Figure 3: Transitional period for applying the SM&CR



8.14 This approach is consistent with that taken for the financial services firms we regulate. We believe this is proportionate and enables firms to make the necessary preparations to comply with our rules.

Q8: Do you agree with our proposed approach for transitional arrangements? If not, please explain why.



Annex 1

Questions in this paper

- Q1:** Do you agree with our proposed approach to classifying CMCs when applying the SM&CR? If not, please explain why.
- Q2:** Do you agree with our proposal to allow firms to 'opt-up' to the Core or Enhanced tier? If not, please explain why.
- Q3:** Do you agree with our proposed Senior Management Functions for CMCs? If not, please explain why.
- Q4:** Do you agree with our proposed approach to applying the Certification Regime? If not, please explain why.
- Q5:** Do you agree that CMCs should be included within scope of the Directory? If not, please explain why.
- Q6:** Do you agree with our proposed fit and proper requirements, including criminal record checks and regulatory references? If not, please explain why.
- Q7:** Do you agree with our proposed approach to applying the Conduct Rules to CMCs? If not, please explain why.
- Q8:** Do you agree with our proposed approach for transitional arrangements? If not, please explain why.
- Q9:** Do you agree with our assessment of the costs and benefits of these proposals?
- Q10:** Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?

Annex 2

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This CBA should be read in the context of other relevant CBAs relating to CMCs, the SM&CR and the introduction of individual authorisations, including those published with the following:
 - PS18/14, where we provided a detailed analysis of the costs and benefits of extending the SM&CR to all FCA authorised firms. This CBA uses the information in PS18/14 relating to Limited Scope SM&CR firms, as explained below
 - CP18/15, where we set out the one-off and ongoing costs to CMCs of changing from the current regulatory regime to our proposed rules²⁴. The costs cited in this paper are in addition to those set out in CP18/15
 - CP13/10, where we set out the costs and benefits of the FCA taking over regulation of the consumer credit industry from the Office of Fair Trading (OFT). This included an analysis of costs to firms of managing applications for authorised individuals for the first time²⁵
 - CP18/19, where we consulted on creating a new public register called the Directory, which would list Certified staff
3. We present here:
 - our estimates of the likely average costs for firms and overall cost to the industry relating to the three main components of our intervention (Senior Managers Regime, Certification Regime, Conduct Rules), distinguishing between one-off and ongoing costs
 - a discussion of the benefits expected to arise from the proposed intervention, in terms of reduction in harm to consumers

24 For this purpose, the current regime is to be taken to extend not only to England and Wales but also to Scotland. Financial products and services is taken to include Section 75 claims under the Consumer Credit Act 1974.

25 While the CMR considers the fitness and propriety of directors during the initial authorisation of the CMC, there is no ongoing requirement for CMCs to apply for an individual to be approved once the firm has been authorised. This is similar to the CBA performed for the consumer credit industry; the OFT considered fitness and integrity, but this was not considered directly equivalent to the Approved Persons regime and was therefore treated as a new requirement.



Problem and rationale for intervention

4. There is evidence of misconduct in the CMC sector, which is harming consumers. This was detailed in the Brady Review, our Financial Lives survey, and the current CMR and the Legal Ombudsman's (LeO) annual reports and includes evidence of:
 - customer facing staff using inappropriate and aggressive sales tactics, which sometimes constitutes as harassment
 - a lack of diligence, skill and care being taken in the provision of service, with evidence of inadequate communication with customers and poor record keeping
 - senior individuals, who are not fit and proper, moving to new firms²⁶
5. Misconduct has also resulted in failures within the claims management market²⁷, including:
 - limited effective competition. Marketing tactics prevent consumers from comparing the offer of the CMC contacting them with others in the market
 - poor consumer understanding of their options. Many consumers do not understand that they are able to submit claims independently
 - CMCs failing to act in the interest of consumers after the contract has been arranged (eg keeping them informed of the progress of their claim)
6. The main drivers of this misconduct come from information asymmetries and behavioural biases:
 - information asymmetry exists between firms and regulators. Regulators cannot monitor all planning and activities by CMCs. So CMCs could fail to adhere to rules that apply to them if the chances of being caught on any individual regulation are perceived to be small, or if the potential to increase profits was large, even though it caused harm to consumers
 - further asymmetry exists between employees and firms' owners. Even if firms are given strong incentives to comply with regulations, eg through threat of future fines, employees may engage in misconduct to enhance their individual benefits. This behaviour could harm the firm's consumers or its long-term profits
 - behavioural biases may also affect employees, who may be incentivised to maximise immediate outcomes and take excessive risk. Present bias, where future consequences are overlooked in favour of immediate benefits, and overconfidence in one's own ability, are two examples of well-documented biases which may strengthen incentives to engage in misconduct, for instance unsolicited calls and employing aggressive and misleading sales tactics

26 Some CMCs re-emerge following liquidation or insolvency by setting up as a new CMC or taking over an existing authorised CMC with some or all of the directors remaining in place. This is known as 'phoenixing'. Some individuals may close down one CMC but quickly move to another, without fulfilling their obligations to customers.

27 See the [Independent review of claims management regulation](#) (commonly known as "[the Brady report](#)"), the FCA's [Financial Lives](#), the Legal Ombudsman's (LeO) annual reports and those conducted by the CMR.

7. Our interventions aim to address the root causes of harm discussed above. CP18/15 sets out our wider proposals to curb harm to consumers in the sector²⁸. Applying the SM&CR regime aims to further advance consumer protection and enhance competition by addressing the market failures that are present in the sector.

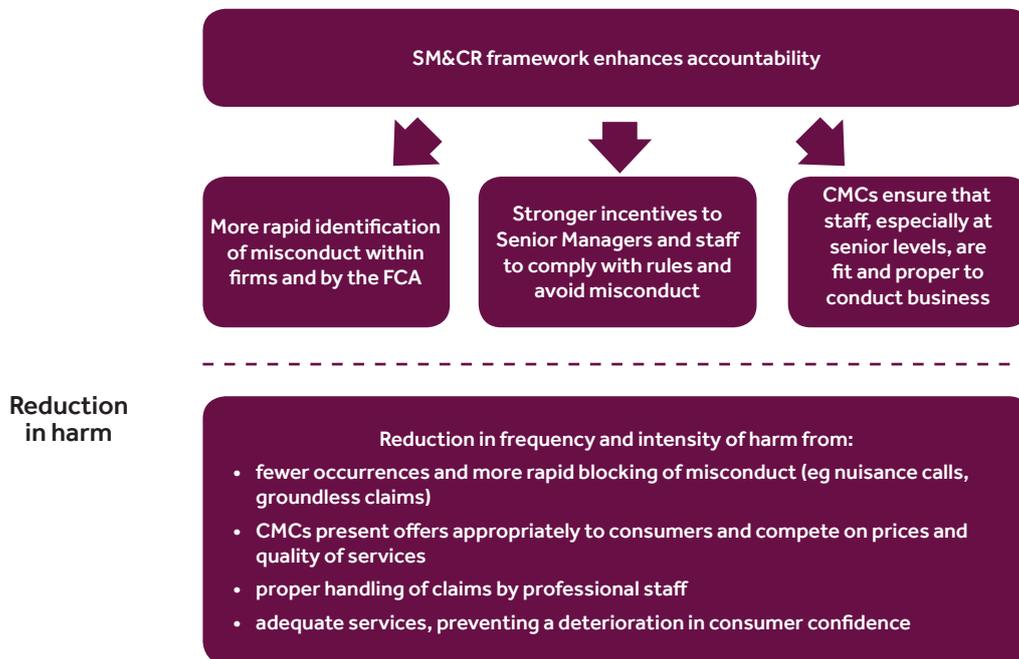
Our intervention

8. As explained in PS18/14, the key aims of the SM&CR are to:
- encourage staff to take personal responsibility for their actions
 - improve conduct at all levels
 - make sure firms and staff clearly understand and can demonstrate who does what
9. We propose treating CMCs that do not carry on other regulated activities as Limited Scope Firms under the SM&CR. We think this is proportionate and practicable for the size of these firms and the relative complexity of their operations. This means all CMCs (except sole traders with no senior managers or staff coming within the certification regime) will need to have someone approved as performing the Senior Management Function (SMF) 27 – Limited Scope Function.
10. We propose that Class 1 firms will also have a Compliance Oversight Function (SMF16)²⁹. This will ensure that larger CMCs have appropriate systems and controls in place.
11. People performing these roles need to be approved by us. In addition, firms will need to 'certify' people holding specific functions under our rules, to make sure they are fit and proper to do their job. Conduct Rules will also apply to most employees working in CMCs.
12. The figure below illustrates how we expect the rules of the SM&CR to reduce harm (Figures 4).

28 www.fca.org.uk/publication/consultation/cp18-15.pdf

29 CMCs with turnover above £1m are defined as Class 1. Class 2 CMCs are defined as those with turnover below £1m.

Figure 4: How we intend to reduce harm to customers



Baseline

- 13.** We have estimated the number of “pure CMCs” (ie CMCs that do not carry out other regulated activities) that will apply for full authorisation to be 736. This is outlined in Table 1 of the CBA in CP18/15 and is based on:
- March 2018 CMR data, which states there are 1,154 authorised CMCs, 899 of which are active
 - a survey of 967 CMCs in England, Wales and Scotland, which are authorised by the CMR (our ‘CMC survey’), undertaken in November 2017. We received 324 responses. Of those that responded to the CMC survey, 20.5% declared that they will not be seeking FCA authorisation³⁰
 - an additional 17 Scottish and 9 Section 75 CMCs³¹, which are not currently authorised by the CMR

³⁰ The exact extent of firm exit/amalgamation remains uncertain at this stage. Since publishing CP 18/15 and conducting our compliance cost survey for that, we have set out the regulatory fees for CMCs in CP 18/23. The setting of these fees was able to take into account the impact of the level of the fees on the number of firms in the market. If the impact of these fees is to increase the extent of firm exit, then there will be fewer firms that are authorised by the FCA, and the compliance cost estimates on the industry as a whole would reduce accordingly. However, for the purpose of assessing the compliance costs of the proposed regulations, we adopt a conservative approach and continue to base our estimate of the number of affected firms on the survey responses (ie we err on the side of estimating higher total costs).

³¹ Under section 75 of the Consumer Credit Act 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the retailer or trader.

14. We note that 82 regulated firms also offer claims management services, of which 52 are active. Regulated firms already have to implement the SM&CR for their regulated activity and these costs were accounted for in the updated CBA that was published alongside PS18/14.
15. The current regulatory regime for CMCs in England and Wales is managed by the Claims Management Regulator (CMR). CMCs regulated by the CMR are already required to comply with the Conduct of Authorised Persons Rules 2018. Many of these rules, like those required by the SM&CR, relate to training, conduct and governance³².
16. The proposed regulatory regime described in this paper is the lowest tier of SM&CR requirements. Firm classed as Limited Scope are subject to fewer requirements than those classed as Core or Enhanced³³. For example, these firms do not need to allocate specific 'Prescribed Responsibilities' to their Senior Managers and do not have to create and maintain a Management Responsibilities Map. We have applied this classification to firms where we think it is proportionate and appropriate to do so.

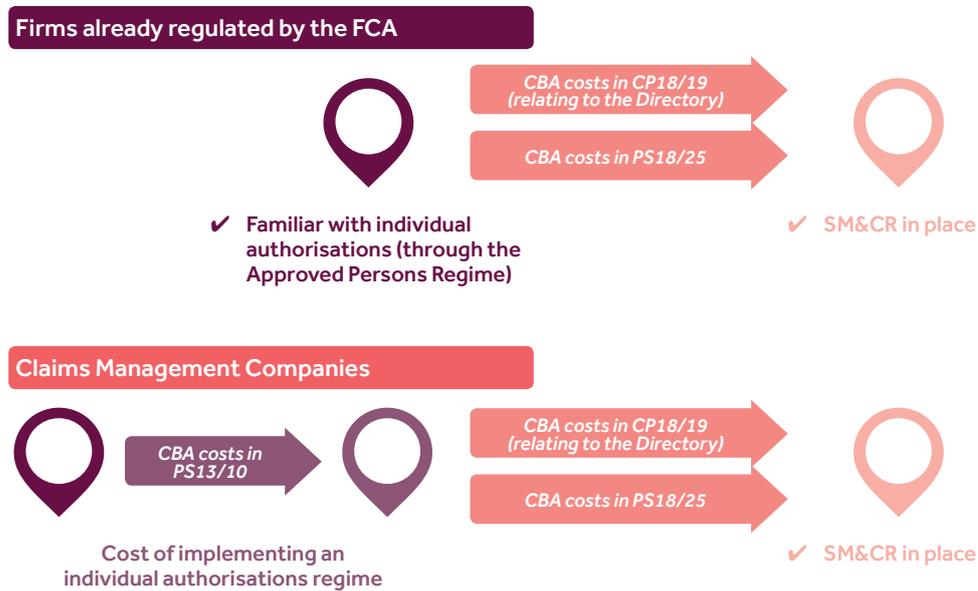
Measuring the costs of our proposals

17. As explained in PS18/14, we sent questionnaires to about 2,000 firms, on a legal entity level, as part of the extension of the SM&CR to all FCA firms. We received responses from 255 firms. In our survey, we asked firms about the ways they would incur costs to implement each of the policy elements, on a one-off and on an ongoing basis. These included changes to organisational structure, required adjustments (eg hiring new staff), training costs, staff monitoring, staff time, IT changes, and record keeping.
18. From this survey, we calculated the estimated costs for firms. As our proposal is that CMCs (that do not carry out other regulated activity) are classified as Limited Scope, we have used the costs provided by the solo regulated firms in this category to estimate the costs that will be relevant for CMCs (see PS18/14).

32 In accordance with proposed secondary legislation governing CMCs, the current rulebook is to be taken to extend to firms in Scotland and to firms doing Section 75 claims under the Consumer Credit Act 1974.

33 The Limited Scope tier covers many different types of smaller firms, as well as sole traders, limited permission consumer credit firms and secondary general insurance intermediaries.

Figure 5: Calculating the costs of CMCs implementing the SM&CR



19. We have added an additional cost to those estimates, because CMCs will need to apply for regulatory approval of individuals for the first time. We have used the estimates provided in the CBA of CP13/10 to provide this cost (see 'costs related to individual authorisations' below)³⁴.
20. We have also added the cost of complying with the rules proposed in CP18/19, where Limited Scope firms must report the details of their Certified Persons on an annual basis for the Directory. This cost is included in the costs related to the Certification Regime.
21. Based on these sources, we estimate the total one-off cost to the CMC industry to implement the SM&CR to be in the range of around £940,000 – £1,000,000 (given 736 firms) and ongoing costs to be in the range of £97,000 – £330,000. This includes costs relating to the Directory, which we estimate to be £129,000 – £132,000 in the first year and £1,000-2,000 per year after that (this is explained below).

Average one-off costs:

Element	Average cost per firm, £
Senior Managers Regime	840 – 970
Certification Regime	160 – 210
Conduct Rules	100
Total	1,100 – 1,280

34 CP13/10 considered the introduction of an individual authorisations regime when consumer credit firms moved to FCA regulation.

Ongoing costs (annual):

Element	Average cost per firm, £
Senior Managers Regime	90 – 365
Certification Regime	20 – 40
Conduct Rules	20 – 40
Total	130 – 445

Source: FCA survey of firms (undertaken Q4 2016) (see the Cost Benefit Analysis published in CP17/25 and PS18/14)

Costs associated with the Senior Managers Regime

22. Implementing the Senior Managers Regime extension involves defining, allocating and documenting the roles and obligations of Senior Managers. As the CMR already requires CMCs to have governance arrangements in place, some firms may need to make minimal changes. However, although the SM&CR doesn't require CMCs to reorganise themselves, we recognise some may wish to use the implementation of the SM&CR as an opportunity to improve their arrangements. Therefore, CMCs may incur one-off costs through changes to their management structure, eg recruitment costs. We consider these costs, on average, to be £840 – £970 per firm and around £620,000 – £680,000 to the sector in total (given 736 CMC firms). This estimate uses the costs detailed in PS18/14, plus the cost of transitioning to an individual authorisations regime, as described in CP13/10.

23. On an ongoing basis, CMCs will need to ensure that their Senior Managers keep their Statement of Responsibilities up to date and resubmit these to us if there are any significant changes. Firms will need to resource this, as clarity of accountability is key to the regime. CMCs will also need to ensure their recruitment of new Senior Managers complies with the SM&CR's fit and proper requirements and our rules around notifying us (eg when a Senior Manager leaves or if their role changes). Every firm subject to the SM&CR must comply with this requirement. Using PS18/14 again, as the basis for our estimation, we consider the average ongoing costs of complying with these rules to be within the range of £90 – £365 a year per firm and £66,000 – £270,000 to the sector in total.

Costs associated with Fit & Proper and Certification requirements

24. To comply with our rules on Certification and fitness and propriety, CMCs will need to review how they recruit and assess people within their firm. Firms should already have relevant systems and processes in place, to comply with the CMR's rules³⁵. However, the SM&CR introduces new requirements for firms to conduct a criminal record check on Senior Managers and obtain a regulatory reference before recruiting anyone into a Certified or Senior Manager role. We estimate the cost of implementing this to be £160 – £210 per firm and around £120,000 – £155,000 to the sector in total (given 736 CMC firms)

35 Relevant rules in the Conduct of Authorised Persons Rules 2018 include 'A business shall ensure that any staff or other people working on its behalf have the necessary training and competence to perform their duties'.



- 25.** On an ongoing basis, CMCs will need to certify that their Senior Managers and Certified Persons are fit and proper to perform their roles at least annually. Firms should already have procedures in place, for example annual appraisals, to perform this assessment. For Limited Scope firms, we estimate the average ongoing costs of complying with these rules to be within the range of £20 – £40 a year per firm and £15,000 – £30,000 to the sector in total.
- 26.** We estimate the costs of the Directory separately from the rest of the Certification regime. We estimate that there will be around 1,400 certified persons across the 736 firms. Using the same approach to estimating costs that was used in the CBA of the Directory, we estimate that the costs of reporting the data elements will be £9,000 – £12,000 in the first year and then £1,000 – £2,000 per year after that. Firms will also incur costs in familiarising themselves with reporting requirements for the Directory, and assessing what they need to do to comply with these requirements. We estimate these (again using the same assumptions as the CBA of the Directory) at around £120,000. These costs are in addition to those described above. This means a total cost to the sector of £250,000 – £285,000.

Costs associated with the Conduct Rules

- 27.** To implement the Conduct Rules, CMCs will need to make the individuals who are subject to the Conduct Rules aware that this is the case, and train them in how the rules apply to them. Based on the CBA in PS18/14, we estimate the cost of implementing this to be £100 per firm and £75,000 to the sector in total (given 736 CMC firms).
- 28.** CMCs will also need to notify us when disciplinary action has been taken against a person for a Conduct Rules breach and keep their staff training up to date. We estimate the average ongoing costs of complying with these rules to be within the range of £20 – £40 a year per firm and £15,000 – £30,000 to the sector in total.

Costs associated with regulated firms undertaking claims management

- 29.** Regulated firms that also undertake claims management activity now have to apply the SM&CR to their claims management activities. For these firms, as they are already implementing the regime, we would expect the additional costs to be fairly small. The additional costs will arise from including additional Certified Staff responsible for Claims Management Activity within the regime and applying the conduct rules to the staff undertaking claims management activity. Given these firms will be implementing systems to cover their regulated activity, we would not expect significant additional costs for systems changes.

- 30.** Using our estimates in the tables of one-off and ongoing costs presented above, we estimate an upper bound estimate for the costs for these firms. If these firms run their claims management separately, then firms on average would incur the costs presented in the tables for implementing the SM&CR for their Claims Management Activity. This would imply that, on average, these firms incur £1,100 – £1,280 in one-off costs and £130 – £445 in annual ongoing costs from implementing the SM&CR for their Claims Management Activity. If firms use their existing systems and processes to implement the regime for their claims management activities, then the costs from implementation will be much lower than these costs. We also note that some of these firms may not continue undertaking claims management activity in the new regime. This would mean that fewer firms incur the costs of implementing these costs than the 82 firms referred to in paragraph 14, above. Our upper bound estimates for these firms, assuming the costs are incurred by all 52 active firms, are one-off costs of £57,200 – £66,600 and ongoing annual costs of £6,800 – £23,100.

Costs to the FCA

- 31.** The costs to the FCA of extending the SM&CR to all FCA-authorized firms has been detailed in the Cost Benefit Analysis published in PS18/14. We will use the same systems, teams and resources to regulate CMCs as we use for other firms. This cost is, to a large extent, fixed. We outlined the cost of regulating CMCs specifically in CP18/15.

The benefits of our proposals

- 32.** We believe that better governance and accountability will lead to an improved culture within firms and one which is more focussed on customer outcomes. This is the key driver for introducing the SM&CR to all our FSMA-authorized firms. A robust individual accountability regime can reinforce acceptable standards of behaviours and be a critical factor in deterring misconduct. The particular benefits of accountability for CMCs, as identified by the Brady report, include:
- preventing unscrupulous directors from using dormant pre-authorized companies, acquiring legitimate CMCs, or establishing 'phoenix' companies
 - holding individuals personally accountable for their firm's conduct, providing a proper framework to ensure that poor conduct does not go unpunished
 - diminishing the likelihood of a firm being controlled from behind the scenes, as individuals would not want to be held accountable for regulatory breaches
- 33.** We think applying SM&CR to CMCs will lead to benefits in the form of³⁶:
- driving up culture and standards through increased accountability at the senior level. This is supported by: a new duty of responsibility on Senior Managers; Senior Manager Conduct Rules and the Certification Regime; clarity about the responsibilities of key individuals and the regime's effect on the likelihood of detecting and sanctioning misconduct more generally

³⁶ The Cost Benefit Analysis published in CP17/25 and PS18/14 explain this more fully.



- increasing the likelihood of instances of misconduct being identified, which should prevent or at least reduce harm to consumers, thanks to the application of Conduct Rules and associated reporting requirements, and firm-level assessment of fitness and propriety
- broadening the scope for the FCA to take disciplinary actions, which should provide incentives to improve behaviour
- encouraging better decision making within firms, through increased accountability and clarity about each individual's responsibilities
- advancing improved staff hiring processes and professionalism through regular fit and proper checks, conditional approvals and regulatory references
- encouraging improved trust in financial services, as all of the above will help raise public confidence in the industry, as well as clarify the FCA's expectations on firms

34. It is difficult to give estimates of benefits, as they depend on future changes in behaviour, for which we do not have comparable evidence. Additionally, this change will arise from a combination of factors, including the transfer of regulation to the FCA and the implementation of the new rules proposed in the recent CP18/15. We would not be able to isolate the specific impact of SM&CR. We also note that some of the benefits cannot be easily expressed in monetary terms. This is particularly true for benefits relating to improvements in consumers' confidence in the CMC sector, and for the further impact that enhanced ability to obtain due compensation may have on trust in markets.

Conclusions on the costs and benefits of our interventions

- 35.** The decision to transfer the regulation of CMCs to the FCA, from the existing CMR, reflected the need to ensure a stronger regulatory regime. This was in response to concerns highlighted by the Brady report, as well as a recent annual report by the Claims Management Regulator.
- 36.** A well-functioning market for CMC services can also act as an effective check and balance against poor practice by firms and help consumers to secure redress. It is important that CMCs provide high-quality services at reasonable prices.
- 37.** We consider that the SM&CR is a necessary complement to the rules proposed in the recent CP18/15, as it ensures the necessary level of accountability for staff operating in CMCs.
- 38.** We have noted the costs of compliance entailed by the application of SM&CR. We estimate the total one-off cost to the CMC industry to implement the SM&CR to be in the range of around £940,000 – £1,000,000 (given 736 firms) and ongoing costs to be in the range of £97,000 – £330,000. This includes costs relating to the Directory. As discussed above, we are unable to provide monetary estimates of the benefits of the proposal. Nevertheless, we consider that the regime is likely to provide significant benefits to consumers in the market for CMC services and, indirectly, in the markets where CMC services lead to redress to consumers when this is due. This provides



incentives against misconduct, which will lead to increased consumers' confidence and, in turn, benefit firms.

Q9: Do you agree with our assessment of the costs and benefits of these proposals?



Annex 3

Compatibility statement

Compliance with legal requirements

1. This annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s.1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives; and (b) its general duty under s.1B(5)(a) FSMA to have regard to the regulatory principles in s.3B FSMA. The FCA is also required by s.138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This annex also sets out our view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of customers (s.1B(4)). This duty applies insofar as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this annex explains how we have considered the recommendations made by the Treasury under s.1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. Our assessment of the equality and diversity implications of these proposals are found in Annex 4.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance our operational objective of consumer protection. They are also potentially relevant to our objective of enhancing market integrity.
8. We consider that our proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. This is because they increase consumer protection, enhance market integrity and aim to drive up service standards. They address failures in the market identified both by our own assessment of the market and by the independent review of claims management regulation (the Brady Review). In particular, we propose to apply greater protections to consumers through a regime that creates individual accountability for treating customers fairly.
9. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s.1F FSMA.

Compatibility with the duty to promote effective competition in the interests of consumers

The FCA has in this consultation had regard to the 5 matters in s.1E(2)(a)-(e) of FSMA

10. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. As indicated, the proposals are principally intended to advance the consumer protection objective. We have taken care to design our proposals so that they target regulatory requirements where they are needed to secure an appropriate degree of consumer protection while minimising any adverse effects on competition.
11. We believe our proposals should enhance competition by creating individual accountability for staff to treat consumers fairly. This includes acting with due skill, care and diligence and taking reasonable steps to have appropriate systems and control in place.

Consumer protection

12. The mandate of the FCA includes the requirement to secure an appropriate degree of protection for consumers. The FCA has in this consultation had regard to the 8 matters listed in s.1C(2)(a)-(h) FSMA on consumer protection.
13. The SM&CR will clarify the lines of responsibility at the top of relevant firms and enhance the regulators' ability to hold senior and other individuals in such firms to account. This should, over time, result in improved governance across financial services and drive up culture and standards of consumer protection.



The FCA's regulatory principles

14. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA.
- The need to use our resources in the most efficient and economic way**
15. The implementation of the SM&CR across the FCA's solo-regulated firms, as set out in PS18/14, will impact the FCA's existing authorisations, supervision and enforcement processes and systems. Following that implementation, however, there is not expected to be any significant change in the level of resources the FCA uses to regulate firms, above those set out in CP18/15.
- The principle that a burden or restriction should be proportionate to the benefits**
16. We have undertaken a cost-benefit analysis of our proposals, which is included in Annex 2 of this CP. We consider the costs are proportionate to the benefits.
- The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**
17. Our proposals are intended to have a positive impact on the behaviour and culture of the firms in question, which should contribute to greater sustainability of any growth in the market.
- The general principle that consumers should take responsibility for their decisions**
18. The proposals we have made concern firms' governance arrangements and requirements applying to their staff. These are not matters over which consumers can have any influence, and they may not easily be able to identify an effective structure. However, with an improved culture and raising of standards within firms to treat consumers fairly and have proper regard to their informational needs, there is implicit support that firms would be better placed to enable consumers to take responsibility for their own decisions.
- The responsibilities of senior management**
19. One of the main objectives of the proposals contained in this Consultation Paper is to ensure that Senior Managers are clear about the responsibilities they hold and are more effectively held accountable for the performance of these responsibilities. There are also specific standards of conduct that apply to Senior Managers through the Senior Manager Conduct Rules.
- The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**
20. We believe our proposals do not undermine this principle. In considering applying the SM&CR to all firms, we have been mindful of the need to consider the impact on smaller firms by applying the Limited Scope tier, which requires compliance with fewer rules. Our proposals also allow CMCs flexibility in choosing how to meet our rules. For example, the Senior Managers Regime does not impose a uniform governance structure on CMCs, but it does require them to demonstrate clear lines of accountability within the governance structure. The Certification Regime also allows firms to identify the functions that can cause significant harm to their business models and consumers. The Code of Conduct is also written at a high level to allow it to reflect the levels of complexity and riskiness of different firms' business.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

21. We will be able to see compliance with the rules either from the information that firms give us (eg under existing requirements in SUP 15, Principle 11 or the new obligation to inform the regulators about disciplinary action arising out of breaches) or by a supervisory visit (eg the operation of the Certification Regime). We do not generally propose to change our current policy which is that this information is not generally published, but instead will consider each firm's circumstances on a case by case basis, including as part of any enforcement investigation.

The principle that we should be accountable and exercise our functions as transparently as possible

22. The FCA has obtained industry feedback during the preconsultation stage and engaged with relevant external stakeholders. We will continue to actively engage with relevant stakeholders throughout the consultation process.

Expected effect on mutual societies

23. We do not expect the proposals in this paper to have a significantly different impact on mutual societies. We do not have any evidence to indicate that mutual societies are involved in undertaking any claims management activity, but would welcome any comments on this as part of the consultation process.

Equality and diversity

24. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conducted an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered. The outcome of the assessment in this case is set out in Annex 4.

Legislative and Regulatory Reform Act 2006 (LRR)

25. We have had regard to the principles in the LRR for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals will lead to improved outcomes for consumers and address the issues identified in the market. We also believe the proposals are proportionate and will result in an appropriate level of consumer protection when balanced with impacts on firms and competition.



Regulators' Code (2014)

- 26.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals meet the following principles:
- regulators should carry out their activities in a way that supports those they regulate to comply and grow
 - regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
 - regulators should provide simple and straightforward ways to engage with those they regulate and hear their views, and should ensure that their approach to their regulatory activities is transparent
 - regulators should base their regulatory activities on risk

Treasury recommendations about economic policy

- 27.** In the remit letter published by the Chancellor of the Exchequer on 8 March 2017 the Chancellor affirms the FCA's role in ensuring that effective competition in financial services can create the right conditions for access to finance, which is part of the Government's economic objective to create strong, sustainable and balanced growth. The FCA has regard to this letter and the recommendations within. As set out in the CP, we consider that our proposals are proportionate and will promote effective competition.

Annex 4

Equality impact assessment

1. We are required under the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation). We are also required to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it, when carrying out our functions.
2. We have conducted an initial equality impact assessment (EIA) of our proposals to ensure that the equality and diversity implications are considered. This annex sets out the results, explaining the potential impact of our proposals on protected groups where we have identified them and, where relevant, the steps we have taken or will take to minimise them.
3. We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. In particular, we have identified the following aspects of the regime with potential equality and diversity implications:
 - the proposals will allow more than one person to perform a Senior Management Function or Certification Function at the same firm, accommodating people working under a job share arrangement. If this was not the case, the proposed rules could be deemed to discriminate indirectly against people who job share, for example due to family obligations
 - the assessment of prospective and current Senior Managers and individuals within the Certification Regime will consider whether they are fit and proper to do their job. For some roles, such as the Chair, this assessment may involve consideration of the person's experience, which can only be acquired with time. This could result in a bias in favour of certain age groups. However, this is the case now and is offset by the requirement to take into account other assessment criteria not directly related to age, such as qualifications
4. Overall, we do not believe that our proposals result in direct discrimination for any of the groups with protected characteristics, ie age, disability, sex, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
5. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.

Q10: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?



Annex 5 Abbreviations in this document

APR	Approved Persons Regime
CASS	Client Assets Sourcebook
CBA	Cost Benefit Analysis
CCA	Consumer Credit Act
CMC	Claims Management Company
CMR	Claims Management Regulator
CP	Consultation Paper
DBS	Disclosure and Barring Service
EG	Enforcement Guide
EIA	Equality Impact Assessment
FCA	Financial Conduct Authority
FGCA	Financial Guidance and Claims Act 2018
FSMA	Financial Services and Markets Act
HM Treasury	Her Majesty's Treasury
LeO	The Legal Ombudsman
ICO	Information Commissioner's Office
PRA	Prudential Regulation Authority
PS	Policy Statement
SM&CR	Senior Managers and Certification Regime
SMF	Senior Management Function
SMR	Senior Managers Regime
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
UK	United Kingdom

Disclaimer

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future. We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Draft Handbook text

SENIOR MANAGERS AND CERTIFICATION REGIME (CLAIMS MANAGEMENT FIRMS) INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
 - (3) section 60 (Applications for approval);
 - (4) section 62A (Changes in responsibilities of senior managers);
 - (4) section 63E (Certification of employees by authorised persons);
 - (5) section 63F (Issuing of certificates);
 - (6) section 64A (Rules of conduct);
 - (7) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
 - (8) section 137A (The FCA’s general rules);
 - (10) section 137T (General supplementary powers); and
 - (11) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 9 December 2019 except for Part 1 of Annex F which comes into force on 10 June 2019.

Amendments to the Handbook

- D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraph E of this instrument.
- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Code of Conduct (COCON)	Annex C
Client Assets (CASS)	Annex D
Claims Management: Conduct of Business sourcebook (CMCOB)	Annex E
Supervision manual (SUP)	Annex F

Citation

- F. This instrument may be cited as the Senior Managers and Certification Regime (Claims Management Firms) Instrument 2018.

By order of the Board
[date]

[*Editor's note:* This draft instrument is drafted as if the amendments to the Handbook proposed by:
(a) the near final draft instruments in PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) and PS18/15 (Extending the Senior Managers & Certification Regime to insurers - Feedback to CP17/26 and CP17/41 and near-final rules); and
(b) the draft instrument in CP18/15 (Claims management: how we propose to regulate claims management companies);
had been made.]

[*Editor's note:* This draft instrument is drafted as if the version of the *Claims Management Order* published by HM Treasury on 27 July 2018 had been made.]

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text.

Amend the following definition as shown.

certification employee ...

(3) ...

(4) (in relation to an *SMCR firm* to which *SYSC TP 8.3.3R* applies (Transitional period for certification for claims management firms) an employee (as defined in section 63E of the *Act*) of that *firm* who is stated to be a *certification employee* by that rule.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

4 General organisational requirements

...

4.4 Apportionment of responsibilities

Application

4.4.1A R ...

- (4) Only SYSC 4.4.5R(2) applies to an *incoming Treaty firm* or an *incoming ~~EEA firm~~ EEA SMCR firm*. However the limitation in this paragraph (4) does not apply to a firm within SYSC 23 Annex 1 5.13R (claims management).

...

...

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
1	Does an individual to whom a function is allocated under SYSC 4.4.5R need to be an <i>approved person</i> ?	Yes. They will be performing the <i>limited scope function</i> . However, the <i>limited scope function</i> does not apply to an <i>EEA SMCR firm (except claims management firms)</i> or an <i>authorised professional firm</i> that is a <i>core SMCR firm</i> .
...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm other than a claims management firm</i> ?	...

...
-----	-----	-----

4.4.7 R A limited scope SMCR firm that has permission to carry on regulated claims management activities may not allocate the limited scope function to a senior manager approved to do the compliance oversight function.

...

6 Compliance, internal audit and financial crime

6.1 Compliance

...

Compliance function

...

6.1.4C R (1) A ~~debt management firm~~ and a ~~credit repair firm~~ firm in (2) must appoint a compliance officer to be responsible for ensuring the firm meets its obligations under SYSC 6.1.1R for any compliance function the firm has and for any reporting as to compliance which may be made under SYSC 4.3.2R.

(2) This rule applies to:

(a) a debt management firm;

(b) a credit repair firm; and

(c) a limited scope SMCR firm within SYSC 23 Annex 1 5.13R.

...

22 Regulatory references

General application

...

22.1.1A G ...

22.1.1B G SYSC TP 8.1.2R applies this chapter to certain claims management firms that are not SMCR firms.

...

23 Senior managers and certification regime: Introduction and classification

...

23.2 Definitions and types of firms

...

23.2.3 G Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:

...

(3) *Firms* whose business is limited to certain types. These are called "limited scope SMCR firms". A large number of *firms* will be in this category. The main examples are:

...

(c) internally managed *AIFs*; ~~and~~

(d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*; ~~and~~

(e) a firm whose permission includes no regulated activities except regulated claims management activities.

...

23 Definition of SMCR firm and different types of SMCR firms Annex 1

...

Part Five: Definition of limited scope SMCR firm

5.2 ...

5.3 R A *firm* listed in the table in SYSC 23 Annex 1 5.4R is a *limited scope SMCR firm* if:

(1) its principal purpose is to carry on:

(a) activities other than *regulated activities*; ~~or~~

(b) in the case of a firm in SYSC 23 Annex 1 5.4R(5), activities other than regulated activities and regulated claims management activities; and

(2) it is not a *MiFID investment firm*.

5.4 R Table: List of limited scope SMCR firms referred to in SYSC 23 Annex 1 5.3R

...	...
(5)	<p>A <i>firm</i> that meets the following conditions:</p> <p>(a) it has <i>permission</i> to carry on <i>insurance distribution activity</i> in relation to <i>non-investment insurance contracts</i>; and</p> <p>(b) it either:</p> <p>(i) does not have <i>permission</i> to carry on any other <i>regulated activity</i>; or</p> <p>(ii) has <i>permission</i> to carry on no other <i>regulated activity</i> except <u>one or more of the following</u>:</p> <p>(A) <i>advising on P2P agreements</i>; or</p> <p>(B) <i>regulated claims management activities</i>.</p>

...

5.12 ...

5.13 R (1) A firm is a limited scope SMCR firm if it meets the following conditions:

(a) it has permission to carry on regulated claims management activities; and

(b) it either:

(i) does not have permission to carry on any other regulated activity; or

(ii) has permission to carry on no other regulated activity except a relevant credit activity.

(2) A firm in SYSC 23 Annex 1 5.7R does not fall within this rule.

5.14 G As explained in SYSC TP 8.2.1R, certain claims management firms are excluded from being SMCR firms altogether.

...

24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

...

What the FCA-prescribed senior management responsibilities are

...

24.2.6 R Table: FCA-prescribed senior management responsibilities

...

FCA-prescribed senior management responsibility	Explanation	Reference letter
...		
(13) Responsibility for the <i>firm's</i> compliance with CASS	(1) ... (2) A <i>firm</i> may include in this <i>FCA-prescribed senior management responsibility</i> whichever of the following functions apply to the <i>firm</i> : ... (c) CASS 11.3.1R (certain CASS compliance functions for certain <i>CASS small debt management firms</i>); or (d) CASS 11.3.4R (certain CASS compliance functions for a <i>CASS large debt management firm</i>); <u>or</u> (e) <u>CASS 13.2.3R (certain CASS compliance functions for a <i>firm</i> carrying on a regulated claims management activity)</u> ; but it does not have to. (3) ...	(z)
...		

...

27 Senior managers and certification regime: Certification regime

...

27.2 Requirements of the certification regime

General

...

27.2.2 G SYSC TP 5, ~~and SYSC TP 7~~ and SYSC TP 8 contain transitional material about the certification regime. This includes material about the fact that:

...

...

27.3 Territorial scope

...

- 27.3.4 G (1) There is an additional territorial restriction relating to *regulated claims management activities*.
- (2) As explained in SYSC 27.7.1R (General requirements), a function is only an *FCA certification function* if it is connected to *regulated activities*.
- (3) As explained in PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.
- (4) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of this chapter and the *FCA certification functions*.
- (5) This restriction applies in addition to the restriction in SYSC 27.3.1R(5).
- (6) PERG 2.4A (Link between regulated claims management activities and Great Britain) explains the circumstances in which a *person* is treated as carrying on a *regulated claims management activity* in *Great Britain*.

...

27.8 Definitions of the FCA certification functions

CASS oversight function

27.8.1 R (1) Each of the following is an *FCA certification function*:

...

(c) in relation to a *CASS small firm*, the function of acting in the capacity of a *person* who is allocated the function in CASS 1A.3.1R (oversight of operational effectiveness);(d) in relation to a *firm* to which CASS 13 (Claims management: client money) applies, the function of acting in the capacity of a *person* who is allocated the function in CASS 13.2.3R (Organisational requirements and responsibility for CASS operational oversight).

...

...

TP 7 Bank of England and Financial Services Act 2016: Certification and regulatory references**7.1 Application, purpose and definitions**

...

7.1.3 G SYSC TP 7:

...

(2) has certain transitional provisions dealing with SYSC 22 (Regulatory references); ~~and~~(3) has certain other transitional provisions relating to the amendments made to the *FCA Handbook* by the Individual Accountability (Dual-Regulated Firms) Instrument 2018 and the Individual Accountability (FCA-Authorised Firms) Instrument 2018; and(4) is adjusted and supplemented by SYSC TP 8 in relation to certain claims management *firms*.

...

After SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) insert the following new SYSC TP 8. The text is not underlined.

TP 8 Bank of England and Financial Services Act 2016: Application to claims management companies

8.1 Application, purpose and definitions

- 8.1.1 R SYSC TP 8 applies to a *firm* if:
- (1) the only *regulated activities* in its *permission* are *regulated claims management activities*;
 - (2) it still had a *temporary permission* on the **solo firms commencement date**; and
 - (3) it would have been an *SMCR firm* but for SYSC TP 8.2.1R.
- 8.1.2 G This Annex will immediately cease to apply to a *firm* if its *permission* is varied to include *regulated activities* in addition to *regulated claims management activities*.
- 8.1.3 G A claims management *firm* should look at SYSC TP 7 if it:
- (1) has other *regulated activities* in its *permission*; or
 - (2) got full authorisation before the **solo firms commencement date**.
- 8.1.4 G SYSC TP 8:
- (1) deals with the application of certain aspects of the senior managers and certification regime to claims management *firms* brought into regulation under the *Act* by the *Claims Management Order* in 2019;
 - (2) explains how the transitional provisions described in SYSC TP 7 are amended for certain claims management *firms*;
 - (3) in particular describes a transition period (the **individual transitional period**) that applies for the purposes of the certification regime in place of the one described in SYSC TP 7; and
 - (4) has certain other transitional provisions relating to application of the senior managers and certification regime to claims management *firms*.
- 8.1.5 G *COCON* is also adjusted during a *firm*'s **individual transitional period** (see *COCON* 1.1.2R).
- 8.1.6 R The terms in the first column of the table in SYSC TP 8.1.7R, where they appear in bold in SYSC TP 8, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 8.
- 8.1.7 R Table: glossary of bespoke terms used in SYSC TP 8

Part One: General	
Defined term	Meaning
claims management firms commencement SI	[Treasury statutory instrument commencing the SMCR for claims management firms]
individual transitional period	the one-year period referred to in regulation [] of the claims management firms commencement SI .
solo firms commencement date	9 December 2019

8.2 Exclusion from the SMCR

- 8.2.1 R A *firm* is not an *SMCR firm* (and is included in Part Three of SYSC 23 Annex 1 (Definition of exempt firm)) for as long as it has a *temporary permission*.
- 8.2.2 R The requirements in SYSC 22 (Regulatory references) that are expressed to apply to a *firm* that is not an *SMCR firm* apply to a *firm* in SYSC TP 8.2.1R.
- 8.2.3 G SYSC TP 8.2.2R means that SYSC 22 Annex 1 (Regulatory references) applies to a *firm*, but on the basis that the following do not apply:
- (1) SYSC 22.2.1R (Obligation to obtain references);
 - (2) SYSC 22.2.2R(4);
 - (3) SYSC 22.2.4R (Obligation to revise references: The main rule); and
 - (4) SYSC 22.4 (Drafting the reference: detailed requirements for SMCR firms).

8.3 Transitional period for certification for claims management firms

- 8.3.1 G The effect of the **claims management firms commencement SI** is that the obligation in section 63E(1) of the *Act* for an *SMCR firm* to take reasonable care to ensure that no *employee* of the *firm* performs an *FCA certification function* unless the *firm* has issued the *employee* with a valid certificate, does not apply during its **individual transitional period**.

- 8.3.2 G (1) A *firm's individual transitional period* is the period that:
- (a) begins on (and includes) the date on which the *firm's temporary permission* comes to an end under the *Claims Management Order* when the *firm's* full authorisation for *regulated claims management activities* comes into effect; and
 - (b) ends on (and excludes) the day falling one year later.
- (2) If other activities are included in a *firm's permission* as described in SYSC TP 8.1.2G part of the way through the one-year period in (1), its **individual transitional period** ends at once.
- 8.3.3 R During a *firm's individual transitional period* the definition of “*certification employee*” is amended to mean an employee (as defined in section 63E of the *Act*) of the *firm* who performs a *certification function* under an arrangement entered into by the *firm* in relation to the carrying on by the *firm* of a *regulated activity*, even though the obligation of the *SMCR firm* to issue a certificate under section 63F of the *Act* has not yet come into force.

8.4 Application of SYSC TP 7

- 8.4.1 R SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) applies to a *firm* as if a reference in SYSC TP 7 to the “*certification transitional period*” were to a *firm's individual transitional period*.
- 8.4.2 G The following parts of SYSC TP 7, dealing with certification, do not apply, and SYSC TP 8.3 applies instead:
- (1) SYSC TP 7.2.1G; and
 - (2) SYSC TP 7.2.3G.
- 8.4.3 R (1) SYSC TP 7 applies to a *firm* as if a reference to the “*general commencement date*” were to the first day of the *firm's individual transitional period*, except in the following provisions:
- (a) SYSC TP 7.4.6R (Giving references);
 - (b) SYSC TP 7.4.7G (Form of references); and
 - (c) SYSC TP 7.7 (Qualification conditions for FCA-authorised firms).
- (2) The definition of “*general commencement date*” is unchanged in the provisions listed in (1)(a) to (c).

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text.

1 Application and purpose

1.1 Application

...

To whom does it apply?

...

1.1.2 R Table: To whom does COCON apply?

Persons to whom COCON Applies	Comments
(6) (C) ... <u>(D) This row (6) also does not apply to an <i>employee</i> of an <i>SMCR firm</i> in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies) during that <i>firm's</i> individual transitional period (as defined in that Annex).</u>
...	

...

Where does it apply?

...

1.1.11A G ...

1.1.11B G (1) There is an additional territorial restriction relating to *regulated claims management activities*.

(2) Whether or not conduct involves *regulated activities* may affect how and whether *COCON* applies.

- (3) As explained in PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the Regulated Activities Order is only regulated activity if it is carried on by way of business in Great Britain.
- (4) The result is that a claims management activity specified in the Regulated Activities Order carried on outside Great Britain is an unregulated activity for the purposes of COCON.
- (5) This restriction applies in addition to the restriction in COCON 1.1.10R(4).
- (6) PERG 2.4A (Link between regulated claims management activities and Great Britain) explains the circumstances in which a person is treated as carrying on a regulated claims management activity in Great Britain.

...

Annex D

Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text.

13 Claims management: client money

...

13.2 Organisational requirements and responsibility for CASS operational oversight

...

13.2.4 R ...

- 13.2.5 G (1) This paragraph CASS 13.2.5G explains how CASS 13.2.3R fits into the regime for *SMCR firms*. This paragraph does not deal with a *firm* that is a *PRA-authorised person*.
- (2) The regime for *SMCR firms* is summarised in SYSC 23.3 (Overview of the senior managers and certification regime).
- (3) The function in CASS 13.2.3R is not a separate *controlled function* and performing that function does not require approval as an *approved person*.
- (4) There are three elements of the regime for *SMCR firms* that are particularly relevant to CASS 13.2.3R, although they do not all apply to all *SMCR firms*:
- (a) a *firm's* obligation to allocate certain responsibilities to its *SMF managers* (see SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities));
- (b) a *firm's* obligation to ensure that one or more of its *SMF managers* have overall responsibility for each of its activities, business areas and management functions (see SYSC 26 (Senior managers and certification regime: Overall and local responsibility)); and
- (c) the certification regime (see SYSC 27 (Senior managers and certification regime: Certification regime)).
- (5) (a) This paragraph (5) explains how CASS 13.2.3R applies to a *limited scope SMCR firm*. Neither SYSC 24 nor SYSC 26 applies to such a *firm*. Most *firms* carrying on a *regulated*

- claims management activity will be limited scope SMCR firms.
- (b) The firm may choose to allocate the function in CASS 13.2.3R to an SMF manager.
- (c) The firm may instead choose to allocate the function in CASS 13.2.3R to someone who is not an SMF manager.
- (d) Where (c) applies, the person performing the function in CASS 13.2.3R will fall into the certification regime. The function in CASS 13.2.3R will be the CASS oversight FCA certification function in SYSC 27.8.1R.
- (6) (a) This paragraph (6) explains how CASS 13.2.3R applies to a core SMCR firm. SYSC 24 applies to such a firm but SYSC 26 does not.
- (b) The firm must allocate responsibility for the firm's compliance with CASS to one of its SMF managers (see SYSC 24.2.1R). That responsibility is an "FCA-prescribed senior management responsibility". The full list of FCA-prescribed senior management responsibilities is in the table in SYSC 24.2.6R.
- (c) Although the CASS function in SYSC 24.2.1R is different from the function in CASS 13.2.3R, the firm may allocate the function in CASS 13.2.3R to the SMF manager in CASS 13.2.5G(6)(b).
- (d) The firm may choose to allocate the function in CASS 13.2.3R to someone who is not an approved person and SMF manager. If so:
- (i) that person will be subject to the employee certification regime described in SYSC 27 (Senior managers and certification regime: Certification regime);
- (ii) that person will be subject to supervision by the SMF manager in (b); and
- (iii) the function in CASS 13.2.3R will be the CASS oversight FCA certification function in SYSC 27.8.1R.
- (7) (a) This paragraph (7) explains how CASS 13.2.3R applies to an enhanced scope SMCR firm. Both SYSC 24 and SYSC 26 apply to such a firm.
- (b) CASS 13.2.5G(6) applies to such a firm.

- (c) In addition, the firm may allocate the CASS FCA-prescribed senior management responsibility to an SMF manager who does not perform any other function coming within the FCA regime for SMF managers in SMCR firms. See SUP 10C.7 (Other overall responsibility function (SMF18)) and SUP 10C.8.1R (Other local responsibility function (SMF22)) for details. Where this is the case, the manager will be performing the other overall responsibility function or the other local responsibility function.

...

Annex E

Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, underlining indicates new text.

8 **Requirements for firms with temporary permission for regulated claims management activities**

...

Table: Disapplied or modified modules or provisions of the Handbook

8.1.4 R ...

8.1.5 G SYSC TP 8.2.1R says that a *firm* with a *temporary permission* is not an *SMCR firm*.

...

Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force 10 June 2019

TP 12 **Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms**

...

12.22 **Terms used in SUP TP 12**

12.22.1 R ...

12.22.2 R Table: glossary of bespoke terms used in SUP TP 12

Part One: General	
Defined term	Meaning
...	...
authorisation application	...
<u>claims management firm</u>	<i>a firm whose permission includes regulated claims management activities.</i>
...	
pre-implementation controlled function	...
<u>pure claims management firm</u>	<i>a firm whose permission only covers regulated claims management activities.</i>
...	

...

12.23 **Forms**

...

12.23.2 R Form O

...

12.24 Claims management firms

Applications for approval

- 12.24.1 D SUP TP 12.15 applies to a **pure claims management firm** on the basis that the approval referred to in SUP TP 12.15.1D(1) comes into effect on the date that firm becomes an *SMCR firm* if that date is after the **commencement date**.
- 12.24.2 D SUP TP 12.15 does not apply to a **pure claims management firm** with a *temporary permission* if that firm has not made an application as referred to in [article 82] of the *Claims Management Order*.
- 12.24.3 G A **claims management firm** with a *temporary permission* should not make another application under section 59 of the *Act* for approval for the performance of a *controlled function* that will only apply to it once it becomes fully authorised for *regulated claims management activities* if it has not made an application as referred to in [article 82] of the *Claims Management Order*.
- 12.24.4 G (1) A **pure claims management firm** may make an application under SUP TP 12.15 in the same way as other *firms*.
- (2) Both a **pure claims management firm** that gets full authorisation before the **commencement date** and one that still has a *temporary permission* before the **commencement date** may make such an application.
- (3) If a **pure claims management firm** makes an application under section 59 of the *Act* after the **commencement date**, SUP TP 12.15 does not apply. It should make the application under SUP TP 10C (FCA senior managers regime for approved persons in SMCR firms).

Pure claims management firms with temporary permission: general

- 12.24.5 G (1) Most of this Annex does not apply to a **pure claims management firm** with a *temporary permission* as such a firm is not a **solo-regulated SMCR firm**.
- (2) If a **pure claims management firm** gets full authorisation before the **commencement date**, it will be a **solo-regulated SMCR firm**. However, most of this Annex will still not apply as the firm will not have any *approved persons* under SUP 10A. It will therefore not have any **pre-implementation approvals** to be converted.
- (3) As explained in SUP TP 12.24.4G, SUP TP 12.15 may be relevant to a **pure claims management firm**.

In flight applications for authorisation

- 12.24.6 G (1) In certain circumstances, a *person* who has made an application for authorisation under the Compensation (Claims Management Services) Regulations 2006 is treated as having made an application for authorisation under the *Act*.
- (2) This paragraph applies to a *person* in (1) who would be a **pure claims management firm** if the application were granted by the *FCA*.
- (3) Where [article 35(4)] of the *Claims Management Order* (Applications for authorisation made to the Regulator: determination by the *FCA*) requires the *person* to submit a further application form and fee to the *FCA*, the applicant should not make an application under section 59 of the *Act* (Approval for particular arrangements) until it has complied with those requirements under [article 35].

Part 2: Comes into force 9 December 2019**10C FCA senior managers regime for approved persons in SMCR firms**

...

10C What functions apply to what type of firm
Annex 1

...

Part Seven: Functions applying to limited scope firms

- 7.1 R *Limited scope SMCR firms* are divided into the following categories for the purposes of *SUP* 10C Annex 1:

...

- (5) a *sole trader* who does not come within (1) to (4), (8) or (9);
- (6) an *authorised professional firm* that does not come within (1) to (4), (8) or (9);
- (7) a *firm* in the table in *SUP* 10C Annex 1 7.10R;
- (8) a *firm* that comes within *SYSC* 23 Annex 1 5.13R (claims management) that is a Class 1 firm as defined in *CMCOB* 7.2.5R(1);

- (9) a firm that comes within SYSC 23 Annex 1 5.13R (claims management) that is not a Class 1 firm as defined in CMCOB 7.2.5R(1).

...

- 7.3 R (1) The table in SUP 10C Annex 1 7.4R sets out which FCA controlled functions apply to a limited scope SMCR firm covered by SUP 10C Annex 1 7.1R(1), ~~(2), (3) or~~ to (4), (8) or (9).
- (2) Part Two of that table applies to EEA SMCR firms.
- (3) Part One of that table applies to other limited scope SMCR firms in (1).
- 7.4 R Table: Controlled functions applying to limited scope SMCR firms except sole traders and authorised professional firms

Part One (UK and non-EEA)						
(1) Brief description of function	(2) Function number	(3) General	(4) Insurance distribution and credit firms	(5) Consumer credit appointed representatives	(6) <u>Class 1 claims management firms</u>	(7) <u>Other claims management firms</u>
Governing functions						
The governing functions that apply to core SMCR firms	Various	×	×	✓	×	×
Required functions						
Compliance oversight function	SMF 16	✓	×	×	✓	×
Money laundering reporting function	SMF 17	✓	×	×	×	×

<i>Limited scope function</i>	SMF 29	✓	✓	✓	✓	✓
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Part Two (EEA firms)						
(1) Brief description of function	(2) Function number	(3) General	(4) Insurance distribution and credit firms	(5) Consumer credit appointed representatives	(6) <u>Class 1 claims management firms</u>	(7) <u>Other claims management firms</u>
Required functions						
<i><u>Compliance oversight function</u></i>	<u>SMF 16</u>	×	<u>Note (3)</u>	<u>Note (3)</u>	✓	×
<i>Money laundering reporting function</i>	SMF 17	✓	Note (3)	Note (3)	×	×
<i><u>Limited scope function</u></i>	<u>SMF 29</u>	×	<u>Note (3)</u>	<u>Note (3)</u>	✓	✓

Notes to the table
<p>Note (1): The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 7.1R. Therefore:</p> <p>(1) column three (General) refers to SUP 10C Annex 1 7.1R(1);</p> <p>(2) column four (Insurance distribution and credit firms) refers to SUP 10C Annex 1 7.1R(2) and SUP 10C Annex 1 7.1R(3); and</p> <p>(3) column five (Consumer credit appointed representatives) refers to SUP 10C Annex 1 7.1R(4);</p> <p>(4) column six (Class 1 claims management firms) refers to SUP 10C Annex 1 7.1R(8); and</p> <p>(5) column seven (Other Claims management firms) refers to SUP 10C Annex 1 7.1R(9).</p>
...

...

