

The logo for ICSR, with the letters 'I', 'C', 'S', and 'R' in orange, red, purple, and teal respectively.

Implement Compliance
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The logo for Actus, featuring the word 'Actus' in purple and a stylized graphic of three figures in orange, teal, and grey. Below it, the text 'Actus Compliance Software' is written in a smaller, grey font.

SMCR: The Future for FCA Regulated Firms: A Briefing for Senior Managers, Compliance, Risk, Legal & HR



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Agenda

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Welcome
(Kenneth Underhill)

2

The Implications for Senior Management
(Kenneth Underhill)

3

The Practical implications
(Jason Jones)

4

The Implications for Cultural Change
(Lucinda Carney)

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Questions

1 Welcome



Kenneth Underhill
Director



Jason Jones
Director

ICSR is a group of highly experienced individuals passionate about helping others to ensure that they meet regulatory requirements and achieve their goals within an environment of business, legal and regulatory change, be it FCA, PRA or otherwise.



Lucinda Carney
CEO & Founder

Actus provide Performance Management & Compliance Software supported by Organisational Development Consultancy. They specialise in using technology as an enabler of behaviour and culture change.

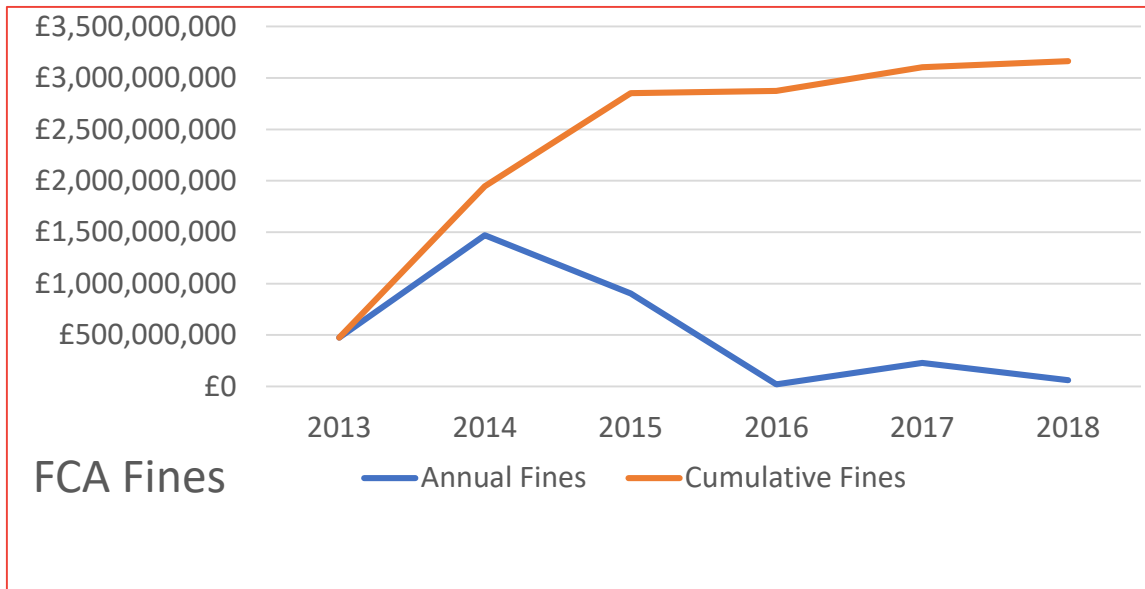
2 Implications: What's it all about?



\$150 billion fines

>300 people convicted and fined

2 Implications: What's it all about?



Ex-Barclays executives deny fraud charges ahead of major trial

John Varley becomes most senior banker to face a British court in a criminal case since the financial crisis



Former Barclays CEO John Varley appears in Southwark Crown Court on Monday © Charlie Bibby/FT

Jane Croft JANUARY 14, 2019



2 Implications: What's it all about?



What has all this meant for individual 'managers'?

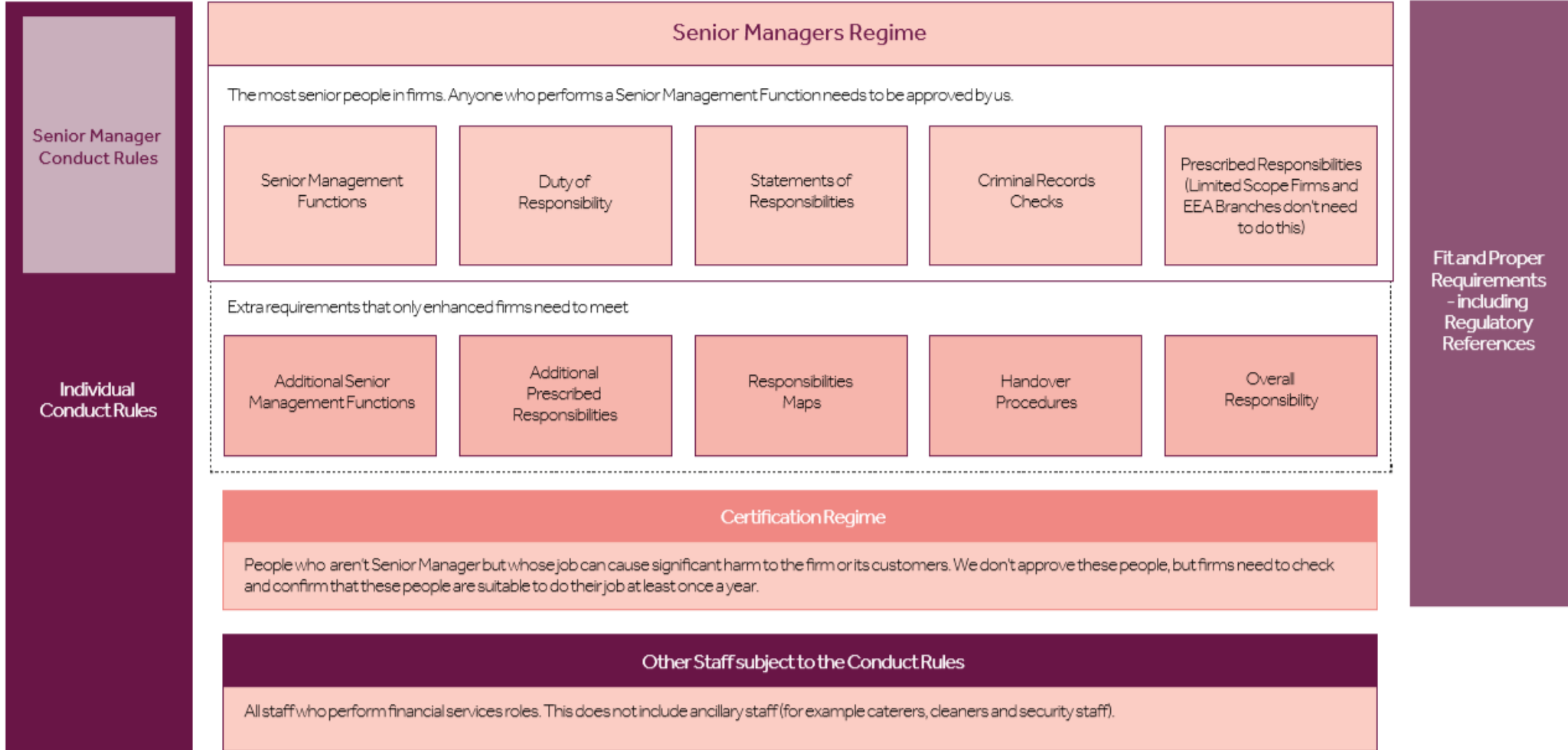


- 60 % of all fines have been levied against individuals
- Mainly against directors in small firms
- The average fine has been £570,000

Why?

- It was obvious they were responsible
- They over-ruled processes and procedures or other individuals in the firm
- They simply had no processes and procedures
- They ran a fiefdom

2 Implications: Senior Management Requirements



2 Implications: Senior Management Requirements

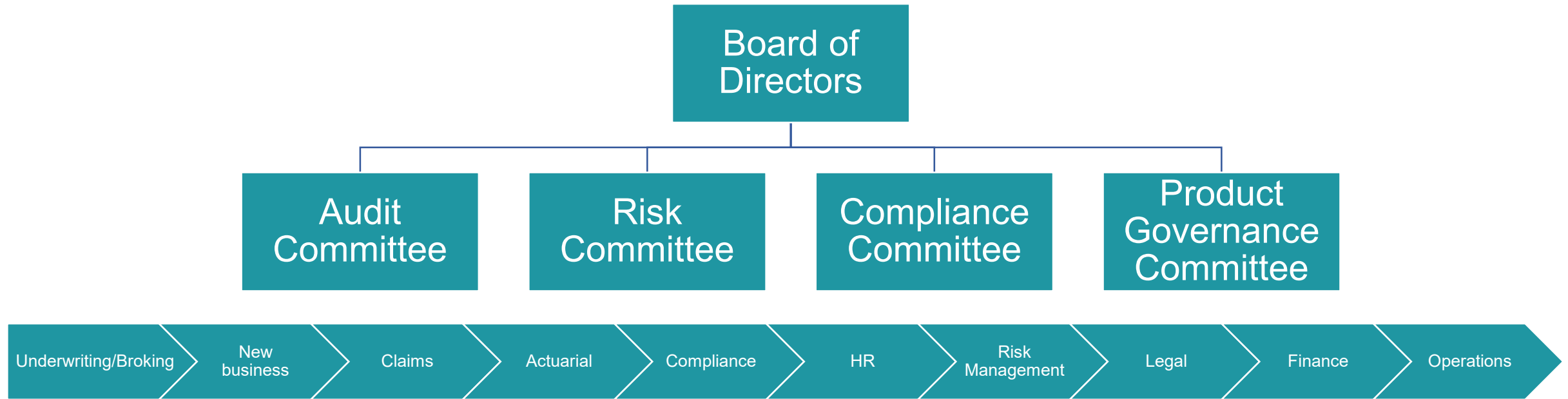


A person is guilty of misconduct if, while an approved person—

- a) the person has failed to comply with a statement of principle issued by the FCA under section 64, or
- b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person

Where a Firm has been in breach of an FCA requirement the Senior Manager responsible for the relevant area of the business where the breach occurred can be held accountable if they did not take reasonable steps to prevent or stop the breach.

2 Implications: Responsibility



FCA Handbook: 2.1.1 The Principles

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

FCA Handbook: 3.1 Systems and controls

The nature and extent of the systems and controls which a firm will need to maintain under SYSC 3.1.1 R will depend upon a variety of factors...



3 The Practical Implications

Also known as “The Technical Section”...



3 The Third Version of SMCR

Senior Managers and Certification Regime (SMCR) replaces the Approved Persons Regime

2016 version for banks, building societies, credit unions and dual-regulated investment firms

2018 version for insurers and Lloyd's Managing Agents

FOCUS

2019 version for solo-regulated (FCA) firms (deadline 9 December 2019)

- e.g. insurance brokers, reinsurance brokers, MGAs, coverholders
- but not Appointed Representatives (continue in Approved Persons Regime)

3



The Senior Managers and Certification Regime:
Guide for FCA solo-regulated firms

July 2018



3 Working out Your SMCR Firm Type



Limited Scope Firm	sole trader <i>or</i> principal business not insurance intermediation	slightly reduced SMCR requirements
Core Firm	-	baseline SMCR requirements
Enhanced Firm	annual regulated business revenue £35 million or more (3 year rolling average)	additional SMCR requirements

3 The Baseline Requirements

Senior Managers Regime	Senior Management Functions (SMFs) Statements of Responsibilities (SoRs) The Duty of Responsibility Prescribed Responsibilities (PRs)
Certification Regime	Certification Functions
Fitness and Propriety	Responsibilities of the firm Criminal records checks Regulatory references
Conduct Rules	Two tiers of individual behaviour rules Training and breach reporting

3 The Senior Managers Regime (SMR)

A **Senior Management Function** (SMF) is a new type of controlled function

Anyone who performs a SMF requires FCA approval before they can start their role

6 SMFs within the Core SMR:

SMF 1 - Chief Executive

SMF 3 - Executive Director

SMF 9 - Chair of the governing body of the firm

SMF 27 - Partner

SMF 16 - Compliance Oversight*

SMF 17 - Money Laundering Reporting Officer*

* only if currently required for your firm by specific Handbook rules

NEDs, unless Chair, will no longer need FCA approval, but still subject to Conduct Rules, fit and proper requirements and regulatory references

3 The Senior Managers Regime

A **Statement of Responsibilities** is a single document that every SMF holder will need to have, clearly setting out their role and responsibilities

- self-contained and not refer to any other documents
- succinct and clear without unnecessary detail

One per person per firm

Must submit a SOR when applying for SMF approval (FCA form)

Must keep SOR up to date and resubmit if any significant changes

3 The Senior Managers Regime

Every SMF holder has a **Duty of Responsibility**

If the firm breaches FCA requirements the FCA could hold to account the person responsible for that area if they didn't take reasonable steps to prevent or stop the breach

Burden of proof rests with FCA

FCA could take action against the firm and/or the relevant SMF holder

3 The Senior Managers Regime (SMR)

The **Prescribed Responsibilities (PRs)** are defined by the FCA and must be given to one or more executive SMF holders

5 PRs within the Core SMR:

(a) Performance by the firm of its obligations under the **SMR**, including implementation and oversight

(b) Performance by the firm of its obligations under the **Certification Regime**

(b-1) Performance by the firm of its obligations in respect of notifications and training of the **Conduct Rules**

(d) Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further **financial crime**

(z) Responsibility for the firm's compliance with **CASS** (if applicable)

3 The Certification Regime

Certification covers specific functions that aren't Senior Management Functions (SMFs), but can have a significant impact on customers, the firm and/or market integrity.

The only **Certification Functions** applicable to general insurance intermediaries are:

- Significant Management Function (current CF29)
- Anyone who supervises a Certification Function (directly or indirectly), but isn't a SMF

Territorial limitation to people based in UK or in contact with UK customers

No FCA approval required to perform Certification Functions

Firms must check and certify initially* and on an ongoing basis at least annually that these people are suitable to do their job...

* firms have 12 months from 9 December to complete the initial certification process

3 Fitness and Propriety

Firms must check that the following people are fit and proper for their role:

- Senior Management Function holders
- Certification Function holders
- NEDs who are not SMFs

This is required initially and on an ongoing basis at least annually

Consider, as relevant for each role:

- honesty, integrity, reputation
- competency and capability
- financial soundness

Guidance in FIT module of FCA Handbook

Firms generally incorporate F&P into recruitment and performance management processes

Must keep adequate records and evidence for at least 6 years...

3 Fitness and Propriety

Firms must undertake a **criminal records check** (to the extent permitted by law):

- as part of each SMF application for approval
- for incoming NEDs who will not be SMF holders

Consider UK and/or overseas checks as appropriate

Not mandatory to check people performing Certification Functions

3 Fitness and Propriety

Firms must request a **regulatory reference** from candidates' past employers (last 6 years) for:

- incoming Senior Management Function holders
- incoming Certification Function holders
- incoming NEDs who are not SMFs

FCA rules set out the standard template and what must be disclosed

Firms must not enter into agreements that conflict with these disclosure obligations

3 Conduct Rules

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

SC4. also applies to NEDs who are not SMFs

3 Conduct Rules

Firms must **train all relevant staff** on how the Conduct Rules apply to their role

Holders of Senior Management Functions and Certification Functions must be trained and comply by 9 December

Firms will then have 12 months to train other staff

Firms must **notify the FCA of any disciplinary action** for a Conduct Rules breach

Within 7 business days for Senior Management Functions (FCA form)
Annually for other staff (GABRIEL electronic reporting)

3 Next steps and implementation dates

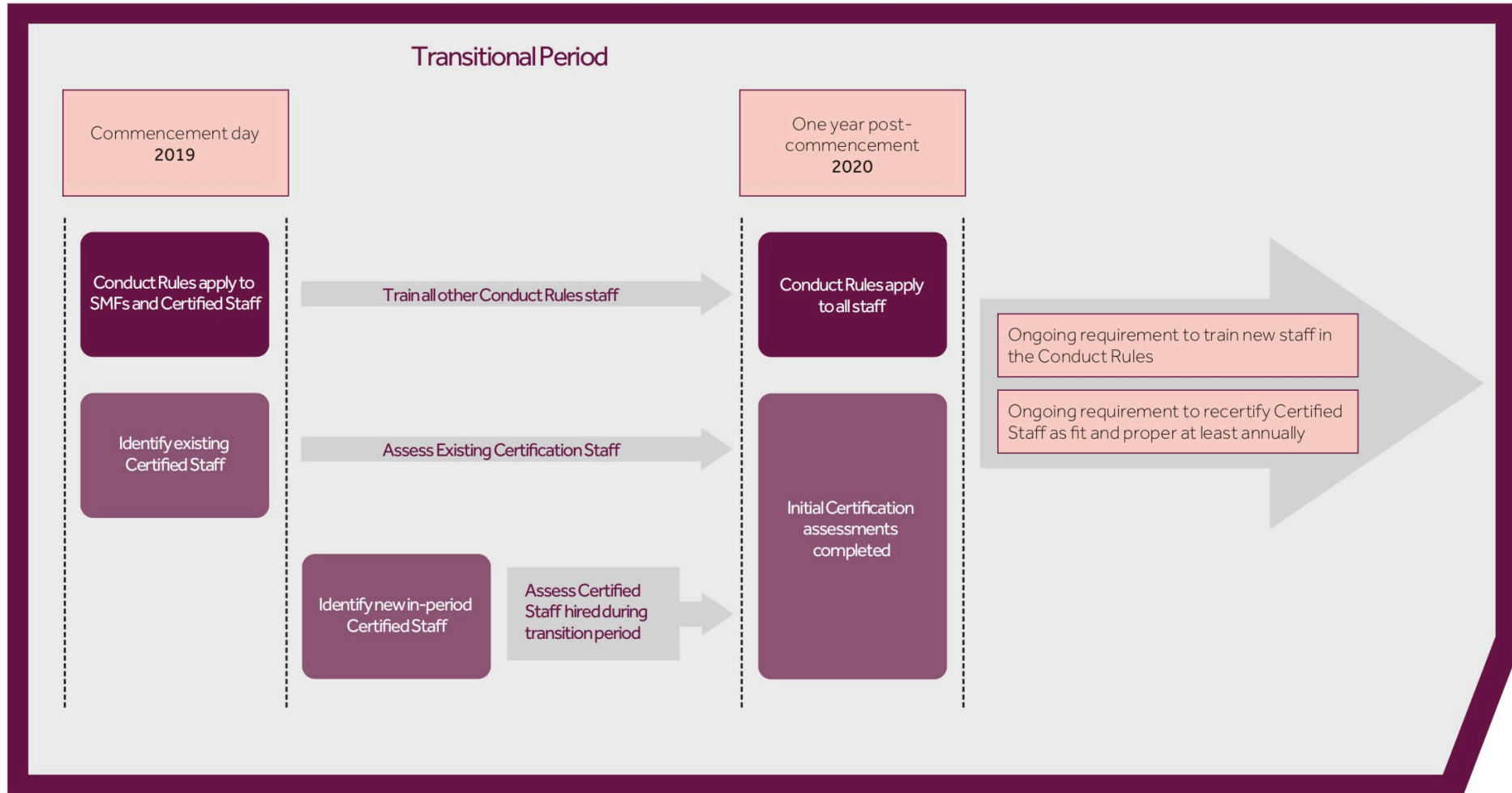
SMCR regime goes live on 9 December 2019

FCA will contact all firms beforehand to agree which level of SMCR applies - Limited Scope, Core, Enhanced

For Core firms:

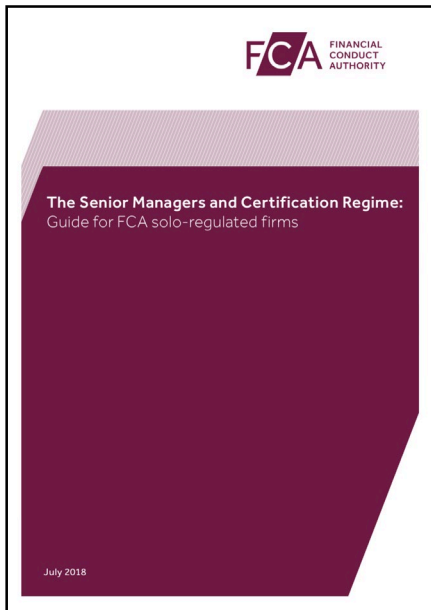
- FCA will automatically convert existing relevant Approved Persons into SMFs
- Will need to maintain but not submit Statements of Responsibilities for their SMFs
- Will need to notify/apply for a NED/Exec Chair

3 Next steps and implementation dates



3 In conclusion

Do read the FCA guidance document



<https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>

Do start early



Do ask for help or advice if required



4



Embedding the ethos of SMCR

How to deliver genuine cultural change

Lucinda Carney CPsychol



How do you think SM&CR might affect your firm's culture?

- Little or no change – it is just another piece of legislation to manage in the background
- Another set of tick box's that people will moan about
- SMF's will be nervous and look to HR/Compliance to provide assurance on their behalf
- It will improve accountability and behaviours throughout the firm



The FCA require



True responsibility and accountability – which can be evidenced



Genuine awareness and improvement in the behaviours that drive risk

4



Consistency & quality around background checks, certification and conduct



Evidence of an embedded control process around risk management

Which fits your firm's profile best?

Performance Management Process

- Little or no performance appraisal processes
- Paper-based appraisals – somewhat of a 'checkbox' exercise
- Well embedded performance appraisal process

SM&CR Readiness

- Nothing in place yet, unsure where to start
- SMF Mapping & Certification Numbers done, planning a manual process
- Roles sorted; planning to manage Certification & Conduct using internal HR Software

Linking performance management and compliance – one cycle



Aligning Responsibilities & Performance Objectives

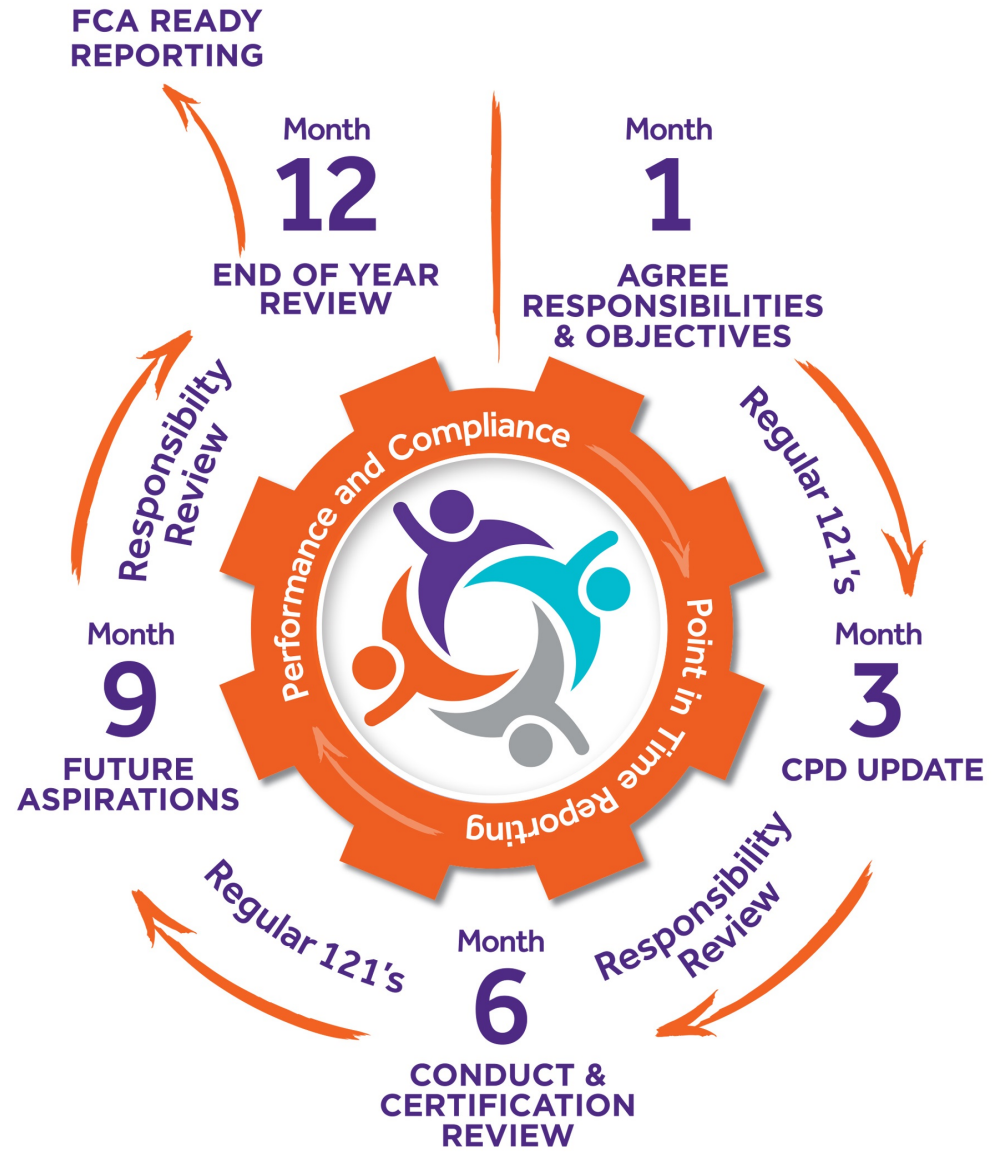
- Ultimate responsibilities still remain at the top
- Demonstrates the importance of compliance related activities
- Provides increased visibility and assurance
- Can be used as evidence of control process
- Embeds responsibilities into business as usual
– key to culture change



Conduct & Certification

- **Rule 1:** You must act with integrity
- **Rule 2:** You must act with due skill, care and diligence
- **Rule 3:** You must be open and cooperative with the **FCA**, the PRA and other regulators
- **Rule 4:** You must pay due regard to the interests of customers and treat them fairly
- **Rule 5:** You must observe proper standards of market conduct

Linking performance management and compliance – one cycle



Competency or Value	What good looks like	Behaviours to change
Keep promises	<ul style="list-style-type: none"> Says what they are going to do and does it Always prioritises the safety of customer money and data Is clear and honest with customers 	<ul style="list-style-type: none"> Acts irresponsibly with money and data Misleads customers Over-promises - under-delivers
Strive for more	<ul style="list-style-type: none"> Always aims for higher levels of performance Demonstrates energy and pace in getting things done Always challenging self and others to do more 	<ul style="list-style-type: none"> Unwilling to push for improvement Lacks energy and drive, prefers an easy life Accepts less than the best in self or others
Courageous	<ul style="list-style-type: none"> Fights to compete and succeed Takes personal ownership for solving problems Challenges the status quo 	<ul style="list-style-type: none"> Passes the buck or blames others Follows the crowd Doesn't own problems/issues
Customer Service	<ul style="list-style-type: none"> Treats customers fairly and with respect Proactively asks questions to understand customer needs Is polite and courteous 	<ul style="list-style-type: none"> Makes assumptions about needs Puts personal needs ahead of customer Overlooks unfair treatment
Commercial	<ul style="list-style-type: none"> Uses resources efficiently and effectively to deliver best value Commercially aware, always looking for ways to be more competitive 	<ul style="list-style-type: none"> Wastes resources Doesn't take advantage of development opportunities Makes excuses for not getting things done

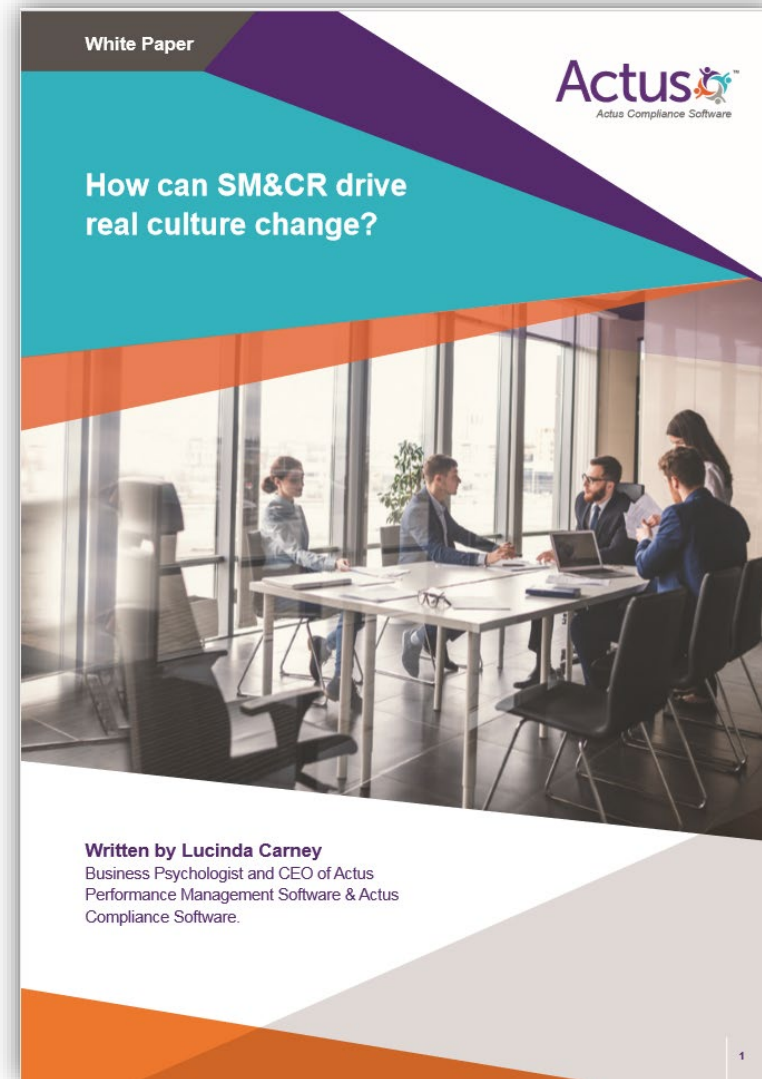
Competency Title & FCA Conduct Alignment	What good looks like	Behaviours to change
Integrity <i>You must act with integrity</i>	<ul style="list-style-type: none"> Is open and honest with customers, is careful to avoid misunderstanding Always prioritises the safety of customer money and data Says what they are going to do and does it 	<ul style="list-style-type: none"> Acts irresponsibly with money and data Misleads customers Over-promises - under-delivers
Performance <i>You must act with due care, skill and diligence</i>	<ul style="list-style-type: none"> Always aims for higher levels of performance Delivers results at pace without compromising quality Always challenging self and others to improve 	<ul style="list-style-type: none"> Unwilling to push for improvement Cuts corners, lacks attention to detail Accepts less than the best in self or others
Accountability <i>You must be open and cooperative with the FCA, the PRA & other regulators</i>	<ul style="list-style-type: none"> Takes personal ownership for solving problems Is positive and collaborative, seeking solutions Challenges those who are not following the rules 	<ul style="list-style-type: none"> Makes excuses or blames others for problems Hides mistakes Works in isolation from others
Customer <i>You must pay due regard to the interests of customers and treat them fairly</i>	<ul style="list-style-type: none"> Treats customers fairly and with respect Proactively asks questions to understand customer needs Challenges others to deliver in the best interests of the customer 	<ul style="list-style-type: none"> Makes assumptions about customer needs Puts personal needs ahead of customer Overlooks unfair treatment
Creating Best Value <i>You must observe proper standards of market conduct</i>	<ul style="list-style-type: none"> Uses resources efficiently and effectively to deliver best value Commercially aware, looks for ways to be more competitive Keeps up-to-date with and follows the rules of the market 	<ul style="list-style-type: none"> Doesn't plan effectively Wastes resources Bends the rules to secure market advantage

Linking Conduct and Competencies

What are the potential benefits of aligning the two processes?

- Improved visibility and dissemination of responsibilities to where it matters – genuinely reducing risk
- Increased awareness of what good and bad looks like around conduct risk and the space to challenge and turn around risky behaviours
- An more meaningful and consistent performance & SM&CR management process – reducing risk, increasing performance and engagement

This free white paper can be downloaded from www.actus.co.uk



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Implement Compliance
Solutions & Resources

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QUESTIONS?

Yes, we'll email you the slides!

The ICSR logo consists of the letters 'I', 'C', 'S', and 'R' in a stylized font. The 'I' is orange, 'C' is red, 'S' is purple, and 'R' is teal.

Implement Compliance
Solutions & Resources

www.icsr.co.uk

The Actus logo features the word 'Actus' in a large, purple, sans-serif font. To the right of the text is a colorful icon of three stylized human figures in orange, teal, and grey, arranged in a circle. Below the main logo, the text 'Actus Compliance Software' is written in a smaller, grey, sans-serif font.

www.actus.co.uk

Thank you and keep in touch



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APPENDICES

3 Differences for Limited Scope Firms

3 **Senior Management Functions** within the Limited Scope SMR:

SMF 29 - Limited Scope Function (apportions responsibilities and oversees controls, old CF8)

SMF 16 - Compliance Oversight*

SMF 17 - Money Laundering Reporting Officer*

* only if currently required for your firm by specific Handbook rules

No **Prescribed Responsibilities** for Limited Scope firms

Limited Scope firms are not required for **non-SMF NEDs** to assess their fitness and propriety, obtain criminal records checks or regulatory references

3 Differences for Enhanced Firms

17 Senior Management Functions within the Enhanced SMR:

- SMF 1 - Chief Executive
- SMF 2 - Chief Finance Function
- SMF 3 - Executive Director
- SMF 4 - Chief Risk Function
- SMF 5 - Head of Internal Audit
- SMF 7 - Group Entity Senior Manager
- SMF 9 - Chair of the governing body of the firm
- SMF 10 - Chair of the Risk Committee
- SMF 11 - Chair of the Audit Committee
- SMF 12 - Chair of the Remuneration Committee
- SMF 13 - Chair of the Nominations Committee
- SMF 14 - Senior Independent Director
- SMF 24 - Chief Operations Function
- SMF 27 - Partner
- SMF 16 - Compliance Oversight (if required by Handbook rules)
- SMF 17 - Money Laundering Reporting Officer (if required by Handbook rules)
- SMF 18 - Other Overall Responsibility (if an area doesn't fall under another SMF)

3 Differences for Enhanced Firms

12 Prescribed Responsibilities for Enhanced firms

Enhanced firms must prepare and maintain a **Responsibilities Map** setting out the firm's management and governance arrangements

This includes, for example, how the PRs have been allocated, details on who has overall responsibility for all the firm's activities, business areas and management functions, details of individuals' and committees' reporting lines, and how any responsibilities are shared or divided between different people

Enhanced firms must have a policy and maintain records showing how it complies with the requirement for **Handover Procedures** to ensure that a person taking a SMF role has all the information and materials they could reasonably expect to have to do their job effectively.