

# **SENIOR MANAGERS & CERTIFICATION REGIME**

**Getting Ready and What Next? for those in Scope**

**27<sup>th</sup> February 2019**

# Agenda



- **Introduction** – Andrea Eccles, CEO, City HR
- **An Overview of SMCR and What Next?** - David Blunt, Head of Conduct Specialists, FCA
- **Lessons Learnt supporting Phase 1** – Chris Finney, Partner, Fox Williams
- **Expert Panel of City HR SMCR Taskforce Members**
  - Marion Bloodworth, Employment Partner, Kemp Little
  - Joanne Owers, Employment Partner, DAC Beachcroft
  - Polly James, Regulatory Partner, Bryan Cave Leighton Paisner
  - Cindy Mahoney, Talent Lead, City HR Association
  - Andrew Pullman, CEO, People Risk Solutions
- **Q&A and Close**

# Senior Managers and Certification Regime

City HR Event – 27 February 2019

Video overview of SMCR

# Senior Managers and Certification Regime

City HR Event – 27 February 2019

David Blunt, Head of Conduct Specialists

# Firms' Culture & Governance

- A continuing priority for the FCA
- Drive behaviours and produce outcomes to benefit consumers and markets
- Extending SM&CR is a key part

# Aim of the SM&CR

To reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold people to account.

As part of this, the SM&CR aims to:

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

# Design of the SM&CR

Three main elements:

Senior  
Managers  
Regime

Certification  
Regime

Conduct  
Rules

# Senior Managers Regime



What do firms need to do to prepare for commencement?



# Senior Managers Regime

## All firms need to:

- Check if they're Limited Scope, Core or Enhanced
  - [Guide to the Regime](#)
  - [Firm Checker Tool](#)
- Identify individuals who will hold new Senior Manager Functions
  - [Firms may need to change existing approvals or add new ones](#)
  - [Check which APR approvals will lapse](#)

**Remember: APR remains for Appointed Representatives**

# Senior Managers Regime

## Before commencement:

- Senior Managers must have a Statement of Responsibilities (SoR)
- Firms must allocate Prescribed Responsibilities (PRs)
- Determine process for new hires
  - Criminal Records checks
  - Regulatory references
  - Fitness and propriety checks
- Determine process for annual fitness and propriety checks

# Senior Managers Regime

**Enhanced** firms also need to:

- Submit the following documents to us:
  - Responsibilities Map
  - Form K with SoR for each SMF
- Keep Responsibilities Maps up to date
- Allocate every activity, business area and management function to a Senior Manager
  - Overall Responsibility requirement
- Have up to date Handover Procedures in place

# Certification Regime



What do firms need to do to prepare for commencement?



# Certification Regime

## Identify:

- which certification functions apply
- certification staff

## Set up processes for:

- new hires
  - regulatory references
  - fitness and propriety checks
- existing staff
  - annual fitness and propriety checks / issuing of certificates

# Conduct Rules



What do firms need to do to prepare for commencement?



# Conduct Rules

## Firms need to:

- Identify which staff will be subject to the conduct rules and when
- Train staff on conduct rules:
  - by 9 December 2019 for SMFs and certification staff
  - by 9 December 2020 for all other conduct rules staff
- Have processes in place to comply with ongoing requirements
  - breach recording and reporting, training for new hires

# Moving to the new regime

All  
firms

## **By 9 December 2019:**

Identify all Senior Managers and  
Certification Staff

Train Senior Managers & Certification  
Staff in Conduct Rules

## **By 9 December 2020:**

Conduct F&P assessments for  
Certification Staff

Train all other staff in Conduct rules

# The Directory - Proposals

We are proposing a Directory that will display both FCA approved and firm-certified staff

The screenshot shows the FCA Directory search interface. At the top left, the logos for the Financial Conduct Authority (FCA) and the Bank of England Prudential Regulation Authority (PRA) are displayed. Below the logos, the text "Home / The directory" is visible. A search bar contains the text "Jazz Cooper" and a "Search" button. To the right of the search bar, there are options for "Advanced search" and "Postcode/area".

The search results section shows "Found 5 results for 'Jazz Cooper'" with options to "Save as PDF" and "Print page". A "Filter by:" dropdown menu is set to "Role".

The profile for Jazz Cooper is displayed, including the name "Jazz Cooper" and IRN: 001000. Under "Individual notices", there are three icons: a red circle with a white 'P' for "Prohibitions apply", a green circle with a white 'AP' for "Approved by the FCA and/or PRA", and a purple circle with a white 'C/A' for "Firm certified/assessed".

The firm name is "Jazz Cooper Wealth Management Ltd" with FRN: 000001. Under "Firm notices", there is a red circle with a white 'R' for "Restricted activities" and a blue circle with a white minus sign for "Hide contact details".

The "Location" is Scunthorpe, and the "Distance from you" is 1.1 miles. A "View Map" button is present. The "Contact details" section includes the "Website" (www.websitejazzcooper.comco.uk), "Email" (Emailjazz@cooper.com), and "Telephone" (00 000 0000).

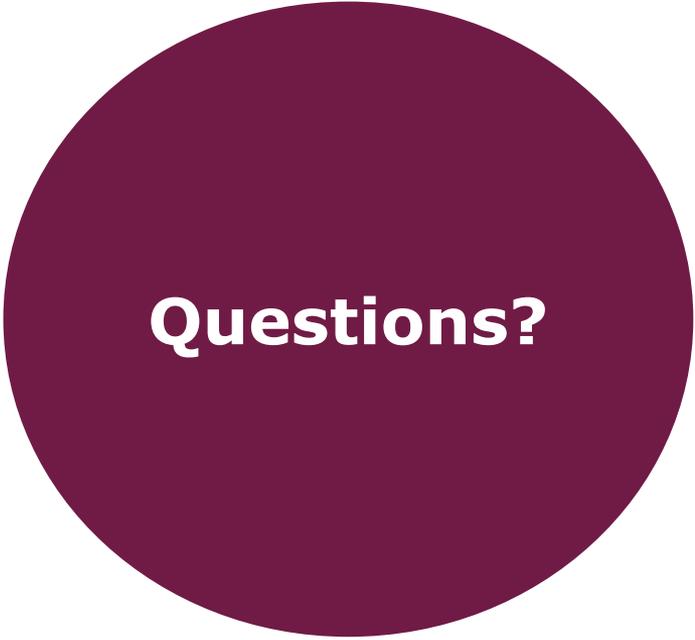
# Next steps

Make use of resources to prepare for 9 December 2019

- Video overview of the SM&CR
- Firm checker tool
- Guide to the SM&CR for Solo-regulated firms

Engage with Consultations

- Guidance on preparing Statements of Responsibility and Responsibilities Map
- Residual issues CP



**Questions?**

# City HR

## The SMCR: Challenges for in-house practitioners

27 February 2019

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# Challenges for in-house practitioners

- Simple?
- “The team”, and “the steering committee”
- Categorisation, boundaries and unexpected results
- The conversations
  - SMFs
  - CFEs
  - Allocation of the PRs
  - Danger money
- Conduct rule training
- Documents and processes

# Challenges for in-house practitioners

- Giving and receiving references
- Giving and withholding certificates
- Disciplinary issues
- Regulatory responses
- Transitional periods
- Long story short

# CITY HR

## ASSESSING YOUR READINESS FOR THE SMCR EXTENSION AND WHERE ARE WE NOW?

### KEY EMPLOYMENT LAW ASPECTS

Wednesday 27 February 2019

**Presented by: Joanne Owers & Marian Bloodworth**

**Co-Chairs – Consultation, Legislation and Policy Committee**

# KEY EMPLOYMENT LAW ASPECTS

## Top 10 tips for a successful SMCR project

- Get the right project team: compliance, legal, HR
- Determine design principles e.g keep SM population as small as possible or larger group?
- Be clear about operating model: no gaps. If one SM rejects responsibility, another must take it.
- Involve SMs early. Implementation smoother the earlier you involve them
- Understand differences between SM concerns: different SMs have different viewpoints and concerns, Steerco needs good line of communication
- Firms have taken the opportunity to conduct governance and controls reviews to improve standards and show they have taken reasonable steps
- Consider a handbook to describe obligations and provide guidance to demonstrate reasonable steps. But be pragmatic/reflect a BAU process
- Understand regulators' drivers: cultural change as important as black letter law in regulators' eyes.
- ID certified persons systematically. Rules can be complex to apply in practice.
- Provide assurance: internal audit will require assurance that SMCR has been implemented appropriately. An assurance report can help SMs show they have taken reasonable steps.

# KEY EMPLOYMENT LAW ASPECTS

SMF's:

- identify who they are
- mapping and allocation of prescribed responsibilities
- identify any gaps
- early and clear communication and involvement
- comfort with governance, people, policies, processes and information aspects
- New contracts?

# KEY EMPLOYMENT LAW ASPECTS

## Top 10 FAQs raised in SM meetings

- What's the difference between the current regime and the new SMCR?
- Would I be exposed if LIBOR/FX equivalent happened in my area of responsibility?
- Why aren't people who sit directly below me and manage the business on a day to day basis SMs?
- How do I meet the reasonable steps test? What is reasonable? Who decides?
- Do I need to write down every decision?
- What are the penalties if I breach the reasonable steps test?
- What resources will the firm give me to make sure I satisfy the test?
- How can I assume responsibility for something when I only have a matrix responsibility?
- Can't responsibilities be shared?
- I work overseas in a group role, why does the regime apply/how can I avoid it applying?

# KEY EMPLOYMENT LAW ASPECTS

## Fitness and Propriety in Practice (1)

- Who will need to be assessed?
- What criteria will be used?
- When do the assessments need to take place?
  - Timescale
  - At what stages during employment cycle?

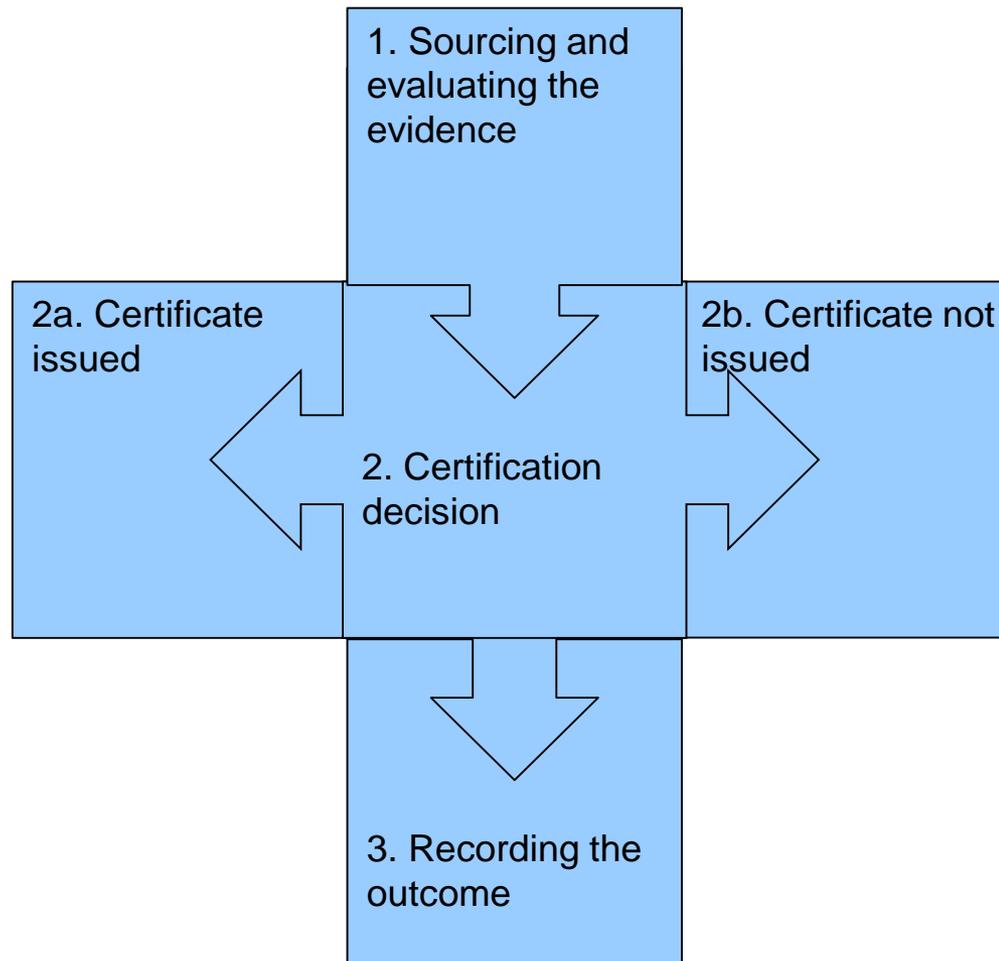
# KEY EMPLOYMENT LAW ASPECTS

## Fitness and Propriety in Practice (2)

- Help is at hand – BSB Guidance
- Good practice guidance
  - 11 assessment principles
- Supporting guidance (1)
  - Definitions;
  - Sources of information;
  - Assessment record template
- Supporting Guidance (2)
  - February 2018;
  - Establishing pass/fail criteria and evidencing F&P assessment;
  - Scenario testing.

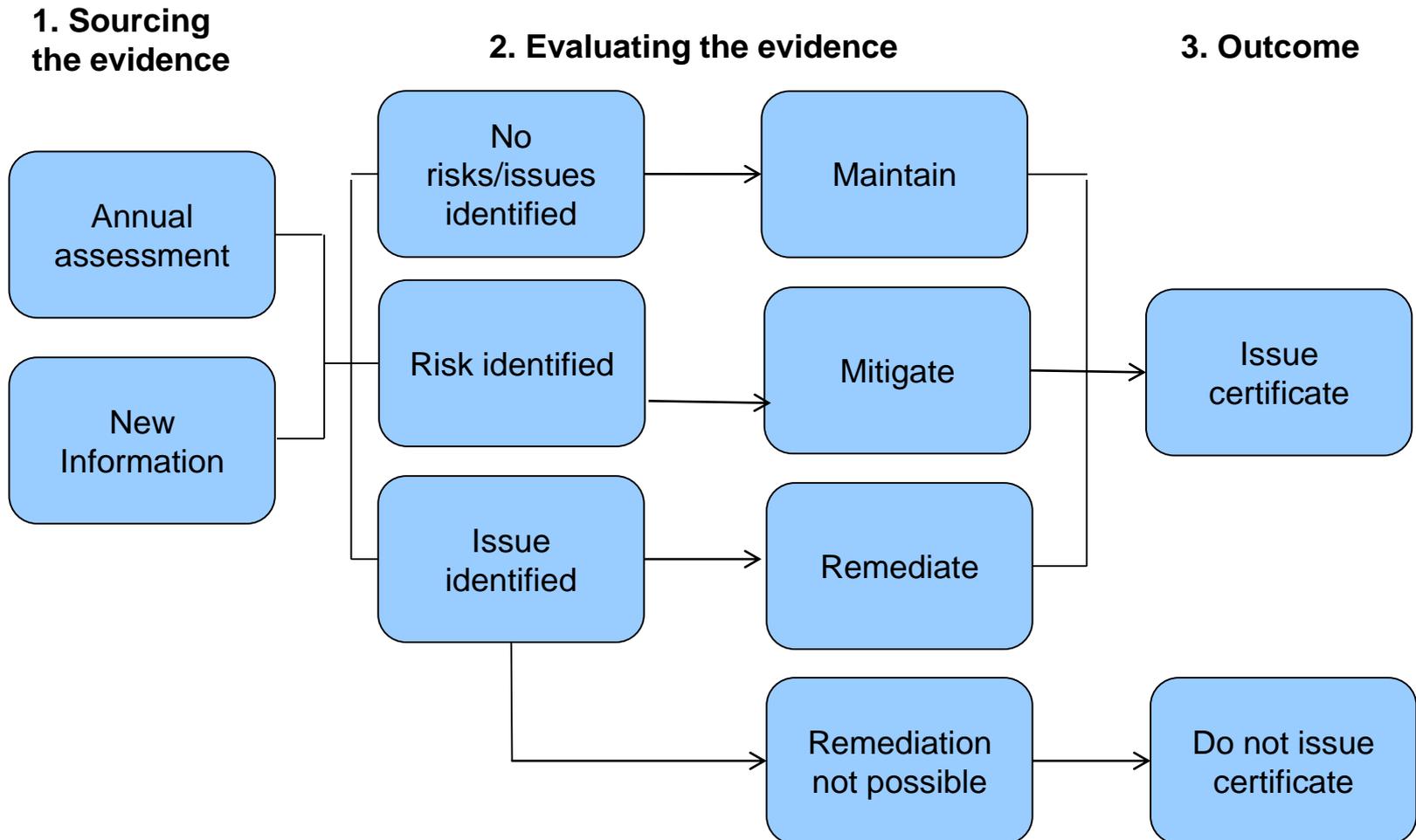
# KEY EMPLOYMENT LAW ASPECTS

Deciding whether to issue a certificate



# KEY EMPLOYMENT LAW ASPECTS

## Decision options



# Key Employment Law Aspects Regulatory References

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- Regulatory reference regime already in place – will apply in full to solo regulated firms w.e.f 9 December 2019
- Policy aim: address rolling bad apples
- Compliance with regulatory reference rules is an SMF responsibility
- Key features:
  - References to be requested covering last 6 years for SMF, CF or Notified NEDs
  - References to be provided as soon as reasonably practical
  - Mandatory information to be provided in mandatory template
  - No time limit regarding serious misconduct
  - Obligation to update reference if new information comes to light
  - No obligation to provide information that has not been verified

## Regulatory references (Cont'd)

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- Implications internally including for:
  - hiring process, regulatory reference policy, disciplinary process, fitness and propriety considerations, exit process
- Impact of issues arising during employment
- Investigations
- Negotiated exits and settlement terms/COT 3s
- Level of detail – differing approaches across sector
- Challenges from employment law perspective?
- BSB consultation on good practice – closes 20 March 2019

# Thank You

KEMP  
—  
LITTLE



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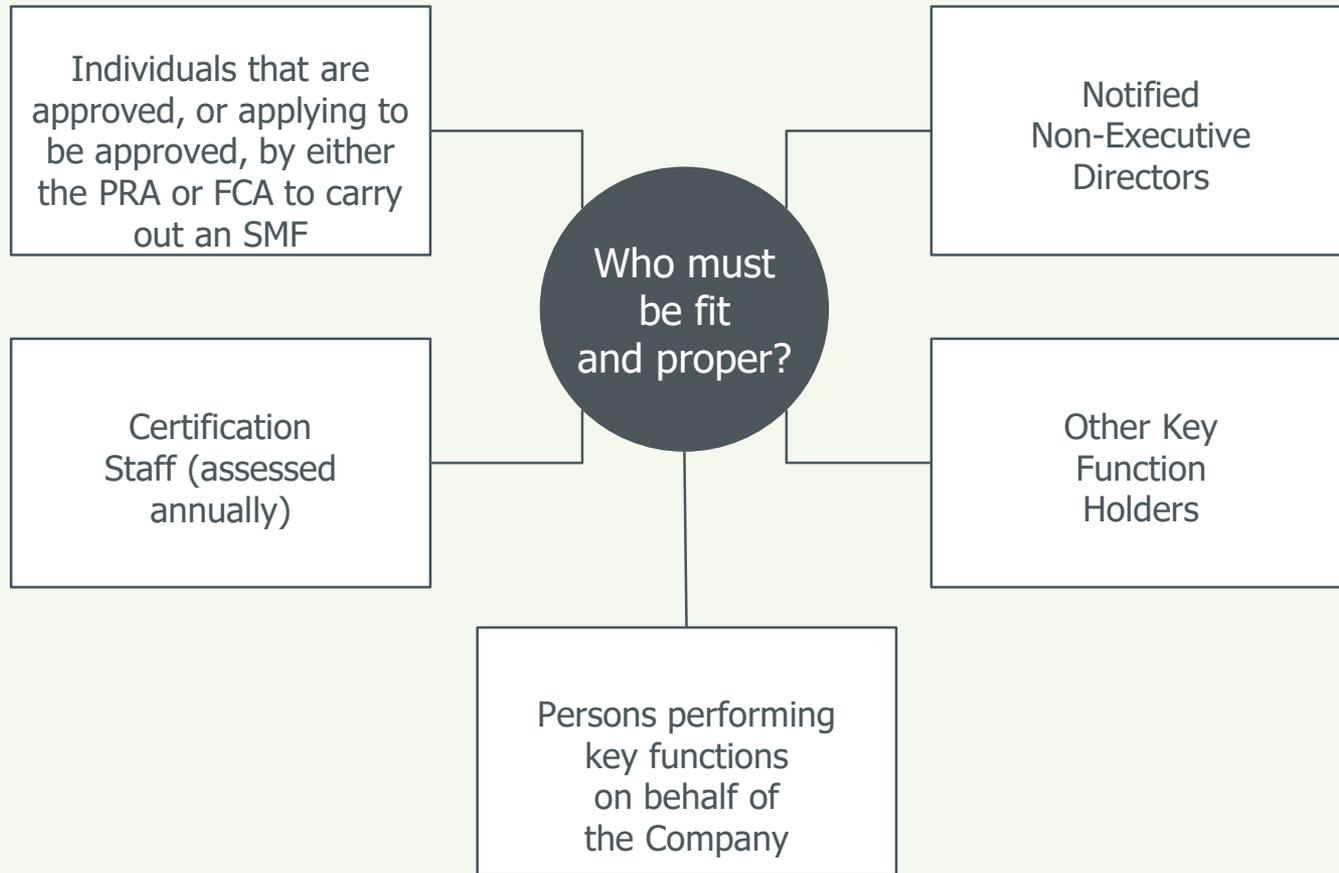
# COCON breaches – regulatory notifications

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- Firms must notify the FCA and/or PRA if they take *disciplinary action* against a person relating to any action, failure to act, or circumstance that amounts to a breach of any of the Conduct Rules. (*s.64C FSMA 2000; FCA Handbook SUP 10C.14.18R and SUP 15.11; PRA Rulebook Notifications 11*)
- *Disciplinary action* is defined as any of the following:
  - The issuing of a formal written warning.
  - The suspension or dismissal of the person.
  - The reduction or recovery of any of the person's remuneration.
- Different requirements on timing depending on the level of seniority of the individual and the regulator concerned.
- Remember any suspicion of a significant breach of a Conduct Rule by an individual must still be notified immediately.

# Insurance - Who Must Be Fit & Proper?



*(s.60A(1) and s.63E-F FSMA 2000; PRA Rulebook Solvency II, Insurance – Fitness and Propriety, 2.1)*

**Insurers should have a fit and proper policy (under Solvency II/EIOPA Guidelines; and Lloyd’s Minimum Standards (where applicable))**

# Training and On-Line Systems

- **Project Management Team**
- **Senior Managers**
- **Certified Persons (MRTs/Key Function Holders)**
- **Employee Conduct Training**
  - **Classroom Style**
  - **On-line**
- **City HR has a Train-the-Trainer Programme and In-House Programme for Employee Conduct Rules Training**





**Members of City HR have used the following:**

- **Unicorn**
- **WorkSmart**
- **Cornerstone**
- **Redland Solutions**
- **Thomson Reuters**
- **Fitch**
- **Eukleia**

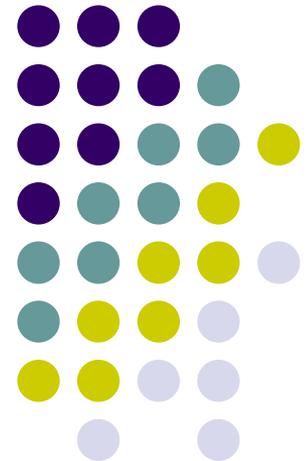
# The SMCR Market Place and How HR is Gearing up to the Challenge

27 February 2019

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# Some Observations

- Mixed experience for first round firms since 2016
- Reality of BAU vs SMCR Project
- Focus on “Reasonable Steps”
- Some disciplinary cases working through re breaches and regulatory references
- New round of firms beginning to focus on SMCR, many have not started yet
- Larger firms building project teams
- Challenge of HR vs Compliance – who owns this?
- Technology solutions

# Timetable



## Enhanced firms must:

- **Submit Form K at commencement for APERs who are being mapped across, including details of all such individuals, SoRs and a Responsibilities Map**

## Core/limited scope firms:

- **No action if existing mappable APERs are mapped across and Firm has no NED or Exec Chair**
- **Must submit Form C by 9 December 2019 for any mappable individuals not being mapped across**
- **Must submit a Form A and an SoR for an Exec Chair to hold SMF9 in addition to their other governing functions being converted**
- **Must submit a Form K for A NED Chair to notify the conversion of a CF2 to SMF9**

# Timetable



## All firms must:

- **Submit an APER Form A prior to commencement for any newly appointed SMFs who are not currently APERs and who will take up the role prior to commencement, include them on the Form K (and for enhanced regime firms, include them on the Responsibilities Map and include an SoR)**
- **Submit an SMCR Form A and SoR for any newly appointed SMFs who are not currently APERs but who will take up the role post commencement**



## Conduct rules training and F&P assessments:

- **Conduct rules apply to SMFs and Certified Staff with effect from 9 December 2019, but only apply to all staff with effect from 9 December 2000**
- **Firms must identify existing Certified Staff as at 9 December 2019 but have until 9 December 2020 to assess them as F&P**
- **Newly appointed Certified Staff hired post 9 December 2019 must be assessed as F&P as part of the hire process**

# Considerations for F&P Assessment

Type of Information Required	Type of Assessment being Undertaken				Supporting evidence: Examples*
	New Role	Annual	Triggered	In-Year	
Entry information	✓				Interview evaluation form, application form, regulatory reference. Professional qualification
Annual appraisal		✓			Appraisal, self-assessment form
Screening checks	✓	✓*	(✓)	(✓)	Credit reference check, DBS check
Self-declarations	✓	✓	(✓)	(✓)	Self-declaration form/self-attestation form
Outcome of other events			✓	(✓)	Outcome of a disciplinary procedure
Individual portfolio of evidence		✓		(✓)	Continuing Professional Development and Training to keep skills current

- ✓ Information likely to be relevant to assessment
- (✓) Information may be relevant to assessment depending on circumstances
- ✓\* The information generated by screening checks may be considered as part of the overall consideration of a person's F&P at the annual assessment but the checks themselves may be carried out less frequently in line with a firm's risk tolerance.

Source: Banking Standards Board (BSB) Statement of Good Practice 1 – Certification Regime: Assessing fitness and propriety table and supplementary information, as extracted from City HR's Measuring Up (2<sup>nd</sup> Edition)

# SENIOR MANAGER AND CERTIFIED PERSONS REGIME – HR CHECKLIST

- Are your policies clear about misconduct issues?
- Are you ready for regulatory references?
- Do your leaver processes link to reward for malus and clawback?
- Handovers procedures

- How do the new SMR and CR requirements impact your succession planning?
- Are you testing fitness and propriety on promotion?

- How do the conduct issues impact compensation at a business unit and individual level?
- Are your malus and clawback processes clearly defined and effective?



- Do you understand the category of your firm and impact?
- Are accountabilities, responsibilities, necessary qualifications and competence clear and current for defined roles?

- Have you determined your SMCR Training and Communications (see FCA film)
- How are you assessing fitness and propriety against the role?
- How will you prove to new recruits in SMR/CR roles that controls are in place to support them?

- Are your processes ready to handle the breach notification and requirements?

Please refer to FCA Guides for:  
Solo-Regulated Firms; Insurers and  
Transitioning from SIMR to SMCR

**Any Questions?**

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