



Experiences of implementing the Senior Managers & Certification Regime (SM&CR)

13 December 2019




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Introduction

The Senior Managers and Certification Regime ('SM&CR') came into effect on 9 December 2019. We hosted a roundtable event on 5 December to discuss implementation issues with a range of firms in the industry.

The Senior Managers and Certification Regime ('**SM&CR**') came into effect on 9 December 2019 for solo-regulated firms as a replacement to the Approved Persons regime (APER). As the SM&CR drew closer and firms across the Financial Services industry were continuing to prepare for its implementation, we wanted to hear from a range of firms in the industry about their experiences in the following areas:

- A. The Senior Managers Regime - Senior Management Functions, Prescribed Responsibilities, and navigating any last-minute issues;
- B. The practicalities of implementing each aspect of the SM&CR and whether firms understood the ongoing requirements, including Reasonable Steps expectations and future regulatory 'housekeeping';
- C. The Certification Regime: Fitness and propriety; and finally,
- D. The Conduct Rules and what happens next and when?

To hear from affected firms, DWF hosted a roundtable event on 5 December 2019, with attendees completing a survey of questions prior to attending, about their firm and experiences of the SM&CR. The demographic of the firms in attendance was: Zero Limited Scope Firms; 33% Core Firms; and 67% Enhanced Firms. We also issued the survey more widely and received a clear split of respondents, with 33.3% of respondents being from each of the three categories of SM&CR firm.

During the roundtable event, we shared the survey responses anonymously to frame discussions around the above points and to more fully understand the experiences of those in the room, based upon feedback from the survey.

Throughout the course of this paper, we refer back to these headline topics and the survey responses while sharing the salient points arising from the discussions between participants in the room.

DWF would like to thank each of the individuals who attended our roundtable event for sharing their experiences.

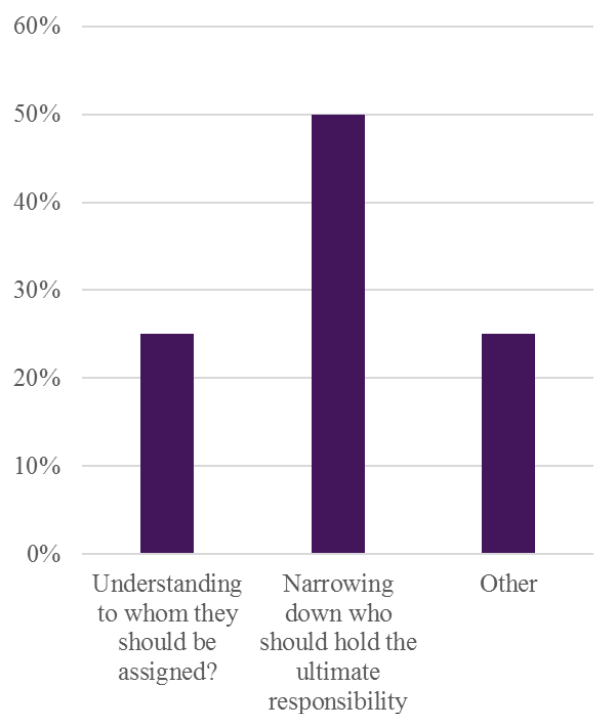
Experience of implementing the Senior Managers Regime

We received the following responses in relation to the above topic:

1. What were the main challenges you faced in terms of assigning SMF's within your business?



2. What were the main challenges you faced in terms of assigning Prescribed Responsibilities within your business?



3. Has your firm concluded all of the documentation expected in respect of designating Overall Responsibility?



These questions opened up some interesting topics for debate, which are summarised below:

Attendees seemed to agree that the move to SM&CR should have been a natural evolution with a 'transposing' of roles from the previous regime and an extension of the record keeping and evidential requirements. Most felt that if employees' job descriptions were in place and up to date, this provided a good starting point for firms to address the requirements of the SM&CR.

When it came to determining who should be SMF role holders, job descriptions appeared to be the key element for most attendees with strong agreement that this assisted when it came to creating the Statement of Responsibilities. However, the approach taken by firms differed in practice: While one firm was already renewing job descriptions on an annual basis, others had not revisited job descriptions since they were issued. However, the consensus from most participants was that

SM&CR was a positive catalyst to review and update employment documentation. All agreed that the takeaway that the better the job description, the easier it made implementing the rest of the SM&CR.

In the room there was still some uncertainty concerning 'Overall Responsibilities' and its application, together with the differences between this and 'Prescribed Responsibilities' ('PR'). The requirements around Overall Responsibility appeared to be of some confusion to most firms in the room, despite only being applicable to the enhanced firms in the room.

It was acknowledged that some of the challenges around the Prescribed Responsibilities arose from slightly conflicting positions between the FCA document 'The Senior Managers and Certification Regime: Guide for solo-regulated firms' and FCA SYSC rules. Within the room we also identified quite different approaches between firms when it came to; allocating Prescribed Responsibilities, the level of engagement expected from employees, and the possible impact on remuneration:

- One point made was that on the grounds of diligence, some individuals declined to take on a particular oversight, stating that they did not believe they had the expertise or resource. Accordingly, this was allocated elsewhere and was seen as a constructive challenge process within the firm about who actually has responsibility for particular aspects of the business.
- Another firm recounted their more 'autocratic' approach, with the CEO and Head of Compliance allocating the SMF and Prescribed Responsibilities to staff without consultation. This firm also issued to those individuals the draft Statement of Responsibilities. They felt it would take too long and be too challenging to have a consultation on the implementation, and there was little resistance from staff to this approach.

Even with these different approaches, all attendees agreed that as employers it was important that they facilitated the ability for employees to ask questions about the allocation of responsibilities and all firms had this step in their implementation process.

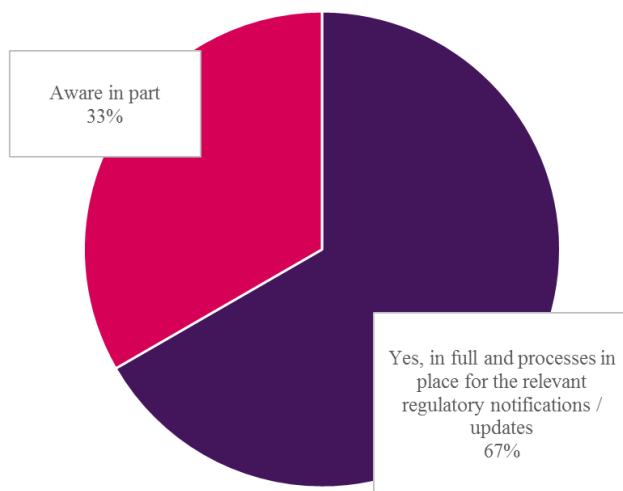
Another view shared in the room was that taking a consultative approach resulted in the exercise of allocating responsibilities as a way of engaging their teams and engaging with senior managers, resulting in them becoming advocates for the changes. It was agreed that this sends a clear message to more junior staff that corporate responsibility, corporate culture and good conduct are all to be embraced and a part of progression through the ranks, while acting as an early mechanism to engage people across the organisation to understand SMF allocations and the meaning of those responsibilities through conversation. The room agreed that this was a very strong approach and a real example of living the rhetoric of 'tone from the top'.

Another discussion point was whether there should be any impact on remuneration as a result of being allocated responsibilities under the Senior Managers Regime (given that employees are effectively just continuing with their existing role). The room was split on this matter with some feeling that no additional remuneration should be granted while other attendees relayed instances of employees asking about and being granted pay increases. One guest commented that they heard multiple individuals in their organisation asking, "*Well how much more am I getting paid for this?*"... This suggested that there was not one consistent practice across the industry, that it was dependant on the firms' culture, but that there was a shared view that it was equitable for remuneration to reflect more explicit personal accountability and liability to fines.

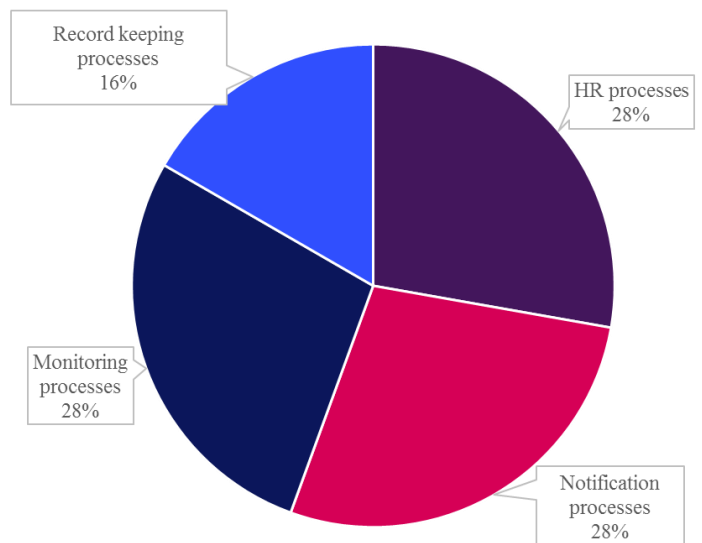
The practicalities of implementing each aspect of the regime, ongoing requirements, Reasonable Steps

The questions around this topic were:

1. Would you say you are aware of your post 9 December regulatory requirements/actions?



2. Are you planning to undertake any further work to enhance your Systems and Controls in any specific areas?



While the responses under this topic were varied (particularly in respect of systems and controls), attendees were keen to prioritise discussion around the Reasonable Steps requirements. Input was provided by our legal experts, which highlighted how the FCA DEPP manual provided the main articulation around FCA expectations in terms of Reasonable Steps. However, it cross-refers to other FCA sourcebooks and various other statutory requirements for Directors and Officers, including multiple Companies Act references in respect of Director conduct and effective control expectations of a responsible individual holding a senior position. It was agreed that there was still significant complication and opacity around what is expected, but DWF provided practical examples, suggesting that best endeavours and clear documentation of rationale was the soundest approach.

This topic gave rise to a number of further points of discussion, namely:

Different ways of 'showing' reasonable steps: Two attendees stated that they were looking to introduce formal documentation that clearly documents the delegation process, which asked questions of senior managers such as '*why did you delegate to a certain individual? How did you assess their expertise and their capacity to take on delegated responsibility?*' The room agreed that this had merit, but the effectiveness of pursuing this route was heavily dependent on how much documentation was expected to be completed to evidence that it was appropriate to delegate, as part of exercising Reasonable Steps.

It was also flagged that within a number of firms, there was a shift in thinking with committee chair and members, particularly for groups responsible for remuneration and audit and committee. There was a distinct feeling from the Chairpersons that due to coming into the SM&CR they were clearly moving 'into the firing line' and that Reasonable Steps for their roles was still challenging to evidence.

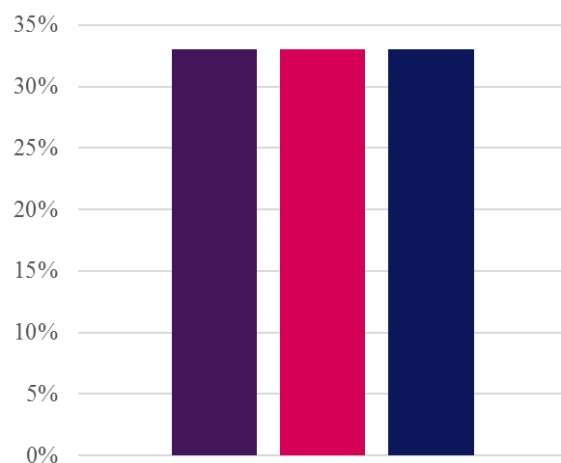
The Certification Regime: Fitness and propriety

The main questions put to the attendees on this topic were:

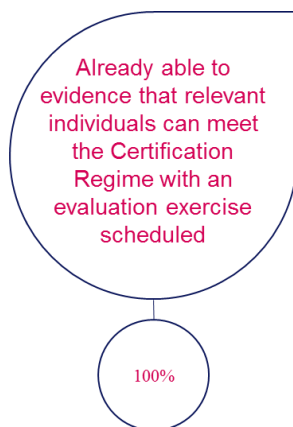
1. How well progressed is your firm in terms of having implemented the requirements in respect of the Certification Regime?



2. In terms of your firm's approach towards the Certification Regime: Irrespective of whether implementation has been concluded, have you:



3. Are there any other aspects of the regime that will be introduced on a gradual basis over time?



- Purchased an online system(s) to manage the assessment process
- A combination of incorporating the requirements into your firm's exiting processes and introducing new requirements across your firm
- Mainly incorporated the requirements into your firm's exiting processes

Attendees differed in their approach to evidence and assessments. One attendee said that their CEO had a pre-agreed template of one to one topics to be asked, providing a formal record of discussions for his direct reports, to build a picture of competence. Another had an aide memoire of items to be discussed and a rolling agenda of what needed to be thought about in one to ones, in order to provide a cumulative assessment of evidence of competence across a year. An area of consistency with firms represented in the room was that they had updated appraisal processes to take the Certification requirements into consideration. Some had gone as far as building new KPIs and accompanying records to evidence competence using behavioural metrics. All agreed that when it came to the Certification process, too much rigidity for senior employees responsible for making the organisation work was not appropriate; one attendee commented that *"my teachers know how to teach and so I let them do it instead of telling them how to do it"*.

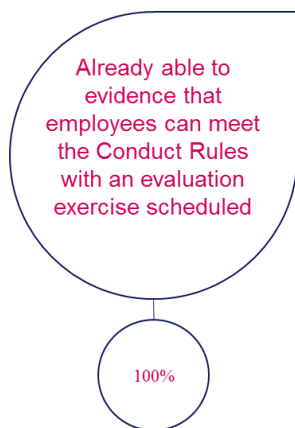
The Conduct Rules: what happens next and when?

The main questions put to the attendees were on this topic were:

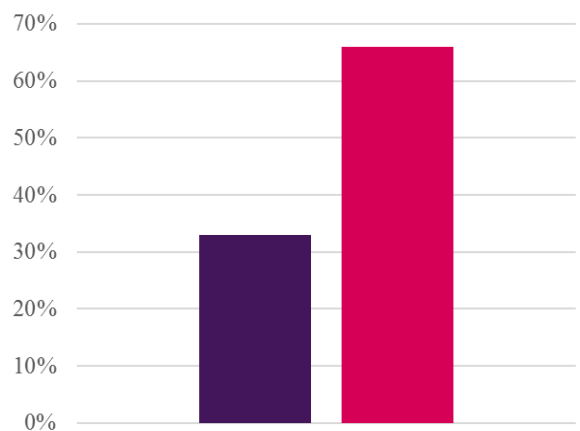
1. How well progressed is your firm in terms of having implemented the requirements in respect of the Conduct Rules?



3. How well progressed is your firm in terms of having implemented the requirements in respect of the Conduct Rules?

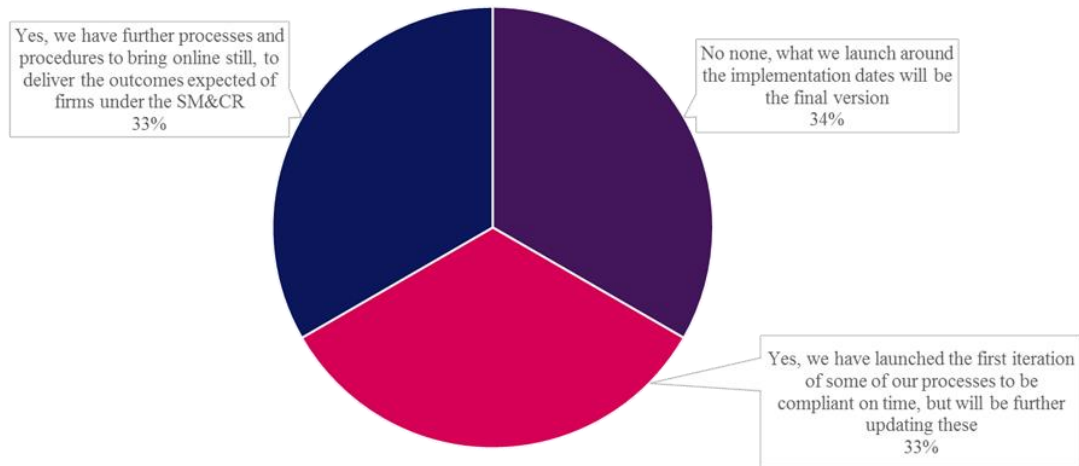


2. Irrespective of whether implementation has been concluded, have you:



- A combination of incorporating the requirements into your firm's exiting processes and introducing new requirements across your firm
- Mainly incorporated the requirements into your firm's exiting processes

4. Are there any other aspects of the regime that will be introduced on a gradual basis over time?



An area which also saw differing approaches was the Conduct Rules. One firm undertook KPI reviews 3 times a year with a deep qualitative review of the output and thought that the idea of role-plays would be revolutionary at his firm. Another attendee indicated that at his firm, role-plays are considered to be an effective tool to develop needs and leads to proper personal development if used regularly. All attendees indicated that they had put a lot of thought and time into developing their 'testing' and review of Conduct Rules.

One attendee faced push back from management about technical testing for specific roles and was worried about the difficulty implementing this. Many other attendees seemed to agree that this was worth pursuing despite pushback, to ensure that knowledge of Conduct Rules could be evidentially demonstrated and improved, and that testing would very much help to confirm ongoing fitness and propriety under the Certification Regime.

All attendees appeared to be primarily focusing on the evidential aspects, with one attendee particularly focusing on creating video clips and case studies to send a clear message to employees about what good conduct looks like in their business.

Thoughts about the future and other points arising

- Another interesting point raised was the impact that the SM&CR might have on employment contracts and the scope of the HR function. With an individual's behaviour outside work already being a complex area of law and HR in practice, attendees were interested in discussing how non-financial conduct, and an individual's reputation and integrity even outside of work could have a heightened meaning under the new regime.
- Attendees were also interested in how the UK SM&CR differs to frameworks in other countries; specifically, how the future might look in terms of enforcement, how this might impact individual accountability and whether there was convergence globally around the concept of Reasonable Steps.
- There was also a generally held view that the FCA have been gearing up to potentially launch a new enforcement strategy and that there will be a change of tact when it comes to supervision and enforcement post implementation, given the new set of tools available to the regulator to measure conduct and to hold individuals to account.

Summary

Overall, there was healthy discussion around the 'correct' approach to almost every aspect of the SM&CR, with attendees seeming to have varying opinions on the right way to demonstrate compliance in a commercial and effective manner. All firms in the room had embraced the SM&CR and there was true recognition that there is no 'one size fits all approach', but that successful implementation needed to be bespoke, based upon the culture within their business. The attendees in the room also shared a consistent view on the spirit of SM&CR requirements and were each able to provide a strong account of how they had approached implementation of the SM&CR within their own firm. Attendees also recognised that the next stages of the SM&CR still present challenges. In particular, it was felt that with the Conduct Rules being substantially open to interpretation, a much more of a dynamic approach is needed within firms, and that whereas the Senior Managers requirements were more about transposition, with the Conduct Rules it will be vital to approach implementation and effectiveness as an iterative process that should be subject to ongoing review.

How we can help

We have assisted many firms with the implementation of the SM&CR and continue to support those firms in their post implementation plans and transitional arrangements. Ongoing service include:

Post implementation evaluation

Our post implementation evaluation provides assurance that the firm is compliant with the requirements of the SM&CR in accordance with the FCA's Senior Management Arrangements, Systems and Controls ("SYSC") sourcebook. This involves reviewing your firm's processes, procedures and documentation against regulatory requirements, identifying any material gaps and providing recommendations to address them. It also enables us to bring to bear insight from across the financial services sector, based upon our experience of working with a range of firms. The scope of this review can be tailored towards a deep dive review of the individual constituent parts of the SM&CR, or on a more thematic basis across your SM&CR implementation as a whole. This can be conducted as a one-off assurance review and or repeated on an annual basis to ensure ongoing compliance with the SM&CR.

Certification & Conduct rules evidence

Firms are required to be able to meet all evidential requirements before 9 December 2020 and we can provide an expert view on how firms can approach meeting these requirements, including how to tailor existing processes within firms (such as the appraisal processes) to be able to meet the competence assessment requirements and evidential standards.

Training

All firms must ensure that training has been provided to all employees in respect of the Conduct Rules, with an annual refresher where necessary, by 9 December 2020. Our conduct rules training has been designed to be as straightforward as possible, and tailored for all levels of staff within your firm. We have four training modules depending on whether you

are a Limited Scope, Core or Enhanced Firm. The modules are targeted to address the different aspect of the SM&CR and include:

- An overview of the SM&CR
- The Senior Manager's regime
- The Certification regime, and;
- The Conduct rules.

Contact us



Andrew Jacobs
Partner - Regulatory
T +44 20 7645 4459
M +44 7902 701867
E Andrew.Jacobs@dwf.law



Darren Fisher
Director - Regulatory
T +44 20 7645 9533
M +44 7598 600 112
E Darren.Fisher@dwf.law



Robbie Constance
Partner - Legal
T +44 20 7645 9629
M +44 7545 100514
E Robbie.Constance@dwf.law



Richard Burger
Partner - Legal
T +44 20 7280 8944
M +44 7545 100510
E Richard.Burger@dwf.law



Beyond borders, sectors and expectations

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That's why we're always finding agile ways to tackle new challenges together. But we don't simply claim to be different. We prove it through every detail of our work, across every level. We go beyond conventions and expectations.

Join us on the journey.