

The downside of being “just in time” with copy is that the editor gets a bit jumpy and impatient. The upside is that I can now comment on the “Joint FCA and PRA statement on SM&CR and coronavirus: our expectations of dual-regulated firms - December 2020 update” which was released on 18<sup>th</sup> December. Not that I can say that it was planned at all.

In April 2020, the FCA and PRA set out the expectations to help dual-regulated firms apply the SM&CR following the exceptional circumstances that arose from the coronavirus pandemic (Covid-19). Some additional flexibility was offered in the application of the SM&CR rules to firms that were impacted by coronavirus. As firms have adapted to the impact of the pandemic over the past few months, the current expectation is that firms’ application of the SM&CR rules returns to normal. Therefore, the provisions that were previously available have now ended.

It was recognised that ‘significant changes’ to responsibilities under Senior Management Functions (SMF) may have been required due to sickness or any other temporary situations as a result of the coronavirus, and that firms might need more time to apply the relevant SM&CR rules. Whilst firms were expected to resubmit relevant Statements of Responsibilities (SoRs) as soon as reasonably practicable, the FCA understood that firms may take longer than usual to submit them.

This provision will end on 7 January 2021. As most firms have now adapted to the new ways of working, the FCA now expects firms to manage changes to senior management responsibilities as a result of the pandemic in a way that allows them to continue to meet their obligations under the SM&CR, and to submit revised SoRs as normal.

The FCA’s and PRA’s rules allow individuals to perform SMFs without approval for up to 12 weeks in a consecutive one-year period if their firm experiences an SMF vacancy that is (a) temporary and/or (b) reasonably unforeseen. This is also known as the ‘12-week rule’. The FCA has found no evidence that the 12-week rule does not provide sufficient flexibility for dual-regulated firms due to coronavirus.

The FCA and PRA do not require or expect firms to designate a single SMF to be responsible for all aspects of their response to coronavirus. While it is important for firms to have a clear framework for allocating responsibilities to various SMFs for different aspects of their response to coronavirus, the FCA and PRA do not generally prescribe a ‘one-size-fits-all’ approach.

Individuals performing SMFs required by the FCA, eg Compliance Oversight (SMF16) and Money Laundering Reporting Officer (MLRO) (SMF17) should only be furloughed as last resort. Unless a furloughed SMF is permanently leaving their post, they will retain their approval during their absence and will not need to be re-approved when they return.

But firms must:

- ensure that furloughed SMFs remain fit and proper on their return
- reallocate the responsibilities of furloughed SMFs, including any Prescribed Responsibilities among their remaining SMFs
- clearly document the reallocation of responsibilities of any furloughed SMFs in SoRs, Management Responsibility Maps (MRMs) and internal documents

Firms should also update their PRA and FCA supervisors of any furloughing of one or more SMFs.

Under the Senior Managers and Certification Regime (SM&CR), the FCA will publish and maintain a directory of certified and assessed persons on the Financial Services Register, so consumers and professionals can check the details of key individuals working in financial services.

Directory Persons data for firms regulated by both the FCA and PRA is now published on the FS Register. Directory Persons data may show for some but not all firms regulated solely by the FCA until 31 March 2021.

Solo-regulated firms must submit their Directory Persons data via Connect by 31 March 2021. The FCA will incrementally display data from solo-regulated firms as it is submitted from 14 December 2020.

It has been quite strange over the year to be registering advisers onto the Directory and have no visibility of that information. The FCA has been producing confirmations of registrations, but there has been no way of checking any of the information until now.

Certified and assessed persons consist of:

- all certified staff (those holding a certification function under the SM&CR)
- directors who are not performing Senior Manager Functions (SMFs) – both executive and non-executive
- other individuals who are sole traders or ARs (including those within ARs) where they are undertaking business with clients and require a qualification to do so

Certified and assessed persons information to be published on the Financial Services Register includes:

- name and any previous names
- roles with start and end dates
- activities undertaken

Customer-facing roles requiring a qualification must include:

- customer engagement methods
- workplace location (where relevant)
- memberships of professional bodies

Whilst all the entries that I have undertaken have been for individuals, there is the facility to do a bulk upload with all the information being put on an Excel .csv file. This must be very useful for firms that have a lot of advisers that need to be put on the system at one time. As long as all the relevant boxes are completed. I can imagine that it becomes quite difficult if mandatory boxes are not completed.

I believe that the directory is a major step in the right direction. It means that all the mortgage and protection advisers will now be visible to the public. Although, I can imagine that the increased head count in firms may lead to higher fees as all advisers will be counted. So good news for consumers there. But bad news for adviser firms.

The onus is on firms to ensure that the information regarding their directory persons is kept up to date and the firms will need to complete regular attestations to this effect. Also, the firms make the decision about the fitness and propriety of advisers and maintaining their records of continued fitness on an annual basis. Added to that is the SM&CR training that needs to be completed and certificated on an annual basis.

The SM&CR introduced an annual Conduct Rules reporting requirement. The report is called REP008 and it should be completed and submitted using RegData.

Firms need to report whether they have taken disciplinary action against individuals who are not Senior Managers for breaches of the Conduct Rules and, if so, the details of the breach.

This includes:

- details about the individual who has committed the breach
- details about what Conduct Rules have been breached
- details about the disciplinary action taken

Disciplinary action means:

- issuing of a formal written warning
- suspension or dismissal of a person

- reduction or recovery of remuneration (clawback)

Firms must submit REP008 annually even if there have not been any Conduct Rule breaches resulting in disciplinary action. Firms that don't submit REP008 by the reporting deadline will be charged a late return fee of £250.

That appears to offer a whole new stream of business for compliance consultants to deal with all that extra administration and liaison with the FCA. Who said that there was no good news coming out of SM&CR!?!?