



By email

22 May 2023

Dear Sir/ Madam,

SMALLER BUSINESS PRACTITIONER PANEL RESPONSE TO DP23/3: REVIEW OF THE SENIOR MANAGERS & CERTIFICATION REGIME

The Panel welcomes the opportunity to respond to this joint discussion paper. Our primary point is that no significant changes are needed to the Senior Managers & Certification Regime at this time. Fundamentally, the Regime is well established, roles and accountabilities are well defined, the conduct rules are sensible, and ongoing costs currently appear manageable. We also note that recent improvements to the FCA's authorisations process appear to be having a positive impact on reducing backlogs. A wholesale redesign of the Regime would be counter-productive and place undue burden on smaller businesses in diverting already stretched firm resources away from other priority work, particularly implementation of the Consumer Duty. Within this context, we have addressed specific questions posed in the discussion paper below, focusing on minor amendments to the operation and execution of the regime, rather than the principles.

Q1: To what extent do you agree or disagree that the SM&CR has made it easier to hold individuals to account?

Q2: To what extent do you agree or disagree that the SM&CR regime has improved safety and soundness and conduct within firms?

SM&CR has helped improve governance by making accountability clearer, there is appropriate monitoring of individuals' adherence to the SM&CR rules including the potential for enforcement action, and helpfully defined Senior Manager Function roles. This has helped streamline internal conversations within firms and both given transparency to and strengthened decision-making.

Q3: To what extent do you agree or disagree that the fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles?

In our view the fitness and propriety requirements are appropriate to supporting the recruitment of qualified individuals to senior manager roles. In circumstances where the requirements act as a deterrent to potential applicants this should serve as a potential 'red flag', as it is in firms' interest to have senior managers who are appropriately qualified and willing to take individual responsibility.

Q9: To what extent do you agree or disagree that the scope of the SM&CR is appropriate?

For consistency it would be helpful to align the Appointed Representatives (AR) regime to SM&CR but be mindful of any additional work which would consequently fall to smaller, regulated firms many of whom are already facing a much-increased burden resulting from the Consumer Duty and AR Regime impacts. Whilst we note that some trade bodies disagree with the findings, previous FCA data analysis claimed that there are more issues arising from principals and ARs than from other directly authorised firms, so the FCA should explore whether SM&CR requirements should apply to AR firms in some proportionate way. The FCA should consider whether all individuals that advise consumers should be registered by FCA: the exclusion of insurance advisers from the FCA register being one anomaly of concern. This would enable product providers to monitor and keep track of individuals that provide poor service to consumers and who move from firm to firm, thus reducing the likelihood and impact of Phoenixing. We would particularly recommend that individuals in positions of influence at AR firms should meet appropriate standards of fitness and propriety and in some circumstances for that to be assessed by FCA, rather than (or as well as) the principal firm. These potential revisions would reinforce the recent changes FCA has made to the AR regime and the linkage between that and the Consumer Duty, thereby supporting and increasing protection for consumers dealing with ARs: but it is important to balance such extension of scope of SM&CR with the extra work this would require smaller firms to perform, should they now fall inside the scope when previously sitting outside it, due to (for instance) being part of an AR network.

Q11: To what extent do you agree or disagree that the SM&CR is applied proportionately to firms and individuals?

In the Panel's view, the scaling mechanism for the SM&CR appears broadly proportionate. One area for potential improvement may be to consider the introduction of a threshold under which SM&CR does not apply from a cost benefit analysis perspective, as the cost and burden on smaller firms may outweigh the potential for harm.

Q18 To what extent do you agree or disagree that the Certification Regime is effective in ensuring that individuals within the regime are fit and proper for their roles?

The frequency of checking and confirmation to meet Certification requirements may be an area for review, if moving away from an annual check requirement could be implemented with minimum administrative burden on firms.

Q19: Regarding the Directory of Certified and Assessed Persons, to what extent do you agree or disagree that:

a. it captures the appropriate types of individuals?

b. the requirements for keeping it up to date are appropriate?

Our broad observation is that the Directory is largely fit for purpose and provides a useful resource for consumers and professions to check the details of key individuals working in financial services firms. Consideration might be given as to whether to add insurance advisors (those who advise on insurance only who are not required to have a qualification) to the Directory, to enable their status to be checked.

Q22: Are there other areas, not already covered in the question above, where you consider changes could be made to improve the SM&CR regime?

For dual regulated firms, it would be helpful to streamline interpretations and ensure there is consistent feedback from the FCA and the PRA regarding individual permissions, responsibilities and functions.

We would be happy to discuss these points further.

Yours sincerely,

[signed]

Andy Mielczarek
Chair, FCA Smaller Business Practitioner Panel