

Applying the Senior Managers and Certification Regime to Claims Management Companies

Policy Statement

PS19/9

March 2019

This relates to

Consultation Paper 18/26
which is available on our website at
www.fca.org.uk/publications

Email:

cp18-26@fca.org.uk

Contents

1	Summary	3
2	Firm tiers	7
3	Senior Managers Regime	11
4	Certification Regime	14
5	Fit and Proper Requirements	17
6	Conduct Rules	19
7	Transitional arrangements	22
8	Feedback to our Cost Benefit Analysis	25
9	Feedback on the Equality Impact Assessment	27
Annex 1		
	List of non-confidential respondents	29
Annex 2		
	Abbreviations used in this paper	30
Appendix 1		
	Made rules (legal instrument)	
Appendix 2		
	Near final rules	

1 Summary

- 1.1** The Senior Managers & Certification Regime (SM&CR) aims to strengthen individual accountability in the firms we regulate. Claims Management Companies (CMCs) will be subject to SM&CR, as set out in this document.
- 1.2** In September 2018, we published Consultation Paper (CP) 18/26 – ‘Claims management companies: how we propose to apply the Senior Managers and Certification Regime’. This Policy Statement (PS) summarises the feedback we got to CP18/26 and gives our response.
- 1.3** This follows the Policy Statement issued in December 2018 (PS18/23 – ‘Claims management: how we will regulate claims management companies’), which sets out how we will regulate CMCs generally and the fees that will apply.
- 1.4** We have also provided a separate guide – ‘The Senior Managers and Certification Regime: Guide for FCA solo-regulated firms’. This sets out the main features of the regime and is intended to help firms prepare for the SM&CR.

Who this affects

- 1.5** Who needs to read this document:
- CMCs that will be regulated by the FCA from 1 April 2019
 - organisations affected by CMCs, such as those that use CMCs to generate leads
 - trade bodies representing CMCs, or trade bodies representing firms that receive claims about their products/services from CMCs
 - bodies representing customers’ interests
 - other bodies currently involved in regulating businesses that provide claims management services, for example, the Information Commissioner’s Office (ICO)
- 1.6** Who else might be interested in this document:
- customers who use, or are considering using, firms that provide claims management services

The wider context of this policy statement

Our consultation

- 1.7** On 1 April 2019, the FCA will regulate Claims Management Companies (CMCs) that are doing regulated claims management activity and are set up or serving customers in England, Wales and Scotland. We consulted on how we will regulate firms that carry out claims management activities in [CP18/15](#) (proposed conduct rules) and [CP18/23](#) (proposed fees rules). [PS18/23](#) set out final rules for these firms in December 2018.
- 1.8** This PS sets out how we will regulate individuals within CMCs. The SM&CR is a system of accountability that aims to raise standards of professionalism, conduct and governance. It was created on the recommendation of the Parliamentary Commission on Banking Standards, which recommended that we develop a new regime that focused on individual responsibility. We applied this to banks, building societies, credit unions and Prudential Regulation Authority (PRA) designated investment firms from March 2016 and to insurers from December 2018. The SM&CR will apply to all FSMA-authorized firms on 9 December 2019.¹
- 1.9** We consulted on how the SM&CR will apply to CMCs specifically in [CP18/26](#), published in September 2018. In summary, we proposed to apply the following elements of the SM&CR:
- The Senior Managers Regime (SMR) – at least 1 person within each CMC would need to be approved by us to perform a Senior Management Function (SMF). Senior Managers have responsibility for systems and controls within the firm and a 'Duty of Responsibility'. This means that, if something goes wrong, we will consider whether they took 'Reasonable Steps' to stop the problem from happening
 - The Certification Regime – which requires firms to assess the fitness and propriety of specific individuals who could harm the firm or its customers
 - The Conduct Rules – basic standards of conduct, which apply to most staff
 - The Directory – a new public register and user interface, which will include Certification staff and other individuals, such as directors

How it links to our objectives

Consumer protection

- 1.10** Our rules and guidance aim to strengthen protections for customers who use CMCs. They also aim to ensure that customers can access redress, but are not harassed or intimidated. They will ensure that individuals working in CMCs are personally responsible for considering their customers' interests and for treating them fairly. Also, by strengthening governance and competence within the sector, customers can have greater assurance that the firms they are dealing with are managed well.

¹ The Government amended the Financial Services and Markets Act 2000 (FSMA) through the Bank of England and Financial Services Act 2016. We consulted on the extension in [CP17/25](#) and [CP17/40](#). We issued the near-final rules in [PS18/14](#). Insurers were subject to some of the SM&CR rules through the Senior Insurance Managers Regime (SIMR). The SIMR was replaced by the SM&CR from 10 December 2018.

What we are seeking to change

- 1.11** The SM&CR aims to reduce harm to consumers and strengthen the claims management market, by creating a system that enables regulators, and encourages firms, to hold individuals to account. 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 demonstrate who does what

Indicators of success

- 1.12** We believe that better governance and accountability will lead to an improved culture within CMCs and one which is more focused on customer outcomes. The SM&CR will create a step-change in standards for individual accountability and governance. The SM&CR seeks to address the following harms:
- distress caused by poor service and delays
 - customers locked in to services that are unsuitable or priced unfairly
 - harassment and aggressive sales practices
 - directors closing one CMC and taking over an existing authorised CMC to avoid fulfilling their obligations (known as 'phoenixing')

Summary of feedback and our response

- 1.13** We received 21 responses to CP18/26. Over 250 firms registered to attend our regional roadshows. We have incorporated feedback from responses to CP18/15, and feedback from the roadshows and other stakeholder meetings.
- 1.14** Nearly all respondents supported our proposals. They expressed support for raising levels of governance and professionalism through an individual accountability regime. Some gave examples of misconduct by CMCs and how this is affecting customers and other firms. We also received some suggestions for changes to the proposed rules.
- 1.15** We intend to implement the consultation proposals, with 2 minor changes. We have made these changes because of feedback and to clarify our rules. Specifically:
- We have decided not to implement the rule that does not permit one individual to hold both the SMF27 – Limited Scope Function and the SMF16 – Compliance Oversight Function as we agree that there may be some cases where it could be appropriate for 1 individual to hold both. We explain this in Chapter 3.
 - We have also amended our rules so that CMCs that are already regulated, because they have other regulatory permissions, will not need to seek new Approved Persons authorisations when claims management becomes regulated. We explain this in Chapter 7.

Equality and diversity considerations

- 1.16** We have considered the equality and diversity issues that may arise from the proposals in this PS.
- 1.17** Overall, we do not believe that the proposals significantly affect any of the groups with protected characteristics under the Equality Act 2010.

Next steps

- 1.18** In general, the rules set out in this PS will apply from 9 December 2019. If your firm has not been authorised by that time, the rules will apply from the date the firm is fully authorised. This is explained in Chapter 7. If your firm is currently subject to the Approved Persons Regime (APR), please refer to [PS18/14](#) and our [guide](#) to the SM&CR to help you prepare.
- 1.19** CMCs will need to apply for individuals to be authorised to perform SMFs as soon as the relevant forms (long or short Form A) become available – expected to be 9 September 2019. Individuals who will perform SMFs need to have received approval by 9 December 2019 (or the date at which the firm is authorised, if later). Firms are encouraged to submit their forms by 1 November 2019.

2 Firm tiers

2.1 In this chapter, we summarise and respond to the feedback on our proposed rules and guidance for applying SM&CR firm categorisation to CMCs.

Our proposals

2.2 In CP18/26, we proposed treating CMCs that do not carry on any other type of FCA-regulated activity as Limited Scope Firms (firms that are subject to fewer requirements than other firms in scope of the SM&CR). CMCs that have other regulatory permissions should refer to [PS18/14](#) and [The Senior Managers & Certification Regime: Guide for FCA solo-regulated firms](#) to determine their firm's classification.

2.3 Firms with multiple regulatory permissions will need to comply with all relevant rules. Figure 2 explains the different firm categories under the SM&CR. More complex CMCs, with other regulatory permissions, will usually be subject to a higher tier of SM&CR (eg the Core and Enhanced regime). The exception to this are CMCs that are also insurance intermediaries or limited permission consumer credit firms, which will continue to be classed as Limited Scope.

Figure 2: Categorisation of firm types summarised in PS18.14

Firm type	Description
Limited Scope Firm	<p>Firms that will be subject to fewer requirements than Core firms. This covers all firms that currently have a limited application of the APR, including:</p> <ul style="list-style-type: none"> • limited permission consumer credit firms • all sole traders • authorised professional firms whose only regulated activities are non-mainstream regulated activities • oil market participants • service companies • energy market participants • subsidiaries of local authorities or registered social landlords • insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts • authorised internally managed Alternative Investment Funds (AIFs)
Core Firm	Firms that will have a baseline of SM&CR requirements applied.

Firm type	Description
Enhanced Firm	<p>A small proportion of solo-regulated firms that will have to apply extra rules. If a firm meets one or more of 6 criteria below, they will be an Enhanced firm:</p> <p>Definitional criteria</p> <ul style="list-style-type: none"> • a firm that is a Significant IFPRU firm • a firm that is a CASS Large firm <p>Criteria calculated on a rolling average</p> <ul style="list-style-type: none"> • firms with Assets Under Management of £50 billion or more as a 3-year rolling average • firms with current total intermediary regulated business revenue of £35 million or more per annum calculated as a 3-year rolling average • firms with annual revenue generated by regulated consumer credit lending of £100m or more calculated as a 3-year rolling average. <p>Criteria calculated at a point in time</p> <ul style="list-style-type: none"> • mortgage lenders and administrators (that are not banks) with 10,000 or more regulated mortgages outstanding at the latest reporting date.

2.4 We also proposed that, if a CMC is already regulated by the FCA and is in a different tier of the SM&CR (ie Core, Enhanced, insurance or banking SM&CR firm), that firm will continue to be subject to the rules of that tier (ie it will be subject to the higher standard).

2.5 Our draft rules allowed insurance intermediaries and limited permission consumer credit firms to remain classed as Limited Scope once claims management becomes a regulated activity, if that is the only other regulated activity carried out by the firm.

2.6 We also proposed allowing CMCs to opt-up into the Core or Enhanced tier of the SM&CR. This is consistent with other firms solely regulated by the FCA.

Feedback received

Q1: *Do you agree with our proposed approach to classifying CMCs when applying the SM&CR?*

Q2: *Do you agree with our proposal to allow firms to 'opt-up' to the Core or Enhanced tier?*

2.7 Most respondents agreed with our proposed approach on classifying CMCs. A number of trade bodies and CMCs commented that the proposals are proportionate.

2.8 A small number of respondents stated that, although they agree with our proposals, the following changes should be made:

- all CMCs that are not sole traders should be classed as Core SM&CR firms, as they can cause considerable harm to consumers and other firms if there is poor conduct, governance or systems and controls
- a more tiered categorisation structure should be introduced
- A number of respondents asked about our plans for keeping CMCs accountable, both through the authorisations process and our enforcement capabilities. These firms expressed support for eliminating fraudulent enterprises and the need to raise standards of culture and governance. A couple raised concerns that some CMCs may create complicated legal structures in order to be categorised as Limited Scope, rather than Core. We also had a request for clarification on how we define sole traders.

2.9 All respondents agreed with our proposal to allow CMCs to opt-up into the Core or Enhanced tier of the SM&CR. One respondent noted that the FCA should be able to compel firms to opt-up, if for example the firm had created a legal structure designed to avoid entering a higher SM&CR tier.

2.10 A few respondents provided feedback to the proposals detailed in CP18/15, 'Claims management: how we propose to regulate claims management companies'. These included:

- Concerns that competition may be reduced, particularly among SMEs and microbusinesses and that this could affect vulnerable customers. This appeared to relate to the transfer of regulation to the FCA, rather than being a direct consequence of applying the SM&CR.
- Fees.
- Thresholds for Class 1 CMC firms.
- Greater clarity around how we define 'lead generators'.

2.11 Our response to feedback about the threshold for Class 1 CMCs, fees and reduced competition can be found in PS18/23 (Chapters 5, 10, 12 and 13). We have amended the term 'lead generator' in our [Glossary](#) to include a definition specific to regulated claims management activity.

2.12 We set out our response on the impact of our conduct and prudential rules on vulnerable customers in PS18/26. In the CBA chapter of PS18/23, we also set out the impact of more CMCs leaving the market than anticipated. We have not received any responses to CP18/26 to justify changing the analysis set out in PS18/23.

Our response

We have considered the feedback and are proceeding with our approach to classifying CMCs, including treating most CMCs as Limited Scope SM&CR firms as consulted on.

The Limited Scope classification was designed for smaller, simpler firms. Although CMCs range from sole traders to large limited companies,

the majority employ fewer than 3 people and have simple corporate structures.

Although we will classify CMCs as Limited Scope, the fundamental requirements of the SM&CR apply in the same way. Senior Managers are approved by the FCA and are subject to the Duty of Responsibility, and the Certification Regime and the Conduct Rules apply to almost all firms. All these elements combined will increase individual accountability and improve standards of conduct across all CMCs.

We agree that, for the standard of conduct and service to rise in the claims management market, CMCs that are not fit and proper should not be allowed to operate. We agree that the authorisations process for CMCs will be critical to ensure that poorly managed firms are removed from the market. Our plans for authorising CMCs are explained in CP18/15 and PS18/23, including the requirement that CMCs demonstrate:

- that the firm satisfies, and will continue to satisfy, minimum standards, called the Threshold Conditions
- that the individuals on the management team have adequate skills and experience to run the firm and act with probity
- that the firm's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner

Our approach to enforcement is explained in Chapter 9 of CP18/15 and Chapter 8 of PS18/23. These documents outline our powers, processes and the enforcement action we can take. We will apply the same approach to CMCs when carrying out enforcement investigations, using sanctions and decision-making, as we do with all other regulated firms.

Where it is identified that CMCs have created legal structures that aim to avoid being classified within another SM&CR tier, such as Core, the assessment team will challenge the rationale for the CMC's business structure at firm authorisation stage. The Limited Scope classification will still provide appropriate accountability, even if the firm is part of a larger group, as the Conduct Rules and the Duty of Responsibility apply to all SM&CR firms regardless of their classification.

We define sole traders in our Handbook 'as an individual who is a firm'. If a firm has been legally established as distinct from its owner (eg as a limited company), it will not be treated by the FCA as a sole trader, even if that company has 1 director.

3 Senior Managers Regime

3.1 In this chapter, we summarise and respond to feedback on our proposed rules and guidance for applying the Senior Managers Regime.

Our proposals

3.2 We proposed applying the following Senior Management Functions (SMFs) for CMCs that do not carry out other regulated activities:

- Limited Scope Function (SMF29) – the holder of this function is responsible for ensuring that significant business responsibilities are clearly and appropriately divided among the directors and senior managers of the firm and overseeing the putting in place and maintenance of systems and controls
- Compliance Oversight Function (SMF16) – the holder of this function is responsible for overseeing the firm's regulatory compliance and for reporting to the governing body. We proposed that the largest CMCs, Class 1 CMCs, will need to appoint a Senior Manager into a Compliance Oversight Function. We think this is appropriate to reflect the complexity and risks posed by these larger firms

3.3 In line with our approach for all other Limited Scope firms, we proposed that CMCs will not need to allocate 'Prescribed Responsibilities' to their Senior Managers.

3.4 Sole traders may not need to be approved as a Senior Manager for the Limited Scope Function if they have no one approved by the FCA as a senior manager, approved person or Certified staff. If they are categorised as a Class 1 firm, however, they will need to have an individual approved as an SMF16 – Compliance Oversight.

Feedback received

Q3: *Do you agree with our proposed Senior Management Functions for CMCs?*

3.5 Most respondents agreed with our proposals. Some respondents said they thought that the Senior Managers Regime (SMR) will help prevent 'phoenixing'.

3.6 A small number of respondents raised concerns or requests for clarification about:

- whether the SMF29 – Limited Scope and SMF16 – Compliance Oversight roles need to be held by separate individuals
- a perception that sole traders will have fewer requirements if they don't need to be approved as a Senior Manager

- concerns that individuals operating CMCs may use false identities or put forward people who are not actually in control of the firm during the firm authorisation process, to mask the identity of those in control
- non-executive directors (NEDs) – a couple of respondents suggested that these roles be classed as SMFs

3.7 We also received a number of queries about our enforcement policies and plans. This included details of what standard of proof would be required to prove a Senior Manager took reasonable steps.

Our response

We are making the rules as consulted on, except that we are not implementing the rule that does not permit one individual to hold both the SMF27 and the SMF16.

We are not implementing this rule as we agree that there could be scenarios where a firm would have a good reason for appointing the same individual to perform the Limited Scope Function – SMF29 and the Compliance Oversight Function – SMF16. In addition, we do not generally have rules that prohibit a person from holding more than one SMF position in the same firm.

We would also like to clarify that although the Compliance Oversight Function – SMF16 does not apply to Class 2 CMCs (ie CMCs with annual total income below £1 million), Class 2 CMCs must still ensure that they comply with all relevant rules and regulations.

Our rules take into account that, for sole traders, the firm is the same as the individual. The individual is assessed at firm authorisation stage, to ensure they have appropriate 'non-financial resources' for the firm and that they are 'suitable'. This includes an assessment of whether those who manage the firm have adequate skills and experience, as well as whether they can be expected to act with probity. It also includes an assessment of whether the firm's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner. We have simplified the process in consideration of practical issues (for example, we don't ask sole traders to provide a reference on themselves), but we don't think this amounts to fewer or less stringent requirements or standards.

We don't agree that all NEDs should be Senior Managers. As we explained in [CP15/05](#), we recognise the different roles of executives and non-executives. The primary role of NEDs is independent oversight and challenge of the executive. Especially for firms with simpler business models, making all NEDs Senior Managers could encourage them to adopt a more executive-type role, where they become involved in the day-to-day management of the firm and risk their independence.

If individuals try to circumvent the SMF approval process, by using false identities or putting forward other individuals, a number of checks

and strategies will be in place to identify such attempts. Where we do identify concerns, we will take appropriate action, including refusing the application.

In CP17/42, we summarised the origin, scope and features of the SM&CR, including the Duty of Responsibility, and how it will be extended to cover solo regulated firms. We set out the final guidance to the Duty of Responsibility in PS18/16. The Duty of Responsibility specifies that we can take action against a Senior Manager where we can show that:

- there was misconduct by the Senior Manager's firm
- at the time of the misconduct or during any part of it, the Senior Manager was responsible for the management of any of the firm's activities in relation to which the misconduct occurred
- the Senior Manager did not take such steps as a person in their position could reasonably have been expected to take to avoid the misconduct occurring or continuing

The burden of proof for all these elements lies on the FCA. The Senior Manager does not need to show that they took reasonable steps, rather it is for the FCA to prove that they did not. The standard of proof for such misconduct is the civil standard.

Our Decision Procedure and Penalties Manual (DEPP), in the FCA Handbook, sets out (in DEPP 6.2.9-A G to 6.2.9-F G) guidance as to the circumstances in which we will take action on the basis of the duty.

4 Certification Regime

4.1 In this chapter, we summarise and respond to the feedback on our proposed rules and guidance for applying the Certification Regime.

Our proposals

4.2 We consulted on applying the Certification Regime to CMCs, as it applies to all solo regulated firms. The Certification Regime applies to certain roles – these are known as Certification Functions. Individuals performing these roles are involved in aspects of a firm's affairs that involve, or might involve, a risk of significant harm to the firm or any of its customers. Roles that are Certification Functions are detailed in SYSC 27 of our Handbook.

4.3 We also consulted on applying requirements relating to the Directory to CMCs. This is consistent with our approach to other firms which are subject to the SM&CR. We set out full details of our proposals for firms and individuals in scope of the Directory in [CP18/19](#) and [PS19/7](#).

Feedback received

Q4: *Do you agree with our proposed approach to applying the Certification Regime? If not, please explain why.*

Q5: *Do you agree that CMCs should be included within scope of the Directory? If not, please explain why.*

4.4 Most respondents supported our proposals, stating that personal responsibility and the possibility of enforcement action against individuals will enhance consumer protection.

4.5 Feedback on our proposals to include key individuals in the Directory was positive. Some noted that transparency is important, that much information is already in the public domain and that public registers are already standard in other professions.

4.6 Some respondents raised the following points relating to the Directory:

- that an individual's qualifications should be listed
- that the information available in the Directory could create a risk of identity theft
- that Limited Scope firms should be excluded
- that small companies should be excluded, on request, from appearing in the find-an-adviser type section

- clarification of what the Directory will show (including whether it will show what a firm and an individual is authorised to do)

Our response

We are implementing the Certification Regime as consulted on.

Under the Financial Services and Markets Act 2000 (FSMA), firms have a legal requirement to assess the fitness and propriety of their Certification Staff (and Senior Managers) at least annually. Firms taking responsibility for their staff being fit and proper is also a key principle underpinning the SM&CR. Firms have the most information about their employees and are in a better position to assess whether they demonstrate the appropriate behaviour and competence to do their jobs.

We do retain oversight of the way firms assess their people. During firm authorisation (including variations of permissions) and any Senior Manager applications, we ask firms to submit evidence such as:

- how the competency was assessed, demonstrating competence and suitability mapped to the specific role and responsibilities of the role
- learning and development plans
- induction programmes
- skills gap analyses

We may also request evidence of how the firm manages the Certification Regime as part of our Supervisory processes.

Individuals who are not fit and proper should find it more difficult to move from firm to firm. This is because Certification Staff are subject to regulatory reference requirements, must be identified in the Directory and must be assessed on their honesty and integrity and competence and capability before starting a new role. Firms must disclose all information that could be relevant to a hiring firm's assessment of a candidate's fitness and propriety. The Directory will provide a transparent data source for firms and customers to see whether an employee has moved firms more frequently than may be expected.

We responded to feedback on the Directory in PS19/7. This included feedback relating to:

- Including qualifications – We respond to this in Chapter 2 of PS19/7, 'Information to appear on the Directory'. We explain that we will additionally list which accredited body an individual is a member of. This will give an alternate route to finding more detailed information on customer facing roles. We have decided not to include more detailed information on individuals Statement of Professional Standing (SPS), qualifications and accreditation level, on the Directory. We believe that including these risks confusing

consumers. For example, Accredited Bodies do not currently use consistent language when describing comparable levels of accreditation (eg fellow, member, chartered) making comparisons difficult for most consumers.

- Identity theft – Some of the data which will be published on the Directory has already been made public by the FS Register. However, we recognise that fraudsters make seek to use some of the information on the Directory. However, this information is high-level in nature, such as their name and role, and so is information that these individuals would already need to make public in the course of their day-to-day role.
- What the Directory will and won't show – This is summarised in Table 1, Chapter 1 of PS19/7. The Directory will include information on the Certification Function held by the individual listed and, if they have a role requiring a qualification under our rules, the type of business they are qualified to undertake. The authorisation of firms will remain listed in the Financial Services Register.

A key benefit of the Directory for smaller firms is enabling them to make their staff known to prospective customers. We don't think it is appropriate to exclude Limited Scope firms or small companies from appearing in a find-an-adviser section because this would reduce the benefit of the Directory for users. Requirements relating to the Directory are consistent across all SM&CR firms and have been designed to be proportional and appropriate to all firm sizes and types.

5 Fit and Proper Requirements

- 5.1** In this chapter, we summarise and respond to the feedback on our proposed rules and guidance for applying fit and proper requirements.

Our proposals

- 5.2** We consulted on applying the fit and proper requirements to CMCs, as they apply to all solo regulated firms. Firms taking responsibility for ensuring their staff are fit and proper to do their jobs is a key feature of the SM&CR. CMCs will need to assess people performing Senior Management Functions and Certification functions before they start their roles, on an ongoing basis and at least once a year. When making these 'fit and proper' assessments, firms must have regard to any general rules that we have about the qualifications, training, competence and personal characteristics required of an individual for that role.
- 5.3** These proposals included the requirement for CMCs to collect certain evidence when assessing candidates for Senior Management Functions, including criminal record checks.
- 5.4** We also proposed applying our rules relating to regulatory references to CMCs. These references help firms to make better informed decisions about candidates.

Feedback received

Q6: *Do you agree with our proposed fit and proper requirements, including criminal record checks and regulatory references? If not, please explain why.*

- 5.5** Most respondents supported our proposed fit and proper requirements.
- 5.6** Some suggested that we set minimum standards of qualifications and professional memberships for staff within CMCs.
- 5.7** A small number of respondents suggested that disclosure requirements for regulatory references should go further. One suggested that regulatory references should include declarations of financial links and personal relationships with other organisations in the sector. Another raised concerns that good references may be given to 'pass the problem on' to another employer.
- 5.8** A couple suggested that criminal records checks should be required for Certification staff.
- 5.9** One respondent questioned whether staff within banks have been suitably held to fit and proper standards. They raised concerns that CMCs will be subject to a higher threshold of behaviour.

Our response

We are implementing the fit and proper requirements as consulted on.

CMCs will be obliged to ensure that employees have the skills, knowledge and expertise necessary for their responsibilities, as required by the Competent Employees Rule.

We think our rules on regulatory references balance the need for firms to share important information about fitness and propriety with an individual's right to privacy and fairness. Individuals and CMCs can provide additional information beyond the minimum criteria set out in our templates, but will be able to decide when this is appropriate.

If a CMC does not disclose information relevant to a hiring firm's assessment of a candidate's fitness and propriety, it is likely to be a breach of our rules. For example, if a firm does not provide a complete picture of an employee's conduct record to the hiring firm in order to 'pass on the problem', they may be in breach under SYSC 22.2.2 of our Systems and Controls Manual (SYSC). In such cases, we will consider what regulatory action should be taken, including enforcement action.

We don't think it is proportionate to require criminal records checks for Certified Staff, but firms can choose to do this as part of their fit and proper assessments.

We expect consistent standards of behaviour and competence for all the firms we authorise, including banks. Due to their systemic importance, senior management in banks could also face criminal prosecution for misconduct under the SM&CR. After the SM&CR begins for solo regulated firms, all FCA authorised firms will be subject to the same conduct standards and regulatory regime. This includes the possibility of regulatory enforcement against individuals in the event of misconduct.

6 Conduct Rules

6.1 In this chapter, we summarise and respond to the feedback on our proposed rules and guidance for applying the Conduct Rules.

Our proposals

6.2 We consulted on applying the FCA's Conduct Rules to CMCs, as they apply to all solo regulated firms. These would apply to regulated and some unregulated activities. For most CMCs, this means anyone involved in or supporting claims management activities.

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

6.3 We proposed applying the Conduct Rules to:

- All Senior Managers.
- All Certified Staff.
- All Directors, who are not Senior Managers (as well as the individual Conduct Rules in the previous table, we are currently consulting on applying SC4 – the Senior Manager Conduct Rule to 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice' – to all Executive Directors).
- All other employees, except ancillary staff (ie people who don't perform a role specific to financial services). Our rules set out an exhaustive list of roles to which the Conduct Rules will not apply. It includes roles such as receptionists, switchboard operators, post room staff, reprographics or print room staff, security guards, vending machine staff, drivers, cleaners, and catering staff.

- 6.4** CMCs will be legally required to notify us when disciplinary action has been taken against a person for a Conduct Rules breach. Disciplinary action means:
- issuing of a formal written warning
 - suspension or dismissal of a person
 - reduction or recovery of remuneration (clawback)
- 6.5** We proposed requiring CMCs to report Conduct Rule breaches within the following timeframes:
- for Senior Managers, within 7 business days of concluding disciplinary action, using Form D (or Form C where the individual will no longer be approved)
 - for other individuals, every year using REP008 on our electronic reporting system
- 6.6** A CMC will need to make an annual notification about Conduct Rules breaches, even if there haven't been any breaches. This is to make sure CMCs correctly monitor and identify Conduct Rule breaches.
- 6.7** These are in addition to the obligations that will apply to CMCs to report concerns about an individual's conduct under other rules and principles. This includes for example, FCA Principle 11, which requires a firm to deal with us in an open and cooperative way, including appropriate disclosure to us of anything about the firm of which we would reasonably expect to know.

Feedback received

Q7: *Do you agree with our proposed approach to applying the Conduct Rules to CMCs? If not, please explain why.*

- 6.8** Most respondents agreed with our proposals. A few stated that it was important that NEDs are also subject to the Conduct Rules.
- 6.9** A small number of respondents raised concerns that CMCs may be more reluctant to undertake disciplinary proceedings, because of the consequences to the individual.
- 6.10** There were some misunderstandings about who the Conduct Rules apply to. Some respondents suggested that the rules should apply to those working in claims management activities that are not within financial services, eg claims handlers working in personal injury claims.

Our response

We are implementing the rules we consulted on and have decided to apply the Conduct Rules to all employees, except ancillary staff (i.e. people who don't perform a role specific to regulated services).

We require all authorised firms to report concerns about an individual's conduct under various rules or principles, such as Principle 11. This enables us to effectively supervise and monitor the firms and individuals we regulate. CMCs will be obliged to notify us of concerns about an individual's conduct as a core principle of their authorisation. However, the onus is on CMCs to ensure that breaches of the Conduct Rules are dealt with effectively under the firm's own disciplinary process. They must also ensure that they appropriately address any customer harm. A notification about an individual does not necessarily mean direct regulatory action against that individual.

The Conduct Rules will apply to most staff within CMCs, including those working in claims management activities that are not within financial services. This includes regulated claims management activity relating to personal injury claims. This is because staff at all levels of a firm have the potential to cause harm. Also, as set out in the Regulated Activities Order and explained in CP18/15 and PS18/23, the FCA will regulate most claims management activity, whether it relates to financial services or not.

7 Transitional arrangements

7.1 In this chapter, we summarise and respond to feedback on the transitional arrangements we proposed in CP18/26.

Our proposals

7.2 We proposed that although we would begin authorising CMCs as firms from April 2019, we would not begin authorising individuals in these CMCs until the SM&CR begins for solo regulated firms on 9 December 2019.

7.3 We also proposed that we will not require CMCs that do not carry out other regulated activities and have not yet received FCA authorisation (ie they are still in the Temporary Permissions Regime) to apply the SM&CR. This means that firms in the Temporary Permissions Regime would not be required to obtain regulatory references for new employees who will be starting Senior Manager or Certified roles. However, we proposed applying some of our general rules and guidance on references to CMCs, specifically that they should:

- Provide a reference when requested, as soon as is reasonably practicable. Our rules and guidance on providing references are explained in SYSC 22.2.2 and SYSC 22.5
- Have policies and procedures in place for providing references, as explained in SYSC 22.8

7.4 We also proposed a transitional period for CMCs. This would be in line with the regulations beginning the SM&CR for CMCs, which will be issued by HM Treasury. We have assumed that these regulations will state that CMCs (that do not have other permissions) will have 12 months to complete fitness and propriety assessments for certification. We also proposed that the Conduct Rules for these firms will not commence for staff who aren't Senior Managers or Certified Staff until the end of the same period. This period will commence:

- on 9 December 2019, if the CMC received authorisation before on or before this date ('SM&CR Commencement')
- from the date the CMC receives full authorisation, if this is later than 9 December 2019

Feedback received

Q8: *Do you agree with our proposed approach for transitional arrangements? If not, please explain why.*

7.5 Nearly all respondents agreed with our proposals. A few supported removing "unsuitable" CMCs and individuals from the sector through the authorisations process.

- 7.6** A small number of respondents said that CMCs should be subject to the SM&CR sooner than December 2019 (or from the date the CMC receives full authorisation). One respondent said all CMCs should be subject to the SM&CR from 9 December 2019 at the latest, including those still operating under Temporary Permissions.
- 7.7** One respondent suggested there should be a deadline for relevant staff in CMCs to have obtained appropriate qualifications.
- 7.8** We had some requests for clarification, including:
- how the transitional arrangements (eg fit and proper assessments of Certified Staff) apply, if a CMC is already authorised by the FCA for other regulated activities
 - when Senior Managers will be approved
 - what will happen if a firm has only 1 suitable individual for the SMF, and that application is rejected

Our response

We are implementing the transitional rules we consulted on with the amendments described below.

The date at which the SM&CR commences for solo regulated firms will be set by HM Treasury. We are unable to bring the date forward for CMCs.

We don't agree that CMCs that have not received authorisation should be subject to the SM&CR. We don't think it's proportionate for firms to implement the SM&CR when there is a possibility that they may be refused authorisation. We also want to make sure CMCs that don't receive authorisation until after 9 December 2019 still receive the benefit of transitional arrangements.

We have not introduced a deadline for staff who are subject to fit and proper assessments to have completed qualifications, nor have we introduced any new qualification requirements for the SM&CR. As part of the fit and proper assessment, however, firms will need to evaluate whether individuals have the level and type of qualification required for their roles.

Firms that are already authorised by the FCA will have 12 months, from 9 December 2019, to complete fitness and propriety assessments and train staff in the Conduct Rules. Chapter 4 of our 'Guide for FCA solo-regulated firms' explains which individuals should be assessed by the firm to ensure they are still fit and proper to perform their role. Chapter 5 of the guide explains which staff members should receive training in the Conduct Rules. This is likely to be most employees working in the firm.

We have also amended the rules relating to the APR for CMCs that are already authorised. These firms will not need to seek additional approved person authorisations when claims management becomes regulated. These rules will need to apply as soon as the claims management regime

begins. So, we are including them in a separate rules instrument rather than in the near-final rules.

These dates are the deadlines for firms to have completed these activities. Firms may wish to complete training and assessments according to a consistent timetable, rather than waiting for the regulatory deadline. This is up to the firm to decide.

To be clear, the Conduct Rules apply to all staff except ancillary staff. This includes people who don't perform a role that is specific to claims management services. The definition of regulated activities for CMCs is explained in CP18/15 and PS18/23 and is broader than financial services.

Individuals who will perform Senior Management Functions in CMCs must have received approval from the FCA by 9 December 2019 (or the date at which the firm receives authorisation, whichever is later). The transitional arrangements for fit and proper assessments only apply to Certified Staff.

If a firm does not have approved Senior Managers in place by the date they are subject to the SM&CR, this is likely to be a breach of our rules. In these cases, we will consider what regulatory action should be taken, including withdrawal of regulatory permissions. In practice, this scenario should be mitigated by the firm authorisation process, where we will assess the firm, including its management body, against the Threshold Conditions. This should make it easier for us to consider subsequent applications for approval as a senior manager.

8 Feedback to our Cost Benefit Analysis

- 8.1** When we propose rules, we must publish a Cost Benefit Analysis (CBA) under Section 138I(2)(a) of FSMA. The CBA must include an analysis and estimate of the costs from, and the benefits delivered by, our proposed rules. We published a CBA for our proposals in September, alongside CP18/26.
- 8.2** This chapter sets out our response to the CBA feedback.

Feedback received

Q9: *Do you agree with our assessment of the costs and benefits of these proposals?*

- 8.3** Most respondents agreed with the CBA. Some suggested that we could have included other benefits in our analysis, such as potential industry growth due to greater consumer trust.
- 8.4** One respondent stated that the cost estimates were too low.
- 8.5** Another disagreed with the evidence and assumptions used to estimate the costs but did not explain why our approach was not valid.
- 8.6** A small number of respondents stated that the benefits of our proposals are dependent on our enforcement plans and capabilities.

Our response

We believe that our estimates of costs in the CBA are reasonable.

We have not received any evidence to suggest that our cost estimates are too low. We would not expect large compliance costs because firms will have a very small number of staff providing regulated activities. Most CMCs will have only 1 Senior Management Function and fewer certified members of staff than solo-regulated firms in other tiers. The figures we provided on the per firm costs are averages. These averages are typically not the costs any individual firm will incur. Some firms will incur higher costs and others lower.

We are not aware of any reason why our approach to estimating the costs is not valid.

We agree that our enforcement work ensures there are real and meaningful consequences for CMCs and individuals who do not follow our rules and who cause actual or potential harm to customers and markets. Our approach to enforcement is explained in Chapter 9 of CP18/15 and Chapter 8 of PS18/23.

We have, however, revised our estimated costs to the claims management industry to reflect the updated projections of firm numbers detailed in PS18/23. In Chapter 12, two scenarios were detailed:

- A core scenario, which applies the methodology used in the original CBA to new CMC data and estimates of 790 firms. This would mean an estimated one-off cost to implement the SM&CR of around £1,000,000 – £1,100,000 and ongoing costs of £100,000 – £350,000
- An alternative, more cautious scenario of 592 firms remaining in the market. This would mean an estimated one-off cost to implement the SM&CR of around £780,000 – £890,000 and ongoing costs of £78,000 – £270,000

In CP18/26 we estimated that there would be 736 firms. So, we estimated that total one-off cost to be in the range of around £940,000 – £1,000,000 and ongoing costs to be in the range of £97,000 – £330,000 per year.

9 Feedback on the Equality Impact Assessment

- 9.1 In CP18/26, we considered whether our proposals could have a potentially discriminatory impact on groups with protected characteristics.

Feedback received

Q10: *Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?*

- 9.2 Nearly all respondents agreed with our assessment.
- 9.3 A small number of respondents were concerned that the reforms could lead to more aggressive marketing by unregulated CMCs and those operating in the financial services sector.
- 9.4 One respondent also stated that, following the deadline for PPI claims in late 2019, vulnerable consumers could be targeted by CMCs looking for new business.
- 9.5 One firm thought that vulnerable consumers could have reduced access to justice if CMCs leave the market and the impact that this could have on competition.

Our response

All CMCs that are doing regulated activity and are set up, or serving customers, in England, Scotland and Wales will need to be regulated. If a firm carries on regulated claims management activities in Great Britain without the required permissions, we will use our criminal, civil and regulatory enforcement powers to take action.

If CMCs conduct aggressive marketing, this is likely to be a breach of our rules. In these cases we will consider what regulatory action should be taken against the firm and/or individuals in the firm.

Firms must establish and implement clear, effective and appropriate policies to identify and protect vulnerable consumers. They will be required to record calls and take additional steps when dealing with vulnerable customers. We have published various resources which may help CMCs in dealing with customers with protected characteristics and to comply with their obligations under the Equality Act. These resources include:

- [Our Approach to Customers](#)

- [Occasional Paper no. 8: Customer Vulnerability](#)
- [Ageing populations: update from the FCA](#)
- [Financially vulnerable customers' thematic review: key findings](#)

It is the responsibility of CMCs to ensure that they are complying with their obligations under the Equality Act. Firms will need to demonstrate that they are dealing with vulnerable consumers appropriately.

We will undertake a consultation, in 2019, on guidance for all firms on the identification and treatment of vulnerable customers. This guidance will be a useful resource for CMCs.

We addressed concerns about competition in Chapter 13 of PS18/23.

Overall, we don't believe our rules adversely impact any of the groups with protected characteristics, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Annex 1

List of non-confidential respondents

Association of British Insurers

Association of Personal Injury Lawyers

Barclays

Consumer Credit Justice

Create Solutions Ltd

Easy Claim Limited

GA Review Limited

Gladstone Brookes

Information at large

InjuryLawyers4U Limited

Kwik accident claim help line

Legal & General Group plc

Money Management Team Limited

Pensions Advisory Service

Tynebank Claims Ltd

Annex 2

Abbreviations used in this paper

AIF	Alternative Investment Funds
APR	Approved Persons Regime
CBA	Cost Benefit Analysis
CCA	Consumer Credit Act 1974
CMC	Claims Management Company
CMR	Claims Management Regulator
CP	Consultation Paper
EG	Enforcement Guide
EIA	Equality Impact Assessment
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act
HM Treasury	Her Majesty's Treasury
ICO	Information Commissioner's Office
NED	Non-Executive Director
PCBS	Parliamentary Commission on Banking Standards
PPI	Payment Protection Insurance
PRA	Prudential Regulation Authority
PS	Policy Statement
SIMR	Senior Insurance Managers Regime
SM&CR	Senior Managers and Certification Regime
SMF	Senior Management Function
SMR	Senior Managers Regime

SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
UK	United Kingdom

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Appendix 1

Made rules (legal instrument)

**APPROVED PERSONS REGIME (EXCLUSION FOR CLAIMS MANAGEMENT)
INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 55U (Applications under this Part);
 - (2) section 59 (Approval for particular arrangements);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 139A (Power of the FCA to give guidance); and
 - (6) article 1 of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2019.

Amendments to the Handbook

- D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraph E of this instrument.
- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Supervision manual (SUP)	Annex B
Forms in Supervision manual (SUP)	Annex C

Citation

- F. This instrument may be cited as the Approved Persons Regime (Exclusion for Claims Management) Instrument 2019.

By order of the Board
28 March 2019

Annex A**Amendments to the Senior Management Arrangements, Systems and Controls
sourcebook (SYSC)**

In this Annex, underlining indicates new text.

4 General organisational requirements

...

4.4 Apportionment of responsibilities

Application

...

4.4.2 G ...

4.4.2A R For the purposes of this section, a *regulated claims management activity* is treated as an *unregulated activity*.

...

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

6 Annex 5D Variation of permission application form

This annex consists only of one or more forms.

...

Variation of Permission (VOP) Application Consumer Credit Activities (Notes)

Variation of Permission (VOP) Application – Claims Management

Variation of Permission (VOP) Application – Claims Management (Notes)

Insert in the appropriate place in SUP 6 Annex 5D the form titled “Variation of Permission (VOP) Application – Claims Management” and the notes titled “Variation of Permission (VOP) Application – Claims Management – notes”. The text of the form and notes is set out in Part Two of Annex C.

Amend the following forms in SUP 6 Annex 5 as shown in Part One of Annex C:

- (1) Variation of Permission Application – Insurance Business, Banking (accepting deposits), Electronic Money, Lloyd’s Market and Funeral Plan Providers
- (2) Variation of Permission Application – Investment Business
- (3) Variation of Permission Application – Home Finance Mediation and General Insurance Distribution Activities
- (4) Variation of Permission (VOP) Application Consumer Credit Activities

10A FCA Approved Persons

10A.1 Application

...

Credit firms with limited permission

- 10A.1.25 R ...
- Claims management exclusions
- 10A.1.28 R For the purposes of SUP 10A.1.13R, SUP 10A.1.18R, SUP 10A.6.23R (Partner function (CF4)) and SUP 10A.6.31R (Small friendly society function (CF6)), a regulated claims management activity is treated as an unregulated activity.
- 10A.1.29 R A function performed by a person (A) in relation to a firm (B), whose permission includes a regulated claims management activity, is not a controlled function when performed by A in relation to B if:
- (1) A is not the subject of a current FCA approved person approval for that controlled function in relation to B;
 - (2) that function would otherwise have been a controlled function but for this rule; and
 - (3) that function would not have been a controlled function in relation to A and B if articles 89G to 89M of the Regulated Activities Order (regulated claims management activities) were not in the Regulated Activities Order.
- 10A.1.30 R SUP 10A.1.25R also applies to a firm whose permission only includes regulated claims management activities and relevant credit activities.
- 10A.1.31 G SUP 10A.1.28R to SUP 10A.1.30R mean a firm whose permission includes a regulated claims management activity will not need to seek additional approved person approvals, because those activities became regulated activities in April 2019.
- 10A.1.32 G SUP 10A.1.28R to SUP 10A.1.30R are not relevant to a firm which has permission to carry on only regulated claims management activities because SUP 10A.1.1R excludes it from this chapter altogether.

...

Annex C

Amendments to forms in the Supervision manual (SUP)

Part One: Amended forms

Replace the following sections of each of the following forms in SUP 6 Annex 5D with the wording below. The text is not underlined:

- (1) Section 9 (Declaration and Signature) in the form called Variation of Permission Application – Insurance Business, Banking (accepting deposits), Electronic Money, Lloyd’s Market and Funeral Plan Providers
- (2) Section 10 (Declaration and Signature) in the form called Variation of Permission Application – Investment Business
- (3) Section 9 (Declaration and Signature) in the form called Variation of Permission Application – Home Finance Mediation and General Insurance Distribution Activities
- (4) Section 9 (Declaration and Signature) in the form called Variation of Permission (VOP) Application Consumer Credit Activities

Declaration and Signature

It is a criminal offence, knowingly or recklessly, to give the appropriate regulator information that is materially false or misleading (see sections 398 and 400 FSMA). Even if you believe or know that information has been provided to the appropriate regulator before (whether as part of another application or otherwise) or is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this application – you should not assume that the appropriate regulator will itself identify such information during the assessment of this application. If there is any doubt about the relevance of information, it should be included.

There will be a delay in processing the application if information is inaccurate or incomplete, and it may call into question the suitability of the applicant and/or lead to the appropriate regulator exercising its powers (including, but not limited to, taking disciplinary/ Enforcement action). You must notify the appropriate regulator immediately if there is a change to the information in this form and/or if inaccurate information has been provided.

I/We confirm that the information provided in this application is accurate and complete to the best of my/our knowledge. I/We will notify the appropriate regulator immediately if there is a material change to the information provided.

I/We authorise the appropriate regulator to make such enquiries and seek such further information as it thinks appropriate to identify and verify information that it considers relevant to the assessment of this application. These checks may include credit reference checks or information pertaining to

fitness and propriety. I/We are aware that the results of these enquiries may be disclosed to the firm/employer/applicant.

I/We agree that the appropriate regulator may, in the course of processing this application, undertake a Police National Computer (PNC) check in respect of any or all of the persons to whom this application relates.

Where the signatory to this application has provided an address and/or email address in connection with the applicant's business, the signatory agrees on behalf of the applicant that the appropriate regulator may use such address and email address as the 'proper address for service' at which to give the applicant a 'relevant document' as those terms are defined in Financial Services and Markets Act 2000 (Service of Notice) Regulations (SI 2001/1420).

I have attached the relevant documents where requested or I have them fully ready and available on request and I have taken all reasonable steps to ensure they are correct.

I confirm that where I have certified that documents are ready they have been prepared to an appropriate standard and are available for immediate inspection by the appropriate regulator.

I understand that the appropriate regulator may require the applicant firm to provide further information or documents at any time.

I confirm that I am authorised to sign this form on behalf of the firm and/or controller(s) and (where applicable) to give each of the confirmations on behalf of the applicant set out in this declaration.

The FCA and the Bank of England process personal data in line with the requirements of the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018. For further information about the way we use the personal data collected in this form, please read the privacy notices available on the FCA's website at: <https://www.fca.org.uk/data-protection> and the Bank of England's website at: <https://www.bankofengland.co.uk/prudential-regulation/authorisations>

In addition to other regulatory responsibilities, firms and approved persons have a responsibility to disclose to the appropriate regulator matters of which it would reasonably expect to be notified. Failure to notify the appropriate regulator of such information may lead to the appropriate regulator taking disciplinary or other action against the firm and/or individuals.

I am aware that, while advice may be sought from a third party (e.g. legal advice), responsibility for the accuracy of information, as well as the disclosure of relevant information, on the form is ultimately the responsibility of those who sign the application.

Review and Submission

The ability to submit this form is given to an appropriate user or users by the firm's principal compliance contact.

Tick here to confirm that the person submitting this Form on behalf of the Firm and (if applicable) the Individual(s) named below - have read and understood the declaration.

Who must sign the declaration?

This declaration must be signed by the person(s) who is responsible for making this application on behalf of the Applicant. There can be one or two required signatures depending on the number of directors / partners in the firm.

Is there more than one director / partner as applicable to the legal status of the firm?

- Yes ▶ Provide more than one signatory below
- No ▶ Provide one signatory below

I confirm that a permanent copy of this application, signed by myself and the signatories, will be retained for an appropriate period, for inspection at the FCA/PRA's request.

Name of authorised signatory	
Signature	
Date	

Name of authorised signatory	
Signature	
Date	

Part Two: New forms and notes

Insert the following new form and notes in the place described in Annex B of this instrument.
The text is not underlined.



Variation of Permission (VOP) Application

Claims Management

Firm Name

Firm Reference Number

Important information you should read before completing this form

This is the Variation of Part 4A Permissions application form. The FCA regulated business that a firm carries on should be consistent with its Part 4A permission. This is shown on the firm's entry on the Financial Services Register (under the heading 'Permissions'). If you wish to make any changes to your firm's business activities that require changes to its permission on the Financial Services Register, you must complete and submit a Variation of Part 4A Permission application form. Your firm should not start carrying out any new activities until the application is approved.

Before completing this form, please refer to the relevant section of the FCA's website, including the FAQ section for further guidance. In addition, if you are unsure and/or in doubt then you may find it helpful to discuss your proposed application with your usual supervisory contact (e.g. Customer Contact Centre) at the FCA, who will endeavour to assist with your queries.

You should ensure that all relevant information and confirmations are included with the form. If not, it may delay your application whilst we seek the outstanding information and/or confirmations. Ultimately Variation of Permission applications will be refused if the outstanding information and/or confirmations are not provided.

There will be an application fee payable at the time of submission. The amount charged will depend on the type of application and the permissions selected. The application fee is non-refundable.

Please note – it is important that you provide accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence.

Contents of this form

1	Contact details and timings for this application	3	5	Threshold Conditions	11
2	Scope of permissions required	5	6	EEA notifications	13
3	Fees and levies	8	7	Fees	14
4	Regulatory business plan	9	8	Declaration	15

Filling in the form

- 1** If you are using your computer to complete the form:
 - use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question; and
 - print out all the parts of the form you have completed and sign the declaration form
- 2** If you think a question is not relevant to you, write 'not applicable' and explain why.
- 3** If you leave a question blank or do not attach the required supporting information without telling us why, we will have to treat the application as incomplete. This will increase the time taken to assess your application.
- 4** If there is not enough space, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

**Claims Management Department
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN**

1

Contact details and timings for this application

We need this information in case we need to contact you when assessing this application.

Contact for this application

1.1 Contact details of the person we will get in touch with about this application

This must be someone who works for the applicant firm, and not a professional adviser.

Title	
First names	
Surname	
Job title	
Business address	
Postcode	
Phone number (including STD code)	
Mobile number (optional)	
Fax number (including STD code)	
Email address	

Pre-application case

A pre-application meeting is not compulsory and we only recommend one if you believe that the meeting would significantly help you get specific support not ordinarily available to you from our website, Handbook and other guidance materials.

1.2 Please specify if you have received support from the Innovation Hub or the Asset Management Hub

Timings for this application

We will attempt to process your application as quickly as possible. If you wish your application to be granted by a specific date, we will try to do so. If we cannot, we will contact you with the reason why. However, please note that we must determine an application for a variation of permission once we have received it and deemed it to be complete within six months of it becoming complete.

1.3 Does the applicant firm have any timing factors that it would like us to consider?

2

Scope of Permission required

Tell us what it is you wish to do to change your firm's permissions.

Regulated Activity

Changing your firm's permission can generate an application fee and vary your fee.

It is your responsibility to make sure the regulated activities you request adequately cover the activities the applicant firm intends to carry on. Use this page to request any changes you wish to make to the firm's Claims Management permission.

You need a Permission Notice that matches the applicant firm's needs and covers every aspect of regulated business it wants to carry on. The Permission Notice shows the range of regulated activities the applicant firm will be authorised to carry on. It will also contain what we refer to as 'requirements' and 'limitations', should this be relevant. Broadly speaking, a limitation is included in the description of a specific regulated activity and will limit how it can be carried on in some way. A requirement is on the firm to take a specified action. A requirement may extend to activities of the firm which are not regulated activities. If the applicant firm carries on a regulated activity that is not set out in its permission notice it could be in breach of FSMA and subject to enforcement action.

For details of regulated activities please refer to the Perimeter Guidance Manual in the FCA Handbook.

2.1 Answer this section if you wish to do the following:

- add a new Claims Management activity to your permission; or
- delete an activity from your permission.

If you wish to add or amend several activities in different ways, copy this page and attach it to this form.

Select activity(ies)			
Add new activity	Amend current activity	Delete activity	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Seeking out, referrals and identification of claims or potential claims (personal injury claim; financial services or financial product claim; housing disrepair claim; claim for a specified benefit; criminal injury claim; employment related claim)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice, investigation or representation in relation to a personal injury claim
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice, investigation or representation in relation to a financial services or financial product claim
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice, investigation or representation in relation to a housing disrepair claim
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice, investigation or representation in relation to a claim for a specified benefit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice, investigation or representation in relation to a criminal injury claim
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Advice, investigation or representation in relation to an employment related claim

Client money

2.2 Does your firm wish to change its client money or assets permission?

- No ▶ Continue to Section 3
- Yes ▶ Answer the relevant questions in this section

2.3 What is the firm able to do now, and how does it wish to change its permission for client money?

Firm is currently able to:	Firm wishes to be able to:
<input type="checkbox"/> Hold and control client money	<input type="checkbox"/> Hold and control client money
<input type="checkbox"/> Not hold and not control client money	<input type="checkbox"/> Not hold and not control client money

2.4 Are you applying to stop holding client money?

- No ▶ Continue to Question 2.5
- Yes ▶ Continue below

Please tick this box if you have included a report from your auditors confirming that you have done this and it has either been paid back to the clients concerned or transferred to another entity that is authorised to hold it

Or, if you are applying to cease holding client money for Insurance Mediation as you have Risk Transfers in place, and you have NEVER held or controlled client money, please tick here to confirm the Risk Transfer Agreement in place with your Insurer covers ALL Client Money. This includes any claims monies received by your firm and any refund of premiums.

If you cannot answer 'Yes' to either of the above two options, explain further below.

2.5 Are you applying to hold client money?

No ▶ Continue to Section 3

Yes ▶ Please state for the applicant, if it holds or has held client money, the highest amount in the last calendar year or, if it did not hold client money in the previous calendar year, the highest amount of client money it projects that it will hold in the current calendar year

You must also attach a copy of your client money handling and reconciliation procedures. Please confirm this is attached.

Yes

3

Fees and levies

3.1 Please state the estimated annual income for claims management activities

Amount (GBP)	
Confirm amount in words	

3.2 Has the applicant previously been authorised by the Claims Management Regulator (CMR)?

No ▶ Continue to Section 4

Yes ▶ Please provide authorisation number prefixed with the letters 'CRM' followed by up to 5 digits and continue to Section 5

--

3.3 Please state the estimated annual income for claims management activities that will be conducted with eligible complainants

The Financial Ombudsman Service (FOS) general levy is based on relevant business. Relevant business is business conducted with eligible complainants (see www.handbook.fca.org.uk/handbook/DISP/2/7.html for further information and the definition of eligible complainant). If you will not conduct business with eligible complainants then you should report 'nil' in this section.

Amount (GBP)	
Confirm amount in words	

4

Regulatory Business Plan

4.1 Effective date of changes

4.2 Reason for Variation

We need to know why your firm is applying to change its permission. You should give as much information as possible, including:

- how this change will affect your firm and the long-term strategy for your business;
- any new operational, legal, market risks that you have identified and will need to consider; and
- details of any outsourcing.

Please attach a full regulatory business plan

Please confirm that this is attached.

Yes

4.3 Does the applicant use, or intend to use, third party lead generators?

No ▶ Continue to Question 4.4

Yes ▶ Please confirm the number of lead generators you will use

4.4 Does the applicant intend to accept introductions from exempt lead generators benefiting from the exclusion for certain providers of referrals?

Article 89V in Part 3B of the FSMA 2000 (Regulated Activities) Order 2001 (SI 2001/544) sets out an exclusion for certain providers of referrals. See Article 7 of the Financial Services and Markets Act 2000 (Claims Management (Activity) Order 2018 (SI 2018/1253):

<http://www.legislation.gov.uk/ukxi/2018/1253/article/36/made>

No ▶ Continue to Question 4.5

Yes ▶ Please provide details of the intended number of exempt lead generators and the nature of their business

4.5 Does the applicant intend to represent customers before a tribunal, or make representations on behalf of the customer, to an ombudsman service or insurer?

- Yes
- No

4.6 Does the applicant have procedures in place for dealing with vulnerable consumers?

- No ▶ Continue to question 4.7
- Yes ▶ Please attach a copy of your client money handling and reconciliation procedures. Please confirm that this is attached.
- Yes

If you are only applying for the permission of seeking out, referrals and identification of claims or potential claims ▶ Continue to Question 4.9

If you are applying for any of the permissions in relation to advice, investigation or representation of a claim ▶ Continue to Question 4.7

4.7 Please attach a copy of your pre-contract information in relation to your claims management activities

Please confirm that this is attached.

- Yes

4.8 Please attach a sample copy of your customer contract in relation to your claims management activities

Please confirm that this is attached.

- Yes

4.9 You must provide a structure chart to show the nature of the relationship between the applicant firm and each close link (please include the business type of the close link).

Please confirm that this is attached.

- Yes

4.10 Are you aware of any information to suggest that any close link is likely to prevent our effective supervision of the applicant firm?

- No
- Yes ▶ Please provide details

5

Threshold Conditions

The threshold conditions are the minimum conditions a firm is required to satisfy, and continue to satisfy, to be given and retain Part 4A Permission. The firm must satisfy us that these conditions will continue to be met if the application is granted. You may be asked to provide documentary evidence in support of your answers, either during the application process or at a later point.

Location of Offices

5.1 Confirm the following:

- if you are a body corporate, that your firm's Registered Office (or if you have no Registered Office, your Head Office) is located within the United Kingdom;
- if you are natural person, that your Head Office is in or you are resident in the United Kingdom.

Effective Supervision

5.2 As a result of this application, will there be any impact on the FCA's ability to effectively supervise the firm?

- No ▶ Continue to Question 5.2
 Yes ▶ Provide further detail below

Appropriate resources / Business to be conducted in a prudent manner

5.3 What is your current prudential category?

5.4 What will the firm's prudential category be as a result of this application? If unchanged, enter the same value as above

5.5 You must confirm you are meeting and will continue to meet the firm's new capital resource requirements and have projections available to prove so

5.6 What will be the firm's new capital resource requirement?

Business Model

5.7 You must confirm that the firm has a suitable business plan available that reflects the firm's current business and proposed changes?

Suitability

Compliance

5.8 A firm must establish, maintain and carry out a Compliance Monitoring Programme of actions to check that it complies and continues to comply with regulations. You must confirm that you have in place a Compliance

Manual and a Compliance Monitoring Programme that reflects the firm's current business and the proposed change in business, if applicable, for which the firm is applying

Conduct of Business Requirements

5.9 You must confirm the firm is ready, willing and organised to comply with the relevant conduct of business provisions for the permission the firm is applying for. This includes provisions in the Business Standards and Specialist sourcebooks sections of the FCA handbook, as applicable to any new regulated activities applied for

Systems and Controls (SYSC) requirements

5.10 You must confirm the firm continues to meet the SYSC requirements?

6

EEA Notifications and Third-Country Banking and Investment Groups

We need to know about any connected firms outside the UK but within the EEA (European Economic Area). We also need to know whether the firm is a member of a third-country banking and investment group

6.1 Is the firm connected with a firm regulated outside the UK but within the EEA?

- No ▶ Continue to Question 5.2
 Yes ▶ Provide further detail below

Name of EEA Regulated Firm	Name of EEA Regulator	Firm's Contact at EEA Regulator (include email address)

6.2 Is your firm currently a BIPRU/IFPRU firm or will it become one if this variation is approved?

- Yes ▶ Continue to Question
 No ▶ Continue to next question

6.3 Is the firm a member of a third-country (i.e outside of the EEA) banking and investment group?

- Yes
 No

7 Fees

You must be ready to pay the application fee in full at the same time as submitting your application, by credit/debit card (you may pay by bankers draft, cheque or other payable order by prior arrangement only if it is not possible to pay by credit or debit card). If the fee is not paid in full within five working days of the date that we contact you after you submit this form, your application will be returned to you. This fee is non-refundable.

We charge an application fee of £250 for applications that will increase your firm's permitted business activities but which do not change your firm's fee blocks. There is no fee to reduce your permission.

Where you are changing fee blocks:

- **For smaller firms, turnover up to £1 million, the application fee is £600**
- **For larger firms, turnover of more than £1 million, the application fee is £5000**

8

Declaration

It is a criminal offence, knowingly or recklessly, to give the FCA information that is materially false or misleading (see sections 398 and 400 FSMA). Even if you believe or know that information has been provided to the FCA before (whether as part of another application or otherwise) or is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this application – you should not assume that the FCA will itself identify such information during the assessment of this application. If there is any doubt about the relevance of information, it should be included.

There will be a delay in processing the application if information is inaccurate or incomplete, and it may call into question the suitability of the applicant and/or lead to the FCA exercising its powers (including, but not limited to, taking disciplinary/ Enforcement action). You must notify the FCA immediately if there is a change to the information in this form and/or if inaccurate information has been provided.

I/We confirm that the information provided in this application is accurate and complete to the best of my/our knowledge. I/We will notify the FCA immediately if there is a material change to the information provided.

I/We authorise the FCA to make such enquiries and seek such further information as it thinks appropriate to identify and verify information that it considers relevant to the assessment of this application. These checks may include credit reference checks or information pertaining to fitness and propriety. I/We are aware that the results of these enquiries may be disclosed to the firm/employer/applicant.

I/We agree that the FCA may, in the course of processing this application, undertake a Police National Computer (PNC) check in respect of any or all of the persons to whom this application relates.

Where the signatory to this application has provided an address and/or email address in connection with the applicant's business, the signatory agrees on behalf of the applicant that the FCA may use such address and email address as the 'proper address for service' at which to give the applicant a 'relevant document' as those terms are defined in Financial Services and Markets Act 2000 (Service of Notice) Regulations (SI 2001/1420).

I have attached the relevant documents where requested or I have them fully ready and available on request and I have taken all reasonable steps to ensure they are correct.

I confirm that where I have certified that documents are ready they have been prepared to an appropriate standard and are available for immediate inspection by the FCA.

I understand that the FCA may require the applicant firm to provide further information or documents at any time.

I confirm that I am authorised to sign this form on behalf of the firm and/or controller(s) and (where applicable) to give each of the confirmations on behalf of the applicant set out in this declaration.

The FCA processes personal data in line with the requirements of The General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018. For further information about the way we use the personal data collected in this form, please read our privacy notice available on our website as <https://www.fca.org.uk/data-protection>.

In addition to other regulatory responsibilities, firms and approved persons have a responsibility to disclose to the FCA matters of which it would reasonably expect to be notified. Failure to notify the FCA of such information may lead to the FCA taking disciplinary or other action against the firm and/or individuals.

I am aware that, while advice may be sought from a third party (e.g. legal advice), responsibility for the accuracy of information, as well as the disclosure of relevant information, on the form is ultimately the responsibility of those who sign the application.

Review and Submission

The ability to submit this form is given to an appropriate user or users by the firm's principal compliance contact.

Tick here to confirm that the person submitting this Form on behalf of the Firm and (if applicable) the Individual(s) named below - have read and understood the declaration.

Who must sign the declaration?

This declaration must be signed by the person(s) who is responsible for making this application on behalf of the Applicant. There can be one or two required signatures depending on the number of directors / partners in the firm.

Is there more than one director / partner as applicable to the legal status of the firm?

- Yes ▶ Provide more than one signatory below
- No ▶ Provide one signatory below

I confirm that a permanent copy of this application, signed by myself and the signatories, will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory	
Signature	
Date	

Name of authorised signatory	
Signature	
Date	

Variation of Permission (VoP) Application

Claims Management – notes

Purpose of these Notes

These notes will help you fill in the Claims Management form correctly

If after reading these notes you need more help, you can:

- visit our website: www.fca.org.uk/
- consult the Handbook: www.fshandbook.info/FS/index.jsp
- call the Customer Contact Centre: 0300 500 0597
- email the Customer Contact Centre: Firm.Queries@fca.org.uk

These notes, while aiming to help you, do not replace the rules and guidance in the Handbook.

Terms in these notes

These notes use the following terms:

- 'you', 'the firm' or 'the applicant firm' refers to the firm applying for authorisation
- 'the FCA', 'we', 'us' or 'our' refers to the Financial Conduct Authority
- FSMA refers to the Financial Services and Markets Act 2000
- 'Claims management activity' refers to regulated claims management activity, except where stated otherwise

Contents of these notes

1	Contact details and timings for this application	2
2	Scope of Permission required	3
3	Fees and levies	7
4	Regulatory business plan	8
5	Threshold Conditions	10
6	EEA notifications	12
7	Fees	13
8	Declaration	14

1

Contact details and timings for this application

Contact for this application

1.1 Contact details of the person we will get in touch with about this application

This should generally be someone in the UK

Pre-application case

1.2 Please specify if you have received support from the Innovation Hub or the Asset Management Hub

No additional notes

Timings for this application

1.3 Does the applicant firm have any timing factors that it would like us to consider?

If you wish your application to be granted by a specific date, for example in time for a product launch, we will try to do so. However, the time taken to determine each application is significantly affected by the quality of the application submitted and whether it is complete. If you leave a question blank, do not sign the declaration or do not attach the required supporting information, we will have to treat the application as incomplete. This will increase the time taken for us to assess your application.

We are required by law to determine applications within the earlier of (a) 6 months of receiving a complete application or (b) 12 months of receiving an incomplete application. However, we aim to make a decision about the application as soon as possible.

2 Scope of Permission required

Regulated Activity

Changing your firm's permission can generate an application fee and vary your fee.

It is your responsibility to make sure the regulated activities you request adequately cover the activities the applicant firm intends to carry on. Use this page to request any changes you wish to make to the firm's Claims Management permission.

You need a Permission Notice that matches the applicant firm's needs and covers every aspect of regulated business it wants to carry on. The Permission Notice shows the range of regulated activities the applicant firm will be authorised to carry on. It will also contain what we refer to as 'requirements' and 'limitations', should this be relevant. Broadly speaking, a limitation is included in the description of a specific regulated activity and will limit how it can be carried on in some way. A requirement is on the firm to take a specified action. A requirement may extend to activities of the firm which are not regulated activities. If the applicant firm carries on a regulated activity that is not set out in its permission notice, it could be in breach of FSMA and subject to enforcement action.

For details of regulated activities, please refer to the Perimeter Guidance Manual in the FCA Handbook.

You can find a full description of each regulated activity in PERG 2.7 at: <http://fshandbook.info/FS/html/FCA/PERG/2/7>

You may also find it useful to look at the FCA glossary: www.fshandbook.info/FS/html/handbook/Glossary

Seeking out referrals and identification of claims or potential claims (personal injury claim; financial services or financial product claims housing disrepair claim; claims for a specified benefit; criminal injury claim; employment related claim)

This permission is specified in Article 89G of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) seeking out persons who may have a claim (unless that activity constitutes a controlled claims management activity: see PERG 8.7A.5G);
- b) referring details of a claim or a potential claim or a claimant or potential claimant to another person; and
- c) identifying a claim or potential claim, or a claimant, or potential claimant;

When carried on in relation to:

- a) Personal injury: claims for damages for personal injury or death
- b) Financial services and financial products; claims in relation to financial services and financial products
- c) Housing repair; claims relating to certain landlord and tenant legislation, for the disrepair of premises under a term of a tenancy agreement or lease, or under the common law relating to nuisance
- d) Specified benefits; claims relating to certain industrial injuries, benefits, supplements or allowances
- e) Criminal injuries; claims under the Criminal Injuries Compensation Scheme

- f) Employment; includes claims in relation to wages and salaries and other employment-related payments, and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment

Advice, investigation or representation in relation to a personal injury claim

This permission is specified in Article 89H of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- b) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim.
- c) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

Where carried on in relation to a personal injury claim (claims for damages for personal injury or death).

Advice, investigation or representation in relation to a financial services or financial product claim

This permission is specified in Article 89I of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- b) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim.
- c) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

Where carried on in relation to a financial services or financial product claim

Advice, investigation or representation in relation to a housing disrepair claim

This permission is specified in Article 89J of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- b) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim.
- c) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

Where carried on in relation to a housing disrepair claim (claims relating to certain landlord and tenant legislation, for the disrepair of premises under a

term of a tenancy agreement or lease, or under the common law relating to nuisance).

Advice, investigation or representation in relation to a claim for a specified benefit

This permission is specified in Article 89K of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- b) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim.
- c) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

Where carried on in relation to a claim for a specified benefit (claims relating to certain industrial injuries, benefits, supplements or allowances).

Advice, investigation or representation in relation to a criminal injury claim

This permission is specified in Article 89L of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- b) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim.
- c) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

Where carried on in relation to a criminal injury claim (claims under the Criminal Injuries Compensation Scheme).

Advice, investigation or representation in relation to an employment related claim

This permission is specified in Article 89M of the Regulated Activities Order, which, in summary, involves any or all of the following:

- a) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- b) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim.
- c) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

Where carried on in relation to an employment related claim (includes claims in relation to wages and salaries and other employment-related payments, and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment).

Client money

Client money is money which a firm receives or holds on behalf of a customer in the course of, or in connection with, providing claims management services. Rules in relation to this can be found in Chapter 13 of the FCA's Client Assets sourcebook (CASS). These rules will apply to CMCs from 1 April 2019.

The rules and guidance about how applicant firms hold client money are designed to provide an adequate level of protection for consumers.

3 Fees and levies

No additional notes

4 Regulatory business plan

4.1 Effective date of changes

No additional notes

4.2 Reason for Variation

No additional notes

Please attach a full regulatory business plan

As a guide, the business plan should include:

- full explanation of your business, its background and what it will do, including the types of claims you intend to handle
- objectives (eg, business opportunity, market share, aims)
- details of your governance framework and key personnel
- details of key operational matters
- experience and employment background of your firm's principals and an explanation of how they are competent to perform the regulated activities you want to carry on
- analysis of key business and regulatory risks
- your long-term strategy and financial projections for 3 years
- details of websites, promotions and communications
- details of all fees that could be payable by the customer, how they are explained to the customer and at which point(s) the customer is required to pay the fees details of how customers will be kept up to date with the progress of their claim

4.3 Does the applicant use or intend to use third party lead generators?

No additional notes

4.4 Does the applicant intend to accept introductions from exempt lead generators benefiting from the exclusion for certain providers of referrals?

No additional notes

4.5 Does the applicant intend to represent customers before a tribunal or make representations on behalf of the customer, to an ombudsman service or insurer?

No additional notes

4.6 Does the applicant have procedures in place for dealing with vulnerable consumer?

No additional notes

4.7 Please attach a copy of your pre-contract information in relation to your claims management activities

No additional notes

4.8 Please attached a sample copy of your customer contract in relation to your claims management activities

No additional notes

4.9 You must provide a structure chart to show the nature of the relationship between the applicant firm and each close link (please include the business type of the close link).

For more help to create a structure chart and to understand what a 'close link' is, please see www.fca.org.uk/publications/systems-information/close-link-information.pdf

4.10 Are you aware of any information to suggest that any close link is likely to prevent our effective supervision of the applicant firm?

No additional notes.

5 Threshold Conditions

Threshold Conditions are the minimum requirements a firm must satisfy to be, and to continue to be, authorised. When we consider the applicant firm's application we will assess whether you will satisfy, and continue to satisfy, the threshold conditions which are set out in full in the Threshold Conditions (COND) 2 Sourcebook of the Handbook at:

www.handbook.fca.org.uk/handbook/COND/2/

Location of Offices

This is a requirement of Threshold Condition 2.2.

Effective Supervision

The appropriate regulator must be capable of effectively supervising the firm. This is a requirement of Threshold Condition 2.3.

Appropriate resources

We must be satisfied the applicant firm has adequate resources. We assess the quality and quantity of the applicant firm's resources for its:

- financial resources;
- management;
- staff; and
- systems and controls.

This is a requirement of Threshold Condition 2.4.

Prudential category

We differentiate between our financial requirements by putting applicant firms in different prudential categories. The firm will fall into at least one prudential category; and it may fall into more than one prudential category, depending on its regulated activities.

The prudential categories for claims management are:

- Class 1; and
- Class 2;

The prudential categories in relation to claims management are set out in CMC0B 7.

Business model

This is a requirement of Threshold Condition 2.7

Suitability

We must be satisfied the applicant firm is 'fit and proper' to be authorised. This is a requirement of COND 2.5. We assess:

- the competence and ability of management;
- the management's commitment to carrying on the business with integrity; and
- the management's commitment to carrying on the business in compliance with the regulatory regime.

Compliance

A firm must establish, maintain and carry out a Compliance Monitoring Programme of actions to check it complies, and continues to comply, with regulations. When assessing this application, we need to be satisfied the applicant firm has the appropriate compliance arrangements in place to meet its regulatory obligations. The applicant firm will need, as a minimum, to have in place procedures to meet our rules. These procedures must be ready for inspection at any time.

6

EEA Notifications and Third-Country Banking and Investment Groups

EEA Notifications

We need to know about any connected firms outside the UK but within the EEA because we may contact the relevant EEA Home State Regulators of these connected firms, as part of the application process.

Third-Country Banking and Investment Groups

Definition of BIPRU firm

BIPRU firm has the meaning set out in the FCA or PRA handbook, as appropriate.

Definition of third-country banking and investment group

A third-country banking and investment group is a banking and investment group that is:

(a) headed by:

- (i) a credit institution;
- (ii) an asset management company;
- (iii) an investment firm; or
- (iv) a financial holding company;

that has its head office outside the EEA; and

(b) not part of a wider EEA banking and investment group.

7 Fees

The application fee is an integral part of your application. If you do not pay the appropriate fee in full with the completed application pack or when we contact you, we will not process your application. For further information on fees, see FEES 3 Annex 1.

You should note the firm's periodic fee may change as a result of this application.

8 Declaration

This must be the person who is responsible for making the application. This should be a suitable person of appropriate seniority at the firm.

Appendix 2

Near final rules

SENIOR MANAGERS AND CERTIFICATION REGIME (CLAIMS MANAGEMENT FIRMS) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
 - (3) section 60 (Applications for approval);
 - (4) section 60A (Vetting candidates by authorised persons);
 - (5) section 61 (Determination of applications);
 - (6) section 62A (Changes in responsibilities of senior managers);
 - (7) section 63E (Certification of employees by authorised persons);
 - (8) section 63F (Issuing of certificates);
 - (9) section 64A (Rules of conduct);
 - (10) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
 - (11) section 137A (The FCA’s general rules);
 - (12) section 137T (General supplementary powers);
 - (13) section 139A (Power of the FCA to give guidance); and
 - (14) [relevant transitional powers conferred on the FCA by the Treasury].
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [9 December] 2019 except for Part 1 of Annex F which comes into force on [10 June] 2019.

Amendments to the Handbook

- D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraph E of this instrument.
- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Code of Conduct (COCON)	Annex C

Client Assets sourcebook (CASS)	Annex D
Claims Management: Conduct of Business sourcebook (CMCOB)	Annex E
Supervision manual (SUP)	Annex F

Citation

- F. This instrument may be cited as the Senior Managers and Certification Regime (Claims Management Firms) Instrument 2019.

By order of the Board
[date]

[Editor's notes:

- (1) This draft instrument is drafted as if the amendments to the Handbook proposed by the near final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 (the solo-regulated firms instrument) included in PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) had been made and was in force.
- (2) The text of the solo-regulated firms instrument was based on a version of the Individual Accountability (Dual-Regulated Firms) Instrument 2018 that was slightly different from the version that was eventually made. We have not marked up the changes needed to bring the solo-regulated firms instrument into line with the Handbook as currently in force.
- (3) No account is taken of the proposed changes in CP19/4 (Optimising the Senior Managers & Certification Regime and feedback to DP16/4 – Overall responsibility and the legal function).
- (4) This draft instrument takes account of the changes made by the Reporting of Information about Directory Persons (Dual-Regulated Firms) Instrument 2019 and the Approved Persons Regime (Exclusion for Claims Management) Instrument 2019.
- (5) This draft instrument is drafted as if the amendments to the Handbook proposed by the near final version of the Reporting of Information about Directory Persons (FCA-Authorised Firms) Instrument 2019 included in PS19/7 (The Directory) were made and in force.
- (6) This draft instrument assumes that the provisions for commencing the SMCR for claims management firms will be in the same statutory instrument as the ones for other solo-regulated firms. If this turns out not to be the case, or if the statutory commencement and transitional arrangements are different from the ones assumed by this draft instrument, we shall make the necessary changes when we make this instrument.]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

certification employee ...

- (3) (in relation to an *SMCR firm* that is an *FCA-authorised person* and subject to SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies) an employee (as defined in section 63E of the *Act*) of an *SMCR firm* who performs a *certification function* under an arrangement entered into by the *SMCR firm* in relation to the carrying on by the *SMCR firm* of a *regulated activity*, even though the obligation of the *SMCR firm* to issue a certificate under section 63F of the *Act* has not yet come into force.

...

Annex B

**Amendments to the Senior Management Arrangements, Systems and Controls
sourcebook (SYSC)**

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

...

1 Annex 1 Detailed application of SYSC

...

Part 3	Tables summarising the application of the common platform requirements to different types of firm		
...			

3.3A R

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...
SYSC 6.1.4CR	...	...	...	Rule for debt management firms and credit repair firms <u>As specified in SYSC 6.1.4CR.</u>
...

...

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

...

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...
SYSC 6.1.4CR	<u>SYSC 6.1.4CR(3) applies as specified in that rule</u> Not <u>Otherwise not applicable</u>	<u>SYSC 6.1.4CR(3) applies as specified in that rule</u> Not <u>Otherwise not applicable</u>
...

...

4 General organisational requirements

...

4.4 Apportionment of responsibilities

Application

4.4.1A R ...

(4) Only SYSC 4.4.5R(2) applies to an *incoming Treaty firm* or an *incoming EEA firm* EEA SMCR firm. However, the limitation in this paragraph (4) does not apply to a *firm* within SYSC 23 Annex 1 6.13R (claims management).

...

...

4.4.2A R ~~For the purposes of this section, a regulated claims management activity is treated as an unregulated activity.~~ [deleted]

...

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
1	Does an individual to whom a function is allocated under SYSC 4.4.5R need to be an <i>approved person</i> ?	Yes. They will be performing the <i>limited scope function</i> . However, the <i>limited scope function</i> does not apply to an <i>EEA SMCR firm</i> (<u>except claims management firms</u>) or an <i>authorised professional firm</i> that is a <i>core SMCR firm</i> .
...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm other than a claims management firm</i> ?	...
...

...

6 Compliance, internal audit and financial crime

6.1 Compliance

...

Compliance function

...

6.1.4C R (1) A ~~*debt management firm*~~ and a ~~*credit repair firm*~~ *firm* in (2) or (3) must appoint a compliance officer to be responsible for ensuring the *firm* meets its obligations under SYSC 6.1.1R for any compliance function the *firm* has and for any reporting as to compliance which may be made under SYSC 4.3.2R.

(2) This rule applies to:

(a) a *debt management firm*; and

(b) a *credit repair firm*.

(3) This rule also applies to a *firm* that meets the following conditions:

- (a) it is a Class 1 firm as defined in *CMCOB 7.2.5R(1)*; and
- (b) *SUP 10C (FCA senior managers regime for approved persons in SMCR firms)* applies the *compliance oversight function* to it.

...

22 Regulatory references

22.1 Application

General application

...

22.1.1A G ...

22.1.1B G *SYSC TP 8.1.2R* applies this chapter to certain claims management *firms* that are not *SMCR firms*.

...

23 Senior managers and certification regime: Introduction and classification

...

23.2 Definitions and types of firms

...

23.2.3 G Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:

...

- (3) *Firms* whose business is limited to certain types. These are called “*limited scope SMCR firms*”. A large number of *firms* will be in this category. The main examples are:

...

- (c) internally managed *AIFs*; ~~and~~
- (d) *firms* whose main business is not regulated and whose regulated business is (with limited exceptions) restricted to *insurance distribution activity* in relation to *non-investment insurance contracts*; and
- (e) a *firm* that only has regulated claims management activities in its permission.

...

23 Definition of SMCR firm and different types of SMCR firms
Annex 1

...

Part Six: Definition of limited scope SMCR firm

6.2 ...

6.3 R (1) A *firm* listed in the table in SYSC 23 Annex 1 6.4R is a *limited scope SMCR firm* if:

(a) its principal purpose is to carry on activities other than ~~(1)~~ *regulated activities*; and

(b) it is not a *MiFID investment firm*.
~~(2)~~

(2) In the case of a *firm* in SYSC 23 Annex 1 6.4R(5), *regulated claims management activities* are treated as *unregulated activities* for the purpose of deciding what the *firm's* principal purpose is.

6.4 R Table: List of limited scope SMCR firms referred to in SYSC 23 Annex 1 6.3R

...	...
(5)	<p>A <i>firm</i> that meets the following conditions:</p> <p>(a) it has <i>permission</i> to carry on <i>insurance distribution activity</i> in relation to <i>non-investment insurance contracts</i>; and</p> <p>(b) it either:</p> <p>(i) does not have <i>permission</i> to carry on any other <i>regulated activity</i>; or</p> <p>(ii) has <i>permission</i> to carry on no other <i>regulated activity</i> except <u>one or more of the following</u>:</p> <p><u>(A) <i>advising on P2P agreements</i>; or</u></p> <p><u>(B) <i>regulated claims management activities</i>.</u></p>

...

6.12 ...

- 6.13 **R** (1) A firm is a limited scope SMCR firm if it meets the following conditions:
- (a) it has permission to carry on regulated claims management activities; and
 - (b) it:
 - (i) either does not have permission to carry on any other regulated activity; or
 - (ii) has permission to carry on no other regulated activity except a relevant credit activity.
- (2) A firm in SYSC 23 Annex 1 6.7R does not fall within this rule.

6.14 **G** As explained in SYSC TP 8.2.1R, certain claims management firms are excluded from being SMCR firms altogether.

...

24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

...

What the FCA-prescribed senior management responsibilities are

...

24.2.6 **R** Table: FCA-prescribed senior management responsibilities

...

FCA-prescribed senior management responsibility	Explanation	Reference letter
...		

<p>(11) Responsibility for the <i>firm's</i> compliance with CASS</p>	<p>(1) ...</p> <p>(2) A <i>firm</i> may include in this <i>FCA-prescribed senior management responsibility</i> whichever of the following functions apply to the <i>firm</i>:</p> <p>...</p> <p>(c) CASS 11.3.1R (certain CASS compliance functions for certain CASS <i>small debt management firms</i>); or</p> <p>(d) CASS 11.3.4R (certain CASS compliance functions for a CASS <i>large debt management firm</i>); <u>or</u></p> <p>(e) <u>CASS 13.2.3R (certain CASS compliance functions for a <i>firm</i> carrying on a <i>regulated claims management activity</i>)</u>;</p> <p>but it does not have to.</p> <p>(3) ...</p>	<p>(z)</p>
<p>...</p>		

...

27 Senior managers and certification regime: Certification regime

...

27.2 Requirements of the certification regime

General

...

27.2.2 G SYSC TP 5, ~~and SYSC TP 7~~ and SYSC TP 8 contain transitional material about the certification regime. This includes material about the fact that:

...

...

27.3 Territorial scope

...

- 27.3.4 G (1) There is an additional territorial restriction relating to *regulated claims management activities*.
- (2) As explained in SYSC 27.7.1R (General requirements), a function is only an *FCA certification function* if it is connected to *regulated activities*.
- (3) As explained in PERG 2.4A (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.
- (4) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of this chapter and the *FCA certification functions*.
- (5) This restriction:
- (a) applies to the *FCA certification function* in SYSC 27.3.1R(3) as well as to the other *FCA certification functions*; and
- (b) applies in addition to the restriction in SYSC 27.3.1R.

...

27.8 Definitions of the FCA certification functions

CASS oversight function

- 27.8.1 R (1) Each of the following is an *FCA certification function*:
- ...
- (c) in relation to a *CASS small firm*, the function of acting in the capacity of a *person* who is allocated the function in CASS 1A.3.1R (oversight of operational effectiveness);
- (d) in relation to a *firm* to which CASS 13 (Claims management: client money) applies, the function of acting in the capacity of a *person* who is allocated the function in CASS 13.2.3R

(Organisational requirements and responsibility for CASS operational oversight).

...

...

TP 7 Bank of England and Financial Services Act 2016: Certification and regulatory references

7.1 Application, purpose and definitions

...

7.1.3 G SYSC TP 7:

...

- (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references) and with benchmark activities; ~~and~~
- (3) has certain other transitional provisions relating to the amendments made to the *FCA Handbook* by the Individual Accountability (Dual-Regulated Firms) Instrument 2018 and the Individual Accountability (FCA-Authorised Firms) Instrument 2018; and
- (4) is adjusted and supplemented by SYSC TP 8 in relation to certain claims management firms.

...

After SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) insert the following new SYSC TP 8. The text is not underlined.

TP 8 Bank of England and Financial Services Act 2016: Application to claims management companies

8.1 Application, purpose and definitions

- 8.1.1 R (1) Subject to SYSC TP 8.1.2R, SYSC TP 8 applies to a *firm* if it met the following conditions on the **general solo firms' commencement date**:
- (a) the only *regulated activities* in its *permission* were *regulated claims management activities*;
 - (b) it still had a *claims management temporary permission*; and
 - (c) it would have been an *SMCR firm* but for SYSC TP 8.2.1R.

- (2) SYSC TP 8 ceases to apply to a *firm* if it has *regulated activities* in its *permission* in addition to *regulated claims management activities* when it still has a *claims management temporary permission*.
- 8.1.2 R SYSC TP 8.1.1R does not apply to SYSC TP 8.6.1R. Instead, SYSC TP 8.6.1R sets out the *firms* to which it applies.
- 8.1.3 G SYSC TP 8:
- (1) deals with the application of certain aspects of the senior managers and certification regime to claims management *firms* brought into regulation under the *Act* by the *Claims Management Order* in April 2019;
 - (2) explains how the transitional provisions in SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) are amended for certain claims management *firms*;
 - (3) in particular, describes a transition period (the **individual transitional period**) that applies for the purposes of the certification regime in place of the one described in SYSC TP 7; and
 - (4) has certain other transitional provisions relating to the application of the senior managers and certification regime to claims management *firms*.
- 8.1.4 R The terms in the first column of the table in SYSC TP 8.1.5R, where they appear in bold in SYSC TP 8, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 8.
- 8.1.5 R Table: glossary of bespoke terms used in SYSC TP 8

Part One: General	
Defined term	Meaning
general solo firms' commencement date	[9 December 2019]
individual transitional period	the one-year period referred to in regulation [] of the solo-regulated firms' commencement SI . If a <i>firm's permission</i> is varied to include <i>regulated activities</i> in addition to <i>regulated claims management activities</i> , it means the shorter period provided for in regulation [] of the solo-regulated firms' commencement SI .

solo-regulated firms' commencement SI	[Treasury statutory instrument commencing the SMCR for FCA-authorized firms]
--	--

8.2 Exclusion from the SMCR

- 8.2.1 R A *firm* is not an *SMCR firm* (and is included in Part Three of SYSC 23 Annex 1 (Definition of exempt firm)) for as long as:
- (1) the only *regulated activities* in its *permission* are *regulated claims management activities*; and
 - (2) it only has a *claims management temporary permission*.
- 8.2.2 R The requirements in SYSC 22 (Regulatory references) that are expressed to apply to a *firm* that is not an *SMCR firm* apply to a *firm* in SYSC TP 8.2.1R.
- 8.2.3 G SYSC TP 8.2.2R means that SYSC 22 applies to a *firm*, but on the basis that the following do not apply:
- (1) SYSC 22.2.1R (Obligation to obtain references);
 - (2) SYSC 22.2.2R(4);
 - (3) SYSC 22.2.4R to SYSC 22.2.6R (Obligation to revise references: The main rule);
 - (4) SYSC 22.4 (Drafting the reference: detailed requirements for SMCR firms);
 - (5) SYSC 22.7.1R (Intra-group transfers); and
 - (6) SYSC 22.9.1R (General record keeping rules).

[*Editor's note:* if the proposed changes in CP19/4 (Optimising the Senior Managers & Certification Regime and feedback to DP16/4 – Overall responsibility and the legal function) to SYSC 22 are adopted, we will amend SYSC TP 8.2.2R and SYSC TP 8.2.3G to match the drafting of those proposed changes.]

8.3 Transitional period for certification for claims management firms

- 8.3.1 G The effect of the **solo-regulated firms' commencement SI** is that the obligation in section 63E(1) of the *Act*, for an *SMCR firm* to take reasonable care to ensure that no *employee* of the *firm* performs an *FCA certification*

function unless the *firm* has issued the *employee* with a valid certificate, does not apply during its **individual transitional period**.

- 8.3.2 G (1) A *firm's individual transitional period* is the period that:
- (a) begins on (and includes) the date on which the *firm's claims management temporary permission* comes to an end under the *Claims Management Order* and the *firm's* full authorisation for *regulated claims management activities* comes into effect; and
 - (b) ends on (and excludes) the day falling one year later.
- (2) If other activities are included in a *firm's permission* part of the way through the one-year period in (1), its **individual transitional period** ends at once.
- (3) If other activities are included in a *firm's permission* before it receives full authorisation for its *regulated claims management activities*, the transitional arrangements in SYSC TP 8.3.1G do not apply and the *firm* will have no **individual transitional period**. However, the transitional arrangements in SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) will still apply if it is authorised before [9 December 2020].

- 8.3.3 R During a *firm's individual transitional period* the definition of “*certification employee*” is amended to mean an employee (as defined in section 63E of the *Act*) of the *firm* who performs a *certification function* under an arrangement entered into by the *firm* in relation to the carrying on by the *firm* of a *regulated activity*, even though the obligation of the *SMCR firm* to issue a certificate under section 63F of the *Act* has not yet come into force.

8.4 Application of SYSC TP 7

- 8.4.1 R SYSC TP 7 (Bank of England and Financial Services Act 2016: Certification and regulatory references) applies to a *firm* with the adjustments set out in this section.
- 8.4.2 R A reference in SYSC TP 7 to the “certification transitional period” is a reference to a *firm's individual transitional period*.
- 8.4.3 R (1) A reference in SYSC TP 7 to the “general commencement date” is a reference to the start of a *firm's individual transitional period*, except in the following provisions:
- (a) SYSC TP 7.4.6R (Giving references); and

- (b) SYSC TP 7.4.7G (Form of references).
- (2) The definition of “general commencement date” is unchanged in the provisions listed in (1)(a) and (b).
- 8.4.4 G SYSC TP 7.2.1G (Certification: The certification transitional period) does not apply. SYSC TP 8.3.1G applies instead.
- 8.4.5 G The *guidance* in SYSC TP 7.5 (Transitional provisions about benchmarks and the certification regime) is not relevant.
- 8.4.6 G The *rules* in SYSC TP 7.7 (Qualification conditions for FCA-authorised firms) are not relevant as they cover *firms* that are *SMCR firms* on the **general solo firms’ commencement date**.

8.5 Additional material about regulatory references

- 8.5.1 R If:
- (1) a *firm* (A) asks a *firm* to which SYSC TP 8 applies (B) for a reference before the start of B’s **individual transitional period**; but
- (2) B gives the reference after that date;
- the requirements in SYSC 22 (Regulatory references) that apply to B when B becomes an *SMCR firm* apply to B.
- 8.5.2 G If a *firm* gives a reference after the start of its **individual transitional period**, the requirements in SYSC 22 for *SMCR firms* apply even if the matters covered by the reference occurred before then.

8.6 Claims management temporary permission

- 8.6.1 R If article 83(3)(b) of the *Claims Management Order* (Application of the 2000 Act to persons with a temporary permission) applies to a *firm*, that article applies for the purpose of deciding the category of *SMCR firm* that applies to the *firm* and, in particular, whether SYSC 23 Annex 1 6.7R or SYSC 23 Annex 1 6.13R applies to it.

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text.

1 Application and purpose

1.1 Application

...

Where does it apply?

...

1.1.11A G ...

- 1.1.11B G (1) There is an additional territorial restriction relating to *regulated claims management activities*.
- (2) Whether or not conduct involves *regulated activities* may affect how and whether *COCON* applies.
- (3) As explained in *PERG 2.4A* (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.
- (4) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of *COCON*.
- (5) This restriction:
- (a) applies to *conduct rules staff* coming within *COCON 1.1.9R* as well as to other *conduct rules staff*; and
- (b) applies in addition to the restriction in *COCON 1.1.10R*.

...

Insert the following new transitional provisions after COCON 4 (Specific guidance on individual contact rules). The text is not underlined.

TP 1 Transitional provisions: Miscellaneous

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)	R	Row (6) does not apply to an <i>employee</i> of an <i>SMCR firm</i> in SYSC TP 8.1.1R (Application, purpose and definitions).	During the <i>firm's</i> individual transitional period (as defined in SYSC TP 8.1.5R (Table: glossary of bespoke terms used in SYSC TP 8)).	The <i>rule</i> in column (2) applies from the end of the <i>firm's</i> individual transitional period (as defined in column (5)).
2	Row (6) of the table in COCON 1.1.2R (Table: To whom does COCON apply?)	G	The effect of COCON TP 1.1R is that an <i>employee</i> described in column (1) of row (6) of the table in that <i>rule</i> is not subject to COCON during the <i>firm's</i> individual transitional period. If the <i>firm</i> does not have an individual transitional period (see SYSC TP 8.3.2G(3)), COCON TP 1.1R does not apply.	As stated in COCON TP 1.1R.	As stated in COCON TP 1.1R.

Annex D

Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text.

13 Claims management: client money

...

13.2 Organisational requirements and responsibility for CASS operational oversight

...

13.2.4 R ...

- 13.2.5 G (1) This paragraph CASS 13.2.5G explains how CASS 13.2.3R fits into the senior managers and certification regime. This paragraph does not deal with a *firm* that is a *PRA-authorised person*.
- (2) The senior managers and certification regime is summarised in SYSC 23.3 (Overview of the senior managers and certification regime).
- (3) The function in CASS 13.2.3R is not a separate *controlled function* and performing that function does not require approval as an *approved person*.
- (4) There are three elements of the senior managers and certification regime that are particularly relevant to CASS 13.2.3R, although they do not all apply to all *SMCR firms*:
- (a) a *firm's* obligation to allocate certain responsibilities to its *SMF managers* (see SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities));
- (b) a *firm's* obligation to ensure that one or more of its *SMF managers* have overall responsibility for each of its activities, business areas and management functions (see SYSC 26 (Senior managers and certification regime: Overall and local responsibility)); and
- (c) the certification regime (see SYSC 27 (Senior managers and certification regime: Certification regime)).
- (5) (a) This paragraph (5) explains how CASS 13.2.3R applies to a *limited scope SMCR firm*. Most *firms* carrying on a *regulated*

- claims management activity will be limited scope SMCR firms.
- (b) Neither SYSC 24 nor SYSC 26 applies to a limited scope SMCR firm.
 - (c) The firm may choose to allocate the function in CASS 13.2.3R to an SMF manager.
 - (d) The firm may instead choose to allocate the function in CASS 13.2.3R to someone who is not an SMF manager.
 - (e) Where (d) applies, the person performing the function in CASS 13.2.3R will fall into the certification regime. The function in CASS 13.2.3R will be the CASS oversight FCA certification function in SYSC 27.8.1R.
- (6)
- (a) This paragraph (6) explains how CASS 13.2.3R applies to a core SMCR firm.
 - (b) SYSC 24 applies to a core SMCR firm but SYSC 26 does not.
 - (c) The firm must allocate responsibility for the firm's compliance with CASS to one of its SMF managers (see SYSC 24.2.1R). That responsibility is an "FCA-prescribed senior management responsibility". The full list of FCA-prescribed senior management responsibilities is in the table in SYSC 24.2.6R.
 - (d) Although the CASS function in SYSC 24.2.1R is different from the function in CASS 13.2.3R, the firm may allocate the function in CASS 13.2.3R to the SMF manager in CASS 13.2.5G(6)(c).
 - (e) The firm may choose to allocate the function in CASS 13.2.3R to someone who is not an SMF manager. If so:
 - (i) that person will be subject to the certification regime described in SYSC 27 (Senior managers and certification regime: Certification regime);
 - (ii) that person will be subject to supervision by the SMF manager in (c); and
 - (iii) the function in CASS 13.2.3R will be the CASS oversight FCA certification function in SYSC 27.8.1R.
- (7)
- (a) This paragraph (7) explains how CASS 13.2.3R applies to an enhanced scope SMCR firm.

- (b) Both SYSC 24 and SYSC 26 apply to an *enhanced scope SMCR firm*.
 - (c) CASS 13.2.5G(6) applies to an *enhanced scope SMCR firm*.
 - (d) In addition, the *firm* may allocate the *CASS FCA-prescribed senior management responsibility* to an *SMF manager* who does not perform any other function coming within the *FCA regime for SMF managers in SMCR firms*. See *SUP 10C.7 (Other overall responsibility function (SMF18))* and *SUP 10C.8.1R (Other local responsibility function (SMF22))* for details. Where this is the case, the manager will be performing the *other overall responsibility function* or the *other local responsibility function*.
- (8) A *firm* may only give the function in CASS 13.2.3R to a *director* or *senior manager*. It is likely that an *SMF manager* will satisfy this condition. If the *firm* wants to give the function to someone else it should make sure that it meets the requirements of CASS 13.2.3R as well as of the *senior managers and certification regime*.

Annex E

Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, underlining indicates new text.

8 Requirements for firms with temporary permission for regulated claims management activities

8.1 Application and purpose

...

Table: Disapplied or modified modules or provisions of the Handbook

8.1.4 R ...

8.1.5 G *SYSC TP 8.2.1R says that a firm with a claims management temporary permission is not an SMCR firm.*

Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force [10 June] 2019

TP 12 **Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms**

...

12.22 **Terms used in SUP TP 12**

12.22.1 R ...

12.22.2 R Table: glossary of bespoke terms used in SUP TP 12

Part One: General	
Defined term	Meaning
...	...
authorisation application	...
<u>claims management firm</u>	<i>a firm whose permission includes regulated claims management activities.</i>
...	
pre-implementation controlled function	...
<u>pure claims management firm</u>	<i>a claims management firm whose permission only covers regulated claims management activities.</i>
...	...
statement of responsibilities	...
<u>temporary permission pure</u>	<i>a pure claims management firm that has a <i>claims management temporary permission</i>.</i>

<u>claims management firm</u>	
...	

...

12.23 Forms

...

12.23.2 R Form O

...

12.24 **Claims management firms**

Applications for approval

- 12.24.1 **G** (1) A **claims management firm** may make an application under SUP TP 12.15 (Applications of approved persons to take effect from the commencement date).
- (2) Both a **claims management firm** that gets full authorisation before the **commencement date** and one that still has a *claims management temporary permission* may make such an application.
- (3) SUP TP 12.15 applies to applications under section 59 of the Act made before the commencement date. If a **claims management firm** makes an application under section 59 of the Act after the **commencement date**, it should make the application under SUP TP 10C (FCA senior managers regime for approved persons in SMCR firms).
- 12.24.2 **D** SUP TP 12.15 applies to a **temporary permission pure claims management firm** on the basis that the application referred to in SUP TP 12.15.1D(1) is treated as made on the **commencement date** or, if later, the date that the *firm* becomes an *SMCR firm*.
- 12.24.3 **D** SUP TP 12.15 does not apply to a **temporary permission pure claims management firm** if:
- (1) that *firm* has not made a relevant application as referred to in article 82 of the *Claims Management Order* (Duration of temporary permission); or
- (2) the FCA has not yet set a last application date that applies to the *firm* (see article 82(3) of the *Claims Management Order*); or
- (3) the opening date applicable to the *firm* has not yet arrived (see article 82(9) of the *Claims Management Order*).

- 12.24.4 G A firm should not make an application for approval under SUP 10C (FCA senior managers regime for approved persons in SMCR firms) in the circumstances described in SUP TP 12.24.3D(1) to (3).

Pure claims management firms with temporary permission: Applicability of this Annex

- 12.24.5 G Most of this Annex will not apply to a **pure claims management firm** as the firm will not have or need to have any *approved persons* under SUP 10A. It will therefore not have any **pre-implementation approvals** or **pre-implementation applications** to be converted.

In-flight applications for authorisation

- 12.24.6 G (1) In certain circumstances, a *person* who has made an application for authorisation under the Compensation (Claims Management Services) Regulations 2006 is treated as having made an application for authorisation under the Act.
- (2) This paragraph applies to a *person* in (1) who would be a **pure claims management firm** if the application were granted by the FCA.
- (3) Where article 41(4) of the *Claims Management Order (Applications for authorisation made to the Regulator: authorisation by the FCA)* requires the *person* to submit a further application form and fee to the FCA, the applicant should not make an application under section 59 of the Act (Approval for particular arrangements) until it has complied with those requirements.

The 12-week rule

- 12.24.7 G SUP TP 12.18.1G (The 12-week rule) applies to a **pure claims management firm** that still had a *claims management temporary permission* on the **commencement date** as if references to the **commencement date** were to the date it becomes fully authorised.

Reporting under SUP 15.11

- 12.24.8 G The first notification period of a **pure claims management firm** under SUP 15.11.13R (Timing and form of notifications: conduct rules staff other than SMF managers) if it still has a *claims management temporary permission* on the **commencement date**:
- (1) starts on the day it becomes fully authorised; and
- (2) ends on the last day of the following August.
- 12.24.9 G SUP TP 12.24.8G applies however short the resulting reporting period may be.

Short Form A

- 12.24.10 D (1) This direction applies to a **claims management firm** that is required to submit to the *FCA* the annex to the application for a *Part 4A permission* called “Annex to application for part 4A permission to carry on claims management activity during temporary permission – The Individual Form” (a “TIF”) about a *person* (X) in relation to the *firm*.
- (2) This direction adds an additional circumstance to *SUP* 10C.10.8AD (How to apply for approval) in which the *firm* must use Form A (shortened form).
- (3) If the *firm* must make an application under section 59 of the *Act* (Approval for particular arrangements) for the performance of an *FCA-designated senior management function* by X in relation to the *firm* using Form A, it must use Form A (shortened form) if:
- (a) the *firm* has submitted the TIF about X:
- (i) at the same time as the application under section 59;
or
- (ii) within the previous nine *months*; and
- (b) there have been no matters arising in relation to the fitness and propriety of X which mean that the information provided to the *FCA* in the TIF regarding the fitness and propriety of X may have changed since the date on which the TIF was submitted to the *FCA*.
- (4) This direction applies to an application under:
- (a) *SUP* TP 12.15 (Applications of approved persons to take effect from the commencement date);
- (b) *SUP* TP 12.15 as applied by *SUP* TP 12.24; and
- (c) *SUP* 10C (FCA senior managers regime for approved persons in SMCR firms).

Part 2: Comes into force [9 December] 2019**10C FCA senior managers regime for approved persons in SMCR firms**

...

10C **What functions apply to what type of firm**
Annex 1

...

Part Seven: Functions applying to limited scope firms

7.1 R *Limited scope SMCR firms* are divided into the following categories for the purposes of SUP 10C Annex 1:

...

- (5) a *sole trader* who does not come within (1) to (4), (8) or (9);
- (6) an *authorised professional firm* that does not come within (1) to (4), (8) or (9);
- (7) a *firm* in the table in SUP 10C Annex 1 7.10R;
- (8) a firm that comes within SYSC 23 Annex 1 6.13R (claims management) that is a Class 1 firm as defined in CMCOB 7.2.5R(1);
- (9) a firm that comes within SYSC 23 Annex 1 6.13R (claims management) that is not a Class 1 firm as defined in CMCOB 7.2.5R(1).

...

7.3 R (1) The table in SUP 10C Annex 1 7.4R sets out which *FCA controlled functions* apply to a *limited scope SMCR firm* covered by SUP 10C Annex 1 7.1R(1), (2), (3), ~~(4)~~, (8) or (9).

- (2) Part Two of that table applies to *EEA SMCR firms*.
- (3) Part One of that table applies to other *limited scope SMCR firms* in (1).

7.4 R Table: Controlled functions applying to limited scope SMCR firms except sole traders and authorised professional firms

Part One (UK and non-EEA)						
(1) Brief description of function	(2) Function number	(3) General	(4) Insurance distribution and credit firms	(5) Consumer credit appointed representatives	(6) <u>Class 1 claims management firms</u>	(7) <u>Other claims management firms</u>

Governing functions						
The governing functions that apply to core SMCR firms	Various	...	...	...	×	×
Required functions						
Compliance oversight function	SMF 16	...	× <u>Note (4)</u>	...	✓	×
Money laundering reporting function	SMF 17	...	...	...	×	×
Limited scope function	SMF 29	...	...	...	✓	✓

...

Notes to the table
<p>Note (1): The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 7.1R. Therefore:</p> <p>(1) column three (General) refers to SUP 10C Annex 1 7.1R(1);</p> <p>(2) column four (Insurance distribution and credit firms) refers to SUP 10C Annex 1 7.1R(2) and SUP 10C Annex 1 7.1R(3); and</p> <p>(3) column five (Consumer credit appointed representatives) refers to SUP 10C Annex 1 7.1R(4);</p> <p>(4) column six (Class 1 claims management firms) refers to SUP 10C Annex 1 7.1R(8); and</p> <p>(5) column seven (Other Claims management firms) refers to SUP 10C Annex 1 7.1R(9).</p>
...
Note (3): ...
<u>Note (4): However, this function does apply to a firm that is also a Class 1 firm as defined in CMC0B 7.2.5R(1) (Classification of firms for prudential resources purposes).</u>

...

TP 1	Transitional provisions				
...					
TP 1.13	Reporting of information about Directory persons				
(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
2	<i>SUP 16.26</i>	R	... (5) ... (6) <u>This rule is modified by SUP TP 1.13.3R.</u>	...	...
<u>3</u>	<u><i>SUP 16.26</i></u>	<u>R</u>	(1) <u>This rule applies to a firm:</u> <u>(a) that comes within SYSC TP 8.1.1R (Application, purpose and definitions); and</u> <u>(b) has an individual transitional period.</u> (2) <u>SUP TP 1.13.2R is adjusted so that a reference to:</u> <u>(a) 9 December 2019 is a reference to the start of a firm's individual transitional period;</u> <u>and</u> <u>(b) a reference to the date 12 months after 9 December 2019 is</u>	<u>As stated in column (4)</u>	<u>As stated in column (4)</u>

			<p>to the end of a <i>firm's</i> <u>individual</u> <u>transitional period.</u></p> <p>(3) <u>Individual</u> <u>transitional period</u> <u>has the meaning in</u> <u>SYSC TP 8.1.5R</u> <u>(Table: glossary of</u> <u>bespoke terms used</u> <u>in SYSC TP 8).</u></p>	
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