# Senior Managers and Certification Regime (SM&CR)

[Name of Firm ] are categorised as a Core firm under the Senior Managers and Certification Regime (SM&CR). This categorisation is appropriate for our business because:

* we do not meet the threshold of an ’enhanced firm’ (as the average amount of our total revenue from regulated business (calculated as a three-year rolling average) is NOT £35,000,000 or more); and
* we are not a Sole Trader

As a firm [Name of Firm ] recognise that we must adhere to the standards and requirements of the Senior Managers and Certification Regime which are comprised of:

1. the Senior Managers Regime;
2. the Certification Regime and
3. the Conduct Rules.
4. **Senior Managers Regime**

**Apportionment of Responsibilities:** [Name of Firm ] must take reasonable care to maintain clear and appropriate apportionment of significant responsibilities among its directors and senior managers in such a way that:

1. it is clear who has which of those responsibilities and
2. the business and affairs can be adequately monitored and controlled by the directors, relevant senior managers and governing body.

[Name of Firm ] has:

* documented the apportionment of Prescribed Responsibilities to appropriate Senior Management Functions (SMFs);
* identified a register of Overall Responsibilities which represent key business functions undertaken by our firm and allocated them accordingly.
* prepared a Statement of Responsibility for each SMF.
* identified where Responsibilities are shared and clearly identified where this occurs.

The Statements of Responsibility are reviewed regularly and updated as appropriate and where there is a significant change, they are submitted to the FCA.

Other documents we use to support the apportionment of responsibilities requirement are organisations charts, project management documents, job descriptions, committee constitutions and terms of reference. Any material changes are noted as soon as reasonably practicable after the change has taken place. Where responsibilities are allocated to more than one individual our records clearly show how these responsibilities are shared or divided between the individuals concerned.

Version controlled records relating to the apportionment of responsibilities are retained for a minimum period of six years from the date on which it is superseded by a more up-to-date record.

**Prescribed Responsibilities** *[Not applicable to Limited scope firms]:* As a Core firm we are required to allocate the following prescribed Senior Management responsibilities: -

(a) Performance by the firm of its obligations under the Senior Mangers Regime, including implementation and oversight

(b) Performance by the firm of its obligations under the Certification Regime.

(b-1) Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules.

(d) Responsibility for the firm’s policies and procedures for countering the risk that the firm might be used to further financial crime.

(z) Responsibility for the firm’s compliance with CASS (CASS 5)

We have allocated the Prescribed Responsibilities to the most senior employee responsible for managing that area of our firm. Where practical we have avoided assigning a wide range of responsibilities to a single SMF Manager. We recognise that it is important that the SMF manager is able to carry out responsibilities effectively. We will ensure that where an individual is performing multiple functions that it does not prevent them from discharging any particular functions soundly, honestly and professionally. Conflicts of interest must be prevented and where they arise our conflicts of interest policy adhered to.

Where possible we will not split a Prescribed Responsibility between several SMF Managers unless absolutely necessary and can be justified. The following are circumstances where it is appropriate to share a prescribed responsibility:

1. It is part of a job share; or
2. Where departing and incoming senior managers work together temporarily as part of a handover
3. We have co-heads of a department or business unit if this can be justified.

The effective segregation of duties is an important element in the internal controls of our firm. It ensures that no one individual is completely free to commit a firm’s assets or incur liabilities on our behalf. It can also help to ensure that the governing body receives objective and accurate information on financial performance, the risks faced by the firm and the adequacy of its systems. Where it is not possible to completely segregate duties, we ensure that there are adequate controls in place, for example frequent reviews of an area by the relevant Senior Manager / [Name of Director]

**Overall Responsibility:** We will ensure that at all times one or more of our Senior managers has overall responsibility for each of the key activities, business areas and management functions of the firm. An SMF Manager who has responsibility for an activity, business area or management function has **“Overall Responsibility”** for that activity, business area or management function.

Overall Responsibilities are separate and different from the compulsory Prescribed Responsibilities. There is no requirement for any activity, business area or management function that is included in an FCA-Prescribed Responsibility to be added as an Overall Responsibility.

The person who has overall responsibility for a function must be the most senior employee responsible for managing or supervising the function under the management of the governing body. They may be a member of the governing body or report directly to the governing body. It must be noted that a person does not have overall responsibility for a function just by being a member of the firm’s Governing Body.

Examples of responsibilities which might be relevant to apportion are; Agency, Business Continuity, Complaint Handling, Compliance Systems and Controls, Consumer Credit Activities, Customer Service, Operational and Strategic Management, Human Resources, Sales and Marketing, Risk Systems and Controls, Retail Sales, Wholesale Sales etc.

**Local Responsibility: -** This applies to firms with branches. A person may have local responsibility for a function but report to the firm outside the branch. As a firm we only have one office therefore no one is allocated a local responsibility.

**Insurance Distribution Activities: -** The function of ensuring the proper implementation and regular review of policies and procedures, systems and controls appropriate to the business has been allocated to [Name of Director]

The nature and extent of the systems and controls have been established taking into consideration:

* The nature, scale and complexity of our business;
* The diversity of our operations, including geographical diversity;
* The volume and size of the transactions and
* The degree of risk associated with each area of our operations.

**Allocation by Default: -** Where responsibilities have not been allocated explicitly they will fall to the Chief Executive by default. However, it is important to avoid the allocation of responsibilities by default or by implication.

1. **Certification Regime**

The Certification Regime applies to employees who are not Senior Managers but perform regulated activities and whose role means it is possible for them to cause significant harm to our firm or our customers. These roles are called *‘Certification Functions’* (CFs).

We will not permit an employee to carry out Certification Functions unless we have issued them with a certificate to perform that function. The following Certification Functions apply to our firm as an Insurance Intermediary: -

* **CASS Oversight Function** – the function of acting in the capacity of a person who is responsible for: -
  1. Oversight of the firm’s operational compliance with CASS and
  2. Reporting to the firm’s governing body in respect of that oversight.
* **Significant Management Function –** the function of acting as a senior manager, with significant responsibility for a significant business unit. In this position the employee will be making decisions on the commitment of our financial resources, our financial commitments, our assets, acquisitions, our lability management or our overall cash and capital planning. Examples include head of the complaints handling, head of insurance broking.

A business unit is not limited to one that carries on commercial activities with customers and third parties or that earns revenue, it can be an internal support department, it may include HR, Compliance, Legal Department or IT

* **Managers of Certification Employees –** the function of managing or supervising a certification employee, directly or indirectly is an FCA Certification Function. But not where this is performed by a Senior Manager.

We will only issue a certificate to a person if we are satisfied that the person is fit and proper to perform the Certification Function to which the certificate relates.

In assessing fitness and propriety we must consider whether they: -

1. Have obtained a qualification,
2. Have undergone or are undergoing training,
3. Possess a level of competence, or,
4. Have the personal characteristics

required by general rules made by the FCA including:

* Honesty, Integrity and Reputation.
* Competence and Capability, and,
* Financial Soundness.

The Certificate will be valid for a maximum of 12 months and issued prior to the individual undertaking the delegated activity. We can issue the certificate for a period of less than 12 months but a certificate cannot be drafted to last more than 12 months.

The certificate will: -

1. state that the approving SMF manager is satisfied that the person is fit and proper to perform the function to which the certificate relates and,
2. set out the aspects of the affairs of our firm in which the person will be involved in performing the function.

If, having assessed the fitness and propriety of an individual, we decide not to issue a certificate we will give that individual notice in writing stating: -

1. what steps we propose to take in relation to the person as a result of the decision and,
2. the reasons for proposing to take those steps.

We will also consider if the circumstances warrant making a notification to the FCA for a breach of the Conduct Rules (see below).

We will maintain a record of every employee who has a valid certificate issued.

We do not need to issue multiple certificates for an employee even if they perform several FCA Certification Functions as part of the same job. Neither do we need to issue multiple certificates for an employee who performs a Certification Function which is made up of a number of different functions. We can issue a single certificate, describe the employee’s functions in broad terms and without listing all the activities that the function may involve. However it is important that we assess whether the employee is fit and proper to perform all aspects of the employee’s role that involve an FCA Certification Functions as described by the certificate.

Although we do not need to issue separate certificates we do need to specify each of the Certification Functions which the employee has been assessed as fit and proper to perform when reporting our directory persons to the FCA via their Connect system.

If the certification employee’s role changes part way through the 12 month period we may need to reissue the certificate if the new function has different requirements relating to: -

1. personal characteristics,
2. level of competence, knowledge and experience,
3. qualifications, or,
4. training.

However, we may not need to issue a new certificate if no reassessment is required and the original certificate is drafted broadly enough to cover the new FCA Certification Function.

As a firm we have the flexibility to draft a certificate wide enough to cover functions that the certification employee is not currently performing as long as they are competent to perform these additional functions.

**Emergency Appointments: -** If it is necessary to appoint an individual to perform a function to provide cover for a certification employee whose absence is reasonably unforeseen and the appointment is for less than four weeks then the performance by that individual of such a function does not constitute an FCA Certification Function. Obviously the exception to this rule are functions requiring qualification we must always ensure a certificate is issued before an employee performs a function that requires a qualification.

[Name of director] has responsibility for ensuring compliance with the Certification Regime and will work with Human Resources to issue certificates annually.

We are required to report information to the FCA about our Directory Persons including our certification employees.

1. **Conduct Rules**

The Code of Conduct Rules apply to our SMF Manager, a Certification employee and all other employees of an SM&CR firm other than an ancillary employee. The Conduct Rules apply to the activities a person is performing for us (a regulated SM&CR Firm) and requires the individual to take accountability for their actions. The Code of Conduct Rules are split into two tiers:-

1. **Individual Conduct Rules** (apply to all conduct rules staff)
2. You must act with integrity.
3. You must act with due skill, care and diligence.
4. You must be open and cooperative with the FCA and other regulators.
5. You must pay due regard to the interests of customers and treat them fairly.
6. You must observe proper standards of market conduct.
7. You must act to deliver good outcomes for retail customers.
8. **Senior Manager Conduct Rules** (apply to all senior conduct rules staff members)

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.

*(Only Rule SC4 applies to Non Executive Directors Rules SC1 – SC3 do not apply to Non Executive Directors.)*

[Name of Firm ] must abide by the Conduct Rules. A breach of the Conduct Rules might call into question whether we remain fit and proper and may result in disciplinary sanctions. We must consider whether a breach of the conduct rules should be reported to the FCA.

**Training**

We will ensure that all persons subject to the conduct rules are notified of the rules that apply to them. We will provide and evidence appropriate regular training. The training will ensure that those subject to the rules have an awareness and broad understanding of all the rules and that they have a deeper understanding of the practical application of the specific rules which are relevant to their work.

**Regulatory References**

We are required to request a reference from past employers of senior manager and certification function candidates. These references will help us make better informed decisions about candidates. We are also required to give references when approached by another firm.

**Obligation to obtain references: -**

If we are considering: -

1. permitting or appointing someone to perform a Senior Management Function (SMF),
2. Issuing a certificate under the Certification Regime, or,
3. Appointing a board director

we must obtain appropriate references from:-

1. their current employer, and,
2. anyone who has been their employer in the past six years.

It is important that we obtain the reference before a certificate is issued under the Certification Regime or before the end of the application period for an SMF or as soon as possible thereafter.

Where we need to fill a vacancy for a certification function which we did not foresee we are able to obtain references after issuing the certificate. But we must take up the reference as soon as reasonably possible.Any certificate issued should be made subject to receipt of a satisfactory regulatory reference. If the reference later raises concerns about the fitness and propriety we need to revisit our decision to issue the person with a certificate.

Although we are only required to try and get a regulatory reference for a person, we are recruiting to perform an FCA Controlled Function towards the end of the application process, the regulator would expect us to have obtained the reference before the application for approval is made. There are circumstances when it is reasonable for us to delay getting a reference and these include where asking for a reference earlier will create a serious risk of: -

1. breaching the confidentiality of a wider commercial or corporate transaction,
2. prematurely triggering the need for a public announcement, or,
3. the candidate not applying for the position in the firm because it would reveal to the candidate’s current employer the proposed move too soon.

The FCA will need to see the information in a reference before it makes a decision. However we must be satisfied that a candidate is fit and proper before we make an application for approval, we are not to rely on the regulator confirming this.

The FCA is quite prescriptive about the information we need to collect, and a template Regulatory Reference form must be used to ensure all information required is obtained. The template is available at <https://www.handbook.fca.org.uk/handbook/SYSC/22/Annex1.html>

**Obligation to Give References: -** If we are asked to give a reference we must do so as soon as reasonably practicable and, we must disclose in the reference all the information which we consider relevant to the assessment of whether the individual who is the subject of the appointment is fit and proper. We are only required to disclose something that occurred or existed:-

1. in the six years before the request for a reference, or,
2. between the date of the request for the reference and the date we give the reference, or,
3. in the case of serious misconduct at any time – all serious misconduct must be disclosed.

**Examples of Serious Misconduct: -** The following are examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose.

1. **Whether the individual has committed a serious breach of individual conduct requirements** 
   * To what extent was the conduct deliberate or reckless?
   * To what extent was the conduct dishonest?
   * Whether the breaches are frequent or whether they have continued over a long period of time. Frequent or repeated breaches increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance.
   * The extent of loss or risk of loss, caused to the existing, past or potential investors, depositors, policy holders or other counterparties or customers.
   * The reasons for the breach. For example, where the breach was caused by a lack of experience which has been remedied by training or further experiences, it is less likely that the breach will still be relevant.
2. **Whether the conduct caused firm to breach requirements of the regulatory system or the subject of the reference was concerned in a contravention of such a requirement by us and in each case whether the conduct was itself serious.** 
   * The seriousness of the breach by our firm is relevant
   * The factors in A above are relevant to whether the conduct was serious.
3. **Whether the conduct involved dishonesty (whether or not also involving a criminal act)**
   * Dishonesty is an important factor, but it is not automatically decisive in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure.
4. **Whether the conduct would have resulted in our firm dismissing the individual had they still been working for us, based on our disciplinary policies and the requirements of the law about unfair dismissal.**
5. **Whether the conduct was such that if we were considering the individual for a role today and became aware of the historical conduct would not employ the individual today notwithstanding the time that had passed.**

The FCA has set out the minimum requirements for a reference. However, this does not prevent us from including more matters in the reference not specifically required by the FCA. We may include the material required by the template and additional material in the same document. However, any additional material must not alter the scope of any of the questions in the FCA template.

We are not required to disclose information that has not been properly verified. We should provide as complete a picture of an employee’s conduct records as possible to new employers.

**Duty to Investigate Allegations: -** We should conclude investigative procedures before an employee leaves however, there is no duty to investigate alleged misconduct by an employee or former employee. However, there are several reasons why it may be appropriate to investigate potential misconduct including: -

1. assessing the actual and potential damage resulting from misconduct,
2. identifying other individuals potentially culpable or accountable for the breach,
3. satisfying ourselves that the SMF Managers responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it, and,
4. where the employee has remuneration susceptible to malus or clawback enabling us to consider whether any adjustments are justified.

**Fairness**

* We must exercise due skill and care in the preparation of the reference.
* We must give frank and honest views but only after taking reasonable care both as to factual content and as to the opinions expressed.
* References must be true, accurate, fair and based on documented fact.
* Fairness will normally require us to have given an employee an opportunity to comment on information in a reference. This might be through disciplinary proceedings. This does not mean that the firm should provide an opportunity to comment on the reference itself as opposed to the allegations on which the reference is based. The opportunity to comment on the allegations could have arisen some time before the reference is prepared. If the employee has not had the opportunity to comment on the allegation when it first arose we will have to give the employee the opportunity around the time that the firm is preparing the reference. The opportunity to comment on an allegation is important if the allegation is going to be included in the reference rather than merely leaving it out of the reference. The employee’s views do not need to be included in the reference. However, the views can be taken into account when deciding whether something should be disclosed.

**Criminal Records Checks: -** As part of our Fitness and Propriety assessment we must obtain criminal record checks on all our Directors and those holding Senior Management Functions.

We do not need to include information from a criminal record check in a regulatory reference as the recruiting firm has a duty to carry out a criminal records check itself if necessary. Criminal records checks are required when appointing an SMF manager and for certain Directors.

**Time Limits: -** In general there is a six-year limit on what should be disclosed in a regulatory reference. Where the matter to be disclosed consists of a single course of conduct, the six-year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six-year limit.

This is also relevant to the six-year time limits for updating references.

The time limit of six years is removed for serious matters. The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. The longer ago the matter occurred the less likely it is still to be serious for these purposes. The key question is how important the information still is for the assessing the employee’s fitness for the functions that they are going to perform. Nothing prevents us from disclosing material outside the time limits.

We are expected to issue a regulatory reference within six weeks of the reference being requested.

**Missing or incomplete information: -**

If our records do not cover the maximum periods this must be noted in the reference.

**Non-Disclosure agreements: - We** must not enter into any arrangement or agreements with any person that limits our ability to disclose information in a regulatory reference. This covers all types of agreements and arrangements e.g.,

1. it is not limited to an agreement or arrangements entered into when the employee leaves,
2. it applies however the employment ends, and,
3. it covers a COT 3 Agreement settled by the Advisory Conciliation and Arbitration Service (ACAS).

We must not give any undertakings to supress or omit relevant information in order to secure a negotiated release. The obligation to supply information to another firm will apply notwithstanding any agreements or arrangements that limit our ability to disclose information.

**Giving and updating references: Additional rules and guidance**

**Omitting or supplementing mandatory disclosures**:- If we conclude that an employee is unfit or has breached a conduct rule but later become aware of facts or matters causing us to revise our original conclusions we may decide not to disclose in a reference our conclusion or we may qualify the conclusion with supplementary information.

We may conclude that an employee is unfit or has breached a conduct rule however, we may also consider that the disclosure is incomplete without including mitigating circumstances. For example, the breach may be uncharacteristic of the employee that may have otherwise had an exemplary record. If this is the case we may decide to include these views.

**Requirement to consider whether there has been a conduct breach:-** If we have taken disciplinary action against an employee relating to a breach of any individual conduct rules or that relates to the individual not being fit and proper to perform a function and we are asked to give a reference about that employee we must include this in the reference

**Updating references fairly:-** Verifications, accuracy and fairness apply to updating a reference. Therefore fairness may require us to give the employee an opportunity to comment on an allegation if it is included in an update to a reference.

**Getting a reference: Additional Rules and Guidance: -** It is not always obvious who the previous employer was as the definition of employer covers more than just a conventional employer. Therefore we may have to get the prospective employees help in identifying their previous employers.

The obligation on our firm to obtain a regulatory reference applies even if the ex-employer is not a regulated firm. It is our duty to take all reasonable steps to try to obtain a regulatory reference however, if the previous employer is not a regulated firm then the FCA accepts that the previous employer may not be willing to give sufficient information. We have an alternative form that can be sent to a non-regulated firm when requesting a reference making it easier for the non regulated firm to understand the information we require.

**Asking for a reference to be updated: - The** obligation to obtain references applies even if we have already got a reference for the employee. For example:-

* we should have a reference whenever we renew the certificate of a certification employee, and,
* when an employee requiring a reference is changing jobs within the firm.

However, we do not necessarily need to obtain a new reference each time that is because an existing reference will very often still be appropriate for the purpose.

The only time that we may need to request a reference to be reissued is if there is a major change in the employee’s role. We may decide that it is appropriate to ask the issuing firm to amend or reissue the reference.

**Appointed Representatives**

In respect of an Appointed Representative (AR) we are not obliged to obtain, give or revise a regulatory reference. However, if asked, an AR is required to give a reference although does not need to use the template for regulatory references given by an SM&CR firm.

If an Appointed Representative requests a reference then we should give a reference.

**Intra-group transfers: -** We should ask for a regulatory reference if we are making an internal transfer as if the individual was coming from an external company. However, if as a firm we have access to the same information sources to the extent that we have access to the information that would be needed to complete a regulatory reference we do not need to obtain a reference. If we only have access to some of the required information we can ask for the information we are missing.

Even if we are not formally getting a reference, we must access the information and obtain and retain the relevant information so we can demonstrate the fitness and propriety of the individual.

If we are completing an internal transfer, we need to use our common sense as to whether an existing regulatory reference can be relied on. If it is addressed so that anyone within our group can rely on the reference we will not need to ask for it to be reissued or amended.

**Record Keeping Rules: -** We need to keep orderly records to meet the requirements of Regulatory References. We need to be able to demonstrate and disclose whether an employee is:-

* Fit and Proper.
* Has been the subject of Disciplinary action.

Information should be kept for a period of at least six years, however, in respect of Serious Misconduct records should be retained indefinitely.

We will not be breaching requirements by failing to include information in a reference that we would otherwise have include if:-

1. we do not have the necessary records, and,
2. there is no regulatory requirement for us to have those records.

If we are asked to give a reference in circumstances where the record keeping requirements under the regulatory reference regime do not apply then: -

1. We are still required to give the reference.
2. We should base the reference on the records we do have.

We will not be breaching requirements if we do not include information in the reference if it is for the reasons stated above.