



Senior Manager & Certification Regime - the new politics?

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New regulation

So its official, after the successful implementation of the Senior Manager & Certification Regime (SMCR) in the banking sector, the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) will extend SMCR to all FCA regulated firms in the financial services sector.

On 4th July 2018, the FCA published policy statement PS18/14 which contained its "near final" rules and responses to industry feedback on its consultation papers.

Insurers will be subjected to the new rules from 10th December 2018 and the implementation date for all other FCA solo-regulated firms will be 9th December 2019.

Under the new rules, organisations will fall under two categories – 'Core' or 'Enhanced' - depending on their size, business model complexity and activities. Those which cross the Enhanced threshold will have a transitional period of 12 months from the date the FCA is notified of their category change, to comply with the additional rules applicable to Enhanced firms.

Politicians are held to a higher standard than most others. We hold them responsible and accountable, rightly or wrongly, for their actions or inactions in equal measure.

This is similar to what will happen under SMCR which will raise accountability standards.





Absolution and responsibility

Gone are the days when executives were able to say, "it's not me sir!", to absolve themselves of all responsibility for the collapse of a financial institution, especially when the regulator wanted to hold them to account for failings at their firm.

The responsibilities of Senior Managers - the key decision makers who hold one or more Senior Manager Functions within an organisation - will be codified so that there is no ambiguity regarding their areas of accountability; they will now be "on the hook" if something goes wrong under their watch.

The Certification Regime (CR) requires firms to identify individuals in "significant harm functions" (described by the FCA as those who are 'involved in aspects of a firm's affairs that might involve a risk of significant harm to the firm or any of its customers') and certify them annually that they are 'fit and proper' to perform their role.

The SMCR conduct rules will apply to all staff within an organisation, apart from ancillary staff such as catering, security guards, cleaners. Senior Managers however, will have additional conduct rules to follow relative to the rest of the employees.

Public domain

The FCA has also put in place proposals for a new public directory which will store details of a wide range of people including Senior Managers and certified staff.

The directory will display information such as the individual's full name, employer details, geographical location, details of any regulatory sanctions.

The public will be able to check the status and history of individuals working in financial services.

Key pillars

The key pillars of the SMCR are outlined below:

The Senior Managers Regime (SMR)	Certification Regime	Conduct Rules
<ul style="list-style-type: none">• Senior Manager Function ('SMF') replaces Significant Influence Function• SMF holder = Senior Manager• SMF requires approval by FCA• Criminal records checks and regulatory references• Prescribed Responsibilities• Statement of Responsibilities• Duty of Responsibility and 'reasonable-steps'• Responsibilities Map• Handover procedures	<ul style="list-style-type: none">• Non-SMFs performing regulated functions• 'Material risk takers' who can cause 'significant harm'• Pre-approval by FCA not required• Annual fit and proper certification• Background checks and training	<p>The public expects politicians to behave like saints and uphold the highest standards in public office. This resonates with the objectives behind the Conduct Rules which are tiered.</p> <ul style="list-style-type: none">• Tier 1 rules apply to all staff (excludes 'ancillary staff')• Tier 2 rules apply only to Senior Managers• Breaches management

Implementing SMCR

The banking industry's experience of implementing SMCR has taught us that the tasks ahead will be enormous. It will be an extremely time-consuming and onerous process given the number of components that needs to be in place to ensure compliance with the rules. Early preparation and completion of initial diagnostics will be crucial to highlight shortcomings and problem areas to focus on.

Having a comprehensive and well informed SMCR project plan is important to ensure effective implementation. Contingency plans should also be incorporated to deal with any setbacks as there will be obstacles along the road.

If any lessons are to be learnt from the ongoing Brexit negotiations, with cabinet resignations, EU's intransigence, Brexit rebels, etc., it is to expect the unexpected and plan for it.

Identifying the affected employees that fall under the SMR and CR will be a key step. There may be added complexities in identifying this population in large firms with matrix structures and staff based overseas who make significant decisions relating to UK entities. Moreover, in some cases, gaps may exist which will need to be filled either by reassigning job roles or recruiting someone new.

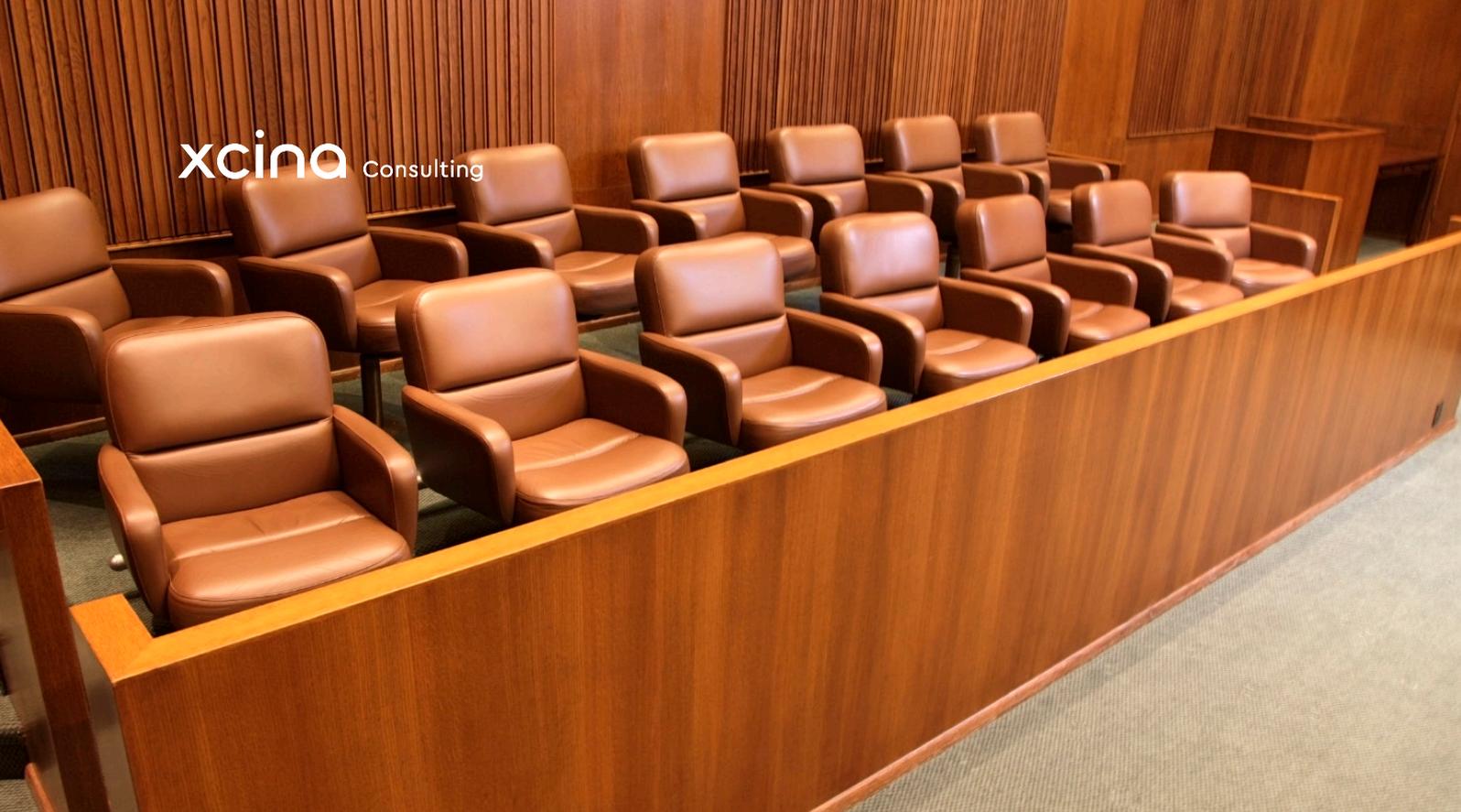
Politicians have political accountability to the public and likewise, under SMCR individuals will have regulatory accountability to the FCA.

The new regime

The new regime aims to bring forth a cultural change and seeks to increase individual accountability. The FCA wants to reign in the "reckless" decision-making culture that blights many firms, and now seeks to hold to account the key decision-makers.

Individuals will no longer be able to blame their managers or other decision-making bodies around them when things go wrong. Instead blame will rest directly on them. There is no collective decision-making accountability under the new regime.

Culture change can be notoriously difficult to achieve but SMCR encourages a change in the mind-set of individuals as there will be a greater focus on individual accountability. Senior Managers will be required to challenge their managers or committees on decisions affecting their areas of accountability. A difficult concept for some!



Criminal liability

The changes brought about by SMCR will be sensitive as individuals will assume additional personal risk and culpability given that they will be held accountable when things go wrong in their areas of responsibility.

There will be criminal liability and the FCA will seek criminal prosecution for the most serious offences with respect to conduct rule breaches and reckless decision making – so the stakes could not be any higher!

As such, early engagement with staff is very important and they must be given opportunity to express their views and made to feel part of the process.

Organisations need to provide training for affected staff to ensure that they are clear about their responsibilities, understand the support available to help them faithfully discharge these and have an escalation pathway to raise concerns.

IT systems and infrastructure

IT systems will play a crucial part in the SMCR implementation strategy. For example, effective IT systems should be able to:

- Maintain accurate and up-to-date employee records required for annual fit and proper certification, and monitor breaches of the Conduct Rules.
- Produce relevant and timely Management Information ('MI') that is complete and accurate so that Senior Managers can monitor their department, demonstrate oversight, and make better informed decisions.

To that end, firms will need to review their existing IT systems and infrastructure and assess whether they are fit for purpose. If they aren't, they will need to decide if enhancements are required or whether investment needs to be made in new systems.

Reasonable steps

Politicians have a duty of responsibility to their constituents and need to be seen to be doing the right things and taking the right actions.

Similarly, Senior Managers (SM), as cited earlier, will be subjected to the 'duty of responsibility' and expected to take 'reasonable steps' to prevent wrong-doing. In this regard, some of the pertinent questions that need to be addressed to demonstrate the reasonable steps taken include the following:

- Have appropriate levels of authority assigned to SM to empower them to make relevant decisions?
- Is the SM a member of the relevant management or governance functions so that they can discharge their responsibilities effectively? For example, does the head of a business unit partake in the key product strategy decisions during the Product Approval Committee meeting?
- Have steps been taken by SM to better understand the risks in their areas of responsibility including working collaboratively with other lines of defence (i.e. compliance and internal audit functions)?

- Does the SM:
 1. Critically challenge the quality of MI they receive?
 2. Read key internal memos and attend relevant forums to keep abreast of developments in the wider firm?
 3. Discuss key decisions in the team and acknowledge any comments or challenge from others?

It will be important to have checkpoints during the SMCR implementation journey to assess the progress and identify pressure points that require intervention. Support needs to be provided promptly to ensure the implementation plan does not get derailed and things run smoothly until the finishing line is reached.

Xcina Consulting can help you navigate this important regulatory change at any stage of your SMCR programme, from gap analysis of your SMCR readiness, designing your SMCR remediation programme to assisting in the implementation of the programme and providing ongoing support.



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