

SMCR and T&C

Nick Smith of EAM Consulting looks at what you can do now to get ready for the application of the SMCR to your firm

Without clear definitions of competence for relevant roles, an appropriate supervisory regime and robust record keeping it is difficult to see how a firm can meet the requirements for certifying those employees who are within the scope of the extended Senior Managers & Certification Regime (SMCR).

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The requirement to ensure that a firm’s employees are competent to carry out their roles is not new. The ‘Competent Employees Rule’ has existed in SYSC for nearly ten years and applies to all employees. At the same time FIT has required firms to consider, among other things, ‘a person’s competence and capability’ when assessing their fitness and propriety to perform a controlled function.

The FCA stated in its Business Plan 2016/17 that during the year it would ‘begin developing our policy on extending the accountability regime to all FSMA firms, including further developing the regime for insurers’. So what changes will this bring? I suggest that a key change is the range of people who will be brought within scope for a more rigorous determination of competence as more people find themselves in roles that require certification or as the line manager of someone in such a role (a certification employee) and so also needing to be certified.

We already know that SYSC 5.2.7 requires that ‘in assessing if a person is fit and proper to perform an FCA-specified significant-harm function, a firm must have regard, in particular, to whether that person:

- has obtained a qualification;
- has undergone, or is undergoing, training;
- possesses a level of competence; or
- has the personal characteristics, required by general rules made by the FCA.

Further the Conduct Rules for Senior Managers require that senior managers ‘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.’

Hence, we can expect these requirements to apply to those directly affected by the extension of the SMCR.

So what can be done now, in advance of the publication of the detailed rules for extending the SMCR?

Part of the answer is to be found in the guidance in SYSC which accompanies the Competent Employees Rule. This states that ‘Firms which are carrying on activities that are not subject to TC may nevertheless wish to take TC into account in complying with the competence requirements in SYSC.’ In other words firms will can start working now to review and develop T&C arrangements that will prove to be effective in ensuring that the relevant people are competent and that there is robust evidence to demonstrate this. Indeed SIMR suggests that a firm’s existing T&C/performance management architecture can become the vehicle for ensuring, maintaining and demonstrating competence within FIT but this presumes that the existing arrangements are effective.

Effective arrangements will require the development of clear statements of the competences required for not just for those whose roles mean that they require to be certified but all the way up the management line through the senior managers to the board. Ways will need to be identified to assess people against these competences that provide clear evidence that the requirements for their role have been met. This process will need to be robust and so an annual appraisal that is, in reality, little more than a ‘tick box’ exercise will not suffice. Rather there will need to be effective supervision and monitoring processes and procedures established that enable senior managers to demonstrate that they have taken reasonable steps to oversee the discharge of delegated responsibilities effectively.

All of this will, of course, need to be supported by record keeping that builds a clear picture of what competences an individual needs for a particular role and how that individual has demonstrated that they possess those competences and use them to carry out their role.

These processes not only need to be developed but also accepted and embedded in a firm’s culture such that they truly become part of the ‘way we do thing around here’ and so deliver real business benefits. Such embedding takes time and so the sooner we start the greater the chance of being ready in time, even if we do not yet know all the details of who will be in scope.

Without clear definitions of competence for relevant roles, an appropriate supervisory regime and robust record keeping it is difficult to see how a firm can meet the requirements for certifying those employees who are within the scope of the extended SMCR.

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