



Senior Managers & Certification Regime: HMT Call for Evidence

FLA RESPONSE

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance, mortgages, and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes.

In 2022, FLA members provided £114.6 billion of consumer credit to consumers, accounting for over a third of total new consumer credit written in the UK. This included £40.7 billion of new finance to help households and businesses purchase cars. 84% of all private new car registrations in the UK were financed by FLA members. And in Asset Finance, our members provided £33.8 billion of finance to the business sector and public services, representing almost a third of UK investment in machinery, equipment and purchased software in the UK last year.

Introduction

As with a lot of regulatory change, SMCR was an opportunity for renewed focus on governance and accountability matters which were much needed at the time of its introduction.

The principles upon which SMCR is built do not, in our view, require change at this stage. SMCR has overall been good for industry conduct and individual responsibility etc. It has led in many cases to positive cultural change within financial service firms which have taken SM&CR seriously and properly embedded it. That being said, SMCR does mean an increased administrative burden for firms and the processes when engaging with the FCA can be challenging at times.

For example, we have received the following feedback:

- Processing times of Senior Management Function (SMF) applications have regularly run far in excess of the regulatory requirement of 90 days, although some improvements have been noticed in recent months but are beginning to slip again.
- Requests for further information on applications are often on information already supplied.
- Where firms also have a large population of certified role holders there is a greater administrative burden.

- For groups that include a number of regulated entities, these processes can be even more laborious.
- The requirements for criminal record checks to be reperformed on existing employees taking up senior manager functions may be an unnecessarily burdensome. Organisations commonly perform criminal record checks as part of onboarding procedures and in the absence of other evidence, we consider a further check unnecessary.
- The financial soundness checks as part of the fit & proper assessment may capture a significant number of employees (where the certified population is large) and may potentially act as a deterrent to potential applicants. Whilst we agree that financial soundness checks can be an important element in assessing suitability and risk in certain appointments, we would encourage the regulators to take a risk-based and proportionate approach.

We would also like to see if the FCA can make the regime easier for smaller and medium sized firms. For example, the FCA's approach to supervision document says they assess the risk of firms via portfolios. For firms that are fixed or dedicated supervision then these are the higher risk and there should be an expectation of higher scrutiny for the key Senior Management Function (SMF) role appointments. However, for other firms in portfolios, we think that there could be a way for the FCA to assess SMF applications based on the risk posed.

We would also like to see more guidance in areas such as what is meant by "reasonable" step" and types of roles that should fall into the certification regime. This would be helpful for some financial service firms.

Similarly, some firms would appreciate the FCA publishing guidance to help firms describe in communications to employees and future employees the fit & proper assessment checks required and how they will be used and interpreted. This should help provide clarity and reduce any anxiety employees and applicants may feel.

Finally, firms would find it useful to have examples from the regulators where they have seen shortcomings and therefore where improvements can be made. This should help prevent the need for enforcement action to be taken by the regulators.

Questions

1. Has the SM&CR effectively delivered against its core objectives? For example, making it easier to hold individuals to account; or improving governance, behaviour, and culture within firms.

Yes, although a greater amount of guidance around what would constitute "reasonable steps" would be useful.

Feedback from one of our systems provider members, suggests SM&CR has delivered against these key objectives. As the regime itself effectively provides firms with a set of tools to help embed stronger governance processes and individual accountability, they have seen over time a change in firms and the importance they attach to ensuring that all elements as required by SM&CR are functioning effectively.

2. Do these core objectives remain the right aims for the UK?

Yes, although some firms would find more examples of good and bad practice from regulators helpful.

The objectives of strong and effective Governance and a culture of individual accountability set around appropriate conduct rule requirements are important for the UK to remain competitive. On this basis, we believe the core objectives remain appropriate.

3. Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

The regime appears to still meet its original objectives.

4. The government would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years

The annual process is very in-depth, although we believe firms have now made this part of BAU. However, if this could be streamlined in any way or if requirements could be clarified, this would be welcomed by firms.

SMCR is administration heavy; it requires a lot of detailed documentation from recruitment all the way through the employee life cycle.

5. What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?

We think it's probably misleading to think SM&CR is holding back the UK's international competitiveness. If anything, the UK's SM&CR regime is leading accountability regimes across the globe, with others mirroring at least some aspects of the UK regime.

Anecdotal feedback about the regime would suggest that there are concerns that due to the complexity and time that it takes to identify suitable SMF applicants and apply for approval and then receive it, that there is a perception that this damages the employment market for Senior Managers in the UK. This is an area that might be worth looking at but it is worth noting that it is not a view held by all. It may also be worth looking at whether the heightened levels of accountability expected of NEDs has led to problems filling these posts in some cases.

6. Are there examples of other regimes that the government could learn from?

FCA's recent approach to the Consumer Duty, providing good and bad examples, was useful and it would be beneficial to see a similar approach taken to SM&CR going forward.

7. How does the level of detail, sanctions and time devoted to the UK's SMCR regime compare with that in other significant financial centres?

We have no particular view on this.

8. Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these? Respondents should provide as much detail as possible to help build the fullest picture of any issues.

A greater degree of regulatory guidance on good and bad practice would help firms to benchmark their application of the regime.

One area raised by one of our associate members is some firms that are part of a group have concerns over the different application to firms within a group, especially if that group contains a Bank/Insurer/Enhanced and Core Firm(s). Whilst firms acknowledge that they can “opt up”, this obviously only brings consistency to the Enhanced and Core Firms within the group.

We note that there are concerns within some Core Firms that due to the lack of reporting data with regards to Senior Managers, Statements of Responsibilities (SOR’s), and Management Responsibility Maps (MRMs), that less focus is given to implementing the regime most effectively.

9. Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?

We think the current scope of SM&CR is about right to achieve its aims and objectives and welcome the potential widening of the regime for certain entities, which is currently under consultation. The widening of SM&CR should help focus these industries and their firm’s attention in increasing their oversight and governance arrangements for the better. We support this.

10. Are there “lessons learned” that government should consider as part of any future decisions on potential changes to the scope of the regime to ensure a smooth rollout to firms or parts of the financial services sector?

One of our associate systems members has noted that when SM&CR was partially rolled out to insurance firms on a staggered basis between 2016-2018 there was less buy in, and less interest from leaders in insurance firms. It has taken until at least 2022, which is four years after the full application of SM&CR, for this to truly settle in insurance, from what they have seen. Therefore, any further application of the regime might deliver more benefits more quickly if it is applied in full at the point of application.

11. Any other comments the government or regulators would benefit from receiving?

The same member has noted that where firms, either Dual Regulated, Enhanced or Core have requirements that do not need evidencing at point of completion e.g. Statements of Responsibilities (SOR’s) / Management Responsibility Maps (MRM’s) etc, there is less of an imperative within a firm to keep them up to date and acting as a “working” document.

With the most recent work that is being undertaken within firms on Consumer Duty, they also note that many firms are not using their SOR's as part of the governance review of who is accountable for what and linked to what the firm is trying to achieve on behalf of its clients. Finding a way to enable firms to use their SM&CR documents for positive process improvement in their business rather than just a regulatory tool, would potentially add real value to what SM&CR is there to achieve.

FLA

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