



Introducing the Directory: CP 18/19

RESPONSE BY THE FLA

Introduction

1. 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 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 2017, members of the Finance & Leasing Association provided £128 billion of new finance to UK businesses and households.
2. We welcome the opportunity to comment on FCA's recent SMCR 'Directory' proposals. We responded to the two previous CP's: *Individual Accountability: Extending the Senior Managers and Certification Regime to all FCA firms* (CP17/25) in November 2017 and CP 17/40: *Individual Accountability: Transitioning FCA firms and individuals to the Senior Managers & Certification Regime* in February 2018.
3. We would like to start by making a few high level points before addressing the questions posed.

Overview / High level points

4. We understand that, as set out in Consultation Paper 18/19, FCA intends to require the details of individuals performing roles within the following categories under SM&CR to be recorded in a newly created central public record ('Directory'):
 - Senior Management Functions
 - All Certification Regime roles
 - Non-Senior Management Function Directors, including both Executive and Non-Executive Directors
5. We see customer value in the creation of a central public record ('Directory') of certain individuals in financial services firms, where these individuals are of a sufficiently senior position and with responsibility for the oversight of areas which, if not managed adequately, have the potential to adversely impact customers, the firm, or the wider market. This information would be useful to both customers and other market participants, as well as other financial services firms. We also believe that

this level of transparency would serve to further re-inforce consumer confidence in the financial services industry.

6. We do, however, believe a level of **proportionality** should be applied as to which functions are required to be recorded in this 'Directory', particularly with regards roles subject to the Certification Regime, so that details are disclosed only where it is in the public interest to do so. For example, for individuals who are involved in providing direct advice to customers on their financial affairs and where there is, therefore, a market imperative for consumers to ensure that they are dealing with individuals who are 'fit and proper' to perform these roles.

Senior Management Functions

7. Senior Management Functions ('SMFs') are the most senior people in a firm with, in FCA's view, the greatest potential to cause harm or impact upon market integrity. These individuals are the most senior decision makers. As such, we feel that it is appropriate for the details of these individuals to be contained within the new 'Directory'. This disclosure would be a proportionate alignment with the expectations of FCA that these individuals should be held accountable for any breaches of FCA's requirements if they did not take reasonable steps to prevent or stop breaches in their area/s of responsibility.

Certification Regime

8. We do not believe that the 'Directory' should be extended to all roles subject to the Certification Regime, and that an element of proportionality should be applied so that individuals should only feature in the Directory where it is directly in the public interest to do so.
9. We believe that the requirements should only apply to a sub-set of individuals subject to the Certification Regime, in particular the following Certified Roles which have the ability to materially and directly impact customer outcomes, and for whom it would be in the public interest to understand whether the individual they are dealing with is authorised, 'fit & proper':
 - Functions subject to qualification requirements
 - Client dealing function
10. Individuals in these roles are likely to include: financial advisers, including pension advisors; mortgage advisers; and retail investment advisers, all of whom will deal directly with customers and advise them on their financial affairs. These individuals therefore have the ability to materially impact the financial circumstances of a retail customer, and it is in the public interest for consumers to understand who they are dealing with and whether or not they are 'fit & proper'.
11. We do not believe that it is in the public interest for other roles subject to the Certification Regime to be included in the Directory, and to do so would be disproportionate to the nature of their role and their responsibility for the oversight of key areas of a business (a responsibility

which is ascribed to Senior Managers under SM&CR). A good example maybe a pensions adviser of a Retail Bank versus the Head of IT for a Consumer Credit firm – the pensions adviser has the direct ability to cause harm to consumers through inappropriate advice, it is therefore in the public interest for the details of these individuals to be included in the ‘Directory’ so that retail consumers can satisfy themselves that they are engaging with an individual who is ‘fit and proper’ to provide advice. Conversely, the Head of IT only has an indirect ability to cause consumer harm (for example, through the provision of poor IT platforms for consumers), however: (i) they are unlikely to be able to adversely impact customer outcomes; (ii) there will be an SMF holder with accountability for IT; and (iii) there would be no public interest in this individual’s details being included on the ‘Directory’.

12. We note that one of the benefits cited by the FCA for including the details of ‘Certification Regime’ individuals is the enhancement to market integrity and firms being able to validate the ‘fit and proper’ nature of individuals they are looking to recruit from the industry. However, we believe that there are already mechanisms in place to deal with this, most notably the requirement for a previous employer to provide Regulatory References on request.

13. We would also like to highlight other risks we see in extending the ‘Directory’ to all Certification Regime holders:

- To an extent, it is subjective as to which roles firms propose categorising as Certified Roles (i.e. covered by the Certification Regime). The FCA’s current proposal could have unintended consequences by leading to firms categorising fewer roles as Certified Roles in order to reduce the administrative burden and protect staff from public exposure.
- Inclusion of a ‘Certified’ individual’s details in the ‘Directory’ could compromise their right to privacy and their personal life, where this is not balanced out by the ‘public interest’ concept outlined above.
- The current proposal could dis-incentivise people to want to become ‘Certified’ persons and / or make it more difficult for firms to attract and retain individuals in ‘Certified’ Roles.
- Increased risk of attempted fraud via phishing scams, with fraudsters using the publically available details to engage in phishing schemes and other fraudulent activity - there are fields in the table such as National Insurance number and passport number that are not needed and put the individuals at risk of ID fraud. We appreciate they are unlikely to be published but this puts a huge amount of responsibility on the FCA to protecting that data. We cannot see any legitimate interest for them to hold such information either for ‘Certified’ individuals or for SMF role holders.
- There is a concern that this ‘Directory’ is too open. By being available to all it could be used for the wrong purpose e.g. by marketing companies, recruitment consultants etc. There are

similar concerns for Senior Management Functions reference ID and data protection etc., however we have a much better understanding here for the need for such a database (refer above).

- There is a danger that consumers may see the 'Directory' as an endorsement of that individual. In reality the individuals have been certified by firms and not by the FCA. Simply by publishing the data there is an implication that the FCA has approved/endorsed them. This could be misleading for the average consumer regardless of how FCA contextualises.

14. Specific questions for the FCA

1. If there is a register for CI's, will firms need to notify the FCA that someone has changed role or is no longer certified? If so, will there be a reason box as there currently is for Approved Person removal? There are concerns that once an individual is on the register they will always be on it.
2. How would breach reporting work/ be logged? Clearly formal sanctions will be included but what about the other breaches firms may need to report? There is a concern the FCA may wrongly contextualise from such reporting, which could result in unintended consequences.
3. Is there a data deletion concept built in? What are the proposed record retention periods?

15. In conclusion, we support the development of a 'Directory', and that this should cover all Senior Management Function (SMF) roles. However, we believe that a level of proportionality should be applied in the application to the Certification Regime – in particular, Certified Roles should only be included in the Directory where it is in the public interest to do so. Where it is not in the public interest to do so then the roles should not be included in the Directory. We believe that this could be achieved.

Response to questions

Q1: Do you agree with the proposed scope of the Directory? If not, which individuals should be additionally included or taken out?

Not in its current form.

As documented above, we think it's too broad and inclusive. We do not believe that all Certified roles need to be included in a public directory. Instead only CI roles which could potentially have a detrimental effect on consumers if things go wrong should be included in any directory, along with SM function roles.

Q2: Do you agree that the proposed information should be published on the Directory?

We are concerned with some of the information which FCA are currently looking to collect, irrespective of whether or not it will eventually be public information.

For example, we don't see the need for either National Insurance or passport information. There may also be concerns if date of birth data was public facing. Again we don't see the need for this. Some individuals and firms may also be concerned if e-mails and telephone numbers are public facing on any FCA 'directory'.

Q3: Do you agree that the Directory user interface should display information stored on the FS Register and the new Connect database? If not, how should these datasets interact?

No, not in its current form.

Paragraph 3.29 on page 17 of the CP says: "*Search returns would present relevant data held by the FCA whether those data are held exclusively on the Connect database, or is a combination of data held there and on the FS register. This would enable those using the search tool to be presented with the full set of data held about the person search*". If we read this correctly, we are concerned that this would provide too much personal information which could be used for fraudulent purposes (e.g. refer to our response to Q2 above).

Q4: Do you agree that the search parameters should return a broader range of results than the current FS register?

No. Refer to our response to Q 3 above.

Q5: Do you agree with the proposed number of business days for reporting when an individual begins undertaking a relevant role, when their circumstances change or when they cease to perform a relevant role? If not, what timeframe do you think would be more suitable?

No. We think 1 business day in normal circumstances and 3 for minor changes of circumstances and for exceptional cases is probably too short. Clearly firms should try and report role details and changes on the 'Directory' as soon as possible but we think within 5 working days (i.e. a working week) is more reasonable and practical.

Q6: Do you agree with the proposed timing of commencement and transitional arrangements? If not, which timeframes would be more appropriate?

Yes

Q7: Do you agree that our proposed measures for ensuring data accuracy are appropriate? If not, please provide details of any additional measures you believe should be taken

As we raise above, we are concerned about the unintended consequences of the use/mis-use of some of the data FCA is currently proposing to collect and publish.

One member has raised a point regarding the "administration fee" of £250 which is proposed in paragraph 4.35. They feel that this level of fee is disproportionate as it has little to do with the level of effort required by the FCA since reporting

and the checking for complete data-fields will be done through the Gabriel system. It seems more like a 'penalty charge' and if so it should be described as such. Whether such a penalty charge is appropriate will depend entirely on the scope of the Directory and the information requirements.

Q8: Do you have any feedback on this CBA?

We do not believe that the current Cost Benefit Analysis fully appreciates the potential for fraud which we have identified in this response.

Q9: Do you agree that these proposals would not result in any direct discrimination against any of the protected groups? Please provide any additional feedback you believe is relevant.

We think there is the potential to place some of those on this proposed Directory in a vulnerable position if a more proportionate approach is not taken on the range of individuals included and the data. There is a potential for fraud and individuals to be identified who pose no direct risk of generating consumer detriment.

**Finance & Leasing Association (FLA)
1 October 2018**