

Employment in Financial Services

Contributing Editor

Louise Skinner at Morgan Lewis & Bockius

01. What is the primary regulatory regime applicable to financial services employees in your jurisdiction?



United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

In the UK, there are two main regulators responsible for the supervision of financial institutions. These are:

- The Prudential Regulation Authority (the PRA) – The PRA supervises over 1,500 financial institutions, including banks, building societies, credit unions, insurance companies and major investment firms. It creates policies for these institutions to follow and watches over aspects of their business.
- The Financial Conduct Authority (the FCA) – The FCA regulates the conduct of approximately 50,000 firms, prudentially supervises 48,000 firms, and sets specific standards for around 18,000 firms.

Some financial institutions are regulated by both the PRA and FCA (dual-regulated). Those financial institutions must comply with rules set down by the PRA in its rulebook (the PRA Rulebook) and by the FCA in its handbook (the FCA Handbook). Other firms are regulated solely by the FCA (solo-regulated) and must comply with the FCA handbook alone. Different rules can apply depending on the nature and size of the firm. The PRA and FCA work closely on certain issues and firms, but the FCA focuses specifically on ensuring fair outcomes for consumers.

The Senior Managers and Certification Regime (SM&CR) sets out how the UK regulators oversee people in businesses supervised and regulated by them, and how those people must act. As the FCA has summarised, “The SM&CR aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence” (<https://www.fca.org.uk/firms/senior-managers-certification-regime>).

SM&CR consists of three elements:

- The Senior Managers Regime (SMR) – This applies to the most senior people in a firm (senior managers) who perform one or more senior management functions (SMFs). These functions are specified in the PRA Rulebook and the FCA Handbook. Senior managers must be pre-approved by the PRA or FCA before starting their roles. Each senior manager must also have a “Statement of Responsibilities” (that sets out what they are responsible and accountable for), which may include (depending on the firm) certain responsibilities prescribed by the regulator known as “Prescribed Responsibilities”. Every year, senior managers must be certified as fit and proper to carry out their role by their firm.
- The Certification Regime (CR) – This applies to employees who, because of their role, could pose a risk

of significant harm to the firm or its customers, such as employees who offer investment advice (certified staff). For solo-regulated firms, these roles are generally called certification functions. Firms must certify that these employees are fit and proper for their roles both at the outset of their employment and continuously.

- The Conduct Rules – The Conduct Rules set minimum standards of individual behaviour in financial services in the UK. They apply to almost all employees of a firm. They also include particular rules applicable only to senior managers.

Certain parts of SM&CR apply to particular firms only. This is outside the scope of this note, which sets out the general position under SM&CR.

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11. Are there any particular requirements that employers should implement with respect to the prevention of wrongdoing, for example, related to whistleblowing or the prevention of harassment?



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Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

Whistleblowing

In addition to the requirements of the SM&CR outlined above which relate to the prevention of wrongdoing (including the Conduct Rules, fitness and propriety assessments, Senior Managers' Duty of Responsibility, the certification and approvals processes and associated training requirements), the PRA and the FCA maintain rules on whistleblowing. These are intended to encourage whistleblowers to come forward to report wrongdoing and protect them from retaliation when they do.

For certain types of SM&CR firms, the rules mandate measures that employers must implement, for others they provide guidance on measures to consider.

The key measures are as follows:

- Whistleblowers' champion – a non-executive director and senior manager with responsibility for whistleblowing compliance within the firm, including oversight of internal policies and procedures and certain reporting requirements.
- Whistleblowing channel – a system which allows whistleblowers to report concerns confidentially and anonymously, and which allows such concerns to be assessed, addressed, and escalated where appropriate.
- Notification regarding external whistleblowing channels – that is, making staff aware of their right to report matters directly to the PRA and FCA and explaining how they can do so.
- Whistleblowing training – this must cover arrangements on whistleblowing within the firm and be provided (and tailored) to employees based in the UK, their managers, and employees responsible for operating the firm's whistleblowing arrangements.

Prevention of harassment

Harassment and related unacceptable workplace behaviours (such as bullying and discrimination) are not specifically addressed in the SM&CR rules on individual accountability. However, it is clear from regulators' public statements that the culture of firms (in its broadest sense) is central to their approach. Having a

healthy firm culture is seen as critical to consumer protection and well-functioning markets, and firms with healthy cultures are considered to be less prone to misconduct.

Firms that are subject to the SM&CR need to be alive to the possibility that instances of harassment and other non-financial misconduct could amount to breaches of the individual accountability regime or trigger certain requirements under it, such as a requirement to investigate, reassess an individual's fitness and propriety, or notify certain matters to the regulators. The same could apply to any failure by relevant staff to investigate and deal appropriately with allegations of this kind, such as a senior manager who turns a blind eye to reports of sexual harassment or workplace bullying. While there have been relatively few instances of non-financial misconduct resulting in an enforcement action to date, this is likely to become an emerging trend.

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Contributors



United Kingdom

Louise Skinner

Thomas Twitchett

Oliver Gregory

Morgan Lewis & Bockius

www.internationalemploymentlawyer.com