

# Employment in Financial Services

## Contributing Editor

*Louise Skinner at Morgan Lewis & Bockius*

**02. Are there particular pre-screening measures that need to be taken when engaging a financial services employee? Does this vary depending on seniority or type of role? In particular, is there any form of regulator-specified reference that has to be provided by previous employers in the financial services industry?**

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

Members of management should at all times be of good repute and possess sufficient knowledge, skills and experience to perform their duties (article 91, Directive 2013/36/EU; and article 9, Directive 2014/65/EU).

Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must exclusively be natural persons and must at all times have the necessary professional standing and expertise to perform their duties (article 19, Act of 25 April 2014). Since 2023, it is specified that “in particular, these persons must demonstrate honesty, integrity and independence of mind which, in the case of members of the legal administrative body, enable them to effectively evaluate and, if necessary, question the decisions of the actual management and to ensure the effective supervision and monitoring of the management decisions taken” (Art. 19, Act of 25 April 2014).

In addition, they must not have been convicted of any of the offences listed in article 20 of the Act of 25 April 2014. This concerns convictions with a professional ban and violations of financial legislation, company codes and insurance law.

The NBB will verify that these persons meet the conditions listed above. Forms for a new appointment, additional elements during the employment, termination of an appointment or renewal of an appointment are available on the NBB website ([www.nbb.be](http://www.nbb.be)). These forms require information mainly regarding education, past financial services experience, training, any criminal or administrative or civil proceedings or investigations, disciplinary decisions, bankruptcy, insolvency, potential conflicts of interest, and time commitments for the new appointment.

The NBB will assess the ability of the person based on five criteria:

- expertise, covering knowledge, experience and skills;
- professional repute;
- independence of mind;
- time commitment; and
- collective suitability for the board (ie, to verify whether the expertise within the said body is sufficiently guaranteed, given the person's knowledge, experience and skills (NBB Fit & Proper Handbook of 22 December 2022, 2:26, p. 16)).

Concerning "N-1" effective managers (managers who exercise direct and decisive influence over the management of the institution, but who are not members of the management committee) other than branch managers, the supervisory authority does not have to authorise them (NBB Fit & Proper Handbook of 22 December 2022, 2:9, p. 14). This does not mean that these persons must not have the required expertise and professional reputation, but only that the NBB will not conduct an assessment.

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## United Kingdom

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

For employees subject to the SMR, anyone performing an SMF must be pre-approved by the relevant regulator before they can start their role. Generally, firms that wish to employ a senior manager must first carry out sufficient due diligence to satisfy themselves that the candidate is a fit and proper person to perform their proposed functions. In this regard, firms must consider the individual's qualifications, training, competency and personal characteristics. The firm must also carry out a criminal records check. They may then apply to the relevant regulator for that candidate's pre-approval. In the firm's application, all matters relating to the candidate's fitness and propriety must be disclosed. The firm must also enclose a statement of that individual's proposed responsibilities and (depending on the firm) the latest version of the firm's management responsibilities map.

For employees subject to the CR, before the appointment and annually thereafter, these employees must be certified by the employing SM&CR firm as being fit and proper. Certification does not involve pre-approval by the FCA or PRA.

Additionally, firms must comply with the regulatory reference rules for all candidates subject to either the SMR or CR before their employment. These rules require employing firms to request a regulatory reference from all previous employers covering the past six years of employment. Information must be shared between regulated firms using a particular template, which includes information relevant to assessing whether a candidate is fit and proper. Firms are also expected to retain records of disciplinary and fit and proper findings going back six years for their employees (or longer for findings of gross misconduct), and they must update regulatory references that they have previously given where new significant information comes to light that would impact the content of a previously given regulatory reference.

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### **03. What documents should be put in place when engaging employees within the financial services industry? Are any particular contractual documents required?**

## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

Regarding anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution, it is necessary to use the forms provided by the NBB to ensure that they are “fit and proper” and are authorised by the NBB (see question 2).

It is also recommended to foresee restrictive covenants in the employment contract, such as confidentiality, other professional activities, non-solicitation, non-competition and intellectual property provisions.

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## United Kingdom

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

As a matter of general UK employment law, employers must give employees written particulars of certain terms and conditions of employment. This is known as a “section 1 statement” after section 1 of the Employment Rights Act 1996, which sets out the mandatory information that employers must give to employees no later than the first day of their employment. This includes fundamental information such as the names of the employer and employee; the date of commencement of employment; the rates and timing of pay; and working hours. Other prescribed particulars (such as information regarding pensions, collective agreements and training) can be provided to employees in instalments within two months of commencement of employment. Typically, a written employment contract will contain the relevant information to satisfy these requirements.

Financial services employers should ensure that, in addition, their employment contracts reinforce the requirements of SM&CR. This will help the employer manage the employment relationship in a manner compliant with SM&CR and demonstrate to the relevant regulators the employer’s commitment to compliance with SM&CR. The employment contract will usually include, therefore, additional provisions regarding the completion of SM&CR-compliant background checks; confirmation of the employee’s regulated function (eg, their SMF or certification function); required regulatory standards of conduct; cooperation with fitness and propriety assessments; and tailored termination events.

In addition, all senior managers must have a statement of responsibility setting out their role and responsibilities. Certain firms must also allocate certain regulator-prescribed responsibilities (prescribed responsibilities) among senior managers. It is common to set out a senior manager’s regulatory responsibilities in their employment contract.

Dual-regulated firms must also ensure that individuals approved to carry out a PRA-designated SMF are subject to any specific contractual requirements required by the PRA. For example, depending on the type of firm, a firm may be required to ensure that the relevant individual is contractually required to comply with certain standards of conduct, such as to act with integrity and with due care and skill (among other requirements).

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## 04. Do any categories of employee need to have

# special certification in order to undertake duties for financial services employers? If so, what are the requirements that apply?

## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must, at all times, have the necessary professional standing and expertise to perform their duties.

This will be assessed by the NBB through standard forms to complete if there is a new appointment, new elements during employment, termination of appointment or renewal of appointment.

"N-1" effective managers must meet the same criteria, but authorisation by the NBB is not necessary (see question 2).

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## United Kingdom

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

See question 2.

All individuals performing an SMF, as classified by the FCA or PRA, will be subject to the SMR. SMFs are described in the Financial Services and Markets Act 2000 (FSMA) as functions that require the person performing them to be responsible for managing one or more aspects of a firm's affairs authorised by the FSMA, and those aspects involve, or might involve, a risk of serious consequences for the firm or business or other interests in the UK. As noted, any individual performing an SMF will need to be pre-approved by the relevant regulator before they can start their role, and thereafter they must be certified as fit and proper by their firm annually. Applications to the regulator for pre-approval must disclose all matters relating to a candidate's fitness and propriety and be accompanied by a statement of responsibilities. Firms must carry out a criminal records check as part of the application for approval.

Additionally, employees of firms who are not senior managers but who, because of their role, could still pose a risk of significant harm to the firm or any of its customers, may be subject to the CR. The certification functions that place an employee within the ambit of the CR are different under the rules of the FCA and the PRA but include persons such as those dealing with clients or those subject to qualification requirements. These employees must be certified by their firm as fit and proper for their roles both at the outset of their employment and on an annual basis thereafter (certified staff). Firms are not required to carry out criminal records checks for certified staff, but firms can choose to do so to the extent it is lawful.

The regulators have set out detailed guidance for firms to consider when assessing an individual's fitness and propriety. This includes assessing an individual's honesty, integrity and reputation; competence and capability; and financial soundness.

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## 05. Do any categories of employee have enhanced responsibilities under the applicable regulatory regime?

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

Specifically, employees holding executive, overall management, oversight or control functions in regulated companies are responsible for ensuring that the companies' organization ensures the continued compliance with applicable financial market laws. Swiss financial market laws do not have enhanced responsibilities for different employee categories. Instead, a person's fitness and propriety are assessed within the context of the specific requirements and functions of a given company, the scope of activities at that company, and the complexity of that company.

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### United Kingdom

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

Every senior manager under the SMR has a "duty of responsibility" concerning the areas for which they are responsible. If a firm breaches a regulatory requirement, the senior manager responsible for the area relevant to the breach could be held accountable for the breach if they failed to take reasonable steps to prevent or stop the breach.

In addition, for most firms, the FCA requires that certain responsibilities – "prescribed responsibilities" – are allocated to appropriate senior managers. These responsibilities cover key conduct and prudential risks. They include, among others, responsibility for a firm's performance of its obligations under the SMR; responsibility for a firm's performance of its obligations under the CR; and responsibility for a firm's obligations around conduct rules training and reporting. Firms must give careful thought to the best person to allocate each prescribed responsibility.

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## 06. Is there a register of financial services employees that individuals will need to be listed on to undertake particular business activities? If so, what are the steps required for registration?

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

There is no list of financial services employees as such, but the NBB will assess, among others, the

experience and the credibility of the person when granting the “fit and proper” authorisation.

This concerns anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution (see question 2).

However, it should be noted that financial services institutions approved by the NBB are listed on its website. Moreover, banking and investment services intermediaries must be registered and file through an online application to the FSMA ([www.fsma.be](http://www.fsma.be)) documents attesting, inter alia, their knowledge, clean criminal record, and professional liability insurance.

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## United Kingdom

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

The FCA maintains a public list of authorised firms and the activities for which each firm has permission. This list is known as the Financial Services Register. The register also includes a directory of certified and assessed persons working in financial services – this includes for each firm (as applicable) senior managers; certified staff; directors (executive and non-executive) who are not performing SMFs; and other individuals who are sole traders or appointed representatives.

Firms are responsible for keeping the directory up to date. Firms must report certain information to the FCA about persons included in the register and directory, including information on an individual's role, their workplace location, and the types of business they are qualified to undertake. The FCA provides guidance and Q&As to assist firms with navigating the register and directory.

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## 08. Are there particular training requirements for employees in the financial services sector?

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

To keep the “fit and proper” authorisation, the concerned persons must ensure that they follow the relevant training.

Regarding the prevention of money laundering, financial institutions must ensure that personnel whose function requires it is aware of the legislation, knows the internal policies, is aware of the internal reporting procedure and receives special continuing education programmes (article 11, §1, Act of 18 September 2017).

At a sectoral level, JC Nos. 310 and 341 provide for an individual right to five days of training per year per full-time equivalent employee.

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## United Kingdom

The PRA and FCA training and competence regimes set the minimum standards that must be achieved by individuals working in the financial services industry. These regimes aim to ensure that authorised firms have arrangements in place to satisfy themselves that their employees are competent.

All FSMA-authorised firms are required to have adequately trained and competent senior management and employees. The training and competence requirements include:

- **Threshold conditions on suitability** – All firms must show that persons connected with the firm are fit and proper, taking into account all the circumstances. When assessing the suitability threshold of an employee, the FCA and the PRA will consider:
  - the nature of the regulated activity the firm carries on or is seeking to carry on;
  - the need to ensure that the firm's affairs are conducted soundly and prudently;
  - the need to ensure that the firm's affairs are conducted appropriately, considering especially the interests of consumers and the integrity of the UK financial system; and
  - whether those who manage the firm's affairs have adequate skills and experience and act with probity.
- **FCA Principles for Businesses or PRA Fundamental Rules** – These rules lay out the parameters of the “fit and proper” standard set for firms in the threshold condition on suitability, and require firms to undertake the following:
  - recruit staff in sufficient numbers;
  - provide employees with appropriate training, with competence assessed continuously;
  - make proper arrangements for employees involved with carrying on regulated activities to achieve, maintain and enhance competence; and
  - train employees to pay due regard to the interests of a firm's customers and treat them fairly.
- **Competent employees rule in chapters 3 and 5 of the Senior Management Arrangement Systems and Controls Sourcebook** – This is the main employee competence requirement in the training and competence regime under the FSMA and applies to individuals engaged in a regulated activity in UK-regulated firms. The application of this rule can be complex and dependent upon the firm and the activities it undertakes, but in general, it provides that firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- **Detailed training and competence requirements in the FCA's training and competence handbook (TC)** – The TC rules are designed to supplement the competent employees rule, especially concerning retail activities carried on by firms. Among others, these rules include the following:
  - rules on assessing and maintaining competence;
  - supervision of employees who have not yet been assessed as competent;
  - appropriate qualifications; and
  - recordkeeping and reporting for firms within its scope, including how a firm assessed its employees as competent, and how it has ensured that its employees remain competent.

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## **09. Is there a particular code of conduct and/or are there other regulations regarding standards of behaviour that financial services employees are expected to adhere to?**

Author: *Nicolas Simon*  
at Van Olmen & Wynant

The NBB has issued a Fit & Proper Handbook, which was last updated on 22 December 2022.

Besides, Febelfin has adopted codes of conduct and regulations for relations between financial institutions and their customers, which can be considered standard practice in the sector.

Each financial institution may also provide more concrete or more precise quality standards for its clientele.

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## United Kingdom

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

Yes. Both the FCA and PRA have established their own high-level required standards of conduct known as the Conduct Rules. The FCA's conduct rules are set out in the FCA's Code of Conduct sourcebook. The PRA's conduct rules are set out in the PRA Rulebook (and different versions apply to different types of PRA-regulated firms).

The FCA's conduct rules apply to most individuals working at an SM&CR firm. The PRA's conduct rules apply to more limited individuals working at dual-regulated SM&CR firms: senior managers (approved by the PRA or FCA); individuals within the PRA's certification regime; key function holders; and non-executive directors.

The Conduct Rules apply to conduct relating to the carrying out of an individual's role. They do not extend to conduct within an individual's private life, provided that the conduct is unrelated to the activities they carry out for their firm. Nevertheless, an individual's behaviour outside of work can still be relevant to the separate consideration of their fitness and propriety.

There are two tiers of Conduct Rules: a first tier of rules applicable to all individuals subject to the Conduct Rules; and a second tier applicable to senior managers only.

The rules of the first tier are:

- Rule 1 – You must act with integrity.
- Rule 2 – You must act with due skill, care and diligence.
- Rule 3 – You must be open and cooperative with the FCA, PRA and other regulators.
- Rule 4 – You must pay due regard to the interests of the customer and treat them fairly.
- Rule 5 – You must observe proper standards of market conduct.

The rules of the second tier (applicable to senior managers) are:

- SC1 – You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
- SC2 – You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- SC3 – You 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.
- SC4 – You must disclose appropriately any information for which the FCA or PRA would reasonably expect notice.
- SC5 (certain dual-regulated firms only) – When exercising your responsibilities, you must pay due regard to the interests of current and potential future policyholders in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits.

Firms must notify the FCA if they take disciplinary action against an individual for a breach of the Conduct Rules.



## **10. Are there any circumstances in which notifications relating to the employee or their conduct will need to be made to local or international regulators?**

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

If a new element occurs that can influence one or more of the five criteria assessing the suitability of a person for the “fit and proper” authorisation (see question 2), the financial institution must file the adequate form with the NBB.

Notification to the NBB is also required in the event of termination or reappointment.

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### United Kingdom

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

Yes. There are multiple potential reporting obligations with various timing imperatives. We include below a snapshot of some of the key obligations:

- under FCA Principle 11, firms have a general duty to inform the FCA of matters about which it would reasonably expect notice;
- a firm must notify the FCA immediately it becomes aware, or has information which reasonably suggests, that a matter which could have a significant adverse impact on the firm’s reputation has occurred, may have occurred or may occur in the foreseeable future;
- a firm must notify the FCA immediately it becomes aware, or has information which reasonably suggests, that a significant breach of a rule (including a significant breach of a Conduct Rule) has occurred, may have occurred or may occur in the foreseeable future; and
- a firm must also notify the FCA if it takes disciplinary action against an individual for a breach of the Conduct Rules. Where the relevant individual is a senior manager, the notification must be made within seven business days. Where the relevant individual is certified staff, the notification must be made in the firm’s annual reporting.

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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?**

## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

EU Directive 2019/1937 on whistleblowing has been transposed in Belgium by the Act of 28 November 2022. Financial services are included in its material scope (article 2, 1°, b)). In general, companies with more than 250 employees had to create an internal whistleblowing system by 15 February 2023. For companies with between 50 and 250 employees, the deadline was 17 December 2023. However, these thresholds do not count for legal entities who are active in financial services, therefore they needed to install an internal whistleblowing system no matter their employee count and respect the deadline of 15 February 2023 (article 57, §3). The FSMA will have to verify whether the financial institutions are respecting their whistleblowing obligations (article 36). Furthermore, persons who report violations relating to financial services receive better protection and are awarded higher lump sum compensation if they are the victim of a retaliation measure (six months gross remuneration; article 27, §3).

Regarding the prevention of money laundering, financial institutions were already required to provide a procedure to enable their personnel, agents or distributors to report a violation of the legislation, through a specific, independent and anonymous channel (article 10, Act of 18 September 2017).

The employer must ensure the wellbeing of its employees, which includes the prevention of harassment. If harassment has occurred, they must provide appropriate support, including remediating measures, protection against dismissal and investigation by a prevention advisor specialising in psychosocial risks (Wellbeing Act of 4 August 1996, Wellbeing Code of 28 April 2017). The procedure must be detailed in the work rules of the financial institutions.

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## United Kingdom

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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## **12. Are there any particular rules or protocols that apply when terminating the employment of an employee in the financial services sector, including where a settlement agreement is entered into?**

### **Belgium**

Author: *Nicolas Simon*  
at Van Olmen & Wynant

If the person concerned is subject to "fit & proper" authorisation from the NBB (see question 2), a form must be filed with the NBB to inform it of the termination.

Furthermore, the settlement agreement cannot include payments that would not respect the caps for remuneration and termination indemnities (see question 7).

Finally, job security clauses have been negotiated at a sectoral level, meaning a specific procedure must be followed for individual or collective dismissal under JC No. 310, with a sanction of six to nine months' remuneration.

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### **United Kingdom**

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

#### **Settlement agreements**

The whistleblowing measures outlined above are complemented by mandatory requirements for SM&CR firms concerning settlement agreements, namely that any such agreement must include a term stating

that it doesn't prevent the individual from making a protected disclosure, and must not require the individual to warrant that they have not made a protected disclosure or that they do not know of any information which could lead to them doing so (a "protected disclosure" is a type of disclosure recognised in English employment law that gives the person making it legal protection from retaliatory detrimental treatment).

SM&CR firms entering into settlement agreements must also ensure that they are not drafted in a way that is incompatible with other relevant regulatory requirements. For example, there is a specific prohibition in the FCA Handbook on firms entering into any arrangements or agreements with any person that limit their ability to disclose information required by the regulatory reference rules (see question 2). As such, terms relating to confidentiality and the provision of employment references should allow the firm sufficient flexibility to comply with regulatory reference requirements, which could include a requirement to update such a reference. In addition, any obligations of confidentiality should include a carve-out to permit relevant regulatory disclosures and reports.

### **Handover procedures**

The SM&CR includes requirements designed to ensure that adequate handovers take place between outgoing and incoming senior managers. Firms must take all reasonable steps to ensure that senior managers (and anyone who has management or supervisory responsibilities for them) have all the information and material that they could reasonably expect to have to perform their responsibilities effectively and under the requirements of the regulatory system. This applies when someone becomes a senior manager and when an existing senior manager takes on a new job or new responsibilities (or when their responsibilities or job are being changed).

Firms must have a handover policy in place to ensure compliance with these requirements. They must also make and maintain adequate records of steps taken to comply with them.

The information and material handed over should be practical and helpful, with an assessment of what issues should be prioritised, and judgement and opinion as well as facts, figures and records. It should also include details about unresolved or possible regulatory breaches and any unresolved concerns expressed by the FCA, the PRA or any other regulatory body.

The format and arrangements of a handover should allow for an orderly transition, which should include the outgoing senior manager contributing to the handover everything that it would be reasonable to expect them to know and consider relevant, including their opinions. This could be achieved by requiring outgoing senior managers to prepare a handover certificate, but the FCA recognises that this will not always be practical.

To ensure that these requirements are satisfied, it is good practice to include in senior managers' employment contracts (and settlement agreements) specific obligations relating to handovers.

### **Reallocating senior managers' responsibilities**

In addition to ensuring that adequate handovers take place between outgoing and incoming senior managers, firms should also ensure on the departure of a senior manager that their responsibilities are reallocated and that this is recorded in a way that is compliant with relevant regulatory requirements. This may include temporary reallocation to one or more existing senior managers where the replacement does not take over immediately on the departure of the departing senior manager, as well as updating the firm's management responsibilities map and statements of responsibilities.

### **Reporting requirements**

When an individual ceases to perform an SMF, the firm must generally notify the relevant regulatory within seven business days.

SM&CR firms must notify the relevant regulators if certain types of disciplinary action are taken, which can include dismissal – see question 10.

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## 13. Are there any particular rules that apply in relation to the use of post-termination restrictive covenants for employees in the financial services sector?

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

There are no specific rules for the financial services sector, except that they cannot have an effect that does not respect the caps for remuneration (see question 7).

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### United Kingdom

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

The SM&CR does not regulate the use of post-termination restrictive covenants for employees in the financial services sector. It is fairly typical for financial services firms in the UK to include non-dealing, non-solicitation, non-compete and similar restrictive covenants in their employment contracts. These are subject to the same common law rules on interpretation and enforceability as in any other sector. The only caveat to this is that firms should ensure that such terms do not include any provision that might conflict with the regulatory duties of either the firm or the employee. This will be a rare occurrence in practice for most types of restrictive covenant, but could arise in respect of post-termination contractual obligations that are closely associated with restrictive covenants, namely those relating to confidentiality. As such, firms should ensure that confidentiality clauses in employment contracts or other agreements such as NDAs include appropriate carve-outs.

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#### Contributors

##### Belgium

Nicolas Simon  
*Van Olmen & Wynant*

##### United Kingdom

Louise Skinner  
Thomas Twitchett  
Oliver Gregory  
*Morgan Lewis & Bockius*

