

# SM&CR extended to insurers – one year on

Insurance & Reinsurance analysis: On 10 December 2018, the Senior Managers & Certification Regime (SM&CR) was extended to all insurers regulated by the Financial Conduct Authority (FCA)—with the objective to increase individual accountability within the sector. Celyn Armstrong, partner, Katharine Harle, partner and Craig Neilson, partner, all at Dentons, assess the impact on insurers, the challenges they have faced as a consequence and the lessons for solo-regulated firms.

## What have been the biggest changes with SM&CR?

Celyn Armstrong (CA): The changes for insurers have not been as substantial as they were for banks when they became subject to SM&CR. This is mainly because insurers were not moving (as banks did) directly from the Approved Persons Regime to SM&CR. Insurers were already subject to the Senior Insurance Managers Regime (SIMR) from March 2016.

The part of the insurers' SM&CR that relates to senior managers is not greatly changed from the regime under SIMR in terms of the fundamental requirement for senior managers to be FCA-approved and have responsibilities allocated to them. What is new for senior managers in insurers is the statutory duty of responsibility and the requirement to have handover procedures.

Katharine Harle (KH): By contrast, the introduction of the Certification Regime to insurers has been a key change, with insurers being required to assess annually the fitness and propriety of staff in specified roles. Regulatory reference rules already applied to senior individuals in insurers and 'key function holders' but were extended to those who also fall within the certification categories.

Craig Neilson (CN): The application of the Conduct Rules is also a critical change especially given the rules requiring reporting of breaches where the firm has taken disciplinary action. It has extended the possibility of regulatory action by the FCA to almost everyone working in insurers, whereas previously only a relatively small number of 'approved persons' could be fined.

## What challenges have insurers faced?

CN: Arguably insurers have had a less challenging time than most banks in so far as:

- they were already subject to SIMR, and
- the FCA's SM&CR proposals for insurers have remained relatively constant unlike the position banks were in where there was considerable uncertainty and the regulators were still consulting on the final rules right up until the regime came into force (with some issues such as the position of the legal function left in doubt until recently)

CA: Somewhat similar to banks though, most of the challenging issues have been internal ones. In order to comply fully with SM&CR and especially the Certification Regime and the Conduct Rules, insurers needed to make significant changes to their HR procedures and governance around employee performance and conduct and giving references. There was also the challenge of providing training on how the Conduct Rules apply to their staff. All of this took time to work through and involved more work than some anticipated.

From what we have seen, insurers did not experience a particularly noticeable difference in regulatory activity after implementation, as the FCA and the Prudential Regulation Authority (PRA) were already scrutinising individual conduct more closely than they used to.

KH: Some insurers did have some poor experiences related to being able to upload statements to the FCA's systems and hopefully these will have been resolved before solo-regulated firms become subject to SM&CR in December 2019.

A key challenge for some insurers was actually getting senior level engagement with SM&CR implementation. In contrast to insurers' experience, when SM&CR was being introduced for banks, there was a lot of press interest and fear generated by the proposed presumption of responsibility. That proposal ultimately got amended, but that coupled by the lack of visible enforcement action against senior managers to date, means SM&CR has not garnered the same amount of senior engagement in the insurance industry.

## Are there any lessons/cautions for solo-regulated firms who are about to come under SM&CR?

CA: Firms will hopefully be well involved in their implementation projects by now as the experience of banks and insurers was that SM&CR implementation is a complex and protracted exercise. A key mistake often made is to focus too much on the senior managers' responsibilities when many of the trickiest issues actually arise in respect of Certification and Conduct Rules.

As part of their projects, firms will need to ensure they:

- establish clear governance arrangements with appropriate allocation of responsibilities to senior managers
- consider which individuals will require certification and assess their fitness
- create training packages for senior managers and other staff
- change their policies and procedures for recruitment, ongoing conduct assessment, disciplinary action and references, and
- amend and re-issue employment contracts

KH: As a result, it is crucial to ensure that HR, Compliance and Operations are represented on the project team, and that there is appropriate senior management support and oversight. It is also worth thinking ahead as to how SM&CR will work in practice post-implementation and who will have ongoing day-to-day responsibility for it because, unlike some regulatory change initiatives, the work doesn't stop after 10 December 2019.

CN: Even if you have planned your implementation project carefully and are confident that you will be ready for December 2019, in our experience it is often only once things are up and running that issues around how things work in practice (or not) come to light. Even the most organised of firms should expect to still be working through finer points of detail into 2020. Firms should aim not to let this detract from being ready in good time to certify their certification population though, as it will save significant duplication of effort if they can tie this in with their annual appraisal cycle.



## Any other observations?

KH: Achieving the level of cultural change which the FCA is increasingly looking for in firms goes beyond just meeting the technical requirements of SM&CR. For lasting positive change, firms need to not just have the right tone from the top, good governance and be incentivising their staff in a way that encourages positive customer outcomes—the FCA indicates they also need to be focusing on diversity and inclusion and staff motivation and purpose. Even for those firms who are embracing this change, it is going to take time.

*Celyn Armstrong advises financial institutions on both contentious and non-contentious regulatory issues. He has particular knowledge of the SM&CR, having been a member of the joint PRA/FCA working group on the SM&CR during his seven years at the FCA. He has also advised many institutions on their implementation projects since rejoining private practice.*

*Katharine Harle is a financial services regulatory partner at Dentons and has worked with a variety of firms assisting with SM&CR implementation projects. Katharine also chairs TISA's SM&CR working group and is regularly invited to speak on SM&CR at external events. Katharine is recognised by Legal 500 as 'an expert on regulatory matters' and 'exciting and innovative'.*

*Craig Neilson is a partner and solicitor-advocate at Dentons who focuses on litigation and contentious regulatory work for a range of clients in the financial services sector. He is a noted individual in Legal 500 2019 for both 'Regulatory Investigations and Corporate Crime' and 'Commercial Litigation'.*

*Interviewed by Susan Ghaiwal.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*



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