

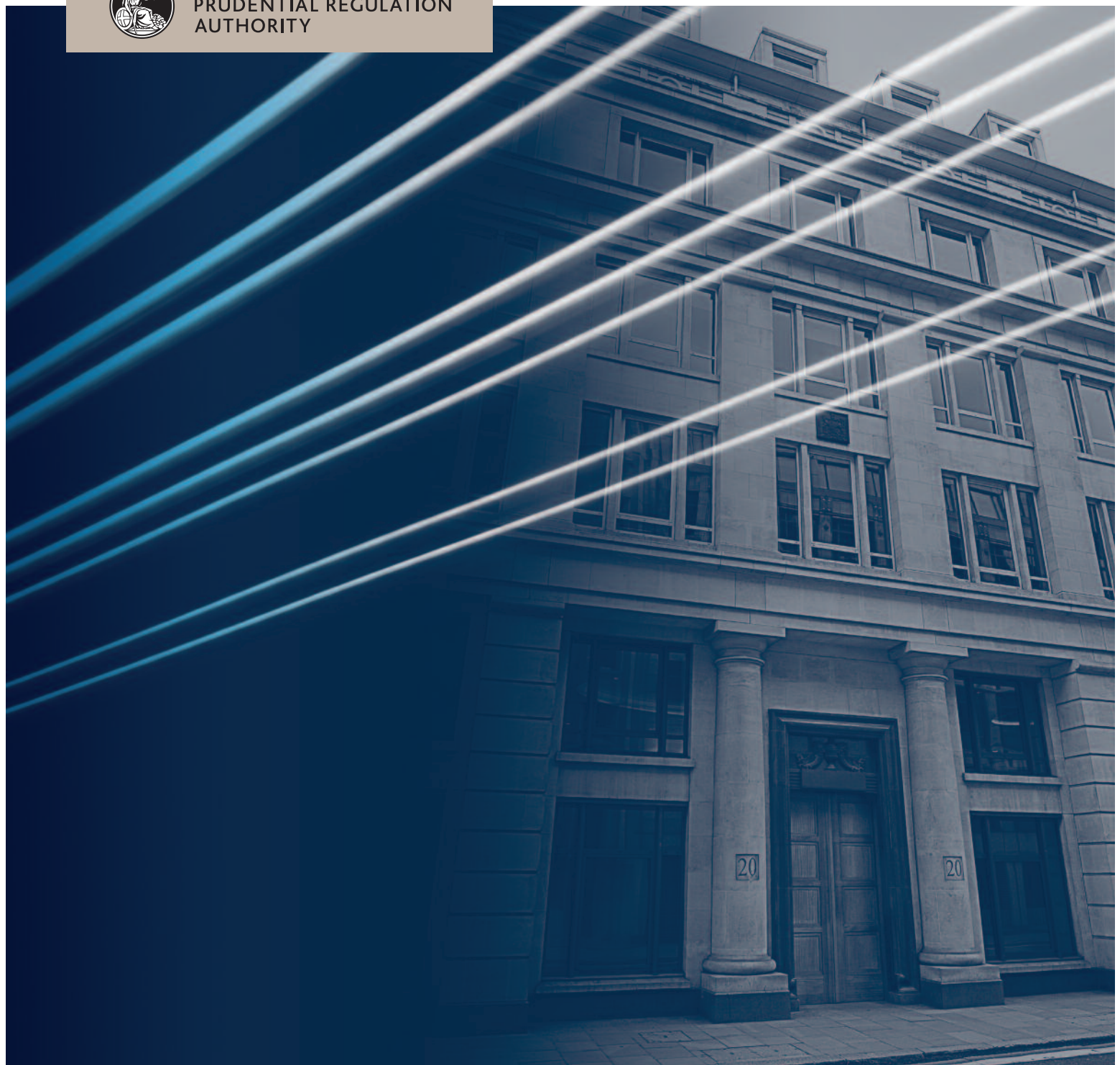
Supervisory Statement | SS28/15

# Strengthening individual accountability in banking

July 2015



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



16 December 2015 – this document has been updated, see  
<http://www.bankofengland.co.uk/pru/Pages/publications/ss/2015/ss2815update.aspx>

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# 1 Introduction

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1.1 This supervisory statement sets out the Prudential Regulation Authority's (PRA's) approach to strengthening individual accountability in banking. It applies to all Relevant Authorised Persons (Relevant Firms) as defined in section 71A of the Financial Services and Markets Act 2000 (FSMA)<sup>(1)</sup> namely:

- banks;
- building societies;
- credit unions; and
- PRA designated investment firms.

1.2 The statement seeks to advance the PRA's statutory objective of promoting the safety and soundness of the firms it regulates by setting out the PRA's expectations of how Relevant Firms should comply with the regulatory framework of the:

- Senior Managers Regime (SMR);
- Certification Regime;
- Assessment of Fitness and Propriety; and
- Conduct Rules.

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(1) As amended by the Financial Services (Banking Reform) Act 2013; [www.legislation.gov.uk/ukpga/2013/33/contents/enacted](http://www.legislation.gov.uk/ukpga/2013/33/contents/enacted).

## 2 The Senior Managers Regime

2.1 This chapter sets out the PRA's expectations of how Relevant Firms and individuals performing a senior management function (SMF) (Senior Managers) should comply with the SMR. The chapter also clarifies:

- the responsibilities of those non-executive director (NED) functions which are in scope of the SMR namely, the Chairman, Senior Independent Director (SID) and the Chairs of the Audit, Nomination, Remuneration and Risk Committees;
- the PRA's expectations regarding the contents of Statements of Responsibilities and Management Responsibilities Maps; and
- how the PRA expects to apply Sections 66B(5) and (6) of FSMA (known as the Presumption of Responsibility).

2.2 This chapter should be read in conjunction with:

- the relevant parts of the PRA Rulebook namely Compliance and Internal Audit; Risk Control; Senior Management Functions; Allocation of Responsibilities and Fitness and Propriety;<sup>(1)</sup>
- the Financial Conduct Authority's (FCA's) rules and guidance on the SMR, as set out in DEPP 6.2, EG 9, SUP 10C and SYSC 4 to 7 of the FCA Handbook; and
- CP18/15 'Corporate Governance: Board Responsibilities' which consults on a supervisory statement on the PRA's expectations of boards thereby complementing the SMR's focus on individual accountability.<sup>(2)</sup>

### Scope of the Senior Managers Regime

#### Executive and Oversight SMFs

2.3 Chapters 3 and 4 of the Senior Management Functions Part of the PRA Rulebook (Senior Management Functions 3 and 4) distinguish between executive and oversight SMFs. Executive SMFs comprise the most senior individuals responsible for the executive management of those areas of a firm which the PRA deems relevant to its safety and soundness objective, such as its overall business, financial resources, risk management, internal controls or a key business area as defined in Senior Management Functions 3.6(1)(a).<sup>(3)</sup> Executive SMFs are typically directly responsible for reporting and putting matters for decision to the board in respect of one or more of the areas listed above.

2.4 In contrast, oversight SMFs do not carry out executive functions in Relevant Firms but perform a NED role in scope of the SMR. Oversight SMFs have fewer responsibilities than executive SMFs under the SMR. Moreover, these responsibilities are non-executive in nature and either inherent in or linked to their Chair or SID roles. **Table A** sets out the full list of SMFs. SMFs subject to pre-approval by the PRA (with FCA consent) are underlined; the other SMFs require pre-approval by the FCA only.

**Table A**

Executive SMFs	Oversight SMFs
<u>Chief Executive</u> (SMF1)	<u>Chairman</u> (SMF9)
<u>Chief Finance</u> (SMF2)	<u>Chair of the Risk Committee</u> (SMF10)
Executive Director (SMF3)	<u>Chair of the Audit Committee</u> (SMF11)
<u>Chief Risk</u> (SMF4)	<u>Chair of the Remuneration Committee</u> (SMF12)
<u>Head of Internal Audit</u> (SMF5)	Chair of the Nomination Committee (SMF13)
<u>Head of Key Business Area</u> (SMF6)	<u>Senior Independent Director</u> (SID) (SMF14)
<u>Group Entity Senior Manager</u> (SMF7)	
<u>Credit Union Senior Manager</u> (credit unions only) (SMF8)	
Compliance Oversight (SMF16)	
Money Laundering Reporting (SMF17)	
Other Overall Responsibility (SMF18)	

#### Minimum number of SMFs and proportionality

2.5 Under Senior Management Functions 6, credit unions are only required to have one person pre-approved by the PRA as a bespoke SMF (the Credit Union Senior Manager (SMF8)) but can have more than one individual if they choose to. The PRA expects the SMF8 to perform functions similar to those of a CEO, ie to be responsible for the day-to-day management of the credit union's activities.

2.6 Senior Management Functions 2.2 requires all banks, building societies and designated investment firms (Relevant CRR firms), all of which are in scope of the Capital Requirements Regulation,<sup>(4)</sup> to have separate individuals pre-approved as Chief Executive (SMF1), Chief Finance (SMF2)

(1) <http://fshandbook.info/FS/prerulebook.jsp>.

(2) [www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp1815.pdf](http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp1815.pdf). The PRA expects to publish a final version of the Supervisory Statement in late 2015.

(3) A key business area is an area with gross total assets equal to or greater than £10 billion; and which either accounts for more than 20% of the firm's gross revenue; or where the firm is part of a group, accounts for more than 20% of the total gross revenue of the group.

(4) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575&from=EN>.



and Chairman (SMF9) (referred to in this statement as 'mandatory SMFs'). This reflects the requirements in the fourth Capital Requirements Directive (CRD IV)<sup>(1)</sup> and Markets in Financial Instruments Directive (MiFID)<sup>(2)</sup> to have at least two individuals who effectively direct the business of a firm, and the restriction on combining the roles of Chairman and Chief Executive in CRD IV. In view of the need to establish that an individual with appropriate skills, experience and personal characteristics is responsible and accountable for each SMF, the PRA would expect to pre-approve natural persons (ie individuals), as opposed to legal persons (such as companies, partnerships etc.) as SMFs.<sup>(3)</sup>

2.7 Relevant CRR firms are only required to have individuals approved to perform SMFs other than SMF1, 2 and 9 if they have someone performing those functions. The PRA expects the number of Senior Managers in Relevant CRR firms to reflect their size, complexity and governance structure. For instance, banks and building societies with gross total assets of £250 million or less are not expected to have many Senior Managers in addition to the mandatory SMFs.

2.8 Conversely, larger firms are often subject to pre-existing legal or regulatory obligations which, in effect, require them to have certain SMFs. For instance, under CRD IV, significant CRR firms must establish Risk, Nomination and Remuneration Committees.<sup>(4)</sup> The Chairs of these committees require pre-approval as the relevant SMFs (SMFs11–13).

2.9 **Table B** lists the categories of Relevant Firm which are required to have certain SMFs pre-approved by the PRA.

**Table B**

SMF	Category of Relevant Firm	Required by
Chief Risk (SMF4)	Banks, building societies and PRA-designated investment firms where proportionate.	CRD IV, Article 76(5). Risk Control 3.1.
Head of Internal Audit (SMF5)	Banks, building societies and PRA-designated investment firms where proportionate.	MiFID implementing Directive, Article 8. <sup>(a)</sup> Compliance and Internal Audit 3.
Chair of the Risk Committee (SMF10)	Banks, building societies and PRA-designated investment firms which are classed as 'significant' CRR firms.	CRD IV, Article 76(3). Risk Control 3.1.
Chair of the Audit Committee (SMF11)	Banks, building societies and PRA-designated investment firms which have their securities admitted to trading on a regulated market and have to appoint a statutory auditor.	Disclosure and Transparency Rules [FCA], Rule 7.1. <sup>(b)</sup>
Chair of the Remuneration Committee (SMF12)	Banks, building societies and PRA-designated investment firms which are CRR firms with assets above £15 billion.	CRD IV, Article 95(1). Remuneration 7.4.
SID (SMF14)	Banks, building societies and PRA-designated investment firms with a premium listing on the London Stock Exchange.	FRC Corporate Governance Code (FRC Code), A.4.1 (comply-or-explain). <sup>(c)</sup>

(a) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:241:0026:0058:EN:PDF>.

(b) Most credit institutions will be required to establish an Audit Committee when the United Kingdom implements the new EU regulatory framework for statutory audit. Directive 2014/56/ amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts; <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0056&from=EN>, Article 39.

(c) [www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf](http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf).

## Sharing an SMF

2.10 In certain circumstances, including but not limited to job-share arrangements, a firm may be allowed to have more than one individual performing a single SMF. However, the PRA expects SMFs to be shared only where appropriate and justified. The individual(s) performing an SMF should be the most senior person(s) responsible for that area of the firm.

2.11 Where two or more individuals share an SMF, both are individually accountable for all the responsibilities inherent in or allocated to that SMF. It follows that, in the event of a firm breaching a relevant requirement (as defined in section 66B(4) of FSMA) relating to an SMF's area of responsibility, each individual pre-approved to perform that SMF can be subject to the 'Presumption of Responsibility' and may be asked to satisfy the PRA that he or she took reasonable steps to prevent, stop or remedy the breach (sections 66B(5) and (6) of FSMA). The same approach applies where a firm allocates a PRA Prescribed Responsibility to two or more individuals performing different SMFs. **Table C** considers two hypothetical scenarios where the PRA may consider allowing two individuals to share a PRA SMF.

**Table C**

Individuals likely to be allowed to share a PRA SMF	Individuals not allowed to share a PRA SMF
A firm's wholesale banking division meets the criteria for a key business area in Senior Management Functions 3.6(1)(a). The division is co-headed by two individuals of equal rank.	A bank's equities desk meets the criteria for a key business area in Senior Management Functions 3.6(1)(a). The head of the equities desk reports to a head of wholesale banking who is the most senior individual responsible for that area at the firm. Both are based in the United Kingdom.
Although all heads of desk report to both co-heads, in practice, one individual focuses more on equities and the other on fixed income, currencies and commodities (FICC).	The head of wholesale banking is required to be pre-approved as Head of a Key Business Area (SMF6).
Both individuals can be pre-approved by the PRA as Heads of the same Key Business Area (SMF6). Each individual will, in principle, be accountable for all the activities of the division and may be asked to demonstrate that they took reasonable steps if a breach of a relevant requirement takes place anywhere within it. However, if the breach takes place in a localised area of the division ie equities, the PRA may take into account the focus of each individual and the way they discharged their shared responsibilities in practice in determining whether each took reasonable steps.	However, because the head of equities reports to the head of wholesale banking, he or she cannot be pre-approved as SMF6 (Senior Management Functions 3.6(2)).

(1) Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV); <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>, Article 13(1).

(2) Directive 2004/39/EC of the European Parliament and Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (MiFID I); <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0039-20110104&from=EN>, Article 9(4).

(3) Banks, building societies and credit unions with assets of £250 million or less (Small Firms) are subject to less onerous requirements under the SMR. The £250 million threshold is calculated across a rolling period of five years or, if the firm has been in existence for less than five years, across the period during which it has existed.

(4) Only category 1 or 2 firms should consider themselves as significant for the purposes of these requirements. See *PRA Policy Statement 7/13*, 'Strengthening capital standards: implementing CRD IV, feedback and final rules', December 2013; [www.bankofengland.co.uk/pr/Documents/publications/ps/2013/ps713.pdf](http://www.bankofengland.co.uk/pr/Documents/publications/ps/2013/ps713.pdf).

## Group Entity Senior Manager (SMF7)

2.12 The SMR only applies to a Relevant Firm's UK-regulated activities. This inherently limits the extent to which it can apply to individuals in a Relevant Firm's parent or group entities, particularly those based overseas. However, the fact that an individual is located outside the United Kingdom does not, in itself, mean that he or she cannot perform an SMF on behalf of a Relevant Firm.

2.13 Chapter 5 of the Senior Management Functions part of the PRA Rulebook specifies an SMF (Group Entity Senior Manager (SMF7)) aimed at individuals based in parent or group entities who exercise significant influence over the management or conduct of one or more aspects of a Relevant Firm's UK-regulated activities.

2.14 The PRA is mindful of both the territorial scope of the SMR and the governance arrangements of overseas banks operating in the United Kingdom. Consequently, the PRA does not require pre-approval of senior individuals located overseas whose responsibilities in relation to the United Kingdom are limited to developing the group's overall strategy. The PRA's focus is on those individuals who, irrespective of their location, are directly responsible for implementing the group's strategy in UK Relevant Firms. The PRA and FCA followed a similar approach under the Approved Persons Regime (APR), which resulted in a small number of individuals based overseas being approved as Significant Influence Functions (SIFs) of UK firms.<sup>(1)</sup>

2.15 Consequently, if an individual located overseas is directly responsible for taking decisions about how a UK Relevant Firm should conduct their UK-regulated activities and has not delegated this responsibility to a Senior Manager based in the United Kingdom, it is likely that he or she will require approval as SMF7 (or, in some cases, another SMF).

2.16 The PRA does not aim or expect to approve individuals as SMF7 in every UK Relevant Firm which is part of an overseas-headquartered group. Whether these entities are required to have any individuals approved as SMF7 is assessed on a case-by-case basis. In the first instance, it is up to firms to consider whether there may be any individuals in their parent or group companies, in the United Kingdom or overseas, who may be performing an SMF7 on behalf of a Relevant Firm. In doing so, they should take into account:

- the respective organisational structures of the group and the Relevant Firm;
- the split of key responsibilities between the group and UK boards and senior management; and
- whether SMFs based in the United Kingdom have an appropriate level of delegated authority from the group or

parent to ensure that the UK entities comply with local regulatory obligations.

## Independence requirements and banned combinations of SMFs

2.17 Certain rules prevent individuals from performing specific combinations of SMFs at the same Relevant Firm or require certain SMFs to be performed independently of all other functions and activities of the firm. **Table D** below lists the SMFs subject to such restrictions.

**Table D**

SMF	Restriction	Required by
Chief Executive (SMF1) and Chairman (SMF9)	A firm must ensure that an individual who performs the Chairman Function on its behalf does not simultaneously perform the Chief Executive Function within the same firm.	CRD IV, Article 88(1)(e). Senior Management Functions 7.2.
Chief Risk (SMF4)	Must be an independent senior manager with distinct responsibility for the risk management function.  Where the nature, scale and complexity of the activities of the CRR firm do not justify a specifically appointed person, another senior person within the firm may fulfil that function, provided there is no conflict of interest.	CRD IV, Article 76 (5). Risk Control 3.5.
Head of Internal Audit (SMF5)	Must be separate and independent from the other functions and activities of the firm.	MiFID Implementing Directive, Article 8. Compliance and Internal Audit 3.1.
Chair of the Risk Committee (SMF10)	Must not perform any executive function in the firm.	CRD IV, Article 76 (3). Risk Control 3.1.
Chair of the Remuneration Committee (SMF12)	Must not perform any executive function in the firm.	CRD IV, Article 95 (2). Remuneration 7.4(2).

2.18 Where rules do not prevent an individual from performing a combination of SMFs, the PRA may still decide not to approve the individual to perform the desired combined SMFs in some circumstances, including but not limited to, where the PRA considers that:

- the functions are incapable of being effectively performed together inherently or in practice, such as Chairman and SID; or
- the individual's qualifications, training, competencies and/or personal characteristics render them fit and proper to perform one function but not necessarily the other(s).

## Allocation of responsibilities to senior managers Responsibilities inherent in the definition of each PRA SMF

2.19 The definition of every PRA SMF in the PRA's Rules contains a responsibility which is inherent, inseparable from and intrinsically built into the specific role. For instance,

(1) See SUP 10A.7.4G in the FCA Handbook.

Senior Management Functions 3.5 defines the Head of Internal Audit (SMF5) as *'the function of having responsibility for management of the internal audit function of a firm and for reporting directly to the governing body of the firm on the internal audit function'*.

2.20 This inherent responsibility is arguably the most important responsibility of any given SMF, as it provides the rationale as to why that specific function is in scope of the SMR in the first place.

2.21 Even where a Senior Manager has not been allocated other responsibilities by the firm, the responsibility inherent in the definition of the SMF he or she is approved to perform means that he or she will be deemed accountable for that aspect of the firm's activities. For example, even if an individual performing SMF5 has no other responsibilities allocated to him or her; he or she will be deemed accountable for all aspects relating to the management of the firm's internal audit function, including reporting to the Board and/or Audit Committee.

#### Prescribed Responsibilities for UK Relevant Firms

2.22 In addition to the responsibilities inherent in the definition of each SMF, Allocation of Responsibilities 4 and 5 set out a list of 28 PRA Prescribed Responsibilities. The FCA's rules contain two further Prescribed Responsibilities relating to financial crime and the Client Assets Sourcebook (CASS).

2.23 UK Relevant Firms must allocate all Prescribed Responsibilities among individuals performing an SMF subject to pre-approval by the PRA or FCA (except the FCA's Other Overall Responsibility function (SMF18) as noted in Allocation of Responsibilities 3.1). The PRA expects firms to allocate each Prescribed Responsibility to the Senior Manager it is most closely linked to. PRA and FCA Prescribed Responsibilities for UK Relevant Firms comprise the following categories:

- **Prescribed Responsibilities which apply to all firms and are replicated in the FCA's rules:** Except for the FCA responsibility relating to financial crime, all the responsibilities in this category relate to the implementation of the SMR and Certification Regime.
- **Prescribed Responsibilities which apply only to Small Firms:** Allocation of Responsibilities 5 sets out four responsibilities covering risk management, systems and controls, financial resources and keeping the board apprised of its legal and regulatory obligations. Small Firms (ie those with gross total assets of £250 million or less) need only allocate these four Prescribed Responsibilities, in addition to the five which apply to all firms, among their Senior Managers (ie they must allocate nine Prescribed Responsibilities in total).
- **Prescribed Responsibilities which apply to all firms except Small Firms:** These responsibilities, which are listed in

Allocation of Responsibilities 4, cover areas relevant to the PRA's safety and soundness objective, such as the allocation and maintenance of capital, funding and liquidity, recovery and resolution and stress-testing.

- **Prescribed Responsibilities which only apply to certain types of firm (excluding Small Firms):**

- firms that carry out proprietary trading;<sup>(1)</sup>
- firms that will be subject to ring-fencing obligations; or
- firms which do not have individuals performing the Chief Risk or Head of Internal Audit functions (SMFs 4 and 5).

2.24 The PRA expects ring-fenced banks (RFBs) to allocate the responsibility for ensuring that the areas of the firm which they are responsible for managing comply with the ring-fencing obligations, to the majority, if not all, of their SMFs (except the FCA's SMF18), including those NEDs in scope of the SMR. This is an exception to the expectation that Prescribed Responsibilities should be allocated only to the individual SMFs they are most closely linked to. The reason for the exception is to incentivise key decision-makers in RFBs to ensure compliance with the ring-fencing obligations throughout the key areas of the firm.

#### Responsibilities and potential accountability of NEDs in scope of the SMR

2.25 The PRA recognises that NEDs in scope of the SMR do not manage a firm's business in the same way as executive SMFs and, therefore, the responsibilities for which they are accountable are more limited.

2.26 NEDs in scope of the SMR are neither required nor expected to assume executive responsibilities but are expected to take on certain responsibilities (set out in **Table E**), all of which are non-executive in nature and are either inherent in or derive from their Chairmanship or SID roles.

2.27 The potential accountability of NEDs in scope of the SMR under the Presumption of Responsibility is restricted to those activities for which they are responsible, which include (but are not limited to):

- ensuring that the Board and/or the committees which they chair:
  - meet with sufficient frequency;

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(1) Allocation of Responsibilities 1 defines proprietary trading for the purposes of the SMR as:  
(a) the regulated activity of dealing in investments as principal as specified in Article 14 of the Regulated Activities Order (Dealing in investments as principal), disregarding the exclusion in Article 15 of the Regulated Activities Order (Absence of holding out etc); and  
(b) ancillary activities and (in relation to MiFID business) ancillary services carried out in relation to the regulated activity.

Table E

SMF	Description of responsibilities (a full list is available in Senior Management Functions 4.1)	Relevant PRA Rulebook material
Chairman (SMF9)	Chairing and overseeing the performance of the board. Leading the development and overseeing the implementation of the firm's policies and procedures for the induction, training and development of all directors.  Overseeing the assessment of fitness and propriety of those NEDs who are not in scope of the SMR and the related notification requirements to the PRA.  Leading the development of the firm's culture by the board.	Fitness and Propriety 2.3, 2.4 and 4.
Chair of the Audit Committee (SMF11)	Chairing and overseeing the performance of the Audit Committee.  Ensuring and overseeing the integrity and independence of the firm's internal audit function (including the Head of Internal Audit).	Compliance and Internal Audit 3.1.
Chair of the Risk Committee (SMF10)	Chairing and overseeing the performance of the Risk Committee.  Ensuring and overseeing the integrity and independence of the firm's risk function (including the CRO).	Risk control 3.5.
Chair of the Remuneration Committee (SMF 12)	Chairing and overseeing the performance of the Remuneration Committee.  Overseeing the development and implementation of the firm's remuneration policies and practices.	Remuneration 7.2–7.4.
Chair of the Nominations Committee (SMF13) [FCA]	Chairing and overseeing the performance of the Nomination committee.	SUP10C.5.2 R (FCA Handbook).
SID (SMF14)	Performing the role of a SID (in line with the FRC Code) and leading the assessment of the Chairman's performance.	
Either Chairman (SMF9) or Chair of the Audit Committee (SMF11)	Ensuring and overseeing the integrity and independence of the compliance function (including the Head of Compliance).  Ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing and ensuring staff that raise concerns are protected from detrimental treatment.	Compliance and Internal Audit 2.4.

- foster an open, inclusive discussion which challenges executives where appropriate; and
- devote sufficient time and attention to matters within their remit which are relevant to the firm's safety and soundness.
- helping to ensure that the board or committee and its members have the information necessary to perform their tasks;
- facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and
- reporting to the main Board on the committee's activities.

2.28 Table F sets out a range of hypothetical scenarios where the PRA may consider taking disciplinary action against NEDs in scope of the SMR and others where the PRA is more likely to focus on individuals performing executive SMFs.

Table F

NEDs in scope of the SMR potentially accountable	Executive SMFs potentially accountable
<ul style="list-style-type: none"> <li>• A Skilled Persons Review reveals that a firm's Risk Committee has not advised the Board on the firm's risk appetite nor assisted it in overseeing the implementation of the firm's risk strategy by executive management in contravention of Risk Control 3.1(2). In this situation, the PRA might primarily consider whether there are grounds to sanction the Chair of the Risk Committee.</li> <li>• During a Board Effectiveness Review, the PRA discovers that the Remuneration Committee has failed to prepare any decisions regarding remuneration for consideration and decision by the Board. In this situation, the PRA may consider whether there could be grounds to sanction the Chair of the Remuneration Committee.</li> <li>• A firm's Chairman and NEDs in scope of the SMR have serious concerns about an overly dominant CEO. These concerns are not addressed, recorded or discussed by the Board or with PRA or FCA supervisors.</li> </ul>	<ul style="list-style-type: none"> <li>• A firm breaches its capital requirements as a result of a major loss in a key business unit that has repeatedly breached its risk limits. The risk limits were discussed and set by the Risk Committee and the Board. In this situation, the PRA might primarily consider whether there are grounds to sanction the appropriate executive Senior Managers, including Heads of the Key Business Areas and the Chief Risk Officer. If, however, the breaches are reported to the Board and/or the Risk Committee, the PRA may also enquire whether the Board/ Risk Committee discussed them and made any recommendations.</li> <li>• In an attempt to obtain Board approval for a new, riskier, lending strategy, a firm's senior executives submit incomplete and misleading management information to the Board which significantly downplays the risks of such a strategy. The CEO also suppresses any negative or questioning advice on this issue, and consequently the board approves the strategy which, six months later, causes the firm to breach a number in the Risk Control section of the PRA Rulebook.</li> <li>• A firm's management fails to monitor the provision of services by a third party under an outsourcing agreement resulting in an operational risk crystallising in breach of Outsourcing 2.1 in the PRA rulebook.</li> </ul>

2.29 The role of the Chairman is integral to firms' safety and soundness. Consequently, the PRA expects Chairmen to:

- seek proactively to remain appraised of matters relating to the board and its individual committees by, for instance, having regular discussions with the Chairs of the Audit, Remuneration and Risk Committees outside board meetings; and
- commit a significantly larger proportion of their time to their functions than other NEDs. The PRA expects Chairmen, in particular those of major firms, not to have or take on additional commitments which may interfere with the fulfilment of their responsibilities to the firm under the SMR. The PRA may consider using its powers to impose conditions on approval to limit a Chairman's ability to take on additional external commitments where it considers that doing so may advance its objectives.<sup>(1)</sup>

2.30 As discussed in Chapter 4, firms must assess the fitness and propriety of those NEDs which are not in scope of the

(1) See *PRA Statement of Policy*, 'The Prudential Regulation Authority's policy on conditions, time limits and variations of approval', June 2015; [www.bankofengland.co.uk/pr/Pages/publications/sop/2015/conditions.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/sop/2015/conditions.aspx).

SMR (Notified NEDs) periodically and comply with certain notification requirements to the PRA. Allocation of Responsibilities 4.1 includes a responsibility for the firm's performance of its obligations under Fitness and Propriety in respect of its Notified NEDs, which the PRA expects to be allocated to the Chairman (SMF9).

2.31 Senior Management Functions 4.6 specifies a SID (SMF14), which it defines as the function of having responsibility for leading the assessment of the performance of the person performing the Chairman function. Where a firm has a SID, the PRA expects his or her assessment of the Chairman to consider, among other things:

- the extent to which the Chairman has fulfilled his or her responsibilities under the SMR; and
- the quality and sufficiency of resources allocated to the Chairman's office (consistent with Allocation of Responsibilities 7.1).

### Individual accountability and collective decision-making by boards

2.32 Although the SMR only applies to some NEDs, who are required to take on individual responsibilities, the PRA views the regime and its application as consistent with the principle of collective decision-making.

2.33 The SMR co-exists with the statutory and fiduciary duties of directors under UK company law and domestic and international corporate governance standards. The SMR clarifies and formalises the individual responsibilities which NEDs in scope of the SMR should already have in practice.

2.34 Moreover, regardless of the fact that some NEDs are subject to limited individual responsibilities and potential accountability under the SMR, the PRA considers it vital that boards as a whole understand the Threshold Conditions, Fundamental Rules and more detailed underlying rules in the PRA Rulebook. Boards should establish within their firms a culture that supports adherence to the spirit and letter of these requirements.<sup>(1)</sup>

2.35 As part of its ongoing supervision of Relevant Firms' governance, the PRA assesses the overall composition and effectiveness of Boards. Moreover the PRA expects firms to discuss succession planning and proposed changes to their board with supervisors irrespective of whether the proposed change relates to a function in scope of the SMR or not.

### Sharing Prescribed Responsibilities

2.36 PRA Prescribed Responsibilities can be allocated to more than one Senior Manager. However, where a firm allocates a PRA Prescribed Responsibility to more than one Senior Manager, each of those individuals will be deemed fully

accountable for that responsibility. PRA Prescribed Responsibilities can therefore be shared but not split among two or more SMFs.

2.37 Where a PRA Prescribed Responsibility is shared among more than one Senior Manager, the PRA expects the responsibility to be recorded identically in each of the Senior Manager's Statements of Responsibilities. However, firms can utilise the free text section in the Statements of Responsibilities to provide additional details on how a given shared Prescribed Responsibility applies to the different individuals sharing it in practice.

2.38 If a firm breaches a relevant requirement in an area relating to a shared Prescribed Responsibility, under the Presumption of Responsibility, all Senior Managers sharing that responsibility may be required to demonstrate that they took reasonable steps to prevent or stop the breach. In doing so, however, each Senior Manager would be expected to provide details on how they discharged the shared Prescribed Responsibility in practice; for instance by referring to the information in their respective Statements of Responsibilities.

### Prescribed Responsibilities relating to culture

2.39 An example of the interplay between the principles of appropriate individual accountability, which lies at the heart of the SMR, and collective decision-making can be found in the two Prescribed Responsibilities in Allocation of Responsibilities 4.1 relating to culture.

2.40 These Prescribed Responsibilities reflect the expectation set out in the PRA's Approach Documents that firms should have a culture that supports their prudent management and builds on the idea that boards and management of regulated firms should embed the principle of safety and soundness in the culture of the whole organisation.<sup>(2)</sup>

2.41 While the PRA acknowledges that a firm's culture is a collective matter for the board (as noted in the FRC Code), these responsibilities seek to ensure that the CEO and Chairman assume a leading role in the development and implementation of Relevant Firms' culture.

2.42 Large UK-headquartered banking groups comprising multiple Relevant Firms may wish to allocate the two Prescribed Responsibilities relating to culture to the group CEO and group Chairman as opposed to the CEOs and Chairmen of the individual legal entities, for instance where culture is a matter reserved for the group board. They are not, however, required or expected to do so. In this situation, it may be appropriate for the group CEO and Chairman to be

(1) PRA Policy Statement PS5/14, 'The PRA Rulebook', June 2014, paragraph 2.4; [www.bankofengland.co.uk/pr/Documents/publications/ps/2014/ps514.pdf](http://www.bankofengland.co.uk/pr/Documents/publications/ps/2014/ps514.pdf).

(2) 'The Prudential Regulation Authority's approach to banking supervision', paragraph 69; [www.bankofengland.co.uk/publications/Documents/prapproach/bankingappr1406.pdf](http://www.bankofengland.co.uk/publications/Documents/prapproach/bankingappr1406.pdf).

approved as Group Entity Senior Managers (SMF7) of each of the Relevant Firms in the group.

### Additional responsibilities

2.43 Firms are free to assign to a Senior Manager, and include in his or her Statements of Responsibilities, additional responsibilities not covered in the PRA's rules. Additional responsibilities must not, however, modify or qualify any responsibilities prescribed by the PRA.

## Statements of Responsibilities and Management Responsibilities Maps

### Statements of Responsibilities

2.44 The purpose of a Statement of Responsibilities is to set out clearly the areas of a firm's regulated activities which each Senior Manager is responsible for.

2.45 The PRA acknowledges that firms may need to include free text in Statements of Responsibilities to clarify and elaborate on the responsibilities of Senior Managers.

2.46 However, in order to avoid the risk of Statements of Responsibilities becoming unduly complex, heavily caveated or unclear, all of which would go against the spirit of the SMR, the PRA has a suggested 300 word limit (stated in the Statement of Responsibilities template form) on the amount of free text that firms can use to describe each responsibility (Prescribed and Additional) which they allocate to a Senior Manager. So, for example, where a firm allocates three responsibilities to a given Senior Manager, the PRA would normally expect these responsibilities to be described in no more than 900 words in total.

2.47 In some instances, simply allocating a PRA Prescribed Responsibility to a Senior Manager should suffice to make that person clearly and formally responsible for that area with no further elaboration required.

2.48 Conversely, there may be situations where a firm legitimately needs to exceed the suggested 300-word limit. For example, when describing the responsibilities of certain SMFs, notably Heads of Key Business Areas and Group Entity Senior Managers, which may apply to individuals performing a diverse range of roles and influencing the firm in different ways.

2.49 In any event, any free text which firms may add to describe a Senior Manager's responsibilities, must not unduly complicate, dilute or undermine the clarity of the individual's responsibilities.

2.50 In general the PRA expects the Statements of Responsibilities of NEDs in scope of the SMR to be less extensive than those of executive Senior Managers.

2.51 Section 62A of FSMA requires firms to submit a revised Statement of Responsibilities whenever there is a significant change in the aspects of the authorised person's affairs which the person is responsible for managing in performing the function.

2.52 In determining whether a change to a Senior Manager's role and responsibilities is significant, the PRA expects firms to consider all relevant factors, including but not limited to:

- the importance to the firm of the responsibilities being given up or taken on;
- whether the change alters the seniority of the Senior Manager in the firm or group;
- whether there are any changes to the identity, number or seniority of individuals reporting to the Senior Manager; and
- whether there are any changes to the skills, experience or knowledge required by the Senior Manager.

2.53 Whether a significant change has taken place will be determined on a case-by-case basis. However, the list below sets out non-exhaustive examples of potential significant changes which, in the PRA's view, may require the submission of a revised Statement of Responsibilities:

- a variation of the individual's approval, either at the firm's, the PRA's or FCA's initiative, resulting in the imposition of a condition or time limit;
- fulfilling or failing to fulfil a condition on approval imposed by the PRA or FCA;
- sharing or ceasing to share an SMF originally performed by one individual among two or more individuals; and
- the addition, re-allocation or removal of any of the following:
  - a PRA or FCA Prescribed Responsibility;
  - responsibility for a function under SYSC 4.7.8R of the FCA Handbook (FCA Overall Responsibility); or
  - any additional responsibility not covered above;

### Management Responsibilities Maps

2.54 Allocation of Responsibilities 6.1 requires firms to develop and maintain a Management Responsibilities Map, which must be a single, up-to-date document setting out management and governance arrangements.

2.55 There is no template for Management Responsibilities Maps; it is up to firms to produce their own. In doing so, the PRA expects them to accurately reflect their structure, size

and complexity including, where applicable, group governance arrangements.

### The Presumption of Responsibility under the SMR

2.56 This section sets out how the PRA will apply sections 66B(5) (also referred to as 'the Presumption of Responsibility') and 66B(6) (also referred to as 'the Reasonable Steps Defence') of FSMA in practice.

2.57 The PRA will consider the specific facts of each situation which may fall within the Presumption of Responsibility and will act as it considers appropriate in light of those facts. Consequently, this supervisory statement does not establish minimum standards or safe-harbours. The expectations and examples below are indicative, non-binding and non-exhaustive.

### Statutory framework

2.58 For the purposes of disciplinary action by the PRA under section 66 of FSMA, a person is guilty of misconduct if any of three conditions are met. One of these arises from the Presumption of Responsibility. It states that a person will be guilty of misconduct if the PRA finds that all the following criteria are met:

- the person is or was a Senior Manager in a Relevant Authorised Person;
- there has been or continues to be a contravention of a 'Relevant Requirement' (as defined in Section 66B(4) of FSMA) by the Firm; and
- the Senior Manager was at the relevant time responsible for the management of any of the Firm's activities in relation to which the contravention occurred.

2.59 The Senior Manager will, however, not be guilty of misconduct under section 66B(5) if he or she satisfies the PRA that he or she had taken such steps as a person in his/her position could reasonably be expected to take to avoid the contravention occurring (or continuing) ('Reasonable Steps Defence').

2.60 The PRA may take disciplinary action under section 66 of FSMA where it appears to the PRA that the person is guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against him or her, given the Presumption of Responsibility, subject to the Reasonable Steps Defence. The availability of the Reasonable Steps Defence means that the Presumption of Responsibility does not establish an 'absolute liability regime' for Senior Managers.

2.61 As with any disciplinary action that the PRA takes under section 66 of FSMA, the statutory process involves a period during which the person involved is able to make representations.

2.62 Under sections 66B(2) and (3) of FSMA, individuals, including Senior Managers, can also be guilty of misconduct if they breach a Conduct Rule or are knowingly concerned in a contravention of a Relevant Requirement by the firm. This supervisory statement does not explicitly consider these two potential grounds for misconduct. However, in respect of any individual situation, the PRA may consider whether the individual is guilty of misconduct by any of sections 66B(2), (3) or (5), solely or in combination. The PRA will consider each situation on its facts. There may be situations where a Senior Manager may be guilty of misconduct by virtue of a breach of the Conduct Rules under section 66B(2) as well under the Presumption of Responsibility.

2.63 There is no distinction made in FSMA between executive and non-executive Senior Managers in relation to the Presumption of Responsibility. However, the PRA's ability to apply the Presumption of Responsibility hinges on the scope of that responsibility in the first place; and the PRA recognises that the Prescribed Responsibilities of those NEDs which are in scope of the SMR are limited to particular non-executive roles. These differences should be recognised in their respective Statements of Responsibilities.

2.64 The Presumption of Responsibility recognises that individual Senior Managers should be held accountable for their individual contributions to collective decisions and their implementation insofar as those contributions are in scope of their Senior Manager responsibilities.

### Description of the operation of the Presumption of Responsibility

2.65 The Presumption of Responsibility arises where all the elements in Section 66B(5) of FSMA are met.

2.66 The first element, whether the individual is or was a Senior Manager at the time of the breach, will be a question of fact.

2.67 The second element is that there has been, or continues to be, a contravention of a Relevant Requirement by the firm. The contravention does not need to be material or significant and the PRA would be fettering its discretion if it only applied the Presumption of Responsibility in cases exceeding a certain level of materiality. However, in taking disciplinary action under section 66 of FSMA, the PRA must be satisfied that it is appropriate in all the circumstances to take action against the person and such circumstances may include the nature and seriousness of the contravention and assessing whether the reasonable steps defence has been raised.

2.68 The fact that the PRA might previously have made findings and reached a bilateral settlement with a firm in relation to some or all of its breaches does not bind either the PRA or the individual in considering whether this second element is satisfied.

2.69 The third element is that the Senior Manager was at the relevant time responsible for the management of any of the firm's activities in relation to which the contravention occurred.

2.70 Depending on the nature and extent of the firm's breach, and the scope of individual Senior Managers' responsibilities, it is possible that more than one Senior Manager could be responsible. In such circumstances, the PRA will consider whether it is appropriate to consider sanctioning one, some, or all such Senior Managers under the Presumption of Responsibility.

2.71 Whether a Senior Manager is or is not responsible for managing any of the firm's relevant activities will be a question of fact. Statements of Responsibilities and Management Responsibilities Maps should be relevant evidence but the PRA may look beyond these if it considers it appropriate. However, the more accurate and clear the Statements of Responsibilities and Management Responsibilities Maps are, the lower the likelihood that the PRA will need to refer to other documents as a means of identifying the Senior Managers Responsible for an area.

### The PRA's approach to the Reasonable Steps Defence

2.72 The PRA can only take action under section 66 of FSMA if it appears to the PRA that a Senior Manager is guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against the Senior Manager. A person will not be guilty of misconduct under the Presumption of Responsibility if the Senior Manager is able to satisfy the PRA that he or she 'had taken such steps as a person in [his or her] position could reasonably be expected to take to avoid the contravention occurring (or continuing)'.

2.73 On this point, the PRA expects the individual to submit evidence and make representations. The PRA would normally expect to engage in dialogue with the individual prior to issuing an initial Decision Notice.

2.74 Section 66B(6) involves the PRA assessing (a) the steps that the specific Senior Manager actually took, against (b) such steps as the PRA considers that a Senior Manager, in that position, could reasonably have been expected to take to avoid the contravention occurring (or continuing). The PRA's expectations of the steps in '(b)' will necessarily depend on the circumstances as they existed at the time. It is not the PRA's intention to apply standards retrospectively or with the benefit of hindsight. However, examples of the considerations that the PRA may consider in forming its view of (b) can include:

- the size, scale and complexity of the firm;
- what the Senior Manager actually knew, or a Senior Manager in that position ought to have known (taking into

account, among other factors, the length of time they have been in the role and handover arrangements to those new in a role);

- what expertise and competence the Senior Manager had, or ought to have possessed, at the time to perform his/her specific Senior Management Function;
- what steps the Senior Manager could have taken, considering what alternative actions might have been open to the Senior Manager at the time and the timeliness within which he or she could have acted;
- the actual responsibilities of that Senior Manager and the relationship between those responsibilities and the responsibilities of other Senior Managers in the firm (including in relation to any joint-responsibilities or matrix-management structures);
- whether the Senior Manager delegated any functions, taking into account that any such delegation should be appropriately arranged, managed and monitored;
- the overall circumstances and environment at the firm and more widely, in which the Senior Manager was operating at the time. For example, where a Senior Manager was subject to competing priorities, the PRA may consider whether the way in which he or she prioritised them was informed by an appropriate risk assessment.

2.75 In relation to '(a)' and the steps that a Senior Manager actually took to avoid the contravention occurring or continuing, examples of the steps that might be considered to be reasonable actions, depending on the circumstances, could include:

- pre-emptive actions to prevent a breach occurring, including any initial reviews of the business or business area on taking up a Senior Manager function;
- implementing, policing and reviewing appropriate policies and procedures;
- awareness of relevant requirements and standards of the regulatory system;
- investigations or reviews of the Senior Manager's area of responsibilities;
- where a breach is continuing, any response taken to that breach;
- structuring and control of day-to-day operations, including ensuring any delegations are managed and reviewed appropriately. This includes in relation to any 'matrix-management' arrangements;



- obtaining appropriate internal management information, and critically interrogating and monitoring that information;
  - raising issues, reviewing issues, and following them up with relevant staff, committees and boards;
  - seeking and obtaining appropriate expert advice or assurance, whether internal or external;
  - ensuring that the firm and/or relevant area has adequate resources, and that these are appropriately deployed, including for risk and control functions; and
  - awareness of relevant external developments, including key risks.
- 2.76 Evidence that the PRA might seek to obtain in respect of these kinds of matters could include:
- board and board committee minutes;
  - minutes of other internal meetings;
  - Statements of Responsibilities and Management Responsibilities Maps;
  - organisation charts and information on reporting lines;
  - any other internal materials, for example, emails or telephone recordings; and
  - regulatory correspondence and interviews.

## 3 The PRA's Certification Regime

3.1 This chapter sets out the PRA's expectations of how firms should act when deciding which roles are 'certification functions' (as defined in the Certification Part of the PRA Rulebook) requiring a certificate to be issued by the firm to the person performing the function.

### Relationship between the Certification Regime and the PRA's Remuneration rules

3.2 The PRA has specified certification functions by reference to the concept of a 'significant risk taker'.

3.3 For CRR firms, both the definition of a 'significant risk taker' for the purposes of the Certification Regime and the definition of a 'material risk taker' in the PRA's rules in the Remuneration Part of the Rulebook ('Remuneration rules') refer to the Material Risk Takers Regulation,<sup>(1)</sup> which sets out qualitative and quantitative criteria for identifying 'staff whose professional activities have a material impact on an institution's risk profile'.

3.4 However, it should be noted that some individuals classified as material risk takers under the Remuneration rules will not fall within the Certification Regime. In particular, anyone who performs an SMF will not be treated as performing a certification function for that firm.<sup>(2)</sup> In addition, NEDs will not fall within the Certification Regime (unless, in addition to their NED function, they also perform an additional function which is a certification function, which the PRA would not expect would normally be the case).

3.5 There may also be employees who are classified as material risk takers but who are not sufficiently involved in a regulated activity of the firm to meet the statutory test for a certification function. This may, for example, be the case where the individual is employed by an overseas subsidiary of the UK-authorized firm; such a person may be a material risk taker under the PRA's Remuneration rules as these will apply at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established outside the European Economic Area. But if they have no involvement in a regulated activity of the UK-authorized firm, the effect of Certification 2.2 is that they would not be performing a certification function.

3.6 The PRA expects that in a CRR firm only those individuals who are material risk takers as defined in the Remuneration

rules could be performing a certification function specified by the PRA. However, the FCA's Certification Regime is wider and also includes individuals who are not 'material risk takers'.

3.7 By virtue of Article 4(2)–(5) of the Material Risk Takers Regulation, a firm may, where certain conditions are satisfied, deem that an employee who meets any quantitative criterion in Article 4(1) but none of the criteria in Article 3 of that Regulation, is not a 'material risk taker'. In such cases, the firm should not treat that employee as a 'significant risk taker' for the purposes of the Certification Regime.

3.8 Credit unions are not subject to the CRR or the associated remuneration requirements. Therefore, they will not have an existing obligation to identify material risk takers for remuneration purposes and the PRA considers that many of the criteria in the Material Risk Takers Regulation would not, in practice, be relevant to credit unions. Instead, the PRA has created a separate, simplified definition of certification functions for credit unions. This will incorporate the elements of the material risk taker criteria that the PRA believes to be relevant to a credit union.

### Identifying functions and describing them in certificates

3.9 The PRA's approach to specifying certification functions makes any function performed by a significant risk taker for a firm a certification function (to the extent that the function will require the employee to be involved in a regulated activity of the firm, and provided that the employee is not performing any controlled function for the firm).

3.10 However, this does not mean that the PRA expects firms to issue multiple certificates to each employee that is a 'significant risk taker'. Rather, in a certificate, a firm may describe the function performed by an employee in broad terms, and without listing all the activities that function may involve. A firm should assess whether the employee is fit and

(18) Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (Material Risk Takers Regulation); <http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0604&from=EN>.

(19) It is however possible that an individual may perform roles at more than one regulated firm, in which case it would be possible for that individual to perform a senior management function at one firm and a certification function at another firm.

proper to perform all aspects of the function as described by a certificate. The factors the PRA requires a firm to take into account when making this assessment are set out in the Fitness and Propriety Part and in Chapter 4 of this supervisory statement.

## Moving functions during the certification year

3.11 In cases where a certified employee's role changes to involve a new certification function part way through the twelve-month period for which their certificate is valid, and if that new function may have different requirements relating to personal characteristics, the level of competence, knowledge and experience, qualifications or training, the PRA expects the firm to assess whether the employee is fit and proper to

perform that new function before they start. A firm should not wait until the point of annual reassessment to determine whether the employee is fit and proper for the new function.

## Associated requirements in FSMA

3.12 In addition to the rules in the Certification Part of the PRA Rulebook, firms should also take account of section 63E (*Certification of employees by Relevant Authorised Persons*) and section 63F (*Issuing of certificates*) of FSMA; for example, in relation to the definition of an 'employee', the content of a certificate, the period for which a certificate is valid, the procedure to be followed in the event of a refusal by a firm to issue a certificate and record keeping.

## 4 Assessing fitness and propriety

4.1 This chapter sets out the factors that the PRA:

- will take into account when assessing whether an individual is fit and proper to perform a SMF; and
- expects firms to take into account when assessing whether an individual is fit and proper to perform:
  - an SMF specified in PRA rules;
  - a certification function specified in PRA rules; or
  - a notified NED function specified in PRA rules (that is, a NED in a CRR firm who is not approved by the PRA or FCA to perform a controlled function at that firm).

### Assessing fitness and propriety

4.2 The PRA's rules in Fitness and Propriety state that when deciding whether a person is fit and proper, a firm must be satisfied that the person has appropriate qualifications, training, competence and personal characteristics needed to perform his or her function effectively and in accordance with any relevant requirements, and to enable sound and prudent management of the firm.

4.3 Section 61(2) of FSMA provides that the PRA may have regard to these rules (among other things) when determining an application for approval to perform an SMF.

4.4 In assessing whether an individual is fit and proper to perform an SMF, including whether the person complies with the rules referred to above, the PRA will have regard to the person's:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

4.5 Firms should also have regard to the factors above when they are assessing whether an individual is fit and proper to perform an SMF or certification function specified by the PRA.

4.6 The PRA will also have regard to the European Banking Authority's Guidelines on the assessment of the suitability of members of the management body and key function holders

(the EBA Suitability Guidelines) and in particular to the Assessment Criteria set out in Title II, Chapter IV of those Guidelines.<sup>(1)</sup>

4.7 In complying with the rules in the Fitness and Propriety Part of the Rulebook, firms should also have regard to the EBA Suitability Guidelines as appropriate. In determining a person's honesty, integrity and reputation, the PRA will have regard to *all* relevant matters which may have arisen either in the United Kingdom or elsewhere. The PRA will consider whether a matter is relevant to the requirements and standards of the regulatory system.

4.8 For example, conviction for a criminal offence will not automatically mean an application will be rejected. The PRA will treat each candidate's application on a case-by-case basis, having regard to a range of factors which may include, but are not limited to:

- the seriousness of, and circumstances surrounding, the offence;
- the explanation offered by the convicted person;
- the relevance of the offence to the proposed role;
- the passage of time since the offence was committed; and
- evidence of the individual's rehabilitation.

4.9 When determining a person's financial soundness the PRA will not normally require a candidate for an SMF to supply a statement of assets or liabilities. The PRA would not expect a person being of limited financial means to, in itself, affect his or her suitability to perform a certification function or an SMF.

4.10 The PRA would expect a firm to take a similar approach to that set out above when assessing whether a person is fit and proper for an SMF or a certification function.

### Assessing the fitness and propriety of Notified NEDs

4.11 The United Kingdom is required under the following EU Directives and guidelines to ensure that all members of the management body of a Relevant Firm are fit and proper:

(1) The EBA's Guidelines (EBA/GL/2012/06) are available at [www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06-Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf](http://www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06-Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf).

- CRD IV (Articles 13, 88 and 91);
- MiFID (Article 9); and
- the EBA Suitability guidelines.

4.12 CRD IV requires Member States to ensure that board members of CRR firms 'at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties'. According to the EBA Suitability Guidelines, this includes ensuring the appointment of all board members is subject to a regulatory approval or notification process. The EBA Suitability Guidelines recognise that as members of the management body have specific roles, the assessment process and criteria can differ.

4.13 In order to comply with these EU obligations, Notified NEDs are subject to assessment and notification requirements by the PRA in lieu of pre-approval. Under these requirements firms must:

- assess the fitness and propriety of all NEDs not subject to regulatory approval on appointment and periodically thereafter. The PRA rules do not define appointment for these purposes but appointment should generally be understood as being linked to a contractual arrangement between the firm and the Notified NED, ie a letter of appointment;
- notify the PRA that such NEDs have been deemed fit and proper; and
- notify the PRA of any other information which would be reasonably material to the assessment of a NED's fitness and propriety.

4.14 The EU obligations listed above do not apply to credit unions. Consequently, the appointment of a NED who does not perform an SMF in a credit union is not subject to either pre-approval or notification, although credit unions are being

required to ensure that such NEDs are fit and proper to perform their role and that they observe key conduct standards.

4.15 The approach and criteria for assessing the fitness and propriety of Notified NEDs should, for the most part, be identical to that used to assess NEDs in scope of the SMR. Differences may, however, arise, where the specific responsibilities of a NED in scope of the SMR require specific expertise or skills.

4.16 Firms should address issues and concerns about a Notified NED's performance or probity in the same way they would address concerns involving a NED in scope of the SMR. This may include sharing these concerns with the PRA if relevant or sufficiently important. Similarly, where the PRA has concerns about a Notified NED, it will normally share them via the Chairman or SID.

4.17 In addition to complying with the PRA's EU obligations, supervisors will be able to use the information provided in these notifications to assess the fitness and propriety of the Notified NED and inform supervision's views on the overall balance and composition of the Board.

4.18 Changes to the composition of a firm's board, including the appointment of a Notified NED, should be reflected in a Relevant Firm's Management Responsibilities Map.

## Criminal background checks

4.19 In England and Wales, a firm should get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks). There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving Access NI). If the candidate is employed by a contractor, the firm may ask the contractor to obtain the certificate. A firm should not send any DBS certificates (or equivalent) or copies of such certificates to the PRA.

# 5 Conduct rules and associated notification requirements

5.1 This chapter sets out the PRA's expectations of how individuals who are subject to the Individual Conduct Rules and the Senior Manager Conduct Rules (referred to here as 'the conduct rules') in the Conduct Rules Part of the PRA Rulebook should comply with them. However, this is not an exhaustive statement of the standards required to comply with the conduct rules.

5.2 This chapter also sets out the PRA's expectations of how deposit-takers and PRA-authorised investment firms will comply with the associated rules in Notifications 11.

## Persons and activities to which the Conduct Rules Part apply

5.3 The Conduct Rules Part applies to persons performing a certification function specified by the PRA, or an SMF specified by either regulator. An employee performing such a function is still subject to the rules regardless of whether the firm has issued a certificate or the person has been granted approval.

5.4 Where an employee is performing a function that would have been an SMF but for the rule at Senior Management Functions 2.3 (which provides a twelve-week grace period to cover absences which are temporary or reasonably unforeseen), the effect of Conduct Rules 1.1(2)(c) is to apply the Individual Conduct Rules (but not the Senior Manager Conduct Rules) to that employee. This means that the employee is not held to the same standards as a permanent Senior Manager, but is still required to comply with the more general standards set out in the Individual Conduct Rules.

5.5 Where an employee is performing a function which would have been a certification function but for Certification 2.4 (ie it is to cover an absence of a certified employee which is reasonably unforeseen and is for less than two weeks), the performance of that function does not cause any of the conduct rules to apply to that employee.

5.6 The conduct rules apply only to an individual's conduct in relation to the activities of the firm at which they are employed or are approved to perform an SMF.<sup>(1)</sup> These rules do not relate to a person's actions in their private life if those actions are unrelated to the firm's activities and the PRA would not generally expect to assess such actions against its rules. However, an individual's wider behaviour could affect his or her ability to comply with rules. The way in which a

person behaves in their private life may be relevant to any assessment, by the PRA or by the firm itself, of whether that person is or remains fit and proper.<sup>(2)</sup>

## Compliance with the rules

5.7 In assessing compliance with or a breach of a conduct rule, the PRA will have regard to the context in which a course of conduct was undertaken, including:

- the precise circumstances of the individual case;
- the characteristics of the particular function performed by the individual in question; and
- the behaviour to be expected in that function.

5.8 A person will only be in breach of any of the conduct rules where they are personally culpable. Personal culpability arises where:

- a person's conduct was deliberate; or
- the person's standard of conduct was below that which would be reasonable in all the circumstances.

## Individual Conduct Rules<sup>(3)</sup>

**Individual Conduct Rule 2:** *'You must act with due skill, care and diligence.'*

## Acting with due skill, care and diligence as a manager

5.9 It is important for a manager (including, but not limited to, a person performing an SMF) to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, the manager should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

5.10 Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the firm beyond those

(1) Such actions are referred to in Section 64A (4)–(5) of FSMA as the performance of 'qualifying functions'

(2) Information on the factors the PRA will take into account when making such an assessment can be found in the Fitness and Propriety Part of the PRA Rulebook and Chapter 4 of this Supervisory Statement.

(3) Individual Conduct Rule 1 is: 'You must act with integrity'. The PRA does not believe it is necessary to provide guidance on what it means to act with integrity

reasonably anticipated, a manager should require explanations from those who report to him or her. Where those explanations are implausible or unsatisfactory, the manager should take steps to test the veracity of those explanations.

**Individual Conduct Rule 3:** *'You must be open and co-operative with the FCA, the PRA and other regulators.'*

5.11 The PRA expects a person would normally report information to the regulators through the firm's mechanisms for reporting information to the regulators. Relevant factors in assessing compliance with Individual Conduct Rule 3 include:

- whether a person has provided information in an appropriate manner into the firm's mechanisms for reporting to the regulator(s);
- whether the person has taken steps to influence a decision so as not to report to the regulator concerned;
- whether the person has acted in a way intended to obstruct the reporting of information to the regulator concerned;
- where relevant to the person's role, the way in which the person has operated, managed or overseen the mechanisms for reporting referred to above; and
- the way in which a person has responded to requests from a relevant regulator.

### Senior managers

5.12 The factors the PRA would expect to take into account when assessing whether a person performing an SMF has complied with Senior Manager Conduct Rules 1–4 include:

- whether the person exercised reasonable care when considering the information available;
- whether the person reached a reasonable conclusion upon which to act;
- the nature, scale and complexity of the firm's business;
- the person's role and responsibilities; and
- the knowledge the person had, or should have had, of regulatory concerns, if any.

5.13 A person's Statement of Responsibilities will be important evidence of their roles and responsibilities, but there may be cases where a person is responsible for additional matters which have not been included in their Statement of Responsibilities. This could occur if the Statement of Responsibilities has not been kept up to date. Therefore, a person's Statement of Responsibilities will not

always be treated as a complete list of the matters for which the PRA regards the person as being responsible.

**Senior Manager Conduct Rule 1:** *'You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.'*

5.14 Strategy and plans will often dictate the risk which the business is prepared to take on and high-level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be higher. A person performing an SMF should take this into account in organising the business for which they are responsible.

5.15 The organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff. Where staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.

**Senior Manager Conduct Rule 2:** *'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.'*

5.16 A person performing an SMF should take reasonable steps both to ensure the firm's compliance with the relevant requirements and standards of the regulatory system, and to ensure that all staff are aware of the need for compliance.

5.17 A person performing an SMF need not personally put in place the systems of control in the business. Whether the SMF does this depends on the SMF's role and responsibilities. The SMF should, however, take reasonable steps to ensure that the business has operating procedures and systems which include well-defined steps for complying with relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

**Senior Manager Conduct Rule 3:** *'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.'*

5.18 A person performing an SMF will not always personally manage the business on a day-to-day basis. The extent to which this is done by the SMF manager will depend on a number of factors, including the nature, scale and complexity of the business and the SMF manager's position within it. The

larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The PRA will look to the SMF manager to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to the SMF manager's attention, he or she should deal with them in an appropriate way.

5.19 Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with that part of the business exemplifies a failure to comply with Senior Manager Conduct Rule 3.

**Senior Manager Conduct Rule 4:** *'You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.'*

5.20 Senior Manager Conduct Rule 4 and Individual Conduct Rule 3 both apply to a person performing an SMF.

5.21 Individual Conduct Rule 3 relates primarily to responses from individuals to requests from the appropriate regulator and an individual's involvement in a firm's mechanisms for reporting to a regulator. However, Senior Manager Conduct Rule 4 imposes a greater duty on SMFs to disclose any information the appropriate regulator would reasonably expect. This includes making a disclosure in the absence of any request or enquiry from the appropriate regulator. By virtue of the position, a person performing an SMF is likely to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something the PRA or FCA would reasonably expect notice of.

5.22 The PRA would not expect a person performing an SMF to disclose information which the person knows that the firm or another senior manager has already disclosed to the PRA.

5.23 The PRA expects that in disclosing appropriately, the person will need to disclose:

- sufficient information for the regulators to be able to understand the full implications of the matter being disclosed;
- in a timely manner; and
- to an appropriate contact at the PRA or FCA (or both), which may include the firm's usual supervisory contact.

## Application of the conduct rules to NEDs in scope of the SMR and Notified NEDs

5.24 NEDs in scope of the PRA's SMR are subject to the conduct rules, including those applicable only to Senior Managers. As was the case under the APR, breaches of the conduct rules by NEDs in scope of the SMR are directly enforceable against the individual Senior Manager.

5.25 Some conduct rules apply to NEDs in scope of the SMR in respect of their limited duties only. For instance, the Chair of the Remuneration Committee would be likely to discharge his or her responsibilities under Senior Manager Conduct Rule 2 if he or she takes reasonable steps to ensure that the Remuneration Committee complies with the requirements of Remuneration and any specific and relevant requirements imposed under section 55M of FSMA, and remains free from undue executive interference in decision-making pursuant to SYSC 7.1.22R (for credit unions) and Risk 3.5 (for CRR firms).

5.26 By contrast, certain Conduct Rules, such as the duty to act with integrity, apply to NEDs in scope of the SMR and executive Senior Managers in very similar ways.

5.27 CRR firms are also required by Fitness and Propriety 3.1 to require that all members of their management body — including Notified NEDs to whom the Conduct Rules do not apply directly — observe Individual Conduct Rules 1–3 and Senior Manager Conduct Rule 4.

5.28 The requirements to 'be open and co-operative with the FCA, the PRA and other regulators' (Individual Conduct Rule 3) and 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice' (Senior Manager Conduct Rule 4) are particularly important for NEDs. As the PRA Approach Document states, if any director has *'concerns about the firm or its management and governance, the PRA will expect them to press for action to remedy the matter and, if those concerns are not addressed, to alert the PRA.'*<sup>(1)</sup>

## Notifications by firms to the PRA (Notifications 11)

5.29 The requirement in Notifications 11.2 reflects section 64B(5) of FSMA and requires firms to notify the PRA if they know or suspect that a person subject to the PRA's conduct rules has breached one of those rules. In practice, the PRA expects that firms will only conclude that it is necessary to report a 'suspected breach' where there are reasonable grounds for the suspicion held. The PRA does not expect firms to report every instance where there is some possibility that a

(1) *The Prudential Regulation Authority's approach to banking supervision* (April 2013) at paragraph 78; [www.bankofengland.co.uk/publications/Documents/paapproach/bankingappr1304.pdf](http://www.bankofengland.co.uk/publications/Documents/paapproach/bankingappr1304.pdf) and *The Prudential Regulation Authority's approach to insurance supervision* (June 2014) at paragraph 88; [www.bankofengland.co.uk/publications/Documents/paapproach/insuranceappr1406.pdf](http://www.bankofengland.co.uk/publications/Documents/paapproach/insuranceappr1406.pdf)



breach has been committed if there are no reasonable grounds on which to believe that a breach has occurred. Where a firm has reported a suspected or actual breach of a conduct rule, it should notify the PRA of any different determination it subsequently makes in relation to that matter. For example, if the firm reports a suspected breach and as a result of subsequent investigation determines that the person had not breached the rules, it should notify the PRA of that determination (Notifications 11.4).

5.30 Where a firm has reported a breach of a conduct rule, and subsequently takes disciplinary action against the person for matters relating to the breach, the firm should make a separate notification of the disciplinary action.

5.31 The PRA expects that firms will report details of known or suspected breaches, including those which do not come to the firm's attention until after the person concerned has left the firm. Firms should consider whether the person was an employee or performing an SMF for the firm at the time the breach is thought to have occurred (rather than at the point at which it came to the firm's attention).

5.32 The obligations to make a notification under section 64B (*'Rules of conduct: responsibilities of relevant authorised persons'*) or section 64C (*'Requirement for relevant authorised persons to notify regulator of disciplinary action'*) of FSMA apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service) or any other arrangements entered into by a firm and an employee upon termination of the employee's employment. A firm should not enter into any such arrangements or agreements that could conflict with its obligations under these sections.

5.33 The provision of information to a regulator which is false or misleading may be a criminal offence under section 398 of FSMA.

5.34 The notification requirements in Notifications 11 complement and do not override existing requirements according to which firms have to report information to the PRA, for example under PRA Fundamental Rule 7 or other Notifications rules.

5.35 Where a notification under Notifications 11.2 relates to a person performing an SMF, a firm should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the PRA by telephone or by other prompt means of communication, before submitting a written notification. Oral notifications should be given directly to the relevant authorised person's usual supervisory contact at the PRA. An oral notification left with another person or left on a voicemail or other automatic messaging service is not considered appropriate.

5.36 The PRA is entitled to rely on any information it receives from a firm and to consider any notification received under Notifications 11 as being made by a person authorised by the firm to do so. A firm should therefore consider whether it needs to put procedures in place to ensure that only appropriate employees make notifications under Notifications 11 on its behalf to the PRA.

5.37 Notified NEDs are not directly bound by the Conduct Rules and are therefore exempt from the accompanying notification requirements in section 64B (5) of FSMA and Notifications 11.2. However, if a firm becomes aware of information which would reasonably be material to the assessment of a current or former Notified NED's fitness and propriety, it must, under Fitness and Propriety 4.3, inform the PRA in writing as soon as practicable.