

Supervisory Statement | SS35/15

Strengthening individual accountability in insurance

August 2015



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



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1 Introduction

1.1 This supervisory statement sets out the approach of the Prudential Regulation Authority (PRA) to strengthening individual accountability in insurance. It is addressed to:

- UK Solvency II insurance firms and groups;
- third-country insurance branches within the scope of rules transposing the Solvency II Directive; and
- the Society of Lloyd's and managing agents.

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 firms should comply with the regulatory framework of the Senior Insurance Managers Regime (SIMR).

1.3 The PRA has considered matters to which it is required to have regard, and it considers that this statement is compatible with the Regulatory Principles and relevant provisions of the Legislative and Regulatory Reform Act 2006. This statement is not expected to have any direct or indirect discriminatory impact under existing UK law. In particular the statement sets expectations regarding:

- the Senior Insurance Managers Regime (SIMR);
- the application of Conduct Standards and associated notifications; and
- assessing fitness and propriety.

1.4 This statement has been subject to public consultation and reflects the responses received by the PRA.¹²

¹ This statement combines draft supervisory statements that were consulted on in CP26/14, '*Senior Insurance Managers Regime: a new regulatory framework for individuals*', November 2014; www.bankofengland.co.uk/pru/Pages/publications/cp/2014/cp2614.aspx; and CP7/15, '*Approach to Non-Executive Directors in banking and Solvency II firms & Application of the presumption of responsibility to senior managers in banking firms*', February 2015; www.bankofengland.co.uk/pru/Pages/publications/cp/2015/cp715.aspx.

² Please see also the feedback provided in PS22/15, '*Strengthening individual accountability in insurance: responses to CP26/14, CP7/15 and CP13/15*', August 2015; www.bankofengland.co.uk/pru/Pages/publications/ps/2015/ps2215.aspx.

2 The Senior Insurance Managers Regime (SIMR)

2.1 This chapter sets out the PRA's expectations of how firms, and individuals performing a Senior Insurance Management Function (SIMF) (Senior Insurance Managers), comply with the SIMR. In particular, this chapter clarifies:

- the scope of the SIMR;
- the identification of key functions; and
- the allocation of responsibilities to individuals.

2.2 This chapter should be read in conjunction with:

- the relevant parts of the PRA Rulebook namely Insurance – Senior Insurance Management Functions, Insurance - Allocation of responsibilities, Conditions Governing Business, and Insurance - Fitness and Propriety;
- the relevant European legislation;
- the Financial Conduct Authority's (FCA's) rules and guidance on its corresponding Approved Persons Regime (APR); and
- CP18/15 'Corporate governance: Board responsibilities' which consults on a supervisory statement on the PRA's expectations of boards thereby complementing the SIMR's focus on individual accountability.¹

Senior Insurance Management Functions (SIMFs)

2.3 This section sets out the PRA's expectations of how firms should comply with, and interpret, the rules on SIMFs in the Insurance — Senior Insurance Management Functions Part of the Rulebook, which govern the scope of the PRA's SIMR.

2.4 In view of the need to establish that an individual with appropriate skills, experience and personal characteristics is responsible for each SIMF, the PRA does not expect persons other than natural persons to be approved for a SIMF.

Criteria for a 'Group Entity Senior Insurance Management Function'

2.5 The definition of a Group Entity Senior Insurance Manager (SIMF 7) will only encompass those individuals who meet the criteria in section 59ZA of FSMA, and who are also deemed to be in a key function (as defined in the PRA Rulebook). This is likely to include the chairman of the group, or the chair of a key group board committee where that committee has direct responsibility for oversight of the affairs of the firm. It is also expected to include those Group Executive Directors and Senior Insurance Managers who have responsibility for some aspect of the safety and soundness of the group, or of the PRA regulated firms in the group.

¹ PRA CP18/15, 'Corporate governance: Board responsibilities', May 2015;
www.bankofengland.co.uk/pru/Pages/publications/cp/2015/cp1815.aspx.

2.6 However, the PRA believes that this definition of a SIMF 7 should not normally encompass Non-Executive Directors (NEDs) in another group company, (other than the chairman of the group board or the chair of a key group board (eg Audit Committee) where that committee has direct responsibility for oversight of the affairs of the firm). It should also not normally encompass individuals who are either in a role with a predominately conduct focus, or who are performing relatively junior managerial roles.

2.7 This function should include any individual within the group (eg a group CEO) whose decisions and actions had to be regularly taken into account by the governing body of the firm.

2.8 The PRA expects individuals performing the Group Entity Senior Insurance Manager role to have regard for the duties of NEDs on the board of a subsidiary through which the Group Entity Senior Insurance Manager is directing business. The board of the subsidiary is expected to provide proper oversight of the subsidiary and has regulatory duties under FSMA and fiduciary duties under the Companies Act 2006 in this respect. This means a Group Entity Senior Insurance Manager may direct elements of the business which form part or all of a subsidiary only to the extent the board agrees to this. In practice this means close liaison between the Group Entity Senior Insurance Manager and the NEDs of the subsidiary including full and transparent passage of information. The PRA will hold the NEDs and the Group Entity Senior Insurance Manager accountable for this collaboration.

2.9 The PRA expects that the allocation of responsibilities should be made in such a way that it does not undermine the collective fiduciary, legal and regulatory responsibilities of the board, but rather complements and informs the operation of collective decision-making mechanisms.

International groups

2.10 The scope of the SIMFs under the SIMR only applies in relation to a firm's UK-regulated activities. This inherently limits the extent to which it can apply to individuals in a 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 SIMF on behalf of a firm.

2.11 The PRA is mindful of both the territorial scope of the SIMR and the governance arrangements of international groups 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 at UK firms. The PRA and FCA followed a similar approach under the APR, which resulted in a small number of individuals based overseas being approved as Significant Influence Functions (SIFs) of UK firms.

2.12 Consequently, if an individual located overseas is directly responsible for taking decisions about how a UK firm should conduct its UK-regulated activities and has not delegated this responsibility to a Senior Insurance Manager based in the United Kingdom, it is likely that he or she will require approval as SIMF 7 (or, in some cases, another SIMF).

2.13 The PRA does not aim or expect to approve individuals as SIMF 7 in every UK firm which is part of an overseas-headquartered group. Whether these entities are required to have any individuals approved as SIMF 7 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 SIMF 7 on behalf of a firm. In doing so, they should take into account:

- the respective organisational structures of the group and the firm;
- the split of key responsibilities between the group and UK boards and senior management; and
- whether SIMFs 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

2.14 Articles 258 & 271 of the EU Solvency II Delegated Regulation prevent individuals from performing specific combinations of SIMFs at the same firm, or require certain SIMFs to be performed independently of any other functions or activities of the firm.

2.15 Where neither PRA rules nor the EU Solvency II Delegated Regulation prevent an individual from performing a combination of SIMFs, the PRA may still decide not to approve the individual to perform the desired combined functions in some circumstances, such as where the PRA considers that:

- there could be a significant conflict of interest from combining the functions (other than on a temporary basis), that would be difficult to manage satisfactorily, such as Chairman and CEO; or
- the individual's qualifications, training, competencies and/or personal characteristics render them fit and proper to perform one function but not the other(s).

2.16 The PRA envisages that a person may be approved to carry out Controlled Functions (CFs) in more than one firm, subject to the individual having sufficient time and resource, and the ability to address any resulting conflicts of interest, and to the combination of duties not preventing the person from carrying out all their responsibilities in a sound, honest, and objective manner.

Sharing a PRA SIMF

2.17 In certain circumstances, including but not limited to job-share arrangements, a firm may be allowed to have more than one individual responsible for a single SIMF.

2.18 The PRA expects to see a clear explanation and justification of how the relevant responsibilities are allocated or shared between the individuals responsible for the SIMF, along with the reporting lines and lines of responsibility for each individual.

2.19 However, the PRA expects SIMFs to be shared between individuals only where appropriate and justified. This individual(s) performing a SIMF should be the most senior person(s) responsible for that area of the firm.

Principle of proportionality

2.20 In accordance with the principle of proportionality, and depending on the nature, scale and complexity of the business activities and risks, the PRA expects that smaller firms may be able to combine responsibilities for different functions with a single individual. This will depend on the entity meeting the need for transparency and accountability, the need for appropriate management of any conflicts of interest, and the need for at least two persons to be effectively running the firm.

2.21 A third country branch undertaking must have at least one individual approved to perform the Head of Third Country Branch SIMF as set out in Insurance — Senior Insurance Management Functions 6 (and, where relevant, a With-Profits Actuary). It is not required to have individual(s) approved in advance to perform any of the other key functions, but a third country branch undertaking will need to notify the PRA of the identity of key function holders and provide relevant information about them.

2.22 However, if a third country branch undertaking has some individuals who are appointed to either the chief finance officer, chief risk officer, chief actuary, chief underwriting officer or head of internal audit functions, and whose role is dedicated to the undertaking's operations in the UK, then the PRA expects firms to apply for the approval of such individuals for the relevant functions. They may also wish to have some additional individuals approved, so as to be able to meet the requirement to have all the Prescribed Responsibilities, as set out in Insurance - Allocation of Responsibilities 2.3, allocated to an approved person.

Key functions

2.23 In accordance with the rules in the Conditions Governing Business Part of the Rulebook and the EU Solvency II Delegated Regulation, the system of governance of each Solvency II insurance firm and group needs to cover at least the following key functions: risk-management, compliance, internal audit, and actuarial. The system of governance may also include additional key functions that are of specific importance to the sound and prudent management of the firm, as assessed by the firm or group concerned.

2.24 When assessing whether an additional key function exists, firms and groups are expected to take into consideration whether:

- the function is essential for the proper functioning of the firm or group considering its risk profile and business;
- the function assumes material or complex financial market risks as part of its activities, or assumes material credit risk through the activity of providing loans;
- the function needs a competence that is difficult to replace; or
- any failure in the operation or effectiveness of the function may seriously threaten the interests of the insurance firm or group or its policyholders.

2.25 The PRA does not consider that key function is intended to be a closed category. In order to facilitate consistency, the PRA suggests that firms may wish to consider whether the following functions would meet the criterion of being of specific importance to the sound and prudent management of the firm, so as to be considered a key function:

- investment function (see 2.27 below);
- claims management function (especially for general or health insurance firms);
- IT function; and
- reinsurance function (if separate from the other key functions, e.g. risk management).

2.26 These are functions whose operation, if not properly managed and overseen, could for some firms, depending on the nature and complexity of the business, potentially lead to significant losses being incurred or to a failure in the ongoing ability of the firm to meet its obligations to policyholders.

2.27 The PRA expects that investment managers and traders, who either oversee or undertake significant, or frequent, investment (or currency) activities on behalf of the firm (or any of its clients or policyholders) would normally be considered to be performing a key function.

2.28 The PRA would normally expect a key function holder to report into a very senior figure at the firm such as the CEO or possibly some other SIMF holder. In cases where there is more than one head of a function, the PRA anticipates that responsibility for a particular key function might be shared between more than one individual. This would be in a similar way, and subject to similar restrictions, to the sharing of responsibilities by two SIMF holders (see paragraphs 2.17 to 2.19 above).

2.29 In accordance with Insurance – Allocation of Responsibilities 5, Solvency II insurance firms should prepare and maintain a governance map. This should show the key functions at the firm, and the relevant individuals (termed key function holders) responsible for these functions, along with their lines of accountability and responsibility both within that firm and any wider group. This governance map should be set out and maintained in a clear and coherent manner.

2.30 A firm or group can freely decide how to organise each function in practice, taking into account the nature, scale and complexity of the risks inherent in its business, and the need for an effective system of governance with a clear allocation of responsibilities. Within this structure the PRA believes that firms will be able to operate within their intended risk appetite and agreed risk strategy and risk profiles without the need for all executive decisions to be taken to the board. However, it is expected that appropriate oversight of executive decisions will continue to be made by the board as part of its oversight function, promoting a culture of effective risk management.

2.31 Performance of each of the above key functions may be outsourced to another undertaking, in accordance with the provisions in the EU Solvency II Regulations, and with guidelines issued by the European Insurance and Occupational Pensions Authority (EIOPA). However, there also needs to be appropriate oversight of any outsourced functions. The PRA expects the governance map to set out which key functions have been outsourced (in whole or in part), the name of the service provider, and the identity of the key function holder within the firm who has the responsibility for oversight of that function.

2.32 The activity of ‘effectively running the firm’ is normally expected to include all the members of the governing body, as well as those individuals on the governing body of a parent or other group company who are exercising the Group Entity Senior Insurance Management function. As indicated in the EIOPA guidelines on Systems of Governance, it would also include the members of the senior management (such as the CEO) who are responsible for high level decision making, and for implementing the strategies devised, and the policies approved, by the board.

2.33 The PRA expects that firms and groups should have clear structures of accountability and delegation of individual and collective responsibilities, including checks and balances to prevent dominance by an individual. Senior individuals remain accountable for the actions of

those to whom they delegate responsibilities, including in particular where firms outsource functions to third parties.

2.34 Third country branch undertakings will also need to establish which are the key functions in respect of the branch's operations and include at least the four minimum key functions specified in the Directive. The rules in Insurance - Fitness and Propriety 4 will then apply in respect of those key functions. In particular, the relevant individuals responsible for these key functions will need to be notified to the PRA for an assessment of their fit and proper status if they will not directly be in either a PRA SIMF or FCA CF.

Allocation of responsibilities to Senior Insurance Managers and NEDs

2.35 The statutory framework of the SIMR contains fewer obligations than the Senior Managers Regime (SMR) for deposit-takers and PRA-regulated investment firms. In particular, under FSMA individuals who are subject to pre-approval at insurance firms are not subject to the presumption of responsibility and prospective criminal liability in case of firm failure.

2.36 There are a number of responsibilities inherent in the definition of each SIMF in the Insurance – Senior Insurance Management Functions Part of the Rulebook which should be read in conjunction with the Conditions Governing Business Part of the Rulebook, and the EU Solvency II Delegated Regulation.

2.37 In addition, Insurance - Allocation of Responsibilities 3 sets out a number of 'Prescribed Responsibilities' which cover:

- the firm's implementation and operation of the SIMR;
- the culture and standards within the firm; and
- a number of areas in which the PRA has specific interest as a prudential regulator.

2.38 The PRA requires firms to allocate PRA Prescribed Responsibilities to any Senior Insurance Manager or director performing a SIMF specified by the PRA or a CF specified by the Financial Conduct Authority (FCA) [in SUP 10A of the FCA Handbook] which is a 'relevant senior management function'. In practice, the PRA expects firms will generally allocate Prescribed Responsibilities to the function to which they are most closely linked.

2.39 Appropriate responsibilities may, where relevant, be allocated to a Group Entity Senior Insurance Manager (SIMF 7). The relevant allocations of responsibilities for each regulated firm will need to be set out clearly in the governance map(s) that are maintained. The PRA still expects any potential conflicts of interest to be addressed properly. In addition, the firm would need to ensure that each individual had the necessary time and resources available so that they could perform their role(s) in a sound, honest, fair, objective and suitably independent manner, as required by the EU Solvency II Delegated Regulation.

2.40 Certain Prescribed Responsibilities can only be assigned to NEDs who are approved to perform an SIMF or an FCA governing function, namely oversight of the:-

- development and implementation of policies and procedures of the firm's remuneration policies and procedures, and

- independence, autonomy and effectiveness of the firm's policies and procedures on whistleblowing.

Scope of responsibilities for NEDs

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

2.42 Those NEDs who are subject to pre-approval by the PRA or the FCA are neither required nor expected to assume executive responsibilities but are expected to take on certain responsibilities (set out in Appendix 1) all of which are non-executive in nature and are either inherent in or derive from their Chair or Senior Independent Director (SID) roles.

2.43 The potential accountability of NEDs in scope of the SIMR 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;
 - 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.

2.44 The role of the Chairman is integral to a firm's 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 SIMR.

2.45 Insurance - Senior Insurance Management Functions 4.5 specifies a SID (SIMF 14), 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 SIMR; and

- the quality and sufficiency of resources allocated to the Chairman’s office.

Individual accountability and collective decision-making by boards

2.46 The PRA views the SIMR and its application as consistent with the principle of collective decision-making. The SIMR co-exists with the statutory and fiduciary duties of directors under UK company law and domestic and international corporate governance standards. The SIMR clarifies and formalises the individual responsibilities which NEDs in scope of the SIMR should already have in practice.

2.47 The PRA considers it vital that the board as a whole understands 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.

2.48 As part of its ongoing supervision of 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 SIMR or not.

2.49 The presumption of responsibility in sections 66B(5) and (6) of FSMA only applies to Relevant Authorised Persons¹ and therefore does not cover individuals in insurance firms. However, NEDs who are performing an SIMF or an FCA governing function in insurance firms can be held individually accountable if they have:

- failed to comply with rules made by the PRA under section 64A of FSMA (including the rules in Insurance - Conduct Standards); or
- been knowingly concerned in a contravention of a relevant requirement by a PRA- authorised person.

¹ Defined in s. 71A of FSMA

3 Application of Conduct Standards and associated notification requirements

3.1 This chapter sets out the PRA's expectations of how individuals who are subject to the Conduct Standards in the Insurance – Conduct Standards 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 Standards.

Persons and activities to which the Insurance — Conduct Standards Part apply

3.2 The Insurance — Conduct Standards Part of the PRA Rulebook applies directly to persons performing either a SIMF specified by the PRA, or a CF specified by the Financial Conduct Authority (FCA) that is a 'relevant senior management function' as defined in the PRA Rulebook. These persons will be required by this Part to comply with these standards.

3.3 In accordance with Insurance — Fitness and Propriety 2.3, the relevant Conduct Standards in Insurance — Conduct Standards 3 should also be taken into account by firms and groups when assessing on an ongoing basis the fit and proper status of all those persons who are effectively running the firm or group or are performing another key function for the firm or group.

Application of the Conduct Standards

3.4 In assessing whether an individual's conduct was either consistent with or complied with a Conduct Standard, the PRA expects the context in which a course of conduct was undertaken to be taken into account, including the:

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

3.5 A person will only be in breach of any of the Conduct Standards where he or she is 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.

3.6 In accordance with Insurance — Fitness and Propriety 2.3, the PRA expects firms and groups to have suitable procedures for monitoring the conduct of individuals who are performing a key function, and to take relevant action if these individuals do not observe these Conduct Standards. For this purpose, the PRA expects firms and groups to take all reasonable

steps to gather and consider information which may indicate the extent to which individuals are in compliance with these Conduct Standards.

3.7 Where a firm or group identifies any matter which might be relevant to an assessment of whether an individual who is performing a key function is fit and proper, including a potential failure to observe a Conduct Standard, it should promptly and fully investigate the position and take appropriate action, including complying with any obligation to notify the PRA (see the notifications section of this chapter).

3.8 The PRA expects that the Conduct Standards apply only to an individual's conduct in relation to the activities of the firm or group for which he or she is working. These standards 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 these standards. However, the PRA notes that an individual's wider behaviour could affect his or her ability to follow these standards more generally. The way in which a person behaves in their private life may then be relevant to any assessment, by the PRA or by the firm itself, of whether that person is, or remains, fit and proper.

3.9 All persons performing a key function should be required by the firm to observe Insurance - Conduct Standards 3.1 to 3.3, in accordance with Insurance – Conduct Standards 2.2. This may be required through a staff handbook, and then through any subsequent staff contract updates. The PRA expects these Conduct Standards to be promulgated suitably through the organisation, and for the firm to take steps to ensure that all relevant staff are aware of their obligation to observe these standards. The PRA expects that they should also be taken into account when setting the relevant objectives (including any expected behaviours) for individuals each year.

Individual Conduct Standards¹

Insurance – Conduct Standards 3.2: *'You must act with due skill, care and diligence'*.

3.10 The PRA expects all individuals who are performing a key function to exercise their business skills with appropriate levels of attention and care; and to provide proper and adequate explanations about the activities they are undertaking, when requested by a senior manager or director of the firm or the group.

3.11 A person who is effectively running a firm or is responsible for another key function is a key function holder. A key function holder may, but will not necessarily, perform a CF that is a PRA SIMF or an FCA CF. The PRA expects a key function holder to understand the business for which they are responsible. Key function holders are unlikely to be experts in all aspects of a complex financial services business. However, the PRA expects that they should understand and inform themselves about the business sufficiently to understand the key risks relating to a firm's insurance, investment or other business activities.

3.12 The PRA expects a key function holder to require explanations from those who report to them, whenever they have material concerns about the identification, measurement or control of risks borne by the firm. Such concerns could for example arise in the following circumstances:

¹ Individual Conduct Standard 1 is: 'You must act with integrity'. The PRA does not expect to have to describe what is meant by acting with integrity.

- business is undertaken (or an investment made) that is expected to be unusually profitable (relative to the risks expected by the firm);
- the profits are particularly volatile; or
- the business involves risks for the firm that are either beyond those reasonably anticipated in the business plan, or beyond the firm's normal risk tolerance limits.

3.13 Where those explanations are implausible or unsatisfactory, the PRA expects the key function holder to take steps to test the veracity of those explanations.

Insurance - Conduct Standard 3.3: *'You must be open and co-operative with the FCA, the PRA and other regulators'*.

3.14 The PRA expects a person to report information to the regulators through the firm's mechanisms for reporting information to the regulators. Relevant factors in assessing whether a person has followed Insurance - Conduct Standard 3.3 include:

- whether a person has provided information into such mechanisms in an appropriate manner;
- 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 those mechanisms; and
- the way in which a person has responded to requests from a relevant regulator.

Conduct Standards for key function holders

3.15 In accordance with rule 2.2 in the Insurance – Conduct Standards Part of the Rulebook, 'Notified NEDs' (ie NEDs of a firm who are not approved persons in relation to that firm), should be required by the firm to observe Insurance - Conduct Standards 3.1-3.3 and 3.7-3.8. Similarly, all other key function holders should be required by the firm to observe Insurance - Conduct Standards 3.1-3.8. The PRA expects that observance of these Conduct Standards should therefore normally be included within the terms and conditions for the appointment of key function holders.

3.16 The factors the PRA expects to be taken into account when assessing whether a key function holder has followed Insurance - Conduct Standards 3.4–3.8 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 responsibility; and

- the knowledge the person had, or should have had, of regulatory concerns, if any.

Insurance - Conduct Standards 3.4: *'You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively'*.

3.17 If the strategy of the business is to enter higher-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be higher. In organising the business for which they are responsible, a key function holder should bear this in mind.

3.18 The PRA expects the organisation of the business, and the responsibilities of those within it, to 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 line manager is clearly set out and understood.

Insurance - Conduct Standards 3.5: *'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'*.

3.19 The PRA expects a key function holder to 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. For this purpose, the PRA expects key function holders not merely to ensure that firms meet the letter of the requirements, but also not to attempt to game them by engaging in creative compliance or regulatory arbitrage designed to mask the riskiness of activities or business models. Rather, key function holders should maintain sight of the overriding principles of safety and soundness and the protection of policyholders, and act accordingly.

3.20 A key function holder need not personally put in place the systems of control in the business; whether they do this will depend on their role and responsibilities. However, the PRA expects the key function holder to take reasonable steps to ensure that the business has operating procedures and systems which include well-defined steps for complying with the detail of 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.

Insurance - Conduct Standards 3.6: *'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'*.

3.21 The PRA does not expect a key function holder personally to manage the business on a day-to-day basis. The extent to which this is done by the key function holder will depend on a number of factors, including the nature, scale and complexity of the business and their 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 expects a key function holder to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level.

3.22 In accordance with this standard, the PRA believes that the authority for dealing with an issue or a part of the business should only be delegated to an individual or individuals by a key function holder when they have reasonable grounds for believing that the delegate has 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.

3.23 Although a key function holder may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate their oversight responsibility. The PRA expects that person to maintain a suitable level of understanding of the delegated activity, supervise and monitor the person to whom the responsibility has been delegated, and ensure that they receive reports on delegated matters and question those reports where appropriate. Where an issue raises significant concerns, the PRA expects a key function holder to act clearly and decisively.

Insurance - Conduct Standards 3.7: *'You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice'*.

3.24 This Conduct Standard applies, in addition to Individual Insurance - Conduct Standards 3.3, to a key function holder. Insurance - Conduct Standards 3.3 relates primarily to responses from individuals to requests from a relevant regulator and to an individual's involvement in a firm's mechanisms for reporting to a regulator. However, Insurance - Conduct Standards 3.7 imposes a greater duty on key function holders to disclose any information the relevant regulator would reasonably expect. This includes making a disclosure in the absence of any request or enquiry from the relevant regulator. By virtue of their position, the PRA expects that a key function holder is likely both to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the PRA or FCA would reasonably expect notice.

3.25 The PRA does not expect a key function holder to disclose information which the person knows that the firm or another senior manager has already disclosed to the PRA, for example through having seen a copy of the relevant communication.

3.26 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(s).

Insurance - Conduct Standards 3.8: *'When exercising your responsibilities, you must pay due regard to the interests of current and potential future policyholders in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits'*.

3.27 The PRA expects a key function holder to ensure that appropriate attention is given to the need to ensure that the firm will continue to be able to provide the benefits that it has committed to provide for its policyholders. This is likely to be achieved primarily through taking relevant actions, in line with the PRA's Conduct Standards, to ensure that the firm meets all the PRA's Fundamental Rules¹ and continues to meet the Threshold Conditions.²

¹ Solvency II Firms Fundamental Rules (FR3) in the PRA Rulebook; fshandbook.info/FS/prerulebook.jsp.

² *The Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013*; www.legislation.gov.uk/uksi/2013/555/contents/made.

3.28 In particular, the PRA expects key function holders to exercise sound and prudent management over the areas of the business for which they are responsible. This would be exemplified through ensuring the application of suitable due diligence over any major transactions that are contemplated by the firm or group, and for which a key function holder has a responsibility. Key function holders should also apply due care and attention in the appropriate management of any conflicts of interest within a firm or group.

Application of the Conduct Standards to NEDs in scope of the SIMR and Notified NEDs

3.29 NEDs who are subject to pre-approval by the PRA or the FCA, are subject to the Conduct Standards, including those applicable only to Senior Insurance Managers. As was the case under the APR, breaches of the Conduct Standards by NEDs in an SIMF are directly enforceable by the PRA using its powers under FSMA.

3.30 Some Conduct Standards apply to NEDs in respect of their limited duties only. For instance, the Chair of the Remuneration Committee would be likely to discharge their responsibilities under Insurance - Conduct Standards 3.2 if they take reasonable steps to ensure that the Remuneration Committee complies with the requirements of the EU Solvency II Delegated Regulation (and any specific and relevant requirements imposed under section 55M of FSMA), and remains free from undue executive interference in decision-making.

3.31 By contrast, certain Conduct Standards, such as the duty to act with integrity, apply to NEDs in scope of the SIMR and executive Senior Insurance Managers in very similar ways.

3.32 Firms are also required by Insurance - Conduct Standards 2.2 to require that all members of their management body, including Notified NEDs to whom the Conduct Standards do not apply directly, observe Insurance - Conduct Standards 3.1–3.3 and 3.7–3.8.

3.33 The requirements to ‘be open and co-operative with the FCA, the PRA and other regulators’ (Insurance - Conduct Standards 3.3) and ‘disclose appropriately any information of which the FCA or PRA would reasonably expect notice’ (Insurance - Conduct Standards 3.7) 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.’¹

Notifications by firms to the PRA in relation to the application of Conduct Standards by individuals

3.34 The PRA considers that a breach of Conduct Standards by a key function holder, including details of any related disciplinary action taken by a firm against that key function holder, would generally reasonably be expected to be material to the assessment of an individual’s fitness and propriety. Therefore, in accordance with Insurance - Fitness and Propriety 4.3, and Fundamental Rules 7 in the PRA Rulebook, the PRA expects insurance firms and groups to notify the PRA if they know that a key function holder has not complied with those Conduct Standards.

¹ See paragraph 88 of the PRA’s approach to insurance supervision’, June 2014; www.bankofengland.co.uk/publications/Documents/prapproach/insuranceappr1406.pdf.

3.35 Where a firm has reported a breach of a Conduct Standard, and subsequently takes disciplinary action against the person for matters relating to the breach, the firm should make a separate notification to the PRA of the disciplinary action.

3.36 The PRA expects that firms will report to the PRA and the FCA details of known 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 a key function holder 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).

4 Assessing fitness and propriety and providing references

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 SIMF; and
- expects firms to take into account when assessing whether an individual is fit and proper to perform a SIMF or NED function specified in the PRA rules.

Assessing fitness and propriety

4.2 In assessing whether an individual is fit and proper to be effectively running a firm or to be performing another key function, firms and groups should apply the rules in Insurance — Fitness and Propriety 2, along with the EU Solvency II Delegated Regulation; and also have regard to the EIOPA Guidelines on Systems of Governance.

4.3 The PRA will also expect firms and groups to have regard in their assessments of fitness and propriety to the person's:

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

4.4 The PRA will likewise consider each of the factors in paragraphs 4.2 and 4.3 when assessing whether an individual is fit and proper to be effectively running a firm or to be responsible for another key function.

4.5 In determining a person's honesty, integrity and reputation, the PRA will have regard to all matters which may have arisen either in the United Kingdom or elsewhere and which the PRA considers relevant to the requirements and standards of the regulatory system.

4.6 For example, conviction for a criminal offence will not automatically mean an application will be rejected. The PRA proposes to 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;
- explanation offered by the convicted person;
- relevance of the offence to the proposed role;
- passage of time since the offence was committed; and
- evidence of the individual's rehabilitation.

4.7 When determining a person's financial soundness, the PRA will not normally require a person notified to them as being responsible for a key function to supply a statement of assets or liabilities. The PRA does not expect a person being of limited financial means, in itself, to affect his or her suitability to effectively run a firm or perform a key function.

4.8 The PRA expects a firm or group to take a similar approach to that set out in paragraphs 4.5 to 4.7 above when assessing whether a person is fit and proper to run a firm or perform a key function effectively.

4.9 In relation to proposed new appointees to SIMFs, the PRA expects the regulatory references, along with the current Financial Services Register, to be an important independent source of information for firms about the suitability of a person's past business conduct. For other proposed new appointees, it is acknowledged that there may only be limited independent information available on a person's past business conduct that can be taken into account.

4.10 Firms may, however, wish to consider whether internal procedures such as pre-employment questionnaires for candidates might be relevant to elicit information on past business conduct for these purposes. Where a firm becomes aware of information which may indicate that aspects of a person's past business conduct might be relevant to an assessment of whether an individual is 'fit and proper', the PRA expects the firm to make reasonable enquiries to establish the circumstances of that conduct and its relevance (if any) to the individual's fitness and propriety.

4.11 For the ongoing assessment of fitness and propriety of individuals, the PRA believes that most firms will already have a regular cycle of appraisals and performance reviews for their staff that is likely to provide an appropriate baseline for this assessment. Additional checks may be deemed appropriate outside of this process, taking account of the nature and level of an individual's responsibilities within the organisation, and of any other relevant information. For the purpose of such checks, the PRA expects firms and groups to take all reasonable steps to gather and consider information which may be relevant to an individual's business conduct.

Criminal background checks

4.12 In order to meet the requirement in Insurance — Fitness and Propriety 2.4 to make a criminal record check, the PRA expects a firm to get an application form from the Disclosure and Barring Service (DBS) or an umbrella body (a registered body that gives access to DBS checks) in England and Wales. There is an equivalent procedure in Scotland (involving Disclosure Scotland) and Northern Ireland (involving AccessNI). If the candidate is employed by a contractor, the PRA expects that the firm may ask the contractor to obtain the certificate. The PRA does not expect firms to send any DBS certificates or copies of such certificates to the PRA.

Appendix

1 PRA Expected Responsibilities of NEDs in scope of the SIMR

Appendix: PRA Expected Responsibilities of NEDs in scope of the SIMR

Senior Insurance management Function	Expected Responsibility
Chairman (SIMF 9)	<p>Chairing, and overseeing the performance of the role of, the governing body of a firm.</p> <p>Leading the development and monitoring effective implementation of policies and procedures for the induction, training and professional development of all members of the firm’s governing body,</p> <p>Overseeing the assessment of fitness and propriety of all NEDs; and</p> <p>Leading the development of the firm’s culture by the governing body as a whole</p>
Chair of the Risk Committee (SIMF 10)	Chairing, and overseeing the performance of the role of, the risk committee.
Chair of the Audit Committee (SIMF 11)	Chairing, and overseeing the performance of the role of, the audit committee.
Chair of the Remuneration Committee (SIMF 12)	<p>Chairing, and overseeing the performance of the role of, the remuneration committee.</p> <p>Oversight of the development and implementation of the firm’s remuneration policies and practices.</p>
SID (SIMF 14)	Performing the role of a senior independent director, and having particular responsibility for leading the assessment of the performance of the person performing the Chairman function.
Any NED subject to pre-approval	Oversight of the independence, autonomy, and effectiveness of the firm’s policies and procedures on whistleblowing including the procedures for protection of staff who raise concerns from detrimental treatment.