



Governance & Professionalism Policy
Strategy & Competition
Financial Conduct Authority
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AFM Response to FCA consultation CP17/26, Extending the Senior Managers and Certification Regime to insurers

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:
 - comment on the proposals, and highlight the consequences for our members.
2. The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not for profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £16.4 billion, and employ nearly 30,000 staff¹.
3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses².
4. In addition, the Bank of England and Financial Services Act 2016 now provides an additional Diversity clause for FiSMA, to require the PRA and FCA to take account of corporate diversity and the mutual business model in all aspects of their work³.

¹ ICMIF, <http://www.icmif.org/global-mutual-market-share-2013>

² Financial Services Act 2012, section 138 K: <http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted>

³ <http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted>

5. The extension of the rules originally designed for banking to all aspects of the regulatory system will help drive up standards across businesses. As FCA states, for insurers, the greatest change will be in the introduction of certification functions, though in our view the consequences of other changes, such as the extension of conduct rules or prescribed responsibilities, may well be at least as significant.
6. The most significant changes for AFM members will be increased recruitment, training and compliance costs. The costs are significant, particularly for smaller organisations. In particular, all employees will need training on changes to the regime, and AFM has recently launched a new online training portal with Skillcast which our members can use to help ensure a high level of knowledge of the new regime at an affordable cost.
7. In a recent briefing for trade bodies, FCA asked for comments on the style as well as the substance of the consultation. We note that FCA has prepared a separate consultation for insurers, who have already implemented some aspects of the new regime, and this is welcomed. We appreciate the greater clarity of the language used, and wider use of summaries and signposts to improve understanding. We also note a greater effort to quantify costs and benefits, and whilst this is a long document, it is much more straightforward to read than PRA's equivalent.
8. We consider that the differentiated approach perpetuated by FCA and PRA by adopting different regimes, separate consultations and inconsistent terminology hinders understanding for firms, adds unnecessary cost and is not justified given the heavy overlap of content. We would have liked to see FCA and PRA issue a joint consultation and adopt a single and consistent approach to SM&CR.
9. Our responses to specific questions raised in the consultation are attached below. We would welcome the opportunity to discuss further the issues raised by our response.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'AB' followed by a long horizontal stroke.

Chief Executive
Association of Financial Mutuals

Our responses to specific questions raised in the consultation

Q1: Does the proposed list of FCA Senior Managers cover the appropriate roles, ie the most senior decision makers within a firm?

Q2: Are there any other roles that the FCA should consider specifying as SMFs?

Q3: Are there any proposed Senior Managers that the FCA should consider excluding?

The proposed list is extensive and covers a wide range of roles, largely based on the current APR. Most AFM members are smaller insurers, and individuals will often hold more than one SMF. We do not anticipate significant changes as a result.

Q4: Do you agree with our proposal to introduce a Conduct Risk Oversight Officer for Lloyd's?

No comment.

Q5: Do you agree with the proposed Overall Responsibility SMF?

This SMF ensures all regulated activities are within the scope of a senior manager, and the examples provided are useful. It may also mean unregulated activities are included by firms, for the sake of completeness. In some cases, where there are activities that are not currently managed in this way, the creation of a new SMF18 role may increase organisational costs.

Q6: Do you agree with our proposal to extend the scope and definition of SMF16 to cover all FCA requirements?

We agree; it will be for individual firms to assess to what extent this broadens the role of compliance oversight.

Q7: Do you agree with our proposal to extend the Chair of the With-Profits Committee to cover any person(s) performing the with-profits advisory arrangement?

We accept the relevance of this proposal.

Q8: Do you agree with our proposal to extend the 12-week rule to apply to responsibilities under the 'Overall Responsibility' requirement? If not, please explain why.

We agree.

Q9: Do you agree with our approach to Prescribed Responsibilities and our proposed list of PRs?

We agree.

Q10: Do you agree with our approach to dividing and sharing Prescribed Responsibilities?

We agree with the approach taken. In small firms where the number of senior managers is limited, there may be more circumstances where a firm feels it would be better to share prescribed responsibilities, and FCA's approach will not remove this option.

Q11: Do you agree with our proposals on Statements of Responsibilities?

We agree. We look forward to the follow up consultation setting out a template for the Statement of Responsibilities.

Q12: Do you agree with our proposal to require firms to maintain, produce and, where relevant, submit Responsibilities Maps?

We think Responsibilities Maps are valuable to firms in ensuring all responsibilities are allocated appropriately. These maps should be consistent with those required for PRA (who describe them as Management Responsibility Maps).

Q13: Do you agree with our proposal to apply handover requirements to Solvency II firms and large NDFs? If not, please explain why.

We agree.

Q14: Do you agree with our proposals for small NDFs?

We recognise that the proposals for small NDFs allow for proportionality in the regime. Our smallest members are committed to high standards of governance via AFM's corporate governance code, annotated for mutual insurers, alongside their regulatory requirements.

Q15: Do you agree with our proposals for small run-off firms?

We agree.

Q16: Do you agree with the functions we have proposed making Certification Functions?

Q17: Are there any other functions that we should make a Certification Function?

Q18: Do you think the identity of people performing Certification Functions should be made public by firms? If so, which Certification Functions should be made public?

The Certification Functions represent a new and significant HR overhead for insurers. The proposals will require each firm to assess for themselves which employees require certification, and similar organisations may take very different approaches.

Given that certification is largely an internal exercise, we consider it is appropriate for firms to have that flexibility, albeit the functions set out in Table 9 helpfully describe the approach they should take.

We note that PRA assumes that on average five to seven roles will be covered by its certification requirements. As FCA states, for some small organisations, there may be no certificated individuals, as the main risk functions are covered by SMFs.

We do not consider people performing Certification Functions should be publicly listed. They are not senior managers in an organisation, and a public record may require firms to be less ambitious in identifying those roles that would benefit from certification.

Q19: Do you agree with our proposed territorial limitation for the Certification Regime? If not, please explain why.

We agree.

Q20: Do you agree with the approach we have proposed to allocating CASS responsibilities? If not, please explain why.

We agree.

Q21: Do you agree with our proposed approach to rules and guidance on fit and proper tests? If not, please explain why.

These are existing rules and guidance; we offer no new comments.

Q22: Do you agree with our proposed requirements on criminal record checks? If not, please explain why.

We recognise the importance of thorough criminal record checks; however, this will add cost and complexity to firm's processes, and extend the time taken to appointment.

Q23: Do you agree with our proposals to extend the requirement for regulatory references to all insurers and to cover Certified persons? If not, why not?

We agree with the proposal, and that it will benefit companies. However it will also add costs and delays to the recruitment process.

Q24: Do you agree with our proposal to apply the Conduct Rules to all employees, except ancillary staff? If not, why not?

The application of conduct rules to employees except ancillary staff will help ensure that all staff are aware of the need to demonstrate high standards, and that they are better aware of the consequences of not doing so. Firms will need to undertake extensive training to ensure staff are aware of how to demonstrate their actions are consistent with the conduct rules, and what types of conduct to avoid.

We note that FCA has determined that its conduct rules apply to “all other employees other than ancillary staff”. PRA intends to extend its conduct rules to *all employees in a certification function* at firms within scope. FCA has indicated that amongst deposit-takers, most firms have included all staff in its conduct rules, and we suggest that this is because of the risks of overlap and underlap in the two competing approaches of PRA and FCA. This is an example of where the two regulators can claim to be proportionate where one offers an exemption or threshold, whilst disregarding that this does not exist with the other regulator: we would prefer greater consistency between the two UK regulators.

Q25: Do you agree with our proposed scope of the Conduct Rules to financial services activities whether regulated or unregulated? If not, why not?

We agree, though the difference between the approach taken to insurers compared to banks may in practice be of limited value, since firms will impress on employees the importance of demonstrating good conduct in all activities.

Q26: Do you agree with our proposals about notifications under the Conduct Rules? If not, please explain why.

Q27: Do you agree with our proposal to link notification requirements for disciplinary action to breaches of the Conduct Rules?

Q28: Do you agree with our proposed frequency of Conduct Rules notifications? If not, please explain why.

We agree.

Q29: Do you agree with our proposals for applying the Senior Managers Regime to EEA branches? If not, why not?

Q30: Do you agree with our proposal to apply the Certification Regime to EEA branches with the adaptations set out? If not, why not?

Q31: Do you agree with our proposal to apply the Conduct Rules to EEA Branches? If not, why not?

Q32: Do you agree with our proposal to apply the Senior Managers Regime to non-EEA branches? If not, why not?

Q33: Do you agree with our proposed SMFs for non-EEA branches? If not, why not?

Q34: Do you agree with our proposal to remove the Actuarial Conduct Function from the list of approved functions for non-EEA branches? If not, why not?

Q35: Do you agree with our proposal to apply the Certification Regime to non-EEA branches? If not, why not?

Q36: Do you agree with our proposed approach to Conduct Rules for non-EEA branches? If not, why not?

We have no comments on the questions posed in chapter 7 of the consultation.

Q37: Do you agree with our SM&CR proposals for ISPVs? If not, what is it you don't agree with and why?

Q38: Do you agree with our proposal to apply the Conduct Rules to ISPVs as for Solvency II and large NDFs? If not, why not?

We would not expect chapter 8 to apply to our members.

Q39: Based on the summary above and the full analysis available here www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf, do you agree with our findings and conclusions to the cost-benefit analysis? If not, please explain why.

FCA has presented costs in total, for small NDFs as well as Solvency 2 firms and large NDFs. This compares to the PRA approach which assesses the likely costs for each organisation. We consider the PRA approach is more informative for firms, as an individual organisation cannot be expected to assess the cost across tens or hundreds of other organisations.

FCA indicates there are around 75 small NDFs in the UK, so the aggregate costs quoted in paragraph 15 of the CBA summary equate to around £11,333 one-off and £8,000 annual ongoing costs. We note however that the detailed CBA gives a population of small NDF insurers of 170 in Table 4, so the costs presented are unclear and may vary significantly.

The detailed CBA offers an estimate, of the number of Solvency 2 insurers and large NDFs, of 390 with an average number of employees of 480. The average number of employees within AFM members that are Solvency 2 firms is considerably smaller (around 50), so the regime costs are likely to be lower than the averages provided in Tables 11 and 12 of the detailed CBA though not on a straight line basis. It would have been useful for the detailed CBA to show how costs are likely to vary according to firm size.

The cost benefit case appears to suggest that the direct costs of implementing the new regime will be almost as great for FCA as they will for all insurers. We find that surprising, though it isn't clear whether the cost quoted of £13.4m applies just to its implementation costs for insurers, or all firms.

We agree with the core benefits FCA has identified from the new regime. We note that the first benefit highlighted by FCA relates to culture and standards, and we broadly agree with that, though note that FCA has no prescribed responsibilities on culture.

We commend FCA for attempting to quantify some of the benefits it proposes. For insurers, the assumption made is that a reduction in harm of between 1 and 2% would

be needed to exceed the costs of compliance. That feels like a reasonable ambition, though the sources of harm relate to redress paid, the costs of handling complaints, and the fines imposed by FCA. Since the volumes of complaints and fines levied against mutuals are very much lower than against non-mutuals, we would assess the total estimated harm to be proportionately much smaller, and that therefore the threshold for breakeven will be considerably greater. FCA's compatibility statement on page 69 does not suggest any attempt has been made to quantify this.

We would encourage FCA to undertake a post-implementation review to understand whether the costs and benefits set out were accurate.