

## Inside FCA Podcast: Interview with David Blunt on Certification and Regulatory References (SMCR)

**OI:** Hello and welcome to the Inside FCA Podcast. I'm Ozge Ibrahim and today I'll be discussing the Senior Managers and Certification Regime or SMCR with FCA's Head of Conduct Specialist in Supervision, David Blunt. In this first of a 2-part series of SMCR podcasts, we'll be specifically looking at certification and regulatory references for solo regulated firms converting to SMCR in December 2019.

Hello, David. Starting with certification, the SMCR has three main components of which certification is one key element. Can you explain what certification is and why this is so important?

**DB:** Certification is all about looking at the people in firms who do really significant roles, roles which could cause real harm to consumers, to markets or to the firm itself and what we want to do is ensure that firms turn their minds to the capability and the competence of individuals doing those roles. So, we're requiring firms to assess every one of these individuals to see whether they are fit and proper for their role, at least annually as well as having done that assessment when they're recruited in the first place. And that test of are they competent needs to consider both the role that that individual is doing and the capabilities and skills of the individual doing that role.

**OI:** What's the FCA trying to achieve by including this in the SMCR?

**DB:** One of the key objectives is to make firms really aware about the responsibilities they have for thinking about the capability, the competence of the staff that they employ especially when it comes to certification, those staff who do these really important roles which can have such a big impact not just on the firm but externally as well.

**OI:** And what do firms need to consider and what are some of the practical steps they could take to help embed certification?

**DB:** Well the place to start is to think about what role an individual is in and then what are the characteristics of the individual that they're considering discharging that role? I think it's also really important for firms to think about competence – what does competence mean for the different roles where they're assessing people as certified? And they've got to give these people training to make sure that they continue to be

fit for the roles that they're in. I think it's also important for firms to think about those difficult cases that they'll undoubtedly face where it's a hard call about whether an individual meets the test or not and how they're going to deal with those individuals who might fail to meet that test of certification.

So, there's a role also for senior managers because they'll have oversight of this certification regime within their firm and they'll want to be confident that what they've got in place are some robust arrangements to make sure that only those people who really are competent to do these important roles are in fact assessed as fit and proper for those roles.

**OI:** Does it apply to all FSMA firms?

**DB:** Yes, this regime of certification applies across the board to all of the firms within the scope of the SMCR.

**OI:** And how about people like overseas staff and contractors?

**DB:** So on contractors it's important to remember that the regime has a special definition of 'employee' for the purposes of determining whether somebody is within the certification part of the regime or not and it's wider than the definition you might normally think of for employee. So, some contractors will be caught by this definition and so be within the scope of certification. For overseas staff, certification is really focused on UK employees and employees of UK firms. But if an employee of a UK firm is working abroad but does deal with clients in the UK, they're going to be caught by the certification regime.

And finally, for those firms who are within the scope of one of the remuneration codes, anybody who's a material risk taker under a remuneration code will be within the scope of certification.

**OI:** And finally, on certification, what's the key thing you'd want our listeners to remember today?

**DB:** So the most important thing for me is it's up to firms to assess whether individuals doing these particularly important roles are fit, proper, capable and competent for those roles and that they've got to do that at least annually.

**OI:** Moving on to regulatory references, I'd like to ask you to explain what this is.

**DB:** The Regulatory References Regime is all about making sure firms get the information they need from previous employers of new hires so that firms can make the right decisions about staff going into particularly important functions. This regime requires a financial services firm to go to the employers of that individual for the last six years asking for information about that individual. And what we want to do with this regime is to stop people who've got poor conduct histories simply moving from firm to firm because the new hiring firm should be able to get the information they need better to understand the conduct history of their new hires.

**OI:** And what do firms need to do when they recruit new certified staff?

**DB:** So, for the hiring firm, they've got to ask the old employer, if it's a financial services firm, for the reference and indeed the old employer is required to provide that reference which is true not just for certification staff actually, but also for senior managers. And importantly, what those references should cover is any conduct rules breaches by the individual which has led to disciplinary action and findings which may be relevant to whether the individual is fit and proper to do the role that they're being employed for.

And finally, the firm providing the reference must also disclose any other relevant conduct matters.

**OI:** There's a rule about non-disclosure agreements or NDAs – can you explain what this means?

**DB:** Yes. So with this rule, we're stopping firms entering into non-disclosure agreements with staff if those agreements would prevent firms and individuals disclosing information which the Regulatory References Regime requires to be disclosed.

**OI:** And finally, certified people will appear on a new directory. Can you tell us a bit more about this please?

**DB:** Yes, the new directory which is going to be published for the first time for solo firms in December 2020 is all about giving greater visibility to people particularly those in the certification layer who aren't approved by the FCA but in relation to whom firms decide they are fit and proper. Now without the directory, the members of the public, other firms wouldn't be able to identify who these people are so the directory

makes that information publicly available. It's going to be based on information that firms send to us which we'll make available for anybody to search.

**OI:** And will this be online?

**DB:** Yes, we're going to make this available online and we're going to make this available from December 2020 for the solo firms because that's when firms will have had to have decided which of their employees are within the scope of certification and issued the first certificates of those individuals being fit and proper for those roles.

**OI:** Thank you, David. It's been great talking with you to learn more about what certification really means and the practical implementation of the SMCR. Thank you for listening and join us again soon for the next Inside FCA Podcast.

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