

Summary of feedback received

March 2019

<p>Consultation title</p>	<p>GC18/4 Senior Managers and Certification Regime: Proposed guidance on Statements of Responsibilities and Responsibilities Maps for FCA firms</p>
<p>Date of consultation</p>	<p>11 October 2018</p>
<p>Summary of feedback received</p>	<p>This document provides a summary of the feedback we received and our response.</p> <p>We received 17 written responses to GC18/4 from regulated firms, trade bodies and other entities. We also held roundtable discussions with several trade associations to gather feedback and make the final guidance more representative of the diverse population of firms to which the regime will apply (around 47,000 firms).</p> <p>All respondents supported our proposals and viewed the guidance as a positive step towards firms understanding the FCA’s expectations for Statements of Responsibilities (SoRs) and Responsibilities Maps.</p> <p>We have also received feedback and queries on other aspects of SM&CR which were not in response to this consultation.</p>
<p>Response to feedback received</p>	<p>In general, we intend to implement the consultation proposals, but have made some amendments and additions to the examples based on the feedback we received. Please see below our response per question.</p> <p>Q1: Do you think we have suggested the relevant key questions for preparing SoRs? If not, what other considerations could we add?</p> <p>Our proposed guidance presented a list of key questions for firms to consider when preparing SoRs.</p> <p>All respondents agreed that these self-assessment questions were relevant and captured the key considerations for firms. Some respondents requested more guidance and clarification in certain areas. We have addressed these points below.</p>

GC Response:

1. A number of respondents questioned whether our use of 'accountable for' in some places and 'responsible for' in others had any significance in the context of articulating responsibilities and SM&CR.

Our response: The terms 'accountable for' and 'responsible for' are used interchangeably in this guidance and we use them with the same meaning. This clarification has been added in the introductory section of the finalised guidance.

2. In the proposed guidance, we stated that 'preparing and maintaining an up to date SoR is a legal requirement for individuals who are Senior Managers.' One respondent would like us to highlight the difference between legal requirements and regulatory obligations in FCA Handbook and respectively what are the consequences for breaching these rules.

Our response: Preparing and maintaining an up to date SoR is a legal requirement for individuals who are Senior Managers. This is a requirement under section 60(2A) (Applications for approval) and section 62A (Changes in responsibilities of senior managers) of FSMA. In general, all the Handbook does is to prescribe the form a statement of responsibilities should take, prescribe the way in which it should be submitted and give guidance on them. The consequences of breaching these FSMA requirements are the same as for breaching a Handbook rule. We can take supervisory or [enforcement action](#) where our rules are breached.

3. Prescribed Responsibilities

Certain respondents suggested that it would be helpful if this guidance set out more clearly which of the Prescribed Responsibilities the FCA would expect to be allocated for consumer credit firms.

One respondent suggested that firms should cross check both the key functions within the business against their own SoR for completeness and the committees upon which they sit against the Prescribed Responsibilities that they hold, to ensure that there is a consistent reflection.

Our response: Consumer credit firms will need to allocate Prescribed Responsibilities if they fall within the Core or Enhanced tier of SM&CR. All firms may refer to the [Firm Checker Tool](#) to work out their SM&CR firm type. The Prescribed Responsibilities that apply are set out in the [Guide to the Regime](#).

Certain Prescribed Responsibilities relate more to chairing relevant committees. Senior Managers who are members and chairs of the committees should include this in their SoR. We have now included example 8 referring to this.

4. Other responsibilities

A number of respondents would like more guidance on what should be captured as other responsibilities and some suggested that the FCA should provide an indicative list of the other responsibilities.

Some respondents were unsure of the level of detail to include in the other responsibilities section, as well as which criteria determine whether certain responsibilities should be included (eg health and safety). In this context, one respondent would like to know if there is an obligation to submit an updated SoR for changes in 'other responsibilities' or firms keeping a current version would suffice.

One respondent was concerned that the FCA may inadvertently be imposing the requirements of Overall Responsibilities on Core firms by including in the guidance examples of other responsibilities relating to business areas.

One respondent suggested that it should make no difference whether firms are recording responsibilities as Overall Responsibilities, other responsibilities or under supplementary information, as long as it is consistent for the entity.

One respondent referred to the published [Handbook Notice 60](#), quoting paragraph 3.15 that, 'Individuals in PIF senior management are responsible for ensuring that PII contracts meet the relevant regulatory requirements and so action can be taken against individuals for any breaches even if the firm itself has failed.' The respondent was concerned that Handbook Notices and Policy Statements may create a whole series of 'mandatory other responsibilities'.

Our response: We do not propose introducing an indicative list of other responsibilities. The range of possible other responsibilities across all sectors and types of firm means that, in our view, such a list could provide little help.

Other responsibilities are 'any additional responsibility, not otherwise recorded in this statement, for which a candidate or senior manager is to be responsible as part of their FCA and/or PRA senior management function(s). For example, responsibilities outside the normal course of business such as those linked to high profile projects or initiatives.'

A SoR should cover the aspects of the affairs of the firm for which the individual is responsible. In our view, this does not normally include allocating responsibility for compliance with individual laws or regulations such as those covering health and safety. Instead, Senior Managers are responsible for compliance with such laws and regulations within their own areas of responsibility.

We provide guidance on the requirement for firms to submit a revised SoR if there has been significant change in a Senior Manager's responsibilities in [SUP 10C.11.6](#). We do not require firms to notify us if a minor change has taken place in the other responsibilities of a Senior Manager. We believe that in most cases the update will be the result of a change in the Prescribed and/or Overall Responsibilities. Please see below Section 6 outlining our expectations around updating SoR.

We have included several examples of other responsibilities across different types of firms. An Enhanced firm will rarely have to fill in the other responsibilities section but it may be used more by Core firms.

Overall Responsibilities only apply to Enhanced firms to ensure each of the activities, business areas and management functions of the business is assigned to an accountable Senior Manager. The other responsibilities section is not a substitute to apply this requirement to Core and Limited Scope firms. However, it should set out clearly for which aspects of the firm's affairs an individual Senior Manager has responsibility, where this is not otherwise clear from the Senior Management Function or Prescribed Responsibilities held.

The SoR sections should be completed accurately and in compliance with the relevant rules. Overall Responsibilities should not be recorded as other responsibilities and vice versa. The supplementary information section should be used to add further details or something that does not fit any other section.

Firms have wider obligations for ensuring compliance with our rules and principles. Under the SM&CR, a Senior Manager has a Duty of Responsibility to take reasonable steps to avoid contraventions of our rules from occurring or continuing in relation to activities for which they are responsible for managing. This sort of reference to particular rules (in a Handbook notice or elsewhere) is used to remind individuals and firms of their obligations, rather than establish a change in policy on senior management responsibilities. In the particular case cited in the response, the Handbook notice does not create a new Prescribed Responsibility or require every firm specifically to mention responsibility for PII in the other responsibility section of SoRs.

5. Overall Responsibilities

One respondent was concerned that the suggested questions around Overall Responsibilities would not align with firms' complex matrices and apportionment documents already describing responsibilities.

Certain groups with Solvency II Insurance firms also have a requirement to allocate a set of Key Functions. One respondent asked how these Key Functions and the Overall Responsibility requirements should interact.

Our response: Overall Responsibility is defined in Handbook [SYSC 26.3](#) and we have provided further guidance on its meaning under [SYSC 26.6](#) and [SYSC 26.7](#). Our suggested questions refer to identifying Senior Managers who are accountable for all the relevant activities, business areas and management functions of the firm, as required under our rules.

We appreciate that in certain complex global groups, a SoR or Responsibilities Map concerning one particular regulated entity might not be aligned in scope with existing documents created to cover regional business or intra-group functions. However, we do not consider any appropriate governance structure or business to be inconsistent with clearly allocating responsibilities within a firm, as part of SM&CR.

Our guidance is aimed at FCA solo-regulated firms. However, as the requirement of Overall Responsibilities is relevant to Insurers subject to Solvency II, we recognise that there will be instances where Key Function holders will also need to be approved as Senior Managers and that these Key Functions can translate to responsibilities of a Senior Manager. We have provided more detailed feedback on this in [PS18/15 \(2.18 onwards\)](#).

6. Record keeping and submitting updated SoRs

A number of respondents would like us to clarify what the requirements are for record keeping of old versions of SoRs.

Another respondent asked us to clarify how firms can determine when they should submit a revised SoR to the FCA, for a relatively minor change.

Our response: A SoR should be a dynamic document which gets updated when the responsibilities of a Senior Manager change.

We provide guidance on the criteria for updating a SoR for a significant change in [SUP 10C.11.6](#). Our guidance remains that this should be based on the materiality of the change and the

impact on the business. These factors are determined proportionately in line with the firm's size and complexity.

In the finalised guidance, we have added reference to the record keeping obligations in Chapter 2 for firms to consider for the different versions of their SoRs over time.

Q2: Do you think the suggested examples are clear in demonstrating good and poor practices of preparing SoRs? If not, please explain why.

Our proposed guidance presented 12 examples of good and poor practice of SoRs across a range of firms in different sectors and tiers of the SM&CR (Enhanced, Core and Limited Scope).

All respondents agreed that our examples were helpful and demonstrated the intended accountability outcomes. Most respondents also found the examples practical and suitable for the diverse population of firms.

GC Response:

7. Respondents noted that the first example under Overall Responsibilities has been ticked under the 'Core' column and in some cases the wording of the Prescribed Responsibilities differed slightly to previous published versions.

Our response: The finalised guidance has used the forms extract ticked under the corresponding boxes and reflects the wording as consulted upon in the [CP19/04](#).

8. One respondent was concerned that the list of activities contained in [SYSC 25 Annex 1G](#) is mostly relevant to banks and does not reflect the diversity of other business models in the solo-regulated population.

Our response: Firms may find it useful to refer to Annex 1 of SYSC 25 as a starting point to think about how their own business is organised, but this is not mandatory or exhaustive. We do not currently plan to extend this guidance. We confirm that there is no requirement for firms to refer to the activities and business areas in SYSC 25 Annex 1.

9. A number of respondents would like the finalised guidance to include more examples applicable to consumer credit firms and add examples of non-executive functions.

Our response: The examples of the guidance are intended to be applicable to all firms within the relevant tier (Enhanced, Core, Limited Scope) as they demonstrate the principles of preparing a SoR across the board. The finalised guidance includes more examples including a consumer credit firm and a non-executive chair in a Core firm.

10. Partnerships

Some respondents commented on how certain of our examples would apply to firms structured as partnerships. One respondent expressed the view that sharing responsibilities across all partners would be undesirable and asked how members of an LLP in client facing roles should be treated under the certification regime.

One respondent queried how partners who also perform a certification role should be covering this in their SoRs.

Our response: We have now included an additional example of a partner responsible for certification in the finalised guidance. As we explained in PS18/14, the Certification Regime can only apply to employees as defined in section 63E (9) of FSMA and partners are unlikely to meet this definition. However, other employees of the partnership may fall within the scope of the Certification Regime.

There is no expectation that limited liability partnerships (LLPs) should seek SMF approval for members who perform certified functions, if they would not otherwise be Senior Managers.

If someone is approved for a Senior Manager function and also meets the definition of one of more of the functions under the Certification Regime, they must be certified for the latter function. Their SoR should contain their responsibilities as part of their Senior Manager role. We have provided clarifications on the application of the Certification Regime in Chapter 3 of [PS18/14](#) (see 3.15 onwards).

11. Two respondents noted that the guidance does not mention any examples of responsibilities in relation to climate change risks.

Our response: We place high importance on climate change and the associated risks for financial firms. We have published a discussion paper on the subject [DP18/8: Climate change and green finance](#). In our view, climate change is one of a number of environmental factors that firms should consider when managing financial and operational risks. We expect firms to pay due regard to these risks and mitigate them within their existing risk management strategy.

12. One respondent stated that it would be helpful for the FCA to offer a view on which software solutions could potentially assist firms in implementing and managing the SM&CR.

Our response: Firms may want to consider whether technology solutions would help them to manage their obligations under the SM&CR but the FCA is not in a position to advise on this.

13. Some respondents made comments regarding specific examples in the proposed guidance.

Example 2

In our proposed guidance, we included a business upgrade project being listed under other responsibilities of an Executive Director. One respondent queried whether it is the FCA's expectation that every project should have a Senior Manager.

Example 6

Our proposed guidance indicated that it is inappropriate to include being an Executive Director as an Overall Responsibility. One respondent said that in their view some SMFs which hold Executive Director responsibilities in addition to another role should include this in the Overall Responsibilities section.

Example 8

Our proposed guidance stated that the SoR of a Head of Research 'could be improved further by more explanation and context on the specific role. For example, this individual might be responsible for specific client types or asset classes.' One respondent queried what additional information should have been included if this individual was not directly responsible for specific client types or asset classes.

Our response:

Example 2

In our proposed guidance, we included a business upgrade change project 'Cosmos' for the fictional firm B which is a mortgage broker. This project is described as affecting a material business unit for that firm and we have included it to demonstrate this point.

We do not expect every single project to have a SMF allocated or that a firm's SoRs should name all the projects or change initiatives in a firm. We have outlined in Section 4 above what the other responsibilities section should include.

Example 6

Being an Executive Director is not an Overall Responsibility in itself. The directorship is fully captured as part of the SMF the individual holds. We would expect that an Executive Director in an Enhanced firm would normally hold Overall Responsibilities in relation to particular functions or business areas for which they are responsible. [SYSC 26.6](#) and [SYSC 26.7](#) give more guidance on the meaning of the Overall Responsibility.

Example 8

We refer to the client types and the asset classes as an example of a relevant consideration in the context of this role. Further information applicable to this particular individual can be included if relevant, as not all Heads of Research have the exact same responsibilities in all firms.

Q3: Do you think the suggested examples are clear in demonstrating how to formulate a Responsibilities Map (Enhanced firms only)? If not, please explain why.

Our proposed guidance provided some key questions for Enhanced firms to consider when preparing their Responsibilities Maps. We also provided two example Responsibilities Maps which highlighted both good and bad practices for different sections of the Map.

Most respondents welcomed the questions and these examples as a clear and helpful point of reference.

GC Response:

14. Some respondents noted that several firms which fall within the Enhanced tier of the regime will have a simpler structure and it is not common to have some of the committees included or in fact any committees at all.

One respondent commented that most firms with a similar business model to the PropLad example do not have Senior Managers chairing committees or serving both retail and commercial clients. We also received feedback on the Introducers Appointed Representatives structure presented.

Our response: We recognise that many Enhanced firms do not and are not required to have certain committees or Senior Managers chairing these committees. In the finalised guidance, we have simplified the second example to demonstrate how a Responsibilities Map could look in cases where there are fewer Senior Managers and/or no committee structure. SM&CR applies only to directly authorised firms and not Appointed Representatives.

15. The 'Atlas Capital Markets Limited Responsibilities Map' stated that the Prescribed Responsibility for Financial Crime should be allocated to 'an individual with adequate seniority to exercise credible oversight across the firm'. One respondent commented that the example implies it is incorrect for this Prescribed Responsibility to be allocated to an individual who is not a Board member or a member of the Executive Committee.

Our response: As is the case with every Prescribed Responsibility, responsibility for Financial Crime should be allocated to a senior individual (see [SYSC 24.3.1 G](#)). This is likely to be a member of the governing body or a person who reports to it. We have seen a number of examples of this responsibility, particularly in banks, being incorrectly allocated to individuals who lack a suitable level of seniority.

16. We also received mixed feedback on the level of complexity of the Responsibility Maps. Some larger firms with complex matrices found them simplistic while some smaller firms found them very complicated.

Our response: The examples cannot reflect the full diversity of firms' governance models but they are intended to be helpful to as many firms as possible by illustrating a middling level of complexity. We encourage firms to focus on the points made in the examples that are most relevant to their individual circumstances.

17. Some respondents would like the FCA map to be included as part of the guidance on SoRs and Responsibilities Maps to authorised firms.

Our response: The [FCA's Responsibilities Map](#) is public and will remain on our website. However, as the FCA is not a financial services entity with a business model of an authorised firm, we do not propose to include it as guidance to solo-regulated firms.

18. Some respondents suggested that the guidance should formulate some additional questions addressing the issues of change notification and the need for version controls over the documentation.

Our response: Firms should keep a record of the different versions of their Responsibilities Maps. The general record keeping requirements under [SYSC 9 Record-keeping](#) apply. A copy of the version submitted to the regulator can also be downloaded via Connect. Our examples include a version control page which can be inserted into the map to capture the date and the number of the version.

Other feedback

- One respondent asked whether this guidance could be used by groups with solo and dual-regulated entities.

Our guidance has been developed to help FCA solo-regulated firms. However, dual-regulated firms might find it useful. Dual-regulated firms need to ensure that they comply with, and pay due regard to, the rules and guidance of both authorities. An example of this is the different expectations on sharing and dividing a Prescribed Responsibility, as the PRA expects that Prescribed Responsibilities will not be split (2.50 of PRA SS 35/15 and 2.40 of PRA SS 28/14). The PRA also expects SoRs and MRMs to reflect how the business model, complexity, risk profile and size of each firm affect each senior manager's responsibilities.

- One respondent queried whether there is a requirement for SMF16 Compliance Oversight function in Core firms.

Guidance on required functions is available in [SYSC](#). The application of the required functions in different SM&CR firms is dependent on their permissions. Many Core firms will be required to have an SMF16 Compliance Oversight function.

- Some respondents would welcome further clarification on the definition of Client Dealing, as they are concerned that it may include a larger number of employees than was envisaged.

In January, we published consultation paper [CP19/04](#) which deals with this.

- One respondent queried whether all existing CF29s are expected to be certified for Core firms.

The short answer is that they need to be certified if they perform one of the certified functions, which is likely if they previously held a CF29 role. We have discussed the certification roles and principles in Chapter 9 of the [Guide to the Regime](#).

- One respondent suggested that interaction between the Certification Regime and Training and Competence (T&C) requirements would benefit from some further consideration. Under T&C, individuals are given a set timescale in which to gain a qualification, while under the Certification Regime a firm needs to make sure that anyone doing a role which meets the definition has been certified. Certification requires a firm to take into account whether the individual has obtained a qualification.

We do not view the certification timeline as conflicting with existing rules under T&C. An individual who has not yet completed their qualification can be certified to perform the role under appropriate supervision similarly to an individual performing a controlled function today. We have provided clarifications on the application of the Certification Regime in Chapter 3 of [PS18/14](#).

- Some respondents suggested more detailed guidance on different topics and raised queries around other areas of SM&CR (eg regulatory references, reasonable steps, COCON training).

Although we have considered this feedback, we do not believe it is appropriate to refer to comments on these unrelated areas of SM&CR in response to a guidance consultation on SoRs and Responsibilities Maps. Respondents might find it helpful to review [PS18/14 – Extending the Senior Managers & Certification Regime to FCA firms](#).

Changes made to the guidance as a result of feedback received

We have outlined the changes made in the relevant sections. In summary, we have

- Added 3 new examples of SoRs and
- removed certain SMFs and committees from the second example of the Responsibilities Maps.

You can see the full text of the proposed guidance [here](#)

We would like to thank all respondents for taking the time to reply and for their constructive feedback. We have carefully considered all responses and have revised our guidance where appropriate.

Annex 1 List of non-confidential respondents

Association of Mortgage Intermediaries

WMBA.