The FCA and PRA review of the Senior Managers and Certification Regime (SM&CR) – BDBF Response

On 30 March 2023, the Financial Conduct Authority (FCA) and UK Prudential Regulation Authority (PRA) published a joint discussion paper on the review of the Senior Managers and Certification Regime (SM&CR), inviting responses by 1 June 2023.

The FCA and PRA are seeking views on the effectiveness, scope and proportionality of the SM&CR, and potential improvements to the regime. Of particular interest is how the regime is operating in practice (we include comments from the employee perspective).

You can read our full response in the PDF below:

BDBF
EMPLOYMENT LAW

The FCA and PRA review of the Senior Manager and Certification Regime (SM&CR)

Brahams Dutt Badrick French LLP - Response

Details of the Respondent

We are a specialist employment law firm based in the City of London. We are experienced in advising on the impact of the SM&CR for individuals, including issues such as:

- the scope and consequences of statements of responsibility;
- the certification process;
- investigations into an individual's conduct or competence;
- the impact of findings regarding fitness and propriety; and
- regulatory references

We have answered those questions from the SM&CR Discussion Paper where we feel our practical experience in this area may be of assistance.

Responses

Q1: To what extent do you agree or disagree that the SM&CR has made it easier to hold individuals to account?

We would strongly agree that it is having the effect of holding individuals to account.

Q2: To what extent do you agree or disagree that the SM&CR regime has improved safety and soundness and conduct within firms?

We are not able to comment in relation to 'safety and soundness'. In relation to 'conduct', we continue to advise individuals who are accused of issues of conduct. Generally speaking, there is a trend away from cases of financial misconduct (e.g. market manipulation) and towards non-financial misconduct (e.g. sexual harassment).

Q3: To what extent do you agree or disagree that the fitness and propriety requirements support firms in appointing appropriately qualified individuals to Senior Manager roles?

Not able to comment.

Q4: Please provide any suggestions that can help ensure that appropriately qualified individuals are not deterred from taking up relevant Senior Manager roles.

Not able to comment.

Q5: To what extent do you agree or disagree that the SM&CR has made it easier for firms to hold staff to account and take disciplinary action when appropriate against them?

In our view, the pendulum has swung too far the other way. Of course it is right that staff should be held to account and, where appropriate, disciplined if there are legitimate concerns about their

If you need advice on the Senior Managers and Certification Regime (SM&CR), please contact Nick Wilcox (nickwilcox@bdbf.co.uk) or your usual BDBF contact.