

## UP TO DATE COMPLIANCE NEWS FOR FIRMS IN THE FINANCIAL SERVICES SECTOR

### Special Edition: FCA Podcast on SM&CR

#### **The FCA recently released a new ‘Inside FCA Podcast’ with the Head of Conduct Specialist in Supervision: David Blunt**

This is the first instalment of a two-part SM&CR podcast discussion on the Certification Regime and Regulatory References.

#### **Certification Regime**

- Under the Certification Regime, firms are required to assess that any staff performing “Certification Functions” are “fit and proper” for their role upon recruitment and on an annual basis.
- “Certification Functions” include specified roles by the FCA that have potential to cause harm to consumers, markets or the firm. For firms that are subject to the Remuneration Code, all “material risk takers” are within scope of the Certification Regime.
- To assess that staff are “fit and proper”, firms must review the scope of an individual’s role and what characteristics are required to effectively discharge such role. Furthermore, firms must consider what competence means for each of the different roles performed by the individual.
- Senior Managers have the responsibility of overseeing the Certification Regime. Firms and Senior Managers should be confident that arrangements in place at the firm are sufficiently robust to ensure only those competent for their roles are assessed as fit and proper.
- Employees of firms performing specified functions fall within the scope of the Certification Regime. However, firms should note that the term “employee” has a special and broader definition under the FCA rules, which means contractors of the firm will come within scope.
- The Certification Regime is primarily focused on staff dealing with UK clients and employees of UK firms. If an employee of a UK firm works overseas but deals with clients in the UK, then they will fall within the scope of the Certification Regime.
- Mr. Blunt emphasised the importance of firms preparing themselves for potentially difficult cases and how they will deal with individuals who fail to meet the Certification requirements.

## Regulatory references

- Firms must obtain Regulatory References for new hires going back 6 years of the individual's employment history. This ensures that firms obtain information they need from the previous employers to make well informed decisions about staff going into important functions. This aims to prevent individuals with poor conduct history moving from firm to firm.
- Firms must obtain Regulatory References for Certification Staff, Senior Managers and Non-Executive Directors. References must follow the [FCA template](#) and cover, amongst other matters, any Conduct Rule breaches resulting in disciplinary action.
- Firms are prohibited from entering into NDAs with staff if those agreements would prevent firms and individuals disclosing information which the Regulatory References regime requires to be disclosed.
- Certification Staff will appear on a new public FCA Directory (separate from the existing [FCA Register](#)). Firms can start submitting data to the Directory as of 9 December 2019. This new Directory will be available in December 2020.
- Effectively, this means there will be a 12-month period between December 2019 and December 2020 when Certified Staff will be completely unsearchable online. The FCA has stated that firms will still be able to carry out due diligence pertaining to such individuals by other means during this time.

## Newgate Compliance



**Martin Herriot**  
Founding Director



**Aron Brown**  
Founding Director



**Matthew Hazell**  
Managing Director



**Traci Pham**  
Managing Director



**Haydon Thomas**  
Director