

FCA emphasises significance of Statements of Responsibility and Responsibilities Maps ahead of SMCR roll out

FINANCIAL REGULATION BRIEFING

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New guidance consultation published by the regulator

On 11 October, the FCA published a guidance consultation ("**GC18/4**") around statements of responsibility and responsibilities map. The regulator made it very clear that the purpose of the GC18/4 was to highlight relevant considerations for solo-regulated firms who shall shortly be subject to senior managers and certification regime ("**SMCR**") rules, when the regime is extended to cover solo regulated firms in 2019. However, given the relatively small cohort of firms in the extended regime who will be required to produce responsibilities maps, it would seem prudent for those firms already caught to have a quick check that the regulator's statements are in line with their current practice.

In GC18/4, the regulator has taken the approach of setting out (fictitious) examples of good and bad practice. This makes for quite an easy read. But to help condense the key messages, we have summarised the top good and bad points which the FCA is focussing on.

Statements of responsibility ("SoRs")

The FCA has provided clarity on the contents of SoRs for solo regulated firms. The FCA describes SoRs as: a single document that every Senior Manager will need to have, clearly setting out their role(s) and responsibilities. The FCA urges individuals to ask themselves: could someone who understands the type of business that you do, but doesn't know how your firm is organised, understand what you are accountable for by reading your SoR? This is clearly what the FCA sees as the purpose of the SoR.

Interestingly, the FCA makes a point which Ashurst has been highlighting to its clients since the initial proposals were published: SoR is not the same as a job profile, so it should not describe the competencies and skills required for the role or how the responsibilities should be discharged. This makes it clear that the SoR needs to be a new document, and cannot simply be a migration of job descriptions, in the event a firm had such an inventory.

We have set out a comparison table of SoR contents for different types of solo regulated firms below for ease of reference.

	ENHANCED FIRM	CORE FIRM	LIMITED FIRM
Prescribed responsibilities	<p>This section is used to allocate one or more Prescribed Responsibilities.</p> <p>A Senior Manager may not necessarily have any Prescribed Responsibilities.</p> <ul style="list-style-type: none"> • Are the Prescribed Responsibilities that you have allocated appropriate to this role? • If any of these Prescribed Responsibilities are shared with another Senior Manager, are they shared appropriately (e.g. because of a job share)? Has the rationale been explained? Is it clear that these are allocated to the Senior Manager who is ultimately responsible? • If any of these Prescribed Responsibilities are divided, is there a good reason for this, and have they been divided in a way that is manageable? • Are the allocated Prescribed Responsibilities applicable to this legal entity? 		N/A
Overall responsibility	<p>This section in the SoR is used to describe responsibilities for the main functions and activities of the business. They are just as important as Prescribed Responsibilities. The purpose of the Overall Responsibilities is to ensure that an SMF manager is responsible and accountable for every area of a firm's activities so that there are no gaps.</p> <ul style="list-style-type: none"> • What activities, business areas and functions does my firm undertake or have? Firms need to consider all their financial services activities and identify which individuals are accountable for what. • Each firm will have its own set of Overall Responsibilities, reflecting their business and activities. • Does every activity, business area and management function at this legal entity have a Senior Manager with Overall Responsibility for it? If a responsibility is included in any of the SMF roles (e.g. Chief Risk function) or the Prescribed Responsibilities that apply to the firm, then firms should not also allocate that responsibility as an Overall Responsibility. • Have you clearly described each Overall Responsibility for the relevant individual in their SoR? • If any of the other Senior Managers are accountable for a similar area of responsibility, have you clearly 	N/A	N/A

	<p>described the dividing line between them (e.g. which product lines or customers each is accountable for)?</p> <ul style="list-style-type: none"> • If any of these responsibilities are shared with another Senior Manager, are they shared appropriately (e.g. because of a job share)? • Have you checked you have not allocated an Overall Responsibility to a second or third line function (e.g. risk, compliance or internal audit) which is actually only accountable for oversight or monitoring? (For example, the Compliance Oversight function should not be given responsibility for sales where its only function is in its oversight role). 		
Other responsibilities	<p>This section can be used to describe responsibilities for other activities which are not covered by a Prescribed Responsibility or that have been allocated under the rules about overall responsibility.</p> <p>Most SMF managers will have covered everything they are responsible for under the sections above and do not need to complete this section.</p> <p>However, there may be things which have not been covered such as new strategic initiatives, business transformation programmes or mergers.</p> <ul style="list-style-type: none"> • Have you used this section for responsibilities that are part of the normal course of business and should be Overall Responsibilities? If so, these should be included in that section. • Have these responsibilities been described clearly so that they can be understood by someone who is not familiar with them? 	<p>This section is used to describe the Senior Manager's other responsibilities. This could be anything not covered by the Prescribed Responsibilities but will usually cover business functions and activities for which they are accountable (e.g. sales, customer service, information technology).</p> <ul style="list-style-type: none"> • Have these responsibilities been described clearly so that they can be understood by someone who is not familiar with them? • Where other Senior Managers are responsible for similar areas, is the distinction clear? • Are these responsibilities relevant to this legal entity? 	<p>This section is used to describe the Senior Manager's responsibilities. This will usually cover business functions and activities for which they are accountable (e.g. sales, customer service, information technology).</p> <ul style="list-style-type: none"> • Have these responsibilities been described clearly so that they can be understood by someone who is not familiar with them? • Are these responsibilities relevant to this legal entity?
Supplementary information	<p>This section provides space for additional information.</p>		

Shared Responsibilities

The FCA is keen to address good and poor practice in SoRs where responsibilities are shared. There is a clear view of the regulator that not all 'shared' responsibilities are actually that. The FCA notes, for example, that it would be poor practice for a Compliance Officer to share Prescribed Responsibilities with a CEO as it is not clear who would be ultimately accountable (and Compliance is a second line of defence function and should be independent). The FCA also criticises circumstances where although responsibilities are described as shared, it actually appears to be divided responsibility. This is made worse if the division is complex and involves individuals who report to each other, potentially confusing accountability. Unless such rationale is very clearly set out and there are no gaps of accountability, the FCA views this as sub-optimal.

A red flag is also raised to the regulator where **every** senior manager shares a Prescribed Responsibility. The FCA's concern here is that roles are not being clearly defined and Senior Managers do not have clear individual accountability.

The FCA highlights good practice where sharing responsibility is used in an appropriate way (e.g. where there is a departing senior manager and the shared responsibilities are part of the handover) and the FCA commends good, clear explanation in the SoR of the rationale in this circumstance.

SOR Checklist

The following sets out some good and bad practice which the regulator has seen in relation to SoRs.

DO'S		DON'T'S	
✓	Include enough information to clearly describe the Senior Manager's actual responsibilities and accountabilities	✗	Include unnecessary detail
✓	Make the SoR self-contained	✗	Refer to other documents
✓	List functions which the Senior Manager is responsible for	✗	Refer to executive director's responsibilities as contributing to the Board and to ExCo (this is part of the job of any Executive Director and is part of the description of the Executive Director Senior Management Function)
✓	Give explanation and detail	✗	Include unnecessary detail
✓	Be prescriptive, particularly on asset classes or business lines	✗	Put down that someone is responsible for TCF (the FCA views this as a firm-wide responsibility, not just one individual's responsibility)
		✗	Include details of responsibility in other entities (the SoR is specific to a legal entity)
		✗	Use this as an opportunity to change the senior manager's current responsibilities

Responsibilities Maps

Responsibilities maps are only required for enhanced firms under the extended regime. The regulator suggests a "Goldilocks" approach and is looking for documents which are not too long, and not too short. They should be just right. And preferably with graphics and text to make it easily understandable. The regulator has given two checklists which are quite useful: one for firms in groups, and the other for firms which are not which relate to responsibilities maps.

Non-group entities

- Is it easy to understand the governance structure of the firm and who is responsible for strategic decisions? For example, are these made by individuals or through committees?
- Is it easy to understand who has oversight of delivery of these decisions?
- Can the reader understand who is responsible for implementing these decisions, including the key responsibilities of Senior Managers?
- Is information on responsibilities provided at a summary level? If not, consider moving detailed information into SoRs.
- Is it easy to understand who reports to whom?
- If there are multiple reporting lines, is the distinction between them clear?

Group entities

Is it clear how the firm relates to others in its group, especially other UK regulated firms?

- Are the key group-level individuals with influence over the firm identified?
- Does the map show how they connect with key individuals and governance bodies of the firm?
- If the firm relies on group-level governance committees (e.g. group RiskCo), are these shown and can the reader understand how this works?
- If governance decisions are made by group management committees (e.g. EMEA Operations Committee), is the remit and membership of these committees clear?
- If group committees influence the governance of the firm, is it clear how these relate to each other and to the formal governance of the firm (eg its Board of Directors)?

Conclusion

The FCA tends to issue guidance where it feels there is confusion in the market. While this paper is targeted at solo-authorized firms, it would act as a good benchmark for existing SMCR firms in relation to their SoRs and Responsibility Maps.

For solo-regulated firms who are now ramping up towards the 2019 extension, this will be quite a useful paper before they start the task of preparing their own SoRs and Responsibilities Maps.

Contacts



James Perry
Partner

T +44 (0)20 7859 1214
M +44 (0)7789 982 184
james.perry@ashurst.com



Jake Green
Partner

T +44 (0)20 7859 1034
M +44 (0)7876 030 472
jake.green@ashurst.com



David Capps
Partner

T +44 (0)20 7859 1397
M +44 (0)7799 143 618 / +44 (0)7799
410 596



Crowley Woodford
Partner

T +44 (0)20 7859 1463
M +44 (0)7887 821 137
crowley.woodford@ashurst.com



Lorraine Johnston
Counsel

T +44 (0)20 7859 2579
M +44 (0)7766 835 841
lorraine.johnston@ashurst.com



www.ashurst.com

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