



## Regulatory round up – key developments in UK financial services

In this article, we share a round-up of the key developments from a regulatory perspective for HR Professionals in UK financial services firms. This covers expected changes to the SMCR regime, regulatory remuneration requirements and whistleblowing framework. We also look at the increasing focus of the regulator on culture and conduct within financial services firms in the wake of recent sexual harassment allegations within a UK asset manager.

### SMCR

The UK Government, alongside the UK financial services regulators (the Financial Conduct Authority (**FCA**) and Prudential Regulation Authority (**PRA**)), recently launched a review into the performance, effectiveness and scope of the Senior Manager and Certification Regime (**SMCR**), a key governance framework within UK financial services firms. The [consultation](#) closed on 1 June and is expected to report back later this year.

The SMCR was introduced in the wake of the 2008 financial crisis with the aim of holding individuals to account and ensuring that they understand and uphold requisite standards of behaviour. The regime impacts HR teams in several ways, including onboarding (e.g. through regulatory references and certification approval processes), performance management, disciplinary procedures, and Conduct Rules compliance. Compliance can be onerous, requiring significant time and resources, and how to implement the regime in practice is not always clear. The review aims to assess how the regime works in practice and what impact the industry thinks it has on the UK's international competitiveness. It is not clear what the future changes might look like, though we expect to see greater flexibility within the current regime to improve the UK's international competitiveness.

### Remuneration requirements

Alongside the Government's broader SMCR review, the FCA has recently published a [consultation paper](#) on proposals to change remuneration requirements for smaller dual-regulated firms (i.e., firms that are regulated by both the FCA and the PRA). The background to this consultation is that the FCA is looking to update its rules to remain broadly consistent with those of the PRA, following a [similar consultation run by the PRA in February 2023](#). The aim of the FCA's proposals is "to ensure more dual-regulated firms are subject to remuneration rules that are more proportionate to the risks these firms pose to consumers and markets in the

UK". Two of the key proposed changes are:

- amending the proportionality thresholds which allow smaller, less complex dual regulated firms to be excluded from some of the remuneration rules by increasing the total assets threshold and changing the additional criteria that firms with over £4 billion of total assets must meet; and
- removing the requirement for smaller, less complex dual-regulated firms to apply the rules on malus and clawback.

The consultation closed on 9 June – we'll report back once we know more. Full details of the background and the proposal can be found in the [consultation paper](#).

### Whistleblowing protections review

**FCA Qualitative Assessment:** The FCA has also kept itself busy by publishing a [summary of the results of its whistleblowing qualitative assessment survey 2022](#) (conducted in early 2022). The findings demonstrate challenges within the management of reports, with 71% (15 out of 21) feeling extremely or somewhat dissatisfied about how the FCA Whistleblowing Team explored the issues reported. Overall only 2 of the 21 respondents reported that they were extremely or somewhat satisfied with the FCA's handling of their whistleblowing report. Some respondents stated that they were not reassured that their concerns had been properly investigated, that they were not adequately updated throughout any investigation, and felt that the FCA "*failed to take allegations of serious wrongdoing seriously*".

In response, the FCA intends to pursue numerous initiatives including improving:

- its dialogue with whistleblowers about investigations, actions taken and outcome of the case;
- the training for its Whistleblowing Team; and
- its webform to fully capture a whistleblower's disclosure.

The challenges faced by the FCA are, in many ways, not unlike those faced by employers. Building trust with whistleblowers, and sharing appropriate levels of information and feedback, are issues employers are grappling with when managing compliance under SYSC 18, the FCA's specific whistleblowing framework, and for European employers, the new requirements in the European Whistleblowing Directive.

**Government Review:** The FCA review sits alongside the Government's long-awaited review of the UK's whistleblowing framework, launched in March. This is partly seen to be a response to the implementation across much of the EU, of the EU's Whistleblowing Directive to consider whether any greater protections should be afforded to whistleblowers under the UK regime.

The Government is seeking views and evidence from whistleblowers, key charities, employers and regulators in order to examine the effectiveness of the UK's current whistleblowing framework. The [policy paper](#) announcing the review states that the research stage is due to conclude by Autumn 2023 but no timeline is given for any next steps. This is one to watch and we will share an update on any announcements later this year.

### Culture and conduct

A key component of the SMCR regime is a focus on conduct and culture within financial services. "*Non-financial misconduct*", such as bullying and harassment, can result in regulated employees losing the ability to work in a regulated role in the future on the basis that they are not "*fit and proper*" to do so. The FCA is clear that serious consideration should be given as to whether anyone found to have victimised a whistleblower is "*fit and proper*" to do their role and has also highlighted that consideration needs to be given to the extent to which an individual engaged in bullying or sexual harassment is "*fit and proper*". There has been a lack of clarity for some time on the level and seriousness of bullying and/or sexual harassment that could result in a finding that an individual is not "*fit and proper*". Thus, the market awaits an update from the FCA following its current review into sexual harassment allegations against UK hedge fund manager, Crispin Odey.