HM Treasury Call for Evidence: Senior Managers & Certification Regime

BSA Response

Restricted
1 June 2023

Building Societies Association

Background

The BSA represents all 43 building societies, as well as 7 larger credit unions. Building societies serve almost 26 million consumers across the UK and have total assets of nearly £500 billion. Together with their subsidiaries, they have helped over 3.6 million families and individuals to buy a home with mortgages totalling over £366 billion, representing 23% of total mortgage balances outstanding in the UK. They are also helping over 23 million people build their financial resilience, holding over £342 billion of retail savings, accounting for 18% of all cash savings in the UK. With all of their headquarters outside London, building societies employ more than 51,500 full and part-time staff.

Response to HMT's General Questions

The BSA welcomes HM Treasury's call for evidence on the Senior Managers & Certification Regime (SMCR).

In general terms, the BSA and its members consider that the primary aims of the SMCR are being met. There are, however, aspects that should be reassessed in order to ensure that the SMCR operates effectively for both firms and regulators. These are set out in Sections 1 to 4 below.

We have not responded to every question, as not all are relevant to our members, but have commented where we consider it appropriate to do so. In response to the specific questions you raise about the regime's purpose:

1. Has the SM&CR effectively delivered against its core objectives? For example, making it easier to hold individuals to account; or improving governance, behaviour and culture within firms.

Based on the evidence of relatively recent surveys (including UK Finance's 2019 Survey[1] and the Bank of England's 2020 evaluation[2] of the regime), this would appear to be the case.

2. Do these core objectives remain the right aims for the UK?

The BSA believes that these remain appropriate, but subject to the regime not becoming unwieldy to operate and the costs of its operation outweighing the benefit. Proportionality remains key for firms based on size and complexity.

3. Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

We believe that the scope of the regime is in danger of expanding. For example, we are watching with interest the development of the regulators' approach to Diversity, Equity and Inclusion. We believe that there is a need for a diverse, equitable and inclusive financial services sector in the UK. We do not currently consider that this could be effectively achieved

[1] https://www.ukfinance.org.uk/policy-and-guidance/reports-publications/smcr-evolution-and-reform
[2] https://www.bankofengland.co.uk/prudential-regulation/publication/2020/evaluation-of-the-senior-managers-and-certification-regime

through the operation of the SMCR. Some of our members already feel a tension between recruiting diverse board members and “ticking a box” for the regulators.

9. Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?

We comment more on this in the following sections.

Aspects of the SMCR to Reassess

As stated above, the BSA believes that there are a number of aspects of the SMCR that could usefully be reassessed.

These are summarised below, and additional information and evidence on each is contained in the later sections of this response:

1. **Processing of Applications:** While the FCA has recently stated that it has cleared the backlog of applications that it has been handling, it will take some time for that to be felt in practice by firms. Where there are delays in processing applications this can have a detrimental impact on firms’ ability to effectively run their businesses in compliance with the SMCR.

   The FCA must in future ensure that it is adequately resourced to deal with and process applications, and where that is not proving to be the case, must be held to account for failing to meet requirements. That said, some of the proposals suggested as meriting review in this response may serve to reduce the volume of applications being dealt with.

   See Section 1 below for more information.

2. **Roles Requiring Approval:** The sheer volume of roles requiring pre-approval by the regulators in itself creates volume issues in terms of their capacity to deal with them efficiently and timeously. It creates a similar administrative burden on firms when collating and submitting applications.

   Consideration should be given to reducing the number of senior manager roles that require approval. For example, might it be appropriate in some/all circumstances for the regulators only to approve a firm’s CEO, CRO and Chair?

   See Section 2 below for more information.

3. **Extension of the 12 week rule:** The 12 week rule currently allows a person to provide cover for an individual Senior Manager without themselves being approved, where the absence is temporary or reasonably unforeseen and is for less than 12 consecutive weeks. This period has proved too short, and in practice has been impacted by the delays at the FCA in processing applications.

The FCA helpfully made modifications to the requirements of this rule during the Coronavirus pandemic and consideration should be given to extending the 12 week rule to a minimum of [36], with appropriate safeguards in place.

See Section 3 below for more information.

4. **Regulatory References:** Feedback from our members is that the current regulatory reference process is unwieldy, time consuming and adds little or no value.

See Section 4 below for more information.

Section 1: Processing of Applications

The BSA and its members consider that a 3 month time frame for the regulators to assess and approve applications is excessive. We believe 1 month would be more appropriate.

We note the FCA claims to have cleared its backlog, but member experience is that the administrative process remains painfully slow. A recent example from one of our members is where an application was submitted to the FCA in mid-March 2023, but it took the regulator over 7 weeks to inform the society that a caseworker had been allocated.

Other members have complained about issues with contacting the FCA; including waiting on the FCA Connect helpline for over 90 minutes only to be cut off with no means to leave a message. There needs to be a process where an appropriate contact point is available for this type of situation.

Section 2: Roles Requiring Approval

Against the backdrop of SYSC, and in a world where the Consumer Duty’s requirements are “live”, firms should be able to be held account more effectively for the proper functioning of their businesses in line with requirements.

The BSA believes that, taking a proportionate and risk-based view, there is scope to consider reducing the number of roles that require regulatory approval.

Section 3: Extension of the 12 Week Rule

The BSA is aware that at various times a number of its members have been concerned at the operation of the 12 week rule in cases of temporary absence. In cases where, for example, key personnel are placed on garden leave having resigned from a firm, recruitment periods are lengthy and in most cases it will inevitably be much longer than 12 weeks for a permanent incumbent to be recruited, never mind for them to have served a notice period elsewhere.

With that in mind, we would urge the government to consider extending the 12 week rule to a minimum of 36 weeks, and preferably longer.

Section 4: Regulatory References

The BSA regularly hears from its members that the current regulatory reference process is unwieldy, time consuming and adds little or no value.

By:
Elaine Morton & Andrew Hopkins
elaine.morton@bsa.org.uk
andrew.hopkins@bsa.org.uk

York House
23 Kingsway
London WC2B 6UJ

020 7520 5900
@BSABuildingSocs
www.bsa.org.uk

www.bsa.org.uk

The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £481 billion, and account for 23% of the UK mortgage market and 18% of the UK savings market.