TOPIC 18

Regulating firms and individuals

LEARNING OBJECTIVES

In Topic 17, we looked at the aims and objectives of the FCA. In this topic we focus on how the FCA goes about supervising firms and individuals in order to fulfil its broader objectives.

By the end of this topic you should have an understanding of:

- regulated activities and investments;
- the responsibilities of senior managers, the Senior Managers and Certification Regime (SM&CR) and the approved persons regime;
- the 'fit and proper' requirements;
- how the FCA categorises the supervision of firms;
- training and competence requirements;
- the FCA's enforcement and disciplinary powers.

This topic covers the Unit 2 syllabus learning outcomes K1.4, K1.5, U1.1, U1.3, U1.4, U2.1, U2.2 and U2.3.

THINK . . .

Many of the FCA's rules are designed to ensure that individuals who look after other people's money have the appropriate character and integrity to do so, are properly trained for their role, and their performance monitored.

If you are already working in the financial services sector, think about how you are supervised and who takes ultimate responsibility for the work you do.

If you are not yet working in the sector, think about what characteristics would make an individual suitable to be responsible for other people's money. What information would you want to know to give you confidence in their integrity?

TOPIC
18

18.1 What are regulated activities and investments?

Any financial services business that carries out a regulated activity in the UK must be authorised, unless they are exempt. Firms have to apply to the FCA (or, if dual regulated, to the PRA) for authorisation.

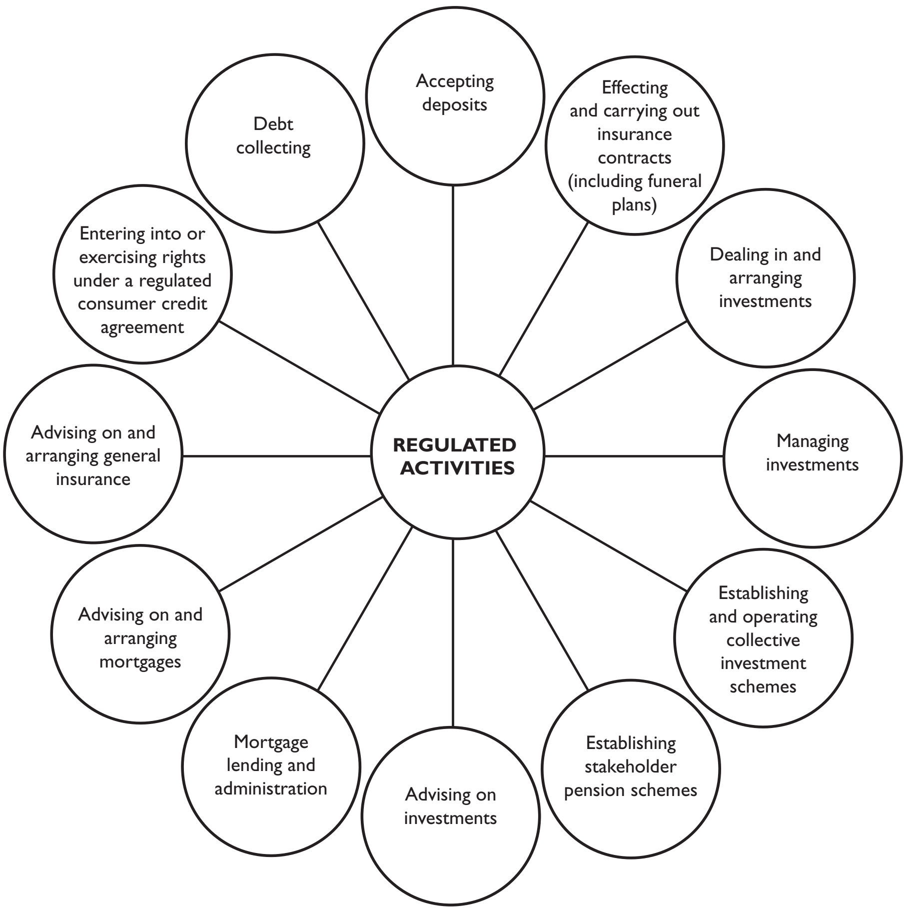
THE GENERAL PROHIBITION

Section 19 of the Financial Services and Markets Act 2000 (FSMA) states that a person (which includes a corporate body) must not carry on a regulated activity or purport to do so unless they are an authorised or exempt person. This is known as the general prohibition.

Carrying on a regulated activity in breach of the general prohibition is a criminal offence under the FSMA.

Figures 18.1 and 18.2 provide examples of regulated activities and regulated investments, respectively.

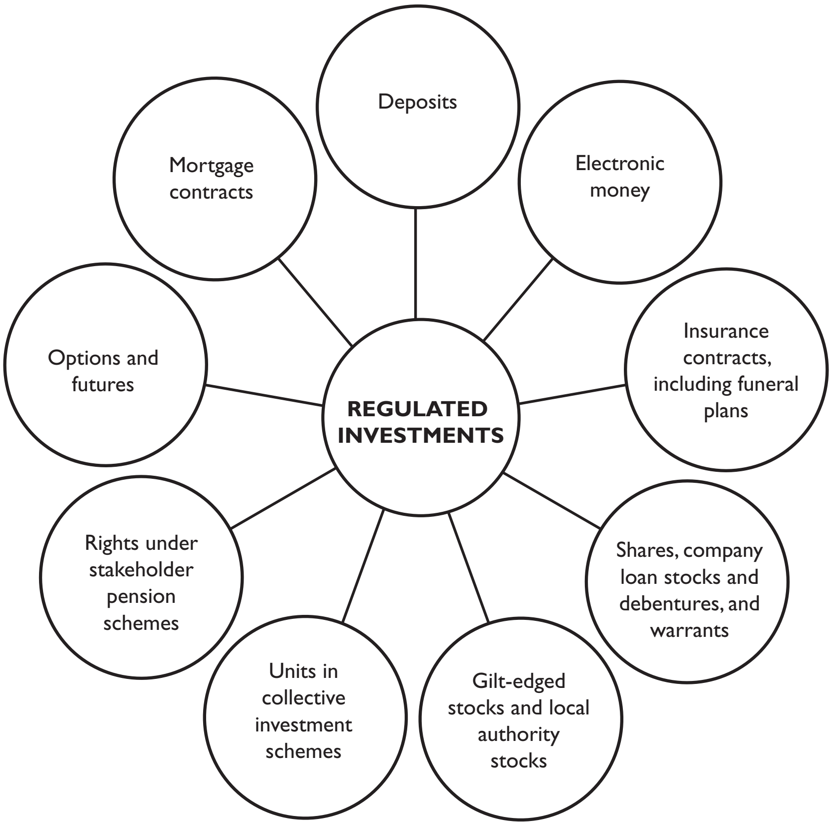
FIGURE 18.1 EXAMPLES OF REGULATED ACTIVITIES



The FCA describes two categories of regulated investment:

- securities (such as shares, debentures and gilts); and
- contractually based investments (including life policies, personal pensions, options and futures).

FIGURE 18.2 EXAMPLES OF REGULATED INVESTMENTS



REGULATED ACTIVITIES: LEGAL BASIS

The activities for which firms must be authorised were first listed in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, often referred to as the Regulated Activities Order (RAO).

The section of the FSMA 2000 under which permission may be granted to a firm to carry out regulated activities is Part 4A – so this form of permission is often known as Part 4A permission. Permission is granted in the form of a list of regulated activities that the firm is allowed to carry out; it also shows the regulated investments with which the firm is allowed to deal.

The range of regulated activities covered by FSMA 2000 changes periodically as new activities fall under FCA and/or PRA regulation.

Detailed guidance on the scope of regulated activities, investments and exemptions is contained in FCA Perimeter Guidance manual (PERG): www.handbook.fca.org.uk/handbook/PERG/2/?view=chapter.

18.2 What is the Senior Managers and Certification Regime (SM&CR)?

In addition to regulating the activities of firms, the FCA also regulates the appointment and activities of individuals within the firm. The rules relating to this aspect of its work are set out in the High Level Standards section of the FCA Handbook.

FACTFIND

You can access all the High Level Standards in the FCA Handbook at:

www.handbook.fca.org.uk/handbook

Two particular issues the regulators had to address in the aftermath of the 2007–09 financial crisis were criticism of its approved persons regime and difficulties in identifying which individual or individuals are responsible for a business's failings. In response, the FCA and PRA introduced a Senior Managers and Certification Regime (SM&CR) for banks, building societies and credit unions. This framework establishes an individual accountability framework and regulates individual conduct and standards in the financial services industry. The FCA extended the SM&CR regime to FCA solo-regulated financial services firms. This excludes appointed representatives who continue to be subject to the approved persons regime.

APPOINTED REPRESENTATIVES (ARs)

An appointed representative (AR) is a firm or person who runs regulated activities and acts as an agent for a firm, which is known as the AR's 'principal'.

The principal firm is the regulated entity, not the AR, and the principal takes full responsibility for ensuring that the AR complies with FCA rules.

As stated above, the approved persons regime still applies to ARs.

ARs carrying out controlled functions (functions that require them to have a significant influence on the conduct of an authorised person's affairs, eg a senior manager) or dealing with customers in connection with regulated activities (eg a financial adviser) are known as approved persons and are subject to individual registration with the FCA.

In Policy Statement 22/11, the FCA established a set of measures aimed at improving the understanding of principals regarding their responsibilities towards their ARs. The measures also require principals to exercise stronger oversight and take more effective responsibility for their ARs. Furthermore, principals are now required to collect additional information from their ARs and report it to the FCA, all with the goal of minimising harm to consumers and markets.

For further information, you can go to:

www.fca.org.uk/publication/policy/ps22-11.pdf

18.2.1 The SM&CR framework

There are three tiers under the SM&CR:

- **Core** – firms in this tier have to comply with the baseline requirements outlined in the rest of this section.
- **Enhanced** – only the firms representing the greatest risk to consumers or markets are classed as enhanced firms. These firms have additional requirements.

- **Limited scope** – this applies to firms that are already exempt under the approved persons regime. They are exempt from some baseline requirements and generally have fewer senior management functions.

The core regime applies to the majority of these firms, and consists of three key elements:

- The Senior Managers Regime.
- Certification Regime.
- Code of Conduct.

18.2.2 What is the Senior Managers Regime (SMR)?

The SMR focuses on individuals in key roles in relevant firms. The FCA has a number of designated senior management functions for core SM&CR firms (see Table 18.1). These are the functions the regulator feels pose the greatest risk to either customers or market integrity if the person conducting them is not fit to do so. There is also a range of prescribed responsibilities that must be allocated among the senior management of a business.

Where an individual applies for a senior management role or moves to a different senior manager role that is materially different from their current one, they must be pre-approved by the regulator. Their application must be accompanied by a "statement of responsibilities", detailing the aspects of the business for which they will take responsibility. The regulator can then compare the personal capabilities of the individual with the nature of the role they will be performing. Once an individual is appointed, firms must have robust procedures to equip the senior manager to carry out their role effectively. Firms are also required to ensure the ongoing fitness and propriety of their senior managers.

Enhanced firms have two additional requirements in which they must:

- maintain a "responsibilities map", which details the way responsibilities are allocated between the senior management should problems arise, the "responsibilities map" enables the regulator to more easily identify which person is responsible.
- ensure that each activity, business area and management function is allocated a senior manager with overall responsibility.

There is a statutory duty for senior managers to take "reasonable steps" to prevent regulatory breaches in their area of responsibility. If a breach occurs, then, in order to take action against an individual, the regulator must be able to prove that the senior manager failed to take reasonable steps to prevent the breach occurring.

The penalties for senior managers are wide and potentially severe. The FCA is empowered to instigate criminal proceedings against a senior manager whose action or inaction has led their business to fail, through "reckless misconduct". If an individual is found guilty, the maximum punishment is a prison sentence of up to seven years and/or an unlimited fine.

TABLE 18.1 FCA-DESIGNATED SENIOR MANAGEMENT FUNCTIONS FOR CORE SM&CR FIRMS

SMF 1	Chief executive
SMF 3	Executive director
SMF 27	Partner function
SMF 9	Chair
SMF 16	Compliance oversight function
SMF 17	Money laundering reporting function

A more comprehensive list applies to enhanced firms, and a condensed one for limited scope firms. For further information you can visit: www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf.

18.2.3 What is the Certification Regime (CR)?

The regulator recognises that the actions of those in more junior roles, below senior management level, could still cause major damage to a business and its customers. The FCA therefore defines a number of "certified" functions. A certified function is one involving aspects of the firm's business where there is a potential risk of significant harm to the firm or its customers.

Individuals in certified functions are subject to the Certification Regime (CR): they are not required to secure direct approval from the FCA but the firm, in effect, certifies their fitness and propriety to carry out the role. Each firm must take reasonable care to ensure that no employee carries out a role for which certification is required until they have been assessed as "fit and proper". Their continued fitness and propriety must be assessed on an ongoing basis, at least annually.

The FCA certification regime applies to the following functions:

- Significant management function.
- Proprietary traders.
- CASS operational oversight functions.
- Functions subject to qualification requirements, eg mortgage advisers, retail investment advisers and pension transfer specialists.
- Client dealing function, eg financial advisers and investment managers.
- Anyone supervising or managing a certified function who is not themselves a senior manager.
- Material risk takers.

- Those with responsibility for algorithmic trading.

A designated senior manager must be responsible for each firm's certification regime.

18.2.4 What is the Code of Conduct?

Under SM&CR, the regulator has the power to make rules of conduct that apply to senior managers, certified persons and other employees. Conduct rules set expectations about standards of behaviour for those employed in firms covered by the Senior Managers Regime, other than ancillary staff (ie those performing a role that is not specific to financial services, such as security staff, IT support, etc).

The tier one individual conduct rules are:

- **CR1** – you must act with integrity.
- **CR2** – you must act with due skill, care and diligence.
- **CR3** – you must be open and co-operative with the FCA, PRA and other regulators.
- **CR4** – you must pay due regard to the interests of customers and treat them fairly.
- **CR5** – you must observe proper standards of market conduct.
- **CR6** – you must act to deliver good outcomes for retail customers.

The tier two conduct rules for senior managers are as follows:

- **SM1** – you must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
- **SM2** – you must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- **SM3** – you must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- **SM4** – you must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

Firms must:

- make individuals who are subject to the rules aware that this is the case, and provide training on how the rules apply to them;
- take effective action where staff fall below required standards.

18.2.4.1 Reporting

The FCA requires firms to report to it within seven days if they take disciplinary action against a senior manager as a result of a breach of one or more rules of conduct. For all other staff, an annual report suffices. The FCA itself may take disciplinary action against an individual found to be in breach of the conduct rules; however, it is only likely to do so in extremely serious cases.

18.2.5 What are the rules on fitness and propriety?

An individual subject to the SM&CR must be deemed "fit and proper" to carry out such a role. The FCA sets out the following criteria.

- **Honesty, integrity and reputation** – these can be judged from a number of factors, including:
  - criminal record;
  - disciplinary proceedings;
  - known contravention of FCA (or other) regulations or involvement with companies that have contravened regulations;
  - complaints received, particularly about regulated activities;
  - insolvency, or management of companies that have become insolvent;
  - dismissal from a position of trust or disqualification as a director.
- **Competence or capability** – in terms of meeting the FCA's training and competence requirements (these are discussed in section 18.8).
- **Financial soundness** – as indicated by:
  - current financial position;
  - previous bankruptcy or an adverse credit rating.

In addition to the requirements detailed above, the FCA requires that, when assessing whether a person is fit and proper to perform a senior management function, particular consideration must be given to whether that individual:

- has obtained a relevant qualification;
- has undergone or is undergoing training;
- possesses a relevant degree of competence;
- has the personal characteristics required by the FCA.

Despite the FCA's emphasis on fitness and propriety there is a risk that an individual with a poor conduct/disciplinary record could gain continued employment in the financial services industry by moving from firm to firm if each new employer remained unaware of past issues. To counter the risk, the FCA requires that before an individual can be appointed to a senior manager role:

- they must be verified as being "fit and proper" to exercise their duties;
- the prospective employer carries out checks in respect of any criminal record and a credit check;
- references are provided from the individual's current and former employers covering the last six years. The reference should include details of any disciplinary action taken against the individual over the last six years due to breaches of the conduct rules and any findings that the person was not fit and proper. Any other information relevant to assessing whether they are fit and proper covering the previous six years should also be provided.

Prior to being appointed to a certificated function an individual must also be verified as fit and proper, have their last six years' references checked, and have a certificate for their function. There is, however, no requirement for a criminal record check.

FINANCIAL SERVICES REGISTER

The Financial Services Register is a public record of firms, individuals and other bodies that are, or have been, regulated by the PRA and/or FCA.

FCA DIRECTORY

Under SM&CR, the FCA publishes and maintains a directory of certified and assessed persons on the Financial Services Register so consumers and professionals can check the details of key individuals working in financial services. Firms are responsible for submitting and maintaining a person's data using the FCA's Connect system. You can find out more at the following link: www.fca.org.uk/firms/directory-persons.

18.3 What are the responsibilities of senior managers?

Senior managers must take responsibility for a firm's compliance with FCA regulations and produce relevant management information (MI). This is to demonstrate that their advisers give quality advice and treat customers fairly, and there are three particular ways in which they are required to achieve this. They must ensure that:

- the firm embodies a compliance culture, with senior managers using MI to drive forward the firm's fair treatment of customers and the quality of their advice process;

- all staff have clearly defined responsibilities and are monitored appropriately;
- monitoring and compliance procedures are regularly reviewed and updated.

18.3.1 Systems and controls

A firm must implement systems and controls that are "appropriate to its business", and it must be able to demonstrate that such systems and controls are appropriate. Systems and controls must be clearly documented and regularly reviewed. They will relate to a wide range of the firm's activities, including:

- the establishment of clear chains of responsibility, delegation and reporting;
- compliance;
- assessment and reporting of risk;
- reporting of other management information;
- competence and honesty of staff, particularly those who are subject to the SM&CR, with senior management applying the 'competent employee' rule, ie employees must have the necessary skills to carry out the job for which they are employed;
- a strategy for controlling business risks and for recovering from serious problems such as fire or computer failure;
- adequate and readily accessible records (with backup) of systems and controls must be securely kept;
- an audit of the systems and controls must be made independently of the persons who normally operate them.

18.4 What is the FCA's approach to supervising firms?

The FCA seeks to ensure that firms are complying with regulatory requirements through a programme of supervision, based on eight principles (see Figure 18.3).

FIGURE 18.3 EIGHT FCA PRINCIPLES FOR SUPERVISION

1	Being forward-looking and pre-emptive – addressing poor conduct to avoid risk and serious harm
2	Focusing on FCA strategy and firms' business models – identifying emerging risks and ensuring the FCA's supervisory activity mitigates these risks
3	Focusing on firms' culture and governance – examining a firm's purpose and the effectiveness of governance strategies used to identify and mitigate risks
4	Emphasis on individual accountability
5	Taking a proportionate and risk-based approach, ie targeting firms that could cause the most harm or have the most significant misconduct
6	Encouraging two-way communication – engaging with consumers, industry and firms, and being transparent about FCA priorities and work
7	Ensuring messages provided are co-ordinated and consistent, working closely with other regulatory bodies
8	Fixing systemic harm, preventing it from occurring again and ensuring consumers are compensated

Source: FCA (2024)

CHECK YOUR UNDERSTANDING 1

Can you recall from your studies in Topic 17 what the difference is between regulation and supervision? It is important for your understanding of this topic, so look back to the definitions in Topic 17 if you aren't sure.

18.4.1 How does the FCA prioritise its supervisory activity?

We saw in Topic 17 that the FCA adopts a "proportionate" approach to supervision, focusing its resources on those areas of the industry and firms that pose the greatest risk to its objectives.

- Most firms are supervised as a portfolio. Here, the FCA groups firms that share a common business model. These firms are supervised through a mixture of targeted supervisory work depending on the markets they operate in and programmes of communication and education.
- In contrast, for firms with the greatest potential impact on consumers or their relevant markets, the FCA provides dedicated supervisory oversight. This is a relatively small number of firms that, based on size, customer

numbers and market presence require the highest level of supervisory attention.

Figure 18.4 summarises the levels of supervision.

FIGURE 18.4 FCA LEVELS OF SUPERVISION

Dedicated supervisory oversight

- Banking and insurance groups with a very large number of retail customers and investment banks with very large assets and trading operations
- Subject to the highest level of supervision
- Supervised using continuous assessment
- Have a named supervisor

Supervised as a portfolio

- Can include a wide variety of firms across all sectors with retail customers and / or a significant wholesale presence
- Also includes smaller firms eg almost all intermediaries
- Their business models are analysed, but the FCA is more interested in firms that are 'outliers' compared with their peers
- The first contact point is the FCA's customer contact centre

CHECK YOUR UNDERSTANDING 2

Why do some firms receive dedicated supervisory oversight?

18.5 The FCA supervision model

The FCA's supervision model is based on the three pillars, as illustrated in Figure 18.5). These pillars draw on the FCA's ongoing analysis of each industry sector and the risks that sector poses to the FCA's objectives.

FIGURE 18.5 FCA SUPERVISION MODEL: THREE PILLARS

Pillar 1 Proactive firm or group supervision	Pillar 2 Event-driven, reactive supervision	Pillar 3 Issues and products
Pre-emptive identification of harm through review and assessment of firms and portfolios: this includes business model analysis and reviewing the drivers of culture	Dealing with issues that are emerging or have happened to prevent harm growing	Wider diagnostic or remedy work where there is actual or potential harm across a number of firms

Source: FCA (2024)

As well as focusing regulatory resources on those businesses posing the greatest risk to its objectives, the FCA focuses its supervision on the areas that have the greatest impact on consumers and market integrity. It examines different parts of a business's operations, and will be in direct contact with a number of people within the business in order to understand how it is run.

Areas of particular interest include the following:

- **Business model and strategy** – the FCA is aware that business strategy can drive behaviours that lead to poor customer outcomes. It seeks to ensure that a business has assessed and mitigated any risks to customers arising from its strategy, as part of its objective to ensure customers get products and services that meet their needs from providers they trust.
- **Culture** – culture underpins everything a business does and an appropriate culture will ensure the fair treatment of customers. The FCA will want to understand:
  - the way business is conducted;
  - expectations of staff; and
  - attitude to customers.
- **Frontline business processes** – this involves understanding the extent to which business processes are designed to give customers what they need and meet their expectations.
- **Systems and controls** – this aspect of supervision focuses on the extent to which culture is reinforced by effective systems and controls designed to identify and deal with risks in areas such as conduct and financial crime.

- **Governance** – the FCA expects senior management and the board within a firm to understand and be able to explain the conduct risks in their strategies. It pays particular attention to the way the governance of a business implements consumer- and market-focused strategies.

18.6 Training and competence

The FCA aims to be proactive rather than reactive, preventing problems from arising rather than simply dealing with them when they do. Ensuring high levels of knowledge and ability among financial services staff is key to achieving this objective. Consequently, the FCA places high importance on training and competence.

The FCA's Training and Competence (TC) sourcebook requires firms to make certain commitments regarding the competence of anyone within the remit of the SM&CR. It is particularly prescriptive in relation to three types of employee:

- financial advisers and those who deal in, or manage, investments;
- supervisors of those advisers, dealers or fund managers;
- supervisors who oversee certain 'back-office' administrative functions, particularly within a product provider (eg supervisors of the underwriting or claims functions in a life assurance company).

At the start of 2011, the TC sourcebook was moved into the High Level Standards part of the Handbook to reflect its increased importance.

TC rules cover the following areas. Note that they do not apply to firms transacting wholesale business with non-retail clients.

18.6.1 Training

Firms must, at appropriate intervals, determine each employee's training needs and organise training that is appropriate and timely. The success of the training in achieving its objectives must be evaluated.

18.6.2 Assessing initial competence

Investment advisers must not be allowed to commence activities until the employer is satisfied that an adviser has:

- achieved an adequate level of knowledge and skill to operate under supervision; and
- passed the regulatory module of an appropriate qualification for investment advisers at RQF Level 4 (such as the Financial Services Regulation and Ethics unit as part of the Diploma for Financial Advisers).

Individuals must work under close (direct) supervision until they have been assessed as competent to work under indirect supervision. Individuals must not be assessed as competent until they have:

- passed all modules of an appropriate examination (such as the Advanced Financial Advice unit as part of the Diploma for Financial Advisers); and
- demonstrated a consistent ability to act competently under minimum supervision.

Supervisors should have coaching and assessment skills as well as technical knowledge.

For investment advisers, the regulatory module of an appropriate qualification must be achieved prior to commencing the activity and the remaining modules must be achieved within 48 months of commencing the activity.

There are different examination standards for those in different roles: mortgage advisers must achieve an appropriate qualification in mortgages at RQF Level 3, such as the Certificate in Mortgage Advice and Practice (CeMAP®). There are no formal requirements for those working as overseers.

18.6.3 Appropriate examinations

The role of investment adviser comes within the remit of the SM&CR, and investment advisers are required to pass an appropriate examination as demonstration of their competence.

18.6.4 Maintaining competence

As well as ensuring that employees become competent, firms must have definite arrangements in place for ensuring that they maintain that competence. A review must take place on a regular and frequent basis to assess the employee's competence, and appropriate action must be taken to ensure that they remain competent for their role. Matters that must be taken into account include:

- technical knowledge and its application;
- skills and expertise;
- changes in the market and to products, legislation and regulation.

A retail investment adviser who has been assessed as competent must complete a minimum of 35 hours of appropriate continuing professional development (CPD) in each 12-month period; 21 hours of that CPD must be 'structured CPD'.

- Examples of **structured CPD** include attending courses, seminars, lectures, conferences, workshops or e-learning activities which entail a contribution of 30 minutes or more.

- **Unstructured CPD** includes conducting research as part of the adviser's role, reading industry or other relevant material, and participating in coaching or mentoring sessions.

Under the terms of the Insurance Distribution Directive, which took effect from 1 October 2018 (see section 24.4), advisers selling protection policies (if they are not subject to the FCA Training and Competence Regime) are required to undertake a minimum of 15 hours' CPD each year.

RECORD-KEEPING

Firms must maintain records showing how and when employees' competence is being assessed. All records relating to the training and competence of individual employees must be retained for specific minimum periods of time after the person ceases to carry out the activity or leaves the company. The time limits are:

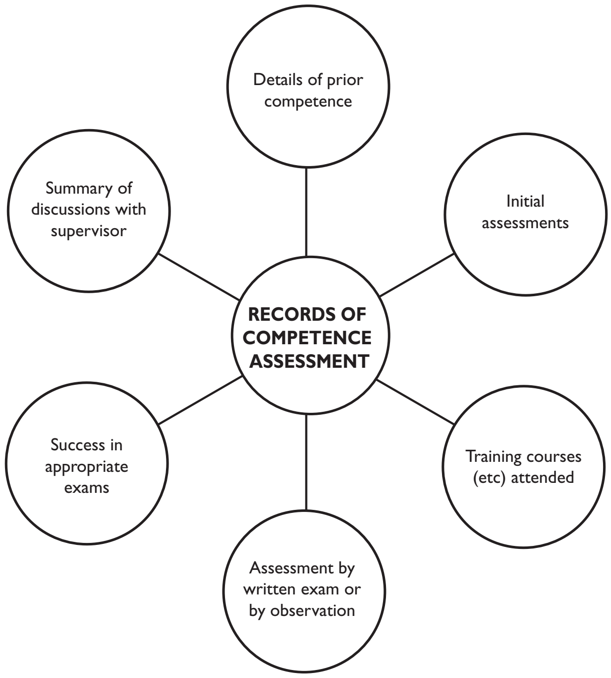
- at least three years for individuals carrying out non-MiFID business;
- at least five years for individuals carrying out MiFID business;
- indefinitely for individuals carrying out pensions transfer business.

Typical records might include some, or all, of the examples shown in Figure 18.6.

Advisers must obtain a Statement of Professional Standing (SPS) each year from an FCA accredited body.

To receive an SPS, an adviser must meet the professional standards of the professional body and declare that they adhere to its code of ethics. They must also confirm that they hold the required qualifications to give retail investment advice.

FIGURE 18.6 RECORDS OF COMPETENCE ASSESSMENT



18.7 What enforcement action can the FCA take?

The FCA takes action when it considers that particular aspects of a firm's business model or culture (such as products, training, recruitment procedures or remuneration policies) are likely to harm consumers. It places emphasis on securing redress for consumers who have suffered harm.

The circumstances that may lead to an investigation cover a wide range of situations including, for example, suspicion that an authorised person is:

- contravening regulations;
- providing false information;
- falsifying documents;
- acting outside the scope of their Part 4A permission;
- participating in money laundering;
- allowing persons who are not approved or certified to carry out functions within the remit of the SM&CR;
- falsely claiming to be authorised;
- undertaking insider dealing or market manipulation.

The person appointed to carry out the investigation on the FCA's behalf has the power to demand that:

- the person being investigated or anyone connected with them answer questions and provide information;
- any person (whether or not they are being investigated or are connected with the person under investigation) provide documents and, in the case of a specific investigation, answer questions or provide information.

If the FCA is satisfied that it has discovered a contravention of its rules, there are a number of steps that it can take, depending on its view of the nature and/or the severity of the contravention. Some of these are described in Figure 18.7.

FIGURE 18.7 FCA ENFORCEMENT POWERS

Variation of a firm's permissions

This may involve removal of one of the firm's permitted regulated activities or a narrowing of the description of a particular activity.

Withdrawal of approval

The FCA might withdraw or suspend a person's approval or certification to carry out some or all of their role.

Injunction

If a person has contravened a regulation, the FCA can apply for an injunction to prevent that person from benefiting from the action, for instance by selling assets that they have misappropriated.

Restitution

If a person has benefited from a contravention of a regulation, the FCA can ask the court for an order requiring that person to forfeit to the FCA any profit made from the activity.

Redress

- If it can be shown that losses have been made by identifiable customers as a result of the contravention of a rule, the FCA may be able to obtain a court order requiring such losses to be made good.
- However, there may be more appropriate ways for that customer to pursue such claims, such as through the Financial Ombudsman Service or the Financial Services Compensation Scheme (see Topic 25).

Disciplinary action

If an approved person or an authorised firm is judged to be guilty of misconduct, the FCA has a range of options regarding the sanctions it might apply. These are to:

- issue a 'warning notice';
- publish a statement of misconduct;
- impose a financial penalty.

Disclosure

The FCA can announce that it has begun disciplinary action against a firm, although it must consult the recipient of the warning notice before making such an announcement.

Enhanced supervision

- This is an intensive supervisory regime designed to deal with issues in firms that are considered to have serious governance failings.
- The FCA can enforce a range of actions, which include requiring the firm's board to commit to specific remedial action, the progress on which will then be reviewed.
- As an alternative, the FCA can impose binding requirements on a firm in respect of certain actions it must take.

Before taking action against a dual-regulated firm, the FCA will consult with the PRA. If the decision is relevant to both regulators, they will decide whether it is best to pursue a joint investigation or for one of them to act alone, keeping the other informed of developments and findings.

CHECK YOUR UNDERSTANDING 3

✓

Over the last two topics, you have covered a lot of information on the FCA, its role as a regulator and its approach to supervision. To check how much of the detail you have taken in, try to **match** the statements in the first column below with the FCA principle, objective or activity to which it relates.

A firm must pay due regard to the interests of its customers, and treat them fairly	One of eight key FCA principles for supervision
Consumers are provided with clear information at all stages, before, during and after a sale	A TC requirement for demonstrating initial competence
Making sure relevant markets function well so that consumers get a fair deal	One of the FCA's enforcement powers
Focusing on firms' culture and governance – examining a firm's purpose and the effectiveness of governance strategies used to identify and mitigate risks	One of the Principles for Businesses
Removal of one of the firm's permitted regulated activities or a narrowing of the description of a particular activity	FCA strategic objective
An employer must be satisfied their employee has achieved an adequate level of knowledge and skill to operate under supervision	One of six FCA outcomes for fair treatment of customers

THINK AGAIN . . .

Now that you have completed this topic, how has your knowledge and understanding improved?

For instance, can you:

- list six examples of regulated activities?
- list six examples of regulated investments?
- describe the key elements of the Senior Managers Regime?
- summarise the FCA criteria for assessing whether individuals are 'fit and proper persons'?
- explain how the FCA prioritises its supervisory activity?
- outline the steps that a firm must take to demonstrate that its employees are maintaining competence?
- outline the FCA's enforcement powers?

Go back over any points you don't understand and make notes to help you revise.

Test your knowledge before moving on to the next topic.

References

FCA (2024) *SUP 1A.3 The FCA's approach to supervision* [online]. Available at: www.handbook.fca.org.uk/handbook/SUP/1A/3.html

Test your knowledge

?

Use these questions to assess your learning for Topic 18. Review the text if necessary.

Answers can be found at the end of this book.

1) What is Part 4A permission?

2) One of the reasons why direct investment in shares is considered higher risk is because it is not classified as a regulated investment. True or false?

3) When assessing whether a person is fit and proper to perform a senior management function, the FCA requires that particular attention be given to certain factors. Which of the following is **not** a factor that the FCA requires to be considered?

   a) Whether the person has obtained a relevant qualification.

   b) Whether the person has undergone or is undergoing training.

   c) Whether the person possesses a relevant degree of competence.

   d) Whether the person has worked in the financial services industry for at least five years.

4) Which one of the following job applicants is least likely to meet the FCA ‘fit and proper’ requirements?

   a) George, who has recently been made redundant from a firm of independent financial advisers.

   b) Irene, who currently has an authorised overdraft limit of £2,000.

   c) Francois, whose father’s house was taken into possession by the lender three years ago.

   d) Yvette, who has missed her last two mortgage repayments following a divorce.

5) What was the main reason behind the introduction of the Senior Managers and Certification Regime in 2016?

6) An employee is being reviewed to ensure they are maintaining their competence, as required by the TC sourcebook. What three areas will the review focus on?

7) How does the FCA supervise most firms?

8) If the FCA discovers a contravention of its rules, one of the steps it may take is to vary a firm's permissions. This means that the firm:

   a) may no longer be able to carry out one or more of its regulated activities.

   b) will be required to sell assets to provide restitution.

   c) will need to seek authorisation from a different regulator.

   d) will be required to submit each sale to the FCA for approval.

9) In relation to the FCA's enforcement powers, what is the difference between 'restitution' and 'redress'?

10) What are the three pillars of the FCA's supervision model?