

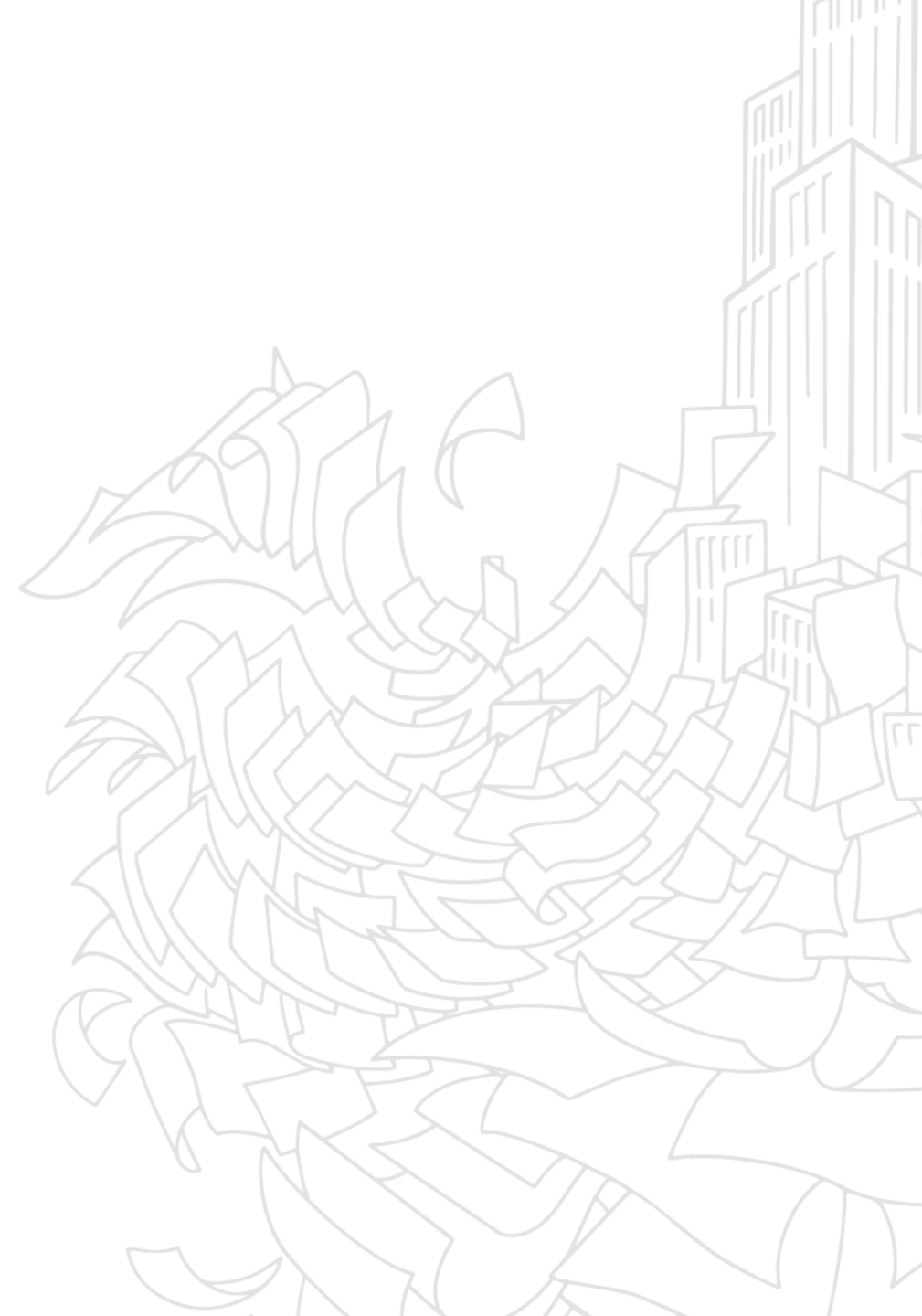
REGULATORY ESSENTIALS TRAINING PROGRAMME 2020

Introduction and overview session



INTRODUCTION TO THE REGULATORY ARCHITECTURE

Sarah Herbert, Compliance Director



HISTORY OF UK FINANCIAL REGULATION

Self-regulation: SROs, SIB and BoE. Transfer of responsibilities from OFT to Treasury.



1980s-90s



2001-2014

Unitary regulator/tripartite system



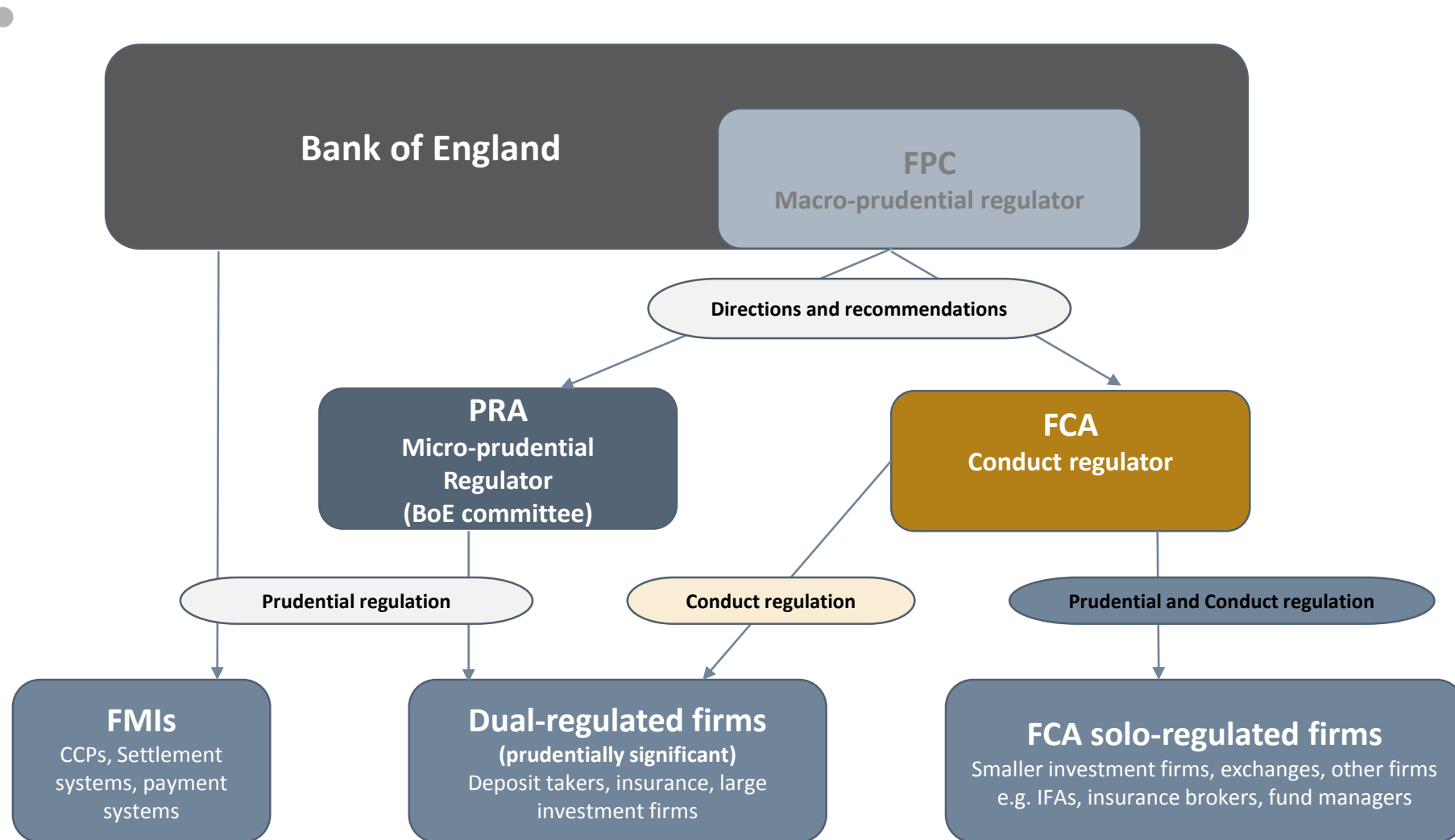
"Twin Peaks"



1 April 2014



UK REGULATORY FRAMEWORK – “TWIN PEAKS”



FCA REGULATORY OBJECTIVES AND FUNCTIONS

Strategic objective

To ensure relevant markets
function well

Operational objectives

Consumer protection

Protect & enhance the
integrity of the UK financial
system

Promote effective
competition

Business Plan sets out each year's priorities

General functions: making rules under FSMA, preparing and issuing codes under FSMA, giving general guidance under FSMA and determining the general policy and principles in relation to its functions under FSMA.

PRA REGULATORY OBJECTIVES

General objective: promoting the safety and soundness of PRA-
authorised persons

Ensure that the business of PRA-
authorised firms is carried on in a way which avoids any
adverse effect on the stability of the UK
financial system

Minimise adverse effect from failure of a PRA-
authorised firm on the stability of the UK
financial system

Insurance general objective:
contributing to the securing of an
appropriate degree of protection for
those who are or may become
policyholders

As a **secondary objective** to act in a
way which facilitates effective
competition in the markets for services
provided by PRA-
authorised persons

SOURCES OF LAW AND REGULATION

- International standards (G20, FSB, BIS and IOSCO)
- EU legislation: directives, regulations, and regulatory / implementing technical standards
- Financial Services and Markets Act 2000 (as amended)
- Secondary legislation
- Regulated Activities Order
- Financial Promotions Order
- PRA & FCA handbooks and guidance

FINANCIAL OMBUDSMAN SERVICE

- A statutory dispute resolution scheme set up under Part XVI and Schedule 17 of FSMA
- DISP sets out the relevant complaint handling rules
- The jurisdiction of the FOS is extended to cover small and medium-sized enterprises, certain charities and trusts and personal guarantors
- The FOS award limit is increased from £150,000 to £350,000
- General 'fairness' test
- Lack of predictability
- Limited opportunity for challenge
- Wider implications / mass detriment

SUPER COMPLAINTS & MASS DETRIMENT

Super complaints- Part 16A of FSMA

- References from designated consumer bodies (i.e. Which?)
- A feature or combination of features, of a UK financial services market is, or appears to be, significantly damaging the interests of consumers

Mass detriment references

- Referrals from FOS or regulated firms- FOS may refer a matter relating to any failing or conduct by any regulated person. However, a regulated firm is only permitted to make references relating to their own failings or conduct
- Narrower in scope than super complaints
- Relates to recurring or systemic failures by the relevant persons causing consumer detriment
- It is necessary to demonstrate that the act or omission is a common occurrence and not a one-off incident

FCA must issue a response to a reference

REGULATORY TOOLKIT



- Authorisation/approval of firms and individuals
- Variation and cancellation of permission and imposition of requirements on FCA's own initiative and intervention against incoming firms
- Product intervention powers
- Financial promotions ban
- Restitutions & redress (complaints schemes)
- Competition concurrent powers
- Information gathering powers
- Enforcement / disciplinary powers
- Monitoring the regulatory perimeter and breaches of the general prohibition under section 19 of FSMA.

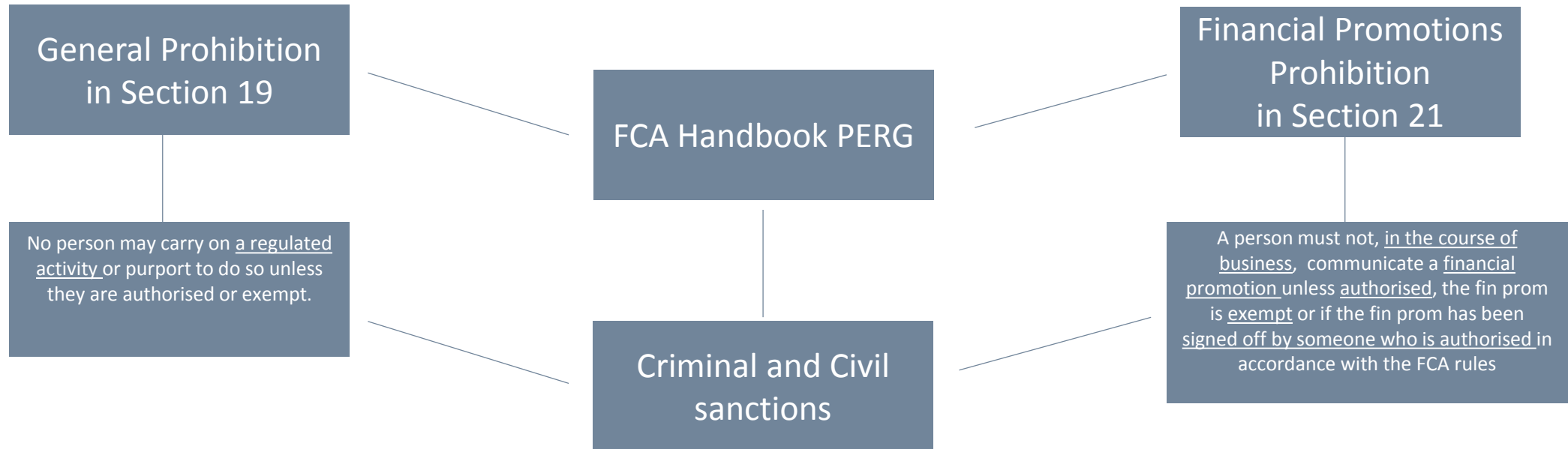
THE REGULATORY PERIMETER AND AUTHORISATION

Sarah Herbert, Compliance Director



OVERVIEW OF THE REGULATORY PERIMETER – FSMA

Financial Services and Markets Act 2000: Part 2



Authorised persons acting outside scope of authorisation (generally not a criminal offence but breach of FCA rules)

SPECIFIED ACTIVITIES AND SPECIFIED INVESTMENTS

- Long list !
- Set out in FSMA (Regulated Activities) Order 2001 (as amended) and described in general terms
- Will often be referred to as the “RAO”
- RAO divided into two parts
 - Part 2 – specified activities
 - Part 3 – specified investments

No authorisation required if carrying on a regulated activity that is excluded under RAO

SPECIFIED ACTIVITIES

RAO Part 2 sets out together with relevant exclusions -

- Accepting deposits
- Issuing e-money
- Insurance related activities
- Activities collectively referred to as “investment activities” including arranging deals in investments, advising on investments, dealing in investments, managing investments etc
- Mortgage related activities including entering into and administering regulated mortgage contracts
- **Consumer Credit related activities (Art 36A, 36H, 39D-G, 60B, 60N, 89A-B)**
- Agreeing to carry on most regulated activities is itself a regulated activity

RAO amended by HMT to introduce new regulated activities, eg when consumer credit regulation transferred to FCA in 2014

See also PERG 2.7 for guidance on specified activities

SPECIFIED INVESTMENTS

RAO Part 3 – includes

- Deposits
- Electronic money
- Contracts of insurance
- Shares, options, futures amongst others / instruments creating indebtedness
- Regulated Mortgage contracts
- Units in a Collective Investment Scheme
- Rights under a pension scheme
- Funeral plan contracts
- **Rights under consumer credit and consumer hire agreements**

RAO EXCLUSIONS

- No authorisation required if carrying on a regulated activity that is excluded under RAO
- Exclusions fall into 2 categories – (a) those that apply in certain circumstances to several regulated activities (“**general exclusions**”) and (b) exclusions that apply to a particular regulated activity (“**specific exclusions**”)
- Examples of **general exclusions** in Art 66 – 72
- **General exclusions** are not available for all regulated activities, see 2.9.1G PERG
- Consider whether an override in relation to certain EU Directives exists in determining whether an exclusion applies - IMD, MIFID and MCD contain exemptions that relate to regulated activities that fall within their scope

“CARRIED ON BY WAY OF BUSINESS”

- Referred to as the “business test”
- But not defined!
- Consider PERG – differs depending on activity in question
- Relevant factors (PERG 2.3.3)
- Will be a fact driven assessment – may not always be obvious
- Particular challenges where lender operates in charitable sphere
- PERG helpfully? says “none of the factors are likely to be conclusive”
- FSMA (Carrying on Regulated Activities by Way of Business) Order 2001



“IN THE UK”

- Where an activity is carried on in, into, or from the UK – sounds simple enough BUT
- Can be complex to determine in cross border context eg, if a customer is outside the UK or some element of the activity happens outside the UK, or a person outside the UK wants to undertake a regulated activity in the UK targeting UK consumers or a person in the UK wants to undertake a regulated activity outside the UK
 - = all scenarios can still mean activity is being carried on in or from the UK
- PLUS – extension of territorial scope of FSMA in certain scenarios: (1) currently exercising rights under EEA single market directive (2) day to day management in the UK (3) maintains an establishment in the UK (4) providing an information society service (ISS)
 - = activities deemed to be carried out in the UK (considerations after the end of the Brexit transitional period)
- FSMA does not specify where particular regulated activities are regarded as carried on – some guidance provided in PERG, also see *FSA v Fradley and Woodward*
- “UK” does not include Channel Islands or IOM

AUTHORISED AND EXEMPT PERSONS

- Authorised Person – (1) someone who has been given permission by the FCA or PRA to carry on regulated activities; or (2) is passporting their services into the UK under an EU Directive (eg MiFID)
- Exempt Person – someone who is exempt from the general prohibition in respect of that activity as a result of being a person who (1) falls within the FSMA Exemption Order eg local authorities, central or clearing banks (2) is an Appointed Representative (AR) or (3) falls within one of the prescribed investment exchanges exemption in FSMA
- Appointed Rep/ AR = a person or firm who conducts regulated activities on behalf of, and as an agent of a firm (the principal) who is directly authorised by the FCA
- Principal is responsible for AR - who must comply with all regulatory requirements that apply to the Principal / FCA guidance on implications for appointing an AR in SUP12. Also see PERG 5.13 for further guidance
- Can only appoint AR for certain regulated activities which are set out in FSMA Appointed Representatives Regs 2001

DECISION TREE / SUMMARY

IS FCA/PRA AUTHORISATION REQUIRED?



SUPERVISION

Sarah Herbert, Compliance Director



THE FCA'S APPROACH TO SUPERVISION

- In April 2019 the FCA published its 'Approach to supervision' document, which sets out why and how the FCA prioritises its supervision work and how, in practice, it supervises the firms and individuals it regulates.
- The FCA will adopt a pre-emptive approach which will be based on making forward-looking judgments about firms' business models, product strategy and how they run their businesses, to enable the FCA to identify and intervene earlier to prevent problems crystallising (SUP 1A).
- The FCA's supervisory work will be guided by its 'supervisory principles', which will help it to prioritise its interventions in order to deliver its operational objectives.

FCA SUPERVISORY PRIORITIES 2020/21

The FCA sets out its most recent sector and cross-sector priorities in its business plan 2020/21. Immediate priority is to address the challenges presented by the 2019 novel coronavirus (COVID-19) pandemic. The business plan indicates a planned change in the focus of the FCA's supervisory framework as follows:

- ☐ Shift towards principles and outcome focussed supervision
- ☐ Increased supervisory focus on smaller firms
- ☐ Faster enforcement action
- ☐ FCA focus on culture: 2020

SUPERVISION MODELS

- Firms are now categorised as either
 - **Fixed portfolio supervision** – Effectively Relationship Managed. Normally larger or strategically significant FCA regulated firms/groups in their respective sector or sub-sector. These Firms require a proactive direct ongoing supervision by the FCA.
 - **Portfolio supervision** – are the majority of FCA regulated firms who share a common business model. The FCA analyses each portfolio and agrees a strategy to take action on firms posing the greatest harm. The FCA has grouped financial services firms into approximately 40 groups.

FORMS OF SUPERVISION

FIXED PORTFOLIO SUPERVISION

- To pro-actively identify and mitigate the key drivers of conduct risk within Fixed Firms which could lead to poor outcomes for consumers or risks to market integrity.
- A fixed firm supervisory cycle can run for between a year and up to 2 or even 3 years. There are certain 'set piece' engagements that will exist during the cycle such as the '**Interim Review**' and the **Firm Evaluation (or FE)**. Both are attended by all relevant stakeholders across the FCA and chaired by senior management.
- There are a number of important judgements the Supervisor will need to make during the supervisory cycle. A good Supervisor will aggregate the positive and negative information they have seen during the cycle to inform their judgements of a firm's culture and the firm's engagement with the FCA's conduct agenda.

FORMS OF SUPERVISION

EVENT-DRIVEN SUPERVISION

- **Reactive work** commences when risks have **crystallised** or are crystallising. There is a flow of information through the Supervisory model which requires assessment by Supervisors and appropriate mitigation (when risks sit outside of a clearly defined Risk Appetite).
- **Non discretionary reactive work** – MP letters, FOIA requests, Approved Persons, Variations and Waivers applications etc.
- **Baseline Monitoring** – Analysis of firm reporting data (generally for outliers or patterns of higher level market behaviour). Financial drivers can be a useful indicator of firms behaving in ways which may harm consumers.
- **Complex Events** – There are teams who deal with complex, systemic or higher priority Pillar 2 risk events in the market.

FORMS OF SUPERVISION

THEMATIC SUPERVISION ACROSS ISSUES & PRODUCTS

- Work on specific issues and products will be used to address the FCA's key conduct priorities across a group of firms. Each project will require an Individual rationale for firm selection.
- Normally forward looking and driven by sector-wide risk assessments
- Wider diagnostic or remedy work where there is actual or potential harm across several firms
- Results and findings are normally published and firms anonymised so key sector wide messages can be provided to industry. Individual firms are often provided with written or oral feedback and in the worst cases in can prompt Supervisory Pillar 2 or even Enforcement action.
- Thematic reviews tend to be larger pieces of work and are also referred to as "cross-firm" work.

TYPES OF SUPERVISORY INTERVENTION

- Attestations:
 - Firm's formal statement that it has or will take action agreed with regulator
- Enhanced Supervision :
 - Following recommendation from Parliamentary commission on Banking Standard a discretionary approach to imposing additional supervision on Tier 1 banks
- Skilled person review :
 - Power under FSMA section 166 to require an independent skilled person to investigate certain aspects of a firms business about which the regulator has concerns (numbers published on website)
- Thematic reviews
 - Used to assess a current or emerging risk regarding an issue or product across a number of firms in a sector or market
- Multi-firm reviews
 - Sector specific reviews across a selection of firms

FCA RISK APPETITE

- The FCA's sector teams play a key role in defining the risk escalation criteria and developing the annual **FCA House View** which collates the organisations' views on various sectors, products and firm risks.
- The FCA's Risk Appetite is ultimately signed off at Board level and exists to improve the consistency of decision making and the allocation of resource.
- **SUP 15.3 Notification Requirements** – It is useful to understand FCA Risk appetite when making a Notification to the Regulator. Key issues to consider (1) Has there been detriment (2) Does the conduct fall short of the FCA's statutory objectives, TCs or Principles.
- Go to the Regulator with a story about how you intend to put an issue right rather than a problem. i.e., root cause & how identified, scale and customer impact, forward looking & interim fixes to address issue and credible commentary on whether you consider remediation is appropriate.

ROUTES INTO ENFORCEMENT

- **Early Intervention under S55 FSMA** – Joint work between Supervision and Enforcement to impose a requirement. Generally forward looking mitigation to prevent further harm.
- **Formal Enforcement** - action involving the powers of appointment of investigators (S168, S171, S172, S173 of FSMA).

ENFORCEMENT

Kirstie Ross, Legal Director



EVERY MARKET ACTION HAS A REGULATORY REACTION

Big Bang (1980)s	=	Financial Services Act 1986
Barings & BCCI (1990s)	=	FSMA 2000
Economic Boom (2000s)	=	'Light-touch' regulation
Financial Crisis (2007 -)	=	Financial Services Act 2012
COVID-19 (2020)	=	FCA temporary forbearance measures

THE CHANGING ROLE OF FCA ENFORCEMENT

“It is worth re-emphasising that the FSA is not – and will not become – an enforcement-led regulator. We regard enforcement as a regulatory tool to be used selectively.” (Sir Callum McCarthy, FSA Chairman, 2005)

“Before 2005 indeed, the FSA was clear that it was ‘not an enforcement led regulator’ and that was interpreted as implying a less than fully robust approach. That has changed...” (Lord Adair Turner, FSA Chairman, July 2012)

Martin Wheatley, then head of the new FCA said in 2012 that it would work on the basis of “shoot first and ask questions later.”

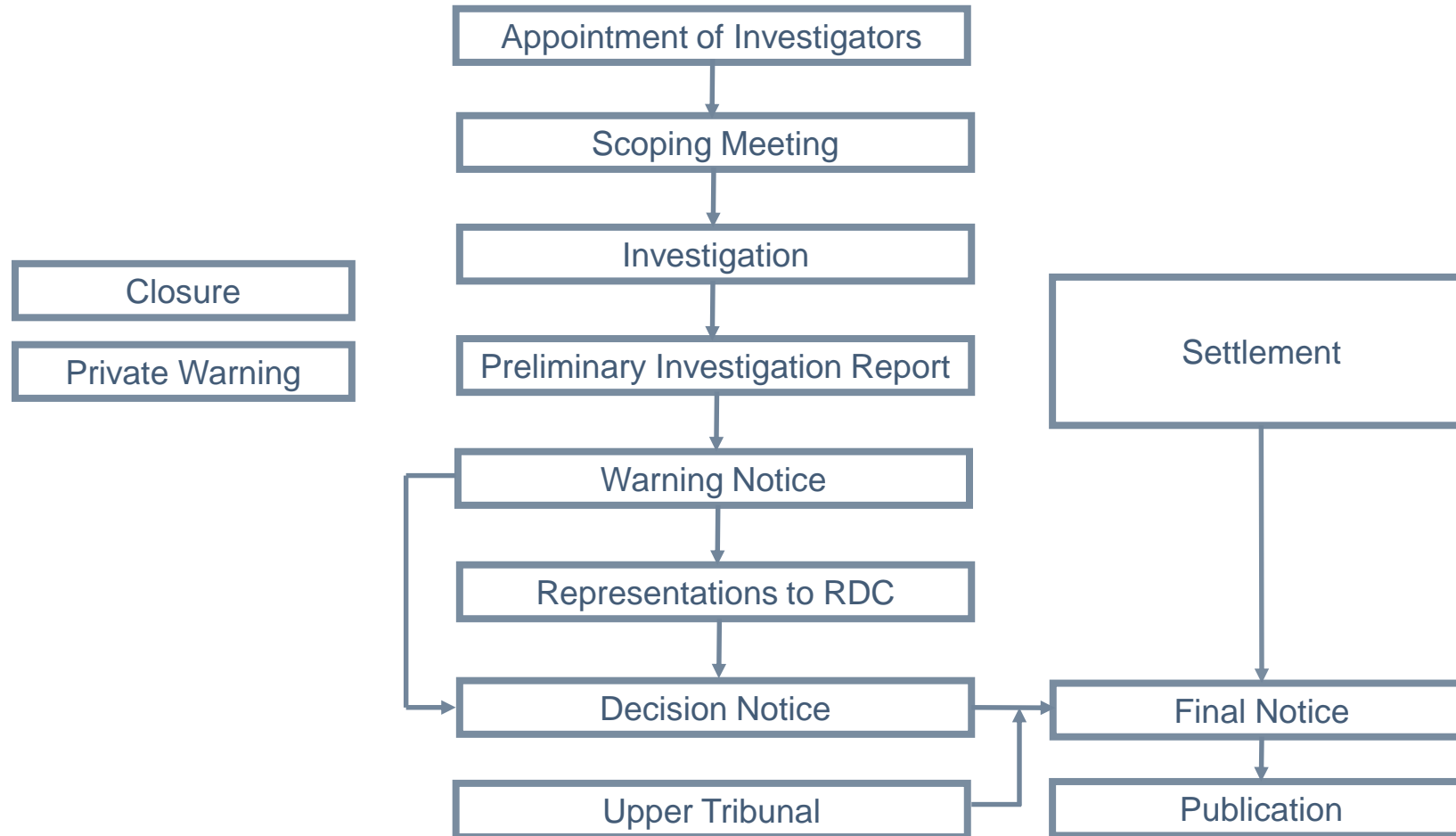
“We need to use all of our powers and functions (including authorisation, supervision, competition and enforcement) to fulfil our objectives” (FCA Mission, Our approach to Enforcement March 2018)

“We decide whether to take enforcement action based on whether we believe there has been serious misconduct, considering factors such as intent to do wrong, failure to act on feedback or negligence or recklessness.” (FCA Mission, Our approach to Enforcement April 2019)

FCA'S ROLE AS ENFORCER / PROSECUTOR

- Disciplinary breaches e.g. Breaches by authorised firms; and individuals of the code of conduct in APER and COCON; or “knowingly concerned” in breach by the firm.
- Criminal prosecutions: FSMA offences and other prescribed offences e.g. Market Abuse, Money Laundering Regulation breaches, Enterprise Act 2002, UTCCR breaches etc.
- Supervisory powers: Fit and proper; cancel / restrict firms' permissions.

ENFORCEMENT PROCESS - OVERVIEW



ENFORCEMENT PROCESS - INVESTIGATION

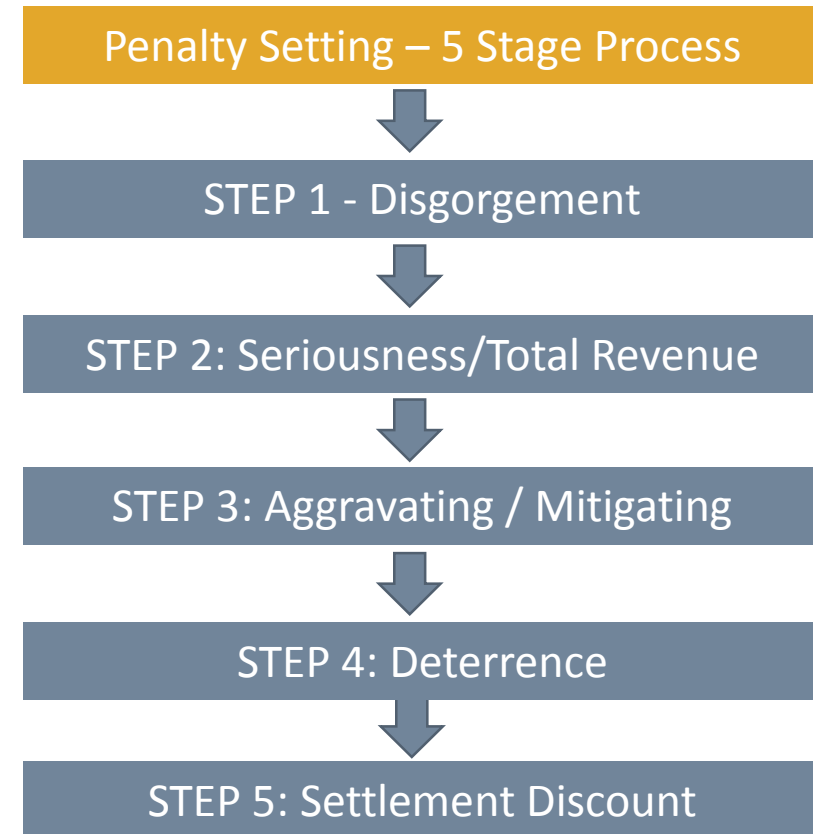
- Powers of Investigators
 - FCA can compel the person under investigation or any person connected with the subject of the investigation to:
 - Attend for interview; and
 - Otherwise produce such information as required
 - FCA can compel **any person** to produce documents
 - Can only be used where the investigator reasonably considers the question, information or document to be relevant to the investigation
 - No entitlement to privileged material ('protected items')

ENFORCEMENT PROCESS - INTERVIEWS

- Interviews are generally conducted under compulsion
- A refusal to attend or answer questions can lead to contempt proceedings
- Any relevant documents should be provided in advance of the meeting
- Depending on the nature of the interview, the FCA may give guidance on the subject matters to be covered
- Interviews will be recorded and transcribed
- A legal representative may attend

ENFORCEMENT OUTCOMES

- Notice of Discontinuance
- Private Warning
- Public Censure
- Financial penalty (**see five stage process on the right**)
- Prohibition
- Withdrawal of authorisation



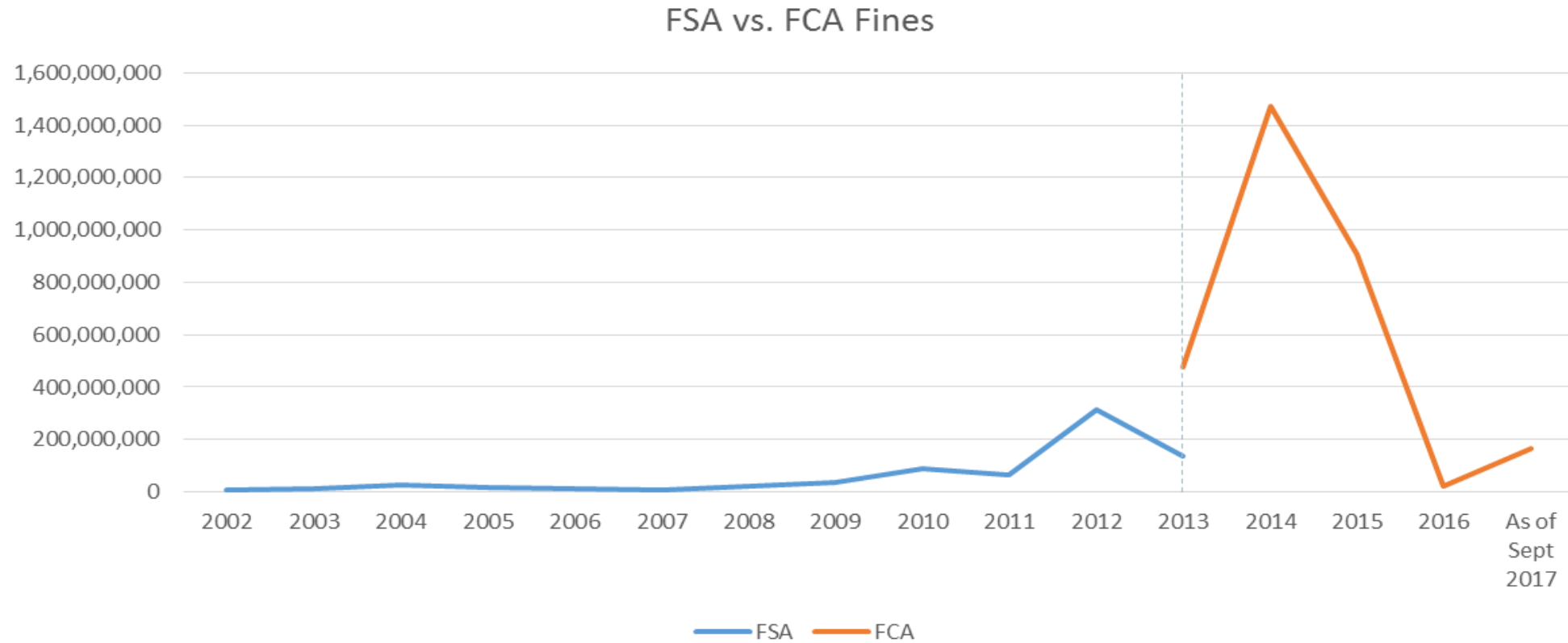
ENFORCEMENT OUTCOMES: SETTLEMENT

- Strong incentives to settle
- Discount on fine (30% at Stage 1)
- RDC and Tribunal are unlikely to award costs
- Streamlined procedure for settlement – involves 2 FCA directors, not the RDC
- Limited scope for negotiation of penalty
- Much turns on the content of the Final Notice

ENFORCEMENT OUTCOMES: PUBLICATION

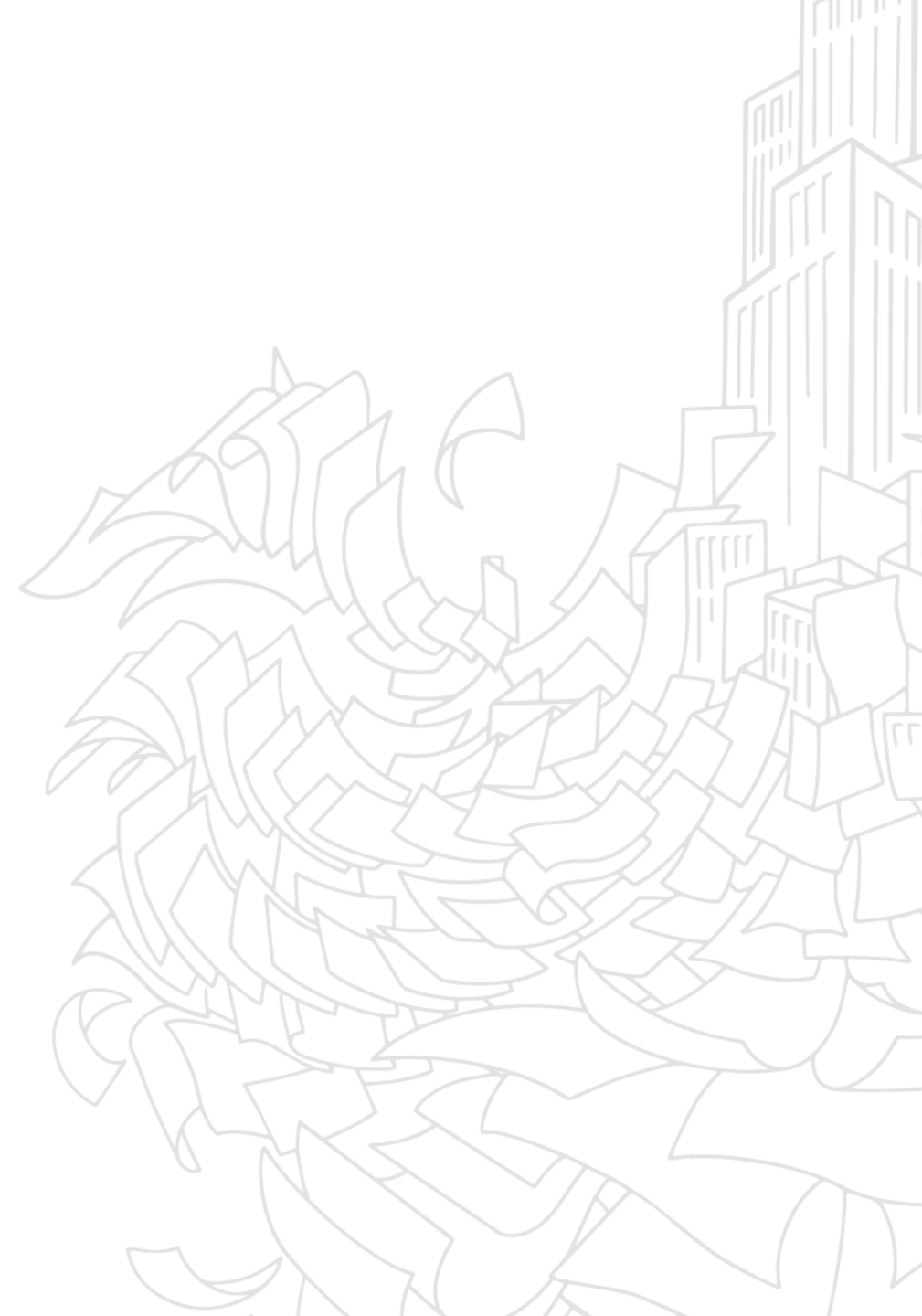
- FCA can only publish the Final Notice (i.e. after the firm or individual has settled or exhausted rights of appeal) BUT
- The FCA may publish information about Warning Notices
- FCA will consult with the firm or individual before publication

A FINE PICTURE...



REDRESS

Kirstie Ross, Legal Director



THE CHANGING APPROACH TO CONSUMER PROTECTION

- The consumer protection objective (FSMA)
 - Securing the **appropriate** degree of protection for customers:
 - In considering what degree of protection may be **appropriate** the FCA **must** have regard to:
 - **The general principle that firms should be expected to provide a level of care that is appropriate having regard to the degree of risk and the capabilities of the consumer**
 - **The general principle that consumers should take responsibility for their decisions**

FCA POWERS: CONSUMER REDRESS

- Section 404, FSMA - Introduced in 2010
- A set of rules under which firms are required to take one or more of the following steps:
 - Investigate whether it has failed to comply with particular requirements
 - Whether the failure has caused loss to consumers
 - Determine the level of redress
 - Make the redress

“The FCA may reduce sanctions to give credit for rapidly-commenced, pro-active, co-operative and thorough remediation, especially consumer redress. However, it may impose tougher sanctions where it observes firms failing to correct relevant deficiencies and make good losses to consumers caused by those firms' failings” (Mark Steward, FCA Executive Director of Enforcement and Market Oversight, 13 February 2020)

FCA POWERS: CONSUMER REDRESS (CONT'D)

- Section 404F(7) & Variation of Permission
 - Corresponds to, or is similar to, a consumer redress scheme
 - FCA can impose similar requirements
 - Will involve a variation of permission (VVOP or OIVOP)

INDIVIDUAL ACCOUNTABILITY

Sarah Herbert, Compliance Director



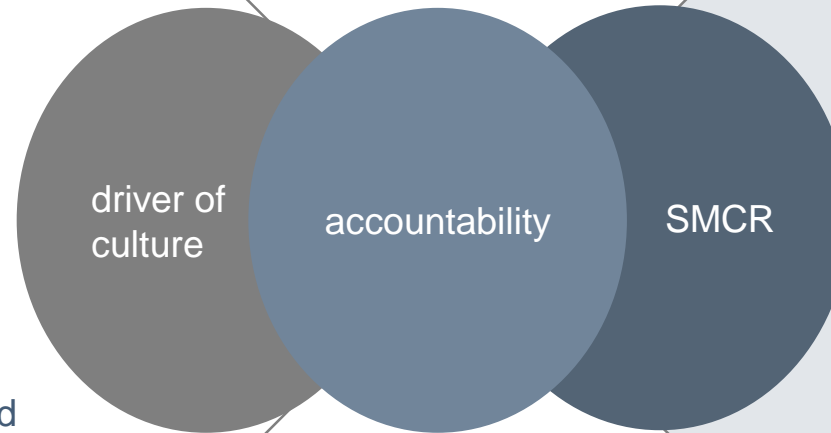
INDIVIDUAL ACCOUNTABILITY.....WHAT IS IT SEEKING TO DO?

Responsibility, accountability and governance in financial services firms and their impact on conduct has been, and remains, a priority for the FCA with a focus on the most significant drivers of good or poor “mindsets and behaviours”



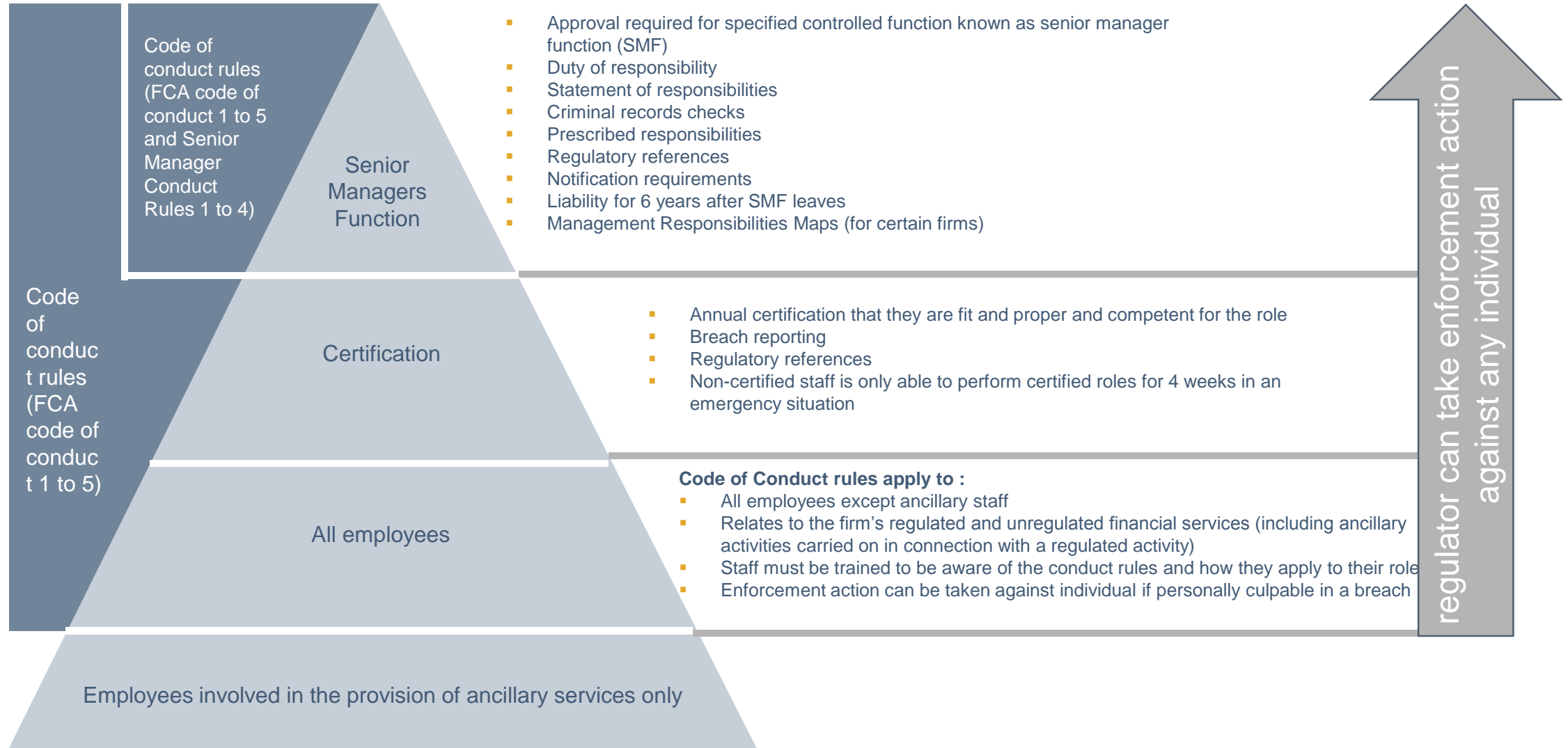
Andrew Bailey, Chief Executive of the FCA

“This is about the importance of individual decision making and behaviour. We must recognise and learn from cases where decisions are being taken effectively, behaviours are good and firms are building a sustainable culture of responsible behaviour”



“We need an approach to investigation that will meet the challenges of supporting the embedding of the culture [of senior management accountability]. **This means that generally where there are grounds for investigating a matter, there will be a need to investigate the role of senior management in the conduct issues that arise**” Jamie Symington, Director of Investigations at the FCA (15/6/17)

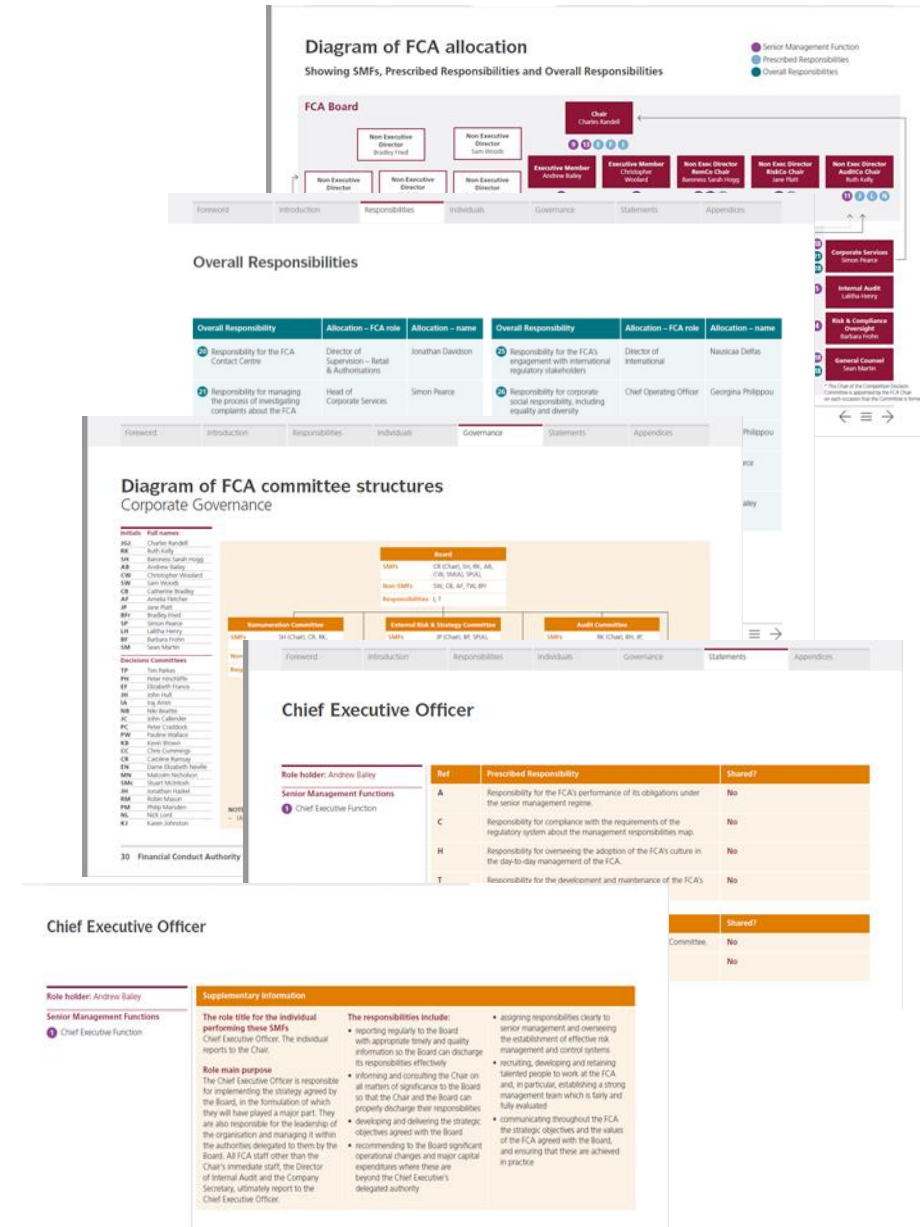
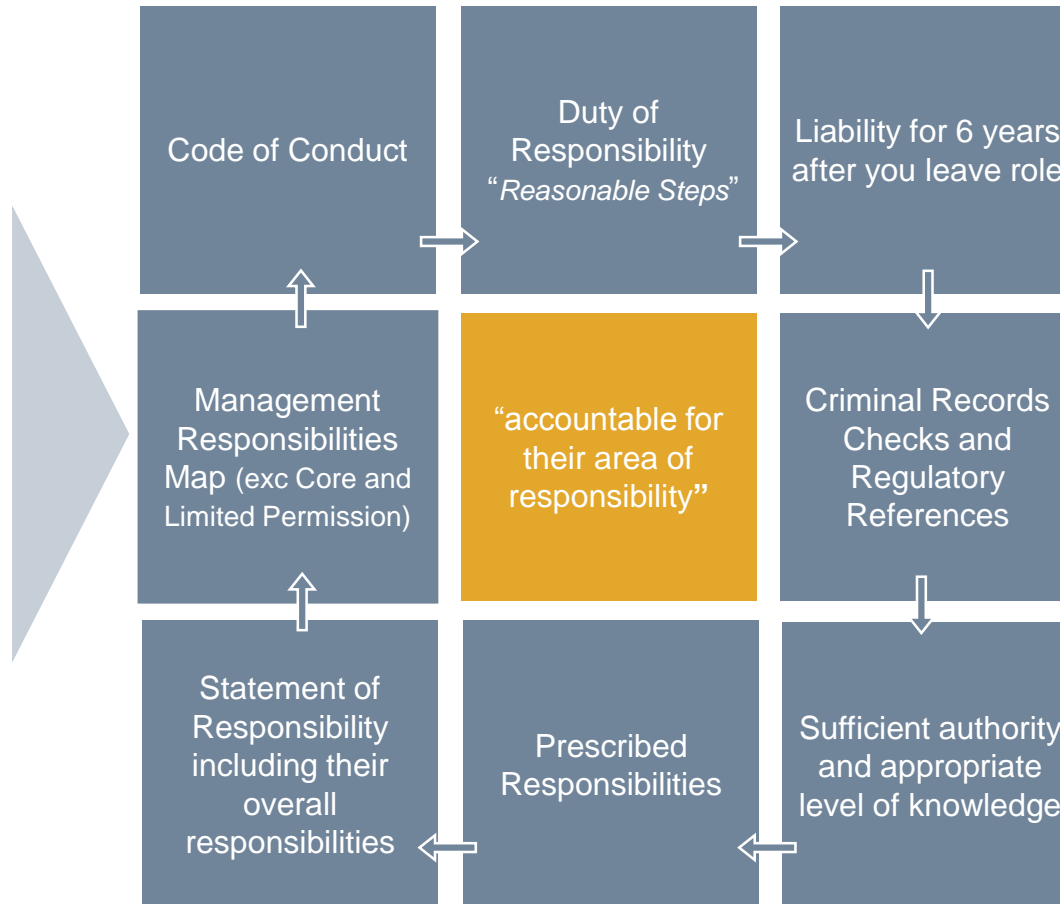
OVERVIEW OF SENIOR MANAGER AND CERTIFICATION REGIME



SENIOR MANAGER REGIME

A SENIOR MANAGER HAS TO TAKE RESPONSIBILITY FOR THE ACTIVITIES UNDER THEIR CONTROL. LIKEWISE, THEY SHOULD BE ACCOUNTABLE FOR THAT RESPONSIBILITY

Andrew Bailey "Transforming culture in financial services" speech 19th March 2017



REASONABLE STEPS

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”
COCON 2.2.2R

“any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively”
COCON 2.2.3R

“the business of the firm for which you are responsible is controlled effectively”
COCON 2.2.1R

You must act with...

“Integrity”
COCON 2.1.1R

“*due skill, care and diligence*”
COCON 2.1.2R

“due regard to the interests of customers and treat them fairly”
COCON 2.1.4R

CERTIFICATION REGIME

Certification Functions:

- Significant Management Functions – these are individuals who under the existing approved persons regime perform significant management function (CF29) and systems and controls functions (CF28); also anyone who has significant responsibility for significant part of the business of the firm
- Functions subject to qualification requirements
- Client dealing function
- Anyone who supervises or manages a Certified Function (directly or indirectly), but isn't a Senior Manager
- Material Risk Takers (as defined in the remuneration code in SYSC 19)
- Algorithmic Trading

The firm is responsible for ensuring staff who perform one of these roles for....



Ensuring that the individual is fit and proper at recruitment (must obtain regulatory references) at requirement and ongoing basis



Must be annually certified



Ensuring the individual has the knowledge, skills and capability to perform the role



Breaches of code of conduct need to be reported annually to the FCA. If the firm is dual regulated PRA needs to be notified in 7 days for roles which require to be certified by the PRA



Non-certified member of staff is only able to perform certified roles in emergency and only for 4 weeks, before they are certified



If breach is identified after a certified member of staff has left the firm, then the firm is required to notify the firm that has requested a regulatory reference



The certified member of staff name will appear on public register (consulted on 04/07/18, PS is due)

CODE OF CONDUCT RULES / CONDUCT STANDARDS

- Applies to all staff (except ancillary staff) and notified non-executive directors (i.e. non-executive directors who do not need to be approved)
- Rule 1: You must act with integrity
- Rule 2: You must act with due skill, care and diligence
- Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators
- Rule 4: You must pay due regard to the interests of customers and treat them fairly
- Rule 5: You must observe proper standards of market conduct



Applies to SMFs

- (Control) You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
- (Compliance): 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
- (Delegation): 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
- (Openness with Regulators): You must disclose appropriately any information of which the FCA or PRA would reasonably expect notices
(applies to non-executive directors who are not SMFs)



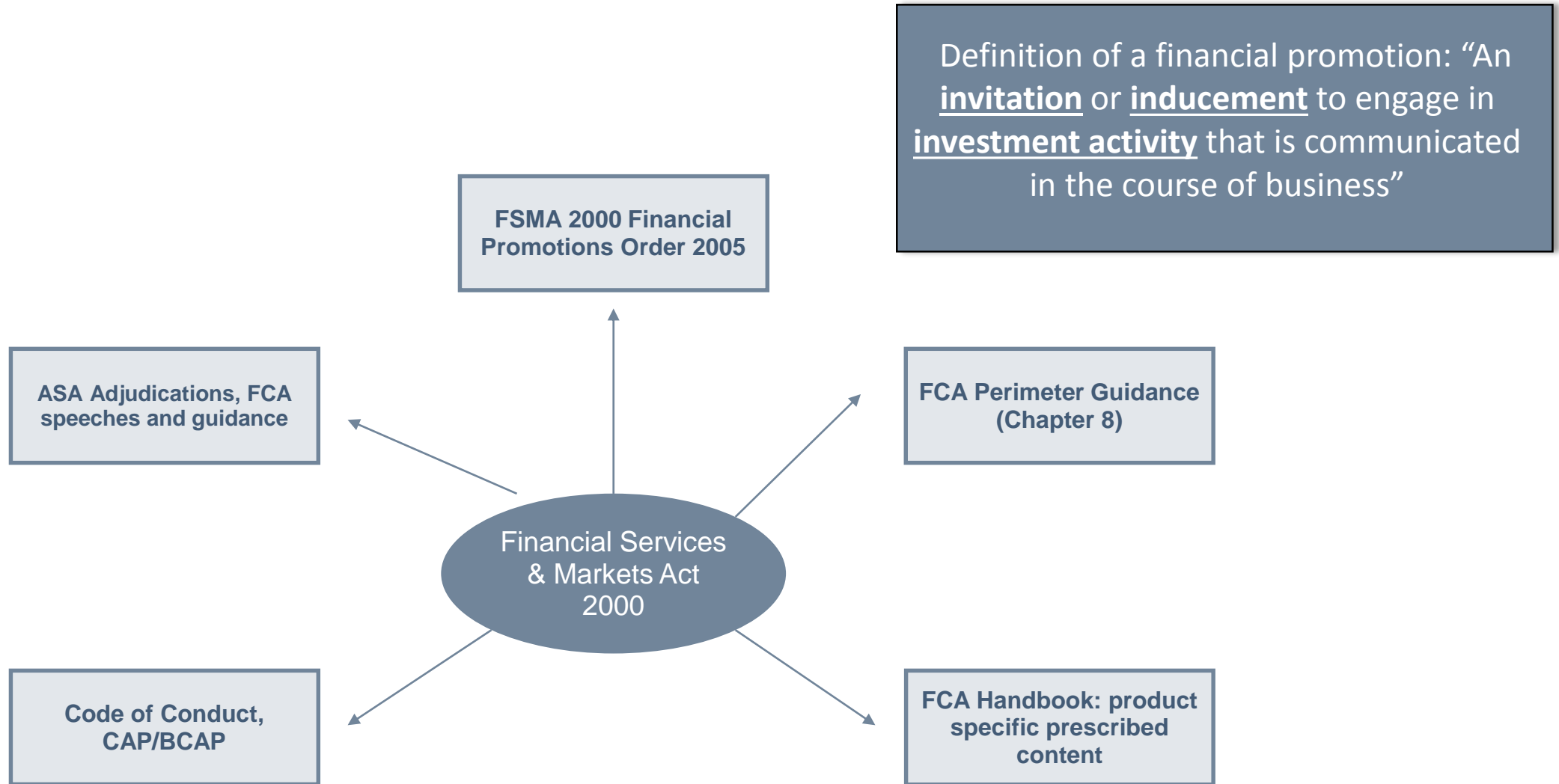
- The PRA and FCA's Conduct rules apply to regulated and unregulated financial services activities plus any ancillary activities connected with it.
- The PRA and FCA can take enforcement action against an individual for a breach of the code of conduct, if they can demonstrate that the individual was personally culpable
- Firms are required to train their staff as to the code of conduct rules and how they apply to their role
- Breaches need to be notified to the FCA/PRA re an SMF within 7 days of being identified and other staff to be reported annually to the PRA
- Breaches will need to be included in regulatory references

FINANCIAL PROMOTIONS

Heather Ibbotson, Associate



STRUCTURE OF THE REGIME



WHAT ARE THE FCA'S EXPECTATIONS OF FIRMS?

- Systems and controls
- Clear strategies for marketing
- Financial promotions only issued after sign off / checked for compliance
- Accountability for design and approval
- Review over a period of time – are promotions still compliant?
- Analysis of complaints
- Adequate training

WHAT HAPPENS IF IT GOES WRONG?



- Power to ban financial promotions
- FCA hotline
- Fines and enforcement
- ASA adjudications / reputational risk
- FCA works closely with the ASA under a mutual MoU to monitor financial promotions
- FOS complaints risks
- Wasted cost of time and resourcing for development, designs and campaigns

WHERE ARE THE RULES ON FINANCIAL PROMOTIONS?

FCA Handbook

- Conduct of Business Sourcebook - COBS 4
- Mortgages and Home finance - MCOB 3A
- Insurance - ICOB 2
- Savings, Current a/c - BCOB 2
- Consumer Credit - CONC 3
- Codes of conduct
 - Code of Conduct for the Advertising of Interest Bearing Accounts
 - UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP)
 - UK Code of Broadcast Advertising (BCAP)
- Industry guidance - BCOBS Industry Guidance
- FCA speeches
- ASA adjudications

KEY LEGAL REQUIREMENTS

- Clear, fair and not misleading
- Triggered information- representative APRs/representative examples
- Risk warnings
- Substantiation
- Prominence

SOCIAL MEDIA AND DIGITAL CHANNELS – KEY HEADLINES

- Standalone compliance
 - Click through
 - Scroll downs
- Space constraints
 - Risk warnings / terms and conditions
 - Applicability to different devices
- Media neutral
 - E.g. TV vs. banner ad vs. Instagram posts
 - Standalone compliance – key problem areas
 - PPC
 - Social media- use of hashtags/wide dissemination
 - Banner adverts- timing of dynamic and rolling banners



FCA's Social Media Guidance FG15/4

OTHER DIGITAL ISSUES

- Native advertising
 - Importance of distinguishing ads from editorial content
- Different media can affect compliance
 - Prominence may differ on (e.g.) tablet vs. phone vs. billboard
 - What is clear, fair and not misleading on one medium may not be on another
- Responsibility for “shares” of your financial promotions online
- Responsibilities for financial promotions on aggregator sites

SOME RECENT DEVELOPMENTS

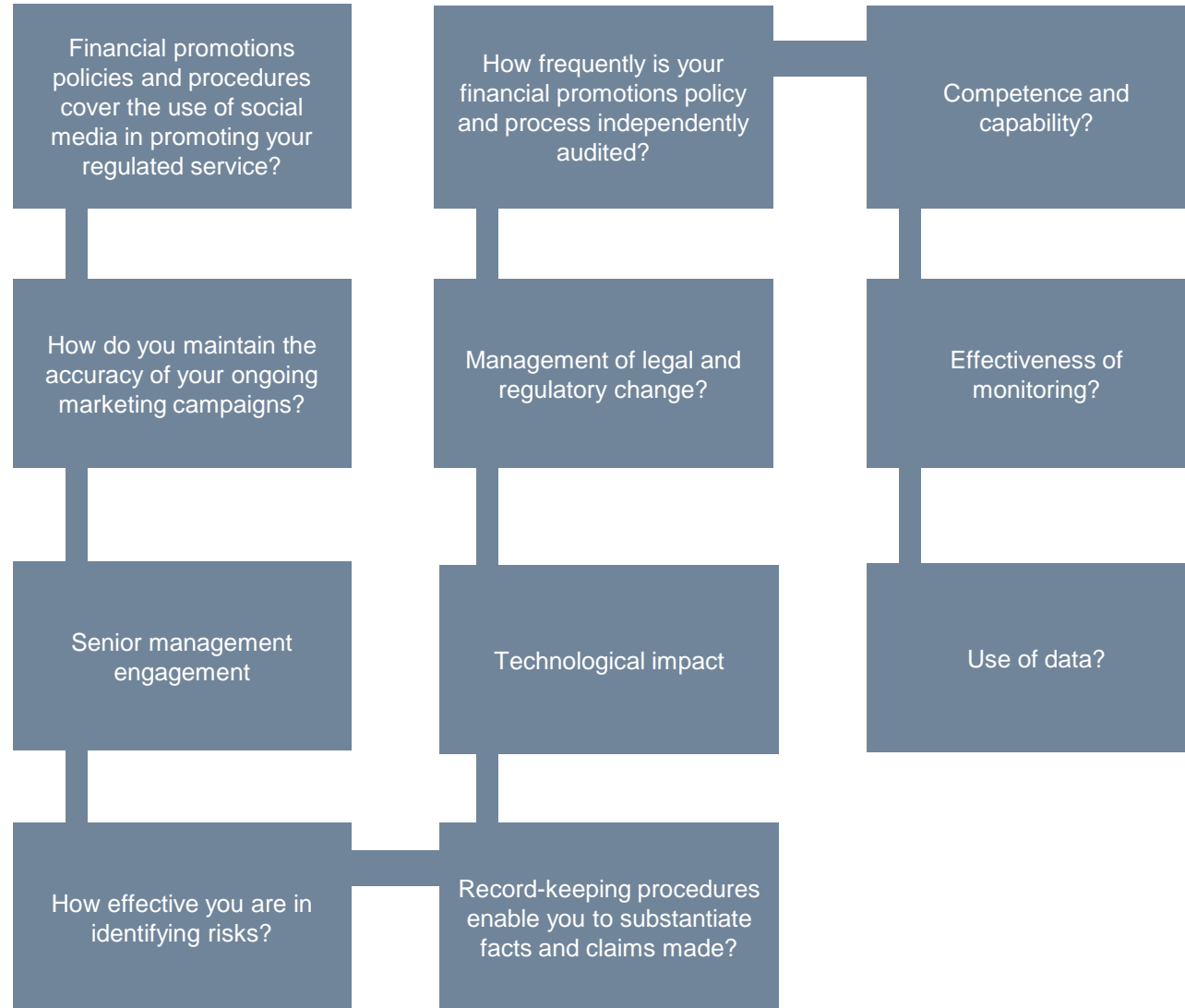
“We have seen examples where furniture companies are not complying with CONC 3, which sets out the FCA rules around firms’ financial promotions, particularly for websites” FCA Dec 2018

Dear CEO letters – financial promotions (Jan 2019 and April 2019)

CP18/21: General standards and communication rules for the payment services and e-money sectors

“Misleading Financial Promotion for Over 50s Life Cover-the financial promotions team have seen promotions for Life Policies for the over-50s where we believe consumers could be misled into thinking they are buying a policy that will cover their funeral costs” FCA Jan 2019

Do you test....



FCA proposes changes to commission disclosures in CONC following findings in its motor market study (CP19/28, October 2019)

Dear CEO letter on how firms clarify the regulated and unregulated sides of their business in customer communications (GEN4)

In December 2018 the FCA directed London Capital & Finance plc to withdraw all existing marketing materials in relation to their Fixed Rate ISA / Bond

In November 2019 the FCA published a new webpage on approving financial promotions of unauthorised persons

In June 2019 the FCA published final rules on BNPL offers

QUESTIONS

