

BACKGROUND SCREENING AND FCA COMPLIANCE

eBOOK - 2021

THE MANDATORY REQUIREMENTS FOR
BACKGROUND CHECKS FOR FCA
REGULATED FIRMS

PERSONNEL
CHECKS

FOREWORD



The FCA is responsible for regulating the conduct of around 58,000 businesses in the UK, employing over 2 million people. Companies regulated by the FCA range from small car dealerships offering finance agreements to multinational banking giants. Whatever the size, the FCA are there to ensure that these organisations treat consumers fairly, encourage innovation and competition and help the FCA identify risks.

Background screening is a mandatory requirement for FCA compliance. Firms need to be able to demonstrate due diligence when it comes to their staff. Financial services can be a high-risk sector and one that is regularly targeted by white-collar criminals. Background screening helps mitigate this risk and ensure you're employing the right people for the job.

Like finance, background screening is a heavily regulated industry. Firms like Personnel Checks are bound by data protection rules, rehabilitation of offender legislation, DBS (Disclosure & Barring Service) eligibility, codes of conduct and industry-specific regulations. Trying to navigate the sector when you're unfamiliar can be complicated, to say the least! This is why we're always on hand to help.

Personnel Checks provide comprehensive screening services to a range of public and private sector financial institutions. We are members of several background screening trade bodies, and our managing director is the sitting vice-chair of the Criminal Record Trade Body (CRTB). We are at the forefront of the industry and use this position to provide better solutions for our customers.

Relying on our background screening expertise means you don't have to worry about learning a whole new area of legislation. Our solutions can be tailored to suit organisations of any size. For a no-obligation consultation, give me a call on 01254 35569 and we can discuss your requirements.

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SM&CR Senior Management and Certification Regime

The Senior Management and Certification (SM&CR) Regime was introduced by the FCA to replace the Approved Persons Regime in 2015. The aim of the SM&CR is to tighten compliance of financial services, strengthen market integrity, reduce harm to consumers and make individuals more accountable for their conduct.

Under the previous regime, any person carrying out a 'controlled function' was required to have a Standard DBS Check completed. This is no longer the case. Only employees identified as carrying out a Senior Management Function are required to have a Standard DBS Check carried out.

SENIOR MANAGEMENT FUNCTIONS

A Senior Management Function (SMF) is a type of controlled function under the Financial Services & Markets Act 2000 (FMSA). Staff members within FCA regulated firms carrying out a role prescribed in the [FCA Handbook](#) as an SMF require a Standard DBS Check to be carried out to be compliant.

Individuals are not limited to one SMF. Depending on their role, staff members may cover 2 or more SMFs. For example, a director can perform the director function and also the compliance oversight function at the same time.

There are 21 identified SMF's for [solo-regulated firms](#) and this increases to 25 for firms [dual-regulated](#) by the PRA (Prudential Regulation Authority) and FCA.

SMF 1 Chief Executive function
 SMF 2 Chief Finance function
 SMF 3 Executive Director
 SMF 4 Chief Risk function
 SMF 5 Head of Internal Audit
 SMF 6 Head of Key Business Area
 SMF 7 Group Entity Senior Manager
 SMF 8 Credit Union SMF
 SMF 9 Chairman
 SMF 10 Chair of the Risk Committee
 SMF 11 Chair of the Audit Committee
 SMF 12 Chair of the Remuneration Committee
 SMF 13 Chair of the Nomination Committee
 SMF 14 Senior Independent Director
 SMF 15 Chair of the With-Profits
 SMF 16 Compliance Oversight
 SMF 17 Money Laundering Reporting

SMF 18 Other overall responsibility function
 SMF 19 Head of Overseas Branch
 SMF 20 Other local responsibility function
 SMF 21 EEA Branch Senior Manager

The following senior management functions are specific to the insurance sector and are governed by the PRA:

SMF 20 Chief Actuary
 SMF 20a With-Profits Actuary
 SMF 23 Chief Underwriting Officer
 SMF 23a Underwriting Risk Oversight (Lloyds)
 SMF 24 Chief Operations
 SMF 25 Small Insurer Senior Manager Function

Anyone carrying out one or more of the above prescribed roles must have a Standard DBS Check completed as a mandatory requirement. Compared to the previous regime, this means a lot of roles no longer need a Standard DBS Check that used to require one. However, this doesn't necessarily mean a DBS Check shouldn't be completed.

In most cases, rather than a Standard DBS Check, a Basic DBS Check is now recommended. We'll discuss the types of DBS Check in more detail in the next section.

DBS CHECKS

A DBS Check is a search carried out by the Disclosure and Barring Service (DBS) to establish someone's criminal record history. In short, it's a criminal record check. Employers use these checks to make informed and safe recruitment decisions based upon the provided information.

Under the SM&CR regime, FCA regulated firms will regularly process Standard and Basic DBS Checks. Firms will need to complete Standard DBS Checks mandatorily on all staff carrying out one or more SMF's. Standard DBS Checks are reserved for certain roles within regulated industries. This includes accountants and solicitors upon entry into their profession, SIA (Security Industry Association) regulated security guards, judicial staff, and certain roles within FCA regulated firms. This level of check can only be carried out by employers.

The FCA recommend carrying out Basic DBS Checks on all other staff under the SM&CR Regime. Basic DBS Checks can be carried out by anyone and are the baseline level of criminal record check. Each check shows different amounts of information.

WHAT DO DBS CHECKS SHOW?

Each level of DBS Check reveals a different amount of information relating to someone's criminal record history. The DBS process three levels of DBS Check, Basic, Standard and Enhanced and each progressively provides more information than the last. Only two types of DBS Check are relevant for FCA regulated firms: Standard and Basic DBS Checks. Below is a breakdown of what information is shown on these checks.

Basic DBS Check: Contain details of any unspent convictions or cautions.

Standard DBS Check: Contains details of any spent or unspent convictions, cautions, reprimands, or warnings the candidate has. Non-convictions are sometimes protected. This means they are only shown when the police consider it relevant.

The reason the Standard DBS Checks are limited to staff members conducting SMFs is because of the nature of the information revealed. For other roles, the level of information revealed would be unnecessary for an employer to know. Under the Rehabilitation of Offenders Act 1974 (ROA), a person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the Act. This is why Basic DBS Checks are all that are recommended for certain roles.

PROCESSING THE CHECKS

When it comes to completing a DBS application form, one of the sections of the form states 'Applicants Position.' As a rule, the position stated here isn't necessarily the applicants job title. Rather, it should contain information about the role which makes it clear to the DBS why the applicant is eligible for the level of DBS Check being applied for. For example:

A builder working on a school site would be required to have an Enhanced DBS Check. On the application form, the Applicant's Position field would be completed as 'Contractor in School.' This is because the location of the work being carried out means there is potential for unsupervised contact with children. This is what makes the builder eligible for the Enhanced DBS Check.

Some employers worry that they are deceiving the DBS when changing the job title on the application form. This isn't the case. The Applicant's Position field just needs to clearly illustrate why that level of DBS Check is required. The same situation applies when applying for Standard DBS Checks for FCA regulated positions involving one or more SMF's. For example:

The Senior Vice President of Sales at a FCA Regulated firm is required to complete a Standard DBS Check. Their role is defined in the FCA Handbook as being the Head of a Key Business Area (SMF 6). When submitting the DBS application form, the Applicant's Position Field would state:

'FCA SMF 6 Head of Key Business Area'

The above format is how all Standard DBS submissions for FCA regulated firms are processed. It is by merit of fulfilling a specific SMF that makes a staff member eligible for a Standard DBS Check. The DBS need this information to be able to conduct the checks appropriately and provide relevant information. In most instances, an applicant's actual job title is irrelevant to the DBS Check.

Sometimes, staff members are responsible for multiple SMFs. A common combination we see is the Compliance Oversight function (SMF 16) combined with the Money Laundering Reporting function (SMF 17). In these cases, the same rules apply but we would have to fit more on. For example:

The Head of Compliance at an FCA regulated firm is fulfilling two SMF's: Compliance Oversight (SMF 16) and Money Laundering Reporting (SMF 17). When submitting the DBS application form, the Applicant's Position Field would state:

'FCA SMF 16/17 CO & MLRO'

The key information that the DBS need to see is 'FCA SMF' and the relevant function number. Without this information, they would query the DBS application when they receive it. The query process can take several weeks to resolve so it is always best practice to submit the job title in the correct format.

PROCESSING DBS DATA

In line with the DBS code of practice, businesses need a formal written policy on the secure handling of any information provided (electronically or otherwise). This policy needs to be clearly made available to any recruit or employee that a business intends to run a DBS Check on.

The employer must handle all information provided to them by DBS in line with the obligations under Data Protection Act 1998.

Businesses that receive DBS information can keep a record of:

- The date of issue of a disclosure
- The name of the subject
- The type of disclosure requested
- The position for which the disclosure was requested
- The unique reference number of the disclosure
- The details of the recruitment decision taken

Disclosure information should never be kept on an applicant's personnel file and should be kept separately and securely, in a lockable, non-portable storage container with access strictly controlled and limited to those who are entitled to see it as part of their duties. This can be a physical or digital container.

Once a recruitment (or other relevant) decision has been made, organisations should not keep disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months to allow for the consideration and resolution of any disputes or complaints.

FITNESS AND PROPRIETY

Fitness and propriety is a key component of any application for FCA registration under the SM&CR regime. The FCA use the fit and proper test as a benchmark to determine whether an individual is suitable to perform a SMF. While it is a test, it is not an examination that applicants must pass.

Prior to 2016, the FCA were responsible for assessing whether individuals were fit and proper. Under the SM&CR Regime, this responsibility has been passed on to regulated firms. Before an FCA regulated firm can submit an application for someone to become an approved person they must be satisfied that the individual in question is fit and proper.

Organisations need to be able to demonstrate that anyone being put forward satisfies the FCA criteria in the following areas:

- Honesty, integrity, and reputation
- Competence and capability
- Financial Soundness

Full guidance for firms can be found in the [Fit and Proper test for Employees and Senior Personnel sourcebook \(FIT\)](#).

RECOMMENDED BACKGROUND CHECKS

When satisfying the main assessment criteria of the fit and proper test, background checks are essential. Although they recognise that this is not an exhaustive list, the FCA recommend the following checks are completed, where appropriate:

CRIMINAL RECORD CHECKS

As discussed in the previous section, DBS Checks should be used by employers to establish whether an applicant has any relevant spent or unspent convictions that could influence their ability to perform their role. However, DBS Checks aren't the only criminal record checks available to employers.

The FIT guidance states in its assessment criteria that firms must take into consideration relevant conviction or offence information "whether or not [it happened] in the United Kingdom." As finance is very much an international industry, international criminal record checks should be considered when employing staff who have spent time overseas.

As a rule, we would recommend carrying out international criminal record checks on any person who has spent more than 6 continuous months living overseas within the past 5-years. However, firms should use their own discretion to determine if the checks may be appropriate in other situations.

REGULATORY REFERENCES

The FCA expect that all regulated firms under SM&CR must complete appropriate regulatory reference checks. FCA regulated firms must request references from all previous employers within the past 6 years, using a [standard template](#).

The FCA have strict guidance on how references should be handled, which can be found [here](#).

QUALIFICATION CHECKS

Firms must satisfy that any applicant for FCA registration has the relevant qualifications and experience to fulfil a prescribed SMF. While viewing someone's physical qualifications is a sound idea, we would always recommend carrying out additional checks to confirm.

Qualification fraud is a growing problem, with the quality of forgeries meaning most frauds go unnoticed until it's too late. Research has shown that up to 75% of admissions staff cannot recognise fraudulent degrees issued in their own institutions name. Qualification Checks provide a comprehensive report confirming the level and types of qualifications gained by an applicant.

FINANCIAL CHECKS

Financial Checks are a key element of determining whether a candidate is financially sound. According to the FIT guidance, firms need to be aware whether an individual has "made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restriction order), offered a bankruptcy restriction undertaking, had assets sequestrated, or been involved in proceedings relating to any of these."

This means any financial checks carried out by firms need to be comprehensive and include information on any county court judgements, bankruptcies, insolvencies and include a credit report.

The FCA guidance states that firms also need to be aware of any financial judgements outside of the United Kingdom. For international recruits, there are overseas civil record checks which can help provide information on whether a candidate is financially sound.

DIRECTORSHIP CHECKS

Directorship Checks provide information on a candidate's directorships. This includes posts currently held as well as previous directorships. The candidate and their company details are also checked to see whether they have ever been 'struck off.'

FCA guidance makes it clear that firms need to be aware of any directorships of firms that have gone into insolvency, liquidation, or administration. Firms also need to be aware of any affiliations which may make an individual unfit to carry out their role due to conflict of interest or other reasons.

ADDITIONAL SUPPORTING CHECKS

SANCTIONS CHECKS

These checks search for sanctions, enforcements, and warnings worldwide. The search includes individuals known or suspected to be affiliated with terrorism, money laundering, fraud, white-collar crime, and other illegal activities.

These checks also highlight Politically Exposed Persons (PEPs). This check is particularly useful when recruiting senior-level staff to ensure they pass the 'fit and proper' criteria.

MEDIA CHECKS

These checks provide selected results based on a search using an online search engine and media feeds against the candidate's full name. This will reveal any negative information that has been publicly reported on the individual. Particularly useful for positions in the public eye.

IDENTITY CHECKS

Identity fraud is estimated to cost the UK economy over £190 billion each year. It is vital that you do everything you can to protect your firm from white-collar criminals with fraudulent intent.

Identity Checks use advanced technology to provide a score indicating a degree of confidence in a person's identity. Combined with a DBS Check and references, you can be sure you're employing the right person.

OCCUPATIONAL HISTORY CHECKS

Many firms opt to run additional Occupational History Checks on staff in senior roles. These checks can be used to run searches into a candidate's work history and cover up to 6 or 10-years. They include all periods of employment, self-employment, and unemployment.

These checks can give you the assurance that the individual you're engaging is experienced enough for the role. They can also confirm that your candidates aren't leaving anything out of their working history.

PROCESSING BACKGROUND CHECKS

Implementing a legally compliant background screening process is a complicated and time intensive task. Screening regulations tend to involve overlapping areas of legislation that can often be contradictory. Relying on professional background screening and compliance organisation is the best way to ensure you get the most out of this process.

Personnel Checks provide comprehensive screening services to a range of public and private sector financial institutions. We are members of several background screening trade bodies, and our managing director is the sitting vice-chair of the Criminal Record Trade Body (CRTB). Personnel Checks are at the forefront of the industry and use this position to provide better solutions for our customers.

We can assist your firm by tailoring screening packages including any of the background checks listed in this eBook. Why not join the ever-growing community of conscientious businesses that are taking the leap into background screening?

For more information about how Personnel Checks background screening solutions can aid your organisation, get in touch! You can give us a call on **01254 355 688** or drop us an email at letstalk@personnelchecks.co.uk