

Chapter 22

Regulatory references

22.1 Application

General application

22.1.1 **R** This chapter applies to all *firms* (subject to ■ SYSC 22.1.5R).

Activities covered

22.1.2 **G** This chapter is not limited to *regulated activities* or other specific types of activities.

Territorial scope and overseas firms

22.1.3 **R** There is no territorial limitation on the application of this chapter, subject to ■ SYSC 22.1.5R and ■ SYSC 22.1.6R.

22.1.4 **G** One effect of ■ SYSC 22.1.3R is that the obligation to provide a reference can apply even if the *employee* worked in an overseas office of the *employer*.

22.1.5 **R** This chapter does not apply to an overseas *firm* that does not have an establishment in the *United Kingdom*.

22.1.6 **R** For an *incoming firm* or any other *overseas firm*, ■ SYSC 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question (defined as "P" in ■ SYSC 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

22.1.7 **R**

- (1) In order to decide whether someone is an *employee* of a *branch*, the *Glossary* definition of *employee* is applied to the *branch* as if the *branch* and the *firm* of which it forms part were separate *firms*.
- (2) For the purpose of (1), paragraph (4A)(c) of the definition of *employee* (someone employed elsewhere in the *group*) does not apply.

22.2 Getting, giving and updating references: the main rules

Obligation to obtain references (full scope regulatory reference firms only)

- 22.2.1** **R**
- (1) If a *full scope regulatory reference firm* (A) is considering:
 - (a) permitting or appointing someone (P) to perform a *controlled function*; or
 - (b) issuing a certificate under the certification regime for P;

(as explained in more detail in rows (A) and (B) of the table in ■ SYSC 22.2.3R), A must take reasonable steps to obtain appropriate references from:

 - (c) P's current *employer*; and
 - (d) anyone who has been P's *employer* in the past six years.
 - (2) A must take reasonable steps to obtain the reference before the time in column two of the applicable row in the table in ■ SYSC 22.2.3R.
 - (3) A must in particular request:
 - (a) the information in ■ SYSC 22.2.2R(1) to (3); and
 - (b) (if P's current or previous *employer* is also a *full scope regulatory reference firm*) the information in ■ SYSC 22.2.2R(4) (questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R).
 - (4) When deciding what information to request under (1), A must have regard to the factors in ■ SYSC 22.2.2R(5) (Factors set out in ■ SYSC 22 Annex 2R).

Obligation to give references

- 22.2.2** **R**
- (1) A *firm* (B) must provide a reference to another *firm* (A) as soon as reasonably practicable if:
 - (a) A is considering:
 - (i) permitting or appointing someone (P) to perform a *controlled function*; or
 - (ii) issuing a certificate under the certification regime for P; or
 - (iii) appointing P to another position in the table in ■ SYSC 22.2.3R;

(as explained in more detail in the table in ■ SYSC 22.2.3R);

- (b) A makes a request, for a reference or other information in respect of P from B, in B’s capacity as P’s current or former employer;
 - (c) B:
 - (i) is P’s current employer; or
 - (ii) has been P’s employer at any time in the six year period preceding the request in (1)(b); and
 - (d) A indicates to B the purpose of the request.
- (2) B must disclose to A in the reference all information of which B is aware that B reasonably considers to be relevant to A’s assessment of whether P is fit and proper.
- (3) B is only required to disclose under (1) and (2) something that occurred or existed:
- (a) in the six years before the request for a reference; or
 - (b) between the date of the request for the reference and the date B gives the reference; or
 - (c) (in the case of serious misconduct) at any time.
- [Note: See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for guidance on the meaning of serious misconduct]
- (4) If B is a *full scope regulatory reference firm*:
- (a) B must in addition disclose the information in questions (A) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements); and
 - (b) B must disclose the information in (a) whether or not A is a *full scope regulatory reference firm*.
- (5) When deciding what information to give to A under (1) to (3), B must have regard to the factors in ■ SYSC 22 Annex 2R (Factors to take into account when asking for and giving regulatory references).

22.2.3

R Table: What positions need a reference

Position	When to obtain reference	Comments
(A) Permitting or appointing someone to perform an <i>FCA controlled function</i> or a <i>PRA controlled function</i> .	One <i>month</i> before the end of the application period	
	Where a request for a reference would require:	
	(a) the <i>firm</i> requesting the reference;	
	(b) the <i>employer</i> giving the reference; or	
	(c) any other <i>person</i> ;	

Position	When to obtain reference	Comments
	to make a mandatory disclosure prior to P disclosing to its current <i>employer</i> that such application has been made, the date is the end of the application period.	
(B) Issuing a certificate under section 63F of the <i>Act</i> (Certification of employees by relevant authorised persons).	Before the certificate is issued	This includes renewing an existing certificate.
(C) Appointing someone to any of the following positions (as defined in the <i>PRA Rulebook</i>): (a) a notified non-executive director; (b) a credit union non-executive director; or (c) a key function holder.	Not applicable	SYSC 22.2.1R (obligation to obtain a reference) does not apply to a <i>firm</i> appointing someone to the position in column (1). However SYSC 22.2.2R does apply to a <i>firm</i> asked to give a reference to a <i>firm</i> appointing someone to the position in column (1).
Note 1: Mandatory disclosure means an obligation in any applicable laws, regulations or rules to declare or disclose information to the public.		
Note 2: P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.		
Note 3: The application period means the period for consideration referred to in section 61 of the <i>Act</i> (Determination of application).		

Obligation to revise references: The main rule (full scope regulatory reference firms only)

22.2.4

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- If at any time:
- (1) a *full scope regulatory reference firm* (B) has given a reference under ■ SYSC 22.2.2R to another *firm* (A) about an *employee* or *ex-employee* of B (P);
 - (2) B was also a *full scope regulatory reference firm* when it gave the reference in (1);
 - (3) either of the following applies:
 - (a) B is aware of matters or circumstances that mean that if B had been aware of them when giving that reference, this chapter would have required B to draft the reference differently; or
 - (b) the following applies:
 - (i) B has since giving the reference reached conclusions of the type described in question (E) of Part One of

■ SYSC 22 Annex 1R or taken disciplinary action of the type described in question (F) of Part One of ■ SYSC 22 Annex 1R; and

(ii) if B had taken or reached those conclusions or actions within the six year period referred to in Part One of

■ SYSC 22 Annex 1R, this chapter would have required B to draft the reference differently; and

(4) it would be reasonable to consider the differences in (3) to be significant for an assessment by A of the fitness and propriety of P for the role at A for which the reference was given;

B must:

(5) make reasonable inquiries as to the identity of P's current *employer*; and

(6) give A details of those differences in writing as soon as reasonably practicable, unless ■ SYSC 22.2.5R says that B does not have to do so.

22.2.5 **R** B does not need to update A if:

(1) A is no longer a *firm*;

(2) P has not yet been *employed* by A (because, for example, P is still working their notice period with B) and it is no longer intended for A to *employ* P;

(3) A is no longer P's *employer*; or

(4) despite making reasonable enquiries under ■ SYSC 22.2.4R, B does not know whether P is still *employed* by A.

22.2.6 **R** This *rule* sets out time limits about the obligation to update a reference in ■ SYSC 22.2.4R.

(1) If B still *employs* P, ■ SYSC 22.2.4R applies throughout the period B remains *employed*.

(2) If B no longer *employs* P, the obligation to update ends six years after P ceased to be *employed* by B.

(3) If B no longer *employs* P and the matters or circumstances are not serious misconduct by P, B does not have to disclose something if it did not occur or exist in the six year period ending on the date B gave the original reference. This limitation applies in addition to the one in (2).

[**Note:** See ■ SYSC 22.5.10G and ■ SYSC 22.5.11G for *guidance* on the meaning of serious misconduct]

Obligation to revise references: Finding out who the current employer is (all firms)

22.2.7

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If at any time:

- (1) a *full scope regulatory reference firm* (B) has given a reference under **SYSC 22.2.2R** to another *firm* (A) about an *employee* or *ex-employee* of B (P);
- (2) B asks A whether P is still an *employee* of A; and
- (3) B gave A the reference no more than six years ago;

A must answer that question as soon as reasonably practicable, even if B does not tell A why it wants to know that information.

22.3 Drafting the reference and the request for a reference

How to draft the reference

- 22.3.1 **G** There are no requirements about the form in which a *firm* that is not a *full scope regulatory reference firm* should give a reference.
- 22.3.2 **G** ■ SYSC 22.4 has requirements about the form in which a *full scope regulatory reference firm* should give a reference.

How to draft the request for a reference

- 22.3.3 **G**
- (1) A *firm* (A) asking another *firm* (B) for a reference should give B sufficient information to let B know that the requirements in this chapter apply to the reference it is being asked to give and which requirements apply.
 - (2) As long as it complies with (1), A does not have to set out specifically the information this chapter requires it to obtain. This is because B should include that information even though B is not specifically asked to include it.
- 22.3.4 **G** A *firm* asking for a reference under this chapter from a current or former *employer* that is not a *firm* will normally need to specify what information it would like.

Inclusion of additional material

- 22.3.5 **G**
- (1) This chapter sets out minimum requirements for a reference. It does not prevent a *firm* from including more than is required by this chapter.
 - (2) If a *firm* does disclose more than is required by this chapter the reference should still meet its duties under general law to its former *employee* and the recipient (see ■ SYSC 22.5.3G to ■ SYSC 22.5.5G).
- 22.3.6 **G** Nothing in this chapter prevents a *firm* from disclosing material outside the time limits under this chapter.

22.4 Drafting the reference: detailed requirements for full scope regulatory reference firms

Purpose of SYSC 22 Annex 1R

- 22.4.1 **G** ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) has two purposes:
- (1) to set out what information a *full scope regulatory reference firm* should disclose under ■ SYSC 22.2.2R(4); and
 - (2) to provide a template that a *full scope regulatory reference firm* should use when giving a reference under this chapter.

How to draft the reference

- 22.4.2 **R**
- (1) A *full scope regulatory reference firm* must use the template in Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) when giving a reference under this chapter to another *firm* (A).
 - (2) A *firm* may make minor changes to the format of the template in Part One of ■ SYSC 22 Annex 1R when giving a reference under this chapter, provided that the reference includes all the information required by ■ SYSC 22 Annex 1R.
 - (3) This *rule* applies even if A is not a *full scope regulatory reference firm*.
- 22.4.3 **G**
- (1) ■ SYSC 22.4.2R does not stop a *full scope regulatory reference firm* including matters in the reference not required by the template in ■ SYSC 22 Annex 1R.
 - (2) A *full scope regulatory reference firm* may include the material required by the template and additional material in the same document.
 - (3) Any additional material should not alter the scope of any of the questions in the templates.
- 22.4.4 **G** A *full scope regulatory reference firm* should use the template in ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant

22.4.5

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authorised persons and disclosure requirements) even if the *firm* asking for the reference does not specifically ask it to.

PRA requirements
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B may combine in a single reference what the *PRA's rules* require and what this chapter requires.



22.5 Giving references: additional rules and guidance for all firms

Verification

22.5.1 **R** This chapter does not require a *firm* to disclose information that has not been properly verified.

22.5.2 **G** (1) For example, this chapter does not necessarily require a *firm* to include in a reference the fact that an *ex-employee* left while disciplinary proceedings were pending or had started. Including such information is likely to imply that there is cause for concern about the *ex-employee* but the *firm* may not have established that the *ex-employee* was actually responsible for misconduct.
(2) However, a *firm* may include such information in a reference if it wishes to (see ■ SYSC 22.3.5G).

Accuracy

22.5.3 **G** A *firm* should, when giving a reference under this chapter, provide as complete a picture of an *employee's* conduct record as possible to new employers.

Fairness

22.5.4 **G** (1) A *firm* supplying a reference in accordance with this chapter owes a duty under the general law to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference.
(2) The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed.
(3) References should be true, accurate, fair and based on documented fact.

22.5.5 **G** (1) An example of the general duty described in ■ SYSC 22.5.4G is that fairness will normally require a *firm* to have given an *employee* an opportunity to comment on information in a reference. The *firm* might do this through, for example, disciplinary proceedings.

- (2) Paragraph (1) does not mean that the *firm* should provide an opportunity to comment on the reference itself, as opposed to the allegations on which it is based.
- (3) A *firm* may have given the *employee* an opportunity to comment on allegations that are later included in a reference even though, at the time that the *firm* is giving that opportunity, no reference is being contemplated. That may mean that the *firm* gives the *employee* their opportunity to comment on the allegations some time before the reference is prepared.
- (4) Paragraph (1) does not mean that a *firm* will be unable to include an allegation in a reference if it has offered the *employee* an opportunity to comment on the allegation but the *employee* has unreasonably refused to do so.
- (5) Where a *firm* should have given an *employee* an opportunity to comment on an allegation if the allegation is to be included in a reference, this chapter requires the *firm* to give the *employee* that opportunity rather than merely to leave the allegation out of the reference.
- (6) Paragraph (5) may mean that where the *firm* has not given its *employee* an opportunity to comment on a matter at the time it first arose, it will have to give the *employee* the opportunity around the time that the *firm* is preparing the reference.
- (7) The obligation to give an *employee* an opportunity to comment does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see ■ SYSC 22.5.18G).
- (8) This chapter does not require the *employee's* views to be included in the reference. Instead the *firm* should take those views into account so far as appropriate when deciding whether something should be disclosed and how the disclosure is drafted.

Outsourcing

22.5.6 **G** The requirements in this chapter for a *firm* (B) to give a *firm* (A) a reference also apply where A has outsourced the collection of that information to another (unregulated) third party, where B has been made aware that the unregulated third party is acting on behalf of A.

Circumstances in which the ex-employee left

22.5.7 **G** The obligation to give a reference for an *employee* or *ex-employee* applies however the *employment* ended or is going to end. For example, it applies whether it ended through resignation, redundancy, dismissal or fixed term work, a secondment or temporary work coming to an end.

Missing or incomplete information

22.5.8 **G** (1) If a *firm's* records do not cover the maximum periods contemplated by ■ SYSC 22.2.2R or ■ SYSC 22 Annex 1R (Template for regulatory

references given by relevant authorised persons and disclosure requirements), the *firm* should note that in the reference.

- (2) A *firm* should not include a warning of the type described in (1) as a matter of routine. It should only be included if there is a genuine need to include it.

All relevant information: Calculation of six year period for disclosure

22.5.9

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- (1) In general there is a six year limit on what should be disclosed under ■ SYSC 22.2.2R(1) to (3).
- (2) Where the matter to be disclosed consists of a single course of conduct (such as market manipulation) the six year period does not begin until that course of conduct has come to an end. This means that individual events that occurred more than six years ago may still be within the six year limit.
- (3) This *guidance* is also relevant to the six year time limits for updating references in ■ SYSC 22.2.6R.

All relevant information: Removal of six year period

22.5.10

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- (1) ■ SYSC 22.2.2R(1) to (3) normally has a six year time limit. ■ SYSC 22.2.2R(3)(c) removes that time limit for serious matters. This paragraph (■ SYSC 22.5.10G) and ■ SYSC 22.5.11G have *guidance* about this. This *guidance* is also relevant to the time limits for updating references in ■ SYSC 22.2.6R.
- (2) The removal of the time limit does not mean that the time that has elapsed since the matter occurred is irrelevant. The length of time that has elapsed is relevant to deciding whether the matter is serious. In general, the longer ago the matter occurred, the less likely it is still to be serious for these purposes.
- (3) In determining whether something is serious for these purposes, the key question is how important the information still is for the requesting *firm's* assessment of the *employee's* fitness for the function that they are going to perform.
- (4) In considering what is relevant, a *firm* should, in particular, have regard to ■ SYSC 22.5.4G (Fairness).
- (5) The table in ■ SYSC 22.5.11G provides *guidance* on some of the factors which a *firm* should take into account when determining whether a matter is serious.
- (6) The *guidance* in this paragraph and in the table in ■ SYSC 22.5.11G is only designed for the purposes of this chapter. It does not, for example, apply for the purposes of ■ SUP 15 (Notifications to the FCA), DEPP or EG.

22.5.11

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Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose

Factors to take into account	Comments
<p>(A) Whether P has committed a serious breach of individual conduct requirements.</p>	<p>Individual conduct requirements has the same meaning as in Part Two of SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements).</p> <p>Factors to take into account in deciding whether the breach is serious include the following.</p> <p>(1) The extent to which the conduct was deliberate or reckless.</p> <p>(2)The extent to which the conduct was dishonest.</p> <p>(3)Whether the breaches are frequent or whether they have continued over a long period of time. The fact that breaches were frequent or repeated may increase the likelihood that they should be disclosed since the breaches may show a pattern of non-compliance.</p> <p>(4)The extent of loss, or risk of loss, caused to existing, past or potential investors, depositors, policyholders or other counterparties or customers.</p> <p>(5)The reasons for the breach. For example, where the breach was caused by lack of experience which has been remedied by training or further experience, it is less likely that the breach will still be relevant.</p>
<p>(B) Whether the conduct caused B to breach requirements of the <i>regulatory system</i> or P was concerned in a contravention of such a requirement by B and, in each case, whether P's conduct was itself serious.</p>	<p>(1) The factors in (A) are relevant to whether P's conduct was serious.</p> <p>(2)The seriousness of the breach by B is relevant. The factors in (A) are also relevant to this.</p> <p>(3)A breach by B of certain requirements is always likely to be serious under (2). Breach of the <i>threshold conditions</i> is an example. However that does not mean that P's involvement will automatically be serious.</p>
<p>(C) Whether P's conduct involved dishonesty (whether or not also involving a criminal act).</p>	<p>Dishonesty is an important factor but it is not automatically decisive in every case. For instance, a small one-off case of dishonesty many years ago may not be sufficiently serious to require disclosure.</p>
<p>(D) Whether the conduct would have resulted in B's dismissing P, had P still been working for B, based on B's disciplinary policies and the requirements of the law about unfair dismissal.</p>	

Factors to take into account	Comments
(E) Whether the conduct was such that, if B was considering P for a role today and became aware of the historical conduct, B would not employ P today notwithstanding the time that has passed.	
Note 1: P refers to the <i>employee</i> about whom the reference is being written.	
Note 2: B refers to the <i>firm</i> giving the reference.	

Breach of APER

- 22.5.12 **G**
 - (1) An example of information that may be relevant under ■ SYSC 22.2.2R(1) to (3) is the fact that the *employee* has breached a requirement in *APER*.
 - (2) This means that any *firm* (not just one that is a *full scope regulatory reference firm*) should consider whether it needs to disclose a breach of *APER* when giving a reference under this chapter.

Agreements not to disclose information

22.5.13 **R** A *firm* must not enter into any arrangements or agreements with any *person* that limit its ability to disclose information under this chapter.

- 22.5.14 **G** ■ SYSC 22.5.13R covers all types of agreements and arrangements. For example:
 - (1) it is not limited to an agreement or arrangement entered into when the *employee* leaves;
 - (2) it applies however the *employment* ends (see ■ SYSC 22.5.7G); and
 - (3) it covers a "COT 3" Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS).

22.5.15 **G** A *firm* should not give any undertakings to suppress or omit relevant information in order to secure a negotiated release.

22.5.16 **G** The obligation to supply information to another *firm* under this chapter will apply notwithstanding any agreement prohibited by ■ SYSC 22.5.13R.

Time in which to respond to reference requests

22.5.17 **G** The *FCA* expects that normally a *firm* should issue a reference under this chapter within six weeks of being asked to.

Duty to investigate allegations

22.5.18 **G** (1) A *firm* should, wherever feasible, conclude investigative procedures before the *employee* departs.

- (2) However, this chapter does not create a duty to investigate alleged misconduct by an *employee* or former *employee*.
- (3) There are several reasons why a *firm* may find it appropriate to investigate potential misconduct by an *employee* or former *employee*, including:
 - (a) assessing the actual and potential damage resulting from misconduct;
 - (b) identifying other individuals potentially culpable or accountable for the breach;
 - (c) satisfying itself that the *SMF manager* responsible for the areas where the misconduct occurred took reasonable steps to prevent or stop it; and
 - (d) (where the *employee* has *remuneration* susceptible to malus or clawback) enabling it to consider whether any adjustments are justified.

Criminal record checks

22.5.19

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A *firm* giving a reference need not include information from a criminal records check it has carried out under Part V of the Police Act 1997 (Certificates of Criminal records, etc). The recruiting *firm* should carry out a criminal records check itself if necessary. ■ SUP 10C.10.16R requires a *relevant authorised person* to carry out such a check when appointing an *SMF manager*.

22.6 Giving and updating references: additional rules and guidance for full scope regulatory reference firms

Omitting or supplementing mandatory disclosures

22.6.1 **G** (1) A *firm* may have concluded that an *employee* is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements)). The *firm* may later become aware of facts or matters causing it to revise its original conclusions.

(2) If so, the *firm* may decide not to disclose in a reference its conclusion or may qualify its conclusion with supplementary information.

22.6.2 **G** (1) A *firm* may have concluded that an *employee* is unfit or has breached COCON or APER (as described in questions (E) to (F) of Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements)). However the *firm* may consider that the disclosure is incomplete without including mitigating circumstances.

(2) For example, if the *firm* is reporting a breach of COCON it may consider that the breach is very uncharacteristic of the *employee* and that they have had an exemplary record since then. In that case, the *firm* should include those views.

Requirement to consider whether there has been a conduct breach

22.6.3 **G** (1) If a *firm* has taken disciplinary action of the type referred to in question (F) in Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements) against an *employee* and is asked to give a reference about that *employee*, the *firm* should (if it has not already done so) consider whether the basis on which it took that action amounts to a breach of any individual conduct requirements covered by question (F).

(2) If the *firm* decides that the basis on which it took that action does amount to a breach of those requirements, it should include that disciplinary action in the reference under question (F).

- (3) Paragraph (2) applies even if the grounds of the disciplinary action did not include such a breach of individual conduct requirements.
- (4) ■ SYSC TP 5.4.5R disapplies the requirement in (1) for disciplinary action taken before 7 March 2017 or, in the case of *relevant authorised persons*, 7 March 2016, where a *full scope regulatory reference firm's* records do not record whether previous conduct subject to disciplinary action amounted to a breach.
- (5) The obligation to consider whether there was a conduct breach does not mean that there is a wider duty to investigate whether there are facts that show that there has been a conduct breach (see ■ SYSC 22.5.18G).

All relevant information: Interaction with mandatory disclosures

22.6.4

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- (1) ■ SYSC 22.2.2R(1) to (3) may require a *full scope regulatory reference firm* to disclose information that goes beyond the mandatory minimum information in Part One of ■ SYSC 22 Annex 1R (Template for regulatory references given by relevant authorised persons and disclosure requirements).
- (2) This may mean, for instance, that a *firm* should in some cases disclose a conclusion that an *employee* or former *employee* has breached COCON or APER where that conclusion was reached outside the time limits in Part One of ■ SYSC 22 Annex 1R.

Updating references fairly

22.6.5

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- (1) ■ SYSC 22.5.1R to ■ SYSC 22.5.5G (Verification, accuracy and fairness) also apply to updating a reference under ■ SYSC 22.2.4R.
- (2) Therefore fairness may require a *firm* to have given an *employee* an opportunity to comment on an allegation if it is included in an update to a reference.

22.7 Getting references: additional rules and guidance for full scope regulatory reference firms

Intra-group transfers

22.7.1

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- (1) This *rule* applies when:
 - (a) a *full scope regulatory reference firm* (A) would otherwise have to ask another *person* (B) for a reference under ■ SYSC 22.2.1R; and
 - (b) A and B are in the same *group*.
- (2) A need not ask for a reference from B if there are adequate arrangements in place under which A has access to the same information sources as B to the extent that they are relevant to things A has to ask B under ■ SYSC 22.2.1R (Obligation to obtain references).
- (3) If A only has access to some of the information sources in (2), A may ask for a reference that only covers the sources to which A does not have such access.
- (4) If A, in accordance with this rule, does not ask for a reference or a full reference it must access the information resources referred to in this *rule* and get the relevant information within the time specified by ■ SYSC 22.2.3R.

22.7.2

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- (1) ■ SYSC 22.7.1R means that a *firm* recruiting someone from another member of its *group* is not required to request a reference from the other where the *group* has centralised records or alternative measures in place to ensure sharing of relevant information between its members.
- (2) The recruiting *firm* should be satisfied that the centralised or alternative measures ensure relevant information is made available as part of the fit and proper assessment of the recruit.

Who should be asked to give a reference

22.7.3

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The *Glossary* definition of *employer* covers more than just a conventional employer and so it may not always be obvious who a *person's employer* is. Therefore a *full scope regulatory reference firm* appointing someone to a position that requires a reference may have to get the *employee's* help in identifying their previous *employers*.

22.7.4

G

- (1) ■ SYSC 22.2.1R (Obligation of a full scope regulatory reference firm to try to obtain a reference) applies even if the *ex-employer* is not a *firm*.
- (2) A *full scope regulatory reference firm* should take all reasonable steps to try to obtain the reference in these circumstances. However, the FCA accepts that the previous *employer* may not be willing to give sufficient information.

Asking for a reference to be updated

22.7.5

G

- (1) ■ SYSC 22.2.1R (Obligation of a full scope regulatory reference firm to try to obtain a reference) applies even if the *employer* has already got a reference for the *employee*. For example:
 - (a) a *relevant authorised person* should have a reference whenever it renews the certificate of a *certification employee*; and
 - (b) changing jobs within the same *full scope regulatory reference firm* may require a reference.
- (2) However, the *full scope regulatory reference firm* does not necessarily need to obtain a new reference each time (a) or (b) above occurs. That is because an existing reference will very often still be appropriate for the purpose (see ■ SYSC 22.7.6G to ■ SYSC 22.7.8G).

22.7.6

G

If a *relevant authorised person* (A):

- (1) appoints someone (P) to a *specified significant-harm function* position;
- (2) obtains a reference from an *ex-employer*; and
- (3) later wishes to renew P's certificate under the certification regime;

it is unlikely that A will need to ask for another reference from that *ex-employer* or ask for it to be reissued unless there is a change in P's role of the type described in ■ SYSC 5.2.17G (major changes in role).

22.7.7

G

- (1) If a *full scope regulatory reference firm* (A):
 - (a) appoints someone (P) to a *specified significant-harm function* or an *approved person* position;
 - (b) obtains a reference from an *ex-employer* (B); and
 - (c) later wishes to:
 - (i) appoint P to another *specified significant-harm function* or *approved person* position; or
 - (ii) keep P in the same *specified significant-harm function* but make a change in P's role of the type described in ■ SYSC 5.2.17G (major changes in role), whether that change is made at a time when the certificate has not yet come up for renewal or at the time it is being reissued; or
 - (iii) move P from a *specified significant-harm function* to an *approved person* position or vice versa;

A should consider whether to ask B to reissue or amend its reference.

- (2) A may decide that it is not necessary to ask B to reissue or amend its reference. For example, A may decide that:
 - (a) the existing reference already covers everything necessary; or
 - (b) (where B is not a *firm*) B will not give any further information.

22.7.8 G

If:

- (1) a *firm* (A) appoints someone (P) to a *specified significant-harm function* or *approved person* position;
- (2) A obtains a reference from an *ex-employer* (B);
- (3) later P transfers to a *specified significant-harm function* or an *approved person* position with a *full scope regulatory reference firm* in A's *group* (C);
- (4) B's reference is:
 - (a) addressed to all *firms* in A's *group*; or
 - (b) otherwise drafted so that it is clear that C may rely on it; and
- (5) C does not need to ask for the reference to be reissued or amended, taking account of ■ SYSC 22.7.6G and ■ SYSC 22.7.7G;

C may be able to rely on that reference without asking B to give another one.

When references are to be obtained

22.7.9 G

If a *full scope regulatory reference firm* is unable to obtain a reference by the time in column two of the table in ■ SYSC 22.2.3R, it should still try to obtain the reference as soon as possible afterwards.

22.7.10 G

- (1) Where a *relevant authorised person* needs to fill a vacancy for a *specified significant-harm function* which could not have reasonably been foreseen, the *FCA* recognises that it may not be reasonable to expect the *relevant authorised person* to obtain references prior to issuing a certificate.
- (2) In such cases, the *relevant authorised person* should take up the reference as soon as reasonably possible.
- (3) If a reference obtained later raises concerns about the person's fitness and propriety, the *relevant authorised person* should revisit its decision to issue the person with a certificate.

22.7.11 G

- (1) Although this chapter (see ■ SYSC 22.2.3R) only requires a *full scope regulatory reference firm* to try to get a reference for a *person* it is recruiting to perform an *FCA controlled function* or a *PRA controlled function* towards the end of the application process, the *FCA* would

normally expect a *firm* to have obtained the reference before the application for approval is made.

- (2) The main examples of circumstances in which it would be reasonable for a *firm* to delay getting a reference are where asking for a reference earlier will create a serious risk of:
- (a) breaching the confidentiality of a wider commercial or corporate transaction;
 - (b) prematurely triggering the need for a public announcement; or
 - (c) the *candidate* not applying for the position in the first place because it would reveal to the *candidate's* current *employer* the proposed move too soon.
- (3) The *FCA* may consider that it needs to see the information in a reference before it reaches a decision. If so, it may formally ask for that information and extend the time period in which it has to make its decision until it gets the reference. ■ SUP 10C.10.28G gives additional details about requests for further information and the effect they have on the period of time the *FCA* has to make a decision about an application.
- (4) *Full scope regulatory reference firms* are reminded that the *Act* itself requires a *firm* to be satisfied that a *candidate* is fit and proper before it makes an application for approval (see ■ SUP 10C.10.14G for more detail). ■ SYSC 22.7.11G(2) does not affect that obligation.

22.8 Additional rules and guidance for all firms

Policies and procedures

- 22.8.1** **R** A *firm* must establish, implement and maintain policies and procedures that are adequate for the purpose of complying with the obligations in this chapter.
- 22.8.2** **G** ■ SYSC 22.8.1R does not require a *firm* to create or keep records that are not required under ■ SYSC 22.9.1R (General record keeping rules) or another *rule*.

Appointed representatives

- 22.8.3** **R** This chapter applies to a *firm's appointed representatives* as well as to the *firm*.
- 22.8.4** **R** When a *relevant authorised person* is permitting or appointing someone to perform a *controlled function* whose approval is given under ■ SUP 10A.1.15R or ■ SUP 10A.1.16R (appointed representatives of relevant authorised persons), the requirements of this chapter for *firms* that are not *full scope regulatory reference firms* apply in place of the requirements that only apply to *full scope regulatory reference firms*.
- 22.8.5** **G** A *firm* should ensure its *appointed representative* complies with the requirements of this chapter when the *appointed representative* appoints an *approved person* under ■ SUP 10A.1.15R to ■ SUP 10A.1.16BR (appointed representatives).
- 22.8.6** **G**
- (1) A *firm* should ensure that its *appointed representative* gives a reference when another *firm* (or its *appointed representative*) asks that *appointed representative* to give a reference in accordance with this chapter.
 - (2) A *firm* is not responsible for its *appointed representative's* giving references if another *principal* has accepted responsibility for this.

Getting and giving a reference where the employee has worked in a group or on secondment
.....

22.8.7

G

If:

- (1) a *firm* (A) is thinking of employing someone (P);
- (2) P is *employed* by a group services company (D) that is not a *firm*;
- (3) P (in their capacity as an *employee* of D) performs a function or service for a *firm* (B) in the same *group* as D such that P is also an *employee* of B; and
- (4) A intends to appoint (P) to a position that entitles A to obtain a reference from B;

then:

- (5) (if A is a *full scope regulatory reference firm*) A should ask both B and D for a reference;
- (6) B is obliged to give the reference if A asks it to (whether or not A is a *full scope regulatory reference firm*);
- (7) B should ask D to provide it with the information needed to provide a reference in accordance with this chapter;
- (8) D may give a reference but (as it is not a *firm*) it is not obliged to; and
- (9) D and B may give a single joint reference.

22.8.8

G

■ SYSC 22.8.7G also applies where:

- (1) D is not in the same *group* but has seconded P to B; and
- (2) P (in their capacity as an *employee* of D) performed any function or services for B such that P was also an *employee* of B.

22.8.9

G

If:

- (1) a *firm* (A) is thinking of appointing someone (P) to a position that entitles A to obtain a reference from another *firm* (B); and
- (2) P was an *employee* of other members of B's *group* as well as of B;

then:

- (3) (if A is a *full scope regulatory reference firm*) A should ask all the group members that *employed* P for a reference;
- (4) B should give a reference if A asks it to (whether or not A is a *full scope regulatory reference firm*);

-
- (5) P's *employers* in that group (including any that are not *firms*) may give a single joint reference; and
 - (6) if the reference is being provided on a consolidated group basis, it should be clear what information is relevant to which *employer* within the *group*.

22.9 Records

General record keeping rules (full scope regulatory reference firms only)

- 22.9.1** **R** (1) A *full scope regulatory reference firm* must arrange for orderly records to be created and kept that are sufficient to enable it to comply with the requirements of this chapter.
- (2) This *rule* only applies to records in relation to the following questions in Part One of **SYSC 22 Annex 1R** (Template for regulatory references given by relevant authorised persons and disclosure requirements):
- question (E) (fit and proper); and
 - question (F) (disciplinary action).

Time limit for records to be kept (full scope regulatory reference firms only)

- 22.9.2** **G** **SYSC 22.9.1R** does not have an express time limit for which a *firm* should retain the records as its effect is that those time limits are the same as the time limits in **SYSC 22 Annex 1R** (Template for regulatory references given by relevant authorised persons and disclosure requirements).

Reduction in disclosure obligations where there are limited record keeping requirements (all firms)

- 22.9.3** **R** A *firm* does not breach the requirements of this chapter by failing to include information in a reference that it would otherwise have to include if:
- the reason for the omission is that the *firm* does not have the necessary records; and
 - neither **SYSC 22.9.1R** nor any other requirement of or under the *regulatory system* requires the *firm* to have those records.
- 22.9.4** **G** If a *firm* is asked to give a reference in circumstances where the record keeping requirements in **SYSC 22.9.1R** do not apply:
- it is still required to give the reference;
 - it should give the reference based on the records it does have; and
 - it will not breach the requirements of this chapter by failing to include information in a reference if the reason for this is that it does

not have the necessary records, as long as it is not required to have those records by some other requirement in the *Handbook* outside this chapter or some other requirement of or under the *regulatory system*.

Effect of previous record keeping requirements (full scope regulatory reference firms only)

22.9.5

G

- (1) ■ SYSC 22.9.1R applies to keeping records created before the date this chapter came into force as well as ones created afterwards.
- (2) A *full scope regulatory reference firm* does not breach the requirements of this chapter by failing to include something in a reference because it destroyed the relevant records before the date this chapter came into force in accordance with the record keeping requirements applicable to it at the time of destruction.

Template for regulatory references given by relevant authorised persons and disclosure requirements

Part One: Form of Template

Guide to using this template:

Each question must be answered. Where there is nothing to disclose, this should be confirmed by ticking the "No" box for the relevant question.

In this template:

- "we" / "our firm" refers to the firm or firms giving the reference (as set out in either 1A or 1B below) ;
- "individual" refers to the subject of the reference (as set out in 2 below);
- "your" refers to the firm requesting the reference (as set out in 3 below)

	Information requested	Response
1A	Name, contact details and firm reference number of firm providing reference; or	
1B	Names, contact details and firm reference numbers (where applicable) of group firms providing a joint reference	
2	Individual's name (i.e. the subject of the reference)	
3	Name, contact details and firm reference number of firm requesting the reference	
4	Date of request for reference	
5	Date of reference	

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

Question A

Has the individual:

- (1) performed a specified significant harm function for our firm; or
- (2) been an approved person for our firm.

Answer:

Yes

No

Question B:

Has the individual performed one or more of the following roles in relation to our firm:

- (1) notified non-executive director;
- (2) credit union non-executive director; or

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

(3) key function holder (other than a controlled function).

Answer:

Yes

No

Question C:

If we have answered 'yes' to either Question A or B above, we set out the details of each position held below, including:

(1) what the controlled function, specified significant-harm function or key function holder role is or was;

(2) (in the case of a controlled function) whether the approval is or was subject to a condition, suspension, limitation, restriction or time limit;

(3) whether any potential FCA governing function is or was included in a PRA controlled function; and

(4) the dates during which the individual held the position.

Answer:

Question D:

Has the individual performed a role for our firm other than the roles referred to in Questions A and B above:

Answer:

Yes

No

If 'yes', we have provided summary details of the other role(s), e.g. job title, department and business unit, below.

Question E:

Have we concluded that the individual was not fit and proper to perform a function:

Answer:

Yes

No

If 'yes' and associated disciplinary action was taken as a result, please refer to Question F below.

If 'yes', and no associated disciplinary action was taken as a result, we have set out below the facts which led to our conclusion.

Question F:

We have taken disciplinary action against the individual that:

(1) relates to an action, failure to act, or circumstances, that amounts to a breach of any individual conduct requirements that:

(a) apply or applied to the individual; or

(b) (if the individual is or was a key function holder, a notified non-executive director or a credit union non-executive director for your firm) the individual is or was required to observe under *PRA* rules (including if applicable, *PRA* rules in force before 7 March 2016); or

(2) relates to the individual not being fit and proper to perform a function.

Answer:

Yes

The answers to Questions A to F cover the period beginning six years before the date of your request for a reference and ending on the date of this reference

No

If 'yes', we have provided below a description of the breaches (including dates of when they occurred) and the basis for, and outcome of, the subsequent disciplinary action.

Question G:

Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper? This disclosure is made on the basis that we shall only disclose something that:

(1) occurred or existed:

(a) in the six years before your request for a reference; or

(b) between the date of your request for the reference and the date of this reference; or

(2) is serious misconduct.

Answer:

Yes

No

If 'yes', we have provided the relevant information below.

Part Two: Definitions used in Part One

Section One of Part Two of this annex defines terms used in this annex.

Section Two of Part Two of this annex modifies the meaning of certain requirements in Part One and has material about completing the template.

Section One: Meaning of certain terms and phrases

Defined term or phrase	Meaning
B	B refers to the <i>employer</i> or <i>ex-employer</i> giving the reference as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.
P	P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.
A finding or conclusion by B that P was not fit and proper to perform a function (see questions (E) to (F) of the template)	This means a finding or conclusion by B in the following circumstances where: (a) B assesses the continuing fitness and propriety of P as an <i>approved person</i> in accordance with the requirements of the <i>regulatory system</i> , including when carrying out this assessment under section 63(2A) of the <i>Act</i> (annual assessment of <i>approved persons</i> by a <i>relevant authorised person</i>); or (b) B assesses the fitness and propriety of P when B is proposing to issue a certificate under section 63F of the <i>Act</i> (Certification of employees by relevant authorised persons) for P.
Individual conduct requirements	Paragraph (b) applies whether the certificate is being issued for the first time or is being renewed. Individual conduct requirements mean any of the following: (a) COCON;

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
	<p>(b)APER;</p> <p>(c)the PRA’s Individual Conduct Standards or Senior Insurance Manager Conduct Standards (in Chapter 3 of the Part of the PRA Rulebook called Solvency II Firms: Insurance – Conduct Standards and in Chapter 3 of the Part of the PRA Rulebook called Non-Solvency II Firms: Large Non-Solvency II Firms – Conduct Standards);</p> <p>(d)the PRA’s Individual Conduct Rules or Senior Manager Conduct Rule (in Chapters 2 and 3 of the Part of the PRA Rulebook called CRR Firms: Conduct Rules and in Chapters 2 and 3 of the Part of the PRA Rulebook called Non-CRR Firms: Conduct Rules); or</p> <p>(e)the PRA’s Conduct Standards (in Chapter 3 of the Part of the PRA’s Rulebook called CRR Firms: Fitness and Propriety and Chapter 3 of the Part of the PRA Rulebook called Non-CRR Firms: Fitness and Propriety).</p>
Function (as referred to in questions (E) to (F))	A function means a function as an <i>approved person or certification employee</i> .
Disciplinary action	<p>Disciplinary action has the same meaning as in section 64C(2) of the Act (Requirement for relevant authorised persons to notify regulatory of disciplinary action), which is:</p> <p>(a)the issue of a formal written warning; or</p> <p>(b)the suspension or dismissal of P; or</p> <p>(c)the reduction or recovery of any of P’s remuneration.</p> <p>This definition applies even if B is not a <i>relevant authorised person</i>.</p>
Notified non-executive director, credit union non-executive director and key function holder	These terms have the same meaning as they do in the <i>PRA Rulebook</i> .
Specified significant harm function, approved person, controlled function and PRA controlled function	These terms have the same meaning as they do in the <i>Glossary</i> .
Potential FCA governing function	<p>Potential FCA governing function means a function:</p> <p>(a)that would have been an <i>FCA controlled function</i> but for:</p> <p>(i)SUP 10A.11 (Minimising overlap with the PRA approved persons regime); or</p> <p>(ii)SUP 10C.9 (Minimising overlap with the PRA approved persons regime);</p> <p>(b)but instead is included in a <i>PRA controlled function</i> under the following parts of the <i>PRA Rulebook</i>:</p> <p>(i)Part 2 of “Senior management functions”;</p> <p>(ii)Part 2 of “Insurance – Senior Insurance Management Functions”;</p>

Section One: Meaning of certain terms and phrases	
Defined term or phrase	Meaning
	(iii)Part 6 of “Solvency II Firms: Senior Insurance Managers Regime – Transitional Provisions”; or (iv)Part 6 of “Non-Solvency II Firms: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Transitional Provisions.
Section Two: Supplementary requirements	
Item of template for which supplemental requirements apply	Supplemental requirements
Questions (E) and (F)	If: (a)the finding or disciplinary action was reached or taken by another member of B’s <i>group</i> with the authority to do so; and (b)the finding or disciplinary action relates to conduct by P relating to the carrying on of activities (whether or not <i>regulated activities</i>) by B; this question applies to such finding or disciplinary action in the same way as it does to findings or disciplinary action made or taken by the <i>firm</i> itself.
Question (F)	This question is subject to SYSC TP 5.4.5R (where there is no need to disclose disciplinary action that took place before certain dates if the <i>firm’s</i> records do not show whether there was a breach of individual conduct requirements).
The whole of Part One of this annex	The template to be used by a <i>firm</i> in giving a reference includes everything in Part One of this annex except for the “Guide to using this template” paragraph.

Factors to take into account when asking for and giving regulatory references

Matters to take into account	Comments
(A) Any outstanding liabilities of that person from commission payments	
(B) Any relevant outstanding or upheld complaint from an <i>eligible complainant</i> against P	
(C) Section 5 of the relevant Form A in SUP 10A Annex 4 (Application to perform controlled functions under approved persons regime) or SUP 10C Annex 2 (Application to perform senior management functions)	
(D) FIT 2 (Main assessment criteria)	
(E) The persistency of any life policies sold by P	This only applies if SUP 16.8.1G(1) (Persistency reports from insurers) applies to B
Note: P refers to the <i>employee</i> or <i>ex-employee</i> about whom the reference is given as defined in more detail in SYSC 22.2.1R and SYSC 22.2.2R.	

