

CONSULTATION REPORT

CERTIFICATION REGIME:

- 1 FITNESS AND PROPRIETY DEFINITIONS AND SOURCES OF INFORMATION
- 2 FITNESS AND PROPRIETY ASSESSMENT PRINCIPLES
- 3 FITNESS AND PROPRIETY ASSESSMENT RECORD TEMPLATE

28 FEBRUARY 2017

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## Introduction

### About the BSB

The Banking Standards Board (BSB) aims to help raise standards of behaviour and competence across UK banks and building societies for the benefit of customers, clients, the economy and society as a whole.

The BSB was launched in April 2015 and opened for membership in January 2016. It is a private sector body open to all banks and building societies operating in the UK and is funded by its members. The BSB is neither a regulator nor a trade association; it has no statutory powers and does not speak or lobby for the industry. Rather, it provides challenge, support and scrutiny for firms committed to demonstrating trustworthiness and raising standards across the sector.

### Good practice guidance

BSB good practice guidance allows member firms and others in the sector to reference their own policies and procedures against a statement of what 'good' looks like. It is developed in partnership with BSB members and represents a pooling of knowledge and experience. It does not impose any legal or regulatory obligations on BSB members, nor does it replace regulation. In the event of inconsistency, applicable laws, rules and regulations prevail.

There are two elements to BSB good practice guidance: an overarching Statement of Good Practice sets out high level principles of good practice for a particular area; and Supporting Guidance then explains these high level principles in more detail.

### Relationships with other codes

The BSB aims to avoid replicating or duplicating work that is already being done well elsewhere. Where our work aligns or overlaps with that of other standard-setting organisations we will, wherever possible, work in collaboration and/or adopt a consistent approach.

### About this report

On 8 June 2016 we launched a consultation on three documents designed to help banks and building societies assess the fitness and propriety (F&P) of employees subject to the Certification Regime. This report summarises the responses we received to our consultation and the way in which we have taken them into account in amending the final good practice guidance.

### About the Certification Regime

The Certification Regime is part of the strengthened Individual Accountability Regime introduced by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), referred to here collectively as 'the regulators'. The Certification Regime applies to approximately 32,000 staff<sup>1</sup>

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<sup>1</sup> HM Treasury, 2015, *Senior Managers and Certification Regime: extension to all FSMA authorised persons*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468328/SMCR\\_policy\\_paper\\_final\\_15102015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468328/SMCR_policy_paper_final_15102015.pdf)

working in roles that could pose a risk of significant harm to their employing firm or its customers.<sup>2</sup> The Certification Regime currently extends to banks, building societies, credit unions, the largest investment banks that are regulated by the PRA and branches of foreign banks operating in the UK.

The key feature of the Certification Regime is that firms are required to attest to the regulators on an annual basis that staff working in these high-risk roles are fit and proper to do so. Firms must therefore assess the F&P of all staff in these roles at least annually.

The regulators have specified that an assessment of F&P should include consideration of a person's:

- honesty, integrity and reputation,
- competence and capability, and
- financial soundness.

It is the responsibility of firms to determine how to assess the F&P of their staff, to issue certificates for roles (whether virtually or otherwise) and to implement the business processes required to support this.

While the new regulation is clear in its requirement that firms assess the F&P of certified individuals, it leaves the detail of how this should be done largely to firms themselves. It presents firms, therefore, with the opportunity collectively to generate substantive and positive change through the raising of professional standards across the sector. The new regulatory requirements of the Certification Regime are, in this sense, a starting point rather than an end in themselves.

Given the importance of the new regime to standards of both behaviour and competence across the banking sector and given also its collective dimension, the BSB began in early 2016 to explore with its members the scope for both learning from each other about implementation of the new regime and identifying areas where consistency of approach could be beneficial. The BSB accordingly convened the Certification Regime Working Group (CRWG) to consider whether and where, in this context, voluntary good practice guidance could be useful.

### About the BSB's Certification Regime Working Group

The CRWG first met in January 2016 and subsequently five more times prior to June 2016. It focused its work on three areas.

First, the CRWG felt it was important to establish a common understanding of the various elements of F&P as set out by the regulators, and of the sources of information that firms might use to provide evidence of F&P. The CRWG considered not only sources of information that currently exist, but also those that could potentially be developed in the future. The consultation paper sought views on both of these.

Second, the CRWG felt that there was a need for a common set of F&P assessment principles, framed at a level high enough for firms to be able to adopt into their own processes but sufficiently

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<sup>2</sup> The FCA's definition is: '[The Certification Regime] applies to 'material risk-takers' (these are staff who are subject to the Dual Regulated Firms Remuneration Code and other staff who pose a risk of significant harm to the firm or any of its customers (e.g. staff who give investment or mortgage advice or who administer benchmarks).' <https://www.fca.org.uk/firms/senior-managers-certification-regime>

challenging as to foster high standards. The principles should provide a description of good practice against which firms could reference their processes, policies and procedures.

Third, the CRWG agreed that a consistent approach might be helpful in the development of an assessment template. The main purpose of this template would be to capture the overall conclusion reached by the F&P assessor and the rationale for this.

The result of the CRWG's work was the development of good practice guidance for assessing F&P, published in three documents for consultation:

- F&P Definitions and Sources of Information,
- F&P Assessment Principles, and
- an F&P Assessment Record Template.

The CRWG continues to meet and the consultation responses and amendments to the guidance have been discussed with the group.

### About the consultation

The three draft good practice guidance documents and the covering consultation paper are available on the BSB website:

<http://www.bankingstandardsboard.org.uk/bsb-certification-regime-fitness-and-propriety-consultation/>

The BSB invited comments on the proposed good practice guidance and asked a number of specific questions. The questions were split into three sections relating to each document;

#### F&P Definitions and Sources of Information

1. What are your thoughts on the proposed F&P Definitions and/or current and potential Sources of Information? Is anything missing, under- or over-stated, or not relevant?
2. How do the proposed F&P Definitions and Sources of Information reflect your current interpretation of the terms and the sources of information you use to conduct F&P assessments? Are there any aspects which may be new to your firm?
3. Are there any areas where further development or guidance would be merited?

#### F&P Assessment Principles

4. Do the principles address the right issues? Would further development of, or guidance on, any of these principles be helpful?
5. Are there any areas which are not currently covered by the principles that you feel warrant further exploration?
6. How do the principles reflect your current approach to F&P assessments? Are there any aspects which would be new to your firm? If so, what would be the most challenging areas?

## F&P Assessment Record Template

7. Does the template address the right issues to serve a useful purpose both as guidance and as a record?
8. Are there any areas where further development or guidance would be merited?
9. Would you find such a template useful in your own firm? If so, is there anything else that you would find helpful in adopting such an approach? If not, what would prevent you using it, or why would you choose not to use it?

The consultation period ran for three months to 7 September 2016. It was published on our website and shared with member firms, trade associations, professional bodies, consumer organisations and professional services firms.

We received 12 responses to our consultation:

Organisation type	Number of responses
BSB member firm	7
Chartered professional body	2
Qualification provider	1
Professional services firm	1
Other voluntary standards organisation	1

### About our response to the consultation responses

We are grateful for all the responses received to the consultation. The following sections of this document set out:

- a high-level summary of the consultation responses and an overview of the main themes arising from the consultation as a whole, highlighting the major changes to the guidance;
- an analysis of comments about the F&P Definitions, and our consequent amendments;
- an analysis of comments about the F&P Assessment Principles, and our consequent amendments;
- a summary of major points raised about the F&P Sources of Information, and our consequent amendments; and
- an analysis of comments about the F&P Assessment Record Template, and our consequent amendments.

The majority of comments were made in relation to the suggested sources of information. In this report we discuss the major themes raised. A more detailed analysis of all of the comments made in relation to the F&P Sources of Information is attached at Appendix 1.

## A note on regulatory references

The consultation concluded prior to the regulators publishing their final rules on regulatory references on 28 September 2016.<sup>3,4</sup> We have taken account in this report and in our amendments to the good practice guidance of both consultation responses and of these final rules. Several respondents suggested that we also develop further guidance on regulatory references and we are considering this as a future piece of work with the CRWG.

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<sup>3</sup> FCA, 28 September 2016, Policy Statement PS16/22 Strengthening accountability in banking and insurance: regulatory references final rules: <https://www.fca.org.uk/publications/consultation-papers/strengthening-accountability-banking-insurance-reg-refs>

<sup>4</sup> PRA, 28 September 2016, Policy Statement PS27/16 Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II): <http://www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps2716.aspx>

## Summary of the consultation responses

### Purpose of assessing F&P

A key theme of the consultation responses related to the purpose of assessing F&P. There were different views as to whether the purpose was solely to decide whether or not to issue a certificate, or whether the assessment could be used for the broader purpose of promoting, recognising and endorsing high professional standards.

We have approached the development of good practice guidance with the same objective as the regulation; that Certification should help to 'drive up' standards.<sup>5</sup> In addition, the regulators' policy statements on regulatory references makes a clear expectation that firms will build on regulatory requirements to prevent and tackle misconduct, assess F&P and exchange relevant information.<sup>6,7</sup>

While the purpose of making an F&P assessment may be to inform a decision as to whether or not to issue a certificate, the information generated through this activity provides the opportunity to go further than compliance alone would demand.

Two respondents felt the guidance added weight to wider efforts to improve standards of competence and behaviour. A further respondent noted it was consistent with other international efforts looking at F&P. Five respondents felt a number of the proposed definitions, and some of the Principles, went beyond the requirements of the Certification Regime and one questioned whether this was appropriate.

We acknowledge that the decision to issue a certificate is a binary one; the certificate is either issued or it is not. We also, however, recognise that a person's F&P is not static, and neither will be the range of information available to those assessing F&P. In addition, the standard that individuals need to meet will vary depending on the role for which they are being certified. As one respondent put it, 'you assess the F&P of an *individual* but you award a certificate for a *role*' [emphasis added].

As an individual's career progresses, he or she will need to demonstrate progressively higher standards in competence and capability as they take on more senior or different roles. The assessment of F&P also provides an opportunity to focus minds on the importance of demonstrating honesty, integrity and a good reputation and maintaining financial soundness. It also allows firms to recognise and endorse individuals who demonstrate high levels of knowledge, skills and positive behaviours.

Deciding not to issue a certificate is a significant decision. Focusing on a perceived regulatory minimum will not, however, be sufficient to help to restore a trustworthy banking sector or to attract and retain top talent. The proposed good practice guidance is intended to use the impetus created by the need to be accountable within the Certification Regime, to achieve higher standards of behaviour and competence.

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<sup>5</sup> See FCA website: <https://www.fca.org.uk/firms/senior-managers-certification-regime>

<sup>6</sup> FCA, 28 September 2016, Policy Statement PS16/22 Strengthening accountability in banking and insurance: regulatory references final rules

<sup>7</sup> PRA, 28 September 2016, Policy Statement PS27/16 Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II)

The good practice guidance has been drafted to help firms implement the assessment of F&P in a way that is consistent and takes account of positive, as well as negative, evidence.

### Definitions (see pp. 11 – 15)

The definitions received broad support in the consultation responses. We have amended each to take account of specific comments.

In particular, we have amended the definition of ‘honesty and integrity’ to take full account of issues concerning customer and client confidentiality. For the purposes of assessing F&P, we have refined the definition of honesty and integrity to focus on speaking and acting truthfully, and on how an individual deals with ethical conflicts and seeks to balance the interests of all parties involved.

We have amended the definition of ‘reputation’ to make it clear that assessment must be based on information that affects the person’s ability to perform their role either by enhancing their own, their firm’s or the industry’s reputation or by bringing it into disrepute.

We have amended the definition of ‘competence and capability’ to reflect better the fact that neither of these is static.

Extensive comments were made in the consultation responses about the element of financial soundness. A central theme was that the F&P risk related to financial irresponsibility and the resulting behaviours that might spring from this, rather than the individual’s specific financial circumstances. We have amended the definition so that the question of financial soundness rests on whether the person is behaving in a financially responsible way (irrespective of their financial circumstances).

### Assessment Principles (see pp. 16 – 31)

There was general support for the Assessment Principles in the consultation responses. Where we have amended these, this reflects primarily feedback received in relation to the Sources of Information and Assessment Record Template (see below for further information).

Many of the specific comments relating to the Assessment Principles asked for further guidance or clarification. These comments related in particular to Principles 2 (Frequency and extent of reassessment), 4 (Establishing pass/fail criteria), 6 (Training and communication around the F&P assessment) and 8 (Assessing F&P as part of a global group).

We have amended Principle 2 to reflect the fact that there are a range of different reasons why an assessment of F&P may be required. Principle 2 focuses on the alignment of a firm’s approach to the assessment of F&P with the firm’s other processes (e.g. performance management and disciplinary procedures) and on the information it uses and when in relation to the different types of assessment.

Principle 4 now includes further detail about the information that might constitute a certification risk or issue and whether there are certain roles or circumstances that might warrant greater scrutiny. We have also amended the title to ‘Establishing pass/fail criteria’.

Principle 6 has been strengthened to distinguish better the roles of those being assessed, those making the assessments, those in specific business functions (e.g. HR or Internal Audit) who may identify certification risks and issues as part of their work, and the wider staff population in raising concerns.

General support was expressed for Principle 8, but a number of comments underlined the challenge of assessing the F&P of individuals moving from overseas into a UK certified role. We will explore this area in our future work.

### Sources of Information (see pp. 32 – 37)

The majority of comments made in the consultation responses focused on our draft Sources of Information document and reflected the wish for greater clarity in helping firms to decide which sources of information to consult, for what purpose and when.

In discussion with the CRWG we have redesigned the Sources of Information guidance so that the sources of information reflect the purpose for which an assessment is being undertaken. The types of assessment we have identified are:

- to enable an individual to take up a certified role either on joining the firm or following internal transfer ('New role assessment');
- annually for the purposes of reissuing a certificate ('Annual assessment');
- in response to another event such as the outcome of a disciplinary proceeding, that generates a certification issue ('Triggered assessment'); and
- in-year to monitor the F&P of an employee at a shorter interval than 12 months where a certification risk or issue has been identified ('In-year assessment').

Different sources of information will be available and/or required depending on the type of assessment. The information gathered can be augmented by self-declarations and screening checks<sup>8</sup> as appropriate, and the guidance provides examples of what these might entail.

### Assessment Record Template (see pp. 38 – 39)

Many respondents commented that the template was overly long and lacked clarity about which sources of information to consult and when. Firms that responded noted the practical difficulties of using the template given existing systems, and the efficiency opportunities of having an IT-based system rather than a paper-based system. Other respondents noted that the template could serve as a useful checklist for assessors.

Alongside our amendments to the content of the Sources of Information document, we have also refined the template. The revised Sources of Information document provides, we hope, a more useful checklist for assessors, meaning that there is no longer a need for a separate document.

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<sup>8</sup> Screening checks (sometimes referred to as 'vetting') refer to information obtained externally from the firm or individual, such as a credit reference check or Disclosure and Barring Service (DBS) checks.

The template now focuses on 'macro-data' recording who is being assessed by whom, for what purpose and when. We have added also a box to enable assessors to record any gaps in the information they have considered and to state what type of assessment should follow next, and when.

Some firms will already have systems in place that record F&P assessments and the example template should not be interpreted as a recommendation to switch from existing IT systems to a paper-based approach; rather, the template is intended as a useful reference for firms in considering what information they should record on their own systems.

## Fitness and Propriety Definitions

### Background

We proposed in our consultation, definitions for each of the elements of F&P specified by the regulators to establish a shared understanding as to what these terms mean in practice. There was broad support for the definitions among respondents. A number of suggestions were made about the definitions, and these and our amendments are set out here.

### Honesty and integrity

We proposed as a working definition of honesty and integrity:

Honesty and integrity is demonstrated by an individual who is open in his or her dealings (inside and outside the workplace), who behaves in a way that is trustworthy and fair and who is responsible and accountable for his or her actions.

One respondent recommended amending the definition to clarify the distinction between the elements of 'honesty' and 'integrity', though supported considering these two together. Specifically, the respondent suggested that the emphasis in relation to honesty should be placed on openness, truthfulness and transparency, while integrity should be associated with doing the right thing because it was the right thing to do, and with taking responsibility.

Many definitions<sup>9</sup> of 'integrity' include 'being honest' and we are not persuaded that the two can be neatly divided. As the sources of information which might be used to provide evidence of integrity are the same as those likely to be consulted to provide evidence of honesty, we believe it is sensible to continue to consider the two elements together. Some definitions of integrity closely relate 'professional integrity' to 'competence'.<sup>10</sup> As, however, the latter is dealt with in a separate element of F&P we have not included it in the definition of honesty and integrity used here.

Another respondent queried whether it was appropriate to include the concept of 'openness', as it could cause conflict with legal and regulatory requirements around client and customer confidentiality; a reference to 'transparency' was suggested instead. We agree the word 'open' can be interpreted in a number of ways and could be misleading. The same concern could, however, be expressed about the word 'transparency'. We have therefore referenced neither in our definition.

A number of respondents questioned whether it was appropriate to consider a person's activities outside the workplace as relevant to their F&P. These comments were raised in the context of some of our proposed sources of information (e.g. social media) and we have responded to these comments in the detailed analysis at Appendix 1. These questions are also, however, relevant to our definition of integrity.

There may be instances where an individual's activities in their personal life can affect the assessment of their honesty and integrity in the work place. Firms may need to consider activities

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<sup>9</sup> See for example the *Oxford Essential English Dictionary*, 2011 Oxford: Oxford University Press

<sup>10</sup> Cox, Damian, La Caze, Marguerite and Levine, Michael, 'Integrity', *The Stanford Encyclopaedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.) <http://plato.stanford.edu/archives/win2016/entries/integrity/>

outside the workplace where these adversely affect the individual's ability to perform their role and where it was fair and proportionate to do so (respecting the person's right to a private life).

Some definitions of integrity demand that individuals behave consistently and exhibit the same moral character in different social contexts.<sup>11</sup> Exhibiting the same moral character both in and out of the workplace is not necessarily a useful measure in assessing a person's F&P from the perspective of helping to raise standards of competence and behaviour. A person may exhibit poor behaviour both in and out of the workplace but still be said to have integrity. We believe that this is partially addressed by maintaining the link between honesty and integrity (i.e. a person who is dishonest in their private life might claim to be honest in the workplace but would have difficulty evidencing integrity). There remains, however, a need to define the element of integrity for the purpose of assessing F&P.

### *Amendments to the guidance*

The CRWG considered that, for the purposes of assessing F&P, the issue of integrity rested on whether a person knowingly ignored ethical conflicts. We have amended the definition to capture this as follows:

Honesty and integrity are demonstrated by a person who consistently speaks and acts truthfully and fairly in his or her dealings with others, and who seeks to recognise and deal with ethical conflicts.

The assessment of integrity for the purpose of assessing F&P within the context of the Certification Regime should focus on whether a person seeks to recognise and deal with ethical conflicts. A question could be raised about an individual's F&P on the grounds of integrity if they deliberately ignored or disregarded ethical conflicts. Where a person is unable to, rather than chooses not to, recognise ethical conflicts or deals with them poorly, this could relate to competence and capability rather than integrity.

This definition is intended to enable firms to assess whether an individual can perform their role in a way that balances the interests of the different parties involved and does not unduly place the interests of one of those parties above the rest.

### **Reputation**

We proposed as a working definition of reputation:

The impressions or opinions held by others about an individual that reflect positively or negatively on the firm for which the individual works, or is about to work, and on the individual's ability to perform his or her role effectively. Such beliefs and opinions may be influenced by:

- external factors (e.g. the views of previous employers or peers in other firms);
- factors internal to the firm; and
- aspects of the individual's personal activities outside the professional sphere.

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<sup>11</sup> See for example Alasdair MacIntyre, 'Social structures and their threats to moral agency', 1999, *Philosophy*, 74(3), 311-29.

Two respondents noted that the FCA does not separate the consideration of reputation from that of honesty and integrity. We made this distinction for the practical reason that the sources of information used to assess a person's reputation are wider than those for honesty and integrity. It is also important to note that all of the elements of F&P (not just honesty and integrity) can affect an individual's reputation.

Furthermore, the consideration of reputation is an assessment of others' views about an individual (not of those qualities that are integral to the individual). This includes those situations where an individual's behaviours in 'public activities' outside the professional sphere may affect their F&P to perform a role. Those assessing F&P must, however, be clear as to why evidence is relevant in this context and they should not intrude inappropriately into a person's private life (i.e. the assessor's conclusion should be based on evidence that is in the public record).

In relation to a number of the sources of information relevant to this element, several respondents noted that an absence of evidence (e.g. a media profile, or publications) may be neutral information and should not be interpreted as implying that a person is not therefore fit and proper in this context. We agree. If information of this type was available, it may be relevant in either a positive or negative capacity.

One respondent agreed that it was important to encourage individuals to role model positive behaviours that could then be used as evidence of reputation. They also asked for further guidance on this.

The definition of a role model will be subjective; each firm will have its own view. In general terms, being a role model means not only demonstrating the positive values, attitudes and behaviour expected of a role, but also exceeding them. Values, attitudes and behaviours may be observed or assessed through, for example, a performance appraisal or via 360-degree feedback, and captured by either the individual concerned or their line manager as evidence that could also be used for an F&P assessment.

#### *Amendments to the guidance*

We have amended the wording of the definition to reflect the information that should be considered as evidence of reputation:

Reputation is the assessment of how an individual's behaviour has affected the impressions or opinions held by others that may reflect positively or negatively on the firm for which the individual works, or is about to work, and on the individual's ability to perform his or her role effectively. This may include enhancing or bringing into disrepute the reputation of the individual, firm or industry as a whole. Such impressions and opinions may be influenced by:

- external factors (e.g. the views of previous employers or peers in other firms);
- factors internal to the firm (e.g. the views of colleagues); and
- aspects of the individual's public activities outside the workplace or professional sphere.

## Competence and capability

We proposed as a working definition of competence and capability:

A term that can encompass two dimensions:

1. the 'stock' of professional experience and qualifications that an individual brings to a role at the outset, and
2. the performance of the individual in role – which can be evidenced through time – and which accumulates into the individual's 'stock'.

One respondent said that the definition of competence and capability should include evidence of how individuals kept up to date with market, industry, legal, regulatory, product and internal policy and procedural change.

### *Amendments to the guidance*

We agree it will be important for individuals to demonstrate they are up to date on issues relevant to their role. We have reflected this in an amendment to the definition, to include a requirement to develop and maintain knowledge and experience:

Competence and capability encompass two dimensions:

1. the professional experience and qualifications that an individual brings to a role, and
2. the performance of the individual in their role, developing and maintaining his or her knowledge and experience which is demonstrated over time.

## Financial soundness

We proposed as a working definition of financial soundness:

Assessment that an individual is not in a financial position that might lead them to compromise his or her professional and ethical conduct.

One respondent noted that the proposed definition of financial soundness was phrased negatively whereas all of the other definitions had been phrased positively.

One respondent noted that financial soundness is not directly correlated to wealth. We agree and believe that it would not be appropriate to penalise individuals on the basis of wealth in the assessment of their F&P.

Another respondent noted that individuals should not be penalised if they fell into financial difficulty for legitimate reasons. We agree with this. The question is not whether somebody is wealthy but whether they are financially irresponsible and behaving in a way that could lead or has led them to compromise their professional and ethical conduct (e.g. by committing fraud). What matters is not the fact that the person has fallen into financial difficulty but how they have responded and whether they are taking appropriate steps to remedy the situation.

There is a separate but related point that financial soundness is also important in the context of its relationship to employee wellbeing and that by raising issues early firms will be in a better position to support employees.

On this point, one respondent commented that an individual should not be dissuaded from accessing any in-house support a firm might offer (e.g. advice, counselling or financial support) because of the risk that this raises a question about their financial soundness. We agree with this. If, for example, a person self-declared to his or her manager that they were in financial difficulty and were open about it, it may be less likely that their financial soundness would be called into question. Managers would also have the opportunity to consider what action (if any) might be required to support that staff member and whether any further safeguards were required.

On the other hand, if a person fell into financial difficulty and did not make a self-declaration while continuing in a role in which there was the potential to extract money for their own ends, this could raise a question as to their financial soundness. It is important, however, to note that, even if a person has the apparent motivation and opportunity to behave in a way that is inconsistent with their role (e.g. by committing fraud), they may not do so. While there might, therefore, be in this example a certification risk, it would not necessarily materialise as a certification issue, and assessors would need to exercise judgement.

The same respondent questioned how financial soundness could be used as an indicator of higher professional standards. We agree that financial soundness is unlikely to be an indicator of higher professional standards. Financial irresponsibility, however, does indicate a failure to meet high professional standards.

The CRWG noted that the term 'financial soundness' was not a single definition for all job roles. For example, for some more junior staff, suffering a financial setback in their personal life might have little impact on their F&P. At the more senior levels, however, being the subject of proceedings or receiving a County Court Judgment or bankruptcy order could call into question whether a person was fit to occupy a leadership role. Again, judgement will be needed on whether the circumstances mean that the person is not fit and proper for the role in which they are performing.

#### *Amendments to the guidance*

We have amended the definition of financial soundness to reflect the comments made regarding financial irresponsibility. The CRWG also suggested that the definition would benefit from focusing on the positive behaviours of financial responsibility:

Financial soundness is demonstrated by an individual who behaves in a financially responsible way and whose financial circumstances do not create a risk of compromising their professional and/or ethical conduct.

## Fitness and Propriety Assessment Principles

### Background

The F&P Assessment Principles were developed to help firms implement the Certification Regime effectively by providing statements of good practice on aspects of the processes involved. We proposed 11 principles, covering:

1. Initial assessment
2. Frequency and extent of reassessment
3. Firm and employee responsibility
4. Developing acceptable tolerance levels
5. Documentation of the F&P assessment
6. Training and communication around the F&P assessment
7. Appealing the outcome of an F&P assessment and the withdrawal of a certificate
8. Assessing F&P as part of a global group
9. Fostering a culture of openness, challenge and support
10. Encouraging greater collaboration between firms
11. Promoting high professional standards across the industry

There was general support for the Principles with eight respondents specifically commenting that they were helpful. Beyond this, comments predominantly related to specific issues, points of clarification or requests for further guidance. The points made in relation to each principle are summarised and discussed here.

### Principle 1: Initial assessment

Principle 1 addressed the initial assessment of a new joiner to a firm. We proposed that:

A firm should:

- carry out a robust F&P assessment using appropriate sources of information against the individual elements of F&P (i.e. honesty and integrity, reputation, competence and capability, and financial soundness) as required by the Certification Regime. The initial assessment should be managed through the:
  - recruitment process;
  - pre-employment vetting process;
  - training and induction programmes; and
  - self-declaration (retrospective) and a commitment to uphold high standards of behaviour and competence (forward looking) by the individual;
- include positive affirmation (i.e. that good behaviour has been demonstrated) rather than focusing solely on the avoidance of negative behaviour (i.e. that an individual has avoided any transgressions) when assessing F&P; and
- consider the time needed for an individual who is new to or returning to a certified role to attain full competence for that role, and define the ways in which the competence can be demonstrated.

One respondent thought Principle 1 did not have merit, that it would be difficult for firms to provide the evidence described and requested further guidance on how it could be implemented. As outlined in the introduction of this document, these principles are designed to offer guidance for firms in the form of good practice against which their own approaches and processes can be referenced. It is not our intention to establish or recommend specific processes or procedures, and there is no requirement for firms to demonstrate adherence to the good practice identified.

The issue of 'absence of information' was raised by two other respondents. They noted that individuals new to the firm, industry or country might be unable to provide 'positive' evidence for all of the elements of F&P. While we agree with this as a general point, we also note that qualifications or training requirements for the role should be taken into account. The absence of 'negative' evidence is, however, likely to provide the bulk of the evidence in concluding that a person is fit and proper in this context.

There may also be, however, circumstances where a firm proposes a development plan to generate evidence as a prerequisite to certification and/or limiting the role (e.g. additional supervision or an in-year assessment). Where a role mandates a qualification or specific training, the full certificate should not be issued until it has been completed.

One respondent supported the inclusion of positive affirmation although another felt it might be difficult to do this in practice.

One respondent noted a distinction between 'training', which would be completed prior to a certificate being issued and 'induction', which would start once a person had started in their role. Each firm will have its own approach and terminology regarding the recruitment process and some firms may consider training requirements as part of an 'induction period'. As such, we have not amended the Principle in this regard.

#### *Amendments to the guidance*

Based on the feedback received, we have made a number of minor amendments to Principle 1 to provide further clarity. We now state explicitly that Principle 1 relates to those who are new to a role; we have changed 'vetting process' to 'screening checks'; we have included a reference to an in-year assessment; and, following publication by the regulators of the final rules, we have added 'regulatory references' as a tool to manage the initial assessment process.

#### **Principle 1: New role assessment**

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A firm should:

- carry out a robust F&P assessment of a person new to a certified role, using appropriate sources of information, against the individual elements of F&P (i.e. honesty and integrity, reputation, competence and capability, and financial soundness) as required by the Certification Regime. The new role assessment should be managed through:
  - the recruitment process;
  - screening checks;
  - regulatory references;
  - training and induction programmes; and

- both self-declaration (retrospective) and a commitment to uphold high standards of behaviour and competence (forward looking) by the individual;
- include positive affirmation (i.e. that good behaviour has been demonstrated) when assessing F&P, rather than focus solely on the avoidance of negative behaviour (i.e. that an individual has avoided any transgressions); and
- consider the time and support needed for an individual who is new to or returning to a certified role to attain full competence for that role, and define the ways in which the competence can be demonstrated. This may involve considering the need for an in-year assessment.

## Principle 2: Frequency and extent of reassessment

Principle 2 was developed recognising that some F&P checks may be undertaken more frequently than others, depending on the individual concerned and their role. We proposed that:

A firm should:

- determine how frequently the different F&P elements are assessed;
- identify the specific job roles in which an individual is at a higher risk of failing the F&P assessment and should be subject to a higher frequency of assessment; and
- determine which sources of information are used in reassessment and to what extent they are used.

Two respondents raised that information from sources such as credit checks or a financial soundness review should only be obtained as part of the annual assessment to avoid unnecessary intrusion. Two other respondents suggested that ongoing monitoring was vital, particularly where training or remediation was required, and that guidance should be extended to ensure reassessment took place when new information became available, and that a sampling audit of assessments should also be undertaken.

We discussed ongoing monitoring with the CRWG, which noted that, while an assessment of F&P will take place at a specific point in time, some evidence could also be gathered throughout the year:

- in day-to-day activity, line managers can observe and record activity, that may be used at a mid-year or annual appraisal to provide evidence of one or more of the elements of F&P;
- in the context of training, for individuals who have been certified but for whom development areas have been identified;
- as part of a sampling audit to check the consistency of F&P decisions across certain groups; and
- through information generated by other events.

These processes are likely to happen as part of firms' 'business as usual activity' and we agree with those respondents who said that an F&P assessment should align with existing processes.

A number of respondents queried the guidance around higher risk roles. One respondent felt that it was not helpful to have a 'two-tier system' in identifying increased risk; another respondent suggested that historical data and trends could over time help to identify higher risk roles. Two

respondents requested guidance as to which roles have a higher risk of failure (e.g. technically demanding roles or those with greater potential to cause harm).

One respondent proposed that firms should focus on high-risk individuals, rather than high-risk roles. An individual may be high-risk because they are new to role and there is a development need, or because something in their self-declaration has raised an F&P concern. In these circumstances firms may consider a development plan to provide evidence that will allow a certification decision to be taken, or, alternatively, limit the role (e.g. introducing additional supervision or in-year assessment).

This could also apply in other circumstances, such as where a person moves to a different certified role internally. In a new role there would be a requirement for a new assessment of F&P. It could, however, be proportionate to consider the previous assessment and determine from this what information might need to be 'topped-up' to satisfy the requirements for the new role.

Firms should determine whether there are certain roles that require more frequent checks. With financial soundness, for example, some firms may require an annual self-declaration and repeat screening checks every three years (e.g. credit reference check). In these circumstances, however, firms may wish to review roles with close proximity to transaction decisions, privileged information or cash and settlement operations more regularly to mitigate risk.

#### *Amendments to the guidance*

We have strengthened Principle 2 to bring out the points raised regarding ongoing assessment, the need to align the F&P assessment with existing processes, and the potential need to focus on individuals who present a higher risk as well as on higher-risk roles. We have also amended it to reflect the different types of assessment that may be required (e.g. triggered or in-year).

### **Principle 2: Frequency and extent of reassessment**

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A firm should:

- determine how frequently different sources of information should be gathered to inform the different F&P elements of annual assessments;
- ensure the process for assessing F&P aligns with existing processes (e.g. disciplinary and performance management) and can both take account of and reflect information generated by these processes in a timely way;
- determine the circumstances that may lead to a requirement for a triggered or in-year assessment of F&P to be conducted; and
- use appropriate sources of information in conducting triggered and in-year assessments.

### **Principle 3: Firm and employee responsibility**

A number of people are likely to take part in or provide input to an F&P assessment. Principle 3 was developed to help firms identify who should be involved, ensure that they are able to fulfil their role, and recognise the role in the assessment of, in particular, the individual employee concerned. We proposed that:

A firm should:

- take responsibility for the assessment and verification of F&P, including:
  - identifying those responsible for assessing F&P at different stages of the process;
  - ensuring those responsible for the F&P assessment are competent and capable to assess each of the F&P elements; and
  - ensuring there is an appropriate level of supervision and support for those responsible for the F&P assessment to limit the level of bias and any potential conflicts of interest.

An individual employee should:

- take responsibility for providing, as appropriate and in a timely manner, the information that allows a firm to assess and verify that individual's F&P; and
- demonstrate a commitment to upholding high standards of behaviour and competence.

Responses to Principle 3 were broadly in favour of the proposed activity for the individual and the firm; some specific comments requested further guidance or additions. The CRWG noted that all other Principles are focused solely on the firm. It was suggested, therefore, that Principle 3 should be amended to set out how the firm supports the individual being assessed, rather than being directed at the individual specifically.

Two respondents emphasised the importance of ensuring those responsible for the assessment were competent and capable; assessors should undertake the assessment effectively, receive training and hold the relevant qualifications to undertake the assessment of specific roles. One respondent noted the importance of fairness to the individual whose F&P is being assessed.

Three respondents requested further guidance on how to ensure an appropriate level of supervision or independent review within the assessment process. We believe an independent review is an integral part of the assessment process to ensure consistency and can be done in a number of ways, such as:

- a sampling audit to check the consistency of F&P decisions across certain groups. The sample size may vary based on the size of the firm;
- initial and refresher training for assessors, to ensure a consistent understanding and application of the assessment;
- triangulation of information, where possible, to verify evidence; and
- moderation of F&P decisions across a sample population by a senior member of staff (not the line manager) who is familiar with the Certification Regime.

Two respondents suggested that the firm should take reasonable steps to verify an individual's self-disclosure. We agree this would be good practice as part of the triangulation of evidence (referred to above).

One respondent supported the reference to the role individuals should play in the assessment of their own F&P.

Another respondent suggested amending the Principle to reflect the difference between information arising from 'ongoing monitoring' and generated by periodic evidence collection exercises.

#### *Amendments to the guidance*

Based on comments from the CRWG relating to the framing of the firm and employee roles, we have amended the title of this Principle to 'Firms' responsibility'.

We have updated Principle 3 to include reference to a process for verifying information, to amend minor wording in the former 'individual' section, and have reflected respondents' comments in the explanatory guidelines.

### **Principle 3: Firms' responsibility**

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A firm should:

- take responsibility for the verification and assessment of the information obtained about an individual's F&P, including:
  - identifying those responsible for assessing F&P at different stages of the process;
  - ensuring those responsible for the F&P assessment are competent and capable to assess each of the F&P elements;
  - ensuring there are processes in place to enable information obtained about an individual's F&P to be verified where necessary; and
  - ensuring there is an appropriate level of supervision and support for those responsible for the F&P assessment to limit bias and avoid any potential conflicts of interest. This should include developing a process for reviewing evidence resulting from an investigation into an F&P issue, to ensure that a fair and reasonable approach is taken in evaluating a particular case;
- take responsibility for ensuring that individuals are aware of the need to provide, as appropriate and in a timely manner, the information that allows a firm to assess and verify their own F&P; and
- take responsibility for encouraging individuals to demonstrate a commitment to upholding high standards of behaviour and competence in such form as may be required by the firm.

### **Principle 4: Developing acceptable tolerance levels**

Principle 4 recognises there are a range of circumstances in which an individual may fall short of the required standards of F&P. Firms will need to create processes that address this in a way that is fair and proportionate to the individual concerned and manages the risk to the firm. We proposed that:

A firm should:

- consider and be clear on the appropriate tolerances that are acceptable when assessing F&P;
- develop a holistic approach to conducting an F&P assessment;

- ensure a structured framework and/or agreed policy is in place for individuals who fail an F&P assessment; and
- ensure there is a framework for reinstatement, as appropriate, of an individual’s certified status.

Five respondents expressed their support for developing a standardised set of guidance on the appropriate tolerances for F&P, to promote consistency of approach across the industry. One of these respondents also noted the potential challenges involved in firms sharing views on tolerances, given the potential commercial considerations.

The CRWG also suggested that the title should be amended to clarify that this Principle is not intended to prescribe the tolerances a firm might adopt, but rather to suggest those processes which a firm might have in place to determine whether a person is exceeding the firm’s risk tolerance and what the firm will do in those circumstances.

#### *Amendments to the guidance*

While the number of comments made on Principle 4 were not large, we have made several amendments to incorporate the results of CRWG work on tolerance levels. These amendments relate primarily to providing more detail on identifying, investigating and evaluating certification risks and issues. We have also amended the title to ‘Establishing pass/fail criteria’ to reflect more closely the intention behind the Principle.

#### **Principle 4: Establishing pass/fail criteria**

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A firm should:

- consider and be clear on the tolerances that are acceptable when assessing F&P including:
  - identifying potential individual characteristics or circumstances that may call into question an individual’s F&P;
  - identifying whether there are certain roles or responsibilities where there is greater risk of a certification issue emerging;
  - determining what self-declarations may be required and when; and
  - determining what screening checks will be applied and when;
- develop a rounded approach using a range of different sources of information to conduct an F&P assessment in line with the firm’s risk tolerance, code of conduct and other employee policies;
- have a clear process for investigating certification issues, so that a fair and reasonable approach is taken to gathering all the evidence for a particular case, and dealing with the circumstances where someone leaves the firm while under investigation (including what information may need to be recorded for a regulatory reference);
- ensure a structured framework and/or agreed policy is in place for individuals for whom the F&P assessment highlights a development or remediation need; and
- ensure there is a framework in place to evaluate the significance of information that may call into question an individual’s F&P.

## Principle 5: Documentation of the F&P assessment

Principle 5 was developed to ensure that there is a clear audit trail for all of the F&P information considered in assessing an individual. We proposed that:

A firm should:

- hold a consolidated record of the sources of information or tools used in an F&P assessment; and
- ensure that the responsible individual (e.g. line manager) adequately records his or her judgement of F&P on an ongoing basis.

One respondent noted that legacy IT systems could prevent firms creating a consolidated record of sources of information for the F&P assessment. While we recognise this limitation, we still consider it to be good practice to have a consolidated record of the sources of information or tools used in any given F&P assessment. It will be particularly important to manage any gaps in the evidence used to support an F&P assessment and the assessment record template now includes a box to record this.

One respondent commented that, although a line manager should consider evidence on an ongoing basis, the broader firm does not need to do so and that positive affirmation of an individual's F&P need take place only annually. Another respondent, however, considered the ongoing assessment to be just as important as an assessment at a single point in time.

Consistent with comments on Principle 2, our view is that ongoing monitoring is important and can be facilitated by existing processes, such as mid-year and annual appraisals.

The CRWG suggested amending the title of this Principle from 'documentation of' to 'evidencing' to more accurately capture the intention of this Principle.

### *Amendments to the guidance*

Following feedback from the consultation and the CRWG, we have changed the title to 'Evidencing the F&P assessment' and amended the guidance to provide more detail as to what type of information ought to be recorded on an ongoing basis.

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## **Principle 5: Evidencing the F&P assessment**

A firm should:

- hold a consolidated record of the sources of information or tools used in an F&P assessment;
- ensure that the responsible individual (e.g. line manager) adequately records his or her judgement of F&P at least annually and (as relevant) any positive or less serious negative behaviours (e.g. below the level that would indicate a triggered or in-year assessment) that might be relevant to subsequent F&P assessments; and

- ensure it has an appropriate system for logging and tracking certification issues at a firm level and maintain a learning log to inform the continuing development of good practice.

### Principle 6: Training and communication around the F&P assessment

Principle 6 was developed to highlight the need for F&P assessors both to undertake assessments and to communicate the outcome to the individuals concerned. We proposed that:

A firm should:

- ensure that there is an appropriate level of training available for those responsible for the F&P assessment and that this training is undertaken;
- develop appropriate training and/or communication as a regular reminder of an individual's responsibilities around the F&P assessment;
- develop appropriate training, guidance and support in relation to an individual's self-declaration;
- ensure that there is an appropriate process for an individual to discuss the outcome of their F&P assessment with their line manager; and
- develop appropriate training for line managers on discussing the outcome of an F&P assessment with the individual concerned.

Five respondents explicitly agreed with Principle 6 and reiterated the importance of training and communication in supporting the assessment and development of F&P.

#### *Amendments to the guidance*

Although there were no substantive comments regarding Principle 6, we have further developed it to give more detail on the support that firms should provide for assessors of F&P, for the individual being assessed and for all staff who support the process.

### Principle 6: Training and communication around the F&P assessment

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A firm should:

- consider the support required by those assessing F&P by:
  - ensuring appropriate training for those responsible for the F&P assessment (including the evaluation of the significance of F&P issues that reflect negatively on the individual) and ensuring that this training is undertaken and refreshed on a periodic basis;
  - providing guidance and training for line managers on the identification of certification risks and issues as part of performance management; and
  - developing appropriate training for line managers on discussing the outcome of an F&P assessment with the individual concerned;
- consider the support required by individuals having their F&P assessed, by:
  - developing appropriate training, guidance and support in relation to an individual's self-declarations, including the type of information that may need to be self-disclosed;

- developing appropriate training and/or communication as an ongoing reminder of an individual’s responsibilities around the F&P assessment; and
- establishing an appropriate process for an individual to discuss the outcome of their F&P assessment with an individual who has responsibility for the assessment;
- establish appropriate guidance and training for all relevant employees to enable them to identify and recognise what constitutes a certification risk and issue, and to raise concerns where appropriate; and
- consider whether there is a need for tailored training and guidance in identifying certification risks or issues and to initiate the appropriate action as necessary for particular business functions (e.g. Compliance, HR or Internal Audit).

### Principle 7: Appealing the outcome of an F&P assessment and the withdrawal of a certificate

Removing an individual’s certificate is a major decision that has significant consequences for the individual concerned. Principle 7 was developed to ensure fairness by incorporating an appeal process into the assessment. We proposed that:

A firm should:

- establish a process for the independent review of the outcome of an F&P assessment; and
- develop a clear appeals process against the withdrawal of an individual’s certificate.

Two respondents noted the importance of having an appeals process that used existing systems or processes where possible. Where an individual, for example, has been subject to a previous disciplinary process the outcome of this should be considered as part of the F&P assessment. The appropriate point of appeal for the individual would be when the outcome of the disciplinary process is decided rather than through the F&P assessment itself.

Two respondents asked what the circumstances might be in which a firm could withdraw a certificate without an appeal. To clarify, in the interest of fairness, an individual should be provided with the opportunity to appeal the decision leading to the withdrawal of a certificate.

One of these respondents also queried the circumstances in which a certificate might be reinstated. We recognise that removal of a certificate is most likely to occur following either disciplinary or performance management processes. In line with our amendments to Principle 2, we would agree that any resulting F&P assessment and decision not to issue or to withdraw a certificate should align, where possible, with these (disciplinary or performance management) processes so there is a single appeal process for these related decisions.

One respondent felt that this Principle had already been covered in Principle 4. We acknowledge some overlap here, but given the importance think it valuable to have a specific principle for an individual’s right to appeal.

One respondent asked for more guidance around deciding whether an individual had ‘failed’ the F&P assessment, and when they should be offered developmental or remediation support to meet the requirements. We will consider this issue further with the CRWG.

## *Amendments to the guidance*

Following the feedback, we have amended Principle 7 to include alignment with other business processes and the importance of firms considering whether withdrawal of a certificate suggests a need for broader organisational change or learning. Our amendments also clarify that an individual should be able to appeal the assessment decision prior to a certificate being withdrawn.

### **Principle 7: Appealing the outcome of an F&P assessment and the withdrawal of a certificate**

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A firm should:

- establish a process for the independent review of the outcome of an F&P assessment;
- develop a clear appeals process against the conclusion of the F&P assessment;
- ensure that any appeal against the conclusion of the F&P assessment is aligned with other relevant business processes (e.g. an appeal against a disciplinary finding or performance management process); and
- consider what process, control or oversight improvements might need to be in place where an F&P issue is identified and how any broader learnings are communicated around the firm.

### **Principle 8: Assessing F&P as part of a global group**

Principle 8 was developed in recognition of the particular challenges involved in sourcing information for overseas employees, and to help establish consistency in this area. We proposed that:

A firm should:

- aim to have, as far as is possible, consistent high standards across the global group for assessing an individual's F&P;
- develop an approach for conducting F&P assessments of overseas individuals that is reflective of what is permitted by local jurisdictions;
- identify and use the appropriate overseas equivalent sources of information for each element of F&P, as required by the Certification Regime; and
- develop appropriate processes to assess the F&P of internationally mobile individuals (e.g. for internal mobility transfers and short term assignments).

Three respondents noted the challenges in assessing individuals moving from an international location, in particular in balancing consistency of the assessment process with respect for local laws and regulation. Five respondents requested further guidance on internationally mobile individuals.

Another respondent noted that many professional body designations are recognised worldwide and could be used in the assessment of international individuals. We recognise this and would expect firms to consider any relevant professional qualifications where possible.

One respondent noted that information relevant to financial soundness might be particularly difficult to obtain in overseas jurisdictions due to legal as well as practical restrictions. Another made the same observation of criminal records, where a person had been convicted overseas.

This consultation on assessing F&P was undertaken prior to the FCA and PRA's policy statements on regulatory references;<sup>12,13</sup> these stated that legal restrictions will be taken into account where firms can demonstrate that reasonable steps have been taken to obtain relevant information.

### *Amendments to the guidance*

There were no comments disagreeing with the approach set out in Principle 8 and we have only made a minor amendment to the phrasing. It is, however, our intention to explore further the issues related to the assessment of overseas individuals and to produce additional guidance as appropriate.

### **Principle 8: Assessing F&P as part of a global group**

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A firm should:

- aim to have high and consistent standards across the global group for assessing an individual's F&P;
- develop an approach for conducting F&P assessments of relevant individuals overseas that reflects what is permitted by local jurisdictions;
- identify and use appropriate overseas equivalent sources of information for each element of F&P, as required by the Certification Regime; and
- develop appropriate processes for assessing the F&P of internationally mobile individuals.

### **Principle 9: Fostering a culture of openness, challenge and support**

The effective assessment of F&P requires a culture of openness, challenge and support; without this, information necessary for the assessment will not be forthcoming. Principle 9 was developed in recognition of this. We proposed that:

A firm should:

- promote an environment in which an individual is confident to speak up and actively challenge the behaviour of colleagues;
- develop appropriate procedures to support an individual and encourage them to disclose any issues in a timely manner; and
- develop and fully embed a performance management culture that assesses a broad range of dimensions consistent with the firm's purpose and values, and high standards of behaviour and competence.

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<sup>12</sup> FCA, 28 September 2016, Policy Statement PS16/22 Strengthening accountability in banking and insurance: regulatory references final rules

<sup>13</sup> PRA, 28 September 2016, Policy Statement PS27/16 Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II)

Five respondents supported the intention of Principle 9 in fostering a culture of openness, challenge and support. One of these, while supportive of the Principle, questioned however whether it was relevant to the Certification Regime. While we recognise that a firm's culture has wider implications beyond F&P, we believe that fostering an open culture is central to an effective assessment process and to achieving the broader aims of the Certification Regime of raising professional standards. This is because:

- an open culture enables individuals to speak up or raise concerns;
- if individuals do not speak up, risks may not be identified until they become issues; and
- such a culture encourages individuals to demonstrate honesty and integrity more broadly.

Two respondents noted that having appropriate safeguards in place for whistleblowers was key to developing and sustaining an open culture. Another noted the work professional bodies have done in promoting a culture of openness.

One respondent suggested that all information should be kept confidential and only be used for the purpose of assessing F&P. We agree firms have a legal responsibility to protect the personal information that has been used for the purposes of F&P but note the regulatory requirements to provide regulatory references. We will be undertaking further work on this issue with the CRWG.

One respondent requested further guidance as to what good would look like in this area.

The CRWG commented on the importance of Senior Managers<sup>14</sup> demonstrating commitment to a culture of openness, challenge and support.

#### *Amendments to the guidance*

We have amended Principle 9 to include a specific reference to the role that Senior Managers play in fostering a culture of openness, challenge and support. We have also reflected some of the points made previously in the explanatory guidance to this Principle.

### **Principle 9: Fostering a culture of openness, challenge and support**

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A firm should:

- promote an environment in which individuals are confident to speak up and actively challenge the behaviour of colleagues;
- ensure Senior Managers lead by example in fostering and supporting a culture of openness, challenge and support;
- develop appropriate procedures to support individuals and encourage them to disclose any issues in a timely manner; and
- develop and implement a performance management process that assesses a broad range of dimensions, consistent with the firm's purpose and values and with high standards of behaviour and competence.

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<sup>14</sup> As defined by the FCA and PRA's Senior Manager Regime at <https://www.fca.org.uk/firms/senior-managers-certification-regime>

## Principle 10: Encouraging greater industry collaboration between firms

The good practice guidance is intended to help create a degree of consistency in the way that firms assess F&P, and facilitate the development of commonly understood practice. Principle 10 recognises that practice will develop over time, and firms will need to work together to identify and avoid emerging inconsistencies. We proposed that:

BSB members should:

- work together to identify opportunities to collaborate in order to develop a common approach to certification (e.g. developing and using an industry standard certificate); and
- work together to develop a consistent approach to both the assessment and reporting of F&P, so that firms can recognise and have confidence in each other's assessments.

Six respondents commented on the importance of collaboration between firms and the value of sharing good practice and developing a consistent approach. One of these respondents noted, however, that any collaboration would need to observe Competition Law requirements, an important point that we clearly recognise.

Five respondents stated that they were keen to explore the opportunity of a standard industry approach for sharing information, such as the passporting of a certificate. One respondent suggested that this would be beneficial in ensuring simplification and consistency across the industry. Another, however, saw this as unrealistic due to the challenges of developing a process that would enable a firm to satisfy regulatory obligations without conducting its own checks. The same respondent also questioned whether it would create any significant savings given that a certificate needs to be reviewed annually.

We discussed these points with the CRWG, which noted that the certificate is for a specific role so cannot 'travel' with a staff member. We agree in part with this. While the certificate itself may not be able to travel, the relevant evidence that led to the certificate being issued can.

The FCA and PRA have now published their final rules on regulatory references, and these rules set out both the scope for firms to share information underpinning the issue of a certificate and the expectation that this will be done. This should enable firms, in time and if there is sufficient consistency across the sector, to address the F&P an individual joining the firm in a less time-intensive and more efficient way. How F&P information can be managed and communicated most effectively between firms is an area that needs further consideration and is something we are considering with the CRWG.

One respondent requested further guidance on best practice for this Principle.

Another highlighted existing work that professional bodies have undertaken in regards to cross-industry collaboration and suggested that this could be aligned with the work of the BSB.

The CRWG also suggested that the title of Principle 10 should be amended from 'encouraging' to 'enabling' or 'promoting' and that the Principle should be addressed to all firms rather than just BSB members.

## *Amendments to the guidance*

In line with the CRWG comments, we have amended the title to 'Promoting greater collaboration between firms' and we have not confined this Principle just to BSB members.

### **Principle 10: Encouraging greater collaboration between firms**

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Firms should:

- identify opportunities to collaborate in order to develop a common approach to certification; and
- work together to develop a consistent approach to the assessment, reporting, recording and communication of F&P, so that each firm can recognise and have confidence in another's assessment.

### **Principle 11: Promoting high professional standards across the industry**

In developing statements of good practice, we are of the view that the Certification Regime serves not only to reduce the risk of harm to customers and clients but also to promote high standards of professionalism. It offers a means of helping to rebuild the trustworthiness of the banking sector. Principle 11 captures this point by focusing on the need to develop both staff in certified roles and those who have the potential to fill those roles in the future. We proposed that:

BSB members should:

- invest in the personal development of:
  - staff in certified roles; and
  - staff who have the potential to occupy certified roles in the future; and
- encourage staff to maintain their own Continuous Professional Development (CPD) and ensure their development is supported outside their day-to-day role through:
  - skills based training;
  - role based knowledge training;
  - knowledge of the banking and broader financial services sectors; and
  - ethics awareness and training.

There was a mix of opinions in response to Principle 11. Four respondents noted their support for high professional standards and continuing professional development. One respondent felt that professional bodies were well placed to support the work of Principle 11. Another said that professional qualifications were good but not always relevant.

One respondent suggested that professional qualifications could remove barriers to entry, while another suggested that qualification requirements (at any level) could be a barrier to entry.

As with Principle 10, the CRWG suggested Principle 11 should be relevant to all firms, not just BSB members.

### *Amendments to the guidance*

We have amended Principle 11 so that it is now addressed to any firm instead of just BSB members. The role of professional bodies and professional qualifications in supporting and promoting high professional standards is being considered as part of the BSB's Professionalism work. The CRWG will be updated on the progress of the professionalism work and will take into account any issues emerging, which are of specific relevance to certification.

#### **Principle 11: Promoting high professional standards across the industry**

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A firm should:

- invest in the personal development of:
  - staff in certified roles;
  - staff who have the potential to occupy certified roles in the future; and
  - staff supporting the certification process;
- ensure staff maintain their own Continuous Professional Development (CPD) and that development is supported outside their day-to-day role through, as appropriate:
  - skills-based training;
  - role-based knowledge training;
  - knowledge of the banking and broader financial services sectors; and
  - ethics awareness and training.

## Fitness and Propriety Sources of Information

### Background

For each element of F&P that we proposed in our consultation we developed lists of the types of information that might be useful in conducting an F&P assessment. These included objective, subjective and observational evidence, and we categorised the information as:

- internal (further sub-divided these into objective ‘facts’ and subjective ‘judgements’);
- external;
- self-declaration; and
- potential future sources.

The sources of information listed in the last of these categories were those that may currently exist partially, or not at all. We sought views on whether there was any support for their appropriateness and further development.

The vast majority of comments in the responses to the consultation focused on the sources of information. We have undertaken a detailed analysis of these comments, attached at Appendix 1. The narrative in this section of the report focuses on the major themes, which have resulted in a substantive change to the guidance.

### Structure of the guidance

There were a number of comments around the way in which the Sources of Information guidance was structured and the types of information included.

One respondent specifically highlighted the need to identify which sources to consult in different circumstances (e.g. new-to-firm recruit or annual attestation review).

Two respondents commented that it would be helpful to identify which sources of information are minimum requirements for the purposes of issuing a certificate and which would be relevant to raising professional standards. One of the respondents also noted the range of external information that might be used in the F&P assessment and the need for greater clarity in the guidance as to how to use it in practice. Another questioned the order in which the sources of information should be considered.

One respondent suggested that distinguishing between ‘internal fact’ and ‘internal judgement’ was unnecessary as some facts were based on previous judgements. A different respondent commented on internal judgements, and the need to ensure that these were evidence based.

One respondent commented that the sources of information in the ‘external’ category were all largely negative and that there was also significant scope for individuals to demonstrate positive behaviours (e.g. activity in professional bodies). Another respondent supported recognising and endorsing professional behaviours during the assessment of F&P.

A further respondent stressed the importance of going beyond simply replicating information available from the annual appraisal process if assessing F&P was going to add real value.

There were also a large number of comments made about particular sources of information. Taken together, these comments highlighted the need for greater clarity in the guidance about when different sources of information might be consulted and for what purpose. We have dealt with the specific points raised in the detailed analysis of comments made in response to the Sources of Information in Appendix 1 and have also taken them into account in considering the structure of the guidance.

### *Amendments to the guidance*

We have now restructured the guidance document to differentiate between sources of information, and examples of the types of information generated by these sources. The annual appraisal process, for example, is a source of information; while the annual performance rating, 360-degree feedback exercise or CPD record are examples of the types of information that might be generated by this source.<sup>15</sup>

We have also mapped the sources of information to the individual elements of F&P and grouped them according to the type of assessment being undertaken. During an employee's lifecycle at a firm we have identified four different types of assessment:

- to enable an individual to take up a certified role either on joining the firm or following internal transfer ('New role assessment');
- annually for the purposes of reissuing a certificate ('Annual assessment');
- in response to another event such as the outcome of a disciplinary proceeding, that generates a certification issue ('Triggered assessment'); and
- in-year to monitor the F&P of an employee at a shorter interval than 12 months where a certification risk or issue has been identified ('In-year assessment').

This approach is intended to clarify the sources of information that a person assessing F&P might expect to use depending on the context of the assessment. The guidance now also explicitly includes reference to individuals contributing additional information to an assessment of F&P over and above what a firm may require.

To introduce greater clarity, we have also separated out two of the sources of information. This is because these sources of information may be relevant to all of the types of F&P assessment (depending on the circumstances). These two types are:

- screening checks, and
- self-declarations.

### **Screening checks**

Firms take different approaches to the frequency with which they conduct screening checks. Some firms do this on an annual basis; others less frequently (e.g. once every three years). Screening checks are also often undertaken at specific points in time for a cohort or whole population of

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<sup>15</sup> Although we note that some of these example might be generated for different reasons in different ways.

certified individuals within the firm. Principle 4 sets out the need for firms to determine their risk tolerance with respect to how current the information gained from screening checks needs to be for a valid assessment of F&P.

Additionally, as two respondents noted, it may not be the line manager undertaking the screening checks or assessing whether the information gathered via these checks raises a question as to their F&P.

Screening checks are considered separately in the guidance for simplicity of structure, and also to make clear the expectation that firms should tailor their own approach, assigning responsibility for different parts of the F&P assessment according to their own systems and processes.

### Self-declarations

Self-declarations are, as with screening checks, now considered separately; again, for simplicity of structure but also in response to a number of comments. Respondents queried the value of self-declarations that could not be verified (e.g. a self-declaration that a person had not been responsible for anything that has or could bring the individual/firm/industry into disrepute, or a general commitment to 'do well'). A further respondent, while supportive of self-declaration, felt it could be a more powerful tool if broken down into the specific elements rather than as a general self-declaration. Another felt that self-declarations were likely to be the only element of the assessment that could be made consistent.

The CRWG were of the strong opinion that a self-declaration had a number of clear purposes. First, it places the individual being assessed at the centre of the process. If standards of competence and behaviour are to be raised it is important that the assessment of F&P is not something that is 'done to' staff but rather something that each individual owns and engages with.

Second, the self-declaration reminds individuals of their responsibilities under the Certification Regime. This may act as a prompt for raising risks or issues relevant to F&P, enabling firms to provide relevant support or oversight. It also helps make the individual conscious of their own responsibilities.

If, by contrast, a situation comes to light and the individual concerned had not made a self-declaration (or had made a self-declaration which was contradicted by events) then this could be very relevant from the perspective of an assessment of honesty and integrity.

One respondent said that firms should have a responsibility to verify independently any information provided through a self-declaration. We agree, although firms will need to adopt a proportionate and risk-based approach in this and seek verification where they have any doubt about a declaration.

One respondent suggested that greater clarity was required over what was the firm's responsibility to request, and the individual's to disclose, in a self-declaration.

### *Amendments to the guidance*

We have now provided a 'About this guidance' section which includes more detail on the role and purpose of self-declarations to address the comments made.

We have also set out a list of examples of self-declarations to make clear what a firm might request under each element of F&P. We have, however, suggested two 'general' self-declarations to capture the expectation on the individual, over and above the specific self-declarations required by a firm:

- the individual understands how the conduct rules apply to their specific job role; and
- the individual has disclosed anything that they feel is relevant to their F&P, based on their self-assessment.

### **Social media**

Using information gathered from social media was not supported in the consultation responses. Concerns were raised about potential intrusiveness, practicality (including the amount of information that might be generated) and the reliability of this source of information for the purposes of making an F&P assessment. The one notable exception was professional networking sites, which were seen as a useful triangulation point in considering reputation.

The CRWG saw information arising from social media as potentially relevant in the context of an F&P assessment in a specific circumstance. If an individual were, for example, making defamatory comments about their firm, customers or clients, this would have clear implications for their integrity and reputation. Awareness of such information is likely to arise in practice following a disciplinary procedure for breach of the social media policy.

### *Amendments to the guidance*

We have changed the wording from 'social media' to 'breach of a firm's acceptable use of social media policy' and referenced it as an example of what might cause a 'triggered' assessment of F&P arising from a disciplinary procedure or self-declaration.

We have retained professional networking sites as a potential source of information for the routine annual assessments.

### **Internal relationships**

One respondent noted that requiring individuals to declare internal relationships felt intrusive. As with social media, the CRWG noted that this type of information was likely to emerge from a self-declaration (in which case any real or perceived conflicts of interest could be managed), or following a disciplinary procedure when individuals had breached a firm's relevant policy.

### *Amendments to the guidance*

We now describe internal relationships as an example of information that could arise from disciplinary procedures or self-declaration in the 'triggered' assessment.

## Statements of personal assets and liabilities

In our consultation proposals we suggested that individuals might be asked to disclose a statement of their personal assets and liabilities. A number of respondents raised concerns about this given the wide range of personal finance situations (ranging from extremely complex to very simple) and queried the value of gathering of this information.

The CRWG suggested that, if an individual was under investigation for some reason, requiring the disclosure of a statement of personal assets and liabilities might be proportionate and relevant to the assessment of an individual's F&P. In the usual course of events, however, such a request would generate large amounts of information that might not, in the vast majority of cases, add anything to the assessment of F&P.

One respondent suggested that it was more appropriate to seek information surrounding County Court Judgments and bankruptcy, as these would be more directly relevant to a person's financial soundness than their personal finances.

### *Amendments to the guidance*

We have amended the guidance removing a statement of personal assets and liabilities as a potential source of information. We have, however, included the more general 'indicators of financial irresponsibility' and included as an example self-declaration that 'the individual is not aware of any financial commitments which may call into question their financial soundness (e.g. inability to meet loans due)'. It is, however, up to firms to set their own risk tolerance on this issue (and we are aware of at least one firm that does require statements of personal assets and liabilities on a routine basis).

## Criminal and civil proceedings

As an external check of honesty and integrity, we proposed in the consultation paper that firms might use information from the Ministry of Justice or Court Tribunals judiciary when making an assessment. Some respondents queried whether it would be proportionate to screen for this type of information. Others suggested that it would be difficult to draw conclusions unless all of the facts were known and there was a clear finding to act upon. One respondent, however, suggested that the guidance should include pending or ongoing investigation by the courts or tribunals. Another respondent highlighted the FCA's guidance on this issue,<sup>16</sup> which included the need to consider:

- the seriousness and circumstances around the offence,
- the explanation offered by that person,
- the relevance of the offence to the proposed role,
- the passage of time since the offence was committed, and
- evidence of the individual's rehabilitation.

We agree criminal convictions should be viewed in the round. We also accept that it may be difficult to draw conclusions from incomplete information, particularly if criminal or civil proceedings are

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<sup>16</sup> See FCA Handbook FIT 2.1: <https://www.handbook.fca.org.uk/handbook/FIT/2/1.html>

pending against an individual. Given, however, that these matters may have an impact on a person's F&P, we nevertheless consider it important that firms keep all of these types of issues in view. Where issues are relevant but the matter is pending, it may be appropriate to schedule an 'in-year' assessment at a later date and issue, in the meantime, a certificate for a period of less than 12 months.

#### *Amendments to the guidance*

We have amended the guidance to encourage individuals to self-declare where they are in criminal or civil proceedings and where there are circumstances which may affect their F&P.

We have also included notification of a criminal conviction as one of the circumstances that may give rise to a 'triggered' assessment.

#### **Ethical and psychometric testing**

The proposal that ethical and psychometric testing might be used as tools in considering an individual's F&P was not supported by respondents. Concerns were expressed about the purpose of these types of tests and their relevance to an F&P assessment. They were seen principally as useful in the context of job interviews or performance reviews, or in training to enhance individual's awareness of the ethical consequences of decisions. Some respondents questioned the reliability of these tests and whether scores were comparable in an objective and meaningful way.

We recognise these issues and consider that these types of test have limited utility for the purposes of recruitment and development. As part of the range of information that might be used, they may be helpful in some instances of assessing F&P but cannot be treated as definitive.

#### *Amendments to the guidance*

We have not included ethical and psychometric testing explicitly as examples of information in the guidance, but note that they may be a useful adjunct to other information in some circumstances.

## **Fitness and Propriety Assessment Record Template**

The assessment template was designed as an initial illustration of what a standardised approach to undertaking an assessment of F&P might look like. It was not intended to be a decision-making model, but rather to provide guidance on how to record a broad (but not exhaustive) range of relevant sources of information. A key objective was to facilitate consistency across the industry, while providing the flexibility to each firm to implement the Certification Regime in line with its own internal processes.

A variety of positive and constructive feedback was received on the template, with key themes relating to:

- the appropriateness of the sources of information,
- the consistency of information across firms,
- the need for different sources of information in different assessment circumstances,
- ease of use, and
- the operational limitations.

Three respondents noted that the template provided a comprehensive list of sources of information and broadly addressed the right issues. Six thought that it was helpful to have a standardised list to ensure fairness and consistency of assessment to help firms set high standards. One respondent highlighted the need for firms to ensure their processes for storing information are compliant with the law surrounding data protection and retention.

Some respondents commented that the relevance of specific sources of information depended on the circumstances of the assessments. A number of background or screening checks, for example, were likely to be required for new-to-firm individuals but not for an internal transfer or an annual assessment of an existing certified individual. One respondent suggested that it would be beneficial to include general commentary for the template to avoid confusion in its use.

A range of additions to the template were suggested by respondents. These included a section for further explanation where someone is considered not to be fit and proper, and an amendment to ensure that a source of information cannot be ignored, particularly where it is known that it may disclose negative information about an individual. The CRWG also suggested including space to note the type of certified role being assessed.

A number of respondents also felt that limitations within the template would prevent it from being used in practice. One commented that the template was too prescriptive and the volume of sources of information would make it onerous as a support tool. Another suggested that the detailed nature of the template could lead to inconsistent application and that the information gathered for the purposes of assessing F&P needed to be proportionate to the size of the firm. This was supported by another respondent who stressed the need for a cost/benefit analysis and proportionality in implementing the assessment of F&P.

Some respondents noted that many firms have already established their own processes as part of the Certification Regime requirements, and that it would be challenging for these firms to make significant changes. Four respondents noted challenges with IT infrastructure, or existing systems that would prevent full implementation of the guidance, particularly in creating a consolidated F&P

record for individuals. A further respondent asked whether firms were expected to tailor the template to their own individual needs.

Despite these limitations, a number of respondents felt the template could act as a useful checklist in helping assessors gather appropriate evidence or in ensuring that all the elements of the assessment had been completed. One respondent also suggested that the template could be of particular use to small firms when they were establishing their Certification Regime processes. Another suggested that a similar template might be useful for individuals tracking and recording their portfolio of evidence to demonstrate high professional standards.

#### *Amendments to the guidance*

Given our amendments to the Sources of Information we have reduced the length and coverage of the Assessment Record Template. The revised Sources of Information now provides a more useful checklist for assessors meaning that there is no longer a need for a separate list-style document.

The template now focuses on 'macro-data' recording who is being assessed, by whom, for what purpose and when. We have added boxes to enable assessors to record the type of certified role being assessed, whether there is a gap in the information, and what the nature and timing of the next anticipated assessment should be.

Some firms will already have systems in place that record F&P assessments and the example template should not be interpreted as a recommendation to switch from existing IT systems to a paper-based approach; rather, the template is intended as a useful reference for firms in considering what information they should record on their own systems.

## Conclusion

The revised *Statement of Good Practice 1 Certification Regime: Fitness and Propriety Assessment Principles* and the *Supporting Guidance Certification Regime: Fitness and Propriety Definitions, Sources of Information and Assessment Record Template* are 'living documents' and will be kept under review. The BSB would welcome ongoing feedback regarding the usefulness of the guidance, and will update it periodically in light of this feedback.

Working with the CRWG, we will continue to explore how firms can most effectively and efficiently implement other aspects of certification and the assessment of F&P, including:

- identifying and evaluating risks and issues related to certification i.e. circumstances which, should they materialise, could call into question whether an individual is fit and proper to perform their role;
- assessing the F&P of individuals working outside the UK or moving to the UK from overseas; and
- factors to consider when sharing information about certified individuals when they move between firms (linked to recent requirements for firms to provide 'regulatory references').

For more information on these or any other areas of the BSB's policy work, please contact [certification@bankingstandardsboard.org.uk](mailto:certification@bankingstandardsboard.org.uk).

## **Appendix 1 — Detailed analysis of comments on the proposed sources of information**

### **Honesty and integrity sources of information**

#### **Internal (fact)**

Under the internal (fact) category we proposed:

- internal disciplinary proceedings;
- recorded conduct rule breaches.

There were no comments on these proposed sources.

#### **Internal (judgement)**

Under the internal (judgement) category we proposed:

- performance appraisal (e.g. on the basis of self-declaration/other evidence that an individual has conducted themselves with honesty and integrity).

There were no comments on this proposed source.

#### **External**

Under the external category we proposed:

- professional body (if appropriate);
- Disclosure and Barring Service (DBS);
- overseas criminal records check;
- Ministry of Justice/Court Tribunals;
- clearing house (e.g. LCH.Clearnet);
- staff fraud checks;
- company search (prior organisations the individual was involved with (investigations/liquidation));
- sanctions check.

One respondent noted that DBS checks may not be available for all staff. Recognising the limitations of the availability of DBS checks, we consider it, nevertheless, to be an important source of information for the purposes of an F&P assessment where available.

One respondent questioned the value added by external checks such as Ministry of Justice/Court Tribunals given that, to obtain this information systematically, there would need to be some form of screening exercise, which might not generate sufficient information.

It may be neither proportionate nor practical to screen all staff to see if there are any outstanding judgments against them. If, however, information came to the firm's attention suggesting that a person had a judgment against them, which was relevant to their F&P, it might wish, for example, to

confirm the individual's self-declaration by seeking the court documents. Firms will need to take a risk-based approach and, in line with Principles 2 and 4, determine how frequently to use this source of information and in what circumstances. We have strengthened Principles 2 and 4 to make this clearer.

### **Self-declaration**

In the self-declaration category, we proposed:

- declaration of anything that calls into question an individual's honesty and integrity (e.g. previous criminal convictions, civil proceedings, regulatory disciplinary proceedings, or disqualification from an authority, disclosure of any internal relationships, confirming whether an individual is currently subject to any criminal proceedings etc).

One respondent noted the FCA's guidance that criminal convictions must be considered on a case-by-case basis. The FCA handbook offers guidance on this issue and we agree that a range of factors may determine whether a conviction is relevant to a person's F&P and, if so, how much weight should be attached to it.

We also agree that a person's F&P must be viewed in the round. While a criminal conviction may be an important source of information for the purposes of an F&P assessment, Principle 4 makes clear that firms should take all available information into account in conducting an F&P assessment.

If a person makes an appropriate self-declaration, this should enable the firm to manage the situation proportionately and fairly. Equally a failure to declare something that is relevant to the F&P assessment may raise questions as to a person's honesty and integrity.

Specific issues regarding personal privacy were raised in relation to declaring internal relationships. The question of internal relationships is a difficult one. The mere fact that there is a relationship may not be a concern; the issue is any potential conflict of interest it may create. It may be the case that an internal relationship has no bearing on a person's F&P. It may equally, however, be the case that an internal relationship might be abused. If a person in a relationship, for example, obtains privileged information from the other based in a different business function in the same firm.

Individuals will need to make themselves aware of any relevant policies the firm has and decide whether a self-declaration is necessary. The self-declaration allows any potential conflicts of interest to be managed and need not imply that a person's honesty or integrity is compromised. The failure to disclose an internal relationship in accordance with the relevant policies of the firm and/or where there may be a real or perceived conflict of interest, could raise honesty and integrity considerations. As with other breaches of a firm's internal policies, this is likely to be dealt with via a disciplinary procedure. As discussed elsewhere, it is important that the outcome of the disciplinary procedure and any subsequent assessment of F&P and the resulting certification decision are aligned. We have now included internal relationships as an example of information arising from disciplinary procedures or self-declarations in the context of a 'triggered' assessment.

One respondent asked whether staff fraud checks should be conducted. Firms will need to determine their own approach to fraud risk management based on the risk profile of their organisation, but common practices include:

- using one of the range of companies that specialise in the reciprocal exchange of information regarding persons who commit fraud (e.g. the CIFAS National Fraud Database);
- continuous transaction monitoring; or
- a series of red flag indicators that may trigger an event.

Such practices may already be business as usual processes within firms. From an F&P perspective, it is important that, if fraud is detected and investigated, an assessment of F&P is triggered at the appropriate point.

### **Potential future sources**

The consultation document identified a number of potential future sources of information for an F&P assessment:

- commitment to uphold high professional/ethical standards;
- interviews (e.g. set of questions and evaluating behavioural indicators that demonstrate evidence of honesty and integrity);
- ethical and/or psychometric tests to assist with the assessment of an individual's honesty and integrity; and
- regulatory references.

We have taken account in this report and in the amended good practice guidance of both consultation responses and the regulators' final rules relating to regulatory references. Several respondents suggested that we also develop further guidance in this area and we are considering this with the CRWG.

We suggested that psychometric testing might be used in the future to assist in the assessment of F&P. A number of respondents questioned whether psychometric testing could, in fact, be a practical tool for the purposes of making F&P assessments. One questioned whether it was realistic to expect that a certificate might be withdrawn or not issued on the basis of a psychometric test alone.

We discussed the potential application of ethical and psychometric tests with the CRWG. Psychometric tests in particular were used widely as part of other HR processes (especially recruitment) but that information was not usually considered as part of the F&P assessment.

Some CRWG members applied these types of test in the context of appointing individuals to roles within Senior Management Functions, as they facilitated an in depth conversation about the suitability of the person for the role. Questions were, however, raised about their applicability to the larger population of certified persons given their lower level of responsibility.

Following the consultation, we consider that ethical and psychometric testing could be relevant to recruitment and performance development but are not approaches that should be considered as a matter of course for the purposes of F&P assessments.

One respondent noted that membership of a professional body could denote a commitment on the part of the individual to high professional standards, and could inform the consideration of reputation as well as integrity. Another questioned how a commitment to high professional standards could objectively be measured. Two respondents noted that professional bodies had developed tools to help individuals to be able to evidence honesty, integrity and reputation.

Recent research commissioned by the BSB from the University of Leeds found that chartered professional bodies, as well as other organisations that provide qualifications and which include a focus on professionalism, are seen as having a significant role to play in raising standards of competence and ethical behaviour in the banking sector. To do this, however, there are a number of challenges to overcome. Our work on professionalism will help to facilitate progress in addressing these challenges, and will consider the particular context of the Certification Regime as part of this.

### Reputation sources of information

#### Internal (fact)

We did not propose any sources of information under 'internal (fact)' in the reputation element.

#### Internal (judgement)

In the internal (judgement) category for reputation we proposed:

- performance appraisal (e.g. 360-degree feedback received from an individual's colleagues and their annual performance rating);
- internal references (e.g. conducted prior to an internal move).

One respondent asked about the use of 360-degree feedback within the context of F&P assessments rather than for developmental purposes. Concern was raised that such feedback could be an unreliable tool depending on the population asked to give feedback and the lack of a formal challenge procedure.

We agree that 360-degree feedback is primarily a developmental tool. It is, however, also a technique which can provide evidence of whether the person is role modelling certain behaviours (or demonstrating behaviours which are inconsistent with a firm's values). Other sectors make use of 360-degree feedback for similar purposes; doctors are, for example, required to present evidence of patient and colleague feedback as part of a portfolio of evidence for their revalidation (the medical equivalent of certification).<sup>17</sup>

We recognise that 360-degree feedback may not be a definitive factor in deciding whether to issue a certificate. It may, however, highlight areas where further investigation is required, and more positively may enable the individual to identify areas for improvement, provide a way of tracking that improvement for future assessments and provide positive affirmation.

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<sup>17</sup> [http://www.gmc-uk.org/doctors/revalidation/colleague\\_patient\\_feedback.asp](http://www.gmc-uk.org/doctors/revalidation/colleague_patient_feedback.asp)

On the question of challenging the findings of 360-degree feedback, Principle 7 of our *Statement of Good Practice 1 Certification Regime: Fitness and Propriety Assessment Principles* highlights the need for processes to allow the independent review and appeal of the F&P assessment outcome. If a decision not to issue or to withdraw a certificate were made on the basis of 360-degree feedback (either solely or in combination with other evidence) this would be open to review or appeal in the context of Principle 7.

## External

In the external category we proposed:

- regulatory complaints/breaches;
- professional body complaints/breaches;
- references (on joining a firm);
- social media (e.g. reviewing online activity and profile in line with a firm's formalised process for initial and ongoing screening and data protection legislation);
- professional connection websites;
- media profile;
- external publications (e.g. has developed a track record/known as an opinion leader, an expert or innovator whose opinion is valued in a specific area).

Of all of the proposed sources of information, the use of social media to evidence honesty, integrity or reputation generated the most comment. Eight respondents raised issues of intrusiveness and privacy. One of these respondents added that proactively screening social media was beyond their current practice and difficult to use as evidence for F&P.

One respondent asked practical questions about how far back in time a firm should look and what kind of information would raise a question about a person's F&P. Another said that, in addition to the privacy issues, careful consideration would also need to be given to establishing relevance to the job role. Allied to this point, another respondent suggested that wording such as 'public activity outside of professional sphere' might help to distinguish between what it is appropriate to consider and what should be considered a person's private life and therefore inappropriate to consider in the context of F&P. This was endorsed by another respondent who felt that a narrower definition of 'social media checks' in this context would be appropriate.

The CRWG considered that, where a person had been engaging in behaviour on social media that brought into question their F&P, this was most likely to have emerged in the course of disciplinary proceedings. This might be because a person had contravened a firm's social media usage policy (e.g. making defamatory statements about their firm or clients). If so, it would be important for the outcome of any disciplinary proceedings to feed into any subsequent F&P assessment and, if serious enough, to trigger an F&P assessment and certification decision. In these more serious circumstances it is important that the outcome of the disciplinary proceedings and the certification decision are aligned. Taking disciplinary action but not reflecting the severity of that action in the certification decision could undermine the intent of the regime. Equally, taking less serious disciplinary action but then concluding that the individual was not fit and proper (and withdrawing or not issuing a certificate) could be, or could be perceived as, disproportionate and unfair, and might be open to challenge.

The CRWG considered that social media was a potential source of information to inform an F&P assessment, but that it would not be proportionate to screen social media profiles systematically.

On balance we have concluded that, for the purposes of assessing reputation within an F&P assessment, proactive screening by the firm of social media is unlikely to be proportionate and could generate a wide variation of information that may or may not be relevant. Reactive use of social media as evidence for an F&P assessment, where misuse of social media has come to light through other processes, maybe appropriate.

With regards to assessing honesty and integrity, however, professional networking sites can be a useful cross check in terms of the professional profile an individual displays. It is, however, important to keep this type of information, if used, in perspective. If an individual's online professional profile is not up to date or does not contain a complete picture, this would be unlikely to raise any F&P concerns. If the individual had greatly inflated their job role or their experience, however, this could be relevant in an F&P context.

An individual might also use social media as a way of demonstrating behaviours outside the workplace that are relevant to their honesty and integrity.

We have amended our guidance to refer to social media (in the form of professional networking sites) in the honesty and integrity element of F&P assessing and to qualify the use of social media in the reputation element.

Two respondents commented that professional body membership and activities might be a source of positive external evidence as well as negative (the latter, in the form of any complaints being dealt with by the relevant professional body). One of these respondents also encouraged the better exchange of information between firms and professional bodies for these purposes.

As discussed previously, our work on professionalism will be considering a range of issues relating to professionalism in banking, which may be relevant in the context of the Certification Regime.

One respondent noted that not all persons in the certified population will have a (social or traditional) media profile or external publications. We recognise this point and agree that the absence of evidence should not be seen as negative evidence in an F&P assessment. External profile, however, may be a useful source of information for more senior individuals trying to demonstrate high professional standards by, for example, contributing positively to the development of professional practice in public forums.

One respondent noted that being known as an opinion leader or expert might speak to competence and capability rather than reputation. Such evidence can certainly attest to more than one element. Being perceived as an expert, as a subjective opinion, may speak to reputation, while being expert in the sense of holding relevant qualifications or maintaining knowledge and skills through CPD or training, may speak rather to competence and capability.

## **Self-declaration**

In the element of reputation, we proposed that an individual could be required to:

- declare that they have not been responsible for/involved in anything that has or could bring the individual/firm/industry into disrepute.

There were no comments made regarding this proposal.

## **Potential future sources**

As potential future sources, we asked for feedback on whether the following might be used:

- interviews (e.g. through interview questions, behavioural indicators demonstrating that an individual considers the perception of external stakeholders towards their actions and the impact their own reputation may have on the firm);
- capturing and recording customer/client feedback;
- regulatory reference.

One respondent supported the use of customer/client feedback where available. There were no additional comments made on these issues. Our guidance has, however, been revised to reflect publication by the regulators of the final rules on regulatory references.

## **Competence and capability sources of information**

### **Internal (fact)**

For internal fact, we suggested the following source of information:

- internal training/events (e.g. attendance levels).

Two respondents commented that attendance at training and internal events is not a valuable source of information and can be difficult to quantify. We recognise this but suggest that it could be useful as input into an individual's annual performance review, the outcome of which will be relevant to the annual assessment of F&P. Attendance at internal training/events (particularly mandated internal training) could be relevant to a person's F&P. We would generally agree, however, that attendance alone is a less useful measure of a person's competence and capability.

An outcome-based approach to training effectiveness (as well as attendance) would be preferable and we would encourage firms to develop this. Approaches to determine the impact, as well as the value, of training on competence and capability are to be encouraged.

## **Internal (judgement)**

In internal (judgement) we suggested the following potential sources of information:

- application and interviews during the recruitment selection process (e.g. interview notes, assessment results, rationale for hiring);
- performance appraisals (e.g. balanced scorecard criteria and performance rating including any performance issues or Performance Improvement Plans (PIPs)).

One respondent commented that they would like to 'avoid any suggestion by way of employment practices for the assessment of F&P'. It is important to recognise that the assessment of F&P does not drive these management processes but rather uses the information they generate. Where an F&P concern is identified, and depending on what that concern is, existing management processes (e.g. putting in place a PIP or commencing a disciplinary procedure) are likely to be the most appropriate way of dealing with it.

## **External**

As potential external sources of information, we proposed:

- professional qualifications (and overseas equivalents);
- education background;
- external training events.

One respondent questioned whether an individual's educational background was relevant to assessing F&P. If it is used as a source of information, it should not eliminate candidates or be used in a discriminatory manner.

We agree that specific details of an individual's educational background should not be relevant in assessing F&P and we would expect this to be covered by a firm's internal HR policy and procedures.

This source of information was intended to refer to instances where a role may require a mandatory qualification (e.g. a university degree or a minimum grade 'C' in GCSE Maths). For clarity, we have amended 'educational background' to 'educational attainment'.

Two respondents felt that holding a professional qualification should be mandatory for certified persons. The BSB's view is that certified persons should be appropriately qualified for the role which they are performing. Qualifications are mandated for some job roles by the regulators, and it is up to firms to take into account the needs of a role and the aspiration to raise standards where this is not the case.

## **Self-declaration**

As a potential self-declaration in support of competence and capability we suggested:

- declaration that the individual is fit and proper to carry out the requirements of their role that would be detailed in their job description.

There were no comments specifically on this in the responses, and in further discussions with the CRWG this approach received broad support. A number of members suggested that job descriptions could more closely reflect the competencies required for the role, and that these could then be incorporated into an individual's objectives.

This would link the competence and capability element of a self-declaration more closely to an individual's specific objectives. We recognise, however, that where this is not presently the case, some firms may not easily be able to adapt existing process and systems.

A further point raised in the CRWG's discussion was that job roles change over time and that a person's original job description may not reflect their current role. The individual should clearly not be penalised in these circumstances. We consider it good practice to have a relevant job description, and would suggest the assessment of F&P as a good point to ensure that the job description is updated so that the certificate reflects the work actually being undertaken.

As an addition to the self-declaration, one respondent suggested it might also be useful for individuals to reflect on their strengths and learning needs as part of the assessment process. While we agree with the underlying statement, this reflection may also be part of the annual appraisal process, the outcome of which would be considered as part of the assessment of competence and capability. Where this is the case, it would not be proportionate to create a further parallel process to capture this information again via a self-declaration.

### **Potential future sources**

In potential future sources of information for competence and capability we proposed:

- 'job families' (i.e. as a means of assessing the expected competencies/skills for certain roles in the industry to include consideration of non-banking backgrounds and international employees);
- a mandatory, role-specific training and competence scheme as part of an employee's induction and progression;
- industry/other sector body qualifications (i.e. a prior requirement for attainment of certain roles);
- Continuous Professional Development (CPD) (e.g. firms could consider developing a CPD scheme whereby employees are required to complete a minimum number of hours of CPD within a 12-month period with a minimum number of hours for structured learning);
- the annual review by an individual of the job descriptions for their roles, confirming they are a correct and accurate reflection of their roles and responsibilities;
- evaluating training effectiveness (e.g. discussion with line manager, follow up surveys and calls);
- regulatory reference.

A number of respondents commented on the importance of training and CPD as measures of F&P and in developing good practice. While it is useful to consider training and CPD in parallel due to their similarities, one respondent emphasised the need to distinguish between the training and skills required for a role and those that individuals choose to do above and beyond what was required of

them. We agree with this. Furthermore, any CPD that is additional to minimum requirements should be relevant for the consideration of competence and capability.

Two respondents supported the use of training and CPD as a measure of competence and capability but suggested that there needed to be a shift from an 'input based' approach to an 'outcome based' approach. Specifically, this involved looking at the quality, rather than quantity, of training.

Two respondents requested further guidance on job families. We had proposed job families as a potential future source of information to assess the expected competencies/skills for certain roles in the industry to include consideration of non-banking backgrounds and international employees. Having reflected further on this, and given the variety of current firm-specific approaches we do not consider it practical to establish industry-wide job families in the near future. We would, however, emphasise the importance of assessing the F&P of an individual against the specific significant harm function(s) and job description in the *Certification Regime: Fitness and Propriety Definitions, Sources of Information and Assessment Record Template*. The assessment of F&P with respect to competence and capability should relate to the competencies required for the specific role. Emphasising this competency-based approach should enable persons transferring into UK banking from another sector or from abroad to provide evidence of transferable skills for their F&P assessment.

One respondent questioned the extent to which a firm can verify and assess CPD, either internally or externally. Two others, however, suggested that professional bodies could play a role in supporting CPD either through standardised qualifications or by helping firms set up a CPD structure, and providing and auditing training.

Three respondents requested further guidance on CPD. Specific questions included the regulators' views on CPD beyond Statements of Professional Standing, whether CPD should apply to all employees, and what CPD means beyond technical capabilities. These themes will be among those to be considered by the BSB's new Professionalism Forum.

One respondent suggested that the definition of competence and capability should include market, industry, legal, regulatory, product and internal policy, and procedural changes. We note that this can and should be evidenced both in the annual performance appraisal and via training and CPD.

There were no comments made on regulatory references. Our guidance has, however, been revised to reflect the fact that the final rules have now been issued.

## Financial soundness sources of information

### Internal (fact)

As an internal (fact) to support the consideration of a person's financial soundness, we suggested:

- salary and overall remuneration.

Three respondents noted that caution was required in using a person's salary and overall remuneration to consider financial soundness. This is because financial soundness does not equate

to an individual's wealth but rather to the responsibility they exercise with the finances they have. We recognise this and agree that financial soundness should not be based on the level of a person's salary and overall remuneration.

The CRWG discussed that it was not the level of salary and overall remuneration, but the behaviour that might be driven by financial irresponsibility that was important. It noted that high levels of remuneration did not preclude committing fraud.

Reflecting the comments received and the CRWG discussion, we have removed salary and overall remuneration from the guidance on financial soundness.

### **Internal (judgement)**

We proposed that the assessment of financial soundness might include:

- indicators of financial irresponsibility;
- compliance with expenses policy.

One respondent noted that compliance with expenses policy is not a valuable source of information for financial soundness and that any significant breach would be subject to disciplinary proceedings. We accept this and note that this point is also applicable to breaches of firm's anti-fraud policy. As with other disciplinary procedures, however, it is important that the outcome of any proceedings arising as a result of a breach of a firm's expenses policy should be considered when the F&P is subsequently assessed. If serious, such breaches should also trigger an assessment of F&P so that the certification status is consistent with the disciplinary outcome.

### **External**

As potential external sources of information we proposed:

- credit reference agencies (e.g. Public and Credit Account Information Sharing (CAIS) check).

There were no comments on this proposed source of information in the responses to the consultation.

### **Self-declaration**

Issues which we proposed might be the subject of a self-declaration were:

- declaration that the individual is not the subject of any arrangements/proceedings/judgments that could call into question their financial soundness;
- disclosure of a wider range of statements (e.g. demonstrate that the cost of meeting liabilities as they fall due is adequately covered by salary and personal assets).

One respondent suggested that firms should ask individuals to declare their personal assets.

Four respondents highlighted that asking individuals to disclose wider financial statements could be seen as intrusive. Two respondents noted that this went beyond FCA guidance, and that having limited means does not mean that an individual is not financially sound or able to perform a controlled function.

It was also noted by one respondent that not only would the disclosure of wider financial statements be intrusive for the individual, but that it would also be a resource intensive exercise for the firm and would not be necessary in most circumstances.

One respondent stated that asking individuals to declare when they were the subject of proceedings (rather than findings) went beyond the guidance of the FCA's rules on financial soundness.

We discussed all of these issues with the CRWG. The working group felt it was important to enable individuals to self-declare if they were in financial difficulty so that support could be offered and proportionate management action taken as appropriate.

On the question of whether an individual should be asked to disclose a wider statement of personal assets and liabilities, the CRWG agreed that, in certain circumstances such as an investigation for fraud, this could be an important source of information to consider in the F&P context (aligned to a disciplinary procedure). However, on a routine basis, it would be unlikely to add much value to the decision whether to issue a certificate or not.

### **Potential future sources**

As a potential future source of information, we suggested:

- wider culture/commitment a firm will make around openness (e.g. encourage an individual to disclose information regarding their financial soundness).

No comments were raised on this specific point in the consultation responses. Discussion with the CRWG, however, indicated a range of firms were already encouraging individuals to be open when they had an issue relating to their financial soundness. Our amendment to the proposed self-declarations provides a way for individuals to demonstrate a wider commitment to openness, and we would encourage the adoption of this practice.