

BANKING STANDARDS BOARD CONSULTATION

Certification Regime: Certification risks and issues

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Certification risks and issues

About the BSB

The BSB was established in 2015 to help raise standards of behaviour and competence across UK banks and building societies.

It is a private sector body funded by membership subscription and open to all banks and building societies operating in the UK. The BSB is neither a regulator nor a trade association. It has no statutory powers and it does not speak or lobby for the industry; rather it provides challenge, support and scrutiny for firms committed to rebuilding the sector's trustworthiness.

About this consultation

BSB good practice guidance aims to help raise standards of behaviour and competence in banking through the effective implementation of the Certification Regime. This consultation seeks views on the BSB's proposed guidance on dealing with the risks and issues that may arise when firms are assessing the fitness and propriety (F&P) of their staff as required by the Certification Regime. It is intended to support the BSB's *Fitness and Propriety Assessment Principles* by providing further good practice guidance in relation to Principle 4 (establishing pass/fail criteria), and Principle 5 (evidencing the F&P assessment). We are seeking views on four key areas, summarised here and explained in more detail below, as well as any views on the guidance as a whole:

- the framework we have set out for the process of assessing F&P;
- the options we have set out for firms as they undertake their F&P assessments;
- the use of examples to illustrate the guidance; and
- the balance of responsibilities between firms and individuals in the evidencing, maintaining and assessing F&P.

The deadline for responses is close of **29 September 2017**.

Who should respond to this consultation?

We are seeking views on this guidance from all interested parties, including firms, individuals and those representing individuals subject to the Certification Regime.

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 32,000¹ staff working in roles which could pose a risk of significant harm to their employing firm or its customers.²

¹ 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

² 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

Currently the Certification Regime extends to banks, building societies, credit unions, the largest investment banks that are regulated by the PRA and FCA and branches of foreign banks operating in the UK.

A key feature of the Certification Regime is that firms are required to attest to the regulators on an annual basis that their staff are fit and proper to carry out roles with significant harm functions. Firms must therefore assess the F&P of all staff in these roles annually.

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

- honesty and integrity;
- reputation;
- competence and capability; and
- financial soundness

It is the responsibility of firms to determine how to assess the F&P of their staff, conduct the assessments, issue certificates for roles and implement and maintain the business processes required to support this.

The BSB has previously consulted on and published principles and a statement of good practice on assessing F&P. In the course of consulting on these earlier documents, BSB member firms and other respondents highlighted that supporting guidance would be helpful in relation to decisions regarding certification following an assessment of F&P, especially where these decisions are not clear cut. This guidance is therefore focused on the point at which firms make decisions about the F&P of an individual that can have significant and direct consequences for that individual.

About the BSB's Certification Regime Working Group

This guidance represents the pooling of knowledge of the BSB's member firms through our cross-industry Certification Regime Working Group. The CRWG first met in January 2016, and has met regularly since then.

The first major area of focus for the working group was a common understanding of the various elements of F&P as set out by the regulators (honesty, integrity, reputation, competence, capability and financial soundness) and the sources of information that firms might use to provide evidence of them. This was combined with a common set of F&P assessment principles framed so as to be sufficiently high-level for firms to adopt into their own processes, but challenging enough to encourage high standards (as well as a degree of consistency across the industry). The principles were designed to help identify good practice against which firms could test their own processes, policies and procedures. We published the outputs of this work in February 2017 as our *Statement of Good Practice 1 on the Certification Regime: Fitness and Propriety Assessment Principles and Supporting Guidance on the Certification Regime: Fitness and Propriety Definitions, Sources of Information and Assessment Record Template*.³

the firm or any of its customers (eg staff who give investment or mortgage advice or who administer benchmarks).'<https://www.fca.org.uk/firms/senior-managers-certification-regime>

³ <http://www.bankingsstandardsboard.org.uk/bsb-fp-guidance/>

In late 2016, the working group began to consider how decisions on F&P are made within firms, and the different factors, risks and issues that are relevant to such decisions. The focus of this work has been on ensuring that the regime is effective in raising standards and proportionate and fair to the individuals being certified; rather than on specific compliance or conduct risks or on defining regulatory minima.

About the questions in the consultation

The BSB is seeking comments on the proposed good practice guidance, and in particular on the questions below. We have grouped the questions into four sections to reflect the key areas of the guidance, and we would welcome comments on any and all of these.

The approach to assessing F&P

1. Do you think the framework (set out on pages 5-6 of the draft guidance) is useful for understanding the steps involved in an F&P assessment, or are there amendments that would better describe industry good practice?

The options available to firms following an F&P assessment

2. Are the four options set out on pages 9-13 of the draft guidance the right ones? Are there others that should be added, or should any of these four be amended or deleted?
3. Do you agree with the explanations and definitions of these different options?
4. How do these options reflect your current approach to or experience of F&P assessments? Are there any aspects which would be new to your firm? If so, which would be the most challenging?

Use of illustrative examples

The draft guidance includes a number of illustrative examples to try to bring the guidance to life, and to illustrate the ideas. They do not refer to specific cases, but reflect some of the issues member firms have encountered in the course of the first round of assessing F&P.

5. Are the illustrative examples in the draft guidance useful and appropriate? Are there others that would provide additional, better or more relevant examples of:
 - a. the factors to consider when evaluating information that may call into question an individual's F&P;
 - b. maintaining F&P;
 - c. mitigating certification risks;
 - d. remediating certification issues; or
 - e. where remediation is not possible?

The balance between individual and firm responsibilities

In this guidance, we focus primarily on the role that the firm plays in assessing the F&P of its staff. We have also explored some of the ways in which individuals have responsibility for maintaining their own F&P, building on our previous good practice guidance. We would be interested to hear

from firms, certified individuals and those representing certified individuals on whether we have got this balance of responsibilities right.

6. Is the guidance on the role of individuals in maintaining their F&P appropriate or are there other factors we should take into account?
7. Is there anything in this guidance, either in substance or tone, that would result in inappropriate or unnecessary responsibilities being placed on either the firm or the individual?

Links to regulatory references

As part of our work with the CRWG, we have also been looking at the scope for developing good practice guidance around the rules on regulatory references, published by the FCA in September 2016.⁴ There are clear links between this guidance and the F&P work; for example, where an issue arises with an individual's certified status and how that issue is recorded for the purposes of the firm meeting the requirements of the rules on regulatory references. We will be looking at this issue in the future, but would welcome in the context of this consultation any comments on the link between issues relating to F&P and those relevant to regulatory references.

[How to respond to this consultation](#)

The deadline for consultation responses is close of **29 September 2017**.

Please submit responses via email to certification@bankingstandardsboard.org.uk. We do not publish responses themselves. We have provided a template for responses, but we are happy to accept responses in other formats. Please clearly mark your responses by reference to the questions posed above.

If you have any queries, please contact the mailbox above.

⁴ [FCA PS16/22: Strengthening accountability in banking and insurance: regulatory references final rules](#), PRA PS27/16: [Strengthening accountability in banking and insurance: PRA requirements on regulatory references \(part II\)](#)