

SUMMARY OF RESPONSES TO THE BSB CONSULTATION ON
SUPPORTING GUIDANCE 2: ESTABLISHING PASS/FAIL CRITERIA AND
EVIDENCING THE F&P ASSESSMENT

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Introduction

About this document

The document sets out a summary of the responses we received to our consultation on draft good practice guidance on dealing with certification risks and issues. The draft good practice guidance and the covering consultation paper are available on the BSB website:

<https://www.bankingstandardsboard.org.uk/bsb-launches-consultation-on-fp-risks-and-issues-draft-guidance/>

The BSB invited comments on the proposed good practice guidance and asked seven specific questions.

We also welcomed any comments from respondents on the links between this guidance and regulatory references requirements (the subject of ongoing work by the CRWG).

The consultation period ran from 13 July 2017 to 29 September 2017, and the consultation document was published on our website and shared with member firms, trade associations, professional bodies, consumer organisations and professional services firms.

Responses to the consultation

We received 13 responses to our consultation from a range of firms and organisations, as described in Table 1.

Table 1

Organisation type	Number of responses
BSB member firms	6
Law firms	2
Other voluntary standards organisations	2
Chartered professional bodies	1
Trade associations	1
Charities	1

We are grateful for all the responses received to the consultation. This document summarises the key issues and themes of the responses, which have also been discussed with members of the BSB's Certification Regime Working Group (CRWG). It also explains where and how these points have been reflected in the final guidance.

Summary of the consultation responses

The responses that we received to this consultation were generally supportive and helped us clarify our thinking and wording in a number of areas. They did not raise issues that suggested a need for changes in the overall structure or tone of the guidance. The key areas of comment related to:

- the purpose and timing of guidance;
- the use of the illustrative examples (and additional examples);
- clarifying responsibilities of the firm and the individual;
- the way in which evidence generated by the firm applies to F&P;
- remediating an issue;
- the relationship with professional bodies;
- alignment with existing processes;
- the appeals process; and
- the links to regulatory references.

Purpose and timing of guidance

Two respondents commented on the timing of the guidance, given that the regime has been in force since March 2016. They felt that it would have been more helpful for the sector to have had good practice guidance in place before the implementation of the regime. While we would certainly agree with this the BSB opened for membership in January 2016, and develops its good practice guidance through drawing on and pooling the experience of its member firms. The point about the need for such good practice guidance to support the sector at as early a stage as possible in the implementation process is, however, well-made, and we hope that the work of the BSB and its members firms will help firms elsewhere in the financial services sector currently planning for the proposed extension of the Certification Regime.

One respondent also suggested that we should review our guidance in six to nine months to evaluate its effectiveness and continuing relevance.

The use of illustrative examples

A key theme of the consultation responses related to the use of illustrative examples in the guidance. These were intended to show how options set out in the guidance might be applied in practice, and respondents were generally supportive of this approach. Some provided specific comments on their tone and nature, as well as additional examples. Four respondents said that the examples focused too heavily on financial soundness issues, and that a wider range of examples would be more helpful. Five respondents also said that firms should provide examples or publish clear policies for their staff to help [set expectations around how F&P evidence would be evaluated – for example, what issues would be considered serious or requiring remediation.

Following discussion with the BSB's CRWG, we have reframed the illustrative examples as a tool to help firms articulate, both for their certified staff and for those assessing F&P, how they expect their risk tolerances normally to be applied to F&P decisions. We have also added to the range of examples provided, drawing on discussions with the CRWG, and also expect firms to be developing their own suite of examples for use internally, if they have not already done so.

Alongside comments on the tone and nature of the illustrative examples in the draft guidance, some respondents provided specific examples either of further scenarios that they considered would be helpful or relevant, or of relevant factors. We have incorporated some of these into the final guidance, either directly as additional examples or in improving the tone, structure and approach of existing examples. Table 2 summarises the examples suggested by respondents, and may be helpful for firm to consider in developing their own illustrative examples for internal use.

Table 2

Theme	Illustrative scenario
Examples to illustrate the application of different factors when evaluating evidence	<p>Concerns about submission of expenses, including the nature and level of expenses or fraudulent claims</p> <p>Failure to disclose properly minor offences, especially those that have expired</p> <p>Concerns about personal account dealing</p> <p>Concerns about mis-marking positions at the end of the day for financial gain, especially where they are difficult to value accurately</p> <p>Disclosure of conflicts of interest (especially when this is not done properly)</p> <p>Breaching employment policies and/or firm code of conduct</p> <p>Deliberate breaches of regulation</p> <p>Compliance with internal controls</p> <p>Failure to undertake prescribed/mandatory training</p> <p>Impact on reputation of a relevant professional body could be a consideration when evaluating the seriousness of evidence calling into question an individual's F&P</p>
Maintaining F&P	Maintaining financial soundness as an example action
Remediating F&P	<p>Example remediation action could be issuing a certificate for three months to force more frequent F&P assessments</p> <p>Decision taken by a professional body not to issue a Statement of Professional Standing</p>

Clarifying responsibilities of the firm and the individual

There was broad support for the balance struck in the draft guidance between the responsibilities of firms and individuals in relation to F&P. Some respondents, however, expressed concerns over the framing of this in a small number of specific areas. Four responses highlighted that the guidance should not imply that individuals should be punished or otherwise disadvantaged for not going beyond the minimum F&P requirements set by their firms. Three other responses supported the idea of aligning the F&P assessment and performance management processes so that individuals who did go beyond the minimum requirements set by their firms could be rewarded for doing so.

The Senior Managers and Certification Regime itself is intended to be 'part of a wider agenda of cultural change within firms'¹ rather than simply a regulatory minimum. Regulators' policy statements on regulatory references also set out a clear expectation that firms will build on

¹ See, for example, the speech by Martin Wheatley, Accountability, from debate to reality, delivered in July 2015: <https://www.fca.org.uk/news/speeches/accountability-debate-reality>

regulatory requirements to prevent and tackle misconduct, assess F&P and exchange relevant information.^{2,3}

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

The BSB guidance is not intended to imply that an individual is required to go beyond meeting only the minimum requirements set by the firm in assessing F&P, but rather to encourage firms to think about how they can recognise those who do wish to do so. We have amended the wording of the section on maintaining F&P (see page 18) to clarify this.

Two respondents raised concerns that the concept of 'wider certification risks' set out in the section on mitigating certification risks (see page 20) could imply that individuals were responsible for situations that were outside their control. One respondent suggested removing the concept altogether (or including a table of the relative responsibilities of firms and individuals). The intention of this section of the guidance is to highlight that not all risks will be generated by the individual themselves, and that not all can or should be mitigated by the individual alone. Some risks, for example, may be more 'structural', such as the way in which a job role has been constructed.

Firms have an opportunity, when assessing the F&P of their certified employees, to consider how this is affected by their own culture and structures, especially if they are able to look across all of the information generated by F&P assessments within their firm. We are therefore retaining the category of 'wider certification risks'. While we also recognise the benefits of being able to allocate individual and firm responsibilities, we do not however consider this feasible within this guidance, given the variety of possible scenarios.

Two respondents highlighted issues around individual responsibility for providing evidence of F&P, noting that in many circumstances it could be difficult for individuals to provide acceptable evidence in a timely way, such as of making repayments. Both respondents emphasised that this should not in itself be taken negatively in the context of assessing F&P. We have accordingly clarified in the relevant section on page 18 that firms need to create an environment where individuals are able to maintain their F&P, and that this should include ensuring that they have sufficient time and space to do so.

One respondent commented that guidance aimed at individuals would be helpful in setting out the responsibilities of the certified individual in maintaining their own F&P. We would agree; this guidance is, however, designed for banks and building societies seeking to implement the Certification Regime effectively and consistently, rather than for individuals.

How evidence generated by the firm applies to F&P

Three respondents commented on the links between the information a firm generates and gathers about its certified population, such as disciplinary and performance outcomes, and particular

² FCA, 28 September 2016, Policy Statement PS16/22 Strengthening accountability in banking and insurance: regulatory references final rules

³ PRA, 28 September 2016, Policy Statement PS27/16 Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II)

elements of F&P. For some evidence, the relevant element of F&P will be clear (e.g. a credit reference check to support financial soundness), but for other types of evidence the link may be less immediately apparent.

Six respondents also noted the strong links between existing firm processes and F&P assessments, and suggested means of aligning these more closely, such as including performance appraisal outcomes in all F&P assessments. We agree that clear alignment between existing processes and F&P assessments is desirable; a disciplinary process should not, for example, result in an outcome that is inconsistent with that of an F&P assessment. The approach taken to this will however, reflect the individual preferences and processes of each firm, and we have not therefore included it in the scope of this guidance.

Recognising the points made on this then we have, however, expanded the sections on aligning existing processes with F&P assessments to emphasise the benefits of such alignment. The guidance also now more clearly highlights that decisions stemming from firms' other internal processes can and should form an input into F&P decisions, while recognising that in practice these may be taken together (see page 9).

We have also added a section on page 10 of the final guidance setting out the need to evaluate evidence generated by the firm through the lens of F&P, and emphasising that firms need to be clear as to their reasons for considering an issue relevant to F&P alongside, or indeed, instead of, a disciplinary issue, for example. This section also includes the elements of F&P more clearly (which are also included in the definitions on page 3).

Remediating an issue

Most respondents agreed with the options we set out as available to firms when assessing F&P, but some commented specifically on the practical implications associated with remediating issues.

Three respondents raised the question of whether an individual can still be certified while they are remediating an issue, given that to carry out a certified role a firm must be sure that an individual is fit and proper to do so, and that everyone carrying out a role within the scope of the regime must be certified to do so. This is an important question and one that we have discussed with the CRWG. The answer to it would appear to depend on both the firm's own risk tolerances and the nature of the issue being remediated.

Faced with a particular issue, a firm might decide that, having agreed remediation actions with an individual, it could allow a certificate to be issued. Alternatively, it could agree remediation actions and issue a certificate for a shorter time period, or with additional controls or supervision, or having amended the role itself; or it could decide that it cannot introduce sufficient additional controls to the certificate to be sure that the individual was fit and proper to perform the role, in which case the firm would not be able to issue the certificate.

In most cases relating to financial soundness, for example, CRWG members have told us that they would generally regard being in financial difficulty as capable of being remediated, with any

associated risks managed through additional supervision.⁴ The individual and the firm agree a remediation plan, and the firm requires the individual to undergo more frequent F&P assessments to assess whether they are carrying out the agreed actions.

There may also be cases where, to demonstrate that they are remediating an issue, the individual needs to be performing their certified role (e.g. in order to demonstrate competence, when this cannot readily be demonstrated outside the role). As long as a firm is content that it can put in place appropriate controls or supervision during a period of remediation, issuing a certificate remains an option.

Members of the CRWG have also highlighted to us that it can be very difficult for firms to find a suitable non-certified role when a certificate is not issued. If a firm considers that an issue can be remediated with appropriate controls in place, it is usually impractical to remove the individual from a certified role.

We have clarified the wording of the 'Remediating an issue' section on page 22 of the guidance to reflect all of this more clearly.

One respondent felt that the guidance could elaborate on instances where an issue cannot be remediated or when remediation has failed. They suggested that, particular in the latter instance, a period of 'probation' might be called for. We agree that this is an approach firms could take when seeking to remediate issues, long-running or otherwise, and the guidance does not exclude that possibility as part of the many options at firms' disposal.

One respondent commented that in some instances the line between mitigating a risk and remediating an issue could be blurred, such as in the case of financial soundness; should this be treated as a risk because of what an individual might do if they are in financial difficulty, or an issue, because of the fact that they are in financial difficulty? We agree that there may be cases where risks and issues overlap (and indeed where issues generate additional risks that need to be mitigated). Financial soundness is, however, one of the elements of F&P set out by the regulators⁵, and will therefore be likely to call into question an individual's F&P irrespective of [whether the person has led to any negative behaviours on their part. This does not, of course, mean that the issue cannot be remediated or appropriate supervision put in place.

The relationship with professional bodies

One respondent felt that the guidance should explore the relationship between firms and professional bodies in more detail, especially in relation to certified individuals requiring a Statement of Professional Standing (SPS) and the wider reputational impact of F&P issues on the sector (and particularly any relevant professional bodies). The guidance (and the BSB's *Supporting Guidance to Statement of Good Practice 1, Certification Regime: Fitness and Propriety definitions, sources of information and assessment record template*⁶) recognises that professional qualifications, SPSs and professional body membership are an important means of demonstrating competence and

⁴ That is not to say that there are not cases where financial soundness can become an issue for someone's F&P, such as repeated failure to meet agreed repayment plans, but firms generally endeavour to be supportive.

⁵ The FCA Handbook, FIT 2.1-2.3, <https://www.handbook.fca.org.uk/handbook/FIT/2/?view=chapter>

⁶ <https://www.bankingsstandardsboard.org.uk/pdf/Assessing-F&P-Supporting-Guidance.pdf>

capability, as well as of meeting the requirements of the Training and Competence framework where required.⁷ It also encourages firms to consider the potential reputational impact of F&P issues, including the interests of the wider banking sector, including professional bodies (see page 12).

In Table 1 of the guidance, we have now included the refusal of an SPS as an additional example of remediating an issue.

Alignment with existing processes

Several respondents raised specific points of clarification on how F&P assessments might align with existing firm processes, and we have tried to address these points in the final guidance.

One respondent suggested including detailed guidance on monitoring and amending responsibilities (for example, in relation to succession planning) to help increase alignment between the guidance and existing firm processes. While we agree that firms should be considering how to monitor F&P effectively throughout the annual cycle and equip employees to move into certified roles, these approaches are likely to be very firm-specific, and we wish to avoid making the guidance overly-prescriptive. In amending the sections on alignment with firm processes, however, we have emphasised that firms are likely to generate substantial data from the F&P assessment round, and that this can be used to help identify opportunities for better alignment with and of existing process across the firm.

The appeals process

The appeals process is central to a robust and fair F&P assessment process, especially when the F&P assessment is connected to a disciplinary process. Two respondents noted the importance of appeals and suggested that the guidance could include more detail on this.

In the guidance (see pages 24-25), we emphasise the importance of the appeals process in F&P assessments, and refer also to the BSB's *Statement of Good Practice 1, Certification Regime: Fitness and Propriety Assessment Principles*⁸ Where the subject is addressed in Principle 7. Developing supporting guidance on the appeals processes represents a significant body of work, and is not therefore something that we have been able to incorporate in this instance. We do, however, agree with the importance of this issue, and we will keep it under review when considering future work.

One respondent commented that, while the guidance assumes that removal of an F&P certificate would be accompanied by an appeals process, the removal of a certificate would in practice be immediate and permanent if the issue were sufficiently serious. Individuals should, as described in our *Statement of Good Practice 1, Certification Regime: Fitness and Propriety Assessment Principles*⁹, have access to a fair and impartial appeals process, regardless of the severity of the issue. That does not mean that an individual will always seek to appeal a decision, but they should be able to do so. Furthermore, an issue that resulted in the immediate and permanent withdrawal of a certificate would also be likely to result in dismissal, which would come with its own appeals route and process.

⁷ <https://www.fca.org.uk/firms/training-competence>

⁸ <https://www.bankingsstandardsboard.org.uk/pdf/Assessing-F&P-Statement-of-Good-Practice.pdf>

⁹ Principle 7: *Appealing the outcome of an F&P assessment and the withdrawal of a certificate*, <https://www.bankingsstandardsboard.org.uk/pdf/Assessing-F&P-Statement-of-Good-Practice.pdf>

The links to regulatory references

In the consultation, we outlined our proposed work on the regulatory references regime and invited comments on the links with the issues explored in this guidance. Five respondents offered comment, and noted the overlap with the conduct rules; concerns around the consistency of regulatory references across firms and with what individuals disclose themselves; the impact of historic disciplinary processes on regulatory reference provision, especially where the disciplinary process had not been completed; and the question of what constitutes information relevant to a regulatory reference and how firms can communicate this to their certified and senior manager populations.

We are grateful for all respondents' thoughts on this area, and will incorporate them in our forthcoming work on this subject.

Next steps

The *Certification Regime: Supporting Guidance on establishing pass/fail criteria and evidencing the F&P assessment* was published on [DATE]. We will keep its contents and relevance under review, and would welcome ongoing feedback on its usefulness, as well as additional illustrative examples that could be added to those already included in the guidance. The BSB will update its guidance as appropriate in the light of this ongoing review process.

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

- 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.

