

## **BANKING STANDARDS BOARD CONSULTATION**

### **Certification Regime: Regulatory References**

JANUARY 2019

## Regulatory references

### About the BSB

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

The BSB is a private sector body funded by membership subscription and open to all banks and building societies operating in the UK. It 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 reputation and every year conducts impartial and objective assessments of the industry's progress.

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

This guidance represents the pooling of member firms' knowledge through the BSB's cross-industry Certification Regime Working Group (CRWG). The CRWG was first convened in January 2016 and has since met regularly with the aim of considering where voluntary good practice guidelines could be useful to firms implementing the Certification Regime (CR) (which began in March 2016).

The CR requires senior managers to attest annually to the 'fitness and propriety' (F&P) of individuals who are managing significant risks. These employees, along with almost all employees in a bank or building society, are also required to act in accordance with conduct rules introduced at the same time.

While the 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. In this, it presents firms, therefore, with the collective opportunity to generate far-reaching and positive change through the raising of standards across the sector. The regulatory requirements of the CR are, seen through this lens, a starting point rather than an end in themselves.

Given the importance of the regime to standards of both behaviour and competence across the banking sector, the BSB has explored with CRWG members the scope for both learning from each other about implementing the new regime and identifying areas where consistency of approach could be beneficial. The resulting BSB good practice guidance has so far focused on helping to raise standards of behaviour and competence in banking through the effective assessment of F&P<sup>1</sup>.

### The purpose of the consultation

This consultation seeks views on the BSB's proposed good practice guidance on regulatory references, a core element of the Senior Managers and CR.

The purpose of a regulatory reference is to provide firms recruiting people into certified roles, senior management functions or notified non-executive director positions with information relevant to the assessment of that person's F&P that they might not gain

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<sup>1</sup> See '[Assessing Fitness and Propriety; Principles, definitions and sources of information](#)' and '[Dealing with risks and issues associated with assessing Fitness and Propriety](#)' for BSB guidance.

through other information supplied to them during the recruitment process. It is also to reduce the risk of damage (financial, legal and / or reputational) to firms arising from the potential actions of individuals in risk-taking roles and with a history of misconduct. It is therefore a key input into the assessment of F&P and is strongly linked to the BSB's work and good practice guidance on the CR and the assessment of F&P.

Firms perform three roles in respect of regulatory references. They provide regulatory references, passing on information about individuals to other firms (information that would be unlikely to be obtained elsewhere); they revise and update references if information comes to light that would affect a firm's assessment of an individual's F&P; and they receive regulatory references as part of the assessment of an individual's F&P when that person joins a firm, is being considered for or is new to a role. Irrespective of whether a firm is a provider or receiver of regulator references, it may face challenges relating to:

- fairness – what is it fair to include or exclude from the perspective of the individual and of the receiving firm? When, for example, a disciplinary process has not been completed, how much information should be included in a reference by the providing firm? Fairness is also relevant in the context of firms receiving regulatory references for use as part of a recruitment process as the information needs to be interpreted in a way that is fair to the individual, rather than used simply to screen out applicants;
- proportionality – acting proportionately when fulfilling the requirements of the regime, especially in taking reasonable steps to identify and verify relevant information, and when considering issues raised by regulatory references and updates to them; and
- consistency – ensuring that references are consistent both in terms of the quality and types of information provided across the firm, and between firms, so that receiving firms can have confidence that the appropriate range of information has been considered for inclusion by the providing firm. Consistency should not preclude, especially in the early life of regulatory references, learning from mistakes and changing course to address them.

In implementing the regulatory reference requirements firms must balance a range of significant considerations. These relate in part to legal and regulatory obligations (employment law, data protection, the requirement to give to another firm full and accurate information of relevance to an individual's F&P), but also to more general, ethical principles such as transparency of process, and consideration of the importance of a regulatory reference to an individual's career and livelihood. This BSB good practice guidance aims to help firms navigate these considerations. It is not intended to be binding on BSB members. We hope that members and the wider sector will find it relevant and practical, and that they will use or refer to it in developing their own processes, policies and procedures for implementing the requirements of regulatory reference.

### Consultation questions

We are seeking views on the guidance in general and, in particular, on all or any of the following questions.

- 1. Does the guidance succeed in its aim of providing a framework for firms seeking to implement regulatory references fairly, proportionately and consistently? If not, why not?**
- 2. Does the guidance help firms judge the degree of detail that it would be appropriate to disclose in a reference about an individual's conduct history? If not, why not?**
- 3. (For regulated firms) Would the guidance have practical application in your firm? How would you use it? If not, why not?.**
- 4. We are considering adding a fourth principle to our stated list of three (i.e. fairness, proportionality and consistency). In line with our stated purpose to help raise standards of behaviour and competence in the UK banking sector, we believe that it could be beneficial to include an overarching principle which relates to complying with the spirit as well as the letter of the regulation (i.e. it's aim of seeking to reduce the risk of damage (financial, legal and / or reputational) to firms arising from the potential actions of individuals in risk-taking roles and with a history of misconduct). Our guidance seeks to provide examples of how firms could do this, but we think making it more explicit could be useful in aiding decision making in firms as new and emerging issues arise. Do you agree? If not, why not?**

#### [Who should respond to this consultation?](#)

We are seeking views on this guidance from all interested parties, including firms required to provide and receive regulatory references (particularly those operating in the banking sector), and individuals subject to the CR and those representing them.

#### [How to respond to this consultation](#)

The deadline for consultation responses is **20 March 2019**.

Please submit responses by email to [certification@bankingstandardsboard.org.uk](mailto:certification@bankingstandardsboard.org.uk). We will not publish responses, but please indicate if you do not wish to be included in a list of those who have responded. We would be grateful if you could mark your responses (as appropriate) by reference to the questions posed above, and if you have any queries or if there is any more information that would be helpful, please contact us at the above address.

