

SUPPORTING GUIDANCE TO STATEMENT OF GOOD PRACTICE 1
(The Certification Regime: Fitness and Propriety Assessment
Principles)

SUPPORTING GUIDANCE 2: ESTABLISHING PASS/FAIL CRITERIA AND
EVIDENCING THE F&P ASSESSMENT

20 FEBRUARY 2018

About this guidance

This Supporting Guidance (Supporting Guidance 2) should be read in conjunction with the Banking Standards Board's (BSB's) *Statement of Good Practice 1 on the Certification Regime: Fitness and Propriety Assessment Principles* ([Statement of Good Practice 1](#)) and *Supporting Guidance to Statement of Good Practice 1 on the Certification Regime: Fitness and Propriety Definitions, Sources of Information and Assessment Record Template* ([Supporting Guidance 1](#)). It is intended to provide firms and those assessing fitness and propriety (F&P) with further information on the options available to them when making certification decisions, especially in cases where the issues are not clear cut.

Status of this document

This document provides Supporting Guidance to the BSB's [Statement of Good Practice 1](#), in particular Principle 4 (Establishing pass/fail criteria) and Principle 5 (Evidencing the F&P assessment). It provides more detail on how these two principles can be implemented in practice, and will be kept under review. Please contact certification@bankingstandardsboard.org.uk if you have any comments or queries.

BSB good practice guidance allows member firms and others in the sector to reference their own policies and practices against a set of aspirational guiding principles. It is developed in partnership with BSB members and through public consultation, 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 (and where relevant, this guidance should support both the letter and spirit of regulation). In the event of inconsistency, applicable laws, rules and regulations should prevail. This guidance is additional to all of the relevant regulatory requirements, and builds on, rather than substitutes for them.

Terminology used in this guidance

Certification risks and issues

In this document, a 'certification risk' is defined as a situation that, should it materialise, could call into question an individual's F&P.

A 'certification issue' is defined as a situation that has materialised and is calling into question an individual's F&P.

Types of assessment

There are several different situations in which an assessment of F&P may be necessary. We have characterised these as:

- when an individual takes 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').

We use these terms in this document. Further explanation of each can be found in [Supporting Guidance 1](#).

Elements of F&P

The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA)¹ consider that the most important factors in making a judgement about an individual's F&P are:

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

In our [Supporting Guidance 1](#) we set out the following definitions of these elements, which we also use in this document.

Honesty and integrity

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.

Reputation

Reputation in this context is the assessment of how an individual's behaviour has affected the impressions or opinions of others about 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 undermining 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

Competence and capability encompass two dimensions:

- the professional experience and qualifications that the individual brings to the role; and
- the performance of the individual in their role, developing and maintaining his or her knowledge and skills as demonstrated over time.

Financial soundness

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 his or her professional and/or ethical conduct.

¹ As set out in the FCA Handbook, FIT 1.3.1: <https://www.handbook.fca.org.uk/handbook/FIT/1/3.html#D15>

Illustrative examples

This guidance includes illustrative examples of the challenges that firms may encounter when assessing F&P, and how these could be addressed. The examples are not intended to suggest that there is a single formula for reaching a decision; each firm's approach will depend on its own risk tolerances. The circumstances of F&P decisions will be different, and firms will need to exercise their own judgement as to which factors are relevant.

Some member firms have told us that they use illustrative examples in training to help F&P assessors judge how to apply the firm's individual risk tolerance to F&P assessments. In this way, firms can set out what they consider the range of acceptable outcomes, given their own risk tolerance. The tables and scenarios in this document bring together examples derived from the experiences of members of the Certification Regime Working Group (CRWG), which highlight the issues they have more commonly experienced. We hope that firms will find these helpful in developing their own scenarios for use internally.

Context

The FCA has made clear its intention that the Senior Managers and Certification Regime are a key part of encouraging and supporting good conduct cultures within firms² rather than simply a regulatory minimum. Important to success in this regard, is enabling and encouraging certified individuals to take personal responsibility for their own professional development. The requirements of the Certification Regime provide an opportunity for firms, line managers and others involved in the assessment of F&P to both recognise and reward those who do this and provide positive evidence that is appropriate, proportionate and relevant to their role. The impetus created by the Certification Regime has the potential to play a significant part in a shared sectoral ambition of raising standards of competence and behaviour in UK banking.

This guidance approaches the implementation of the Certification Regime as an opportunity to raise standards of behaviour and competence. It focuses, therefore, on what can be done above any regulatory minimum. Regulatory requirements are, however, clearly central, and their impact (especially the Conduct Rules) will need to be considered when making certification decisions.

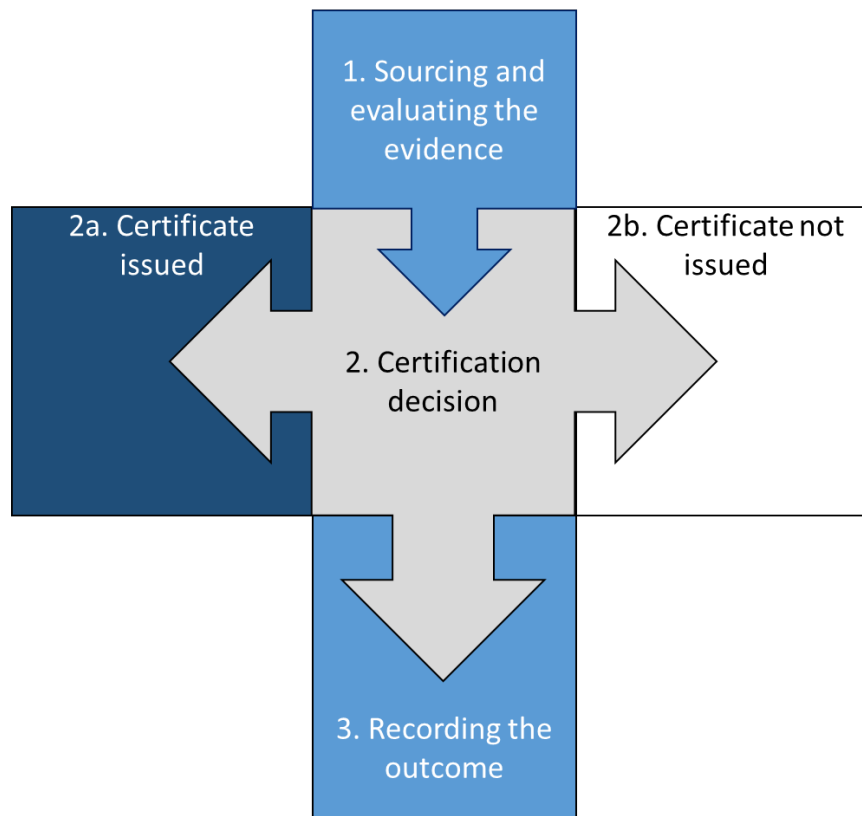
In our *Statement of Good Practice 1*, Principles 4 and 5 address making and evidencing the decision of whether to issue a certificate. During consultation, member firms identified these as areas where more detailed guidance would be helpful. This document has been developed in response, to provide firms with additional guidance when deciding whether or not to issue a certificate following an F&P assessment.

² See, for example, the speech by Jonathan Davidson, *Getting culture and conduct right – the role of the regulator*, delivered in July 2016: <https://www.fca.org.uk/news/speeches/getting-culture-and-conduct-right-role-regulator>

Structure of the F&P assessment

This guidance is intended to act as a tool for those assessing F&P. It is structured around the 'typical' decision-making process of an F&P assessment, as set out in Figure 1.

Figure 1 – F&P assessment outline



The assessment follows three distinct stages:

- sourcing (through either routine processes or a specific event) and evaluating the evidence that is needed to conduct an F&P assessment;
- deciding whether or not to issue the certificate, and taking action to mitigate risks or remediate an issue where necessary; and
- recording the outcome (which is also of relevance to regulatory references, should the firm subsequently need to provide one).

In most cases, the outcome of an F&P assessment will be straightforward and no risks or issues will be found (Box 2a in Figure 1). In a small number of instances, however, an issue may be identified for which there is no possibility of mitigation or remedy, meaning that a certificate should not be issued at that time (Box 2b).

This guidance addresses all three stages of the assessment (Boxes 1 – 3 in Figure 1), but focuses on the decision itself; how do those assessing F&P come to a decision about whether to issue a certificate, when the evidence is not clear-cut?

Figure 2 summarises the options available to firms in the case of a typical F&P assessment. It is unlikely that a certification risk (that is, something that could call into question an

individual's F&P, but is not actually doing so) would be so serious that a firm would not issue a certificate. This is, however, clearly an option, subject to the firm's judgement.

Figure 2 – F&P assessment options

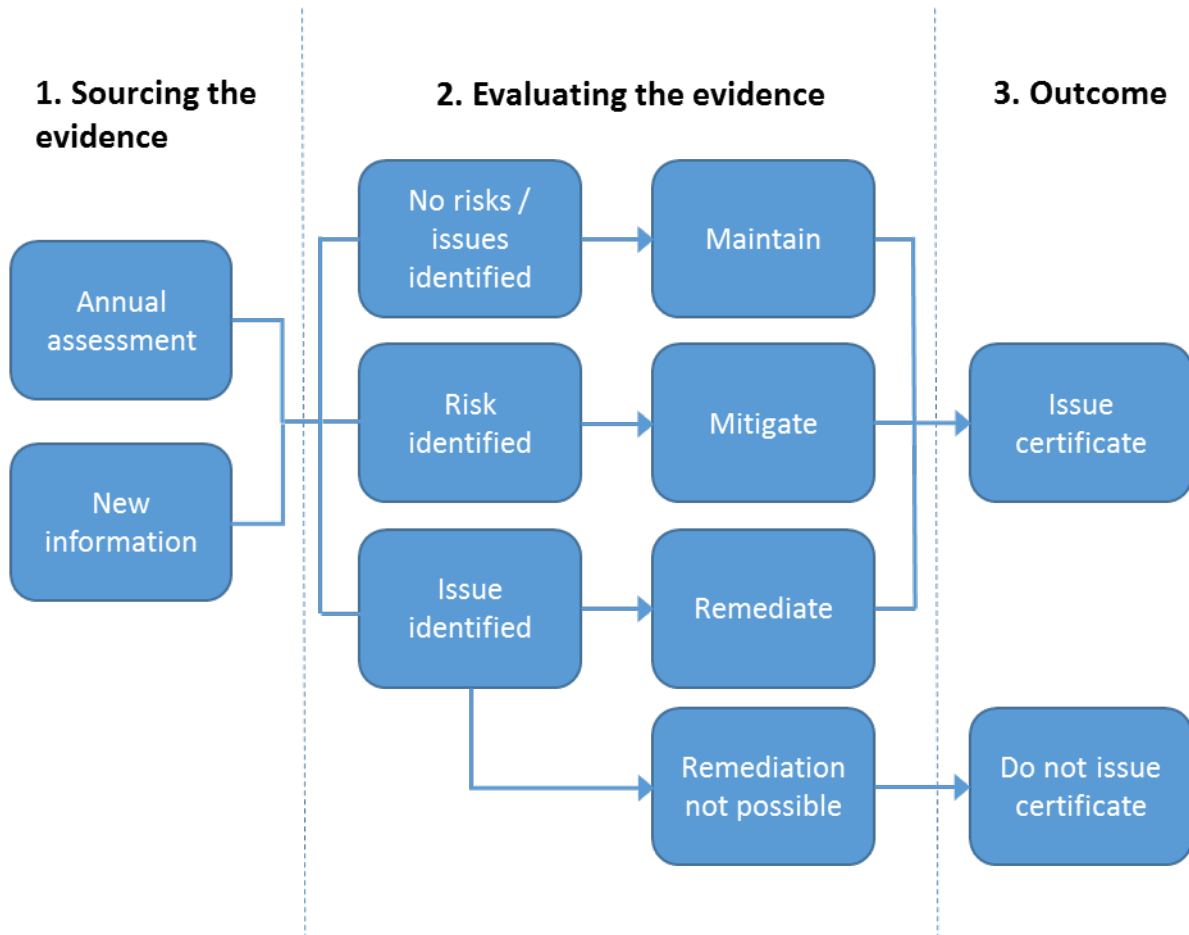


Table 1 provides a number of examples to illustrate how this process could work in a variety of scenarios.

Table 1	Scenario	Action
Maintaining F&P	A firm's certified population includes a number of individuals who have recently become subject to the requirements of the Certification Regime. Some of this newly-certified population have said that they would appreciate further guidance and support on how the responsibilities of the Certification Regime relate to their roles.	The firm provides mandatory training for all certified individuals, but may also invest in additional training or support for this newly-certified group, to ensure that they are able to maintain their F&P.
	A firm's certified population of retail investment advisors must maintain their qualifications to meet the requirements of the regime. This includes mandatory annual CPD.	The firm ensures that these individuals have sufficient time to complete their relevant CPD effectively.
Mitigating a risk	As part of their annual F&P assessment, an individual declares a potential conflict of interest due to a family relationship with someone working at a senior level in a client firm. They do not currently have any professional contact with the client, but could do so in future.	The firm decides to mitigate the risk of the potential conflict of interest by ensuring that the individual is prevented from working on all matters relating to that client. This requires putting in place some additional controls, in line with the firm's own policies.
Remediating an issue	An individual has failed to complete their annual update training within the required timeframe. On investigation, this was because the individual was unable to attend the dates of the course due to illness, and was not given any other time to catch up.	A plan is put in place and agreed with line management to ensure the course is completed as soon as possible. During this time, additional supervision is also put in place.
	The firm is notified by a professional body that one of their certified employees has been issued with a provisional Statement of Professional Standing because they are under investigation for a suspected breach of the professional body's code of conduct.	The firm may wish to discuss the matter further with the professional body to understand whether the issues would be relevant as part of the F&P assessment.

An individual self-declares during their F&P assessment a financial soundness issue, as a close family member is unable to work for (what are likely to be) long-term health reasons.

The individual agrees an action plan that the firm can monitor over time, including through an in-year assessment. The firm may also issue the certificate for less than a year (for example, for three months) to ensure that an in-year assessment is undertaken.

A firm finds that a certified individual has been posting comments on public social media sites that violate the firm's social media use policy. Following investigation the firm considers that, although this took place via the individual's personal social media accounts, it is relevant to the firm and the individual's F&P.

To remediate the issue, the firm requires the individual to remove the posts and to undertake additional training on the firm's policies on this issue.

Issue cannot be remediated

A firm discovers that a certified individual has repeatedly failed to disclose information relevant to the assessment of their F&P. The firm commences a disciplinary investigation, during which it becomes apparent that the individual was aware that they should have disclosed the information but chose not to do so.

As a result of the disciplinary process, the firm conducts a triggered assessment of the individual's F&P and decides that the failure to disclose calls into question the individual's honesty and cannot be remediated. The result is that the individual is not certified as fit and proper.

Sourcing the evidence

Sourcing the evidence that forms the basis of the F&P assessment is central to ensuring that the assessment considers all the relevant information, and was a subject of the BSB's [Supporting Guidance 1](#). This guidance (i.e. Supporting Guidance 2) relates to evaluating evidence in the context of an F&P assessment, once it has been sourced. It may, however, be useful to note here the importance of consistent decision-making across a firm's other internal processes when they provide evidence for an F&P assessment.

Incorporating evidence from other firm processes

Most of the evidence that feeds into an F&P assessment will have been gathered as part of a firm's other processes (e.g. performance evaluation, disciplinary procedures, routine screening etc). This helps to ensure that the assessment draws on relevant information held by other areas of the firm, avoids duplication and enables the firm to build a more rounded picture of its certified staff, based on the data available. The actions taken as part of one process (for example, the appraisal process or a disciplinary procedure) need, however, to be consistent with those taken in an F&P assessment. Many firms find that the clearest way to ensure that the different processes are joined up is to consider the impact on F&P alongside the decision made in the related process (although they do not necessarily have to be simultaneous); the impact of an appraisal rating on F&P (if any) may, for example, be considered at the same time as the rating is awarded.

Evaluating the evidence

Once the evidence relevant to an individual's F&P has been collated, this information will need to be assessed to determine whether a certificate should be issued. This process may identify risks or issues that call into question an individual's F&P, and the assessor will need to evaluate their significance.

Evaluating evidence in terms of F&P

An F&P assessment is distinct from (for example) a typical disciplinary process. In the former, firms are asked to make a judgement about an issue or set of issues against the elements of F&P prescribed in the regulatory regime; honesty and integrity, reputation, competence and capability and financial soundness. The outcome of an internal organisational process may, however, feed into the F&P assessment.

When evaluating evidence that appears to call into question an individual's F&P, the firm needs to identify what the issues are and why they matter for that person's F&P. The firm should also consider what element(s) of F&P might be relevant in this context.

Some types of evidence generated routinely by a firm, link very clearly to the elements of F&P. A credit reference check, for example, provides evidence that can be used to evaluate someone's financial soundness, while a relevant qualification may demonstrate an individual's competence and capability. For other more complicated pieces of evidence, however, the link to F&P may not be so clear, especially where these are subjective in nature.

How firms link the information they generate about an individual to the elements of F&P, will reflect their approach to what is relevant to F&P. Some firms will, for example, link all disciplinary outcomes to the F&P assessment; others may not consider this necessary, if the disciplinary action they take is consistent with what they would have done as part of an F&P process. Whatever its approach, a firm needs however to be able to articulate the element of F&P to which any piece of evidence relates, and why this evidence is relevant.

Positive, neutral and negative evidence

In deciding whether to issue a certificate, decision-makers will need to consider the range of evidence available about the individual at the time of the assessment. Evidence could be:

- positive, where the individual actively demonstrates the different elements of F&P (e.g. a relevant professional qualification or CPD record; feedback from others received as part of the annual assessment process);
- neutral, where there is no evidence to suggest that an individual does not meet the requirements of F&P (e.g. there is no reason to believe that an individual has been dishonest or lacked integrity); or
- negative, where there is evidence suggesting that there may be an issue with an individual's F&P (e.g. a screening check flagging an issue that had not previously been disclosed by the individual).

Much of the evidence that is relevant to the certification risks and issues discussed in this guidance will relate to situations that could call or have called into question an individual's F&P (i.e. negative evidence), or that are characterised by an absence of negative

information. Judgements relating to honesty, for example, may generally be informed by evidence of a neutral type, in the sense of there being no evidence of dishonesty.

The evidence that forms the basis of an F&P assessment can come from a variety of sources. Information relevant to the consideration of an individual's F&P does not have to be identified solely as part of a routine annual F&P assessment. Evidence of failure to remediate an issue, for example, could arise during in-year supervision and result in a triggered assessment, rather than be identified at a routine annual assessment.

Balancing the role of the individual and the role of the firm

Although firms are responsible for assessing the F&P of their certified population, the individual being assessed has a responsibility for building and maintaining the evidence that demonstrates their F&P, and for undertaking any mitigating and/or remediating actions that firms consider necessary. Firms, in turn, are responsible for ensuring that their certified population has the time, space and resources both to manage their own F&P (for example, the time to undertake training) and to provide sufficient evidence to satisfy the firm that a certificate can be issued. Firms may also need to consider how to handle any mitigation or remediation internally. This may include, for example, maintaining confidentiality in cases where an individual's financial circumstances call into question their F&P.

Firms should ensure that the organisation's culture supports their employees in acting in a way that is fit and proper. By the same token, where an issue has arisen that calls into question an individual's F&P, firms should consider whether broader organisational factors or issues related to the firm's culture have played a role. This does not mean that individuals should be made responsible for failings in a firm's practices or culture, or that there is no personal responsibility involved; rather, it means that firms should take the opportunity to consider whether and how their culture encourages behaviour that may be inconsistent with the requirements of F&P.

Factors to consider in evaluating the significance of information

Firms should have a framework in place to help assessors evaluate information that is relevant to F&P in a consistent way. Table 2 contains a non-exhaustive list of relevant factors to consider when evaluating the significance of information calling into question an individual's F&P. These factors may each mitigate or aggravate the outcome of the F&P process (i.e. whether or not a certificate is awarded and, if it is, whether and what action is needed to mitigate a risk or remediate an issue). While each case will be mainly concerned with circumstances specific to a particular individual, firms should also give thought as to whether there are any implications or lessons that can be drawn from a wider firm perspective, taking into account the regulatory context.

On pp. 13-19, we provide examples of how a firm might apply these factors when an issue has arisen. They illustrate how an assessor might use different factors to evaluate an issue's severity, and therefore what level of action a firm might take.

Table 2 Factors that may mitigate or aggravate the severity of an issue

Specific circumstances	Intent	Was the incident deliberate or accidental (e.g. from not understanding firm processes)?
	Frequency	How often has this happened? Was it a single incident? Is there a pattern? What does this suggest about causes or recurrence?
	Degree of harm or impact ³	To what extent does the degree of actual or potential harm or impact (e.g. to customers, clients, members or colleagues) aggravate the seriousness of the issue?
	Level of experience	How experienced is the individual? What is the degree of influence they have within the firm? Should they have known better?
	Individual reaction	How did the individual react to the circumstances? Did they, for example, actively seek to correct a mistake or take ownership of the situation?
	Level of ongoing risk	How significant is the ongoing risk to the firm?
	Personal factors	Are there any personal mitigating or aggravating factors, such as illness or bereavement?
	Nature of evidence	How did the evidence come to light (e.g. self-declared as opposed to uncovered through screening or an investigation)?
	Relevance	If the evidence arose within the individual's personal sphere (e.g. social media), to what degree is it relevant to their ability to perform in their role?
Wider context	Legal / regulatory context ⁴	Are there relevant regulatory statements? Is the incident within the scope of the conduct rules?
	Consistency with other firm decisions	What has the firm done in previous cases where there have been similar issues? What precedents might this decision set for the firm?
	Individual track record	What is the track record of this individual in the firm, or previously? Do they have a history of incidents that raise concerns, relating either to the same or different issues?
	Reputational impact	What is the potential reputational impact for the firm and/or the wider banking sector (e.g. a professional body)? Could it result in a loss of trust among customers, members and/or clients?
	Impact on other individuals	Does it raise questions over the F&P of any other employees (e.g. a line manager who has not provided sufficient oversight, or colleagues who may have been aware or involved)?
	Organisational considerations	Is there a wider issue within the firm? Are, for example, people in this role being incentivised to act in a certain way? Is there a controls or supervision failure in a specific area?

³ The degree of harm or impact caused may aggravate the severity of the issue, although lack of harm or impact (for example, an unsuccessful attempt to deceive) would be unlikely to provide any mitigating circumstances.

⁴ The impact of the regulatory environment and the Conduct Rules in particular will need to be considered early on in the assessment of risks and issues.

Worked examples: evaluating evidence calling into question an individual's F&P

This section gives two worked examples illustrating how an assessor might apply the aggravating and/or mitigating factors included in Table 2 in evaluating the severity of an issue, and how they might then deal with it. These draw on discussions with the CRWG.

An individual in financial difficulty

In routine screening checks, information has come to light that an individual is not able to meet their debts as they fall due. This may call into question their financial soundness. The F&P assessor might consider a range of factors when deciding the appropriate response.

Not all of the aggravating or mitigating factors in Table 2 (e.g. the degree of harm and impact on other individuals' F&P) will be relevant in each and every case. Considering which are, may help the assessor to decide the appropriate course of action, e.g. in this instance, offering provision of financial advice or putting in place additional monitoring by the individual's line manager to mitigate any risk. In cases of financial difficulty, firms often seek in the first instance to support the individual. Long-running difficulties in managing financial issues can also, however, lead to disciplinary issues if not dealt with effectively, and firms should also take this into account.

The table below illustrates how a firm might apply aggravating and mitigating factors to this example.

Factor	Key questions	Possible considerations
Intent	Is the incident a result of an unforeseen change in circumstances (e.g. a partner suddenly losing their income), or does it appear to be because of, for example, financial irresponsibility?	While it is difficult to judge an individual's financial decisions, a firm might take the view that some circumstances raise more concerns than others.
Legal / regulatory context	How does the regulatory framework apply?	Although there may be limited apparent impact on the individual's F&P, financial soundness is one of the characteristics that the regulatory framework takes into account.
Frequency	Is there a pattern to the individual's financial difficulties? Has this happened before, or is it a one-off event?	If an issue is clearly one-off, a firm is likely to be more concerned with how to support the individual. If, however, an individual's routine screening frequently raises concerns, the firm may consider that other action is necessary.
Individual reaction	Is the individual prepared to take responsibility for resolving the issue? If this was a known issue, have they taken steps to address it, such as sticking to agreed payment plans?	An individual actively trying to deal with financial difficulties is likely to be met more sympathetically than one who has repeatedly failed to engage with agreed remediation plans. Have they, for example, they tried to seek specific help or advice?
Personal factors	Are there other personal circumstances that might, for example, help to explain a pattern or a lack of self-disclosure?	Personal circumstances might help to explain, for example, why an individual felt unable to disclose an issue sooner.
Nature of evidence	How did this come to light, and should the individual have raised it sooner? In this example, routine screening raised the issue, but had it been going on for a sufficiently long time beforehand that a firm might reasonably have expected the individual to raise it? Had the individual indicated on any previous occasions that they were concerned about their financial soundness (whether through the F&P process or otherwise)?	The sooner an individual raises an issue with the firm, the sooner it can be dealt with. In this example, the firm might deal with an individual more supportively if concerns had been raised before the issue was revealed in routine screening. Individuals may, however, be uncomfortable raising issues before they have to if they are concerned about the consequences, and firms should consider whether their cultures encourage individuals to be open in this way.

Individual track record	Does the individual have an otherwise unblemished track record? Is this incident out of line with past behaviour?	A firm may be less likely to impose additional controls on an individual for whom F&P issues are out of character, than on someone with multiple F&P issues.
Consistency with other firm decisions	Does the firm have an existing policy in these circumstances, e.g. providing access to financial advice?	If a firm has an existing policy and practices in place for this type of issue, an assessor would need to think carefully about any reasons for departing from those precedents.
Degree of harm or impact	What is the potential external impact on the firm?	Is there likely to be an external impact on the firm or its customers (e.g. in this case, the individual is a mortgage advisor in a small branch) In this circumstance, the scale of the firm may determine how much this could aggravate the situation.

Failure to disclose a conflict of interest

It comes to light that an individual has failed to disclose a conflict of interest between themselves and a client firm with which they have contact, despite having been clearly and repeatedly asked to declare relevant conflicts of interest. This could call into question the individual's honesty and integrity. The F&P assessor might consider a range of factors when deciding the appropriate response.

Again, in this example, not all the aggravating or mitigating factors (e.g. the degree of harm or impact, and the reputational impact) are directly relevant. Considering how those factors that are relevant apply may help the assessor to decide the appropriate course of action, e.g. whether this requires simply putting in place additional controls around contact with the client firm, or raises deeper conduct issues.

In this example there is likely to be a disciplinary as well as an F&P process, so the decision about the disciplinary and the F&P impact may be taken together. There is nevertheless value in considering the factors that may affect the F&P decision itself.

The table below illustrates how a firm might apply aggravating and mitigating factors to this example.

Factor	Key questions	Possible impact
Intent	Did the individual deliberately withhold information or did they not understand what they were being asked for?	This will be central in determining whether this is an issue of honesty and integrity, or one of competence.
Level of experience	Should this individual have known better?	Individuals who have had to deal with conflicts of interest throughout their working life might be expected to have known better.
Relevance	How relevant is this to the role the individual performs and for which they are certified?	In this example, there is a conflict of interest with a client firm of the individual concerned, so a firm might be likely to consider the conflict and the failure to disclose it highly relevant to their role.
Organisational considerations	Does the firm's policy on declaring conflicts make clear what should be declared and what does not need to be? Is the self-declaration sufficiently clear that the individual would have known what was being asked?	If the policy or the self-declaration is not sufficiently clear, the firm will need to address this, and may wish to consider what action it is fair to take against the individual themselves.
Impact on other individuals	From the firm's perspective, does this raise concerns about other individuals' F&P in terms of their disclosure of similar issues (especially if the firm thinks that there may be weaknesses in firm controls or processes in the area)?	The firm may wish to take the opportunity to review its processes if it discovers a pattern of issues in relation to disclosures.
Frequency	Has this happened before, or is it a one-off event?	That this a repeated failure to disclose a conflict of interest may aggravate the severity of the issue, given the individual has had more than one opportunity to declare it.
Individual reaction	How has the individual behaved since this came to light? Are they prepared to take responsibility for resolving the conflict, if they can?	If they have tried to hide or deny the issue, this may aggravate concerns around their honesty and integrity. If, however, they have co-operated this may mitigate the issue to a question primarily of competence.
Personal factors	Are there other personal circumstances that might explain a pattern or a lack of self-disclosure?	Personal circumstances might help to explain why, for example, an individual felt unable to disclose an issue sooner.

Nature of evidence

How did this come to light, and should the individual have raised it sooner? Had the individual indicated on any previous occasions that they were concerned about potential conflicts of interest (whether through the F&P process or elsewhere)?

The sooner an individual raises an issue with the firm, the sooner it can be dealt with. In this example, the firm might deal with an individual more supportively if concerns had been raised before the issue was revealed in routine screening. Individuals may, however, be uncomfortable raising issues before they have to if they are concerned about the consequences, and firms should consider whether their cultures encourage individuals to be open in this way.

Individual track record

Does the individual have an otherwise unblemished track record? Is this incident out of line with past behaviour?

If the behaviour is out of character for the individual this may mitigate the F&P outcome. If however it is in line with past behaviour this may raise concerns about the individual's judgement in other areas of their role (as well as about their honest and integrity) and change the outcome of the F&P decision.

Consistency with other firm decisions

Does the firm have an existing policy in relation to these circumstances, e.g. of imposing additional internal controls?

If a firm has an existing policy and practices in place for this type of issue, an assessor would need to think carefully about any reasons for departing from those precedents.

Degree of harm or impact

What is the potential external impact on the firm?

Customer or client confidence in the firm is likely to be damaged by the existence of a conflict of interest. This could be significant if there is evidence that the individual has used their connection with the client inappropriately.

Issuing a certificate

It is likely that, for most individuals, firms will decide to issue an F&P certificate. In reaching that decision, however, firms may need to consider a range of risks and issues identified by the assessment and how to deal with these.

Maintaining F&P

For most certified individuals, an F&P assessment will be about considering how their F&P can be maintained. Identifying steps to maintain F&P should not usually affect the issuing of a certificate. It is, however, important that demonstrating F&P is not a 'one-off' annual event at the point of assessment, but rather an ongoing commitment by both the individual and their employer. The evidence available about an individual will change over time and needs to be kept sufficiently up to date to enable firms to make an informed decision about an individual's F&P, at least annually.

Some aspects of F&P will entail meeting specific requirements. To demonstrate competence and capability, for example, an individual may need to show that they are keeping up to date with product development, completing any required CPD or demonstrating positive behaviour. Not all firms will do this in the same way, although using the performance management process and the annual performance rating as key inputs into the F&P assessment will generally be part of the process.

Other aspects will be more discretionary, such as trying to gather positive evidence of an aspect of F&P when there is only an absence of negative information, or where evidence relates to a certified role different to that which they are seeking to move into. More generally, the F&P process can provide a good opportunity – alongside the performance assessment process – to recognise an individual's achievements and encourage the provision of positive evidence to inform future F&P assessments, rather than focusing solely on avoiding negative behaviour. Recognising achievement as part of a firm's general approach to F&P can also promote pride among employees in having certified status.

Where a certified individual wishes to undertake personal development beyond that required for the role, their line manager has an important task in guiding their efforts. The most effective choices and approaches will vary between certified individuals depending on their roles, seniority and experience. Some personal development activities may simply not be relevant, proportionate or appropriate in the individual's context (and line managers will need to say so if this is the case).

Both firms and individuals are responsible for ensuring that the evidence underpinning an F&P assessment is current. The nature of this responsibility will vary, depending on the source of information. Individuals, for example, will need to take responsibility (in discussion with their line manager) for their own personal development, while firms will be responsible for undertaking screening checks and carrying out performance assessments. When responsibility for demonstrating F&P sits with the individual, firms should make sure that they are giving their employees the necessary time and support for this.

Some non-exhaustive examples of circumstances in which individuals might need to maintain the evidence underpinning their F&P are provided in Table 3.

Table 3	Example reason	Example action
Maintaining F&P	The role has ongoing qualification requirements	CPD or other qualifications kept up to date
	Maintaining understanding of role requirements	Staying up to date with relevant policies, procedures or product information
	Providing positive evidence of F&P, where relevant (i.e. rather than being content with an absence of negative evidence)	Consideration in the annual F&P assessment of behavioural performance ratings or other metrics (e.g. customer outcomes or balanced scorecard)
	Maintaining financial soundness	Keeping financial affairs in good order

Mitigating a risk

When assessing the F&P of its certified population, a firm may identify certification risks. A certification risk is a situation that could potentially call into question an individual's F&P, but has not (yet) materialised as an issue. To prevent a risk from becoming an issue that does call into question an individual's F&P, a firm may wish to take steps to mitigate the risk such as imposing additional controls or supervision. It is unlikely that this would result in a firm being unable to issue a certificate. There may, however, be circumstances where the risk cannot be effectively mitigated in line with the firm's own risk tolerances, and the firm is not therefore prepared to accept it.

Firms are likely to encounter two distinct categories of risk: individual risks, and wider certification risks. An 'individual risk' is specific to the person and has the potential to call their F&P into question at a future date. Such risks are likely to be identified in the context of an individual's F&P assessment, although they could also emerge from trends identified at the level of a team, business area or larger group, and be mitigated through other existing processes (such as routine line management action).

'Wider certification risks' are structural and will tend to relate to the role rather than the individual, while nevertheless potentially calling into question the individual's F&P for that role. They might include, for example, inadequate controls in higher risk roles (e.g. those with close proximity to transaction decisions, privileged information or cash and settlement operations). These risks are most likely to be identified and mitigated at firm or department level using data and information from more than one F&P assessment. Identifying or mitigating these risks should not normally be the responsibility of the individual.

It is unlikely to be possible, for reasons of practicality and proportionality, to mitigate all F&P risks. Firms need to decide where to set their risk tolerance, taking into account their judgement of the significance and likelihood of a risk materialising into an issue, the frequency of the risk occurring, and any relevant regulatory objectives.

Some non-exhaustive examples of the types of certification risks assessors and firms may encounter are provided in Table 4.

Table 4

Individual risk

Type of risk	Example scenario
Conflicts of interest	Are there any conflicts of interest that could call into question any element of the individual's F&P, and have they declared them when required to do so?
Personal circumstances	Are there any personal circumstances specific to the individual, such as financial soundness, that could present a risk?
Absence of information	Is there any information missing about the individual for any reason (such as criminal records checks being unavailable in a specific jurisdiction, or a full regulatory reference being unobtainable from all relevant previous employers)?
Individual track record	What is the individual's track record within the firm and is there anything that might flag risks, such as complaints that did not result in action against the individual? Were any risks raised in their regulatory reference? How much experience does the individual have within the firm and with the requirements of the role?
Concentration of risks	Are there more risks associated with this person than would normally be expected for someone in this role?

Wider certification risk

Type and parameters of role	Are there aspects of the role that might affect where the firm sets its risk tolerances, e.g. close proximity to transaction decisions, privileged information or cash and settlement operations?
Whether the role was previously specifically regulated	Was this type of role previously regulated under the Approved Persons Regime, or are the requirements of the Certification Regime likely to be new to the individual?
Type of F&P assessment undertaken	What type of assessment is being undertaken? Is it e.g. a triggered assessment because of new information, or a new to role assessment for which the firm has little evidence of its own?

Remediating an issue

While certification risks have the potential to call into question an individual's F&P, certification issues relate to situations that have arisen. Issues may be identified either as the result of an F&P assessment, or through another route (e.g. customer or client complaints, or a whistleblowing procedure). When an issue is identified, the firm will need to be satisfied that the issue can be remediated and any risks managed before it issues a certificate for the role.

In some cases the firm may need to withhold a certificate until the issue has been remediated, which would likely also require amendments to the role the individual is performing as they will no longer be certified to perform it. This does not necessarily mean that a firm will not be able to issue a certificate at a later date, such as following an in-year assessment. A firm might in some cases consider that issuing a certificate with additional requirements, such as closer supervision, additional controls or for a period shorter than a year, is sufficient to address the issue. These additional requirements may subsequently be removed following further F&P assessments.

The level at which a firm decides to remediate an issue will depend on the firm and the nature of the issue in question. Some issues may be dealt with through the individual's line manager. Remediation of other cases may need to be addressed by other areas of the firm such as HR or other central functions, depending on the firm's own policies.

Where a firm and an individual agree remediation actions, the firm may need to monitor these to ensure that they are being carried out and are effective. The nature and timing of the monitoring will usually be agreed as part of the original remediation plan. It might entail, for example, an in-year assessment to review the effectiveness of additional controls and ascertain whether they are still necessary. If a remediation plan were to involve, for example, restricting the scope of a certificate, an in-year assessment would also provide the opportunity to review whether those restrictions were still necessary.

Some examples of types of certification issues and potential actions for remediation are provided in Table 5.

Table 5	Example reason	Example action
Individual issue	The individual is not assessed as competent to perform their role	Improvement plan to gain relevant qualifications, training or experience over a specified period. The firm adjusts the level and intensity of supervision and re-assesses the individual's competence.
	Poor performance not related to technical competence	Addressed through the performance management process
	The circumstances affecting F&P are expected to be temporary, e.g. the individual is new to the role or has had a change in circumstances	Additional controls, appropriate level of supervision and/or support for a specified period
	An individual declares a financial difficulty	Access to support, e.g. debt management plans, financial advice or financial aid; if necessary, additional oversight or controls
	Agreed remediation plans require the firm to assess progress (such as improving performance issues)	In-year assessment (possibly in combination with other measures)
Firm issue	Issues with the type of role rather than the individual filling it, such as a conflict of interest arising from the way in which the role is structured	Additional controls, supervision and/or training for all relevant individuals and/or changes to the way that the role is structured.

Not issuing a certificate

When remediation is not possible

It will not be possible, practical or proportionate to remediate all issues. This could be because of the nature of the issue itself, which in all cases the firm considers not possible to remediate; or because the firm considers that in this case remediation is not possible, perhaps because it has already failed or is otherwise not possible for the firm. The decision not to remediate an issue will be informed by each firm's risk tolerances and will result in a certificate not being issued. Some examples of the factors which firms could consider when evaluating whether an issue can be remediated are included in Table 6.

Given the consequences for the individual of deciding that an issue cannot be remediated, it is important that firms try to give as much clarity to F&P assessors about what it considers cannot be remediated or the point at which it remediation is considered to have failed. Where possible, a firm's policies should set out when something is likely to be considered a significant F&P issue. Firms may find it helpful to develop examples that illustrate their range of risk tolerance, for use in training.

Consequences of non-remediation

Where an individual has agreed to remediate an issue but has failed to do so, a firm will need to decide on the appropriate course of action. While there may well be a legitimate reason for no remedial action having been taken, persistent failure will be a cause for concern, especially where a firm judges that it cannot issue a certificate until the issue has been remediated. The firm may decide in these circumstances that the issue cannot in fact be remediated effectively by that individual.

Consistency with other processes

Many issues that cannot be remediated may also be such as to result in a disciplinary process. Any subsequent F&P assessment, whether an annual or triggered assessment, should take into account the outcome of the disciplinary process. Where a disciplinary process results in the termination of employment, a subsequent F&P assessment may not be undertaken. The circumstances of the termination of contract should nevertheless be recorded in any subsequent regulatory reference, or indeed notified to the regulator where appropriate.

Not all scenarios will result in a firm never issuing a certificate to an individual. In some circumstances, especially related to competence, a firm may be able to issue a certificate for a different (possibly more restricted or less senior) role for which the individual can demonstrate F&P. In this scenario, the firm may be able to issue a certificate for the original role at a later date if, for example, the individual acquires the necessary competence.

Appealing the outcome of an F&P assessment

Deciding not to issue a certificate is likely to have a material impact on an individual's career and professional standing. It is therefore important to ensure that, in taking such a step, firms have considered fully the circumstances, evidence and options, as well as what constitutes good practice. This is especially important in relation to ensuring that individuals have the right to appeal a decision through a fair process overseen by someone with suitable authority and skill, and who was not involved in the original decision. The BSB's

[Statement of Good Practice 1](#), and specifically Principle 7 (Appealing the outcome of an F&P decision and the withdrawal of a certificate) may be helpful in this context.

Incomplete assessment

There may also be situations in which it is not possible to complete an F&P assessment (when, for example, an individual leaves the firm before an assessment can be completed). In these cases the firm will need to record the incomplete status of the F&P assessment in order to be able to provide a regulatory reference, if necessary, at a later date.

Table 6	Factors why remediation may not be possible
Specific case not possible to remediate	Failure on the part of the individual to remediate an issue despite agreeing to do so (e.g. failing to attend required training or comply with new controls) The cost / time / resource needed to remediate is disproportionate (e.g. it would take too long, cost too much or require resource that is not available)
Type of issue not possible to remediate	The severity of the issue is too great (e.g. large-scale harm to customers and clients and/or reputation) The type of issue involved means that remediation is inappropriate (e.g. deliberate dishonesty, serious misconduct, persistent or severe conduct rule breaches, criminal conduct)

Recording the outcome

The final stage of the F&P assessment is to record the outcome of the assessment, including any risks and issues identified and the steps agreed to mitigate or remediate them. Having recorded the outcomes fully, firms can then collate and analyse any trends or areas of concern emerging across the firm; information that would not be apparent to or identifiable at the level of the individual assessor.

The BSB's [Supporting Guidance 1](#) provides an example of how the evidence and outcomes of an F&P assessment might be recorded and communicated within a firm, and it is important that firms consider whether they have accurate record-keeping systems in place to ensure that they are able to access all the information relevant to assessing an individual's F&P, especially when it is dispersed across an organisation.

Ensuring consistency across the firm

Some of the risks and issues addressed in this guidance can be identified by F&P assessors at the level of each individual being assessed. Others may be identifiable (and addressed) only at a firm level, looking across all of the information arising from the certification process. Central functions such as Internal Audit, Compliance and HR have important roles to play in drawing together and analysing the information coming out of F&P assessments, and identifying any areas of concern, trends or structural issues. Reviewing all of a firm's assessments can help to identify links to other processes (such as performance management and disciplinary processes) and promote consistency of assessment throughout the firm.

Global groups will also need to consider how they can ensure consistency in assessing the F&P of internationally mobile individuals performing certified roles. The BSB's [Statement of Good Practice 1](#), and in particular Principle 8 (Assessing F&P as part of a global group) includes good practice guidance on this.

