

# Fit and Proper Persons – Meeting the Criteria

February 2024

All individuals in a supervised role (as defined in Commission guidance elsewhere) are required under the Regulatory Laws in the Bailiwick to meet the “Fit and Proper” standard, set out in the relevant Minimum Criteria for Licensing (“MCL”), from the outset, and on an ongoing basis. This note is for individuals who are, or are intending, to hold one of these positions, or the entities looking to employ them.

## What does “Fit and Proper” mean?

This is the term used to summarise the standards that an individual being appointed to, or holding, a supervised role needs to demonstrate. Each of the Regulatory Laws requires us to have regard to certain matters when it comes to an individual looking to hold a supervised role, as well as permitting us to take into account the previous conduct and activities of that individual. Whether an individual is “Fit and Proper” will contribute to how the proposed or current licensee meets the relevant MCL.

## How is this measured?

We will consider each individual application in the whole, but will generally focus on a number of key points such as the individual’s:

- Competence, including their skills, knowledge, capability, and expertise:
  - Has the individual demonstrated by experience, professional qualifications and/or relevant training that they are suitable to perform the role?
  - Does the individual understand the structure, purpose and risks associated with the business model?
  - Does the individual understand the regulatory obligations associated with holding that supervised role?
  - Has the individual sufficient time (taking into account existing commitments) and skills to perform the role and to meet their responsibilities?
  
- Probity<sup>1</sup>, considering their integrity, honesty and reputation:
  - Will the individual act in an honest, fair, diligent, and independent-minded fashion in carrying out the proposed role? Will this include ensuring the good reputation of the Bailiwick, including avoiding or mitigating conflicts of interest?
  - Has the individual demonstrated that he or she will act in the interests of the entity and will not act in their own self-interest, and will fulfil all their relevant duties?
  - Has the individual been convicted of any of the offences set out under section 13 of the Online Personal Questionnaire?
  - Are there any pending cases against him or her?
  - Has the individual ever been subject to an action or decision taken in respect of a Licence, Registration, Authorisation, Professional Qualification or Membership held by him or her, or of a firm in which he or she held a supervised role or its equivalent?

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<sup>1</sup> The Guernsey Court of Appeal has set out the position on the test for probity: *The Guernsey Financial Services Commission v I Domaille et al* [2024] GCA003. Further, this judgment upholds *Wingate v SRA* [2018] EWCA Civ 366 which confirmed that a person need not be dishonest in order to lack integrity. The words of the UK Upper Tribunal: *First Financial Advisers Ltd v FSA (12 June 2012)* provide a useful guide to the legal concept of integrity: “[e]ven though a person might not have been dishonest, if they lack either an ethical compass or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity”.

- What is his or her employment history? Does it demonstrate his or her integrity and soundness of judgement?
- Has the individual demonstrated that he or she will deal with the GFSC in an open, transparent and co-operative manner?
- Solvency, in the form of the individual's financial soundness:
  - Has the individual been the subject of bankruptcy or analogous proceedings, or are any such proceedings pending?
  - Has the individual made any compromise arrangement with his or her creditors?
- Business practices, previous conduct etc:
  - Has the individual been engaged in any business practices or otherwise conducted themselves in such a way that casts doubt on his competence and/or soundness of judgement?

We assess the “fitness and propriety” of an individual by a number of means, including the following:

- 1) Reviewing the individual's Online Personal Questionnaire and any updates.
- 2) Gathering information from the notifications provided to us by licensed firms.
- 3) Conducting supervisory engagement with, or thematic reviews of, licensed firms according to their risk impact rating. As part of this process, we may meet with the directors and senior management.
- 4) Publicly available information and due diligence enquiries from relevant third parties, including other regulators.

The above is not an exhaustive list of the matters we may consider in reaching our conclusions, and we will have regard to these factors and additional ones on a case-by-case basis as appropriate. Our public statements, which often highlight cases where individuals have failed to act in a Fit and Proper manner, may also provide useful guidance on how we assess these standards. The full collection of our public statements can be found at <https://www.gfsc.gg/commission/enforcement/public-statements>.

### **What should a licensed firm or applicant do?**

We expect the licensee (current or proposed) handling an individual's appointment to assess him or her against the Fit and Proper standard, and to have the necessary processes in order to identify where they do not meet these, whether at the beginning of the appointment process or on an ongoing basis. Notification of any issues affecting a supervised role's fitness and propriety must be made to us on a timely basis.

*Please note that this note is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied upon as such. This note may be updated at any time to reflect changes to the Regulatory Laws or following guidance from the Royal Court.*