

Fit and Proper Persons – meeting the criteria

All individuals in prescribed positions (as defined in Commission guidance elsewhere) are required under the Regulatory Laws in Guernsey 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 guidance is for individuals who are, or 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 prescribed position 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 prescribed position, 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 focus on a number of key points such as the individual’s:

- Competence, considering 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 prescribed position?
 - Has the individual sufficient time (taking into account existing commitments) and skills to perform the role and to meet their responsibilities?

- Probity, considering their integrity¹, 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?

¹ The English courts have recently confirmed that a person need not be dishonest in order to lack integrity: *Wingate v SRA* [2018] EWCA Civ 366. The words of the UK Upper Tribunal in *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”.

- 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 prescribed position or its equivalent?
 - 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?

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 prescribed person's fitness and propriety must be made to us on a timely basis.

Please note that this guidance 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 guidance may be updated at any time to reflect changes to the Regulatory Laws, or following guidance from the Royal Court.