



APPROVED PERSONS (APER)

4 Approved Persons (APER) and FIT

4.1 Controlled functions

Controlled Functions are specific functions or job types that the FCA, as directed by the Financial Services Marketing Act 2000 (FSMA), deem to be central to an organisation's ability to meet its regulatory requirements. They are specified in the supervision guidance in the handbook and are the backbone to how the FCA see businesses being controlled and managed.

It will be necessary to retain an up to date register of controlled functions and approved persons at all times (attached as Template 1). From 2nd April 2013 the FCA has made changes to the controlled functions. These changes have been made to ensure that firms have the right persons in key positions to deliver effective corporate governance and risk management. A list of the controlled functions is below:

Type	CF	Description
FCA Governing Functions*	1	Director function
	2	Non-executive director function
	3	Chief executive function
	4	Partner function
	5	Director of unincorporated association function
	6	Small friendly society function
FCA Required Functions*	8	Apportionment and oversight function
Systems and controls function*	28	Systems and controls function
Significant management function*	29	Significant management function
Customer-dealing function	30	Customer function

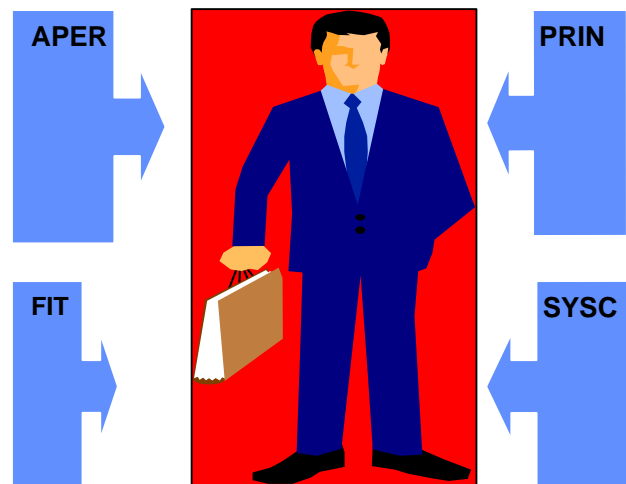
The FCA significant-influence functions are denoted with a * and comprise the FCA governing functions, the FCA required functions, the systems and control function, and the significant management function. A significant influence function is defined as one which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the firm's affairs.

4.2 What is an approved person?

An approved person (AP) is an individual given authorisation by the FCA to carry out a controlled function. Therefore, an AP's responsibility within the organisation will be to perform one or more controlled functions.

There are two main requirements of an AP who is responsible for a controlled function(s) and two other areas that they will be affected by:

1. **That such a person fulfils the Fitness and Propriety (FIT) requirements; and abides by the Statements of Principle and the Code of Practice for Approved Persons (APER).**
2. **They will also need to adhere to the requirements of PRIN see Section 2 Chapter 1; and fulfil the requirements of SYSC see Section 2 Chapter 2.**



An AP will have to demonstrate, with where appropriate documentary evidence, that they are capable of performing their role in a competent manner. The FCA will only approve an individual if they are satisfied the person is fit and proper. They will look at honesty, integrity, reputation, competence, capability and financial standing. The FCA will consider any indication that the individual is, or has been, in financial difficulties, which may adversely influence how they carry on their job. They will also review criminal offences, previous regulatory issues, e.g. disciplinary proceedings by the FCA or other regulatory body or regulatory complaints, dismissal from another firm, involvement in another business which has had authorisation refused or removed, disqualification from a director role and how truthful and candid the applicant has been in past dealings with the FCA.

Firms will be expected to monitor the continued fitness, propriety and competence of APs on an ongoing basis.

In carrying out their roles each AP is expected to have regard to the FCA's principles for APs and the application of the code of practice.

4.3 Statements of Principle

There are seven Statements of Principle and the code of practice provides guidance on how the seven Statements of Principle can be applied. The AP needs to understand the Statements of Principle and their obligation to adhere with them. It is recommended that these form part of the conditions of employment.

The FCA Principles for Approved Persons	
1	An approved person must act with integrity in carrying out his/her accountable function.
2	An approved person must act with due skill, care and diligence in carrying out his/her accountable function.
3	An approved person must observe proper standards of market conduct in carrying out his/her accountable function.
4	An approved person must deal with the FCA and with other regulators in an open and co-operative way and must disclose appropriately any information of which the FCA would reasonably expect notice.
5	An approved person performing an accountable significant influence function must take reasonable steps to ensure that the regulated business of the firm for which he/she is responsible in his/her accountable function is organised so that it can be controlled effectively.
6	An approved person performing an accountable significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he/she is responsible in his/her accountable function.
7	An approved person performing an accountable significant influence function must take reasonable steps to ensure that the business of the firm for which he/she is responsible in his/her accountable function complies with the regulatory system.

'Reasonableness will be judged on the information that a firm knew or ought to have known at the relevant time, and the actions taken in the light of that knowledge, and good business practice applicable at that time'.

4.4 The Code of Practice for Approved Persons

4.4.1 The Code of Practice – key elements

- Individuals should not continue to undertake a controlled function having failed to meet the standards of knowledge and skill required to perform the role.
- In organising business for which the individual performs a significant influence function, the individual should bear in mind the risks the business is prepared to take.
- The individual should consider reviewing each area of the business for which they are responsible so that it is clearly assigned to a particular individual.
- The organisation of the business and the responsibility of those within it should be clearly defined.
- If an individual's performance is unsatisfactory, then the firm should carefully review whether to allow this individual to continue in their position.
- Where the individual is not an expert in a business area, they should consider whether they or those that they work with have the necessary expertise.
- When delegating a task, there should be reasonable grounds for believing the delegate has the competence, knowledge, skill and time to address the issue.

4.4.2 Code of Practice – key areas to consider

The Code of Practice is intended to help determine whether or not an approved person's conduct complies with the various Statements of Principle. It refers to an AP being in breach of a principle where they are personally culpable.

1. **What is personal culpability?** - breaches of the principles where conduct is deliberate or the standard of conduct is below that which would be reasonable in the circumstances. This includes omitting to do something as much as doing something inappropriate and whether reasonable care was taken when considering information available and how this was acted upon. This includes failing to have an adequate understanding of regulation and the personal responsibilities arising out of being an AP.

2. **Statements 1 & 2** – breaches occur where APs deliberately mislead or attempt to mislead a client, the business or the FCA and/or fail to inform or advise the significance of material information. This includes:

- falsifying documents of any sort (all client documents and internal records including training, qualifications or past employment records);
- continuing to perform a controlled function despite having failed to meet FCA training and competence requirements (this includes relevant insurance and management/regulatory training);
- failing to pay due regard to the interests of a customer, without good reason;
- deliberately misusing the assets or confidential information of a client or the business. In the case of clients this applies to funds (including retaining a client's funds wrongly), market/price sensitive information or failing to advise the client they are incorrect in their understanding of a material issue including the required technical insurance knowledge related to the insurance services provided by the business;
- destroying, or causing the destruction of, documents (including false documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a client, his firm, or the FCA;
- deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled function;
- misleading others in the senior management team about the nature of any increased risk to the business through any types of new business being undertaken;
- deliberately designing contracts to include insurance in an implicit rather than an explicit way so as to disguise breaches of FCA requirements and standards of the regulatory system;
- deliberately failing to disclose conflicts of interest to a client including fees and profit sharing arrangements when asked;
- providing false information to the FCA;
- deliberately misleading clients;
- providing inaccurate or inadequate information to the firm or its auditors;

- failing to segregate client money and failing to process clients payments in a timely manner; and
 - not ensuring that there is a process in place to complete a fact-find on the demands and needs of the proposed client. This ensures any advice given is with a reasonable understanding of the risks involved in the transaction including information on any other form of existing insurance in force e.g. dual insurance or any overlap in cover which may affect the decision by the client to purchase further insurance. This should also be monitored and audited to ensure it happens.
- 3. Statement 3** – breaches of market conduct occur where APs permit professional relationships to be influenced through conflicts of interest or through putting their own interests above their duty to any customer for whom they act.
- 4. Statements 4 & 7** - breaches occur where APs fail to set up and implement adequate and appropriate systems of control to ensure compliance with FCA regulation and/or fail to disclose information in accordance with these internal systems or direct to the FCA as required. This includes:-
- failing to ensure the compliance systems and controls of the **whole** business are appropriately set up, monitored and reviewed; failures or breaches are dealt with in a timely manner, bringing in external support and advice as appropriate. This includes failure to act on knowledge of breaches of regulation in areas of the business other than under the AP's direct control;
 - failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved in a timely and appropriate manner, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards;
 - failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards;
 - not implementing recommendations made as a result of an independent review of the business;
 - not providing information to the FCA when requested and to the specified timescale;
 - not attending interviews or answering questions requested or demanded by the FCA;
 - failing to have a clearly defined reporting process regarding FCA/compliance issues within the business and not communicating it to all staff.

The key message regarding relations with FCA is “no surprises” – it is better to advise them of a situation with some idea of how you will put things right than for them to find out through other means. When considering whether information is material and should be reported to the FCA, it is worth bearing in mind that the FCA assesses the risk a business brings to them, by considering their three main objectives which are:

1. *Securing an appropriate degree of protection for consumers. Vetting at entry aims to allow only those firms and individuals satisfying the necessary criteria (including honesty, competence and financial soundness) to engage in regulated activity. Once authorised, the FCA expect firms and individuals to maintain particular standards set by them. They will monitor how far firms and individuals are meeting these standards. Where serious problems arise the FCA investigates and, if appropriate, disciplines or prosecutes those responsible for conducting financial business outside the rules. The FCA can also use their powers to restore funds to consumers;*
2. *Protecting and enhancing the integrity of the UK financial system to include its soundness, stability and resilience and ensuring it is not used for a purpose connected with financial crime; and*
3. *Promoting effective competition in the interests of consumers taking into account of the needs of those consumers who use or may use services*

5. Statement 5 – breaches occur when APs fail to organise the business appropriately including unclear reporting lines and levels of authorisation or confusing job descriptions. This includes:

- failing to apportion significant responsibilities among the business’s directors and senior managers;
- failing to review the competence knowledge skills and performance of staff to assess their suitability for their jobs;
- giving undue weight to financial performance over working in a compliant manner when considering the suitability and continuing suitability of an individual for a particular role;
- failing to review whether poor performers should remain in their role;
- allowing the business managerial or other vacancies to remain unfilled without adequate cover, thereby putting compliance with FCA requirements at risk; and
- failing to ensure that job descriptions show clear reporting lines, responsibilities including limits of authority, competences, qualifications, experience and skills required.

6. Statement 6 – breaches occur where APs fail to keep themselves adequately informed about the aspects of the firm's business for which they are responsible. This includes:

- failing to ask for adequate reports on business performance;
- failing to ensure progress happens, in a timely manner, of tasks or business issues which are delegated to others either in-house or externally;
- accepting implausible or unsatisfactory explanations from others on regulated business issues;
- permitting insurance contracts or deals or new areas of business without assessing the impact on the business;
- allowing inadequate monitoring of highly profitable transactions or unusual transactions or business practices;
- failing to ensure where an AP has delegated authority, investigation, management or resolution of an issue to another party, that they have the skills, knowledge, expertise and time;
- failing to understand the business for which the AP has responsibility;
- failing to ensure that where the AP does not have the expertise ensuring there is sufficient expertise in the business to provide him with adequate explanations of issues within the business area; and
- delegating work (either in-house or externally) without checking that the individual has the appropriate capacity, competence, knowledge or seniority or skill to deal with it.

4.4.3 The individual's 'wider' responsibility

The responsibility on the individual AP is wider than satisfying the FIT rules and compliance with the Principles for APs and Code of Practice for APs.

It is also the individual's responsibility to work collectively to ensure that the firm as a whole is in compliance with the Principles for Businesses (PRIN) and Senior Management Arrangements, Systems and Controls (SYSC). Although individual APs are assigned individual responsibilities, compliance with the new FCA regime requires a global and collective outlook by the individuals within the firm in order for the Firm to satisfy its requirements, i.e. the Principles for Businesses and SYSC.

As an AP, a thorough understanding of the SYSC rules is essential as the individual has a responsibility for ensuring compliance with these standards. The individual needs to make sure that they are fully aware of the systems and controls that are required for their controlled function(s) and that these systems and controls are not only in place but are also being used effectively.

4.5 The FIT and Proper test for Approved Persons

This sourcebook describes the FCA's criteria for deciding if someone is fit and proper for taking or continuing the responsibility for a controlled function.

The FCA will consider honesty, integrity, reputation, competence, capability and financial standing. They will also take into account the firm's size and business market and will remove approval of anyone they feel is not fit and proper.

Honesty, integrity and reputation are judged by the FCA on a number of factors including:

- criminal record;
- involvement in civil proceedings;
- disciplinary proceedings or investigations by a professional, government, FCA or other regulatory body;
- contravention of regulatory or other standards;
- complaints about regulatory activities;
- involvement in companies that have failed authorisation or licence to trade;
- involvement in management companies that have become insolvent or entered into administration;
- involvement in companies subject to regulatory criticism;
- dismissal or resignation from a trusted position;
- disqualification as a director or manager; and
- past experience with regulators and attitude to regulation standards.

The FCA will judge competence and capability on both satisfying the requirements of the training and competence standards and also by the individual demonstrating their ability to perform a controlled function.

The financial standing will cover both current financial status and also his/her record of any debt, bankruptcy or creditor arrangements, including whether the candidate has been subject of any judgement debt or award which remains outstanding or was not satisfied in a reasonable timescale. The FCA will not normally require the candidate to supply statements of assets and liabilities. The fact that a person may be of limited financial means will not in itself affect his suitability to perform a controlled function.

4.5.1 Personal files for approved persons

A full history of the AP will be required to enable the completion of the FCA AP Form. This will include:

- financial services' employment history over the last 10 years; and
- any implications to their Fit and Proper standing arising out of previous personal conduct.

The firm also has responsibilities to ensure that APs remain fit and proper and need to have a process in place to monitor this on a regular basis.

Template 2 contains an initial and annual self declaration on criminal records and financial standing.