

All firms



Applications for approval – our approach to adverse disclosures

This factsheet provides:

- a. details of our approach to applications where:
 - ii. individual candidates have criminal convictions; or
 - iii. individual candidates have falsified information.
- b. emphasis on the importance we attach to full disclosure by individuals and why firms must give us full reasons about why they have concluded that an individual is fit and proper in making the application for his/her approval.
- c. a link to our website and the Upper Tribunal's website where you can find examples of applications for approval that we have refused.
- d. reminders about:
 - i. mandatory submissions via Online Notifications and Applications System (ONA);
 - ii. references;
 - iii. application to perform a controlled function (shortened version);
 - iv. temporary absences; and
 - v. withdrawals where there is adverse information.

In this factsheet:

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Individual candidates with criminal convictions

Occasionally we receive applications for approval to perform a controlled function for an individual candidate who has a criminal conviction.

In our Handbook, we set out some general guidance about our approach to criminal convictions under the headings of COND and FIT ((**COND**) and (**FIT**)).

We consider several factors when we assess the fitness and propriety of an individual candidate to perform a particular controlled function. The most important considerations include the individual's honesty, integrity and reputation and to help us assess this, we will look at any criminal convictions.

We take all criminal convictions seriously. However, crimes where the individual has acted with dishonesty are of particular concern, even when the convictions are 'spent'. This is because we must assess whether to approve someone to perform a controlled function(s) relating to other people's finances. Parliament has recognised this by giving us a specific exemption to the Rehabilitation of Offenders Act 1974.

Whilst we will take into account any criminal convictions which an individual has, a criminal conviction does not automatically mean that we will propose to refuse an application. We will consider it in the light of all the relevant circumstances and make judgements on a case-by-case basis. When we make such judgements, we will look at several factors. These include:

- a. the nature of the crime(s) that resulted in the criminal conviction(s) – the scale and

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Continued: Individual candidates with criminal convictions

- impact and relevance to the controlled function(s) that the individual is to be approved to perform and the responsibilities that will come with that controlled function(s);
- whether the nature of the crime and/or its circumstances raises questions of honesty, integrity and/or competence;
 - whether the appropriate penalty, restitution or other remedial steps required have been carried out; and
 - the record of the individual since the relevant crime(s), including employment history and personal conduct.

When we consider these types of application, we also take into account the time that has passed since the criminal conviction(s). Generally the more time that has passed, the less weight we will attach to that criminal conviction. However, we will consider any subsequent misconduct and, for example, whether the offender has taken any steps to provide compensation to anyone who lost out because of his/her offence(s).

An individual may be open and cooperative in giving us details about the criminal conviction(s). This may indicate not only that the individual understands his/her obligations to co-operate with the regulatory authorities but also gives us some confidence that the individual is approaching full rehabilitation.

By contrast, we will place greater weight on the criminal conviction(s) if it appears the individual has not given us all the details about his/her past. An individual who fails to tell us about a criminal conviction suggests they have yet to come to terms with their past, and that they do not understand their duties to have an open relationship with us.

Some people have asked us to issue more specific guidelines on the above issues, for example, to produce a 'tariff' indicating how much time should pass after certain types of criminal conviction before we would consider an application in relation to that type of candidate. We do not and will not produce such a tariff because we are under a statutory obligation to consider each application on its facts and satisfy ourselves of the fitness and propriety of the individual concerned. The circumstances in different cases can vary enormously. Whilst there are certain general principles that we can and do apply, they can never be conclusive in any particular case.

Also the absence of a 'tariff' makes clear that we can and do consider other individual specific factors – e.g. if the individual regrets his/her actions, rehabilitation programmes he/she has attended etc – when we assess the overall circumstances and decide whether to grant approval.

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Individuals who have falsified information

Any incident where an individual has forged signatures and/or falsified documents is on the face of it, evidence that the individual concerned is not fit and proper. This type of conduct is dishonest as it is intended to mislead other people or organisations.

If, despite such an incident, you wish to make an application for such an individual's approval you will need to ensure that you and that individual disclose full and complete details of any such incidents to us. There is also an onus on you to explain why, in your opinion, that individual is fit and proper, as we have detailed below.

Applications for approval

How should you disclose this information?

The individual should have told you about the incident and you should ensure that you give us full details and any supporting documents in your application for his/her approval. You should attach a copy of the document in question and any correspondence about the incident (including the investigation report, if applicable). We will regard any failure to give us this information and/or documents as further evidence of a lack of openness and hence a lack of fitness and propriety on the part of the individual. It may also cause us to re-assess your own suitability to be authorised if there is clear evidence of any collusion on your part in the non-disclosure.

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Completeness of applications and non-disclosure

The Online Notifications and Applications System (ONA) must be used to submit applications.

If any disclosures are made in the fitness and propriety section of the application to perform a controlled function, full details should be provided in support of the application. This includes disclosures about any previous disciplinary investigation by previous regulators or employers involving the candidate.

We take non-disclosure seriously, especially where there is an apparent attempt to mislead. Non-disclosure will add to the

seriousness of the undisclosed issue. If our vetting checks reveal any matters that have not been disclosed, then applications will be subject to investigation and the candidate's suitability to be approved will be called into question. A person who knowingly or recklessly provides information to the FSA that is false or misleading may commit a criminal offence, and could face prosecution under section 398 of the Act regardless of the status of their application.

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Your and our assessment of individuals against the fit and proper criteria

You should only submit an application to perform a controlled function of an individual after you have made your own checks and satisfied yourself on your own assessment of the relevant criteria that the individual is fit and proper (see our rules under SUP 10.12.9G (**SUP 10.12**)).

Our assessment process includes undertaking criminal records checks on a sample basis and if we have reason to believe that relevant information has not been disclosed. Where candidates countersign their own application, which is often the case for sole trader and single director applications, they too will be selected for a criminal records check.

We will not automatically refuse applications for the approval of individuals who have criminal convictions or who have falsified documents. But these issues do raise serious concerns and they will need to be taken into account by you and by us in making a decision about the approval of that individual. You will need to make strong arguments to address these concerns. Your arguments should address our fit and proper criteria (**FIT**), in particular the individual's honesty and integrity, with reference to the adverse information and any supporting documentation.

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Websites

We publish information on our website about the cases where we refuse firms or individuals permission to carry out certain activities, or where we take disciplinary action against them.

www.fsa.gov.uk/Pages/Library/Communication/Notices/index.shtml

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The website of the Upper Tribunal provides information about the cases where our decision to refuse applications for approval

has been upheld by that Tribunal. **[Tribunal]**

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adverse disclosures**

A few reminders:

References: We have had a few cases where applicant firms have not obtained references from the previous employers of individual candidates. Firms should be aware that authorised firms are obliged to provide references for former individual employees who are to perform any of the controlled functions for another authorised firm (see SUP 10.13.12R and SUP 10.13.13G – **SUP 10.13**).

Application to perform a controlled function

(shortened version): Firms are reminded that the employment history and fitness and propriety sections do not need to be completed if the conditions in the notes to the application under 'shortened application form' are met.

Temporary absences: Circumstances may arise where individuals temporarily stop performing a controlled function, e.g. prolonged sick leave, maternity leave or for the duration of an

investigation. Firms will need to use their judgement whether to withdraw an individual's approval (notification to cease a controlled function (form C)). If they do, they will have to re-apply for approval if appropriate. If firms decide not to withdraw an approval they should consider whether they need to notify us (notification of changes in personal information (form D)) of any circumstances that might impact on the individual's fitness and propriety (**SUP 10.13**).

Withdrawals where there is adverse information: Where an employee's approval is being withdrawn and there is adverse information (for example when an employee has been dismissed) it would be helpful if as much information as possible is included on the withdrawal form. Firms should bear in mind that we might rely on this information when we assess future applications for approving the individual concerned.

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