

Summary of feedback received

November 2012

Consultation title	Anti-bribery and corruption systems and controls Proposed guidance and amendments to ' <i>Financial crime: a guide for firms</i> '
Date of consultation	March 2012
Summary of feedback received	<p>We received ten responses to this consultation.</p> <p>The large majority of respondents welcomed the proposed guidance and our effort to keep '<i>Financial crime: a guide for firms</i>' (the Guide) up to date.</p> <p>General comments</p> <p>Some respondents were concerned that supervisors were going to use the Guide as a checklist, rather than in a risk-based and proportionate way. Some thought the examples of good practice were mandatory, one respondent considered that explicit references to the risk-based approach should be inserted into all examples of good practice and two respondents were confused by the two-part structure of the Guide.</p> <p>Specific comments</p> <p>Some respondents were concerned firms would interpret our guidance on remuneration (specifically on managing the risk that remuneration structures reward staff for taking unacceptable financial crime risks) in a manner that prevented them from rewarding staff for good performance.</p> <p>A number of respondents asked for greater clarity over which function the FSA expected to oversee a firm's anti-bribery and corruption controls. Some were concerned that the repeated reference, in the Guide, to a firm's 'compliance function' would unduly restrict firms' ability to organise their business effectively.</p> <p>Some respondents said they would welcome a definition of 'third parties' and 'corruption' and some felt that an example of good practice, which referred to firms providing anti-corruption training to third parties, was disproportionate.</p> <p>Finally, one respondent thought that considering the political connections of staff and customers for risk management purposes</p>

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	<p>constituted a potential breach of the Data Protection Act and the European Convention on Human Rights.</p>
Response to feedback received	<p>We thank all respondents for taking the time to reply and for the constructive feedback we received. We have carefully considered all responses and have revised the Guide where appropriate.</p> <p>We have decided against amending the structure, language or approach of the Guide. We have made it clear, both in our PS 11/15 and in the introductory section of the Guide, that the Guide provides guidance to firms on steps they can take to reduce their financial crime risk. This guidance is not binding and it is not a checklist of things firms must do to meet our expectations. But we expect firms and supervisors to use it in a risk-based, proportionate and outcome-focused way: for example, a firm may decide that an example of good practice is not appropriate, taking into account its size and the nature and complexity of its business. We also acknowledged in PS 11/15 that a minority of respondents found a two-part Guide confusing; but since Part 2 provides summaries of, and links to, FSA thematic reviews and lists all examples of good and poor practice that were included in these reviews, we did not believe it was more user-friendly to merge both parts. Instead, we added cross-references in each part of the Guide to relevant material in the other part.</p> <p>We have also decided against amending references to a firm's compliance function in all examples of good and poor practice; as set out above, the Guide does not prescribe a certain course of action but sets out one, but not the only, way for firms to organise their financial crime systems and controls. Firms are therefore free to arrange oversight of their anti-bribery and corruption systems and controls in the way best suited to their business.</p> <p>We do not believe that considering the political connections of staff and customers for risk management purposes contravenes the provisions of the Data Protection Act or the European Convention on Human Rights. Considering the political connections of staff and customers does not mean a disproportionate intrusion into the private lives of staff and customers by, for example, establishing political affiliations or opinions; instead, it refers to the consideration of personal connections with governments or administrations, which could expose the firm to bribery and corruption risk. We have amended the reference to 'political connections' to make this clear.</p>
Changes made to the guidance as a result of feedback received	<p>We have made several minor changes to our guidance as a result of the feedback we received.</p> <p>In Part I Box 2.5, we amended our guidance on remuneration structures and financial crime risk to make clear that firms can reward staff in a proportionate way that does not encourage undue risk-taking. We deleted a corresponding example of poor practice and amended an example of good practice in Part II Box 13.9.</p>

In **Part I Box 6.2**, we clarified that we have regard to the Bribery Act's definition of 'bribery', but that the definition of 'financial crime' in our Handbook also extends to corrupt behaviour that is outside the Bribery Act's scope.

In **Part I Box 6.3**, we amended an example of good practice relating to whistleblowing hotlines to reflect the fact that the provision of anonymous hotlines, although desirable, may not always be possible. We also amended the corresponding example of good practice in **Part II Box 13.10**.

In **Part I Box 6.4**, we amended an example of good practice to alleviate respondents' concern that we expect all firms to provide anti-corruption training to all third parties in all cases.

In **Part I Annex 1**, we amended our explanation of the term 'corruption' to make clear that corruption includes bribery as well as certain other improper behaviour. We also explained our use of the term 'third party'.

Part II Box 13.2, we amended an example of good practice to make clear that we do not consider it good practice for all firms to hire anti-corruption consultants, but that we consider it good practice for firms to supplement internal with external expertise where staff knowledge and understanding of bribery and corruption risk may be limited.

In **Part II Box 13.7**, we amended an example of poor practice to stress that we consider it important that firms carry out ongoing checks on a risk-sensitive basis to identify changes that could affect an individual's integrity and suitability.

Throughout the document, we replaced the term 'political connections' to make clear that bribery and corruption risk is associated with the links of staff, customers or third parties to relevant political and administrative decision-makers, rather than just politically exposed persons. We do not expect firms to consider the political affiliations of staff, customers or third parties.

We also replaced many references to 'corruption' with references to 'bribery and corruption' to make clear that we expect firms to consider both bribery and corruption.

Finally, we took the opportunity of this revision to make minor administrative changes to the Guide, such as updated hyperlinks, and to correct typographical errors where the text of the Guide in the Handbook deviated from the Instrument 2011/75. In Part I, Boxes 1.1, 3.2 and 3.10, paragraphs 3.7, 7.3, 7.5 and 7.6 and Common Terms 'FATF Recommendations', 'FATF Special Recommendations', 'Fuzzy matching' and 'Wire Transfer Regulation' are affected by these changes. We have also inserted two new case studies in Chapter 3.

[You can access the full text of the guidance consulted on here](#)
