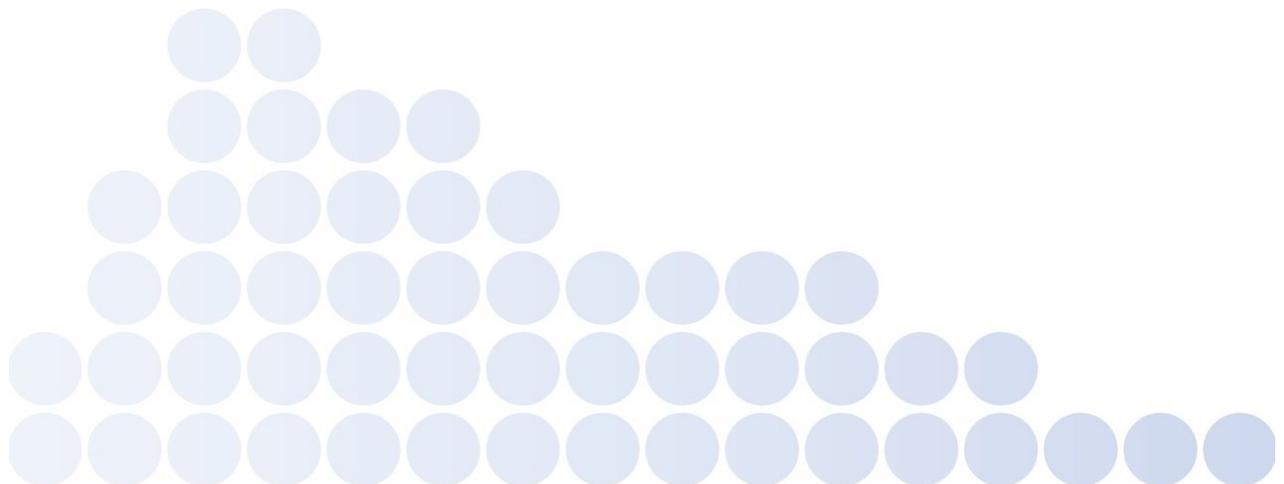




The Gibraltar Financial Services Commission

Fit & Proper Policy Statement

Published: August 2016



Policy Statement on the Assessment of Fitness and Propriety

1. The GFSC is committed to ensuring transparency and consistency in its approach to the application of the assessment of fitness and propriety.
2. This policy statement sets out some of the factors that the GFSC will use to determine whether a licensee, role-holder or controller/shareholder meets the applicable fitness and propriety requirements when seeking authorisation or approval or on a continuing basis in the context of ongoing supervision and enforcement. This policy statement will apply in all instances unless otherwise required by a statute.
3. This policy statement should be read in conjunction with our [Supervisory Approach](#), [Risk Appetite Statement](#) and [Enforcement Strategy](#) documents.
4. We may from time to time change our policy on the assessment of fitness and propriety. When we do, we shall place the amended policy statement on our website.

Overview

5. The GFSC has an obligation to ensure that all licensees, role-holders and controllers/shareholders demonstrate, and continue to act with, honesty, integrity and professionalism, and do not pose a risk to the public or the jurisdiction. As such fitness and propriety requirements are fundamental to the GFSC's Authorisation, Supervisory and Enforcement functions.
6. The Authorisations function uses the fitness and propriety requirements to assess individuals applying for licences, seeking appointment in notifiable roles or acquiring certain holdings in licensed entities. In the context of authorisation the burden of demonstrating fitness and propriety will rest on the individual concerned. The Supervisory function uses the requirements when looking at ongoing conduct. The Enforcement function uses the requirements as part of its investigation process to help assess whether a firm, licensee, notifiable role holder or controller/shareholder no longer meets the statutory requirements for holding the licence, notifiable role or ownership interest.
7. Where the fit and proper persons test is utilised by the GFSC's Authorisations, Supervisory and/or Enforcement functions, each function will consider a licensee's, notifiable role holder's or controller's/shareholder's fitness and propriety by reference to a range of key factors focused around three basic elements:
 - honesty, integrity and reputation;
 - competence and capability; and
 - financial position.
8. The GFSC will also take account of the activities an individual is performing or intends to perform, the licence or permission held or to be held and the markets within which they operate.

Some of the factors to be considered

9. The GFSC will have regard to a number of factors when assessing a person's fitness and propriety. The factors set out below are not intended to be exhaustive; not all of them will be relevant in a particular case, and there may be others that are relevant and which we will take into account. Any one or combination of factors may lead us to conclude that a licensee, role-holder or controller/shareholder fails to meet the applicable fitness and propriety requirements.

Honesty, integrity and reputation:

- Has the individual been convicted of any criminal offence?

The GFSC will be particularly concerned with offences that involve dishonesty, fraud, financial crime or an offence under legislation relating to money laundering, consumer protection or specific areas of financial services.

There will be a presumption that an individual convicted of an offence that involves dishonesty, fraud, financial crime or an offence under legislation relating to money laundering will not meet the fitness and propriety requirements.

- Has the individual been subject to any investigations or adverse findings in civil or in disciplinary proceedings?

The GFSC will be particularly concerned with investigations or findings that relate to misconduct, fraud or are connected to financial businesses or with the contravention of regulatory requirements.

There will be a presumption that an individual subject to a finding that directly relates to fraud will not meet the fitness and propriety requirements.

- Has the individual behaved in a way that is not compatible with that expected of a licensee or role-holder?

The GFSC will take into account behaviour which is dishonest, which is violent, where there is evidence of discrimination towards others, where an individual has misused their position to obtain pecuniary advantage or misused a position of trust.

- Has the individual been truthful and candid in their dealings with the GFSC or any other regulator, professional body or government body or agency?

The GFSC will expect licensees and role-holders to disclose any matters that have occurred in the Gibraltar and/or overseas.

Knowingly or recklessly providing false or incomplete information or failure to disclose material information will be treated as prima facie evidence of dishonest behaviour and will raise a presumption that an individual will not meet the fitness and propriety requirements.

Competence and capability:

- Does the individual possess the adequate knowledge, skills, experience and capability to understand the firm's activities and properly execute their responsibilities?

The GFSC will take into account any relevant qualifications, previous or current training, experience within similar roles, time available to perform the function, the size of the firm and type of work undertaken, the overall level of competence and any relevant personal characteristics.

Financial position:

- Has the individual, as an individual or as a director, partner or manager of a business, made any arrangements with creditors, filed for or been adjudged bankrupt, had a bankruptcy petition served on them, been the subject of a bankruptcy order or undertaking or otherwise had assets sequestered.

The GFSC will be particularly concerned with events covered in Gibraltar under the Insolvency Act 2011 and any matters that relate to bankruptcy, insolvency, liquidation, administration or voluntary arrangements in Gibraltar and/or overseas.

There will be a presumption that an individual who has been the of subject of matters that relate to bankruptcy, insolvency, liquidation, administration or voluntary arrangements in Gibraltar and/or overseas will not meet the fitness and propriety requirements.

Evidence

10. When considering those factors which raise a presumption that the fitness and propriety requirements have not been met, the individual will be required to demonstrate to the GFSC how they meet the requirements.
11. At the application stage, where the presumption is raised, the applicant will need to submit a full statement setting out any exceptional circumstances, any evidence of rehabilitation and an independent report or details of an independent professional person who the GFSC can contact for a reference.
12. At the supervision or enforcement stage, where the presumption is raised, the GFSC may use the failure to meet the fitness and propriety requirements as evidence that a risk is posed to the public or the jurisdiction. In those instances the GFSC will require evidence demonstrating that the individual has not fallen below the requisite level.

Rehabilitation

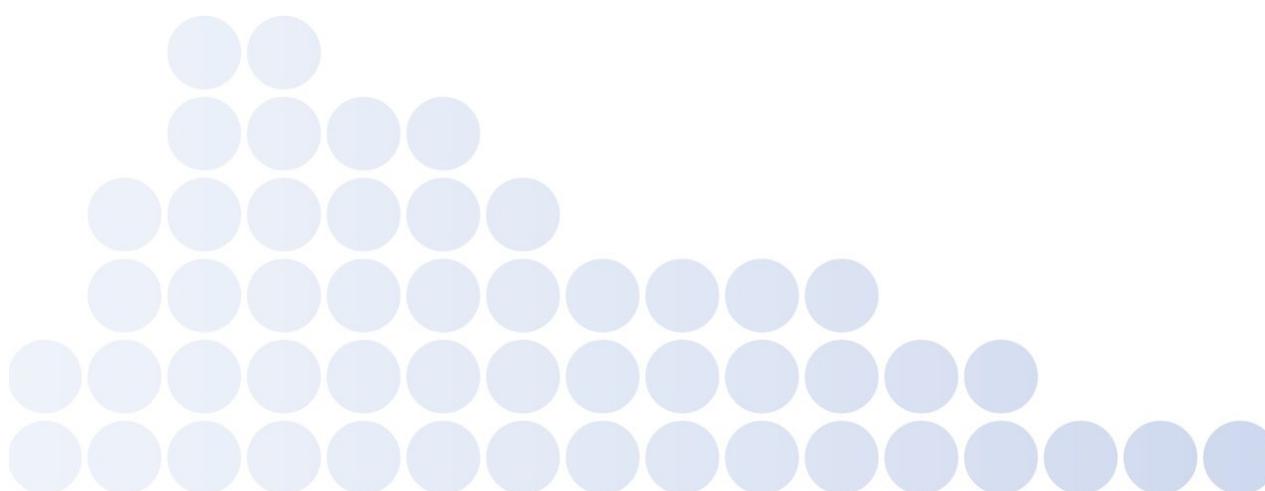
13. It is for the individual to demonstrate that they have undergone successful rehabilitation, where relevant. The individual circumstances put forward must be weighed against the public interest and the need to safeguard members of the public and maintain the reputation of the jurisdiction. We will consider each application on its own merits.

Failure to Meet the Requirements

14. The failure by a licensee, notifiable role holder or controller/shareholder to meet the fitness and propriety requirements can be expected to result in refusal of a licence or an application, revocation of a licence, authorisation or status as a notifiable role holder or controller/shareholder or other regulatory action by GFSC.

Ongoing Reporting

15. All licensees, notifiable role holders or controllers/shareholders are required to continue to meet the fitness and propriety requirements on an ongoing basis. If there is a change in an individual's circumstances which could or may cause the GFSC to believe that the individual has fallen below the fitness and propriety threshold the individual and, where relevant, the firm must promptly notify the GFSC. Failure to do so will be regarded as lack of candour in the individual's and/or firm's dealings with the GFSC.



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Gibraltar Financial Services Commission
PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar
www.fsc.gi
info@fsc.gi

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