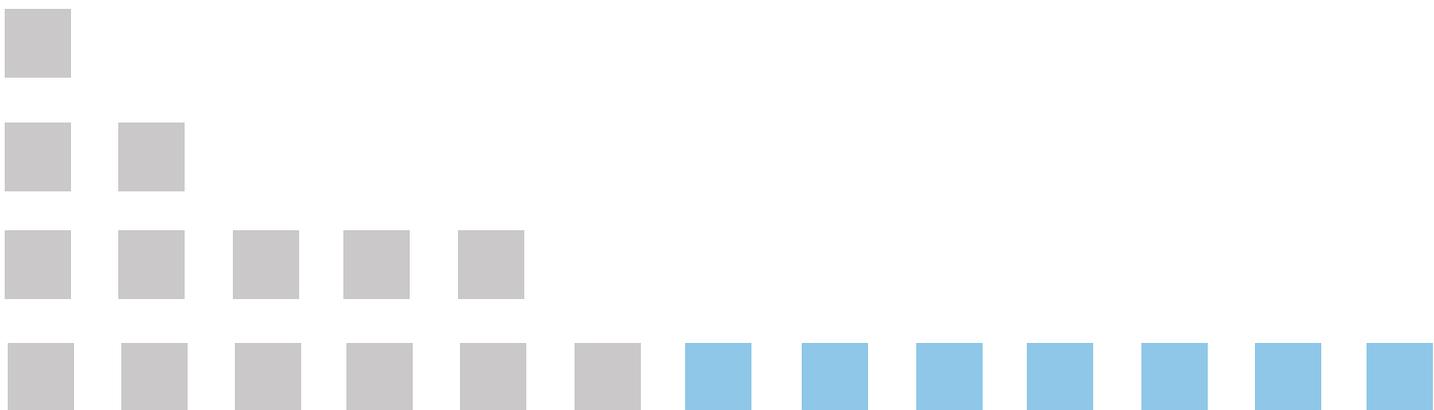


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# Skilled Persons Report

## Policy Statement



# Skilled Persons Report Policy Statement

## Introduction

This policy statement, established in accordance with Section 136(5) of the [Financial Services Act 2019](#) (the Act), sets out the principles that the Gibraltar Financial Services Commission (GFSC) will apply when exercising its powers under Section 136(1) to (4) of the Act to request a Skilled Person Report (SPR). Given that the cost of a SPR is borne by the subject of the report, it is important to understand what factors and circumstances we consider, and how we ensure that the approach taken is proportionate, when determining whether this route is the most appropriate action for us to take.

To understand the approach we take, this policy statement addresses the following areas:

- What a Skilled Persons Report is.
- Why we will request a Skilled Person Report - the circumstances under which the GFSC will request this type of report.
- Factors we consider when determining whether a Skilled Person Report is the most appropriate tool to use.
- How we will request a Skilled Person Report.
- The selection and appointment of the skilled person and the appointment process.

To note that we will also use the same approach, as set out in this policy statement, when we request a SPR under the [Supervisory Bodies \(Powers Etc.\) Regulations 2017](#).

## What is a Skilled Persons Report?

A SPR is one of the many information gathering tools available to the GFSC.

A SPR, commissioned under Section 136(1) of the Act, is an independent review, carried out by a skilled person, that usually focuses on a specific area(s) that has been identified by the GFSC (in accordance with the exercise of our functions) as needing further analysis.

The GFSC can use a SPR to achieve various outcomes. Some examples include:

- a specific requirement for information
- analysis of certain information
- need for expert advice or recommendations on a specific matter

The skilled person will report on the matters covered by the scope of the review and provide the GFSC with the information required.

A SPR is different to an Investigation. An investigation is where we appoint an Inspector in accordance with Section 137 of the Act. However, it should be noted that a SPR could identify issues that could lead to the appointment of an Inspector and/or enforcement action.

# Why we will request a SPR

In accordance with Section 136(2) of the Act, the GFSC can request a SPR from:

- an authorised person (“A”) - as defined in section 54 of the Act<sup>1</sup>
- any other member of A’s group
- a partnership of which A is a member
- a person who has at any relevant time been a person falling in any of the above-mentioned descriptions, who is, or was at the relevant time, carrying on a business.

Throughout this policy statement, we refer to the above types collectively as “firm”.

The rationale for requesting a SPR depends on the outcome we want to achieve.

In this way, a SPR can allow us to achieve various outcomes:

- identify, assess and measure a risk that we understand is likely to happen
- monitor the development of identified risks, wherever these arise
- reduce, limit or mitigate identified risks and so prevent them from crystallising or increasing
- respond to risks when they have crystallised - i.e. SPR will be used to determine what remedial action is appropriate in the context of the outcome of the report.

When we use a SPR, the SPR will make clear, to the firm and the skilled person, the nature of the concerns that led to the appointment of a skilled person and the possible uses for the results of the report. It is likely this would cover a situation where standard supervision is not delivering the required results, for example, if the firm is not cooperating with GFSC information requests.

A SPR commissioned for information gathering purposes could identify issues that could be used in support of enforcement action. Regardless of its purpose, we would ensure that the commissioning of a SPR is proportionate.

For illustrative purposes, we set out below further examples of scenarios that may lead to the GFSC requesting a SPR to be commissioned. The list is not exhaustive and not all the scenarios listed will always lead to the route of requesting a SPR. We will also take into account other factors (as set out in the next section of this policy statement) that influence whether the SPR is the most appropriate tool when seeking to address the concern, issue or desired outcome:

- Breakdown in communication/not cooperating adequately with the GFSC — for example where, despite numerous requests, the firm does not provide the GFSC with the required information to enable us to carry out our functions and/or a failure to engage in remediation action.
- Poor corporate governance – for example ineffective board oversight, challenge or a lack of understanding of the business and the risks that it faces.
- Concerns around customer protection – examples include where there is a high number of complaints against the firm, concerns around sales practices and the quality of services provided to customers or the lack of or a poor standard of information provided to customers.
- Inadequate systems and controls - procedures have not been implemented and systems and controls are not considered suitable for the size, nature and complexity of the business.
- Financial resources concerns – inability of a firm to quantify its current financial position and/or ongoing failure to meet financial resources requirements.

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<sup>1</sup> An authorised person is defined as: 1. A firm that holds a permission under Part 7 to carry on one or more regulated activities. 2. An EEA firm qualifying for authorisation (in accordance with regulations made by the Minister under Part 2 of Schedule 10) 3. A person who is authorised under Schedule 11 (cross-border marketing of recognised UCITS schemes). 4. A person who is authorised by a provision made under Part 31 (transitional provisions, including acquired rights).

## Factors we take into account (when requesting a SPR)

When we are considering whether to request a SPR from a firm, part of our decision making process involves looking at all the relevant information available to us to ensure that the approach we take is fair and proportionate. This allows us to assess the effectiveness and suitability of requesting a SPR and whether a SPR is the most appropriate tool we should use.

Each assessment is conducted on a case-by-case basis and takes into account a number of different factors. These are focused around the firm, the cost of producing the report (this is borne by the firm), our resources, what other powers and tools we have available (and could use in the situation) that would provide a more effective result.

A breakdown of some of the factors we are likely to take into account are set out below, together with further detail and examples of how we consider each of the areas when deciding whether to exercise the powers to request a SPR from a firm.

### Cost considerations

When looking at the cost implications we are likely to consider the following:

- Whether the firm would derive some benefit from the work carried out, and any subsequent recommendations, made by the skilled person. For instance a better understanding of its business and its risk profile, or improvements to its systems, processes and controls.
- If the work (to be carried out by the skilled person) should reasonably have been carried out by the firm (either internally or by instructing a third party). For instance a compliance review or the development of new systems.
- Whether the required information and documents are readily available, or if the firm's record keeping and management information systems are poor.
- Whether the analysis of the required information could be performed without expert assistance.
- If the firm appears to have breached regulatory requirements and put the interests of consumers at risk, and/or is unable or unwilling to review and remedy the matters of concern. Also, whether the GFSC can rely on the firm to remediate the concern itself.

### The objective of the GFSC's enquiries

We consider the outcome we want to achieve and the relative effectiveness and proportionality of our available powers to achieve those objectives. These would include:

- If the objectives are limited to gathering historic information, or evidence for determining whether enforcement action may be appropriate. In this case, the GFSC's information gathering and investigation powers may be more appropriate than the SPR route.
- If the objectives relate to obtaining expert analysis or recommendations (or both) to identify, monitor, prevent or remediate concerns, the SPR route may be an appropriate power to use (instead of, or in conjunction with, the GFSC's other available powers).

### Firm's current position

Some of the circumstances we could consider are:

- The quality of a firm's systems, processes, controls and records and whether the GFSC is confident that the firm is able to provide the required information.
- The required knowledge or expertise available to the firm to complete the review and whether it would more be appropriate to involve a third party (with the required technical expertise).
- The record of previous shortcomings and whether similar issues have happened in the past and, if so, whether timely remedial action was taken.
- Whether the GFSC is confident that the firm is able and willing to deliver an objective report.

- Whether the matter of concern involves actual or potential misconduct, therefore making it inappropriate for us to rely on the firm itself to enquire into the matter.
- The relationship with the GFSC and whether the firm is being open and cooperative.

## Use of other powers available to the GFSC

As part of our considerations, we would consider the appropriateness of other statutory powers we have available and the degree of proportionality for example:

- Whether we can gather information required without using specific statutory powers. For example, this could be achieved by carrying out an onsite visit by GFSC staff or requesting information on an informal basis.
- Requesting information from a firm using our information gathering powers.
- Appointing an Inspector to carry out an investigation, under Section 137 of the Act.
- Whether it is necessary to obtain a technically sound and independent report for use in any subsequent proceedings.

## GFSC-related considerations

We look at the impact on our resources and assess whether we are better placed to carry out the review. In doing so we consider the following:

- Whether the GFSC has the necessary expertise.
- Whether the resources required to produce a report itself are available within the GFSC.
- If the review would be the best use of the GFSC's resources at the time.

## Nomination and appointment of a skilled person

This section sets out the selection and appointment of a skilled person in accordance with Section 136(3) of the Act.

There are two different routes for the appointment of a skilled person:

- The firm nominates a skilled person and seeks approval from the GFSC.
- The GFSC nominates a skilled person.

As a matter of policy, we will seek to nominate or approve an appropriate Gibraltar based professional to act as a skilled person. In circumstances where the skills required are not in our opinion readily available within the Jurisdiction, we will appoint external persons. It is our intention to **support** the **appointment** of these persons within the Jurisdiction in each of the areas we work.

Where a firm selects individuals, we usually request that the firm provides the names of individuals (usually at least three) for us to be able to consider and ultimately approve one. We also ask for details of the firm's assessment as to the suitability of the individuals for the role and background details of the respective individual's experience and expertise to enable him/her to carry out the SPR.

This is a key part of the GFSC's assessment, as we must be satisfied that the individual meets the requirement under Section 136(3) (a) of the Act i.e. has the professional skills necessary to carry out the review and produce a SPR. To achieve this we ensure that the individual demonstrates the following characteristics:

- Knowledge and understanding of the firm's activities and processes, as well as expertise in the type of business being carried out and any relevant specialised/technical knowledge required.
- Level of competence and skills necessary to carry out the review and produce a report on the matter concerned.
- Expertise, taking into account any relevant professional qualifications, previous training and membership of relevant professional bodies.

- Experience in the business area in question, in the field of expertise required and/or previous experience in carrying out a SPR or similar appointment.

Other factors we take into consideration when nominating or approving the appointment of a skilled person are:

- Independence – how detached the individual is from the firm and whether there is any professional difficulty or potential conflict of interest arising from reviewing the matters to be reported on to provide an objective opinion.
- Time available to the skilled person to perform the function - we also consider the length of time to conduct the review and report on the findings as well as the ability to complete the report in the specified timeframe.
- The size, nature and complexity of the firm subject to the SPR - as this may require specific technical skills and other means of support to ensure that the SPR is technically sound and completed within the specified timeframe.

## Notification to carry out a SPR

Prior to determining whether to commission a SPR, we will normally contact the firm to discuss why we intend to take this approach and what we aim to achieve. In doing so, this prompts discussion around whether the SPR is the most appropriate means of obtaining the required information, the scope of the SPR, who to appoint and the likely cost.

If we decide to proceed and request a SPR, under 136(1) of the Act, we will do this via a written notice. This notice will also set out the information required by Section 136(4) of the Act in respect of timeframes and format of the SPR.

The SPR notification may set out:

- Why we are requesting the report and details of the nature of the concerns that led to the request, together with how we may use the results of the report.
- Scope of the report – the areas the report must cover and the questions that need to be addressed, together with details of any specific points we want the review to focus on.
- Either a:
  - Request for the firm’s proposed skilled persons nominations and rationale for selecting those persons. Together with details of how the persons fit the description of skilled person.
  - List of nominated skilled persons that the GFSC has approved as being suitable to carry out the SPR.
- The date a skilled person must be appointed by.
- The date we expect the report to be submitted by or intervals at which the skilled person should report on progress to the GFSC.
- Information on the format of the SPR. Generally, the format of the written report includes a summary of the areas reviewed, a list of the findings with recommendations from the skilled person on how the firm can remediate these.

It is important to note that we will engage with the firm and/or the skilled person throughout the SPR process as and when required. Open communication is encouraged so that expectations are managed and it is understood by all parties what the SPR is to cover, the associated cost (to produce the SPR) and the format of the report. This aims to avoid any potential misunderstandings and ensures that the SPR is fit for purpose as well as promptly addresses any queries either party has on the process or the report itself.

We expect the firm to be provided with an opportunity to submit written comments on the draft SPR to the skilled person prior to being finalised. Once the SPR is finalised a copy is issued to both the firm and the GFSC.

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