



## **GUIDANCE FOR SKILLED PERSON REVIEWS**

Last updated: October 2018

### **Under Financial Services and Markets Act 2000 as amended by the Financial Services Act 2012, Section 166 and Section 166A**

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### INTRODUCTION

### BACKGROUND

1. This guidance is issued by ICAEW (The Institute of Chartered Accountants in England and Wales) in October 2018 to help chartered accountants and other professionals who are asked to report under Section 166 (s166) and Section 166A (s166A) of the Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012 (FS Act). It is intended to be used for engagements commissioned on or after October 2018. This guidance updates and replaces the guidance in ICAEW Technical Release TECH15/14FSF. (Skilled persons' guidance – reporting under section 166 Financial Services and Markets Act 2000).
2. The Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England (BoE) have various information gathering and investigation powers under FSMA. This includes (1) a power under s166 to require a report by a skilled person; and (2) a power under s166A to require a skilled person to collect and update information. In addition, under paragraph 12 of Schedule 17A FSMA, the BoE may exercise the s166 powers in relation to various clearing houses. References in this guidance to the 'appropriate regulator' mean either the FCA, the PRA, or the BoE as appropriate.
3. Section 166 gives the appropriate regulator the right to require an authorised firm, which might include other members of the group of which the authorised firm is or has been part (as defined by s166(2) FSMA), to provide the appropriate regulator with a report on any matter about which information or documents could reasonably be required by the appropriate regulator in connection with the exercise of the functions conferred on it by or under FSMA. The skilled person approved or appointed by the appropriate regulator must appear to the appropriate regulator to have the skills necessary to make a report on the matter concerned.
4. Following legislative changes implemented under the Financial Services Act, an appropriate regulator may commission a skilled person review either 'directly' or 'indirectly'; these concepts are explained in more detail below.
5. Section 166A is a power that the appropriate regulator can use where an authorised firm has contravened a requirement to collect, and keep up to date, information of a description specified in the rules.
6. The appropriate regulator may commission an s166 or s166A either:
  - by requiring the authorised firm to appoint the skilled person (indirectly commissioned), or
  - by appointing the skilled person itself (directly commissioned).

Where the authorised firm appoints the skilled person, the contractual arrangements are between the authorised firm and the skilled person. The authorised firm will approach a number of potential skilled persons and request they propose for the work. The chosen skilled person must be approved by the appropriate regulator, who will consider whether the skilled person has the necessary skills to carry out the work. This is known as an 'indirectly commissioned s166.'

Where the appropriate regulator appoints the skilled person itself, the contractual arrangements are between the appropriate regulator and the skilled person. To enable the FCA, PRA and BoE to comply with the European Procurement Directive and the Public Contracts Regulations 2015, a panel of skilled persons is maintained by the appropriate regulators and renewed every four years. The appropriate regulator will ask skilled person firms from the relevant subject matter lot to propose for the work. This is known as a 'directly commissioned s166.'

7. The purpose of this Technical Release is to provide supplemental guidance to skilled persons in undertaking their role and carrying out their responsibilities in connection with a skilled person review engagement. It is not endorsed by the PRA, FCA or BoE and its application is voluntary. Representatives from the PRA and FCA were observer members of the ICAEW working group tasked with creating the guidance.
8. A skilled person may be an accountant, lawyer, actuary, or any other person (such as a specialist adviser, consulting firm, or other professional) with relevant skills. A skilled person may be an individual but is more typically a firm.
9. This guidance is not intended to address reports that may be commissioned by:
  - authorised firms as a result of the FCA or PRA requesting information under s165 FSMA, the power to require information from an authorised firm directly; or
  - the FCA or PRA under s167, s168, or s169 FSMA, appointments of investigators to carry out investigations.

### APPROPRIATE REGULATORS' POLICIES ON THE USE OF S166 AND S166A

10. Reviews by skilled persons are one of a number of tools that the appropriate regulator can use in supervising authorised firms. The appropriate regulator may use its powers under s166 and s166A in conjunction with its other powers.
11. The decision to use s166 powers can be prompted by a variety of factors that lead the appropriate regulator to seek an assurance report or require investigation, verification, assessment or analysis of a particular matter<sup>1</sup>. The appropriate regulator issues a requirement notice to set out the scope of work they are seeking.
12. The appropriate regulator may require the appointment of a skilled person under s166 for one or more of the following purposes<sup>2</sup>:
  - **diagnosis:** to identify, assess and measure risks;
  - **monitoring:** to track the development of identified risks, wherever these arise;
  - **prevention:** to limit or reduce identified risks and so prevent them from crystallising or increasing; or
  - **remedy:** to respond to risks when they have crystallised.
13. In deciding if a skilled person review is needed, the appropriate regulator will consider whether it is the most appropriate tool to use, its objectives (for example the nature of the information that it requires, such as simple historical information or expert analysis or recommendations), whether such a review is a proportionate response in the situation, and cost and resource considerations<sup>3</sup>.
14. A skilled person review could be commissioned by the appropriate regulator as part of its normal supervisory procedures or in contemplation of enforcement action. In cases where the appropriate regulator may be contemplating enforcement action, the appropriate regulator may, for example, request a skilled person review in order to obtain expert analysis in relation to the firm's compliance or non-compliance with that regulator's requirements (for example the adequacy of its control environment or the suitability of advice given to customers in relation to a particular product).

### MEETING EXPECTATIONS DURING A S166 SKILLED PERSON REVIEW

15. The below considerations can help guide skilled persons to meet regulatory expectations during a s166 review.
16. **Agreeing scope:** If the scope of the draft Requirement Notice is unclear, the skilled person should discuss this with the appropriate party (depending on whether they are contracting directly or indirectly). In the course of this discussion the skilled person should establish a full understanding of the 'exam question(s)' being asked in the Requirement Notice, to ensure that the appropriate regulator's expectations are met. Chapter 3 contains more guidance on this topic. Any changes to the scope must be agreed by the appropriate regulator.
17. **Clarifying procedures:** Following confirmation of appointment, the skilled person should prepare a detailed procedures document or work plan that aligns to the Requirement Notice. This should be discussed and agreed early with the firm and the appropriate regulator. Chapter 3 contains more guidance on this topic.
18. **Type of report:** A skilled person can provide a variety of different types of report, depending on what the appropriate regulator requires and what is technically possible. Reasonable assurance reports require the most precise requirements and highest evidential standards, as such are not always appropriate. It is important to clarify the desired report as early as possible. If a mixed scope review requiring elements of a reasonable assurance and review and recommend report is needed, this can be priced and performed by the skilled person.
19. **Independence:** It is important that the skilled person considers themselves appropriately independent to carry out the review. The appropriate regulator will also consider whether a skilled person is conflicted. Skilled persons are typically asked for a breakdown of other work performed for the firm subject to the s166 review, including details of the type of work completed and the amount of fees for such work. The appropriate regulator's standard for considering whether independence safeguards are sufficient to overcome a self-review threat may be higher than the skilled person's own internal assessments. (See paragraphs 43-47 'Conflicts of interest, independence and objectivity' for further commentary).
20. **Communication:** The skilled person should ensure that there is regular communication with the appropriate regulator's contact as listed in the Requirement Notice, through bilateral and trilateral meetings. Where necessary, during the course of the review the skilled person should raise issues with the appropriate regulator and firm to avoid unexpected findings at the conclusion of the work. (See paragraphs 99-103 'Communication' for further commentary).
21. **Relevant skills and expertise of the skilled person:** Any significant changes in the agreed team resources should be raised with the appropriate regulator's contact as listed in the Requirement Notice. Significant changes

<sup>1</sup> FCA SUP 5.3.2 G and PRA SS7/14 para. 1.6

<sup>2</sup> FCA SUP 5.3.1G and PRA SS7/14 para. 1.5

<sup>3</sup> FCA SUP 5.3.3 G – 5.3.10 G and PRA SS7/14 para. 2.1 – 2.9

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to key engagement personnel must be agreed in advance. (See paragraphs 55-56 – ‘Changes to the requirement notice’ for further commentary).

22. **Timescales:** The appropriate regulator will expect timescales to be met; and require sufficient notification and an explanation for any movement of such agreed timescales, in advance where possible or at the earliest opportunity. (See paragraphs 99-106 ‘Communication and project management’ for further commentary on this). On rare occasions, the appropriate regulator may accelerate the timetable for delivery of the skilled person report. The skilled person will need to consider the affect the accelerated timetable has on planning schedule and budget. Where the skilled person believes the updated timetable is unrealistic, it should raise this with the appropriate regulator stating reasons.
23. **Costs:** The appropriate regulator will consider proportionality when issuing a Requirement Notice. The appropriate regulator will expect there to be open discussion in terms of hours, costs and work undertaken, and for the skilled person to communicate any additional cost at the earliest opportunity, and in advance of being incurred. (See paragraphs 91-92 for further commentary on costs).
24. **Consistency:** The reports executive summary must reflect and refer to the content and messages in the underlying document and its tone should accord with the body of the report.
25. **Confirmation of evidential requirements:** The skilled person should clarify with the appropriate regulator (and the firm where appropriate) the type of evidence which should be provided in support of the findings in the report and the standard against which the evidence of the report is being judged, as noted with regard to enforcement in paragraph 14. Clear communication about subsequent enforcement action by the regulator will help the skilled person to deliver a proportionate approach to the engagement while ensuring the review meets the appropriate regulator’s needs. For further consideration of situations where it is known enforcement will follow the skilled person review, please refer to paragraphs 115-116.
26. **Relationship management:** For indirect appointments, the skilled person would be expected to communicate with both the regulator and regulated firm. For direct appointments, the skilled person should always communicate with the regulator in the first instance and seek confirmation from the regulator of the level of communication with the regulated firm.
27. **Opinions and judgments:** The format and content of reporting of findings, observations and conclusions should have been discussed and agreed with the appropriate regulator and the firm during the planning and scoping stage of the engagement.
28. The skilled person engagement process would typically follow the phases set out in the following table; in practice some of these steps would be undertaken concurrently or the process may be somewhat iterative, and skilled persons must be flexible. The need for quality control must be considered throughout.

NAVIGATING THIS TECHNICAL RELEASE

29. The table below provides a summary of the content of this Technical Release:

	Process	Outcomes
Appointment	<p><b>1 Appointment of skilled person to undertake a skilled person review</b></p> <p><b>The draft Requirement Notice will explicitly state whether the engagement is a direct or indirect engagement and the desired form of report.</b></p> <p><b>1. (a) Contracting directly with the appropriate regulator:</b></p> <p>Members of the skilled person panel access the draft requirement notice for a s166 or s166A engagement on the appropriate regulator’s procurement portal. Skilled persons are only able to access draft Requirement Notices that relate to their designated lot. At this stage the appropriate regulator will notify the skilled person if there are known conflicts which would impact their ability to tender for the engagement. The skilled person also has a duty to notify the appropriate regulator if they are aware of conflicts.</p> <p>A conference call then takes place where all members of the lot can dial in to discuss the draft Requirement Notice and discuss any questions and the clarity of the scope.</p> <p><b>1. (b) Contracting indirectly (with the firm):</b></p> <p>After the appropriate regulator contacts the firm to notify it of plans to commission a skilled person review, the skilled person is approached by the firm. The skilled person should meet and/or discuss with the appropriate regulator and/or regulated firm to gain an understanding of the draft Requirement Notice and provide feedback. The draft notice will state what form of report the appropriate regulator envisages. The skilled person makes an initial determination as to whether they can carry out the work.</p>	<ul style="list-style-type: none"> <li>• Draft Requirement Notice produced by the appropriate regulator.</li> <li>• Skilled person chooses whether to tender for the engagement or accepts (or rejects) nomination or appointment, subject to formal appointment (or approval where an indirect engagement) by the appropriate regulator.</li> </ul>
	<p><b>2 Scoping</b></p> <p><b>In practice this often occurs concurrently with the appointment process.</b></p> <p>When the skilled person is contracting directly, further discussions with the appropriate regulator will take place on the conference call described above. When contracting indirectly the skilled person speaks to the appropriate regulator and/or firm to gain an understanding of the background, and the appropriate regulator’s objectives and requirements.</p> <p>Where a phased approach is anticipated, it may be difficult to budget at the outset. The skilled person, in conjunction with the regulated firm and appropriate regulator, will need to agree a mechanism by which a budget for later phases can be determined and contractually agreed.</p>	<ul style="list-style-type: none"> <li>• A further draft of the Requirement Notice may be produced.</li> <li>• The skilled person should confirm their understanding of the scope. Additional matters will ordinarily be clarified by the appropriate regulator in the final Requirement Notice, including whether enforcement action is anticipated.</li> <li>• When the scope is confirmed, a final Requirement Notice is issued, which will form the basis of the engagement terms.</li> </ul>
Agreeing an Engagement	<p><b>3 Extent of work and procedures to be performed</b></p> <p><b>In practice this is likely to overlap with the scoping.</b></p> <p>Based on the scope set out in the Requirement Notice, the skilled person develops a detailed approach to the work, including the nature and extent of procedures, to be performed. The skilled person will confirm the estimated cost for undertaking the work to the appropriate regulator where contracting directly, or to the firm where contracting indirectly.</p>	<ul style="list-style-type: none"> <li>• Detailed approach and procedures developed by the skilled person, based on the desired form of reporting.</li> </ul>
	<p><b>4 Terms of engagement</b></p> <p>The skilled person will agree the terms of engagement with the firm and/or the appropriate regulator with reference to the detailed scope and procedures to be performed. For a direct engagement, the contract is issued by the regulator whereas for an indirect engagement it is issued by the skilled person.</p>	<ul style="list-style-type: none"> <li>• Draft engagement letter submitted to the firm and the appropriate regulator where contracting indirectly.</li> <li>• Draft contract submitted by the regulator to the skilled person for review where contracting directly.</li> </ul>

	Process	Outcomes
		<ul style="list-style-type: none"> <li>Final signed engagement letter.</li> </ul>
Performance	<p><b>5 Communication and project management</b></p> <p>The skilled person should agree with the firm and/or the appropriate regulator the nature and format of communication that may be necessary during the review and reporting process.</p>	<ul style="list-style-type: none"> <li>Communication and project management approach agreed between all parties.</li> <li>Skilled person should keep the firm and the appropriate regulator periodically apprised of costs against budget.</li> </ul>
	<p><b>6 Fieldwork and report drafting</b></p> <p>Based on the agreed communication protocols, the skilled person will liaise with the appropriate regulator and/or firm throughout the engagement including providing progress updates, sharing findings and sharing draft reports according to the instructions stated in the Requirement Notice.</p>	<ul style="list-style-type: none"> <li>Interim/draft reports shared where required.</li> <li>Agreed progress updates with the appropriate regulator and the firm.</li> </ul>
Completion and reporting	<p><b>7 Final report</b></p> <p>Before the report is finalised, the skilled person should obtain management comments and a management representation letter (in writing). Many management representations can be anticipated at the outset or during the skilled person review process and should therefore be discussed at this earlier stage. The final report should be issued in line with the appropriate regulator's instructions, in most instances this will be to the appropriate regulator and the firm at the same time.</p>	<ul style="list-style-type: none"> <li>Draft final report with management comments from the firm.</li> <li>Obtain a management representation letter. If it is a reasonable assurance engagement, this should contain a representation as to the design and effective operation of the relevant controls.</li> <li>Final report issued following the process set out in the Requirement Notice. It is typically issued contemporaneously to the appropriate regulator and the firm.</li> </ul>
	<p><b>8 Finalisation meeting</b></p> <p>A meeting should be held to discuss the findings of the report and management's comments on the findings.</p>	<ul style="list-style-type: none"> <li>Bilateral/trilateral meeting held to discuss the report and management's comments.</li> </ul>
	<p><b>9 Final fees</b></p> <p>Once the review is complete and the report finalised, the skilled person should provide a final fee analysis to the firm, and/or the appropriate regulator and agree the final billings.</p>	<ul style="list-style-type: none"> <li>Final fee analysis provided to the appropriate regulator (direct engagement) or the firm (indirect engagement).</li> </ul>
Quality assurance	<p><b>10 Quality assurance</b></p> <p>The skilled person should ensure their work is subject to adequate quality standards including, where relevant, supervision and review, independent review functions, documentation standards, and data protection. Despite its position in this table, this process occurs throughout the entire engagement.</p>	<ul style="list-style-type: none"> <li>Skilled person's internal processes and documentation.</li> </ul>
Feedback	<p><b>11 Feedback provided</b></p> <p>The skilled person, the appropriate regulator and, where appropriate, the regulated firm should share feedback with each other on the process and the outcome of the engagement.</p>	<ul style="list-style-type: none"> <li>Feedback provided on the engagement.</li> </ul>

## APPOINTMENT OF A SKILLED PERSON

30. A skilled person should only accept an appointment once satisfied that the Requirement Notice can be met. To facilitate this, the skilled person should hold initial discussions with the appropriate regulator and/or firm to clarify the requirements.
31. The appropriate regulator will normally contact the firm before finalising its decision to require a review by a skilled person.
- This will provide an opportunity for discussion about the nature of the proposed appointment;
  - Alternative means of obtaining the information;
  - Scope of the review;
  - Whether the skilled person's appointment will be direct or indirect;
  - Concerns about independence or objectivity;
  - Cost; and
  - Timetable for producing the report.

The regulators have indicated that they will be open with the skilled person about their reasons for conducting the skilled person review and, in particular, will inform the skilled person during the scoping process whether enforcement action or access to working papers is contemplated.

## DIRECT APPOINTMENT OF A SKILLED PERSON

32. The appropriate regulator has the power to appoint a skilled person directly from the panel. The panel has been developed 'to ensure a consistent, high quality and transparent approach to conducting skilled person reviews'. The panel consists of skilled persons, each of whom has been selected to act on one or more of a number of technical areas (known individually as a 'lot', or collectively as the 'lots'). Detailed descriptions of each lot are available on the FCA and the PRA websites. The panels and lots are the same for all regulators. When commissioning a skilled person review, the appropriate regulator will consider the nature of the review and will identify the relevant lot(s) accordingly.
33. The appropriate regulator will advise the firm that it will select and contract directly with the skilled person. During this process, the appropriate regulator will conduct a tender process, where appropriate, to identify the most suitable skilled person. The tender process will include an assessment of technical capabilities, resources available, conflicts of interest and commercial considerations. The skilled persons invited to tender may vary depending on whether the cost of the proposed review is likely to exceed the EU Procurement Directive's threshold and an assessment of its complexity. Tenders will normally be invited from those skilled persons on the panel under the relevant lot(s).
34. At the start of the tender process the appropriate regulator will notify relevant members of the panel via its online procurement website. During this process the appropriate regulator will publish a draft Requirement Notice on its procurement website which sets out its objectives, the scope of and the form of reporting required for consideration by the skilled persons on the panel. This is accompanied by an invitation to tender (ITT) letter which sets out further considerations from the regulator.
35. The cost of appointing a skilled person to produce a report ultimately falls upon the firm<sup>4</sup>. When an appropriate regulator directly appoints the skilled person it will use powers in Chapter 3 of the Fees Manual (FEES) to levy a fee on the authorised firm concerned<sup>5</sup>.
36. Based on the draft Requirement Notice, the appropriate regulator will normally hold discussions on the proposed assignment in a trilateral meeting (with the firm, the appropriate regulator and the skilled person) and a bilateral meeting (between the appropriate regulator and skilled person only). A critical factor in determining the scope will be the desired form of the skilled person report. Where the appropriate regulator contracts directly, skilled persons have the opportunity to ask questions about the draft Requirement Notice on a conference call, and can submit questions through permitted channels (the appropriate regulator's portal, though these may be published), but will not communicate with the appropriate regulator or the firm directly on an individual basis until notified of the regulator's intention to contract with the skilled person firm. The skilled person must not have any communication with the regulated firm on the proposed report in relation to the skilled person work, unless permitted by the regulator to do so.

<sup>4</sup> FCA SUP 5.3.8G and PRA SS7/14 para. 2.1

<sup>5</sup> FCA Handbook FEES 3.2.7 and PRA Rulebook FEES 4.16 and 4.17.

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### INDIRECT APPOINTMENT OF A SKILLED PERSON

37. Once the appropriate regulator has decided to commission a skilled person review and has informed the firm of that decision, the appropriate regulator may nominate an individual skilled person or skilled person firm. If the authorised firm is to propose a skilled person for approval by the appropriate regulator, the draft Requirement Notice can be used by the firm to approach a number of potential skilled persons. FSMA requires that a skilled person appointed by the firm must be nominated or approved by the appropriate regulator<sup>6</sup>.
38. In considering the appropriateness for nomination, approval and appointment of the skilled person some key factors relevant to the firm, the appropriate regulator and the proposed skilled person<sup>7</sup> are:
- the skilled person's expertise, knowledge and resources;
  - the ability of the skilled person to complete the report or collect or update the information within the specified time frame;
  - the estimated costs; and
  - any potential conflicts of interest arising from the appointment and the independence and objectivity that the skilled person will bring to bear in carrying out the work.

### EXPERTISE, KNOWLEDGE AND RESOURCES

39. As noted above, the skilled person will normally be a firm (a skilled person) but may also be a named individual. Where a firm is appointed to act as a skilled person, then an individual from that firm (the 'individual skilled person') is normally nominated and is accountable for the completion and delivery of the review. In either case, all parties should seek to ensure that the individual skilled person has appropriate skills, experience and knowledge to fulfil the scope set out in the Requirement Notice. This includes possessing sufficient knowledge and understanding of the appropriate regulator's rules and the statutory provisions relevant to the scope of the assignment to enable them to understand, evaluate and execute the scope of the engagement and the form of reporting required by the appropriate regulator.
40. It is the responsibility of the skilled person to present their credentials, capabilities and independence, and ability to undertake the engagement based on the Requirement Notice to the firm and the appropriate regulator, as well as those of the individual skilled person and their key team members.
41. Once appointed, there will be cases where individuals become unavailable during the course of the assignment, for example due to changes in the timing of the work, unexpected staff absences or resignations. The skilled person should agree at the outset with the appropriate regulator, and where appropriate with the firm, which individuals on the team are considered key personnel and a suitable protocol for discussing the implications of changes in these individuals' circumstances or availability. This would include when substantial changes to the responsibilities or structure of the team are envisaged.
42. In order to have access to the expertise, knowledge and resources necessary, a skilled person might decide that it is appropriate to sub-contract aspects of the work to one or more other parties. Such an intention should be disclosed to the firm and the appropriate regulator at the earliest opportunity, with the identity of the sub-contractor shared and the appropriate regulator approving this. Usually this would take place at the proposal stage, but there may be instances where this is not possible and so should be highlighted to the appropriate regulator as soon as the skilled person becomes aware. The appropriate regulator is comfortable with such arrangements in principle but will usually wish to satisfy themselves that the skilled person has the skills, resources and expertise necessary to manage the work of the sub-contractor and to subject its work to quality assurance review. Furthermore, while such arrangements do not reduce the responsibilities or accountability of the skilled person, the appropriate regulator will wish to have access to the sub-contractor in the same way as it would have access to the skilled person if none of the work had been sub-contracted.

### CONFLICTS OF INTEREST, INDEPENDENCE AND OBJECTIVITY

43. All parties should consider whether the skilled person (being the firm and key personnel) has any conflict of interest (actual, potential or perceived) relating to the firm and the subject matter of the report which could impair the confidence of all parties in the objectivity of the skilled person review. As required by the regulators invitation to tender (ITT), the skilled person should be open with the appropriate regulator about their relationships with the firm (including the firms affiliated businesses) both at the time when tenders are being requested and subsequently. This includes details of all current and previous relationships with the firm and confirmation of how any conflicts identified will be managed or whether they cannot be managed.
44. For this purpose, the term 'actual or potential conflict of interest' is intended to include:

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<sup>6</sup> FCA SUP 5.4.6G and PRA SS7/14 para. 3.1

<sup>7</sup> FCA SUP 5.4.8G and PRA SS7/14 para. 3.4

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- Consideration of all past, ongoing, or potential work that the skilled person has performed (or may perform) for the firm (including assignments unrelated to the area to be examined under the Requirement Notice);
  - Secondments of staff to the firm;
  - Systems which the skilled person (or its affiliates) have designed which may become part of the subject matter under investigation;
  - Relationships with significant individuals in the firm relevant to the proposed assignment (including where such individuals were previously employees of the skilled person);
  - Any potential future work to the extent that it can be foreseen; and
  - Any other previous or existing professional relationships that could present a conflict of interest or compromise the skilled person's independence and objectivity.
45. The skilled person should, in addition, assess their independence and the independence of any supporting engagement team by reference to the ICAEW Code of Ethics or in accordance with the skilled person's trade or professional body's code of ethics. See paragraph 89 for further information.
46. For relationships that, in the skilled person's view, do not preclude the acceptance of the assignment, the skilled person should inform the appropriate regulator and the firm at the earliest opportunity (ideally in advance) of the relationship along with details of any independence safeguards in place. This will provide the appropriate regulator and the firm with all relevant information to assess whether the skilled person has sufficient independence and detachment from the subject matter to undertake the assignment objectively.
47. If a reasonable assurance engagement is proposed, in addition to the guidance set out above, the skilled person should satisfy the ethical requirements under the ICAEW Code of Ethics including s291 'Independence – other assurance engagements' both before approval by the appropriate regulator and acceptance by the skilled person, and during the engagement or in accordance with the skilled persons' trade or professional body's code of ethics.

## USE OF THE FIRM'S EXTERNAL AUDITOR OR ADVISER AS A SKILLED PERSON

48. A firm will sometimes consider appointing its statutory auditor, legal or other adviser as a skilled person. In some cases, such persons' will have a good understanding of the subject matter and therefore it may be more effective or efficient to appoint them as a skilled person rather than another party.
49. The appropriate regulator can approve the appointment of the external auditor or adviser of a firm as a skilled person. Having a current or recent relationship with the regulated firm does not necessarily preclude appointment as a skilled person, providing the potential skilled person can demonstrate appropriate independence, objectivity and effective management of any conflict of interest.

## OTHER RELEVANT FACTORS

50. Other factors for the skilled person to consider before deciding whether to submit a tender for the engagement include:
- the reporting risk of the engagement taking into account the reasons for the report, the nature of the scope of the engagement, any particular characteristics of the firm, the form of reporting, and the quality and quantity of evidence likely to be available;
  - the costs of undertaking the engagement and reporting;
  - where an assurance engagement is proposed, whether all the IAASB's pre-conditions for assurance<sup>8</sup> are met, including the ability to obtain evidence to support the assurance conclusion(s); and
  - the time to prepare and deliver the report.; and
  - the extent of exposure to liability to the firm and the appropriate regulator for negligence.

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<sup>8</sup> Paragraph 22, IAASB 'International Framework for Assurance Engagements'

## AGREEING AN ENGAGEMENT

51. This section provides guidance for the skilled person on agreeing the scope of the engagement.
52. In practice the acceptance process and the development of the Requirement Notice may overlap, with a draft Requirement Notice being produced during the process of nomination, approval and appointment of the skilled person.

## REQUIREMENT NOTICE

53. The Requirement Notice sets out the high-level scope ('scope of requirements') for the proposed skilled person review. It should include all terms necessary to properly specify and define the scope of requirements of the engagement, including the form of report required. The appropriate regulator is required to adopt a proportionate approach in the drafting and issuance of the Requirement Notice. It typically includes:
  - the objectives of the skilled person review, which may include an overview of the circumstances that led to the report being commissioned;
  - the subject matter to be addressed;
  - the form of reporting of the overall findings (i.e., assurance (reasonable or limited), review and recommend, agreed upon procedures, or a combination of these), including an indication of:
    - the content and structure of the report;
    - the extent of the detail of the content to be included in the report (for example, the extent of the detail of the description of the internal controls examined); and
    - the need for draft or interim reports;
  - an indication of the nature and extent of the procedures to be undertaken by the skilled person (the level of detail depending on the type of the report to be provided);
  - references to any relevant standards or codes which the appropriate regulator expects the skilled person to apply in performing their duties, such as the ICAEW Code of Ethics;
  - an indication of the planned communication between the skilled person and the appropriate regulator;
  - the timelines for performing the work, communicating with and reporting to the appropriate regulator;
  - whether or not at the time of determining the Requirement Notice the appropriate regulator is commissioning the report in contemplation of enforcement action;
  - whether or not at the time of determining the Requirement Notice the appropriate regulator intends to request access to the skilled person's working papers; and
  - any other matters identified by the appropriate regulator or by the skilled person that need to be specified in the Requirement Notice.
54. The scope of requirements detailed in the final Requirement Notice should be determined by the appropriate regulator in line with its objectives. The skilled person should, however, ensure that they have a clear understanding of the requirements so that these are reflected in the planned approach and procedures. The skilled person should also raise any issues pertaining to the scope of requirements with the appropriate regulator during their initial discussions and recommend any changes they believe necessary to deliver the report in line with the appropriate regulator's requirements. Two-way communication between the skilled person and appropriate regulator should continue throughout the engagement.

## CHANGES TO THE REQUIREMENT NOTICE

55. The Requirement Notice is typically first issued in draft form. While its content ultimately remains at the appropriate regulator's discretion, this creates an opportunity for the skilled person to identify issues and make suggestions, in discussion with the appropriate regulator and the firm. For example:
  - There could be additional related areas or risks not identified in the Requirement Notice which could also be addressed, enabling the appropriate regulator to achieve more fully its objectives in requiring a skilled person review.
  - In instances where a reasonable assurance opinion is sought it may be necessary to clarify which elements within the Requirement Notice meet the IAASB pre-conditions for assurance, that reasonable assurance procedures would be appropriate and proportionate, and whether elements would be better suited to a review and recommend approach.

## GUIDANCE FOR SKILLED PERSON REVIEWS

- It could be possible to narrow or focus the scope of requirements to meet the appropriate regulator's objectives more efficiently.
  - There can be areas which are not referred to in the scope of requirements and are intended to be specifically excluded. The inclusion of an explicit statement to this effect in the scope of requirements increases clarity and avoids misunderstanding.
  - There may be potential for the skilled person to place reliance on internal audit or other members of the firm's staff or its advisers. In order to place reliance on the work of others, the skilled person will need to make an assessment of their expertise, quality of their work and suitability for the given purpose. Should the skilled person decide to rely on the work of others, this should be discussed with and agreed by the appropriate regulator.
  - Elements of the wording of the scope of requirements could be ambiguous and need amendment to ensure clarity.
56. If any significant matters affecting the scope of the report, the content of the report, or the form of reporting arise during the scoping process or later during the engagement process, the skilled person should discuss the matters with the appropriate regulator and the firm. If necessary in such circumstances, the appropriate regulator will ensure the final Requirement Notice accurately reflects the agreed scope.

## DETERMINING THE FORM OF THE REPORT

57. There are different types of skilled person reviews that can be commissioned by the regulators. In its decision-making process, the appropriate regulator will look at its objectives in commissioning the report and will take into account:
- the subject matter;
  - the existence and suitability of the criteria against which the subject matter could be evaluated or measured;
  - the degree of confidence required by the appropriate regulator on the subject matter;
  - the purpose and anticipated use by the appropriate regulator of the final report; and
  - the costs and benefits of different approaches.
58. Based on the considerations above, there are three main types of reports by skilled persons listed below:
- review and recommend;
  - assurance (reasonable or limited); and
  - agreed-upon procedures.
59. A Requirement Notice may request one or more of these reports in combination (see paragraph 75). For example, the Requirement Notice may require a reasonable assurance opinion together with a review and recommend report. The majority of reports commissioned are in whole or in part review and recommend. Appendix 1 provides a table, which summarises the different types of report, the criteria for and the objectives of using each type of report.

### Review and recommend reports

60. This report allows the appropriate regulator to request the skilled person to provide findings, recommendations, views and conclusions based on the skilled person's professional experience and judgement. Review and recommend reports are generally written in a narrative (or 'long form') style.
61. A common area of subject matter is an external assessment of the design and operation of a firm's processes and controls. Under a review and recommend approach, a skilled person is able to provide their views and recommendations on both the design and operation of such processes and controls. A range of evidential levels can be obtained including detailed testing. Views expressed would typically be based on a level of detailed sample testing agreed with the regulator as part of the scoping of the engagement. To do this the skilled person prepares a detailed work programme to identify the levels of testing to be performed and share this with the regulator. As the amount of testing necessary can be discussed and agreed between the skilled person and the regulator, it may mean the report is more efficient to produce than an assurance engagement and can be particularly useful if changes have occurred in the control environment during the period under review.
62. This report will also typically include recommendations setting out actions to be taken by the firm. This may help the firm to address issues highlighted during the engagement and the supervisor to monitor the firm's progress.
63. The procedures adopted for a review and recommend report would not be sufficient on their own to support an assurance opinion over the suitability of design and/or operating effectiveness of controls as discussed above. However they would allow the skilled person to provide their views on design and operation. If an assurance opinion is required, the appropriate regulator may ask for a reasonable assurance report (as detailed in

## GUIDANCE FOR SKILLED PERSON REVIEWS

paragraphs 65-71) together with a review and recommend report (see Appendix 2). The skilled person should ensure the evidence gathered to support their findings, recommendations, views and conclusions is clearly set out within the report.

64. Appendix 1 provides guidance on when review and recommend reporting may be used for skilled person reviews; and Appendix 2b provides an illustrative example of the content of a review and recommend report.

### Reasonable and limited assurance engagements

65. The objective of assurance reports by skilled persons is to enhance the appropriate regulator's confidence over a specific matter for which the firm is responsible. Assurance engagements will typically involve more detailed testing and verification procedures than review and recommend or agreed-upon procedures, and require, from the outset, a clear understanding between the skilled person, the appropriate regulator, and the firm about the availability of evidence and access to relevant management and employees of the firm (including written management representations) and each party's respective responsibilities.
66. As such the scope should be clearly defined and agreed upfront to ensure the level of work is proportionate to the requirements of the appropriate regulator. The skilled person obtains an understanding of the subject matter and independently plans the nature and extent of procedures required to address the agreed scope. Using suitable criteria (see further discussion below), the skilled person evaluates and measures the subject matter and comes to a reasonable or limited assurance opinion. To do this the skilled person should prepare a detailed scoping schedule, sometimes described as a 'work programme', to identify the different levels of testing procedures to be performed against the requirements of the draft Requirement Notice.
67. Non-financial assurance engagements are performed in accordance with the framework set out within International Standard on Assurance Engagements (ISAE) 3000 (Revised), 'Assurance Engagements other than Audits or Reviews of Historical Financial Information'<sup>9</sup>, which incorporates the IAASB's 'International Framework for Assurance Engagements'. The FCA, PRA and BoE will accept assurance reports prepared under ISAE 3000 (Revised) by firms which are not members of an International Federation of Accountants (IFAC) member body. All such firms providing ISAE 3000 (Revised) reports must meet the requirements of ISAE 3000 including compliance with International Standard on Quality Control 1, 'Quality Control for firms that Perform Audits and Reviews of Financial Statements, and other Assurance and Related Services Engagements' (ISQC 1) or requirements which are at least as demanding<sup>10</sup>. See Section on Quality Assurance for more information.
68. A reasonable assurance opinion is expressed in a positive form (for example: 'in our opinion the [firm] was compliant with [Rule] as at [date] in all material respects ...'). By contrast, a limited assurance opinion is expressed in a negative form (for example, 'nothing came to our attention indicating that the [firm] was not compliant with [Rule] as at [date] in all material respects'). Appendix 1 provides further guidance about when reasonable assurance opinions and limited assurance opinions may be used for skilled person reviews; Appendices 3b and 3d provide an illustrative reasonable assurance opinion; and Appendix 4 provides an illustrative limited assurance opinion. Where the skilled person concludes that they are unable to issue an unqualified opinion, they would issue a modified, qualified or adverse opinion.
69. Suitable criteria under ISAE 3000 (Revised) for the purpose of measurement or evaluation of the subject matter may be expressed in terms of one or more of the appropriate regulator's rules (for example, on the reporting of capital or liquidity), or specific industry guidance. However, judgemental, principles or risk based legislation, standards or guidance might not be suitable criteria as they are not sufficiently specific or objective. In some cases such legislation, standards or guidance can be distilled into suitable criteria for measurement and assurance if agreed by the relevant parties, and the resulting assurance opinion would be expressed in these terms.
70. In cases where an existing set of suitable criteria does not already exist, suitable criteria will need to be agreed. The appointed skilled person will help the firm subject to s166 to identify and list the firm's relevant controls and control objectives for the processes within the scope of the Requirement Notice, the control objectives being the proposed 'suitable criteria'. These control objectives should be developed by the firm to ensure accuracy of description.
71. The appropriate regulator is responsible for the final determination of the appropriateness of the control objective as assessment criteria in relation to the Requirement Notice and will need to agree these with the firm and the skilled person before the work begins. Any subsequent amendment to such criteria should be discussed and agreed (in advance where possible) by the skilled person and the appropriate regulator during the performance stage.

### Agreed-upon procedures engagements

72. The performance of agreed-upon procedures may be a cost-effective way to achieve the objectives of some assignments, provided that it is appropriate for the skilled person engagement to be only that of fact finding. For example, if the regulator wished to establish certain facts to understand if certain transactions were in compliance

<sup>9</sup> Superseded by ISAE 3000 (Revised) for assurance reports issued on or after 15 December 2015.

<sup>10</sup> More information about how to comply with ISQC 1 can be found here: <http://www.ifac.org/>

## GUIDANCE FOR SKILLED PERSON REVIEWS

with client money rules, agreed-upon procedures could be designed to establish this. Appendix 1 provides guidance on when agreed-upon procedures reporting may be used for skilled person reviews.

73. In an agreed-upon procedures engagement, the appropriate regulator sets out in the Requirement Notice (usually after discussions between the appropriate regulator, the firm, and the skilled person) the procedures to test specific aspects of the subject matter in which the appropriate regulator is interested. Following this discussion this scope will be set out in the final Requirement Notice. The skilled person carries out the procedures (performed in accordance with International Standard on Related Services (ISRS) 4400, Engagements to Perform Agreed-Upon Procedures regarding Financial Information where relevant, or in accordance with the skilled person's trade or professional body's professional standards and procedures) and reports the factual outcomes of the procedures.
74. The appropriate regulator uses the outcome of the procedures to obtain confidence (or otherwise) in the subject matter. As the skilled person will carry out only the specified procedures that are agreed and set out in the Requirement Notice, it is important that the procedures are clearly articulated and the appropriate regulator, the firm, and the skilled person are satisfied that the procedures to be conducted are achievable and meet the appropriate regulator's objectives. The appropriate regulator and the firm assess for themselves the factual findings reported by the skilled person and draw their own conclusions. The skilled person makes no assessment of the subject matter and draws no conclusions.

### Mixed scope engagements

75. In practice, the Requirement Notice may be for a skilled person report which is a combination of the above types of engagement. For example, a report may include a reasonable assurance opinion over the design suitability and operating effectiveness of specific controls in relation to specified control objectives along with a review and recommend report that, while not diluting nor modifying the assurance opinion, provides recommendations as well as an overall view or conclusion on the control environment. In these cases, the report should highlight and distinguish between these types of reporting.

### Other considerations for assurance or other reporting

76. For assurance engagements, ISAE 3000 (Revised) sets out various factors to be considered including the nature of the subject matter, procedures for gathering evidence, factors for assessment of assessment criteria and quality and quantity of evidence.
77. The amount of work and testing required to issue a reasonable assurance opinion is likely to be considerably more than that required for a limited assurance opinion, review and recommend or agreed-upon procedures report. The skilled person should determine the approach to the work, including the nature, timing and extent of procedures, that would be required based on the scope set out in the Requirement Notice. The skilled person should ensure that all parties are aware of the implications of the work to be undertaken, particularly with respect to the cost of the exercise and in terms of the appropriate regulator's requirement to assess the costs and benefits of the work being undertaken.

### Reporting on typical areas of subject matter

78. The subject matter of skilled person reviews can vary widely as can the nature of the skilled person reports on that subject matter, including the level of assurance (if any) that is provided. Some examples are outlined below.
  - **Regulatory reporting:** May include reporting on the preparation of the appropriate regulator's prescribed forms (for example on capital adequacy or liquidity, etc.) in accordance with the relevant regulator's reporting instructions and definitions, and proper extraction from underlying books and records.
  - **Client Money and Assets (CASS):** May address compliance with the FCA's requirements, as well as the design and effectiveness of the control environment surrounding these requirements. This type of skilled person report would be in addition to the mandated assurance on CASS typically performed by a firm's auditors.
  - **Quality or suitability of advice:** May address the advice given by the firm to clients for certain products over a certain time period.
  - **Systems and controls:** May relate to a particular business, function, system or report addressing the design and operating effectiveness of specific controls.
  - **Governance and culture:** May entail an analysis, review and recommendations on a firm's governance structure, its effectiveness, or an assessment against best practice or a particular code of practice.
  - **Financial reporting matters:** May cover components of the firm's financial statements such as valuation or impairment estimates<sup>11</sup>.

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<sup>11</sup> For these engagements, the skilled person must have regard to the IFAC *Code of Ethics*, section 230, *Second Opinions*.

### APPROACH TO WORK AND PROCEDURES TO BE PERFORMED

79. Based on the Requirement Notice, including the form of report to be issued, the skilled person should develop a detailed approach and procedures to be performed in carrying out the work, typically in the form of a work programme, which identifies the different levels of testing procedures to be performed against the requirements of the draft Requirement Notice.
80. The extent of work and procedures to be performed should be determined through discussion with the appropriate regulator and the firm in line with their objectives and expectations. When an assurance report is to be provided the skilled person must judge and conclude upon the appropriate nature, timing and extent of procedures; whereas in an agreed-upon procedures report, the appropriate regulator is responsible for determining such procedures. The extent of work and the timing and nature of the procedures to be performed should form part of the terms of engagement (see below).
81. In some circumstances, in order for the skilled person to develop a detailed approach and planned procedures, and understand the consequences on its resourcing, timing and fee estimates, it may be necessary to carry out an initial scoping exercise to enable the skilled person to obtain a greater understanding of the firm's operations in the area to be examined.

#### Materiality levels

82. The skilled person should, where appropriate (particularly in assurance engagements), consider the levels of materiality against which procedures will be designed and findings will be assessed, in light of the final scope of requirements and objectives of the appropriate regulator set out in the Requirement Notice.
83. In determining materiality, the skilled person should understand the factors (quantitative and qualitative) that might influence the decisions of the intended users of their report. Where the identified criteria are considered suitable (see paragraphs 69-70) but still allow for variation in presentation or measurement of the subject matter, the skilled person must apply professional judgement in considering the influence on their report and users' decisions and may need to discuss further with the appropriate regulator before finalising the report. Depending on the nature of the subject matter, there may be no quantitative materiality factors, or it may be that no misstatement is tolerated.
84. The materiality level should be discussed with the appropriate regulator when developing the approach to the work and procedures to be performed. In non-assurance engagements (for example agreed-upon procedures) the concept of materiality is not employed, but thresholds used to determine the scope of procedures will be agreed with the appropriate regulator and the firm.

#### Relevant engagement periods or dates

85. The periods or the dates for which the relevant information is to be extracted and examined will be set out in the Requirement Notice. When undertaking detailed planning the skilled person should seek to confirm the feasibility of the periods or dates, taking into account the following factors:
  - whether there is sufficient evidence available in the period (for example, whether relevant senior management meetings will have taken place); or
  - whether changes are expected in the area(s) to be examined (for example in systems, processes, management or products). If so, the skilled person should ascertain whether their report is intended to reflect the position before, after or during the change period.

### TERMS OF ENGAGEMENT

86. The basis of the engagement terms will depend on whether it is a direct or indirect engagement. A direct engagement uses the appropriate regulator's engagement terms as the basis of the contract. In these circumstances the skilled person should ensure that the appropriate contractual provision has been made for sharing the report with the regulated firm, as they will not be a party to the contract. Where the engagement is indirect, the letter of engagement between the firm and the skilled person should make provision for the contractual obligations in relation to skilled person reviews<sup>12</sup>. The engagement letter should be drafted with reference to the final Requirement Notice and this should be appended to the letter. The engagement letter should also include reference to the scope of work and the procedures to be performed, which should be consistent with the detail included in the Requirement Notice.
87. Where the FCA or PRA directly commissions a skilled person report pursuant to the FCA Section 166 Framework, the preparation and disclosure of such report shall be governed by the terms and conditions set out in that Framework. The skilled person may separately request that the firm signs a hold harmless letter concerning the firm's receipt of the report.<sup>13</sup> This is a matter between the firm and the skilled person, although the skilled person should have highlighted if they require such an agreement in their proposal. The firm is not required to sign such an agreement under either regulator's rules. If a potential skilled person is unable to put in place an agreement

<sup>12</sup> FCA SUP 5.5.1 R and FCA SUP 5.5.5R; and PRA SP1/2/3/4 3.1 – 3.4

<sup>13</sup> ICAEW members should consider the ICAEW's Guidance 'Managing the professional liability of accountants', Section F: : Managing third-party risk, and in particular consider what protection is put in place to manage the risk of assuming a duty of care or liability to the firm.

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with the firm and decides that it cannot undertake an engagement without it, they should inform the relevant regulator at the earliest opportunity so that the regulator can arrange for another suitable skilled person to undertake the engagement.

88. Where the firm is contracting with the skilled person, the draft and final engagement letter should be shared with the appropriate regulator so that it can ensure that its objectives and scope of requirements will be met.
89. When contracting to act as a skilled person, there is an expectation that the skilled person will complete their work with reasonable skill and care<sup>14</sup>. If the skilled person is an ICAEW Chartered Accountant, they should confirm to the firm and the appropriate regulator that the engagement will be performed in accordance with the ICAEW Code of Ethics as relevant to such engagements. If the skilled person belongs to another professional body (such as another accountancy body or the Law Society), they should confirm that the engagement will be performed in accordance with their trade or professional body's code of ethics.
90. Typical components of an engagement letter may include:
  - nature and scope of services (split between assurance, agreed-upon procedures and review and recommend as necessary);
  - respective responsibilities of the skilled person and the firm (and its directors) as well as access to evidence and appropriate members of firm management and staff;
  - the 'suitable criteria' agreed for any limited or reasonable assurance work;
  - liability;
  - use and distribution of the report;
  - timetable, fees and contact persons;
  - identification of the individual skilled person and any other lead individual(s) with responsibility for delivering the report;
  - terms and conditions applicable to contracts with the skilled person;
  - the requirement for a management representation letter from the firm to confirm to the best of its knowledge and belief that (i) information provided is accurate, complete and up to date and (ii) in the context of an assurance engagement and in relation to control objective, that the controls were suitably designed and operated effectively during the relevant period (an illustrative management representation letter is set out in Appendix 5).

## FEE CONSIDERATIONS

91. The cost of a skilled person review can vary widely and be significant. The appropriate regulator must consider cost when deciding whether or not to commission a report from a skilled person and when scoping the engagement<sup>15</sup>. Regardless of whether the skilled person is directly commissioned by an appropriate regulator or the firm itself appoints the skilled person, the firm must pay the fee charged for the skilled person review<sup>16</sup>.
92. The skilled person should agree the estimated cost of the review, based on the agreed scope, upon appointment. The appropriate regulator will expect to be informed of the estimated fee<sup>17</sup> and changes to the estimate made during the course of review to allow the appropriate regulator to consider proportionality. Fee estimate changes based on additional scope should be discussed with and agreed by the appropriate regulator at the earliest opportunity and before the additional work commences. The skilled person must clearly explain the reasons behind fee estimate changes to the appropriate regulator. See paragraph 137 for further commentary on fees.

## PAYMENT TERMS

93. Receiving payment for the skilled person work can be difficult. It is recommended that the skilled person agrees with the firm or the appropriate regulator (if the skilled person is directly appointed by the appropriate regulator) clear payment terms and considers frequent billing cycles or a payment on account where appropriate.
94. The skilled person should also make it clear to the firm that if invoices are not paid in accordance with the agreed payment terms the skilled person reserves the right to (i) cease work until payment is received and (ii) inform the appropriate regulator.

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<sup>14</sup> The relevant legal test for professional competence and negligence in this area.

<sup>15</sup> FCA SUP 5.3.8 G and 5.3.9G; and PRA SS7/14 2.1

<sup>16</sup> FCA SUP 5.3.8 G and PRA SS7/16 2.7

<sup>17</sup> FCA SUP 5.5.8 G; and PRA SS7/14 2.1

## PERFORMANCE

### THE ROLE OF THE SKILLED PERSON

95. The skilled person must recognise that there are two parties interested in the report – the firm and the appropriate regulator. The appropriate regulator will always be the party requiring a report to be commissioned, but the party appointing could be the firm or the appropriate regulator themselves if contracting directly. The skilled person should liaise with the appropriate regulator, in either case, to help deliver a clear and appropriate scope in the Requirement Notice and a mutually-acceptable methodology that will achieve the objectives set out in the Requirement Notice.
96. If the skilled person is concerned that the engagement will not meet its objectives, they should bring it to the attention of the appropriate regulator and the firm in a timely manner.

### OBLIGATIONS OF THE SKILLED PERSON

97. The skilled person must cooperate with the appropriate regulator and liaise with them in a timely manner throughout the engagement, to ensure that they are fully informed on all matters relevant to the engagement so that they can monitor whether the engagement is proceeding in line with the scope of its requirements<sup>18</sup>. The appropriate regulator will expect to discuss matters relevant to the skilled person review during the performance of the assignment and preparation of the report<sup>19</sup>.
98. At the planning stage, the skilled person should discuss and agree with the appropriate regulator what information is to be shared, in what level of detail, and how often. Information that the skilled person may agree to provide to the appropriate regulator might include, among other things:
- interim and draft reports;
  - source data, documents and working papers;
  - details of any significant findings and conclusions; and
  - specific information about the planning and progress of the work to be undertaken (including project plans, progress reports including percentage of work completed, details of time spent and costs to date).

### COMMUNICATION AND PROJECT MANAGEMENT

#### Communication

99. A successful review is more likely to be achieved when the role of the skilled person is made clear to all parties, particularly to the firm. This means there should be early, transparent and ongoing dialogue between the appropriate regulator, the firm and the skilled person, and an agreed means of ongoing communication (nature, format, and frequency) to avoid misunderstanding of expectations.
100. It is important that the skilled person is proactive in communicating with the appropriate regulator throughout the engagement, including during the scoping and approval process, the progression of the work and completion and reporting<sup>20</sup>. Such discussions will normally involve the firm.
101. The skilled person should establish protocols for communication with the appropriate regulator. The following are examples of matters which should be considered.
- The skilled person and appropriate regulator should ensure any concerns over the timelines to deliver the scope of work are raised during the initial scoping conversations.
  - The timing and format of progress update meetings should be agreed.
  - Though rare, there may be times when, during the course of the engagement, the skilled person believes that changes are necessary to the scope of requirements, the scope of work and procedures being performed or the key personnel in the engagement team to best meet the objectives of the appropriate regulator. The skilled person should detail the suggestion to the appropriate regulator (where directly contracting) and the firm for consideration and agreement.
  - Any agreed changes to the scope of the skilled person review should be formalised through revisions to the draft Requirement Notice (or addendum to it if a final Requirement Notice has been issued) and addendum to the engagement letter between the appropriate regulator or firm and the skilled person. The amendment to the engagement letter would normally include a revised fee estimate and the appropriate regulator should be informed of this proposed revision and approve it before it is made.

<sup>18</sup> FCA SUP 5.5.2 G and PRA SS7/14 para. 4.2

<sup>19</sup> FCA SUP 5.4.11 G and PRA SS7/14 para. 4.2

<sup>20</sup> FCA SUP 5.4.11 G and PRA SS7/14 para. 4.2

## GUIDANCE FOR SKILLED PERSON REVIEWS

- The skilled person should discuss with the appropriate regulator the timing and format for communication (to the firm and the appropriate regulator) of key issues as they are identified. It may be appropriate for the skilled person to inform the appropriate regulator directly, without first informing the firm, of any matters of material significance that the skilled person has become aware of during the course of the engagement that the appropriate regulator should reasonably be aware of. This direct communication may be appropriate for example, where it would be prejudicial to the objectives of the Requirement Notice to firstly discuss the issue(s) with the firm. In these circumstances, this is an obligation of the skilled person and should be set out in the terms of engagement.
  - The skilled person should agree with the appropriate regulator the frequency with which they will share draft reports.
102. Communication usually takes the form of bilateral meetings or calls between the appropriate regulator and the skilled person throughout the review. The appropriate regulator and the skilled person will request bilateral meetings or discussions – for example, in the case of substantial or complex reports, the appropriate regulator may request a periodic bilateral progress update from the skilled person which can help to manage expectations and allow for a re-focusing of the report if necessary. The appropriate regulator may also ask for a bilateral meeting to discuss the final report without the firm present, in addition to a trilateral meeting where findings can be discussed with the firm.
103. When bilateral dialogue takes place, the skilled person should keep the firm informed of such dialogue unless there is a good reason not to do so. The appropriate regulator will advise the skilled person if the firm should not be informed of such dialogue. The skilled person should maintain a record of bilateral and trilateral discussions.

### Project management

104. The appropriate regulator will normally specify a time limit in the Requirement Notice for delivery of the report. During the course of the review, the skilled person should provide the firm and the appropriate regulator with timely updates on progress compared to planned timetable and agreed fees. The skilled person is expected to inform the appropriate regulator and the firm if the agreed timetable may not be met<sup>21</sup>.
105. On a regular basis during the assignment, the skilled person should inform the appropriate regulator and the firm of the costs to date and provide an estimated cost to complete<sup>22</sup>. This should be in accordance with the original cost quoted, unless there has been a subsequent agreement with the appropriate regulator for a change in costs. Refer to paragraph 92 for further commentary.
106. Skilled persons should have procedures in place to ensure that quality assurance standards are maintained for documentation and recording work. See paragraphs 138-147.

### Form and content of working papers

107. In most cases the appropriate regulator will not need to ask the skilled person to provide source data, documents and working papers. However, the appropriate regulator may ask a skilled person to provide copies of source data, documents, communications and working papers if it reasonably believes this information will be relevant to any investigation it may be conducting, or any action it may need to consider taking against the firm<sup>23</sup> by making a request under sections 171 and 172 of FSMA 2000.
108. Working papers prepared by the skilled person remain the property of the skilled person. Where the appropriate regulator requires access to the working papers of a skilled person, the source data, documents and working papers that the appropriate regulator may need to access are those necessary to support the findings contained in the skilled person report. Working papers concerning the internal administration and the management of the assignment, such as engagement acceptance processes, staffing, quality assurance processes, do not constitute working papers necessary to support the skilled persons' findings.
109. The form and extent of working papers is a matter for the skilled person's professional judgement.
110. Depending on the scope of the engagement and the form and content of the skilled person report, the report prepared by the skilled person may contain substantial narrative details. To the extent that details are recorded in the report there may be no need to duplicate such information separately in working papers.
111. The specific findings included in the skilled person report can involve matters of varying degrees of subjectivity. For more subjective matters such as difficult questions of principle, comparison or judgement the report normally includes the supporting reasoning. For example:
- a judgement as to whether the skilled person reasonably believes that an FCA or PRA rule may have been breached; and

<sup>21</sup> FCA SUP 5.4.12 G; and PRA SS7/14 para. 4.9 – 4.11

<sup>22</sup> FCA SUP 5.5.2(4) G and PRA SP1/2/3/4 2.1/PRA SS7/14 4.4

<sup>23</sup> FCA SUP 5.5.3 G and PRA SSX/13 para. 4.4

## GUIDANCE FOR SKILLED PERSON REVIEWS

- where internal controls are examined, a judgement as to whether a matter identified is considered to be an issue worthy of reporting.
112. To the extent the reasoning for matters of judgement is not expressed in the skilled person report, the skilled person should record the reasoning in working papers. For example in the case where internal controls are examined, the working papers should record how issues initially judged by the skilled person as reportable, but subsequently excluded from the report, have been resolved.
113. There are no specific statutory requirements for how long the skilled person should keep working papers. The skilled person uses judgement to determine the appropriate period of retention bearing in mind the possible needs of the firm and the appropriate regulator, where enforcement action is contemplated or is in progress.
114. When performing skilled person reviews, the skilled person is subject to the requirements and potential sanctions of s177 of FSMA in relation to complying with a request for information by the appropriate regulator.

## IMPLICATIONS IN ENFORCEMENT SITUATIONS

115. For all reports, the appropriate regulator may use the report and any of the report's associated information or documents in subsequent supervision or enforcement action(s). This is in accordance with SUP 5.5.2 and 5.5.3 and the PRA Supervisory Statement 1.7-1.7B. A skilled person review commissioned in contemplation of enforcement action may require a greater quantity and higher quality of evidence to be recorded and retained as part of the fulfilment of the Requirement Notice than for an engagement commissioned as part of the appropriate regulator's normal supervisory processes. The Requirement Notice and any supporting agreed procedures or protocols should set out clearly exactly what standard is required or processes are to be followed.
116. If circumstances change during the engagement such that the appropriate regulator believes there is suspected or actual serious misconduct, it could be necessary to suspend or end the skilled person review, to enable an investigation into the misconduct to commence. To do this, the skilled person should ensure an orderly handover. It is therefore important that the skilled person and the appropriate regulator communicate clearly about the requirements, expectations and intended use of the skilled person report throughout the review.

## CONFIDENTIALITY, SAFE CUSTODY AND OWNERSHIP

117. The firm must waive any duty of confidentiality owed by the skilled person to the firm that might limit the provision of information or opinion by the skilled person to the appropriate regulator<sup>24</sup>. The skilled person is, however, otherwise required to keep all information received from the firm confidential in accordance with their obligations as a primary recipient of information under FSMA s348. Breach of s348 FSMA is a criminal offence under s352 FSMA.
118. The firm cannot be required to produce to the appropriate regulator or the skilled person:
- information protected by banking confidentiality unless the exceptions set out in FSMA s175 apply; or
  - information which is a protected item under FSMA s413 (broadly this relates to material which is the subject of the firm's legal professional privilege).
119. The skilled person should take particular care with material which is potentially protected under FSMA s413, particularly where the skilled person is retrieving material from an electronic database using search terms. If the skilled person receives material which they consider may be a protected item, whether or not the material has been given to them by the firm, the skilled person should notify the firm, and give the firm an opportunity to consider whether the material is protected and whether the firm wishes to disclose the material to the skilled person, on the basis of a limited waiver of privilege. In the absence of a waiver of privilege, the skilled person should return protected items to the firm, together with any working papers that may contain references to such protected material, and should not refer to such material in any report without the prior consent of the firm.
120. There may be instances whereby members of senior management who have been removed from the firm request access to skilled person report. In addition, law enforcement agencies could use a skilled person report in order to form part of a prosecution against a firm and/or an individual. Under such instances, the skilled person must first consider its obligations under FSMA s348.

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<sup>24</sup> FCA SUP 5.5.1R(3) and PRA SS7/14 6.1 – 6.2

## COMPLETION AND REPORTING

### DRAFT REPORTS

121. When draft reports are required as part of the agreed communication under the engagement contract, these should be issued contemporaneously to the regulated firm and the appropriate regulator. Under a direct appointment this may vary, as the skilled person is reporting directly to the appropriate regulator and so reporting should be in accordance with the appropriate regulator's instruction.
122. The regulated firm should consider the factual accuracy of the report and seek clarification where necessary at the draft stage.

### FINAL REPORT

123. The reporting of findings in a skilled person review takes the form agreed with the appropriate regulator as per instructions detailed within the Requirement Notice.
124. The report should have clear and robust findings and, where appropriate, conclusions, relevant to the scope and objectives set out in the Requirement Notice. Reports with findings or conclusions that are couched in vague or ambiguous terms are an impediment to the appropriate regulator as they make it more difficult to assess what further actions are appropriate, or indeed to conclude that no further action is needed.
125. The skilled person should also set out in the report any scope limitations as well as further detail on the scope of work performed, such as sampling methodology, that may be appropriate and or necessary to add additional context.
126. Where an assurance report is provided in accordance with ISAE 3000 (Revised), the skilled person should be clear that this standard has been applied. In addition the skilled person should identify whether ISQC 1 (see Section on Quality Assurance for further information) has been complied with or if not, which professional standard has been followed which is at least as demanding.
127. The appropriate regulator has the ability to discuss the report with the skilled person with or without the firm present.

### MANAGEMENT REPRESENTATIONS

128. Written confirmation of oral representations reduces the possibility of misunderstandings between the skilled person and the firm. In particular, in an assurance engagement, the skilled person should request from the firm a written confirmation of the design and/or operation of the controls that is no less than the skilled persons' assurance conclusion over the same controls. In paragraph 90 it is noted that the skilled person may ask the firm, as a term of engagement, to provide a management representation letter, which confirms to the best of its knowledge and belief that information provided is accurate, complete and up to date, and also asserts if there is any limitation on the information (an illustrative management representation letter is set out in Appendix 5). Having no written representation may impact the skilled person report and result in a qualified opinion or a disclaimer of opinion on the basis of a limitation on the scope of an assurance engagement.
129. Where the skilled person is providing an assurance opinion in accordance with ISAE 3000 (Revised), it will be necessary to obtain written management representations from the firm. It may also be appropriate to obtain such representations for a review and recommend engagement but this will depend on the type of work being undertaken.
130. During an assurance engagement, the firm may make representations to the skilled person, either unsolicited or in response to specific inquiries. When such representations relate to matters that are material to the evaluation or measurement of the subject matter, the skilled person should:
  - evaluate their reasonableness and consistency with other evidence obtained, including other representations;
  - consider whether those making the representations can be expected to be well informed on the particular matters; and
  - obtain corroborative evidence.
131. Representations by the firm cannot replace other evidence the skilled person could reasonably expect to obtain. An inability to obtain sufficient appropriate evidence regarding a matter that has, or may have, a material effect on the evaluation or measurement of the subject matter, when such evidence would ordinarily be available, constitutes a limitation on the scope of the engagement, even if a representation from the firm has been received on the matter.

### MANAGEMENT COMMENTS

132. Ordinarily the appropriate regulator will expect that the firm is given the opportunity to provide written comments on the report which the skilled person can consider, and where appropriate amend, before its submission in final

## **GUIDANCE FOR SKILLED PERSON REVIEWS**

form to the appropriate regulator<sup>25</sup>. The skilled person should make clear to the appropriate regulator what changes, if any, have been made to the report and why.

133. The skilled person should invite the management of the firm to provide comments on the recommendations made in the report. These should be provided once the final draft report has been completed.

## **FINALISATION MEETINGS**

134. A finalisation meeting or meetings should be held to discuss the findings of the report and the firm's comments on the findings.

## **DISPUTE RESOLUTION**

135. Effective communication throughout the engagement should minimise potential disputes. If a dispute occurs between the skilled person and either the firm or the appropriate regulator, normal dispute resolution steps should be taken.
136. It is important that, even when a dispute occurs, the sections of the report which are not subject to the dispute should be agreed and finalised as much as possible.

## **FINAL FEES**

137. Once the review is complete and as the report is finalised, the skilled person should provide a final cost analysis as part of the final report. The appropriate regulator will expect the final cost to be in line with the skilled person's estimate at the start of the review, unless discussed and amended during the course of the review.

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<sup>25</sup> FCA SUP 5.4.10 G and PRA SS7/14 4.9

## **QUALITY ASSURANCE**

138. Skilled persons should ensure that each phase of work is conducted within an environment where quality standards are maintained and quality of work is monitored. The skilled person will follow the ICAEW Code of Ethics or their own trade or professional body's code of ethics and professional standards as well as other relevant practice, including any FCA, PRA or related regulatory requirements, to ensure quality assurance best practice.
139. For engagements performed in accordance with IAASB assurance standards (for example ISAE 3000 (Revised)) the skilled person must also comply with ISQC 1 or other professional requirements that are at least as demanding. Practitioners who are not professional accountants should comply with ISAE 3000 (Revised) paragraphs 3, 4 and 12(r).
140. Guidance on the minimum standards that skilled persons should adhere to is set out below. Skilled persons should have procedures and systems in place, appropriate to their market, size and operation, to ensure that:
- work is organised and controlled to meet firm and industry standards;
  - appropriate supervision and review arrangements are applied;
  - all work undertaken is adequately recorded and monitored; and
  - all staff are made aware of, and comply with, the skilled person's systems and procedures.
141. Skilled persons should ensure that responsibilities of the skilled person and the firm, as well as members of the engagement team, are clearly identified.

## **SUPERVISION AND REVIEW**

142. It is usual practice for senior members of the skilled person's engagement team to supervise and review the work of more junior members. This includes all aspects of the process from proposal, planning, execution and meetings to report writing. The extent of supervision and review is likely to depend on the degree of risk associated with the work and the composition of the team. Such reviews are part of the engagement process and if review papers are not retained, a note should be made on file that a review has taken place.
143. Skilled persons should have procedures to ensure that work, including that of any sub-contractors (to the extent permitted in the contractual terms with the firm and the appropriate regulator), is adequately supervised and reviewed before it is finalised. Appropriate procedures should be determined to minimise the risk of errors and misjudgements.

## **INDEPENDENT QUALITY REVIEW FUNCTION**

144. In order to maintain quality and an appropriate degree of challenge throughout the engagement, the skilled person should consider appointing an independent individual to act in a quality review capacity. The independent individual is an individual employed by the skilled person with at least the same skill, capability and seniority as the senior member(s) of the skilled person's engagement team. The individual's role is to ensure that the matters set out in the requirement notice have been reported upon, challenge the scope of work, meet the team on a regular basis and ensure findings are appropriately reflected so as to deliver a high quality report.

## **RECORDING WORK**

145. All those involved in the skilled person's work must make adequate file notes and retain them on the relevant client files to show source and/or reference material in support of any opinion given as well as any research undertaken.

## **REVIEW OF PROCEDURES**

146. Skilled persons will keep their procedures under review, considering issues such as whether staff receive adequate training and whether access to technical material is sufficient. The review should also include a selection of draft reports prepared to ensure that the work carried out conforms to the terms of the engagement letter.

## **COMPLAINTS**

147. Any complaints from the firm or the appropriate regulator should be investigated immediately by a senior member of the skilled persons' firm, who is independent of the engagement team. If, following the investigation by the independent individual, the skilled persons' firm is of the opinion that the complaint is justified they should do whatever is appropriate to resolve the matter. Where any complaints are made to the skilled person by the regulated firm, the complaints should be notified to, and discussed with, the appropriate regulator in the first instance.

**FEEDBACK**

148. Effective feedback mechanisms are an important element of the skilled person review process. Feedback provides an opportunity for both the appropriate regulator and the skilled person to share concerns or highlight areas of good practice in relation to the conduct and outcome of the engagement. This contributes towards enhancing the skilled person review tool in terms of consistency, quality and efficiency, and therefore benefits all parties.
149. Feedback mechanisms may include specific, planned feedback sessions at key stages of the process. The skilled person should consider building in feedback sessions with the appropriate regulator as part of their work plan. This should include, as a minimum, a feedback session after the delivery of the final report to the appropriate regulator.
150. In addition to specific, planned feedback sessions, there may be cases where there is a need to give feedback more promptly as waiting for such sessions would preclude the opportunity for timely action that might avoid potential problems. For example, where the skilled person takes a view that the scope of the work as set out in the Requirement Notice is not consistent with the expectations of the appropriate regulator, evidenced through later discussions with the appropriate regulator, it is important to communicate this promptly so that any misunderstandings can be addressed. This would avoid the risk of further significant (and potentially unnecessary) work being performed or the skilled person review not meeting its objectives.
151. In providing feedback to the skilled person, it is likely that the appropriate regulator will consider the skilled person's performance and work in the context of the key qualities that the appropriate regulator would expect the skilled person to exhibit and the cost and timeliness with which the work was undertaken.

## APPENDICES

The appendices that follow are designed to provide illustrative examples of documents and reports related to skilled person review engagements. This selection of examples is by no means an exhaustive representation of the possible FCA, PRA or BoE requirements or skilled person reports. In particular:

- while a review and recommend report is illustrated (see Appendix 2b), these can take many forms depending on the subject matter and approach taken by the skilled person; and
- there are many other potential subject matter areas beyond those covered in these appendices. These appendices are illustrative examples for guidance purposes only.

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## APPENDIX 1: REPORT TYPES AND CRITERIA FOR USE

	Nature of report and type of output	Relevant standard	Considerations for when to use
<b>Reasonable assurance opinion</b>	An opinion expressed in the positive on (i) design suitability and operating effectiveness of controls in relation to specified control objectives or (ii) compliance with defined industry rules.	ISAE 3000 (Revised)	<p>For a reasonable assurance opinion to be given, the IAASB's pre-conditions<sup>26</sup> for assurance must be met, including suitable assessment criteria or industry rules.</p> <p>Reasonable assurance opinions provide the highest available level of assurance to the regulator on the evaluation or measurement of the subject matter. A stand-alone opinion is provided and so this form of engagement does not provide further views, judgements or recommendations. If these are also required, it may be appropriate to combine the assurance report with a review and recommend report.</p> <p>Due to the assurance standards the skilled person must adhere to, these opinions tend to be more time consuming to produce and so are potentially more expensive than other forms of engagement.</p>
<b>Limited assurance opinion</b>	An opinion expressed in the negative on compliance with defined industry rules.	ISAE 3000 (Revised)	<p>For a limited assurance opinion to be given, the IAASB's pre-conditions for assurance must be met, including suitable assessment criteria or industry rules.</p> <p>Limited assurance opinions provide a lesser degree of assurance to the regulator than reasonable assurance. A stand-alone opinion is provided and so this form of engagement does not provide further views, judgements or recommendations. If these are also required, it may be appropriate to combine the assurance opinion with a review and recommend report.</p> <p>Due to the assurance standards the skilled person must adhere to, these opinions tend to be more time consuming to produce and so are potentially more expensive than other forms of engagement, albeit less time consuming than reasonable assurance opinions.</p>
<b>Review and recommend</b>	<p>Review of subject matter and report on exceptions with recommendations, views and conclusions.</p> <p>No assurance given.</p>	None	<p>Review and recommend reports give the skilled person significantly more flexibility to give clear views and conclusions on the subject matter, whereas an assurance opinion provides only the conclusion itself.</p> <p>The level of testing required can be agreed between the skilled person and the regulator and so review and recommend reports can be more targeted and less time consuming than assurance engagements.</p> <p>The review and recommend report will also typically include recommendations for actions to be taken by the firm. This may help the firm</p>

<sup>26</sup> Refer to Paragraphs 69-70

to address the issues highlighted and enable supervisors to monitor the firm's progress.

<b>Agreed-upon procedures</b>	Factual reporting only without assessment of the subject matter and conclusions. No assurance given.	ISRS4400 (regard to)	Agreed-upon procedures can give the regulator the information it requires in relation to a specific objective. Agreed-upon procedures are potentially the most efficient way for a regulator to establish facts if no views are required from the skilled person.
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Note – It may be appropriate to combine different types of reports to achieve the objectives of the appropriate regulator. This will be specified in the Requirement Notice.

### ISAE 3000 (Revised) – suitable criteria

Assurance engagements require the skilled person to express an overall conclusion on the subject matter against the specified assessment criteria. Criteria also assist the permitted recipients of the assurance report to understand the basis on which the subject matter was evaluated to reach a conclusion. Criteria should be suitable in relation to the subject matter and may be already established or developed for a specific engagement where they do not previously exist.

As part of the pre-conditions for assurance, the skilled person considers whether specifically developed criteria are likely to satisfy the 'suitable criteria' test and be 'fit for the purpose' of the engagement using characteristics discussed below.

The skilled person should consult with the appropriate regulator to ensure that the criteria meet their needs before proceeding with an engagement.

#### Characteristics of criteria

The skilled person considers the suitability of the assessment criteria to be applied before accepting an assurance engagement. Suitable criteria as set out in the IAASB 'International Framework for Assurance Engagements' exhibit the following characteristics:

- **Relevance:** relevant criteria contribute to conclusions that assist decision making by the intended users of the assurance report.
- **Completeness:** criteria are sufficiently complete when relevant factors that could affect the conclusions in the context of the engagement circumstances are not omitted. Complete criteria include, where relevant, benchmarks for presentation and disclosure.
- **Reliability:** reliable criteria allow reasonably consistent evaluation or measurement of the subject matter including, where relevant, presentation and disclosure, when used in similar circumstances by similarly qualified practitioners.
- **Neutrality:** neutral criteria contribute to conclusions that are free from bias.
- **Understand ability:** understandable criteria contribute to conclusions that are clear, comprehensive, and not subject to significantly different interpretations.

Established criteria tend to be formal in nature, but the degree of formality depends on the subject matter. Criteria in areas such as compliance with legal or regulatory requirements may be widely recognised, either because they are available to the public or because there is an established standard, for example, ISO/IEC 27001 (information security management) and the COSO framework (internal control). Performance criteria may be set out in contractual arrangements as agreed with the users. It is not unusual for established criteria to be customised to meet users' needs.

## APPENDIX 2: REVIEW AND RECOMMEND REPORTING

### 2(A) EXTRACT FROM AN ILLUSTRATIVE REQUIREMENT NOTICE (OPERATIONAL RISK MANAGEMENT FRAMEWORK)

#### REQUIREMENT NOTICE

##### SKILLED PERSON REPORT

To: Name of firm (the 'firm')

Of: Address

Date:

This notice is given pursuant to section 166 of the Financial Services and Markets Act 2000 as amended ('FSMA'). Section 166 of FSMA gives the Prudential Regulation Authority ('PRA') the power (i) to require a person to commission a report from an appropriately skilled person on any matter; or (ii) to itself appoint a person to provide the PRA with a report on the matter concerned.

The purpose of this notice is to require [firm] (the 'firm') to provide the PRA with a report by a skilled person ('the report'). The scope of the skilled person services is as set out in annex A.

The power to require the report is one of the PRA's regulatory tools for the supervision and monitoring of firms. The PRA may use the report and associated materials in connection with the exercise of its functions under FSMA, including relying on the report, or any part of it, in any subsequent enforcement action that the PRA decides is appropriate to take.

#### Purpose of the report

The purpose of the report is to provide the PRA with a review of the firm's Operational Risk Management Framework (ORMF) and to establish how embedded and effective it is. The report should also provide the PRA with an assessment of the methodology used and process undertaken by the firm to calculate an operational risk capital charge which is reflective of its exposure to low frequency/high severity operational risk (OR) events.

#### Engaging the skilled person

The firm is invited to put forward, within 15 working days from the date of this notice and for the approval of the PRA, the names of three skilled persons who are suitable to act as the skilled person to prepare the report. The firm must advise the PRA of:

- the name and business address of the proposed skilled person (the 'nominee'), including the name of the individual proposed to lead the preparation of the Report;
- the professional qualifications of the individual proposed to lead the work on the Report;
- a summary of the nominee's relevant experience, including expertise in [INSERT DETAILS OF ANY SPECIFIC EXPERTISE REQUIRED];
- confirmation that the nominee will have the resources at the time required;
- details of any current, previous or potential future relationship between the nominee and the firm, the potential conflicts of interest these give rise to and how these conflicts would be managed
- a detailed summary of the proposed approach to the preparation of the Report;
- a detailed breakdown of estimated costs of the Report; and
- the extent of the nominee's professional indemnity insurance;

The Firm may nominate any suitable supplier for the PRA to consider and is not required to select from those suppliers listed on the Skilled Person Panel used for reports directly commissioned by the PRA. However, details of the PRA's Skilled Person Panel can be found on our website (<https://www.bankofengland.co.uk/prudential-regulation/supervision>) and the Lot appropriate to this skilled person Report is [lot number].

#### Contractual arrangements

The firm is reminded of the requirements set out in the Use of skilled persons part of the PRA Rulebook and the guidance in the PRA's expectations in the 'Reports by skilled persons' Supervisory Statement – SS7/16 (updated September 2015)

Once the PRA has approved the appointment of the skilled person, the firm must enter into a contract with the skilled person which complies with use of skilled persons.

#### Reporting arrangements

A draft of the final report must be completed and sent to the PRA by [XX 20XX]. The skilled person must send the PRA [X] copies of the report in paper as well as in electronic form to [name and email address] at The Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA.

## GUIDANCE FOR SKILLED PERSON REVIEWS

The final report must be completed and sent to the PRA by [XX 20XX]. The skilled person must send the PRA [ ] copies of the report in paper as well as in electronic form to [name and email address] at The Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA.

The skilled person must provide the PRA with identical copies of any draft report at the same time it issues drafts of the report to the firm.

[Name of lead supervisor]

### Annex to Requirement Notice

#### Background

[Include a brief summary of the events that have led to the commissioning of this skilled person report]

#### Key requirements of the report

The skilled person is required to review and provide recommendations on the following aspects of the ORMF:

- (i) the ORMF is embedded and effective; and
- (ii) the Pillar 2A methodology produces an OR capital charge that reflects the firm's exposure to low frequency/high severity OR events.

#### ORMF:

In relation to (i), the skilled person must undertake a review that encompasses:

- testing to assess the operational effectiveness and use of the ORMF to identify, manage, monitor and report the operational risk exposures it is, or might be, exposed to; and
- a review to determine whether the outcomes of these assessments are appropriately escalated and acted upon.

The skilled person should conduct their assessment by focusing on testing the following two risks: IT/outsourcing risk and financial crime (as set out in the Firm's 2017 ICAAP). This is to ensure that the final report provides sufficient detail and analysis and focuses on the areas of most material risk (outsourcing risk is considered one of the largest OR risks in terms of quantum of potential exposure) or specific risks that the firm itself has called out.

In undertaking this work, the skilled person should assess the level of embeddedness by way of specific reference to, and in line with, the Capital Requirements Regulation (CRR) for Operational Risk, Title III, Chapters 1 – 4, Articles 312 – 324 as well as Articles 74 and 85 of the Capital Requirements Directive (CRD IV), where relevant.

To this end, the PRA will expect the skilled person to scope an assessment of, including but not limited to, the following.

- The role of the governing body and senior management in providing oversight and challenge of operational risk:
  - role of the Board and the Board Risk Committee;
  - delegation of accountability, responsibility and challenge to senior management for managing operational risk;
  - role of the Risk Management Committee;
  - role of the Audit Committee;
  - oversight, challenge and review arrangements; and
  - reporting and escalation.
- The role of the Operational Risk Framework:
  - design and approval of the Framework;
  - OR policy and procedures;
  - risk appetite/tolerance for operational risk;
  - risk control self-assessment;
  - key operational risk indicators; and
  - treatment of near misses.
- The role of the Operational Risk Control Function:
  - role of the Chief Operational Risk Officer;
  - mandate of the operational risk control function;
  - key responsibilities and accountabilities;
  - reporting lines;
  - skills, competencies and resources within the function – current and future;
  - relationship with other risk management activities undertaken by the business; and
  - oversight, challenge and review arrangements with respect to operational risk identification, management and reporting.

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### Operational risk capital requirement:

In relation to (ii), the skilled person is required to review and provide recommendations on (including but not limited to), the following aspects of the operational risk capital requirement.

- An assessment of the firm's modelling methodology, scenarios and assumptions used to derive the operational risk capital, (in particular whether the process is robust and appropriate to the size and complexity of the business activities being conducted), and including those used to establish the diversification benefit.
- There is appropriate governance and validation surrounding the methodology, scenarios and assumptions to ensure that they will continue to be fit for purpose and relevant to the size and complexity of the firm and takes into account possible changing market and operating conditions.

To that end, the PRA will expect the skilled person to scope an assessment of, including but not limited to, the following:

- Measurement of OR:
  - operational risk scenario analysis process;
  - scenario determination and challenge process;
  - validation of completeness, accuracy and relevance of the scenarios the firm has selected;
  - risk mitigation arrangements;
  - reporting and escalation;
  - use of scenarios for operational risk management;
  - operational risk model assumptions;
  - operational risk model validation; and
  - operational risk model governance.

In relation to both i) and ii) the skilled person's approach and sampling methodology should be agreed with the PRA.

### Report structure

The report should be structured as follows.

- An executive summary of the report's findings and recommendations, including the overall conclusions and views of the skilled person;.
- An outline of the methodology that was undertaken to fulfil the requirements of the scope of the report, including where appropriate:
  - o the nature and extent of documentation or other firms records examined;
  - o the nature and extent of reliance on the firm's staff;
  - o the people interviewed; and
  - o whether the skilled person found it necessary to conduct further work not originally planned in order to meet the report requirements and, if so, the nature and extent of such further work;
- A section providing details of each of the matters examined under the terms of the report's scope, providing summary results of testing, expressing a view on the outcomes of such testing, and providing detail and recommendations in any areas where weaknesses were identified.
- An annex documenting detailed testing carried out by the skilled person.
- Any other of the matters detailed in Use of Skilled Persons 3.1(1)(b)4 of the PRA Handbook.
- A breakdown of the total cost of the report.

### Communication between the skilled person and the PRA

[Same as per illustrative Requirement Notice in Appendix 3(a)]

## 2(B) ILLUSTRATIVE EXAMPLE CONTENT OF REVIEW AND RECOMMEND REPORT

The following is an illustrative list of chapter headings and appendices that would form the content of a typical review and recommend skilled person review under FSMA s166. The illustrative list below is for guidance purposes only; and therefore such reports can take many forms depending on the subject matter and the approach taken by the skilled person.

### **Executive summary**

This would typically include an introduction to the skilled person review and the structure of the report, together with an overall summary of the findings, recommendations, views and conclusions of the skilled person in relation to such findings. It would also include the firm's summary management response.

### **Background and scope**

This chapter would typically include details on the content of the Requirement Notice, a summary of the purpose and use of the report. It should also include details of the scope of work and approach to the review. Changes to the scope after the final Requirement Notice has been issued should also be recorded in this section.

### **Findings and recommendation chapter(s)**

This section may constitute one or more chapters; and would typically comprise the skilled person's findings during the course of the review against the appropriate regulator's requirements as set out in the Requirement Notice, together with the skilled person's conclusions and recommendations on such findings. This would also include management comments against each finding and associated recommendation(s).

### **Appendices**

Appendices will vary depending on the nature of the report. Set out below is a summary of typical appendices which might be included a review and recommend report.

- Copy of fully executed engagement letter between (1) the firm and (2) the skilled person.
- Copy of the skilled person review procedures and project plan.
- Copy of the appropriate regulator's final Requirement Notice.
- Copy of any evidence (e.g., variation letter) evidencing changes to the scope of work.
- List of meetings during the course of the review.
- List of documentation received and reviewed by skilled person.

## APPENDIX 3: REASONABLE ASSURANCE OPINION

### 3(A) AN ILLUSTRATIVE REQUIREMENT NOTICE (REGULATORY RETURNS)

#### REQUIREMENT NOTICE

#### SKILLED PERSON REPORT

To: Name of firm (the 'firm')

Of: Address

Date:

This notice is given pursuant to section 166 of the Financial Services and Markets Act 2000 as amended ('FSMA'). Section 166 of FSMA gives the Prudential Regulation Authority ('PRA') the power (i) to require a person to commission a report from an appropriately skilled person on any matter; or (ii) to itself appoint a person to provide the PRA with a report on the matter concerned.

The purpose of this notice is to require [firm] (the 'firm') to provide the PRA with a report by a skilled person ('the report'). The scope of the skilled person services is as set out in the annex to the requirement notice.

The power to require the report is one of the PRA's regulatory tools for the supervision and monitoring of firms. The PRA may use the report and associated materials in connection with the exercise of its functions under FSMA, including relying on the report, or any part of it, in any subsequent enforcement action that the PRA decides is appropriate to take.

#### Purpose of the report

The purpose of the report is to provide reasonable assurance on:

- the adequacy and effectiveness of the systems and controls relating to the firm's regulatory reporting with particular regard to the preparation, review, reconciliation and submission to the PRA of the regulatory returns [specify name of returns to be covered];
- the completeness and accuracy of the submitted regulatory returns, as assessed in terms of the firm's compliance with the guidance set out in the PRA Rulebook; and
- [additional points if relevant].

#### Engaging the skilled person – Directly Commissioned Report.

The firm is invited to put forward, within 15 working days from the date of this notice and for the approval of the PRA, the names of three skilled persons who are suitable to act as the skilled person to prepare the report. The firm must advise the PRA of:

- the name and business address of the proposed skilled person (the 'nominee'), including the name of the individual proposed to lead the preparation of the Report;
- the professional qualifications of the individual proposed to lead the work on the Report;
- a summary of the nominee's relevant experience, including expertise in [INSERT DETAILS OF ANY SPECIFIC EXPERTISE REQUIRED];
- confirmation that the nominee will have the resources at the time required;
- details of any current, previous or potential future relationship between the nominee and the firm, the potential conflicts of interest these give rise to and how these conflicts would be managed
- a detailed summary of the proposed approach to the preparation of the Report;
- a detailed breakdown of estimated costs of the Report; and
- the extent of the nominee's professional indemnity insurance.

The Firm may nominate any suitable supplier for the PRA to consider and is not required to select from those suppliers listed on the Skilled Person Panel used for reports directly commissioned by the PRA. However, details of the PRA's Skilled Person Panel can be found on our website (<https://www.bankofengland.co.uk/prudential-regulation/supervision>) and the Lot appropriate to this skilled person Report is [lot number].

#### Contractual arrangements

The firm is reminded of the requirements set out in the Use of skilled persons part of the PRA Rulebook and the guidance in the PRA's expectations in the 'Reports by skilled persons' Supervisory Statement – SS7/16 (updated September 2015).

Once the PRA has approved the appointment of the skilled person, the firm must enter into a contract with the skilled person which complies with use of skilled persons 3.

#### Reporting arrangements

A draft of the final report must be completed and sent to the PRA by [XX 20XX]. The skilled person must send the PRA [ ] copies of the report in paper as well as in electronic form to [name and email address] at The Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA.

## GUIDANCE FOR SKILLED PERSON REVIEWS

The final report must be completed and sent to the PRA by [XX 20XX]. The skilled person must send the PRA [ ] copies of the report in paper as well as in electronic form to [name and email address] at The Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA.

The skilled person must provide the PRA with identical copies of any draft report at the same time it issues drafts of the report to the firm.

[Name of lead supervisor]

### Annex to Requirement Notice

#### Background

[Include a brief summary of the events that have led to the commissioning of this skilled person report]

#### Key requirements of the report

The purpose of the report is to provide reasonable assurance on:

- the adequacy and effectiveness of the systems and controls relating to the firm's regulatory reporting with particular regard to the preparation, review, reconciliation and submission to the PRA of the regulatory returns [specify name of returns to be covered];
- the completeness and accuracy of the submitted regulatory returns, as assessed in terms of the firm's compliance with the guidance set out in SUP 16.12 Annex 25G; and
- [additional points if relevant].

The skilled person report should provide:

- a description and an assessment of the systems and controls relating to the firm's regulatory reporting;
- details of any weaknesses in the systems and controls relating to the firm's regulatory reporting, the cause of those weaknesses and recommendations for remedial action to address those weaknesses; and
- details of any instances where the firm's regulatory reporting was inaccurate or incomplete, including information on the nature, scale and materiality of those instances and an explanation of the underlying cause.

The report should cover the PRA regulatory returns relating to [area of returns] (the 'regulatory returns') as follows:

Regulatory return as at	Due to be submitted by
PRA [XXX] [Date]	[Date]

[Specify whether the regulatory returns listed above relate to solo or group level]

The skilled person and the PRA should agree on the appropriate level of materiality.

There is no requirement for the skilled person to audit the accuracy of the figures in the books and records of the firm [or group]. [The definition of books and records and whether these may have been subjected to testing by the firm's auditors should be described as agreed.]

Areas where approximations, estimates, or expert judgements are used in compiling or aggregating figures on the regulatory returns should be identified and their reasonableness assessed.

The degree of automation compared to manual preparation should be considered when designing the procedures to be applied and evaluating the impact on the accuracy of the returns.

The skilled person should provide suggestions for the firm to improve its systems and controls over reporting the information required in the regulatory returns to the PRA in order of priority and with an indication of reasonable timescales for implementation, should we agree with the firm that any changes are desirable.

The skilled person is also asked to report on all other matters identified as a result of its work about which the PRA may reasonably require notice.

The skilled person must adhere to the guidance in International Standard on Assurance Engagements 3000 'Assurance engagements other than audits or reviews of historical financial information' (ISAE 3000 (Revised)), the International Framework for Assurance Engagements and the ICAEW Code of Ethics s291, 'Independence – other assurance engagements'. The skilled person should also take note of the guidance for skilled persons issued by ICAEW, Technical Release TECH15/14FSF.

The skilled persons' approach and sampling methodology<sup>27</sup> should be discussed with the PRA.

#### Report structure

The report should be structured as follows:

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<sup>27</sup> FRC Guidance is present at: <https://frc.org.uk/>

## GUIDANCE FOR SKILLED PERSON REVIEWS

- An executive summary of the report's findings and recommendations.
- A reasonable assurance opinion over the firm's systems and controls over regulatory reporting.
- A reasonable assurance opinion on whether the data presented in the firm's regulatory returns has been properly extracted from the books and records of the firm and from underlying source documentation, and whether the regulatory returns have been prepared in accordance with the PRA's reporting instructions and definitions applicable to those returns.
- An outline of the methodology that was undertaken to fulfil the requirements of the scope of the report, including where appropriate:
  - the nature and extent of documentation or other records examined;
  - the nature and extent of reliance on other parts of the firm's group;
  - the people interviewed; and
  - whether the skilled person found it necessary to conduct further work not originally planned in order to meet the report requirements and, if so, the nature and extent of such further work.
- A section providing details of each of the matters examined under the terms of the report's scope, providing summary results of testing, expressing an opinion on the outcomes of such testing, and providing detail and recommendations in any areas where weaknesses were identified.
- An annex documenting detailed testing carried out by the skilled person.
- Any other of the matters detailed in 'Use of skilled persons 3.1(1)(b)'.
- A breakdown of the total cost of the report.

### Communication between the skilled person and the PRA

- The skilled person will be required to meet and hold discussions with the PRA before starting work on the report, in order to discuss its scope and to obtain a full briefing of the background and objectives of the report.
- The skilled person will be required to meet and hold discussions with the PRA during the preparation of the report to discuss the progress of the report and any emerging findings. A timetable for ongoing progress meetings/calls will be agreed at the outset of the work.
- The PRA expects to maintain an open line of communication with the skilled person throughout the preparation of the report. In addition, the PRA must be kept informed by the skilled person of any significant developments as and when they occur. This should include notification of any material changes in the estimated cost of commissioning the report.
- The firm must inform the PRA of the direct cost of commissioning the report once completed. Please note that this cost should exclude charges for any work that is undertaken by the skilled person which is outside the scope of the report.

### 3(B) ILLUSTRATIVE REASONABLE ASSURANCE OPINION (REGULATORY RETURNS)

#### Independent skilled person assurance report to the directors of [name of entity]<sup>28</sup> in respect of the regulatory returns made to the Prudential Regulation Authority as at [date]

We have carried out a reasonable assurance engagement in accordance with the terms of our engagement letter dated [date] and the requirement notice dated [date] on the regulatory returns on [subject matter] of [name of entity] as at the following dates:

- [return] – as at [reporting date]
- [return] – as at [reporting date]

This report is made solely to the directors and the [appropriate regulator] in accordance with the terms of our engagement letter. Our work has been undertaken so that we might state to the directors and the [appropriate regulator] those matters which we are required to state in an independent assurance report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the directors and the [appropriate regulator] for our work, for this report, or for the conclusion we have formed, save where expressly agreed in writing.

#### Respective responsibilities of the directors and the skilled person

As directors of the firm you are responsible for preparing the regulatory returns on [subject matter] of [firm] and ensuring that the returns comply with the requirements of the Financial Services and Markets Act 2000, as amended (FSMA), statutory instruments and the rules in the Prudential Regulation Authority (PRA) Rulebook as they relate to regulatory returns on [subject matter] and to [firm].

Our responsibilities for this engagement are established in the UK by our professional ethical guidance and are to undertake a reasonable assurance engagement on the preparation of the regulatory returns in accordance with our engagement letter and the requirements of [regulation]. We report an opinion on whether the regulatory returns have been prepared in accordance with [regulation] in all material respects as at the reporting dates.

#### Our approach

We conducted our reasonable assurance engagement in accordance with International Standard on Assurance Engagements ISAE 3000 (Revised) issued by the International Auditing and Assurance Standards Board and with regard to TECH 15/14 issued by ICAEW, and the requirements of the [appropriate regulator].

Our work was based upon obtaining an understanding of the process to produce the regulatory returns on [subject matter], and evaluating the application of the PRA Rulebook to obtain reasonable evidence on which to form our assurance conclusion. Our work also included tests, on a sample basis, to trace the information in the returns back to source documents. This included examining the [...].

#### Inherent limitations

We have not audited the accuracy of the figures in the books and records of [client] from which the information in the regulatory returns on [subject matter] was extracted.

#### Conclusion

Except for the matters set out in column B of the attached schedule of issues, in our opinion the regulatory returns on [subject matter] have, in all material respects:

- been properly extracted from the relevant books and records of [firm]; and
- been prepared in accordance with the reporting instructions and definitions for the regulatory returns on [subject matter] issued by the PRA.

[Skilled person's name]

[Name of skilled person]

[Chartered Accountants]

[Location]

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<sup>28</sup> This illustrative report only addresses the reasonable assurance part of the scope in the accompanying illustrative Requirement Notice.

## GUIDANCE FOR SKILLED PERSON REVIEWS

[Date]

### Schedule of issues<sup>29</sup>

We have included in column C the firm's responses to the matters raised in column B in this schedule of issues. These comments have been provided to us by the firm. We have not examined the accuracy of the statements made or the suitability of any actions taken or proposed and we take no responsibility for them.

Issue	Matter arising	Identifying party	Firm's comment
1.		[skilled person/firm]	

Additional optional paragraphs regarding ethical standards relating to assurance engagements.

#### Compliance with ISQC 1

[In preparing the report *[the firm – insert name of firm]* of which the skilled person is a member has applied ISQC 1] – *Include statement to this effect when the skilled person is a professional accountant.*

OR (delete as appropriate)

[In preparing the report *[the firm – insert name of firm]* of which the skilled person is a member has applied *[[insert name and detail of other professional requirements, or requirements imposed by law or regulation]*, which are at least as demanding as ISQC 1.] - *Include statement to this effect when the skilled person is not a professional accountant.*

#### Compliance with the ICAEW Code of Ethics

[In preparing the report *[the firm – insert name of firm]* of which the skilled person is a member has complied with the independence and other requirements of the ICAEW Code of Ethics related to other assurance engagements – *Include statement to this effect when the skilled person is a professional accountant.*

OR (delete as appropriate)

[In preparing the report *[the firm]* of which the skilled person is a member has complied with *[insert name and detail of other professional requirements, or requirements imposed by law or regulation]*, which are at least as demanding as Parts A and B of the ICAEW Code of Ethics related to other assurance engagements.] – *Include statement to this effect when the skilled person is not a professional accountant.*

<sup>29</sup> The issues described in this appendix should only be those that affect the reasonable assurance opinion. Other issues should be set out in a separate review and recommend report, as appropriate.

### 3(C) EXTRACT FROM AN ILLUSTRATIVE REQUIREMENT NOTICE (MARKET CONDUCT CONTROLS)

REQUIREMENT NOTICE

SKILLED PERSON REPORT

To: Name of firm (the 'firm')

Of: Address

Date:

This is a notice under section 166(3)(a) of the Financial Services and Markets Act 2000 (FSMA), requiring [INSERT NAME OF FIRM] (the Firm) to provide the Financial Conduct Authority (the FCA) with a report (the Report) by a skilled person (Skilled Person). The scope of the Report is set out in the Annex attached to this notice.

FSMA section 166 gives the FCA the power to require the Firm to provide information or produce documents with respect to any matter.

The appointment of a Skilled Person is one of the regulatory tools used by the FCA to supervise and monitor firms. The FCA may use the Report and any associated information or documents provided by the Skilled Person, in connection with the exercise of any of its statutory functions. This includes relying on the Report and any of the Report's associated information or documents in subsequent FCA supervision or enforcement action(s). This includes action(s) taken under powers conferred on the FCA by the Competition Act 1998 and/or Enterprise Act 2002.

It is the duty of the Firm to give the Skilled Person all such assistance as the Skilled Person may reasonably require during the preparation of the Report or the collection of relevant information in the matter concerned.

#### **Purpose of the review**

The purpose of the report is to provide a reasonable assurance opinion that the firm has effective market conduct control frameworks that are embedded within the firm's business as usual processes and procedures.

Certain specific procedures need to be carried out as set out in Annex A.

#### **ANNEX A**

##### **Key requirements of the review**

Market conduct controls.

- a) Testing and analysis of the firm's implementation of the remediation plan to design adequate and effective market conduct controls.
- b) Testing and analysis of the effectiveness of market conduct controls within the firm following the implementation of the remediation plan.
- c) Appropriate recommendations for remedial action in relation to findings under a) and b) above.

In relation to the above, the report should have regard, but not be limited to, the firm's compliance with the relevant principles and rules in PRIN and SYSC.

##### **Report structure**

The report should be structured as follows:

- An executive summary of the report's findings and recommendations.
- An outline of the work that was undertaken to fulfil the requirements of the scope of the report, including where appropriate:
  - the nature and extent of documentation or other firm's records examined;
  - the nature and extent of reliance on the firm's staff;
  - the people interviewed; and
  - whether the skilled person found it necessary to conduct further work not originally planned in order to meet the report requirements and, if so, the nature and extent of such further work.
- A section providing details of each of the matters examined under the terms of the report's scope, providing summary results of testing, expressing an opinion on the outcomes of such testing.
- An annex documenting detailed testing carried out by the skilled person.
- Any other of the matters detailed in SUP 5.5.1 R(1)(b) of the FCA Handbook.
- A breakdown of the total cost of the report.

### 3(D) ILLUSTRATIVE REASONABLE ASSURANCE OPINION (MARKET CONDUCT CONTROLS)

#### **Independent skilled person assurance report to the directors of [name of entity] ('the firm') in respect of market conduct controls as at [date].**

We have carried out a reasonable assurance engagement in accordance with the terms of our engagement letter dated [date] and the requirement notice dated [date] on the directors description of [name of entity's] specified market conduct controls throughout the period [date] to [date] as described in Appendix [x] to this report.

This report is made solely to the directors in accordance with the terms of our engagement letter and the requirement notice. Our work has been undertaken so that we might state to the directors and the [appropriate regulator] those matters which we are required to state in an independent assurance report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the board of directors for our work, for this report, or for the conclusion we have formed, save where expressly agreed in writing.

#### **Respective responsibilities of the directors and the skilled person**

As directors of the firm you are responsible for preparing the descriptions set out in [Annex A]; specifying the relevant market conduct policies and processes covered by the description; specifying the control operating criteria including the control objectives and stating them in the description; identifying the risks that threaten the achievement of the control objectives; and designing, implementing and effectively operating controls to achieve the stated control objectives.

The directors of the firm are and shall be responsible for ensuring that the firm complies with laws and regulations applicable to its operations. Specifically, the directors are responsible for ensuring that the firm implements and operates controls designed to achieve compliance with its market conduct obligations.

As directors of the firm you are responsible for preparing the regulatory returns on [subject matter] of [firm] and ensuring that the returns comply with the requirements of the Financial Services and Markets Act 2000, as amended (FSMA), statutory instruments and the rules in the Prudential Regulation Authority (PRA) Rulebook as they relate to regulatory returns on [subject matter] and to [firm].

Our responsibilities for this engagement are established in the UK by our professional ethical guidance and are to undertake a reasonable assurance engagement on the specified market conduct controls in accordance with our engagement letter and the requirements of [regulation]. We report an opinion on whether the regulatory returns have been prepared in accordance with [regulation] in all material respects as at the reporting dates.

#### **Our approach**

We conducted our engagement in accordance with International Standard on Assurance Engagements ISAE 3000 (Revised) issued by the International Auditing and Assurance Standards Board and with regard to TECH 01/18FSF issued by ICAEW, and the requirements of the [regulator]. We performed a reasonable assurance engagement as defined in the IAASB's International Framework for Assurance Engagements and in accordance with TECH 01/18FSF.

An assurance engagement to report on the design and operating effectiveness of controls involves performing procedures to obtain evidence about the suitability of design and operating effectiveness of the controls. Our procedures included assessing the risks that the controls were not suitably designed or operating effectively to achieve the related control objectives stated in the description. Our procedures also included testing the operating effectiveness of those controls to provide reasonable assurance that the related control objectives stated in the description were achieved. We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### **Inherent limitations**

Because of their nature, controls may not prevent or detect and correct all errors or omissions within the market conduct processes. The directors acknowledge that the design of internal controls relating to the firm's market conduct obligations is subject to inherent limitations and, accordingly, errors or irregularities may occur and not be detected. Such control procedures cannot guarantee protection against (among other things) fraudulent collusion especially on the part of those holding positions of authority or trust. In addition, given the nature of the evidence subject to control procedures there is no guarantee that the controls will identify fraudulent activity undertaken by third parties. Our opinion is based on historical information and the projection to future periods of any opinions about the suitability of the design or operating effectiveness of the controls would be inappropriate.

#### **Basis for a qualified opinion**

We were unable to obtain sufficient and appropriate evidence over certain controls. Consequently, we are unable to opine that they were operating effectively throughout the period.

## GUIDANCE FOR SKILLED PERSON REVIEWS

### Conclusion

The accompanying description of controls in [Annex A] states that the firm had controls in place and operating to achieve the stated control objectives. However, our procedures identified that, as described under the heading 'Results of testing' in [Annex A], certain controls did not operate effectively throughout the period to achieve the objectives described. These are indicated as 'exceptions' in [Annex A].

In our opinion, in all material respects, based on the criteria including the control objectives set out in the description:

- a. the relevant controls related to the control objectives stated in the description were suitably designed to provide reasonable assurance that the specified control objectives would be achieved if the described controls operated effectively throughout the period from [date] to [date]<sup>30</sup>; and
- b. except for the effect of the matters included in the Basis for qualified opinion paragraph above, the controls tested, which were those necessary to provide reasonable assurance that the control objectives stated in the description were achieved, operated effectively throughout the period from [date] to [date].

[Skilled person's name]

[Name of skilled person]

[Chartered Accountants]

[Location]

[Date]

### Additional optional paragraphs regarding ethical standards relating to assurance engagements

#### Compliance with ISQC 1

[In preparing the report *[the firm – insert name of firm]* of which the skilled person is a member has applied ISQC 1] – *Include statement to this effect when the skilled person is a professional accountant.*

OR (delete as appropriate)

[In preparing the report *[the firm – insert name of firm]* of which the skilled person is a member has applied *[insert name and detail of other professional requirements, or requirements imposed by law or regulation]*, which are at least as demanding as ISQC 1.] – *Include statement to this effect when the skilled person is not a professional accountant.*

#### Compliance with the ICAEW Code of Ethics

[In preparing the report *[the firm – insert name of firm]* of which the skilled person is a member has complied with the independence and other requirements of the ICAEW Code of Ethics related to other assurance engagements – *Include statement to this effect when the skilled person is a professional accountant.*

OR (delete as appropriate)

[In preparing the report [the firm] of which the skilled person is a member has complied with *[insert name and detail of other professional requirements, or requirements imposed by law or regulation]*, which are at least as demanding as Parts A and B of the ICAEW Code of Ethics related to other assurance engagements.] – *Include statement to this effect when the skilled person is not a professional accountant.*

### Annex A - Description of the controls operated by [firm] and the [skilled person] test of controls

*Set out below are some illustrative examples of market conduct control objectives:*

The exceptions identified in the 'Results of testing' column impact on operating effectiveness only, not design effectiveness against the specific control objectives.

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<sup>30</sup> If the controls were implemented during the period, the representation letter, the description and the assurance report should reference the appropriate period e.g., from the later of the start of the period or the implementation date to the end of the period.

## GUIDANCE FOR SKILLED PERSON REVIEWS

### 1. Trade surveillance

**Control objective 1:** All trade surveillance rules are supported by clear business requirements.

Control description	Testing plan	Results of testing
Each trade surveillance rule has a business requirement document which documents the rationale and purpose of each rule. These are reviewed and signed off by the Head of Market Conduct Surveillance.	Inspection - Confirm business requirement documents are in place for all of the trade surveillance alert types. Evidence that these have been signed off by Head of Market Conduct Surveillance.	We reviewed all [x] of the trade surveillance rules and determined that each rule had a business requirement document. We found no exceptions.

**Control objective 2:** Changes to trade surveillance alert parameters are reviewed and signed off before implementation.

Control description	Testing plan	Results of testing
Any changes to parameters are requested using the change request form. This is reviewed and signed off by the Head of Market Conduct Surveillance.	Inspection - Review the number of changes made to the alert parameters made to trade surveillance during the review period and for each sample of changes confirm that a change request form was completed and this form was signed by the Head of Market Conduct Surveillance.	Exception – there were [x] parameter changes during the review period, we found no evidence of change request forms being used for parameter changes during the period.

## APPENDIX 4: COMBINED REASONABLE ASSURANCE AND REVIEW AND RECOMMEND REPORTING

### 4(A) EXTRACT FROM AN ILLUSTRATIVE REQUIREMENT NOTICE (OPERATIONAL RISK MANAGEMENT FRAMEWORK)

#### Combined reasonable assurance and review and recommend reporting

*Example requirement notice to show a reasonable assurance opinion where there may also be some review and recommend required where suitable criteria, etc. cannot be identified.*

#### Key requirements of the review

The skilled person is required to provide a reasonable assurance opinion on the design and operating effectiveness of the firm's governance and control framework within its compliance function with particular regard to the adequacy and embeddedness of the:

- compliance risk assessment and compliance monitoring programme;
- compliance desk reviews;
- compliance training programme;
- compliance and internal audit resource plan;
- reporting of compliance issues to management;
- operation of the control room;
- new product process;
- new transaction process; and
- governance framework within the compliance function in the UK.

The reasonable assurance opinion should be provided, where appropriate, to assess the controls in place during the period from [x] to [y].

Where the skilled person is not able to test to a level sufficient to obtain reasonable assurance, due to the lack of suitable criteria, subjective nature of the matter or limited sample size available, the skilled person should provide comments and any recommendations on the design and effectiveness of the controls instead.

The skilled person must adhere to the guidance in International Standards on Assurance Engagements 3000 'Assurance engagements other than audits or reviews of historical financial information' (ISAE 3000 (Revised)), the International Framework for Assurance Engagements and ICAEW's Code of Ethics 'Section 290 on Independence relating to assurance engagements'. The skilled person should also take note of (i) guidance for skilled persons issued by ICAEW, Technical Release TECH 01/18FSF; and (ii) guidance for reporting accountants issued by ICAEW, Technical Release AAF01/06, Assurance on internal controls of services organisations.

## 4(B) ILLUSTRATIVE EXAMPLE OF COMBINED REASONABLE ASSURANCE AND REVIEW AND RECOMMEND REPORT CONCLUSION

*The content of a combined reasonable assurance opinion and review and recommend report would typically consist of an amalgamation of Appendices [3(b)] and [3(d)] and Appendix [5(b)]. Examples of wording which should be included to distinguish between the 'reasonable assurance' and 'review and recommend' elements of the report is set out below.*

### **Executive summary**

As required by the FCA, we have provided a reasonable assurance opinion under ISAE 3000 (Revised) on the design and operation of certain of [Firm's] Market Conduct controls.

Our reasonable assurance opinions are set out in Sections [x] and [x] of this report.

Where we have agreed with [firm] and the FCA not to provide a reasonable assurance opinion over in-scope controls (for example, where we have been unable to objectively test whether certain controls operated), we have performed alternate procedures. Our observations and recommendations are set out in Sections [x] and [x] of this report.

### **Reasonable assurance opinion**

*The following additional wording may be used at the end of the reasonable assurance opinion to clarify that certain elements of the review are outside of the scope of the reasonable assurance opinion:*

We have also reported in Section [x] to [x] of the report in respect of the wider control environment, which goes beyond the relevant controls subject to assurance in this opinion. In understanding our overall conclusions in Sections [x] and [x] of the report, it is necessary to consider the entirety of Section 2 of the report.

## APPENDIX 5: MANAGEMENT REPRESENTATION LETTER

**Management representations [to name of the firm appointed as the skilled person] relating to the skilled person review commissioned under our engagement letter with you dated [date]**

Dear Sir

This representation letter is provided in connection with your assurance engagement to report on the [describe subject matter information] contained in [name of the report where included] ('your report') for the [year/specify period] ended [date] (the 'review period') in accordance with the [Financial Conduct Authority's (FCA)/Prudential Regulation Authority's (PRA)] Requirement Notice issued [date]. The [describe subject matter information] comprises:

[List information included; any additional information (eg, selection criteria, data sets etc.) can be attached as an Appendix and referred to from here. Define name of the client here as the company if it has not been defined earlier.]

We confirm that, to the best of our knowledge and belief, having made such enquiries as we considered necessary for the purpose of informing ourselves:

1. the directors have fulfilled their responsibilities, as set out in the terms of the agreement with you dated [date] and acknowledge our responsibility for [establishing and maintaining adequate and appropriate internal controls and processes to meet [describe area of control activity] and compliance with [specify] rules];
2. the description (the 'description') of the control objectives and controls designed to meet those objectives, specified in section [x] of the report, is complete and accurate and we believe the control objectives to be suitable in relation to that activity; and
3. the controls related to the control objectives stated in the description were suitably designed to provide reasonable assurance that the specified control objectives would be achieved if the described controls operated effectively throughout the review period<sup>31</sup>, with the exception of the matters [listed on page x].

The controls related to the control objectives stated in the description operated effectively throughout the review period with the exception of the matters [listed on page x]. We have disclosed to you all significant deficiencies in the design or operation of internal controls and processes over the [describe subject matter information] of which we are aware.

[OR for data extraction/regulatory reporting assurance arrangements, insert the following:

All the transactions undertaken by the company, that are material either individually or in aggregate, have been properly reflected and recorded in the books and records, and are reflected in the [subject matter], with the exception of the matters you have brought to our attention in your report or as otherwise disclosed to you.

Where approximation, estimates or expert judgments are used in compiling the [subject matter], they are reasonable other than the matters you have brought to our attention in your report.]

4. The company was in compliance with the [specify] rules as at [date] [and throughout the review period], with the exception of the known or suspected breaches and events, all of which have been disclosed to you. [All the required notifications have been made to the FCA/PRA.]
5. We have provided you with:
  - access to all information/records of which we are aware that is relevant for the purpose of the engagement;
  - additional information/records that you have requested from us for the purpose of the engagement; and
  - unrestricted access to persons within the company from whom you determined it necessary to obtain assurance evidence.
6. Where applicable, we have disclosed to you all information in relation to:
  - any reviews, investigations or reports concerning any aspects of the company's activities that are performed or supplied by any party that may be relevant to the company's report or your assurance report;
  - any correspondence with the [FCA/PRA] relating to your report; and
  - any known events subsequent to the review period of the [describe subject matter information] being reported on that would have a material effect on such information. [The following events have occurred subsequent to [specify period] ended [date] up to the present date:
    - [List subsequent events]

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<sup>31</sup> If the controls were implemented during the period, the representation letter, the description and the assurance report should reference the appropriate period e.g., from the later of the start of the period or the implementation date to the end of the period.

**GUIDANCE FOR SKILLED PERSON REVIEWS**

Yours faithfully

Director  
For and on behalf of the Board of Directors of [Name of Company]

## ABBREVIATIONS

<b>AAF</b>	ICAEW's Audit and Assurance Faculty
<b>BoE</b>	Bank of England
<b>CASS</b>	Client Asset Sourcebook in the FCA Handbook
<b>FCA</b>	Financial Conduct Authority
<b>FCA SUP</b>	The Supervision Manual of the FCA Handbook
<b>FEE</b>	The Fees Manual of the FCA Handbook
<b>FSF</b>	ICAEW's Financial Services Faculty
<b>FSMA 2000</b>	The Financial Services and Markets Act 2000
<b>FS Act</b>	The Financial Services Act 2012
<b>ICAEW</b>	The Institute of Chartered Accountants in England and Wales
<b>IESBA</b>	International Ethics Standards Board for Accountants
<b>IFAC</b>	International Federation of Accountants
<b>ISAE</b>	International Standard on Assurance Engagements
<b>ISQC 1</b>	International Standard on Quality Control 1 <i>(Quality control for firms that perform audits and reviews of financial statements, and other assurance and related services engagements)</i>
<b>ISRE</b>	International Standard on Review Engagements
<b>ISRS</b>	International Standard on Related Services
<b>PACE</b>	Police and Criminal Evidence Act 1984
<b>PRA</b>	Prudential Regulation Authority
<b>PRA RP</b>	PRA Rulebook Part
<b>s166</b>	Section 166 of the Financial Services and Markets Act 2000, Reporting by skilled persons
<b>s166A</b>	Section 166A of the Financial Services and Markets Act 2000, Reporting by skilled persons

## GLOSSARY

<b>Act</b>	The Financial Services and Markets Act 2000, as amended by the Financial Services Act 2012.
<b>Agreed-upon procedures report</b>	A report prepared by the skilled person, under ISRS 4400, describing the nature and extent of procedures performed and factual findings.
<b>Appropriate regulator</b>	The FCA, the PRA, or the Bank of England (BoE) as appropriate.
<b>Assurance report</b>	A report prepared by the skilled person, under ISAE 3000 (Revised), expressing a conclusion on a specified subject matter against specific criteria.
<b>Auditor</b>	Statutory auditor of the authorised firm's financial statements, appointed under the Companies Act 2006.
<b>Authorised firm (or 'firm')</b>	The firm, regulated by the FCA, and where applicable by the PRA, which has been required to commission the report by a skilled person under section 166 or s166A FSMA 2000. The skilled person's client for the engagement.
<b>FCA Handbook</b>	The FCA Handbook of Rules and Guidance.
<b>FCA SUP 5</b>	The chapter of the Supervision Manual of the FCA Handbook dealing with reports by skilled persons.
<b>ICAEW Code of Ethics</b>	ICAEW's code of ethics for professional accountants.
<b>IFAC Code of Ethics</b>	The International Federation of Accountants' code of ethics for professional accountants.
<b>Individual skilled person</b>	The nominated individual accountable for the completion and delivery of a skilled person review at a firm appointed to act as skilled person.
<b>IESBA Code</b>	International Ethics Standards Board for Accountants Code.
<b>ISAE 3000</b>	International Standard on Assurance Engagements 3000 (Revised), Assurance Engagements other than Audits or Reviews of Historical Financial Information.
<b>ISRS 4400</b>	International Standard on Related Services, Engagements to Perform Agreed-Upon Procedures regarding Financial Information.
<b>Principles</b>	Abbreviation used by the FCA/PRA to denote material deriving from the Principles for Businesses in the Handbook.
<b>PRA RP [x]</b>	PRA Rulebook Part [x] (Use of skilled persons).
<b>PRA Rulebook</b>	The PRA Rulebook of PRA rules.
<b>PRA SSX/13</b>	PRA Supervisory statement (Use of skilled persons).
<b>Requirement Notice</b>	The notice issued by the appropriate regulator under s166 or s166A FSMA 2000 to an authorised firm requiring the firm to provide the appropriate regulator with a report by an external person, a 'skilled person'.
<b>Scope of requirements</b>	The scope of the skilled person's work and reporting as set out in the Requirement Notice; distinguished from the skilled persons' planned approach to the work including procedures to be undertaken.
<b>Section 166</b>	Section 166 of the Financial Services and Markets Act 2000, Reporting by skilled persons.

## GUIDANCE FOR SKILLED PERSON REVIEWS

- Section 166A** Section 166A of the Financial Services and Markets Act 2000, Appointment of a skilled person to collect and update information.
- Skilled Person** The person (firm or individual) appointed by an authorised firm to undertake a report which the appropriate regulator has required it to provide under s166 FSMA 2000.

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