

Chapter 4

Code of Practice for Approved Persons: specific

4.5 Statement of Principle 5

- 4.5.1 G [deleted]

- 4.5.1A G The *Statement of Principle 5* (see ■ APER 2.1A.3R) is in the following terms:
"An *approved person* performing an *accountable higher management function* must take reasonable steps to ensure that the business of the *APER employer* for which they are responsible in their *accountable function* is organised so that it can be controlled effectively."

- 4.5.1B G

- 4.5.2 G In the opinion of the *FCA*, conduct of the type described in ■ APER 4.5.3G, ■ APER 4.5.4G or ■ APER 4.5.8G does not comply with *Statement of Principle 5*.

- 4.5.3 G Failing to take reasonable steps to apportion responsibilities for all areas of the business under the *approved person's* control falls within ■ APER 4.5.2G (see ■ APER 4.5.11 G).

- 4.5.4 G Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated falls within ■ APER 4.5.2G (see ■ APER 4.5.11 G).

- 4.5.5 G Behaviour of the type referred to in ■ APER 4.5.4 G includes, but is not limited to:
 - (1) implementing confusing or uncertain reporting lines (see ■ APER 4.5.12 G);
 - (2) implementing confusing or uncertain authorisation levels (see ■ APER 4.5.13 G);
 - (3) implementing confusing or uncertain job descriptions and responsibilities (see ■ APER 4.5.13 G).

- 4.5.6 G [deleted]

- 4.5.7 G (2) [deleted]

4.5.8 G Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing an *accountable higher management function* falls within ■ APER 4.5.2G (see ■ APER 4.5.14 G).

4.5.9 G Behaviour of the type referred to in ■ APER 4.5.8 G includes, but is not limited to:

- (1) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable (see ■ APER 4.5.14 G);
- (2) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role (see ■ APER 4.5.14 G);
- (3) allowing managerial vacancies which put at risk compliance with the requirements and standards of the *regulatory system* to remain, without arranging suitable cover for the responsibilities (see ■ APER 4.5.15 G).

4.5.10 G Strategy and plans will often dictate the risk which the business is prepared to take on and high level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, the *approved person* performing an *accountable higher management function* should bear this in mind.

Apportionment of responsibilities

4.5.11 G To comply with the obligations of *Statement of Principle 5* (having regard to ■ APER 4.5.3G and ■ APER 4.5.4G), the approved person performing an *accountable higher management function* may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.

Reporting lines

4.5.12 G The organisation of the business and the responsibilities of those within it should be clearly defined (see ■ APER 4.5.5 G (1)). Reporting lines should be clear to staff. Where staff have dual reporting lines there is a greater need to ensure that the responsibility and accountability of each individual line manager is clearly set out and understood.

Authorisation levels and job descriptions

4.5.13 G Where members of staff have particular levels of authorisation (see ■ APER 4.5.5G(2) and ■ APER 4.5.5G(3)), these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which he is aware.

Suitability of individuals

4.5.13A **G** The appropriate *approved person* performing an *accountable higher management function* should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has in place appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

4.5.14 **G** If an individual's performance is unsatisfactory, then the appropriate *approved person* (if any) performing an *accountable higher management function* should review carefully whether to allow that individual to continue in position. In particular, if they are aware of concerns relating to the compliance with requirements and standards of the *regulatory system* (or internal controls) of the individual concerned, or of staff reporting to that individual, the *approved person* performing an *accountable higher management function* should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.

An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The *approved person* performing an *accountable higher management function* should satisfy themselves, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the *regulatory system* (see in particular *Statement of Principle 6*, ■ APER 4.5.8G, ■ APER 4.5.9G(1) and ■ APER 4.5.9G(2)).

Temporary vacancies

4.5.15 **G** In organising the business, the *approved person* performing an *accountable higher management function* should pay attention to any temporary vacancies which exist (see ■ APER 4.5.9G(3)). They should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *approved person* performing an *accountable higher management function* should assess the risk that is posed to compliance with the requirements and standards of the *regulatory system* as a result of the vacancy, and the higher the risk the greater the steps they should take to fill the vacancy. It may be appropriate to limit or suspend the activity if appropriate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of one of the *customer functions*, they may only be filled by *persons* approved for that function.