Chapter 5

Reports by skilled persons
5.1 Application and purpose

Application

5.1.1

(1) This chapter applies to every firm.

(2) The rules, and the guidance on rules in SUP 5.5 (Duties of firms), do not apply to a UCITS qualifier.

5.1.1A

In respect of the FCA’s power in section 166 of the Act (Reports by skilled persons), reference to a firm in SUP 5.5.1 R, SUP 5.5.5 R and SUP 5.5.9 R includes a recognised investment exchange.

5.1.1B

In respect of the FCA’s power in section 166 of the Act (Reports by skilled persons), the guidance in this chapter applies to a recognised investment exchange in the same way as it applies to a firm.

5.1.1C

SUP 5.5.1R and SUP 5.5.5R apply to CBTL firms in relation to their CBTL business as if a reference to firm in these rules were a reference to a CBTL firm and a reference to section 166 of the Act were a reference to section 166 of the Act, as applied by article 23(2)(b) of the MCD Order.

5.1.1D

SUP 5.5.1R and SUP 5.5.5R apply to former CBTL firms in relation to their CBTL business as guidance and as if:

(1) a reference to firm in those rules were a reference to a CBTL firm;

(2) section 166 of the Act were a reference to section 166 of the Act as applied by article 23(2)(b) of the MCD Order; and

(3) the word “must” were replaced by the word “should”.

5.1.1E

The guidance in SUP 5.2.1G, SUP 5.3, SUP 5.4 (except SUP 5.4.1AG), and SUP 5.5 (except SUP 5.5.10G and SUP 5.5.11G) applies to CBTL firms and former CBTL firms in relation to their CBTL business as if:

(1) a reference to firm in that guidance included a CBTL firm;

(2) a reference to a section of the Act were a reference to that section as applied by article 23 of the MCD Order if applicable; and
(3) a reference to the FCA’s functions under the Act were a reference to the FCA’s functions under Part 3 of the MCD Order.

5.1.2 This chapter (other than the rules, and guidance on rules, in SUP 5.5 (Duties of firms)) is also relevant to certain unauthorised persons within the scope of section 166 of the Act (Reports by skilled persons) (see SUP 5.2.1 G).

5.1.2A (1) This chapter also applies, as guidance, to a designated bank, designated credit reference agency or a designated finance platform:

(a) in relation to its activities under the Small and Medium Sized Business (Credit Information) Regulations or in relation to its activities under the Small and Medium Sized Business (Finance Platforms) Regulations, as the case may be;

(b) as if, in relation to the activities in (a), references to “must” in SUP 5 were read as “should”; and

(c) where it is not a firm, as if it were a firm.

(2) Regulation 26 of the Small and Medium Sized Business (Credit Information) Regulations applies Part 11 of the Act which includes the provisions concerning skilled persons in relation to activities of a designated bank or a designated credit reference agency under those Regulations. Regulation 23 of the Small and Medium Sized Business (Finance Platforms) Regulations has the same effect in relation to a designated bank under those Regulations or a designated finance platform.

(3) In relation to a designated bank or a designated credit reference agency, a reference in this chapter to the regulatory system includes the requirements applicable to such a person set out in the Small and Medium Sized Business (Credit Information) Regulations. In relation to a designated finance platform or a designated bank, a reference in this chapter to the regulatory system includes the requirements applicable to such a person set out in the Small and Medium Sized Business (Finance Platforms) Regulations.

(4) The application of section 166 by regulation 26 of the Small and Medium Sized Business (Credit Information) Regulations or by regulation 23 of the Small and Medium Sized Business (Finance Platforms) Regulations does not include the persons set out in section 166(11). Therefore, any reference to those persons in this chapter does not apply in relation to a designated bank, designated credit reference agency or a designated finance platform.

(5) In relation to an appointment under section 166A as applied by the Small and Medium Sized Business (Credit Information) Regulations or the Small and Medium Sized Business (Finance Platforms) Regulations, any reference in this chapter to a breach of rules concerning collecting and keeping up-to-date information is a reference to contravention of the requirement under regulation 24 of the Small and Medium Sized Business (Credit Information) Regulations or under regulation 23 of the Small and Medium Sized Business (Finance Platforms) Regulations, as the case may be.
The purpose of this chapter is to give guidance on the FCA’s use of the power in section 166 (Reports by skilled persons) and section 166A (Appointment of skilled person to collect and update information) of the Act. The purpose is also to make rules requiring a firm to give assistance to a skilled person and, where a firm is required to appoint a skilled person, to include certain provisions in its contract with a skilled person. These rules are designed to ensure that the FCA receives certain information from a skilled person and that a skilled person receives assistance from a firm.
5.2  The FCA’s power

Who may be required to provide a report?

Under section 166 of the Act (Reports by skilled persons), the FCA may, by giving a written notice, itself appoint a skilled person to provide it with a report, or require any of the following persons to provide it with a report by a skilled person:

1. a firm; or
2. any other member of the firm’s group; or
3. a partnership of which the firm is a member; or
4. a person who has at any relevant time been a person falling within (1), (2) or (3);

but only if the person is, or was at the relevant time, carrying on a business.

Under section 166A of the Act (Appointment of skilled person to collect and update information), the FCA may require a firm to appoint, or itself appoint, a skilled person to collect or update information.
5.3 Policy on the use of skilled persons

5.3.1 The appointment of a skilled person to produce a report under section 166 of the Act (Reports by skilled persons) is one of the FCA’s regulatory tools. The tool may be used:

1. for diagnostic purposes, to identify, assess and measure risks;
2. for monitoring purposes, to track the development of identified risks, wherever these arise;
3. in the context of preventative action, to limit or reduce identified risks and so prevent them from crystallising or increasing; and
4. for remedial action, to respond to risks when they have crystallised.

5.3.1A SUP 5 Annex 1 gives examples of circumstances in which the FCA may use the skilled persons tool.

5.3.2 The decision by the FCA to require a report by a skilled person under section 166 of the Act (Reports by skilled persons) will normally be prompted by a specific requirement for information, analysis of information, assessment of a situation, expert advice or recommendations or by a decision to seek assurance in relation to a regulatory return. It may be part of the risk mitigation programme applicable to a firm, or the result of an event or development relating or relevant to a firm, prompted by a need for verification of information provided to the FCA or part of the FCA’s regular monitoring of a firm.

5.3.2A The decision by the FCA to require the collection or updating of information by a skilled person under section 166A of the Act (Appointment of skilled person to collect and update information) will be prompted where the FCA considers there has been a breach of a requirement by a firm to collect, and keep up to date, information of a description specified in the FCA’s rules.

5.3.3 When making the decision to require a report by a skilled person under section 166 (Reports by skilled persons) or the collection or updating of information by a skilled person under section 166A (Appointment of skilled person to collect and update information) of the Act, the FCA will have regard, on a case-by-case basis, to all relevant factors. Those are likely to include:

1. circumstances relating to the firm;
(2) alternative tools available, including other statutory powers;

(3) legal and procedural considerations;

(4) the objectives of the FCA’s enquiries;

(5) cost considerations; and

(6) considerations relating to the FCA’s resources.

SUP 5.3.4 G to SUP 5.3.10 G give further guidance on these listed factors.

Circumstances relating to the firm

The FCA will have regard to circumstances relating to the firm, for example:

1. attitude of the firm: whether the firm is being cooperative;

2. history of similar issues: whether similar issues have arisen in the past and, if so, whether timely corrective action was taken;

3. quality of a firm’s systems and records: whether the FCA has confidence that the firm has the ability to provide the required information;

4. objectivity: whether the FCA has confidence in the firm’s willingness and ability to deliver an objective report;

5. conflicts of interest: whether the subject matter of the enquiries or the report involves actual or potential misconduct and it would be inappropriate for the FCA to rely on the firm itself to enquire into the matter; and

6. knowledge or expertise available to the firm: whether it would be appropriate to involve a third party with the required technical expertise.

Alternative tools available, including other statutory powers

The FCA will have regard to alternative tools that may be available, including for example:

1. obtaining what is required without using specific statutory powers (for example, by a visit by staff of the FCA or a request for information on an informal basis);

2. requiring information from firms and others, including authorising an agent to require information, under section 165 of the Act (Power to require information);

3. appointing investigators to carry out general investigations under section 167 of the Act (Appointment of investigator in general cases) (see EG 3 for the FCA policy on the use of this power); and

4. appointing investigators to carry out investigations in particular cases under section 168 of the Act (Appointment of investigator in specific cases) (see EG 3 for the FCA’s policy on the use of this power).
Legal and procedural considerations

5.3.6 The FCA will have regard to legal and procedural considerations including:

1. statutory powers: whether one of the other available statutory powers is more appropriate for the purpose than the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the Act;

2. subsequent proceedings: whether it is desirable to obtain an authoritative and independent report for use in any subsequent proceedings; and

3. application of the Handbook rules: whether it is important that the relevant rules in the Handbook should apply, for example SUP 5.5.1 R which obliges the firm to require and permit the skilled person to report specified matters to the FCA.

The objectives of the FCA’s enquiries

5.3.7 The FCA will have regard to the objectives of its enquiries, and the relative effectiveness of its available powers to achieve those objectives. For example:

1. historic information or evidence: if the objectives are limited to gathering historic information, or evidence for determining whether enforcement action may be appropriate, the FCA’s information gathering and investigation powers under sections 165 (Power to require information), 167 (Appointment of investigator in general cases) and 168 (Appointment of investigator in specific cases) of the Act are likely to be more appropriate than the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the Act; and

2. expert analysis or recommendations: if the objectives include obtaining expert analysis or recommendations (or both) for diagnostic, monitoring, preventative or remedial purposes, the section 166 power (Reports by skilled persons) may be an appropriate power to use, instead of, or in conjunction with, the FCA’s other available powers.

Cost considerations

5.3.8 In accordance with its general policy the FCA will have regard to the question of cost, which is particularly pertinent in relation to skilled persons because:

1. if the FCA uses the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information), either the firm will appoint, and will have to pay for the services of, the skilled person, or the FCA will appoint, and will require under FEES 3.2.7 R (zp) or FEES 3.2.7 R (zq) that the relevant firm pays for the services of, the skilled person;

2. if the FCA uses its other information gathering and investigation powers, it will either authorise or appoint its own staff to undertake the information gathering or investigation (or both), or it will pay for
the services of external competent persons to do so; in either case the costs will be recovered under the FCA’s general fee scheme.

5.3.9 In having regard to the cost implications of using the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information) alternative options (such as visits) or other powers, the FCA will take into account relevant factors, including:

(1) whether the firm may derive some benefit from the work carried out and recommendations made by the skilled person, for instance a better understanding of its business and its risk profile, or the operation of its information systems, or improvements to its systems and controls;

(2) whether the work to be carried out by the skilled person is work that should reasonably have been carried out by the firm, or by persons instructed by the firm on its own initiative; for instance a compliance review or the development of new systems;

(3) whether the firm’s record-keeping and management information systems are poor and:
   (a) the required information and documents are not readily available; or
   (b) an analysis of the required information cannot readily be performed without expert assistance;

(4) whether the firm appears to have breached requirements or standards under the regulatory system or otherwise put the interests of consumers at risk, and it is unable or unwilling to review and remedy the matters of concern, or the FCA considers that it cannot rely on the firm to do so; and

(5) the perceived probability and seriousness of possible breaches of regulatory requirements and the possible need for further action.

5.3.9A [deleted]

Considerations relating to FCA resources

5.3.10 The FCA will have regard to FCA-related considerations including:

(1) FCA expertise: whether the FCA has the necessary expertise; and

(2) FCA resources: whether the resources required to produce a report or to make enquiries or to appoint a skilled person itself are available within the FCA, or whether the exercise will be the best use of the FCA’s resources at the time.
5.4 Appointment and reporting process

Scope of report

5.4.1 Where the FCA requires a report by a skilled person under section 166 of the Act (Reports by skilled persons), the FCA will send a notice in writing requiring the person in SUP 5.2.1 G to provide a report by a skilled person, or notifying the person in SUP 5.2.1 G in writing of the FCA’s appointment of a skilled person to provide a report, on any matter if it is reasonably required in connection with the exercise of its functions conferred by or under the Act. The FCA may require the report to be in whatever form it specifies in the notice.

5.4.1A Where the FCA requires the updating or collection of information by a skilled person under section 166A of the Act (Appointment of skilled person to collect and update information), the FCA will send a notice in writing requiring the firm to appoint a skilled person, or notifying the firm of the FCA’s appointment of a skilled person, to collect or update the relevant information.

5.4.2 As part of the decision making process the FCA will normally contact the person in SUP 5.2.1 G or in SUP 5.2.2 G to discuss its needs before finalising its decision to require a report or the updating or collection of information by a skilled person. This will provide an opportunity for discussion about the appointment, whether an alternative means of obtaining the information would be better, what the scope of a report should be, who should be appointed, who should appoint, and the likely cost.

5.4.3 The FCA will give written notification to the person in SUP 5.2.1 G or SUP 5.2.2 G of the purpose of the report or collection or updating of information, its scope, the timetable for completion and any other relevant matters. The FCA will state the matters which the report is to contain, or the information which is to be collected or updated, as well as any requirements as to the report’s format. For example, a report on controls may be required to address key risks, key controls and the control environment. The FCA attaches importance to there being a timetable for each report and to the skilled person, with the cooperation of the person in SUP 5.2.1 G or the firm in SUP 5.2.2 G, as relevant, keeping to that timetable.
5.4.4 The written notification in SUP 5.4.3 G may be preceded or followed by a discussion of the FCA’s requirements and the reasons for them. This may involve the FCA the person in SUP 5.2.1 G or in SUP 5.2.2 G and the person who has been, or is expected to be, appointed as the skilled person. The FCA recognises that there will normally be value in holding discussions involving the skilled person at this stage. These discussions may include others if appropriate.

5.4.5 The FCA will wish to conduct the discussion with the firm, the skilled person and any others within a timescale appropriate to the circumstances of the case.

Appointment process

5.4.6 Where the skilled person is appointed by the person in SUP 5.2.1 G or SUP 5.2.2 G, the appropriate regulator will normally seek to agree in advance with the person in SUP 5.2.1 G or SUP 5.2.2 G the skilled person who will make the report or collect or update the relevant information. The Act requires that such skilled person be nominated or approved by the appropriate regulator:

(1) if the appropriate regulator decides to nominate the skilled person who is to make the report or collect or update the information, it will notify the person in SUP 5.2.1 G or SUP 5.2.2 G accordingly; and

(2) alternatively, if the appropriate regulator is content to approve a skilled person selected by the person in SUP 5.2.1 G or SUP 5.2.2 G, it will notify the latter person of that fact.

The appropriate regulator may give the person in SUP 5.2.1 G or SUP 5.2.2 G a shortlist from which to choose.

5.4.7 A skilled person must appear to the FCA to have the skills necessary to make a report on the matter concerned or collect or update the relevant information. A skilled person may be an accountant, lawyer, compliance consultant, actuary or person with relevant business, technical or technological skills.

5.4.8 When considering whether to nominate, approve or appoint a skilled person to make a report or collect or update information, the FCA will have regard to the circumstances of the case, including whether the proposed skilled person appears to have:

(1) the skills necessary to make a report on the matter concerned or collect or update the relevant information;

(2) the ability to complete the report or collect or update the information within the time expected by the FCA;

(3) any relevant specialised knowledge, for instance of the person in SUP 5.2.1 G or SUP 5.2.2 G, the type of business carried on by the person in SUP 5.2.1 G or SUP 5.2.2 G, or the matter to be reported on or information to be collected or updated;
(4) any professional difficulty or potential conflict of interest in reviewing the matters to be reported on, or the information to be collected or updated, for instance because it may involve questions reflecting on the quality or reliability of work previously carried out by the proposed skilled person; and

(5) enough detachment, bearing in mind the closeness of an existing professional or commercial relationship, to be able to collect or update the information or to give an objective opinion on matters such as:

(a) matters already reported on by the skilled person (for example, on the financial statements of the person in SUP 5.2.1 G or in SUP 5.2.2 G or in relation to their systems and controls); or

(b) matters that are likely to be contentious and may result in disciplinary or other enforcement action against the person in SUP 5.2.1 G or SUP 5.2.2 G, its management, shareholders or controllers; or

(c) matters that the skilled person has been involved in, in another capacity (for example, when a skilled person has been involved in developing an information system it may not be appropriate for him to provide a subsequent opinion on the adequacy of the system).

5.4.9 In appropriate circumstances, it may be cost effective for the FCA to nominate or approve the appointment of, or appoint itself, a skilled person who has previously acted for, or advised, the person in SUP 5.2.1 G or SUP 5.2.2 G. For example, the FCA may nominate or approve the appointment of, or appoint, the auditor of a person in SUP 5.2.1 G or SUP 5.2.2 G to prepare a report or collect or update the information taking into account, where relevant, the considerations set out in SUP 5.4.7 G.

5.4.10 Where the skilled person is appointed by the person in SUP 5.2.1 G or SUP 5.2.2 G, the FCA will normally require the skilled person to be appointed to report to the FCA through that person. In the normal course of events the FCA expects that the person in SUP 5.2.1 G or SUP 5.2.2 G will be given the opportunity to provide written comments on the report or the collection of the relevant information prior to its submission to the FCA.

5.4.10A Where the skilled person is to be appointed by the FCA itself, the skilled person will report directly to the FCA.

5.4.11 The FCA may enter into a dialogue with the skilled person, and is ready to discuss matters relevant to the report or the collection or updating of the relevant information with that person, during the preparation of the report or the collection or updating of the relevant information. Such discussions may involve or be through the person in SUP 5.2.1 G or SUP 5.2.2 G.
5.4.12 The FCA will normally specify a time limit within which it expects the skilled person to deliver the report or collect or update the relevant information. Where the skilled person is appointed by the person in §SUP 5.2.1 G or §SUP 5.2.2 G, the skilled person should, in complying with its contractual duty under §SUP 5.5.1 R, take reasonable steps to achieve delivery by that time. If the skilled person becomes aware that the report may not be delivered, or collection or updating of the relevant information may not be, on time, the skilled person should inform the FCA and the person in §SUP 5.2.1 G or §SUP 5.2.2 G as soon as possible. Where the skilled person is appointed by the person in §SUP 5.2.1 G or §SUP 5.2.2 G, if the skilled person becomes aware that there may be difficulties delivering the report or collecting or updating the relevant information within cost estimates, the skilled person will no doubt wish to advise the firm.

5.4.13 The FCA may meet with the person in §SUP 5.2.1 G or §SUP 5.2.2 G and the skilled person together to discuss the final report. The FCA may also wish to discuss the final report with the skilled person present but without the person in §SUP 5.2.1 G or §SUP 5.2.2 G.
5.5 Duties of firms

Contract with the skilled person

When a firm appoints a skilled person to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the Act, the firm must, in a contract with the skilled person:

(1) require and permit the skilled person during and after the course of his appointment:

(a) to cooperate with the FCA in the discharge of its functions under the Act in relation to the firm; and

(b) to communicate to the FCA information on, or the skilled person’s opinion on, matters of which the skilled person has, or had, become aware in the capacity of skilled person reporting on the firm in the following circumstances:

(i) the skilled person reasonably believes that, as regards the firm concerned (A) there is or has been, or may be or may have been, a contravention of any relevant requirement that applies to the firm concerned; and (B) that the contravention may be of material significance to the FCA in determining whether to exercise, in relation to the firm concerned, any functions conferred on the FCA by or under any provision of the Act other than Part VI (Official Listing); or

(ii) the skilled person reasonably believes that the information on, or the skilled person’s opinion on, those matters may be of material significance to the FCA in determining whether the firm concerned satisfies and will continue to satisfy the threshold conditions; or

(iii) the skilled person reasonably believes that firm is not, may not be or may cease to be a going concern;

(2) require the skilled person to prepare a report or collect or update information, as notified to the firm by the FCA, within the time specified by the FCA; and

(3) waive any duty of confidentiality owed by the skilled person to the firm which might limit the provision of information or opinion by that skilled person to the FCA in accordance with (1) or (2). (See also SUP 5.5.13 G and SUP 5.6)
5.5.2  In complying with the contractual duty in SUP 5.5.1 R (1) the FCA expects that a skilled person appointed by a firm under section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the Act will cooperate with the FCA by, amongst other things, providing information or documentation about the planning and progress of the report and its findings and conclusions, if requested to do so. A firm should therefore ensure that the contract it makes with the skilled person requires and permits the skilled person to provide the following to the FCA if requested to do so:

(1) interim reports;

(2) source data, documents and working papers;

(3) copies of any draft reports given to the firm; and

(4) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including percentage of work completed, details of time spent, costs to date, and details of any significant findings and conclusions).

5.5.3  If the FCA is considering asking for the information specified in SUP 5.5.2 G it will take into consideration the cost of the skilled person complying with the request, and the benefit that the FCA may derive from the information. For example, in most cases, the FCA will not need to request a skilled person to give it source data, documents and working papers. However, the FCA may do so when it reasonably believes that this information will be relevant to any investigation it may be conducting, or any action it may need to consider taking against the firm.

5.5.4  In complying with the contractual duty in SUP 5.5.1 R, the FCA expects that, in the case of substantial or complex reports, the skilled person will give a periodic update on progress and issues to allow for a re-focusing of the report if necessary. The channel of communication would normally be directly between the skilled person and the FCA. However, the FCA would also expect firms normally to be informed about the passage of information, and the skilled person would usually be expected to keep the firm informed of any communication between the skilled person and the FCA.

5.5.5  A firm must ensure that the contract required by SUP 5.5.1 R:

(1) is governed by the laws of a part of the United Kingdom;

(2) expressly:

(a) provides that the FCA has a right to enforce the provisions included in the contract under SUP 5.5.1 R and SUP 5.5.5 R (2);

(b) provides that, in proceedings brought by the FCA for the enforcement of those provisions, the skilled person is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions;

(c) (if the contract includes an arbitration agreement) provides that the FCA is not, in exercising the right in (a), to be treated as a party to, or bound by, the arbitration agreement; and
(d) provides that the provisions included in the contract under ■ SUP 5.5.1 R and ■ SUP 5.5.5 R (2) are irrevocable and may not be varied or rescinded without the FCA’s consent; and

(3) is not varied or rescinded in such a way as to extinguish or alter the provisions referred to in (2)(d).

5.5.6 G The Contracts (Rights of Third Parties) Act 1999 or Scots common law, enables the FCA to enforce the rights conferred on it under the contract required by ■ SUP 5.5.1 R against the skilled person.

5.5.7 G If the FCA considers it appropriate, it may request the firm to give it a copy of the draft contract required by ■ SUP 5.5.1 R before it is made with the skilled person. The FCA will inform the firm of any matters that it considers require further clarification or discussion before the contract is finalised.

5.5.8 G The FCA expects the firm, including where applicable in complying with Principle 11, to give the FCA information about the cost of the skilled persons report. This may include both an initial estimate of the cost as well as the cost of the completed report. This information is required to help inform the FCA’s decision making in the choice of regulatory tools. Information about the number and cost of reports by skilled persons will be published by the FCA.

Assisting the skilled person

5.5.9 R A firm must provide all reasonable assistance to any skilled person appointed to provide a report under section 166 (Reports by skilled persons) or to collect or update information under section 166A (Appointment of skilled person to collect and update information) of the Act.

5.5.10 G In providing reasonable assistance under ■ SUP 5.5.9 R, a firm should take reasonable steps to ensure that, when reasonably required by the skilled person, each of its appointed representatives or, where applicable, tied agents waives any duty of confidentiality and provides reasonable assistance as though ■ SUP 5.5.1 R (3) and ■ SUP 5.5.9 R applied directly to the appointed representative or tied agent.

5.5.11 G Reasonable assistance in ■ SUP 5.5.9 R should include:

(1) access at all reasonable business hours for the skilled person to the firm’s accounting and other records in whatever form;
5. Section 166(7) of the Act (as applied by article 23(2)(b) of the MCD Order) imposes, in appropriate circumstances, a duty on CBTL firms to give the skilled person all such assistance as the skilled person may reasonably require. Where this duty applies to a CBTL firm, the FCA expects the CBTL firm to:

1. take reasonable steps to ensure that, when reasonably required by the skilled person, each of its appointed representatives waives any duty of confidentiality;

2. take reasonable steps to ensure that, when reasonably required by the skilled person, each of its appointed representatives complies with any duty under section 166(7) applicable to it, or provides assistance to the skilled person as though that duty applied directly to it;

3. allow the skilled person access at all reasonable business hours to the CBTL firm’s accounting and other records in whatever form;

4. provide such information and explanations as the skilled person reasonably considers necessary or desirable for the performance of his duties; and

5. permit the skilled person to obtain such information directly from the CBTL firm’s auditor as he reasonably considers necessary or desirable for the proper performance of his duties.

Responsibility for delivery

5.5.12 When a firm appoints a skilled person to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the Act, a firm is expected, including where applicable in complying with Principle 11, to take reasonable steps to ensure that a skilled person delivers a report or collects or updates information in accordance with the terms of his appointment.

Assistance to skilled persons from others

5.5.13 In respect of the appointment of a skilled person under section 166 of the Act (Reports by skilled persons), section 166(7) of the Act imposes a duty on certain persons to give assistance to a skilled person. The persons on whom this duty is imposed are those who are providing, or have at any time provided, services to any person falling within SUP 5.2.1 G. They include suppliers under material outsourcing arrangements.

5.5.14 In respect of the appointment of a skilled person under section 166A (Appointment of skilled person to collect and update information) of the Act (Reports by skilled persons), section 166(7) of the Act imposes a duty on certain persons to give assistance to a skilled person. The persons on whom this duty is imposed are those who are providing, or have at any time provided, services to any person falling within SUP 5.2.1 G. They include suppliers under material outsourcing arrangements.
Act, under section 166A(5) a skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
SUP 5 : Reports by skilled persons

Section 5.6 : Confidential information and privilege

5.6 Confidential information and privilege

Confidential information

5.6.1

Within the legal constraints that apply, the FCA may pass on to a skilled person any information which it considers relevant to the skilled person's function. A skilled person, being a primary recipient under section 348 of the Act (Restrictions on disclosure of confidential information by Authority etc.), is bound by the confidentiality provisions in Part XXIII of the Act (Public record, disclosure of information and cooperation) as regards confidential information received from the FCA or directly from a firm or other person. A skilled person may not pass on confidential information without lawful authority, for example, where an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the person from whom that information was received and (if different) to whom the information relates. The FCA will indicate to a skilled person if there is any matter which cannot be discussed with the person in SUP 5.2.1 G.

Banking confidentiality and legal privilege

5.6.2

The limitations in the following sections of the Act are relevant to this chapter:

(1) section 175(5) (Information and documents: supplemental provisions) under which a person may be required under Part XI of the Act (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); and

(2) section 413 (Protected items), under which no person may be required to produce, disclose or allow the inspection of protected items.

5.6.3

In respect of the appointment of a skilled person under section 166A (Appointment of skilled person to collect and update information) of the Act, a contractual or other requirement imposed on a person to keep any information confidential will not apply if:

(1) the information is or may be relevant to anything required to be done as part of the skilled person's appointment under section 166A (Appointment of skilled person to collect and update information) of the Act;
(2) a firm or a skilled person requests or requires the person to provide the information for the purpose of securing that those things are done; and

(3) the FCA has approved the making of the request or the imposition of the requirement before it is made or imposed.

5.6.4  

A firm may provide information that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done in respect of the skilled person's collection or updating of information under section 166A (Appointment of skilled person to collect and update information) of the Act.
Non-exhaustive list of examples of when the FCA may use the skilled person tool (This Annex belongs to SUP 5.3.1AG)

<table>
<thead>
<tr>
<th>Toolkit purpose</th>
<th>Purpose for use of tool</th>
<th>Examples of reasons for use of tool</th>
</tr>
</thead>
</table>
| Diagnostic      | • To find out more about a concern (e.g. the result of a visit, risk assessment, or notification) and determine whether action is needed to mitigate a risk to the regulatory objectives or to determine whether there may have been a breach of a rule or a threshold condition or, in the case of an RIE, failure to meet the recognised requirements.  
  • To assess the implications of, and firm's* response to, a change of circumstances e.g. - proposed entry into new business area; - new control structure; - merger or take-over; - new IT system; or - launch of an E-Commerce venture. | • Concern about effectiveness of the firm's* internal audit department.  
  • Concern about reliability of submitted financial returns.  
  • Inability of a firm* to quantify its current financial position.  
  • Assessment of consequences of incomplete customer files.  
  • Concern about quality of systems and controls.  
  • Indication of financial crime or money laundering.  
  • Concern about a firm's* controller.  
  • Assessment of control structure when a bank (specialising in consumer lending) diversifies into commercial lending. |
| Diagnostic/monitoring | • To verify information provided to the FCA. | • Verification of a specific return to give the FCA assurance of the quality of information provided. |
|                     | • To collect information required by but not provided to the FCA by the firm*.  
  • To update information previously provided to the FCA but not kept up to date by the firm*. | • Failure by a firm* to provide or keep up to date information required by the FCA. |
| Monitoring         | • To review systems and controls  
  • To complement baseline monitoring | • Assessment of systems and controls in firms* where identified as a risk mitigation priority.  
  • In-depth review of part of a firm* which is material to the firm's risk profile but of which the FCA does not consider it has an adequate, up-to-date understanding. |
| Preventative       | • To gather and analyse information on an identified risk and develop recommendations for resolution. | Review of identified control weaknesses over client money to obtain recommendations to ensure compliance with the relevant rules. |
### Toolkit purpose

<table>
<thead>
<tr>
<th>Purpose for use of tool</th>
<th>Examples of reasons for use of tool</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remedial</td>
<td>• To assist in the design of a customer redress programme.</td>
</tr>
<tr>
<td></td>
<td>• To assist in the design of a remedial action plan.</td>
</tr>
<tr>
<td></td>
<td>• To oversee and report on remedial action plan.</td>
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<tr>
<td></td>
<td>• Where possible, the FCA has identified possible losses from failure to reconcile assets or from mis-posting of transactions to the general ledger.</td>
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<td></td>
<td>• To report on quality of work undertaken and adherence to milestones in the action plan.</td>
</tr>
</tbody>
</table>

* or, where applicable, the other persons in SUP 5.2.1 G.

Non-exhaustive list of examples of when the FCA may itself appoint a skilled person rather than require a firm to do so

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Diagnostic/ monitoring/ preventative/remedial</td>
<td>(any of the above)</td>
<td>• To provide a report or information that is urgently required.</td>
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<tr>
<td></td>
<td></td>
<td>• To assert a greater degree of control over the appointment and oversight of the skilled person due to the sensitive nature of the matter concerned.</td>
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<tr>
<td></td>
<td></td>
<td>• To assert a greater degree of control over the appointment and oversight of the skilled person in circumstances where more than one firm* is the subject of the same report or information required.</td>
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</tbody>
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