# Helpsheet: Fit and proper

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## Introduction

This helpsheet is intended to assist members in practice in understanding their obligations in ensuring that appropriate staff be used for all assignments and that they have in place procedures required to assess the ‘fit and proper’ status of those involved in the practice.

Fit and proper declarations, insider dealing statements, confidentiality statements and independence statements can all be used to a greater or lesser degree within the regulated areas of auditing and investment business. However, these statements have relevance to almost every aspect of a firm’s work and it is therefore strongly recommended that all staff (including administrative staff) are required to complete declarations on at least an annual basis.

Sub-contractors and consultants should be treated in the same way as employees as the extent of the regulatory requirements will extend to anyone involved in work performed by the firm.

## Regulatory and legislative background

A fundamental principle of the ICAS Code of Ethics is independence. It is therefore necessary to ensure that this is considered when undertaking work. As a result, firms need to be aware of any connections with clients which could impact on the ability to be independent.

Firms are also required under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017[[1]](#footnote-2) (the AML Regulations) to have appropriate internal controls in place to assess all principals, staff, sub-contractors and consultants as being fit and proper.

Part V of the Criminal Justice Act 1993 (the Act) also requires confirmation from all principals, staff, sub-contractors and consultants that they understand and will comply with the restrictions against insider dealing.

The Act prohibits an individual who has unpublished price-sensitive information from:

1. dealing in his own right based on that information;
2. counselling or procuring any other person to deal based on that information; or
3. communicating that information to any other person if he knows or has reasonable cause to believe that that person, or some other person, will make use of that information for dealing, counselling or procuring any other person to deal based on that information.

This part of the Act is restricted to dealing in securities listed on a recognised stock exchange.

These provisions are very widely drafted and can catch apparently innocent comments made inadvertently. Since clients of the firm may well deal with listed companies, such price-sensitive information may well become available in the smallest of practices.

The ICAS Audit Regulations require as part of the criteria for audit registration, that a firm is fit and proper. The application for registration as an audit firm looks into a firm’s financial integrity, disciplinary record and professional standard.

The ICAS Audit regulations require that a firm continues to remain fit and proper while registered as an audit firm and therefore the firm should review its fit and proper status as part of its annual compliance review.

The ICAS Audit Regulations require an audit registered firm to obtain confirmation from all principals; and all staff, sub-contractors and consultants involved in audit work, that they are independent, will adhere to the rules of confidentiality and are fit and proper individuals.

## Statement of independence and confidentiality and confirmation of fit and proper status

To ensure completeness and to minimise the administrative burden on firms, all necessary declarations and enquiries can be combined into a single exercise. A Statement of independence and confidentiality and confirmation of fit and proper status (a ‘fit and proper declaration’) can used to achieve this.

## Timing of fit and proper declarations

### Pre employment or engagement of sub-contractors and consultants

The AML Regulations require that a firm has internal controls in place to carry out screening of those involved in compliance with the AML Regulation or otherwise capable of contributing to the identification or mitigation of the risks of money laundering and terrorist financing, or prevention or detection of money laundering and terrorist financing in relation to the firm’s business. The requirement relates to screening to take place both prior to the appointment and during an appointment.

The completion of a fit and proper declaration carried out as part of the recruitment process, or as part of the engagement of sub-contractors and consultants, will assist the firm in complying with their obligations.

It is also important that all staff, including sub-contractors and consultants, have up to date contracts of employment or agreements. These contracts and agreements should include a clear statement that the individual should always operate within the requirements of legislation and the ICAS Code of Ethics and that failure to do so is a disciplinary matter. This brings the matters in the fit and proper declaration within the contract of employment and ensures that the practice has the appropriate sanction available in the event of a gross breach of the legislation or ethical guide.

It is obviously appropriate to ensure that fit and proper declarations are completed, returned and reviewed prior to contracts of employment or contracts for services are signed as once there is a binding legal agreement it may be more difficult to extricate from the situation.

### Induction

When a new member of staff joins the firm, or a new sub-contractor or consultant is being used, they should be asked to confirm that their pre-appointment fit and proper declaration remains unchanged.

Depending upon the time between the pre-appointment declaration and taking up the post, and the timing of the annual confirmation (see below), it may be appropriate for a new declaration to be completed as part of the induction process.

### Continuous review

The fit and proper declaration should be updated and amended by principals, staff, sub-contractors and consultants whenever there is a change in circumstances. It should be emphasised to all principals, staff, sub-contractors and consultants that they are required to declare such changes as they happen.

### Annual confirmation

While relevant changes should be notified as they occur it can be expected that notifications might not always be forthcoming, not as a result of deliberate inaction but most likely due to common forgetfulness.

As a result, the fit and proper declaration should be at least reviewed on an annual basis by all principals, staff, sub-contractors and consultants to ensure that they remain current, and all relevant matters are picked up and dealt with appropriately.

We would strongly recommend however that it is better to require all principals, staff, sub-contractors and consultants to complete a fresh fit and proper declaration at least annually. The physical steps of completing a new declaration help to emphasise the importance of the obligations and embed ethical values within the firm. Again, for ease of administration firms may wish to carry this out across the firm at the one time, possibly aligned to other annual exercises such as performance reviews, or as part of a separate annual exercise.

In audit registered firms, all independence confirmations and fit and proper declarations must be reviewed by the Audit Compliance Principal (ACP) on submission by principals and staff, to ensure the ACP is aware of any issues impacting audit work or the fit and proper status of the firm on a whole. Evidence of this review should be formally documented.

## Technology and fit and proper declarations

To mitigate the potential use of fraudulent documents, employers must use a [UK government certified IDSP](https://www.gov.uk/government/publications/digital-identity-certification-for-right-to-work-right-to-rent-and-criminal-record-checks/digital-identity-certification-for-right-to-work-right-to-rent-and-criminal-record-checks) to carry out digital right to work checks or meet candidates in person to manually verify documents. Using a government certified IDSP can help firms conduct rigorous staff vetting to mitigate the risk during the hiring process and ongoing employment.

The use of technology can help to not only verify the identity of a potential new employee but also screen them to check their names against PEP, sanctions and adverse media as well as criminal disclosure checks, all of which form part of these annual declarations.

Firms should review their employee screening process to ensure it is up to date and is complying with their anti-money laundering responsibilities and other professional requirements.

There are many further benefits of digital identity checking, using a certified IDSP, such as:

* Significantly faster employment checks;
* Improve the security of your process by reducing fraud risk;
* Eliminate the risk of human error;
* Improve the scalability of processes to reach more candidates;
* Automate recording of transactions, document and data storage; and
* Enhance candidate experience and their perception of your business.

## Specimen documents

Statement of independence and confidentiality and confirmation of fit and proper status:

[Individual fit & proper form - (non-audit) registered firm](https://www.icas.com/members/more-for-members/evolve/knowledge-and-insight/general-practice-manual/Individual-confirmation-of-fit-and-proper-status-non-audit-registered-firm.docx)

[Individual fit & proper form – audit registered firm](https://www.icas.com/members/more-for-members/evolve/knowledge-and-insight/general-practice-manual/Individual-confirmation-of-fit-and-proper-status-audit-registered-firm.docx)

[Firm wide fit and proper form – audit registered firm](https://www.icas.com/members/benefits-of-membership/customer-centric-organisation/more-for-members/evolve/knowledge-and-insight/general-practice-manual/Firm-wide-confirmation-of-fit-and-proper-status-audit-registered-firm.docx)

## For further information and assistance

[Audit Regulations](https://www.icas.com/__data/assets/pdf_file/0018/610290/Audit-Regulations-and-Guidance-05.12.22-v2.pdf) contains guidance in Part 2 on fit and proper status.

Further assistance and information can be obtained from the Practice Support team. You can contact them through the Practice Support section of the [ICAS Technical helpdesk](https://www.icas.com/contact-us/icas-technical-helpdesk).

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1. Regulation 21 [↑](#footnote-ref-2)