

CRITICAL THIRD PARTIES INSTRUMENT 2024

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137T (General supplementary powers);
 - (2) section 139A (Power of the FCA to give guidance);
 - (3) section 166(9) (Reports by skilled persons);
 - (4) section 166A(9) (Appointment of skilled person to collect and update information);
 - (5) section 312M (Power to make rules); and
 - (6) section 312P (Information gathering and investigations).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [date].

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C

Making the Critical Third Parties sourcebook (CTPS)

- E. The FCA makes the rules and gives the guidance in accordance with Annex D to this instrument.
- F. The Critical Third Parties sourcebook (CTPS) is added to the Specialist sourcebooks block within the Handbook, immediately after CONC.

Citation

- G. This instrument may be cited as the Critical Third Parties Instrument 2024.

- H. The sourcebook in Annex D to this instrument may be cited as the Critical Third Parties sourcebook (or CTPS).

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>critical third party</i>	a <i>person</i> that is designated by the Treasury by regulations made in exercise of the power in section 312L(1) of the <i>Act</i> (Critical third parties).
<i>CTP duties</i>	the duties and obligations placed upon a <i>critical third party</i> by or as a result of the <i>Act</i> , including the <i>rules</i> in <i>CTPS</i> .
<i>CTP Fundamental Rules</i>	the <i>rules</i> set out in <i>CTPS</i> 3.2 (The CTP Fundamental Rules).
<i>CTPS</i>	the Critical Third Parties sourcebook
<i>disruption</i>	(in <i>CTPS</i>) includes (in relation to a service) complete or partial failure of that service or a significant degradation to the quality of that service.
<i>financial sector incident management playbook</i>	a <i>document</i> setting out how a <i>critical third party</i> will communicate with and support the <i>regulators</i> and <i>firms</i> (individually and collectively) in respect of incidents that affect the delivery of a <i>material service</i> and for these purposes the terms <i>regulators</i> , <i>firms</i> and <i>material service</i> have the meaning that they have in <i>CTPS</i> as set out in the <i>Glossary</i> .
<i>key Nth-party service provider</i>	a <i>person</i> that is part of a <i>critical third party's</i> <i>supply chain</i> and is essential to the ultimate delivery of a <i>material service</i> to one or more <i>firms</i> and for these purposes the terms <i>material service</i> , <i>supply chain</i> and <i>firms</i> have the meaning that they have in <i>CTPS</i> as set out in the <i>Glossary</i> .
<i>material service</i>	(in <i>CTPS</i>) a service (wherever carried out) provided by a <i>critical third party</i> to one or more <i>firms</i> a failure in, or <i>disruption</i> to, the provision of which (either individually or, where more than one service is provided, taken together) could threaten the stability of, or confidence in, the <i>UK</i> financial system and for these purposes the term <i>firms</i> has the meaning that it has in <i>CTPS</i> as set out in the <i>Glossary</i> .
<i>oversight functions</i>	(in <i>CTPS</i>) any of the functions conferred by the <i>Act</i> upon a <i>regulator</i> in relation to <i>critical third parties</i> and for these purposes

the term *regulator* has the meaning that it has in *CTPS* as set out in the *Glossary*.

person connected with a critical third party has the same meaning as in section 312P(10) of the *Act* (Critical third parties), and the reference to any relevant time means any time relevant for the application of the relevant *rule* in *CTPS*.

regulator (in *CTPS*):

- (1) the *PRA*;
- (2) the *FCA*; or
- (3) the Bank;

and so that:

- (4) *regulators* means them collectively;
- (5) unless the contrary intention appears, any reference in *CTPS* to a *regulator* is a reference to:
 - (a) when the relevant *oversight function* is exercised by the *PRA*, to the *PRA*;
 - (b) when the relevant *oversight function* is exercised by the *FCA*, to the *FCA*;
 - (c) when the relevant *oversight function* is exercised by the Bank, to the Bank;
- (6) the Bank means the Bank of England other than when it is acting in its capacity as the *PRA*; and
- (7) in this definition, the term *oversight function* has the meaning that it has in *CTPS* as set out in the *Glossary*.

supply chain (in *CTPS*) the network of *persons* that provide infrastructure, goods, services or other inputs directly or indirectly utilised by a *critical third party* to deliver, support or maintain a *material service*.

Amend the following definitions as shown.

- asset*
- (1) (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) any property, right, entitlement or interest.
 - (2) (in *CTPS*) includes data, people, information and infrastructure.

firm

...

(11) ...

(12) (in CTPS) includes (in accordance with section 312L of the Act (Critical third parties)):

(a) an electronic money institution;

(b) a payment institution;

(c) a registered account information service provider;
and

(d) an FMI entity as defined in section 312L(8) of the Act (Critical third parties).

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

Method of payment

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1A: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£) by reference to the pricing category in FEES 3 Annex 1AR.	Due date
...
(zp) A person in respect of which the FCA has given notice of its intention to itself appoint a <i>skilled person</i> to provide it with a report pursuant to section 166(3)(b) of the Act (including as applied by section 312P of the Act) and SUP 5.2 or, as the case may be, <u>CTPS 12.2</u>
(zq) A person in respect of which the FCA has given notice of its intention to itself appoint a <i>skilled person</i> to collect or update

information pursuant to section 166A(2)(b) of the <i>Act</i> (<u>including as applied by section 312P of the <i>Act</i></u>).		
...

Annex C

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5 Reports by skilled persons

5.1 Application and purpose

Application

...

5.1.2A G ...

5.1.2B G This chapter does not apply in relation to a *critical third party* in its capacity as such. *CTPS 12 (Reports by skilled persons)* applies instead.

...

8 Waiver and modification of rules

...

8.3 Applying for a waiver

...

Form and method of application

8.3.3 D A firm (but not a *critical third party*) wishing to apply for a *waiver* must complete the application form in *SUP 8 Annex 2D* and submit it in the way set out in *SUP 15.7.4R* to *SUP 15.7.9G* (Form and method of notification).

...

8.3.3A G ...

8.3.3B G See *CTPS 2.3.3G* (Table: Other parts of the Handbook and related material that apply) for applications for a *waiver* by a *critical third party*.

...

Annex D

Critical Third Parties Sourcebook (CTPS)

In this Annex, all the text is new and is not underlined.

1 Application

1.1 Who?

1.1.1 R Unless otherwise stated, *CTPS* applies to *critical third parties*.

1.2 What?

1.2.1 R Unless a narrower application is specified, *CTPS* applies in connection with the provision of services to *firms*.

1.2.2 G *CTPS* 1.2.1R reflects the scope of the *FCA*'s power to make *rules* in section 312M of the *Act* (Power to make rules).

1.2.3 G The scope of the *guidance* in *CTPS* 11 (Costs of skilled persons reports) and *CTPS* 12 (Reports by skilled persons) about the *FCA*'s policy on the use of its *skilled persons* powers follows the scope of those powers.

1.3 Where?

1.3.1 R Except to the extent otherwise specified, there is no territorial limitation on the application of *CTPS*.

2 Purpose and other material

2.1 Purpose

2.1.1 G The purpose of *CTPS* is to set out the *FCA*'s *rules* for *critical third parties*.

2.1.2 G The purpose of the *FCA*'s *rules* for *critical third parties* is set out in the supervisory statement referred to in *CTPS* 2.2.1G.

2.2 Material outside the Handbook

2.2.1 G The *regulators* have published a joint Supervisory Statement titled 'Operational resilience: Critical third parties to the UK financial sector'.

2.2.2 G That document sets out the *regulators*' expectations of how *critical third parties* should comply with the *regulators*' rules.

2.2.3 G That means that *CTPS* does not in general have *guidance* on the *rules* in *CTPS*. Instead, such *guidance* is to be found in the joint Supervisory Statement referred to in *CTPS* 2.2.1G. That Supervisory Statement should be the main source of reference for *critical third parties* on how to approach,

interpret and comply with the *rules* in *CTPS* and the rules of the other *regulators*.

- 2.2.4 G The only exception is that *guidance* on the *rules* about *skilled persons* can be found in *CTPS* 12 (Reports by skilled persons).

2.3 Other applicable parts of the Handbook

- 2.3.1 G Virtually all the *rules* applicable to *critical third parties* are set out in *CTPS*. For the most part, a *critical third party* will not need to look at any other part of the *Handbook*.

- 2.3.2 G The table in *CTPS* 2.3.3G sets out the other parts of the *Handbook* and related provisions that apply to a *critical third party* in its capacity as such. The table does not cover a *critical third party* that is also subject to the *Handbook* in another capacity such as an *authorised person* or a *person* whose *securities* have been admitted to the *official list*.

- 2.3.3 G Table: Other parts of the Handbook and related material that apply

Module	Chapter or section	Comments
The <i>Glossary</i>	The whole of the <i>Glossary</i> applies	
<i>GEN</i>	<i>GEN</i> 1.3 (Emergency)	
	<i>GEN</i> 2 (Interpreting the Handbook)	
<i>FEES</i>	Rows (zp) and (zq) of Part 1A of the table in <i>FEES</i> 3.2.7R (Table of application, notification, vetting and other fees payable to the FCA) and other parts of <i>FEES</i> relating to the payment of such fees.	These cover fees under sections 166(3)(b) and 166A(2)(b) of the <i>Act</i> , which relate to fees in relation to <i>skilled persons</i> . [<i>Note to readers of this consultation document</i> : apart from skilled persons fees, fees are outside the scope of this consultation.]

<i>SUP</i>	<i>SUP</i> 8 (Waiver and modification of rules)	While most of <i>SUP</i> 8 applies to a <i>critical third party</i> , the procedures for applying for a <i>waiver</i> do not apply. The <i>FCA</i> will direct what the application procedure is if and when a <i>critical third party</i> wants to apply for a <i>waiver</i> . <i>SUP</i> 8.1.1AG says that a reference in the chapter to a ‘ <i>firm</i> ’ includes a reference to, among others, a <i>critical third party</i> .
	<i>SUP</i> 9 (Individual guidance)	
<i>DEPP</i>		
<i>EG</i>		

3 Critical Third Party Fundamental Rules

3.1 Application

- 3.1.1 R The *CTP Fundamental Rules* apply with respect to a *critical third party* carrying on the activity of providing services to *firms* wherever those services are carried out.

3.2 The CTP Fundamental Rules

- 3.2.1 R *CTP Fundamental Rule 1*: A *critical third party* must conduct its business with integrity.
- 3.2.2 R *CTP Fundamental Rule 2*: A *critical third party* must conduct its business with due skill, care and diligence.
- 3.2.3 R *CTP Fundamental Rule 3*: A *critical third party* must act in a prudent manner.
- 3.2.4 R *CTP Fundamental Rule 4*: A *critical third party* must have effective risk strategies and risk management systems.
- 3.2.5 R *CTP Fundamental Rule 5*: A *critical third party* must organise and control its affairs responsibly and effectively.
- 3.2.6 R *CTP Fundamental Rule 6*: A *critical third party* must deal with a *regulator* in an open and co-operative way, and must disclose to a *regulator* appropriately anything relating to the *critical third party* of which it would reasonably expect notice.

4 Critical Third Parties Operational Risk and Resilience Requirements

4.1 Cross-cutting requirement

- 4.1.1 R A *critical third party* must have in place sound, effective and comprehensive strategies, controls, processes, and systems that enable it to comply with the other *rules* in *CTPS*.

4.2 Requirement 1: Governance

- 4.2.1 R A *critical third party* must ensure that its governance arrangements promote the resilience of any *material service* it provides, including by:
- (1) appointing a natural person that is an *employee* or member of its *governing body* (who has appropriate authority, knowledge, skills and experience) to act as the central point of contact with the *regulators* in their capacity as authorities having *oversight functions*;
 - (2) establishing clear roles and responsibilities at all levels of its staff involved in the delivery of a *material service*, with clear and well-understood channels for communicating and escalating issues and risks;
 - (3) establishing, overseeing and implementing an approach that covers the *critical third party's* ability to prevent, respond and adapt to, as well as recover from, any event that causes *disruption* to the delivery of a *material service*, and learn from those events and any testing undertaken;
 - (4) ensuring appropriate review and approval of any information provided to the *regulators*;
 - (5) notifying the *regulators* in writing of:
 - (a) the name of the person appointed under (1);
 - (b) the business address of that person; and
 - (c) email addresses, telephone numbers and out of hours contact details for that person; and
 - (6) notifying the *regulators* of any changes to the information notified under (5) as soon as practicable.

4.3 Requirement 2: Risk management

- 4.3.1 R A *critical third party* must effectively manage risks to its ability to continue to deliver a *material service* including by:
- (1) identifying and monitoring relevant external and internal risks;
 - (2) ensuring that it has risk management processes that are effective at managing those risks; and

- (3) regularly updating its risk management processes to reflect issues arising and lessons learned from:
 - (a) a *disruption to a material service*;
 - (b) engagement with the *regulators*;
 - (c) new and emerging risks; and
 - (d) any associated testing, including but not limited to testing carried out in accordance with *CTPS 5* (Information gathering, evidence and testing).

4.4 Requirement 3: Dependency and supply chain risk management

4.4.1 R A *critical third party* must (as part of its obligation under *CTPS 4.3.1R* (Requirement 2: Risk management)) identify and manage any risks to its *supply chain* that could affect its ability to deliver a *material service*, including due to dependencies on:

- (1) a *person connected with a critical third party*; or
- (2) a *key Nth-party service provider*.

4.4.2 R A *critical third party* must take all reasonable steps to ensure that each *person* in its *supply chain*:

- (1) understands the requirements that apply to the *critical third party* by virtue of the *CTP duties*;
- (2) takes appropriate action to facilitate the *critical third party* meeting those requirements; and
- (3) provides the *regulators* with access to any information relevant to them exercising their *oversight functions*.

4.5 Requirement 4: Technology and cyber resilience

4.5.1 R A *critical third party* must (as part of its obligation under *CTPS 4.3.1R* (Requirement 2: Risk management)) ensure the resilience of any technology that delivers, maintains or supports a *material service*, including by having:

- (1) technology and cyber risk management and operational resilience measures;
- (2) regular testing of those measures (including as part of its obligations under *CTPS 5* (Information gathering, evidence and testing));
- (3) processes and measures that reflect lessons learned from testing (including under (2)); and

- (4) processes and procedures that convey relevant and timely information to assist risk management and decision-making processes.

4.6 Requirement 5: Change management

- 4.6.1 R A *critical third party* must ensure that it has a systematic and effective approach to dealing with changes to a *material service*, including changes to the processes or technologies used to deliver, maintain or support a *material service*, including by:
- (1) implementing appropriate policies, procedures and controls to ensure the resilience of any change to a *material service*;
 - (2) implementing any change to a *material service* in a way that minimises the risk of undue *disruption*; and
 - (3) ensuring that prior to being implemented, any change is appropriately risk-assessed, recorded, tested, verified and approved.

4.7 Requirement 6: Mapping

- 4.7.1 R A *critical third party* must:
- (1) (subject to (2)) identify and document:
 - (a) resources, including the *assets* and technology, used to deliver, support, and maintain each *material service* it provides; and
 - (b) any internal and external interconnections and interdependencies between the resources identified under (a) in respect of that service; and
 - (2) have completed the identification and documentation of resources under (1) within 12 *months* of the *critical third party* being designated by the Treasury and keep it up to date at all times thereafter.

4.8 Requirement 7: Incident management

- 4.8.1 R A *critical third party* must appropriately manage incidents that adversely affect, or may reasonably be expected to adversely affect, the delivery of a *material service* including by:
- (1) implementing appropriate measures to respond to and recover from incidents in a way that minimises the impact;
 - (2) setting a maximum tolerable level of disruption to the service;
 - (3) maintaining and operating a *financial sector incident management playbook*, the first version of which must be in place within 12

months of the *critical third party* being designated by the Treasury;
and

- (4) coordinating and engaging with arrangements put in place by *firms*, authorities or other *persons* for coordinating responses to incidents adversely affecting the *United Kingdom*'s financial sector or parts of it.

4.9 Requirement 8: Termination of a material service

- 4.9.1 R A *critical third party* must have in place appropriate measures to respond to a termination of any of its *material services* (for any reason), including by putting in place:
- (1) arrangements to support the effective, orderly and timely termination of that service, and (if applicable) its transfer to another *person*, including the *firm* the service is provided to; and
- (2) provision for ensuring access, recovery and return of any relevant *assets* to the *firms* it provides that service to and where applicable in an easily accessible format.

5 Information gathering, evidence and testing

5.1 General evidence requirement

- 5.1.1 R A *critical third party* must be able to demonstrate to the *regulators* its ability to comply with *CTPS*.

5.2 Scenario testing

- 5.2.1 R As part of its obligation under *CTPS* 5.1.1R (General evidence requirement), a *critical third party* must carry out regular scenario testing of its ability to continue providing each *material service* within its maximum tolerable level of disruption in the event of a severe but plausible disruption.
- 5.2.2 R When carrying out the scenario testing, a *critical third party* must identify an appropriate range of adverse circumstances of varying nature, severity and duration relevant to its business, risk profile and *supply chain* and consider the risks to the delivery of the *material service* in those circumstances.

5.3 Testing of financial sector incident management playbooks

- 5.3.1 R As part of its obligation under *CTPS* 5.1.1R (General evidence requirement), a *critical third party* must test the measures in its *financial sector incident management playbook* annually with an appropriate representative sample of the *firms* to which it provides *material services*.

- 5.3.2 R A *critical third party* must, as soon as reasonably practicable, prepare and send to the *regulators* a report of the test undertaken under *CTPS 5.3.1R* (including any actions taken in the light of the results of the test).

6 Self-assessment

6.1 Self-assessment

- 6.1.1 R A *critical third party* must prepare an annual written self-assessment for the *regulators* of its compliance with *CTPS*.
- 6.1.2 R The self-assessment must be submitted to the *regulators* within 3 *months* of a *critical third party* being designated by the Treasury and thereafter within 12 *months* of the last submission.
- 6.1.3 R A *critical third party* must keep a copy of its annual self-assessment for a period of at least 3 years after submitting it to the *regulators*.

7 Information sharing with firms

7.1 Information sharing with firms

- 7.1.1 R A *critical third party* must have effective and secure processes and procedures in place to ensure sufficient and timely information is given to a *firm* to which it provides any services to enable that *firm* to adequately manage risks related to its use of the *critical third party's* services.
- 7.1.2 R The information referred to in *CTPS 7.1.1R* includes:
- (1) results of testing carried out (including any action taken in the light of the results of the test) in compliance with *CTPS 5* (Information gathering, evidence and testing); and
 - (2) a summary of the information contained in the annual self-assessment made in compliance with *CTPS 6* (Self-assessment).

8 Notifications

8.1 Relevant incidents

- 8.1.1 R In this chapter, a relevant incident is either a single event or a series of linked events that:
- (1) causes serious *disruption* to the delivery of a *material service*;
 - (2) seriously and adversely impacts the availability, authenticity, integrity or confidentiality of *assets* relating or belonging to *firms* which a *critical third party* has access to as a result of it providing services to those *firms* or results in a serious loss of such *assets*; or
 - (3) has the potential to result in any of those things.

8.2 Initial incident notifications

- 8.2.1 R Subject to *CTPS* 8.5.1R (Confidentiality), a *critical third party* must, in so far as it is aware at the time of submission of a notification under this *rule*, provide the *regulators* and the *firms* it provides the affected service to with the following information about the relevant incident:
- (1) the time when the incident was detected (in GMT or if different, the local time in the location where the relevant incident was detected);
 - (2) a description of the relevant incident;
 - (3) the cause or possible cause of the relevant incident, either known or suspected;
 - (4) contact details of any individual who is responsible for communicating with the *firms* to which the *critical third party* provides services about the relevant incident;
 - (5) the name and number of *material services* affected;
 - (6) the nature and extent of the *disruption* and *assets* affected (actual and potential);
 - (7) details of any initial action taken or planned in response to the relevant incident;
 - (8) the geographical area affected by the relevant incident;
 - (9) the anticipated recovery time for each *material service* affected; and
 - (10) any other information that will enable the *firms* and the *regulators* to make an initial assessment of the relevant incident’s potential impact.
- 8.2.2 R Subject to *CTPS* 8.5.1R (Confidentiality), a *critical third party*, in so far as it is aware at the time of submission of a notification under this *rule*, in addition to the information in *CTPS* 8.2.1R, must also provide the following information to the *regulators* about the relevant incident:
- (1) the names and number of *firms* affected;
 - (2) where *assets* relating or belonging to *firms* have as a result of the relevant incident been lost, compromised, corrupted or become unavailable for a significant period, details of such matters;
 - (3) contact details of an individual (who may or may not be the individual in *CTPS* 4.2.1R(1) (Requirement 1: Governance) or *CTPS* 8.2.1R(4)) who is responsible for communicating with the *regulators* about the relevant incident;

- (4) details of any other regulatory body or authorities (other than the *regulators*) that have been notified of the relevant incident; and
- (5) any other relevant information about the potential impact of the relevant incident on the stability of, or confidence in the *UK's* financial system.

8.2.3 R The notifications under *CTPS* 8.2.1R and *CTPS* 8.2.2R must be made without undue delay after a *critical third party* is aware that the relevant incident has occurred.

8.3 Intermediate notifications

8.3.1 R Subject to *CTPS* 8.5.1R (Confidentiality), a *critical third party*, in so far as it is aware at the relevant time, must keep the *regulators* and the *firms* to which it provides the affected services periodically appraised by providing them with the following information in relation to the relevant incident:

- (1) suitable technical information that assists in understanding the nature of the relevant incident;
- (2) steps taken to restore the services or recover the *assets*;
- (3) information about the *critical third party's* stakeholder engagement;
- (4) information about any ongoing investigation;
- (5) in relation to cyber-attacks:
 - (a) the type of threat actor (including known capabilities and motives); and
 - (b) the complexity and novelty of the attack;
- (6) the potential impact of mainstream and social media coverage on the *critical third party* and *firms* (including as a result of misinformation and disinformation); and
- (7) any update on information previously provided to the recipient of the notice or any other information which the *critical third party* reasonably considers to be relevant to the recipient of the notice.

8.3.2 R Subject to *CTPS* 8.5.1R (Confidentiality), a *critical third party*, in so far as it is aware at the time of submission of a notification under this *rule*, in addition to the information in *CTPS* 8.3.1R, must keep the *regulators* periodically appraised by providing them with the following information in relation to the relevant incident:

- (1) any vulnerabilities that the relevant incident has exposed the *critical third party*, a *person* who provides services to one or more *firms*,

other *critical third parties* or *firms* to, or which have otherwise been revealed; and

- (2) whether there is a risk of similar incidents happening at other *critical third parties*, a *person* who provides services to one or more *firms*, or *firms* due to issues caused by the relevant incident or by factors in common with the relevant incident.

8.4 Final notification

8.4.1 R Subject to *CTPS* 8.5.1R (Confidentiality), within a reasonable time of the relevant incident in *CTPS* 8.1.1R (Relevant incidents) being resolved, a *critical third party* must provide the *regulators* and the *firms* to which it provides the affected services, with the following information in relation to the relevant incident:

- (1) a description of the root causes;
- (2) a description of any remedial actions the *critical third party* has or is planning to put in place and an estimated timeline for the completion of those remedial actions;
- (3) a description of the *critical third party*'s assessment of:
 - (a) the likelihood of recurrence of the relevant incident; and
 - (b) the long-term implications of the relevant incident on services the *critical third party* provides to the *firms*;
- (4) a description of identified areas for improvement for the *critical third party* and, where relevant, the affected *firms*; and
- (5) any other information the *critical third party* reasonably considers to be relevant to the recipient of the notice.

8.5 Confidentiality

8.5.1 R Where a *critical third party* is otherwise required to disclose something under this chapter, but is subject to section 413 of the *Act* (Protected items), it is not disclosable to *regulators* but the *critical third party* may choose whether or not to disclose it to *firms*.

8.6 Notifications to the regulators

8.6.1 R A *critical third party* must notify the *regulators* promptly where:

- (1) civil proceedings are brought by or against the *critical third party* or a claim or dispute is referred to alternative dispute resolution, in any jurisdiction, and it poses a significant threat to the *critical third party*'s:
 - (a) reputation; or

- (b) ability to provide any *material service*;
- (2) the *critical third party* is subject to criminal proceedings, or has been prosecuted for, or has been convicted of, a criminal offence in any jurisdiction involving fraud or dishonesty;
- (3) disciplinary measures or sanctions have been imposed on the *critical third party* by any statutory or regulatory authority in any jurisdiction (other than the *regulators*), or the *critical third party* becomes aware that one of those bodies has commenced an investigation into its affairs;
- (4) the *critical third party* is in financial difficulty and is considering entering into an insolvency proceeding or a restructuring plan in any jurisdiction, or any such proceedings are likely to be brought against it in any jurisdiction; or
- (5) there is an actual or potential circumstance or event that seriously and adversely impacts or could seriously and adversely impact the *critical third party's* ability to meet any of its obligations under *CTPS*.

8.7 General provisions about notifications

- 8.7.1 R A *critical third party* must send notifications required under this chapter to the *regulators* and *firms* by electronic means.
- 8.7.2 R A *critical third party* must take reasonable steps to identify and obtain the necessary information to enable it to comply with the obligations in this chapter.

9 Inaccurate, false or misleading information

9.1 Inaccurate, false or misleading information

- 9.1.1 R A *critical third party* must take all reasonable steps to ensure that all information it gives to the *regulators* in accordance with the *CTP duties* is:
 - (1) factually accurate or, in the case of estimates and judgements, fairly and properly based after appropriate enquiries have been made by the *critical third party*; and
 - (2) complete, in that it should include anything of which the *regulators* would reasonably expect notice.
- 9.1.2 R If a *critical third party* is unable to obtain the information required in *CTPS* 9.1.1R, then it must inform the *regulators* that the scope of the information provided is, or may be, limited.
- 9.1.3 R If a *critical third party* becomes aware, or has information that reasonably suggests, that it has or may have provided the *regulators* with information

which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material way, it must notify the *regulators* immediately.

- 9.1.4 R Subject to *CTPS* 9.1.5R, the notification must include:
- (1) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
 - (2) an explanation why such information was or may have been provided; and
 - (3) the correct information.
- 9.1.5 R If the information in *CTPS* 9.1.4R(3) cannot be submitted with the notification (because it is not immediately available), it must instead be submitted as soon as possible afterwards.

10 Nominations

10.1 Application

- 10.1.1 R A *critical third party* that has its head office outside the *UK* must comply with this chapter.

10.2 Rules

- 10.2.1 R A *critical third party* coming within *CTPS* 10.1.1R (Application) must:
- (1) nominate in writing a *person* who is authorised on behalf of the *critical third party* to receive any *document* given by a *regulator* under its *oversight functions*;
 - (2) notify the *regulators* in writing of:
 - (a) the name of each nominated *person* authorised to receive any *document* on its behalf under (1);
 - (b) an address of a place in the *UK* for the service of *documents* to each nominated *person*; and
 - (c) an email address, telephone number and out of hours contact details for each nominated *person*;
 - (3) notify the *regulators* of any changes to the information notified under (2) as soon as reasonably practicable; and
 - (4) take reasonable steps to ensure that a *person* nominated to act in accordance with this chapter:
 - (a) passes to it any *document* provided to it by the *regulators*; and

- (b) is cooperative and acts in a timely way with the *regulators* when discharging any of their *oversight functions*.

11 Costs of skilled persons reports

11.1 Costs of skilled persons reports

- 11.1.1 G Where a *regulator* appoints a *skilled person* under section 166(3)(b) or section 166A(2)(b) of the *Act* as applied by section 312P of the *Act*, the expenses incurred by the *regulator* in relation to that appointment will be payable to it by the *critical third party* or, as the case may be, the *person connected with a critical third party*. In the case of the *FCA*, this is provided for by *FEES 3.2.7R* (Table of application, notification, vetting and other fees payable to the *FCA*).

12 Reports by skilled persons

12.1 Purpose

- 12.1.1 G 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* as applied by section 312P (Information gathering and investigations) of the *Act*.
- 12.1.2 G The purpose is also to make *rules* requiring a *critical third party* to give assistance to a *skilled person* and, where a *critical third party* 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 *critical third party*.
- 12.1.3 G (1) It is possible that section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* may apply to a *critical third party* directly rather than through section 312P (Information gathering and investigations) of the *Act*.
- (2) For example, section 166 might apply because the *critical third party* is a member of the same *group* as an *authorised person*.
- (3) *SUP 5* (Reports by skilled persons) applies when section 166 or 166A applies directly in that way.
- 12.1.4 G If the *FCA* uses the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* in respect of a *critical third party*, it will normally make it clear whether it does so:
- (1) under the regime for *critical third parties* (that is, under section 312P (Information gathering and investigations) of the *Act*);

- (2) directly under sections 166 or 166A; or
- (3) under both (1) and (2).

12.1.5 G *CTPS* 11 deals with certain aspects of the costs of *skilled persons* reports.

12.2 The FCA’s power

Who may be required to provide a report?

12.2.1 G Under section 166 (Reports by skilled persons) as applied by section 312P (Information gathering and investigations) of the *Act*, 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 *critical third party*;
- (2) a member of a *critical third party’s group*;
- (3) a *controller* of the *critical third party*;
- (4) a *person* mentioned in Part 1 of Schedule 15 of the *Act* (for example, an *employee* or agent of the *critical third party*); and
- (5) a *person* who has at any relevant time been a *person* falling within (2) to (4).

12.2.2 G Under section 166A (Appointment of skilled person to collect and update information) as applied by section 312P (Information gathering and investigations) of the *Act*, the *FCA* may require a *critical third party* to appoint, or itself appoint, a *skilled person* to collect or update information.

12.3 Policy on the use of skilled persons

Section 166: General

12.3.1 G The appointment of a *skilled person* to produce a report under section 166 (Reports by skilled persons) of the *Act* 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.

12.3.2 G The use of the tool could be prompted by any matter, including:

- (1) a specific requirement by the *FCA* for information;
- (2) an analysis of information undertaken by the *FCA*;
- (3) an assessment of a situation by the *FCA*;
- (4) expert advice or recommendations received by the *FCA*; or
- (5) a decision by the *FCA* to seek assurance in relation to a regulatory report or its compliance with any part of *CTPS*.

12.3.3 G The tool may also be used as part of the oversight programme applicable to a *critical third party* or the result of an event or development in relation to a *critical third party* that is prompted by a need for verification of information provided to the *FCA* as part of its monitoring of a *critical third party*.

12.3.4 G The *FCA* encourages a *critical third party* to speak to its supervisors before commissioning any external review on subject matters which may be of interest to the *FCA*. This may avoid the *critical third party* incurring unnecessary costs where the *FCA* wishes to make use of *skilled persons* on the same, or broadly the same, matter.

Section 166A: General

12.3.5 G The appointment of a *skilled person* to collect and update information under section 166A(9) (Appointment of skilled person to collect and update information) of the *Act* is another one of the *FCA*'s regulatory tools. It may be used where the *FCA* considers that a *critical third party* has failed to collect, and keep up to date, information required by the *FCA*.

Factors leading to the appointment of a skilled person: General

12.3.6 G 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 *critical third party*;
- (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.

- 12.3.7 G *CTPS* 12.3.8G to *CTPS* 12.3.14G give further guidance on the factors in *CTPS* 12.3.6G.

Factors leading to the appointment of a skilled person: Circumstances relating to the critical third party

- 12.3.8 G The *FCA* will have regard to circumstances relating to the *critical third party* – for example:
- (1) attitude of the *critical third party* – whether the *critical third party* 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 *critical third party's* systems and records – whether the *FCA* has confidence that the *critical third party* has the ability to provide the required information;
 - (4) objectivity – whether the *FCA* has confidence in the *critical third party's* willingness and ability to deliver an objective report;
 - (5) conflicts of interest – whether:
 - (a) it would be inappropriate for the *FCA* to rely on the *critical third party* itself to enquire into the matter because, for example, the subject matter of the enquiries or the report involves actual or potential misconduct; or
 - (b) the subject matter of the report is such that the *critical third party* and the *FCA* would benefit from an external third party;
 - (6) knowledge or expertise available to the *critical third party* – whether it would be appropriate to involve a third party with the required technical expertise; and
 - (7) the materiality of the services, including whether the service is a *material service*.

Factors leading to the appointment of a skilled person: Alternative tools available, including other statutory powers

- 12.3.9 G 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 *critical third parties* and others, including authorising an agent to require information, under section 165 (Power to require information) of the *Act*;
- (3) appointing investigators to carry out general investigations under section 167 (Appointment of investigator in general cases) of the *Act* if that power applies; and
- (4) appointing investigators to carry out investigations in particular cases under section 168 (Appointment of investigator in specific cases) of the *Act*.

Factors leading to the appointment of a skilled person: Legal and procedural considerations

- 12.3.10 G 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 *CTPS* 12.5.1R, which obliges the *critical third party* to require and permit the *skilled person* to report specified matters to the *FCA*.

Factors leading to the appointment of a skilled person: The objectives of the *FCA*'s enquiries

- 12.3.11 G 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) (if that power applies) and 168 (Appointment of investigator in specific cases) of the *Act* may 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* if they are available; 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.

Factors leading to the appointment of a skilled person: Cost considerations

- 12.3.12 G 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) of the *Act*, either the *critical third party* will appoint, and will have to pay for the services of, the *skilled person*, or the *FCA* will appoint, and will require under *FEES* 3.2.7R (zp) or *FEES* 3.2.7R (zq) that the relevant *critical third party* pays for the services of, the *skilled person*; and
 - (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.
- 12.3.13 G 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 *critical third party* 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 *critical third party*, or by *persons* instructed by the *critical third party* on its own initiative; for instance, a compliance review or the development of new systems;
 - (3) whether the *critical third party*’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 *critical third party* appears to have breached requirements or standards under the *regulatory system* or otherwise put the integrity of the *UK* financial system 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 *critical third party* to do so;
- (5) the extent to which there appear to be risks that could threaten the *FCA*'s objectives; and
- (6) the perceived probability and seriousness of possible breaches of regulatory requirements and the possible need for further action.

Factors leading to the appointment of a skilled person: Considerations relating to *FCA* resources

- 12.3.14 G The *FCA* will have regard to *FCA*-related considerations, including:
- (1) whether the *FCA* has the necessary expertise; and
 - (2) 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.

12.4 Appointment and reporting process

Appointment process

- 12.4.1 G When the *FCA* is contracting directly with a *skilled person* it will itself appoint the *skilled person*.
- 12.4.2 G Where the *skilled person* is appointed by the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G, the *Act* requires that such *skilled person* be nominated or approved by the *FCA*:
- (1) if the *FCA* decides to nominate the *skilled person* who is to make the report or collect or update the information, it will notify the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G accordingly; or
 - (2) alternatively, if the *FCA* is content to approve a *skilled person* selected by the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G, it will notify the latter *person* of that fact.
- 12.4.3 G Where the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G is selecting the *skilled person*, the *FCA* may give that *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G a shortlist from which to choose.
- 12.4.4 G Where a *critical third party* is contracting with a *skilled person*, it remains the *critical third party*'s responsibility to assess the individual appropriateness of the *skilled person*.

- 12.4.5 G As part of the decision-making process, the *FCA* will normally contact the *person* in *CTPS* 12.2.1G or in *CTPS* 12.2.2G 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:
- (1) the appointment;
 - (2) whether an alternative means of obtaining the information would be better;
 - (3) what the scope of a report should be;
 - (4) who should be appointed;
 - (5) who should appoint; and
 - (6) the likely cost.

Skills, resources and conflicts of interest

- 12.4.6 G 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.
- 12.4.7 G 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:
 - (a) the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G;
 - (b) the type of business carried on by the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G;
 - (c) the services provided by the *critical third party*; and
 - (d) 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*; or
 - (b) matters that are likely to be contentious and may result in disciplinary or other enforcement action against the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G, 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 aspects of a *material service*, it may not be appropriate for them to provide a subsequent opinion on the adequacy of that service).

- 12.4.8 G 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 *CTPS* 12.2.1G or *CTPS* 12.2.2G.

Scope of report

- 12.4.9 G The *FCA* may require a report by a *skilled person* under section 166 (Reports by skilled persons) of the *Act* on any matter if it is reasonably required in connection with the exercise of the *FCA*'s functions conferred by or under Chapter 3C (Critical Third Parties) of Part XVIII (Recognised Investment Exchanges, Clearing Houses, CSDs and Other Parties) of the *Act*.
- 12.4.10 G If the *skilled person* appointed to make a report under section 166 (Reports by skilled persons) of the *Act* is appointed by the *person* in *CTPS* 12.2.1G, the *FCA* may require the report to be in whatever form it specifies in the notice to the *person* concerned.
- 12.4.11 G The *FCA* will give written notification to the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G 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.
- 12.4.12 G The *FCA* attaches importance to:

- (1) there being a timetable for each report or collection and updating of information; and
 - (2) the *skilled person*, with the cooperation of the *person* in *CTPS* 12.2.1G or the *critical third party* in *CTPS* 12.2.2G, as relevant, keeping to that timetable.
- 12.4.13 G The written notification in *CTPS* 12.4.11G 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 *CTPS* 12.2.1G or in *CTPS* 12.2.2G 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.
- 12.4.14 G The *FCA* will wish to conduct the discussion with the *critical third party*, the *skilled person* and any others within a timescale appropriate to the circumstances of the case.
- 12.4.15 G Where enforcement action is anticipated as a likely outcome, the *FCA* would normally signal this to the *skilled person* prior to work commencing as this would impact the type of evidence which should be provided in support of the findings in the *skilled person* report.

Reporting process

- 12.4.16 G Where the *skilled person* is appointed by the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G, the *FCA* will normally require the *skilled person* to be appointed to report to the *FCA* through that *person*.
- 12.4.17 G Where the *skilled person* is to be appointed by the *FCA* itself, the *skilled person* will report directly to the *FCA*.
- 12.4.18 G Regardless of how the *skilled person* is appointed, they will usually be in regular contact with the *FCA* throughout the process.
- 12.4.19 G
- (1) The *FCA* expects the *skilled person* normally to give a periodic update on progress and issues during the engagement – the frequency of which is to be discussed with the *FCA*. This should allow for a re-focusing of the report if necessary.
 - (2) Where the *skilled person* is appointed by the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G:
 - (a) the channel of communication would normally be directly between the *skilled person* and the *FCA*; and
 - (b) the *skilled person* would usually be expected to keep the *critical third party* or other *person* informed of any communication between the *skilled person* and the *FCA*.

- 12.4.20 G It may be appropriate for the *skilled person* to communicate matters of material significance to the *FCA* set out in *CTPS* 12.5.1R(1)(b) without first informing the *critical third party*. The same applies to equivalent material in the case of another *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G.
- 12.4.21 G If the *FCA* is considering asking for additional information during the engagement, 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.
- 12.4.22 G (1) In most cases, the *FCA* will not need to request a *skilled person* to give it source data, *documents* and working papers.
- (2) 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 consider taking against the *critical third party* or other *person*.
- 12.4.23 G (1) 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.
- (2) The *skilled person* should take reasonable steps to achieve delivery by that time. Where the *skilled person* is appointed by the *critical third party*, this will be part of its contractual duty under *CTPS* 12.5.1R.
- (3) 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 or within cost estimates, the *skilled person* should inform as soon as possible:
- (a) the *FCA*; and
- (b) if the *skilled person* is appointed by the *person* in 12.2.1G or *CTPS* 12.2.2G, that *person*.
- 12.4.24 G (1) This paragraph applies where the *skilled person* is appointed by the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G.
- (2) In the normal course of events, the *FCA* expects that the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G 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*.
- (3) The *skilled person* is expected to provide the *FCA* with identical copies of any draft report or relevant information at the same time they are issued to the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G.
- 12.4.25 G The *FCA* may meet with the *person* in *CTPS* 12.2.1 G or *CTPS* 12.2.2G and the *skilled person* together to discuss the final report.

12.4.26 G The *FCA* may also wish to discuss the final report with the *skilled person* present but without the *person* in *CTPS* 12.2.1G or *CTPS* 12.2.2G.

12.5 Duties of critical third parties

Contract with the skilled person

12.5.1 R When a *critical third party* appoints a *skilled person*, the *critical third party* must, in a contract with that *person*:

- (1) require and permit the *skilled person* during and after the course of their appointment:
 - (a) to cooperate with the *regulators* in the discharge of their *oversight functions*; and
 - (b) to communicate to the *regulators* information on, or the *skilled person's* opinion on, matters of which they have, or had, become aware in their capacity as a *skilled person* reporting on the *critical third party* in the following circumstances:
 - (i) the *skilled person* reasonably believes that the information on, or their opinion on, matters for which they were appointed may be of material significance to the *regulators* in determining whether the *critical third party* concerned complies with and will continue to comply with the *CTPS duties*; or
 - (ii) the *skilled person* reasonably believes that the *critical third party* is not, may not be or may cease to be a going concern; and
- (2) require the *skilled person* to prepare a report or collect or update information, as notified to the *critical third party* by the *regulator* that has required such report, collection or updating within the time specified by the *regulator*; and
- (3) waive any contractual or other duty of confidentiality owed by the *skilled person* to the *critical third party* which might limit the provision of information or opinion by that *skilled person* to the *regulators* in accordance with (1) or (2).

12.5.2 R A *critical third party* must ensure that the contract it makes with the *skilled person* under *CTPS* 12.5.1R requires and permits the *skilled person* to provide the following to the *regulators* if requested to do so:

- (1) interim reports;
- (2) source data, *documents* and working papers;

- (3) copies of any draft reports given to the *critical third party*; 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).
- 12.5.3 R A *critical third party* must ensure that the contract required by *CTPS* 12.5.1R is:
- (1) governed by the laws of a part of the *UK*;
 - (2) in writing, and:
 - (a) expressly provides that the *regulators* have a right to enforce the provisions included in the contract under *CTPS* 12.5.1R, *CTPS* 12.5.2R and *CTPS* 12.5.3R(2)(b) to (d);
 - (b) expressly provides that, in proceedings brought by the *regulators* 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, expressly provides that the *regulators* are not, in exercising the right in (a), to be treated as a party to, or bound by, the arbitration agreement; and
 - (d) expressly provides that the provisions included in the contract under *CTPS* 12.5.1R, *CTPS* 12.5.2R and *CTPS* 12.5.3R(2) are irrevocable and may not be varied or rescinded without the *regulators*’ consent; and
 - (3) not varied or rescinded in such a way as to extinguish or alter the provisions referred to in (2)(d).
- 12.5.4 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 *CTPS* 12.5.1R against the *skilled person*.
- 12.5.5 R If a *critical third party* appoints a *skilled person*, that *critical third party* must, including where applicable in complying with *CTPS* 3 (Critical Third Party Fundamental Rules), give the *regulators* sufficient and timely information about the cost of the *skilled person* report or collection or updating of information, including both an initial estimate of the cost as well as the cost of the completed report, collection or updating of information).
- 12.5.6 G If the *FCA* considers it appropriate, it may request the *critical third party* to give it a copy of the draft contract required by *CTPS* 12.5.1R before it is made with the *skilled person*. The *FCA* will inform the *critical third party* of

any matters that it considers require further clarification or discussion before the contract is finalised.

- 12.5.7 G The *FCA* expects a *skilled person* to clarify or discuss any matters that are raised by the *FCA* regarding a contract before it is finalised.

Responsibility for delivery

- 12.5.8 R When a *critical third party* appoints a *skilled person*, a *critical third party* must take reasonable steps to ensure that the *skilled person* delivers a report or collects or updates information in accordance with the terms of the *skilled person's* appointment.

Assisting the skilled person

- 12.5.9 R A *critical third party* must provide all reasonable assistance to a *skilled person* appointed to provide a report under section 166 (Reports by skilled persons) of the *Act* or to collect or update information under section 166A (Appointment of skilled person to collect and update information) as applied by section 312P of the *Act* and take reasonable steps to ensure that its *employees* and agents also provide all reasonable assistance to that *skilled person*.

- 12.5.10 G Reasonable assistance in *CTPS* 12.5.9R should include:
- (1) access at all reasonable business hours for the *skilled person* to the *critical third party's* accounting and other records in whatever form;
 - (2) providing such information and explanations as the *skilled person* reasonably considers necessary or desirable for the performance of their duties; and
 - (3) permitting a *skilled person* to obtain such information directly from the *critical third party's* auditor as they reasonably consider necessary or desirable for the proper performance of their duties.

Assistance to skilled persons from others

- 12.5.11 G In respect of the appointment of a *skilled person* under section 166 (Reports by skilled persons) of the *Act*, section 166(7) (as applied by section 312P (Information gathering and investigations) 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 *CTPS* 12.2.1G.
- 12.5.12 G In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, under section 166A(5) (as applied by section 312P (Information gathering and investigations) of the *Act*), 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.

12.6 Confidential information and privilege

Confidential information

- 12.6.1 G 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.
- 12.6.2 G A *skilled person*, being a primary recipient under section 348 (Restrictions on disclosure of confidential information by Authority etc.) of the *Act*, is bound by the confidentiality provisions in Part XXIII (Public record, disclosure of information and cooperation) of the *Act* as regards confidential information received from the *FCA* or directly from a *critical third party* or other *person*.
- 12.6.3 G 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.
- 12.6.3 G The *FCA* will indicate to a *skilled person* if there is any matter which cannot be discussed with the *person* in *CTPS* 12.2.1G.

Legal privilege

- 12.6.4 G The limitations in section 413 (Protected items) of the *Act* are relevant to this chapter. This section provides that no *person* may be required to produce, disclose or allow the inspection of *protected items*.

Effect of confidentiality restrictions

- 12.6.5 G 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 of the *Act*;
 - (2) a *critical third party* 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.
- 12.6.6 G A *critical third party* 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*.

13 Referrals to oversight by the regulators or Treasury designation

13.1 Referrals to oversight by the regulators or Treasury designation

- 13.1.1 R A *critical third party* must ensure that neither it nor anyone acting on its behalf in any way indicates or implies that it has the approval or endorsement of any of the *regulators* by virtue of:
 - (1) its designation as a *critical third party*; or
 - (2) being overseen by the *regulators* in respect of services it provides to *firms*.
- 13.1.2 R In no communication should a *critical third party*, or anyone acting on its behalf, suggest that its designation by the Treasury or oversight by the *regulators* confers any advantage to a *firm* or anyone else in using its services as compared to a service provider who is not designated or subject to *CTPS*.

14 Record keeping

14.1 Record keeping

- 14.1.1 R A *critical third party* must arrange for orderly records to be kept of its business and internal organisation, in so far as it concerns the provision of services to *firms*, which must be sufficient to enable each *regulator* to:
 - (1) perform its *oversight functions*; and
 - (2) ascertain whether or not the *critical third party* has complied with its *CTPS duties*.

Sch 1 Record-keeping requirements

- Sch 1.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- Sch 1.2 G It is not a complete statement of those requirements and should not be relied on as if it were.
- Sch 1.3 G Table: Record-keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
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<i>CTPS 4.7.1R</i>	Resources map	Identification of resources used to deliver, support and maintain <i>material services</i>	Ongoing duty	None specified
<i>CTPS 6.1.3R</i>	Annual written self-assessment	Copy of that self-assessment	Completion of assessment	3 years
<i>CTPS 14</i>	General record keeping requirement about the provision of services to <i>firms</i>	Sufficient to enable each <i>regulator</i> to: (1) perform its <i>oversight functions</i> ; and (2) ascertain whether or not the <i>critical third party</i> has complied with its <i>CTP duties</i>	None specified Therefore, this is governed by the requirement in <i>CTPS 14</i> described in column (3)	See column (4)

Sch 2 Notification requirements

- Sch 2.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification requirements.
- Sch 2.2 G It is not a complete statement of those requirements and should not be relied on as if it were.
- Sch 2.3 G Unless otherwise specified, the notification is to be given to the *regulators*.
- Sch 2.4 G Table: Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>CTPS 3.2.6R</i>	Any information of which the <i>regulators</i>	Appropriate disclosure	Any information of which the <i>regulators</i>	Appropriate

	would reasonably expect notice		would reasonably expect notice	
<i>CTPS</i> 4.2.1R(5) and (6)	Details about central point of contact and changes to those details	Those details	The initial notification is made when the <i>critical third party</i> becomes subject to <i>CTPS</i> . Thereafter, notification is to be given when the details change.	As soon as practicable
<i>CTPS</i> 5.3.2R	Results of testing of the <i>critical third party's financial sector incident management playbook</i>	Those results	Completion of test	As soon as reasonably practicable
<i>CTPS</i> 6.1.3R	Annual written self-assessment	That self-assessment	Completion of assessment	Within 3 <i>months</i> of the <i>critical third party</i> being designated by the <i>Treasury</i> and thereafter within 12 <i>months</i> of the last submission
<i>CTPS</i> 7	Information about risks. It is to be sent to the <i>firms</i> to	Sufficient information about risks. It includes the results of	Ongoing obligation	Ongoing obligation

	which the <i>critical third party</i> supplies services.	testing under <i>CTPS 5</i> and a summary of the annual self-assessment under <i>CTPS 6</i> .		
<i>CTPS 8.1 to CTPS 8.5 and CTPS 8.7</i>	Serious incident affecting a <i>material service</i> or <i>assets</i> . Notifications should be given to the <i>regulators</i> and <i>firms</i> .	Specified details of the incident	The initial notification is on occurrence. Thereafter, intermediate notifications should be given during the course of the incident. A final notification should be given on resolution.	Initial notification: without undue delay Intermediate notification: during course of incident as appropriate Final notification: within reasonable time of resolution
<i>CTPS 8.6 and CTPS 8.7</i>	Civil or criminal proceedings, disciplinary measures or sanctions, insolvency and restructuring proceedings and certain threats to the ability to meet obligations under <i>CTPS</i>	Description of event	Occurrence	Promptly
<i>CTPS 9</i>	The <i>critical third party</i> has given a <i>regulator</i> information that is false,	Details of the matters in column (2) and the correct information	Becoming aware or having information that reasonably	Immediate

	misleading, incomplete or inaccurate, or that has or may have changed in a material way.		suggests that it has or may have provided such information	
<i>CTPS</i> 10.2.1R(2) and (3)	Details about the <i>person</i> who has authority to receive any <i>document</i> given by a <i>regulator</i> and changes to those details. Requirement applies to a <i>critical third party</i> that has its head office outside the <i>UK</i> .	Those details	The initial notification is made when the <i>critical third party</i> becomes subject to <i>CTPS</i> 10. Thereafter, notification is to be given when the details change.	As soon as practicable
<i>CTPS</i> 12.5.5R	Cost of <i>skilled person</i> report	Details of those costs	When facts arise	Timely

Sch 3 Fees

Sch 3.1 G There are no *rules* providing for the payment of fees in *CTPS*.

Sch 4 Powers exercised

Sch 4.1 The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the *rules* and *guidance* in *CTPS*:

- (1) Section 137T (General supplementary powers);
- (2) Section 139A (Power of the *FCA* to give guidance);
- (3) Section 166(9) (Reports by skilled persons);

- (4) Section 166A(9) (Appointment of skilled person to collect and update information);
- (5) Section 312M (Power to make rules); and
- (6) Section 312P (Information gathering and investigations).

Sch 5 Rights of action for damages

- Sch 5.1 G Section 312 (Application of provisions of this Act to this chapter 5) of the *Act* provides that section 138D (Actions for damages) of the *Act* does not apply to the *rules* in *CTPS*.

Sch 6 Rules that can be waived or modified

- Sch 6.1 G The *rules* in *CTPS* may be waived or modified by the *FCA* under section 138A (Modification or waiver of rules) of the *Act* where the conditions in that section are met.