



Forest Stewardship Council®



## Questions and Answers (Q&A)

**ADVICE-40-004-18**

***Addressing deliberate false claims***



## Introduction

The ADVICE-40-004-18 *Addressing deliberate false claims* was published on 06 April 2020. The Advice Note applies to certification bodies and certificate holders and specifies the actions that shall be taken when false claims are identified. In addition, it provides measures for certificate holders to ensure that they do not inadvertently enter into a business relationship with a blocked organization when they outsource services or when Central Offices want to add a new group member or a participating site.

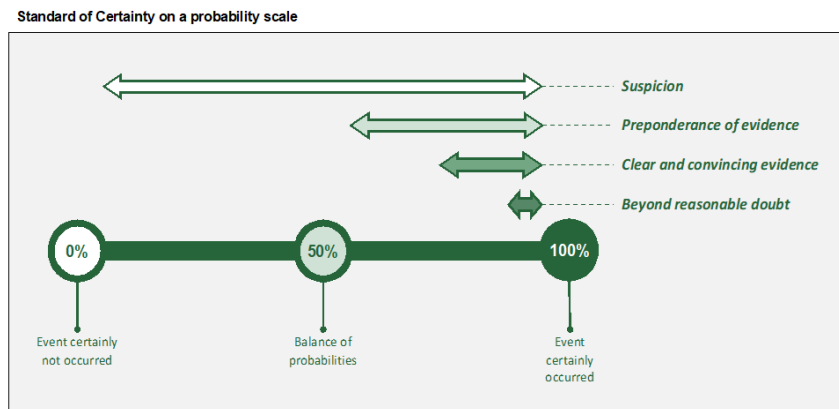
This guidance document has been developed to help with the effective implementation of the Advice Note. It provides a range of clarificatory answers to questions that were raised by different stakeholders since the publication of the Advice Note.

This document is meant to be a 'living' document and will be periodically updated with new questions and queries from stakeholders, as applicable. In case you have any additional questions, queries, or clarification requests regarding the implementation of this Advice Note, please reach out to us at [chainofcustody@fsc.org](mailto:chainofcustody@fsc.org).

1. **Is “Clear and convincing” evidence a new term for FSC?**

No, it is not a new term for FSC and has been used in various contexts such as the FSC Policy for Association. The term has been further defined for specific use in this Advice Note as “Evidence available to the certification body, ASI and/or FSC that supports a conclusion that a fact is substantially more probable to be true than not. In other words, there must be a firm conviction or belief that the organization deliberately made false claims. Clear and convincing evidence shall be supported by documents, facts, other information or records, either quantitative or qualitative, that can be verified through analysis, observation, measurement, and other means of research”.

**Graphic 1. Standards of certainty on a probability scale**



This term has been used by FSC in order to ensure that facts have being substantiated before making any decision that affects an FSC certificate holder.

2. **Why does the Advice Note refer to false claims since Clause 1.6 from FSC-STD-40-004 already deals with non-conforming products?**

The clause 1.6 on non-conforming products does not address intent nor cases of repeated negligence (i.e., why the false claim took place) but only specifies the activities to be undertaken by the organization in case non-conforming products are detected after they have been delivered. The Advice Note on false claims sets out to address the root cause of false claims when they are discovered.

	<b>FSC-STD-40-004 Clause 1.6</b>	<b>ADVICE-40-004-18</b>
<b>Scope</b>	Non-conforming products	Deliberate and/or multiple negligent false claims
<b>Goal</b>	Prevent further distribution of non-conforming products	Protect FSC integrity
<b>Authorized entity to act in case of non-conformance</b>	CB	FSC/ASI
<b>Frequency of checks by authorized entity</b>	Usually once per year via annual audit	Anytime
<b>Consequence</b>	Major or minor non-conformity	Blocking of certificate and penalty

**3. How is a false claim different from an inaccurate claim?**

A false claim is quite different from an inaccurate claim, which occurs when a product that is eligible to be sold as FSC certified is sold with the wrong FSC claim. Inaccurate claims are not covered by the Advice Note.

While mistakes with **eligible products** would fall into the category of inaccurate claims (addressed in FSC-STD-40-004), the Advice Note allows FSC to take more forceful action to protect the integrity of the FSC scheme and certificate holders from **wrongly labeling or selling ineligible products as FSC certified**.

**4. Why does the Advice Note address both deliberate and negligent false claims?**

Both deliberate and negligent false claims are a risk to the FSC scheme and to protect its integrity, FSC has clarified in the Advice Note the difference between deliberate and negligent false claims and how each will be treated.

- a. For negligent false claims, the Advice Note clarifies that an incident with a false claim is linked to a root cause and multiple incidents of false claims may originate from the same root cause. In all such cases, these instances of false claims (while each of them triggering a non-conformity in an assessment) count as one false claim event for the purpose of this Advice Note. Three or more negligent false claims in any 5-year period trigger the provisions of the Advice Note.
- b. For deliberate false claims, the Advice Note clarifies that a false claim is considered deliberate when 'it is made with knowledge and awareness of the consequences.' The Advice Note becomes applicable as soon as the deliberate false claim is identified.

**5. What happens when a certificate holder receives a false claim from another certificate holder?**

- a. If a certificate holder received a false claim by another certificate holder and is unaware that the product is a non-conforming product (false claim), then the receiving certificate holder would not be subject to ADVICE-40-004-18 but will have to apply the provisions of FSC-STD-40-004 V3-0 Clause 1.6.
- b. If a certified holder received a false claim by another certificate holder and is aware that the product is a non-conforming product/a false claim and continues to pass on the false claims to customers, then it becomes a deliberate false claim and the provisions of this Advice Note are applied.

**6. Will every false claim incident be taken into consideration for applying this Advice Note? E.g., for a printer, if it inadvertently fed non-FSC certified paper into the printing press and subsequently sold 1000 printed pieces, would each incorrectly labelled printed piece be considered a false claim?**

An incident with a false claim is linked to a specific root cause and multiple incidents of false claims may originate from the same root cause. In all such cases, these instances of false claims (which would normally trigger a single major non-conformity in an audit) would count as one false claim incident for the purpose of this Advice Note.

Concerning the given example, all the 1000 printed pieces originated from a single root cause, and would (during an assessment), result in a single major non-conformity. As such, this whole incident would be considered a single false claim.

**7. What is meant by negligence?**

It is not necessarily the case that any wrongdoing which has been done unintentionally is considered negligence. Negligence is defined as failure to exercise reasonable care and in most jurisdictions, it is implied that a person, who is considered to be responsible, had the

duty to exercise reasonable care. This duty in the context of an FSC CoC certificate holder could take the form of implementing physical material segregation, regularly maintaining machines, training of staff, etc. In contrast, there could be situations where products with false claims are delivered despite due care being exerted – in which case the Advice Note would not apply.

**8. How is the Advice note applied when there are more than two negligent false claims in a five-year period?**

For this Advice Note to be triggered for negligent false claims, it must be demonstrated that the certificate holder was negligent in its actions. This requires identification of **at least three false claim incidents** arising out of negligence in a 5-year period.

A single false claim incident here refers to all instances of negligent false claims (which would normally trigger a single non-conformity in an assessment) that can be attributed to a single root cause. So effectively, negligent false claims occurring due to three or more root causes in a 5-year period shall trigger this Advice Note.

*It is highly unlikely that the same root cause that triggered the false claim incident occurs repeatedly in a 5-year period, since once a root cause is identified, the required corrective action is expected to address and eliminate the root cause. Should a root cause persist and be identified in a subsequent assessment, it would mean that the non-conformity was not resolved satisfactorily in the first instance.*

**9. What happens when a company is blocked from recertification?**

For the duration of the blockage, the blocked company has a status similar to an uncertified organization. In addition, it cannot be recertified by another CB, be a part of an FSC group certificate, or carry out FSC related outsourcing activities for another FSC certified organization until the blockage is revoked.

On the FSC certificate database ([info.fsc.org](http://info.fsc.org)), the blocked organization would be labelled as 'suspended and blocked' or 'terminated and blocked', depending on the circumstances). This label will remain on the database until the blocked status is revoked.

**10. Some stakeholders view the blockage period as too long and other stakeholders view the blockage period as too short. Why did FSC choose these time frames?**

The blockage period has been determined by FSC in such a manner that it is:

- a. Ensuring equal treatment for all certificate holders
- b. Balancing the interest of the CH, market participants and the market of the FSC certification scheme
- c. Long enough to act as a deterrent *and*
- d. Applicable to a variety of different situations and different products. E.g., for a calendar manufacturer, a blockage period for 10 months in January would not create any deterrent effect since most of the sales would be taking place in November/December.

The Organization can have its blockage lifted by implementation of corrective and preventive actions, the application of requirements for non-conforming products (as specified in clause 1.6 of FSC-STD-40-004), payment of the compensation fee (as prescribed in FSC-PRO-10-003), and other conditions established by FSC to remedy the shortcomings. Based on the intensity and severity of the integrity issues identified, FSC shall establish the applicable conditions to remedy the shortcomings.

**11. Can certificate holders who have been blocked use the compensation mechanism to 'pay their way back' into the system? Would this not be an advantage for those certificate holders who pass false claims deliberately, and could then pay a limited (compared to sales) fee to have their certificates restored?**

No, the Advice Note does not permit certificate holders to simply pay a fee in order to remove the blockage. In addition to paying the compensation fee, the certificate holder needs to:

- a. Implement corrective and preventive actions
- b. Implement applicable conditions imposed by FSC to remedy the shortcomings. These conditions would be determined by FSC based on the intensity and severity of the shortcomings.
- c. Apply the requirements for nonconforming products (as specified in clause 1.6 of FSC-STD-40-004) which include to:
  - i. notify its certification body and all affected direct customers in writing within five business days of the non-conforming product identification, and maintain records of that notice;
  - ii. analyze causes for occurrence of non-conforming products, and implement measures to prevent their reoccurrence;
  - iii. cooperate with its certification body in order to allow the certification body to confirm that appropriate actions were taken to correct the non-conformity.

The purpose of sanctioning is protecting the system from false claims. It is meant to deter certificate holders from making false claims. The required corrective and preventive actions as well as other conditions imposed by FSC, combined with the financial penalty, should be less profitable than benefitting from any false claim.

**12. Would certificate holders who have signed or will be signing the revised 2020 Trademark License Agreement (TLA) be punished twice in case of a false claim – once as per the Advice Note and once again as per the provisions of the revised TLA?**

No, the Advice Note is for organizations who have not yet signed the revised 2020 TLA. In essence, both run in parallel – the Advice Note is applicable only for those who have not yet migrated to the revised 2020 TLA.

**13. What is the compensation fee used for?**

The money collected by means of compensation fees are to ensure the integrity and strengthen the FSC system.

**14. How is the compensation fee calculated?**

The calculation of the compensation fee is a transparent process and is described in detail in FSC-PRO-10-003 V1-0. The document is publicly available and can be viewed on the FSC website at: <https://fsc.org/en/document-centre/documents/resource/431>.

The financial penalty/compensation fee is determined by FSC in accordance with the seriousness and the duration of the specific false claim as well as with the economic capacity of the blocked organization based on the annual turnover. Each of these criteria is further scaled to reflect the seriousness and duration of each specific false claim. This calculation is used to ensure that the financial penalty/compensation fee is reasonable and to ensure equal treatment of blocked organizations.

**15. What happens if a certificate holder is wrongly accused of false claims and can this be appealed?**

FSC decisions on false claims are made after a process of thorough review and verification by multiple actors ('the multiple eye principle'), concluding that clear and convincing evidence exists for the relevant allegations. Therefore, the possibility of an unwarranted accusation is highly unlikely. However, in case a certificate holder wants to contest the

decision by FSC, then they can do so as per the process described in Clause 6 of FSC-PRO-10-003 V1-0.

**16. Can the false claims Advice Note be applied retroactively?**

No. The Advice Note cannot be applied to false claims that occurred before the Advice Note was effective on 06 April 2020. However, FSC has the right to protect the integrity of the FSC scheme and can still suspend or terminate Trademark License Agreements (TLAs) and restrict companies from recertification when there is clear and convincing evidence of deliberate false claims that occurred before this date.