



Forest Stewardship Council®



## **ADVICE-40-004-18 (V2-0)**

### ***Addressing false FSC claims on products/projects containing material from unacceptable sources***

#### **Questions and Answers (Q&A)**

## Introduction

The ADVICE-40-004\_18 *Addressing deliberate false claims* came into effect on 06 April 2020. Based on stakeholder feedback received since then, the advice note has been since amended and a new version ADVICE-40-004\_18 (v2-0) *Addressing false FSC claims on products/projects containing material from unacceptable sources* was published on 25 October 2021. This 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 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 would be periodically updated with new questions and queries from stakeholders. In case you have any additional questions/queries/clarification requests regarding the implementation of this Advice Note, please reach out to us at [chainofcustody@fsc.org](mailto:chainofcustody@fsc.org).

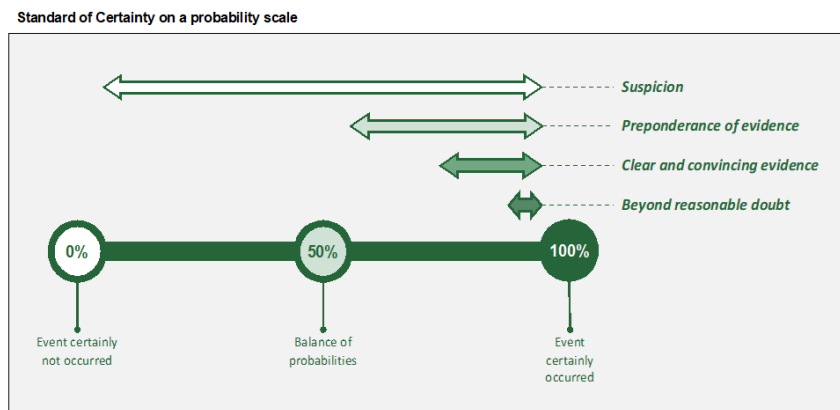
## Version history

Date	Comment
27 July 2021	Clarification A & Q for ADVICE-40-004-18 (V1-0)
02 November 2021	Updated to align with ADVICE-40-004-18 (V2-0)

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

No, it is not a new term within the FSC system and has been used in various contexts such as [the FSC Policy for Association complaints](#). With regards to this specific Advice Note, the term has been defined in the Advice Note itself as “Evidence available to the certification body, ASI and/or FSC or to the Blocked Organization that supports a conclusion that a fact is substantially more probable to be true than not. 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 to ensure that the facts are being substantiated before making any decision that affects an FSC certified organization.

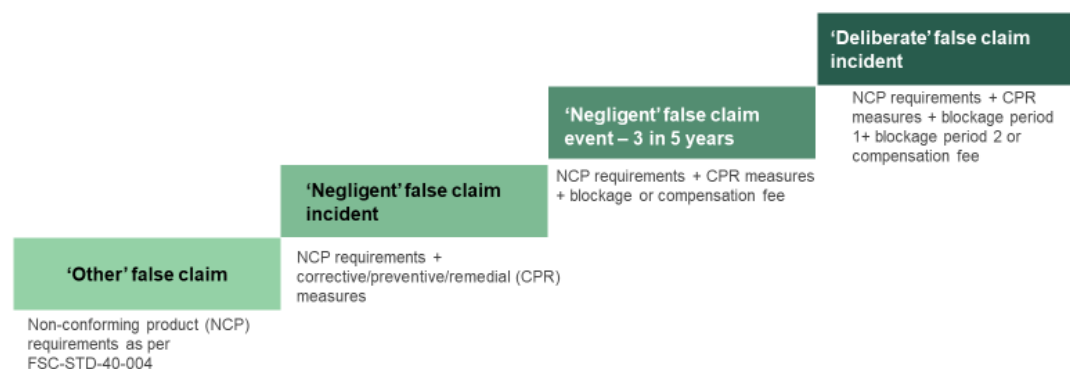
**2. Why does the Advice Note refer to *deliberate* false claims since Clause 1.6/1.8 from FSC-STD-40-004 (3-0/V3-1) already deals with non-conforming products?**

Clause 1.6/1.8 on non-conforming products does not address intent or 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.

FSC-STD-40-004 Clause 1.6/1.8		ADVICE-40-004-18 (V2-0)
<b>Scope</b>	Non-conforming products	Deliberate, negligent or other false claims
<b>Goal</b>	Prevent further distribution of non-conforming products	Protect FSC system integrity
<b>Authorized entity to act in case of non-conformance</b>	CB	CB and 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	Carry out non-conforming products requirements  Implement corrective, preventive, and remedial measures  Blocking of certificate or compensation fee

## Graphic 2: Hierarchy of scenarios and applicable requirements

Graphic 2, provides a summary of the type of claims and subsequent consequences.



### 3. What are the differences between deliberate, negligent and other false claims?

To protect the integrity of the FSC scheme, FSC has clarified in the Advice Note the difference between deliberate, negligent and other false claims and how each will be treated.

- a. For **negligent** false claims, the Advice Note clarifies that negligence is “*failure to exercise reasonable care*”. It further clarifies that three (3) or more negligent false claims events within a five (5)-year period employs the Advice Note.

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For example, a certificate holder forgets to check their supplier's certificate code and the FSC claim for the material purchased, since usually the material sourced from the same supplier has always been certified in the past. The supplier's CoC certificate status was terminated, and the material was not eligible to be claimed as FSC.

*Other examples:*

- Accounts made a mistake when raising an invoice
  - Goods-in/received staff put the material in the wrong pile because they were in a hurry
  - The certificate holder forgot to train a new staff member and an error was made, although the rest of the staff were trained.
  - Confusion between certified packaging and certified content (e.g., packaging with the FSC label refers to the box rather than actually the wooden content that is certified)
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- b. For **deliberate** false claims, the Advice Note clarifies that a false claim is considered deliberate when it is made “*by an organization with knowledge and awareness of the consequences*”. The Advice Note becomes applicable as soon as the deliberate false claim is identified.

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*For example, a certificate holder ran out of FSC stock, however, a customer placed a large order requesting FSC-certified material. The organization intentionally and knowingly sold non-certified material to the customer with FSC claims with the full knowledge they would be suspended or terminated if false claims are detected during an evaluation.*

*Other examples:*

- *Applying the FSC label on non FSC-certified products with the intent to pass them off as FSC-certified*
  - *Selling non FSC-certified raw materials with a FSC claim on invoice with the knowledge they do not have FSC-certified status*
  - *Promoting non FSC-certified products as FSC with the knowledge they are not*
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- c. For **other** false claims, the Advice Note clarifies “*that has been made neither deliberately, nor due to the failure of the organization to exercise reasonable care, but under exceptional or uncontrollable circumstances*”. These are false claims that the certificate holder could not have anticipated and could not have prepared for. ‘Clear and convincing evidence’ is required to determine a False Claim incident as ‘other’.

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*For example, a certificate holder's computer system was attacked by hackers through corporate espionage, a virus caused a malfunction on the production programming and mislabeled thousands of products with FSC claims.*

*Other examples:*

- *Program malfunction causes the program to print the wrong claims on invoices*
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#### 4. How is a false claim different from an inaccurate claim?

The definition of false claims clarifies, that “A *False Claim* is different from an *inaccurate claim*, in which a product, that is eligible to be sold as FSC certified, is sold with the wrong claim.” Inaccurate claims are not covered by the Advice Note. False claims on the other hand occurred if the organization made false claims on sales documents or the use of the FSC trademarks, on products and/or for projects that are not FSC-certified or FSC Controlled Wood.

A false claim can only be generated if the organization is purchasing uncertified material along with FSC-certified material. If the organization is **only** purchasing FSC-certified, controlled wood, or reclaimed material, then they cannot generate any false claims, and any inaccurate claim that might be generated would be beyond the scope the Advice Note.

While mistakes with eligible products would fall into the category of inaccurate claims (addressed in FSC-STD-40-004), FSC took actions to protect the integrity of the FSC scheme and certificate holders from wrongly labelling or selling ineligible products as FSC certified.

	<b>False claim</b>	<b>Inaccurate claim</b>
<b>Purchasing</b>	FSC-certified and uncertified materials or products	Only FSC certified materials or products (including Controlled Wood).
<b>Material/product</b>	Non FSC-certified	FSC-certified
<b>Claim</b>	False	Inaccurate
<b>Sale</b>	Not eligible to be sold as FSC certified	Eligible to be sold as FSC certified (but the claim is inaccurate)
<b>Examples</b>	Applying the FSC label on non FSC-certified products  Selling non FSC-certified raw materials with a FSC claim on invoice	Applying the wrong FSC label on FSC-certified products (i.e., FSC MIX rather than FSC 100%  Sent an invoice with the wrong FSC claim for an FSC-certified product
<b>Normative reference</b>	ADVICE-40-004-18	<i>FSC-STD-40-004 V3-0/V3-1 Clause 1.6/1.8.</i>

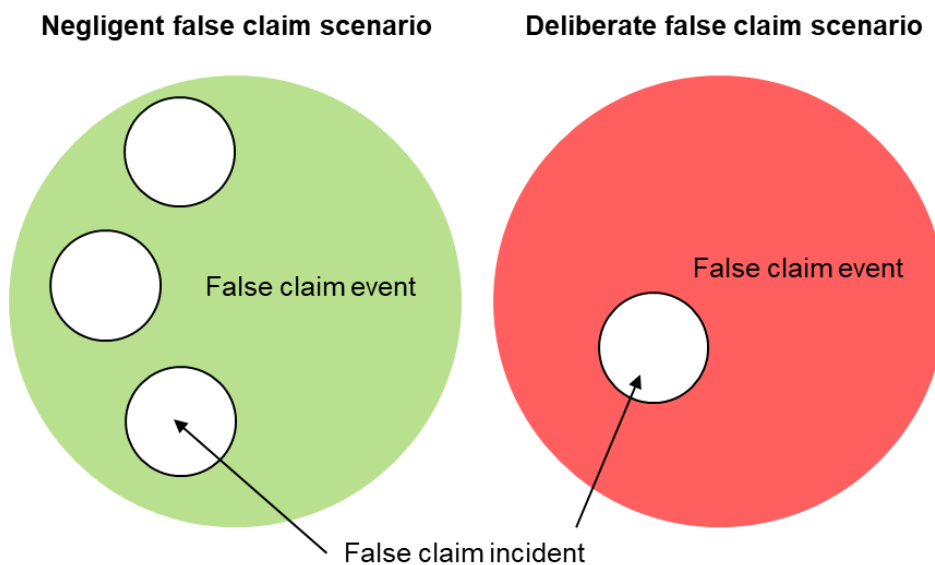
**Let's consider the following scenarios:**

<b>Inaccurate claim</b>	<i>A certificate holder accidentally labels their FSC-certified solid wood chopping boards with the FSC MIX label/. The solid wood chopping boards are FSC-certified and are eligible to be sold as FSC however they carry an incorrect claim, the correct claim is FSC 100%. For incorrect claims, they will have to apply the provisions of FSC-STD-40-004 V3-0/V3-1 Clause 1.6/1.8.</i>
<b>Negligent false claim</b>	<i>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/V3-1 Clause 1.6/1.8.</i>
<b>Deliberate false claim</b>	<i>A certificate 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.</i>

Clause 1.6/1.8 of FSC-STD-40-004 V3-0/V3-1 refers to requirements for non-conforming products but does not cater for situations where claims were made through negligence whereas the Advice Note provides additional requirements to address this.

**5. What is the difference between a false claim incident and a false claim event?**

A 'False Claim incident' is a single instance of a 'False Claim' that can be attributed to a root cause. A false claim event is one or more incidents of false claims which originate from the same root cause. All these instances of false claims which would normally be treated as a single non-conformity in an assessment count as one false claim event for under the Advice Note.



For the negligent false claim scenario, certificate holders will have three or more negligent false claims events in a five-year period for the consequences of the Advice Note to be applicable. For deliberate false claims, a single event will trigger the application of the Advice Note.

**6. Will every false claim incident be taken into consideration for applying this Advice Note? E.g., A printer 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?**

No, all the 1000 printed pieces will be considered as part of a single false claim incident which contributes to false claim event. All such false claim incidents arising out a single root cause will be part of the same false claim event. Three or more negligent false claim events need to occur for the Advice Note to be applied.

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

Not every unintentional wrongdoing leads to negligence. Negligence is defined as “*failure to exercise reasonable care*” and in most jurisdictions, it is implied that a person, who is responsible, had to have a 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 three negligent false claims in a five-year period?**

For three or more negligent false claims **events** to trigger application of the Advice Note, an example could be as follows:

- **Year 1:** The CB identifies the false claim and issues a major non-conformity (CAR) for **the root cause leading to the false claim**. The certificate holder implements the NCP requirements and CPR measures to address the root cause that led to the CAR within the timeline specified in the CAR (maximum 3 months).
- **Year 2:** In a subsequent assessment, the CB identifies new negligent false claims with **a different root cause** from Year 1, and therefore issues only one new major non-conformity. Again, the certificate holder implements the NCP requirements, CPR measures and addresses the root cause that led to the CAR within the timeline specified in the CAR (maximum 3 months).
- **Year 3:** The CB issues a third major non-conformity for additional negligent false claims with **a different root cause** from the ones identified in previous years. In this example, this is the 3<sup>rd</sup> major non-conformity. The certificate holder is blocked from the FSC Certificate Scheme until they implement the NCP requirements and CPR measures and pay the compensation fee.

**9. 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
- b. Balancing the interest of the certificate holder, market participants and the market of the FSC certification scheme
- c. Long enough to act as a deterrent *and*
- d. Can be reasonably applied 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 payment of the compensation fee (as prescribed in FSC-PRO-10-003) before the suspension period and implementation of corrective, preventive and remedial measures, and the application of requirements for non-conforming products (as specified in clause 1.6/1.8 of FSC-STD-40004 V3-0/V3-1) and other applicable conditions established by FSC to remedy the shortcomings.

**10. What happens when a company is blocked from recertification? Does that prohibit the company from carrying out any FSC certified production or all production?**

For the duration of the blockage the blocked organization shall not carry out any processes or activities that are included within the scope of their FSC certification (e.g., trading, processing, manufacture, labelling, storage, and/or transport of FSC material or FSC certified products). The blockage does not apply to the production outside the scope of the FSC certification.

On the FSC database (info.fsc.org), the Organization would be labelled as 'suspended and blocked' or 'terminated and blocked'. This status will remain on the database until the blocked status is revoked.

**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 to those certificate holders who pass false claims deliberately, and then pay a limited (compared to sales) fee and restore their certificates?**

No, the Advice Note does not permit certificate holders to simply pay a fee to remove the blockage. For negligent false claims, the certificate holder can remain blocked or pay the compensation fee to remove the blockage. For deliberate false claims, the certificate holder can only remove the blockage after the first blockage period by paying the compensation fee, if not they will remain blocked until they pay the compensation fee.

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
- c. Apply the requirements for nonconforming products (as specified in clause 1.6/1.8 of FSC-STD-40-004 V3-1/V3-2) which include:
  - 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. analyse causes for the occurrence of non-conforming products, and implement measures to prevent their reoccurrence;
  - iii. cooperate with its certification body to allow the certification body to confirm that appropriate actions were taken to correct the non-conformity.

The purpose of sanctioning is to protect the system from false claims. It is meant to deter certificate holders from making false claims, as committing a false claim combined with the risk of paying a compensation fee is less profitable than committing any false claim.

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

No, there will not be any double punishment. Both the Advice Note and the TLA reference the same mechanism which can only be applied once.

**13. Why do certificate holders need to sign an MoU with additional measures?**

The MoU serves to ensure both parties have overlapping expectations on which concrete NCP and CPR measures to be implemented as a result of the Advice Note and FSC-STD-40-004. As every false claim situation is different, so are the NCP and CPR measures different for rectifying the situation created with false claims. The term ‘additional measures’ allows FSC to require implementing measures that could not be covered by definitions of NCP and CPR but are necessary to rectify false claim situations completely. The MoU with additional measures may or may not be signed, it is not a mandatory requirement, but would depend on specific situations.

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

The monies collected by means of compensation fees would be used to improve the integrity measures and strengthen the FSC system.

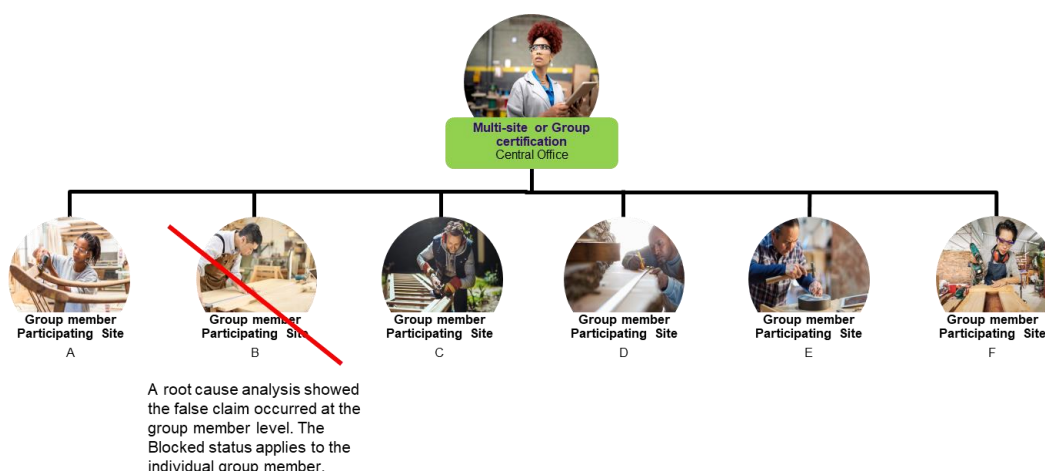
**15. Why is the calculation of the compensation fee so complicated? Is it transparent?**

The calculation of the compensation fee is a transparent process and is described in detail in FSC-PRO-10-003 V1-1. The document is publicly available and can be viewed on the FSC website at: <https://fsc.org/en/document-centre/documents/resource/431>.

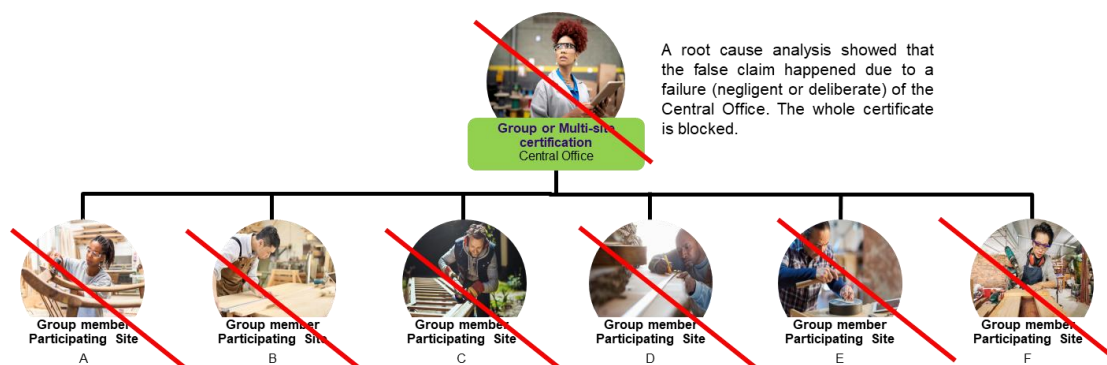
The compensation fee is determined by FSC in accordance with the seriousness and the duration of the specific false claim as well as with the economic capacity of the blocked organization based on the annual turnover of forest products. Each of these criteria is further scaled to reflect the seriousness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

**16. What happens when a group member or participating site is responsible for a false claim?**

Under Multi-site or Group COC certification, if a group member or participating site is responsible for a false claim, the Advice Note applies to that specific group member or participating site and not to the Central Office. If the root cause analysis establishes the development of the false claim to a failure at the group member or participating site level, then blocked status will apply to the group member or participating site.



However, the application of the blocked status will be applied to the whole certificate if the root cause analysis establishes that the false claim occurred due to a failure (negligent or deliberate) of the Central Office.



### 17. Who is responsible for carrying out the root cause analysis and who verifies it?

The certificate holder is responsible for performing a root cause analysis to find out the reason for the false claim occurring and identify appropriate actions to address the root cause. The certification body is responsible for verifying the root cause analysis for accuracy and relevance.

### 18. Who prescribes or verifies the CPR measures?

The certification body is responsible for prescribing corrective and preventive measures. The certificate holder implements remedial measures, the certification body will verify that all measures have been implemented and are completed.

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For example, a certificate holder makes a false claim, they had incorrectly sold 25 tons of non FSC-certified wood chips to a customer. They agreed with their certificate body that they will implement the following CPR measures:

- Apply the requirements for nonconforming products (as specified in clause 1.6/1.8 of FSC-STD-40-004 V3-1/V3-2) and other corrective action requests (CARs) to address the nonconformities (*corrective measure*)
  - Implement solutions to prevent future occurrences (*preventative measure*)
  - Implement volume compensation for the 25 tons sold by deducting the equivalent volume from existing credits (*remedial measure*)
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### 19. 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 has been collected 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 Section 6 of FSC-PRO-10-003 V1-1.

**20. 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 V2-0 will be effective on 01 January 2022. For false claims that happened between 06 April 2020 and 01 January 2022, Advice Note V1-0 applies. 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 even before 06 April 2020.

**21. What is the purpose of compensating volumes as part of remedial measures?**

Volume compensation is required when products or materials are found to carry false claims. As a remedial action, the organization responsible for the False Claim incident must purchase, allocate or deduct credits of the equivalent volume of FSC input material from their system to correctly compensate for the equivalent volume that was falsely claimed as FSC.

**22. Must a blocked certificate holder continue to pay Annual Administration Fee (AAF)?**

When certificate holders are “Suspended and Blocked”, they still must continue to pay the AAF until they or their certification body formally withdraw and terminate their certificate, the status of the will be updated to “Terminated and Blocked”.