

CLOSING DATE 11 JULY
7th July 2017
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Dear Sirs

PIMFA's response to GC17/4: Financial Advice Market Review (FAMR): Implementation part 1

PIMFA welcomes this opportunity to respond to the FCA's Guidance Consultation on FAMR implementation.

We welcome the FCA's objective of providing greater clarity on the regulatory framework around streamlined advice and we also welcome the FCA's proposal to consolidate and amend existing guidance as we believe that multiple sources may lead to confusion and uncertainty. It would be very helpful to have a single document setting out all the relevant information and guidance.

Whilst the provision of further guidance to firms regarding what a streamlined advice service might look like is helpful, we think it falls short of what is needed. At the moment, advisers are reluctant to offer a focused/simplified service, for example on ISA or pension switches, as they fear it being treated as a full advice service. This causes frustration for clients and inhibits the development of streamlined advice models. We are concerned that it is still hard to work out the extent of a firm's liabilities and responsibilities for streamlined advice and whether there can be assurance that FOS's interpretation will properly recognise the limited nature of simplified advice.

Our responses to questions in the Guidance Consultation are set out in the attached appendix.

Please do not hesitate to contact us if you wish to clarify any point arising from of our response.

Yours faithfully

Alexandra Roberts

The Personal Investment Management and Financial Advice Association (PIMFA) is the trade association for firms that provide investment management and financial advice to help individuals and families plan for their financial life journeys.

Our mission is to create an optimal operating environment so that our member firms can focus on delivering the best service to clients, providing responsible stewardship for their long-term savings and investments.

Q1: Do you agree with the guidance set out in this section?

We are in general agreement with the guidance provided, but would like to make the following comments.

Whilst the introduction to the Guidance Consultation sets out the distinction between simplified and focused advice (para 1.10), the guidance then proceeds to focus solely on simplified advice. We think it worthwhile bringing out that while the considerations as to the information sought and considerations on whether a simplified advice process is appropriate are the same for both, they arise in different situations and so need different preparation. There is considerable difference between having a simplified advice process in place and dealing with clients who come in off the street asking for advice on a specific point. The guidance should make it clear that firms should have in place a process for clients coming in and asking for focused advice and that the principles that a firm should follow are the same. This should be set out more clearly in the guidance so firms have a clear understanding of what they should do and some of the things they might do to prepare and plan for when they are willing to provide focused advice.

We believe the guidance should recognise the difference between selling and advising. The guidance from 2.6 and again from 2.17 reflects a process whereby a firm might look to sell a product within the rules, i.e. work out who it might be appropriate for and devise systems to ensure that only those type of people make it through the simplified process. An advice process starts the other way round. A person will ask for a need to be met and a product is then identified to match that need. Advice firms will comply with the product governance rules and they will have identified the financial instruments that they will consider to deliver their service offering but they will not start with a premeditated desire to use any particular product. Distribution of the products they might use is contingent on a client having a matching need. Since RDR, advice is a service and is not necessarily product driven. Both are legitimate within the framework but the guidance should reflect both possibilities.

Paragraph 2.10 only obtains where the service is an ongoing one. It is possible, eg ISA investment, that the service may be one-off. The guidance should reflect this.

Paragraphs 2.23-2.33 deal with client information and suitability and collecting proportionate levels of information. We welcome the fact that it is stated at paragraph 2.28 that *'It is clear that the rules allow a firm offering a streamlined advice service to collect only the information that is necessary to provide a suitable recommendation in relation to a streamlined service'* and that *'the principle of proportionality in MiFID allows firms to collect the level of information proportionate to the products and services they offer, or on which the client requests specific investment advice'*. Both firms and clients want to ensure that the scope of the streamlined advice is clear. We believe that firms wishing to offer streamlined advice will take particular care to explain the nature and scope of their offering and may also specifically identify specific areas which are not part of their service offering. The examples in the appendix suggest that firms ask filter questions to ensure that a client falls into the intended market for the service. Assuming a client's response to the filter questions makes them eligible for the streamlined service the firm will then need to obtain the necessary information to enable a suitability assessment to be made. However, in our view the data obtained from the filter questions are also part of the data that would be considered as part of the suitability assessment.

In example 1, Client information that might be needed to determine suitability in respect of the client's financial situation is

- What is your regular monthly income? What is the source of that regular income?
- How much are your regular monthly financial commitments?

However our view is that in making a suitability assessment the firm would also have to have regard to the responses to the filter questions

- Do you have any dependents (partners, children, etc .)? If something were to happen to you (e.g. you were unable to work, or you were to die) would you/ your dependents be provided for?
- Do you have £x left over each month after you have paid your monthly financial commitments?
- Do you have money set aside in cash savings to cover any emergency expenditure - at least enough to cover three months' usual outgoings?
- Do you have any unsecured/unmanaged debts, such as credit cards, store cards, personal loans? (We do not mean the mortgage on your home)
- Are you able to leave any money invested through this process untouched for at least five years?

In effect, data obtained to ensure the service is being offered to the correct clients is also data that needs to be considered as part of the suitability assessment. The Guidance Consultation does not make this clear.

It should be recognised that, as the examples illustrate, whilst there may be certain issues that need not be addressed in the context of a streamlined service when assessing suitability there is still an assessment to be undertaken and the scope for reducing significantly the amount of work that needs to be undertaken in respect of the suitability assessment is limited. There is no difference in the standards to be met when conducting a suitability assessment for streamlined advice compared to full advice and FCA and FOS will expect firms to demonstrate they have met these standards.

Q2: Is there any guidance in FG15/1 or FG12/10 which is not covered here which you consider helpful and which should be retained?

Q2 and Q3 are responded to jointly below.

Q 3: Is there any guidance in FG15/1 or FG12/10 which you believe is no longer relevant and should be withdrawn?

FG12/10

(4.4)(4.6) The definition of a personal recommendation and guidance on what falls within the definition of a personal recommendation is very much of value to firms and should be retained. Clearly the definition of regulated advice needs to be amended in light of the changes to the Regulated Activities Order and the FCA should ensure that the revised guidance makes very clear how it applies to different types of firms.

(4.31-4.39) The section on Adviser Charging, which sets out the rules and indicates that it applies to simplified advice, should be retained.

(4.40-4.54) This section sets out in greater detail the necessary professional standards where advice is provided through a) an automated process; b) with help of a competent adviser who is giving recommendations; c) an assistant who will not give a personal recommendation. This should be retained.

Guidance on complaints and redress should be retained and expanded. Consumers receiving advice through a simplified process still have recourse to FOS and the FSCS, however in the context of streamlined advice, an adviser does not have to advise on everything as long as the boundary of what is the subject-matter of the advice is made clear to the client. It is therefore of crucial importance that this principle is adhered to by FOS.

FG15/1

Following the amendment to the Regulated Activities Order and the change in the definition of regulated advice, it would be helpful for the revised guidance to set out clearly how the changes affect different types of firms; the distinction between advice and guidance; and the tests to determine whether a personal recommendation has been made.

In relation to guidance on the definition of personal recommendations within FG15/1, there is still some ambiguity around whether or not customer perception is a relevant factor when considering whether a personal recommendation has been given. This is touched on in various places in the paper but some of the statements could be seen to be contradictory. For example, paragraph 3.24 talks about the customer “being given the impression” that the product is suitable for them and therefore it will be a personal recommendation; yet at paragraphs 4.14 and 4.16 it is acknowledged that a customer’s understanding of the nature of the service they have received may not always be accurate. Paragraph 3.12 says the context is important, whereas paragraph 3.15 gives a definitive list of things that need to be present for it to be a personal recommendation - yet it seems possible to have a personal recommendation without all these elements. Paragraph 3.53 says even a clear, prominent and understandable disclaimer is unlikely to be sufficient to avoid having presented a recommendation as suitable, yet does not give an example that would be sufficient. Therefore some further clarity on what is sufficient to make it clear to a consumer that it is not a personal recommendation would be useful.

Furthermore, that while one (or more) of the elements may be implied, it should be explicit that without all 3, no advice is given.

The question of how the FOS will treat streamlined advice in the event that there are complaints is touched upon in FG15/1, though it is dealt with by a fairly generic statement of how FOS generally deals with complaints. As stated above, advisers need assurances FOS will adhere to the principle that if the limits and scope of the advice were explained and made clear, the consumer should not have recourse in relation to matters outside that scope. Also, if the FCA is aware of simplified models that it has seen that meet both its and FOS’s requirements, then it should be willing to provide joint guidance to that effect.

Q4: Do you agree with the guidance in this section?

We are in general agreement with the guidance provided in this section.

Q5: Do you agree with our proposal not to publish a standardised fact find proforma?

Yes.

Q6: Is there anything else that could be added to the guidance in relation to fact finds that would be helpful?

No comment.

Q7-Q9: Response already provided in previous paper dated 23 May 2017.

Q10: Do you agree with the guidance in this section?

Q11: Following the publication of this fact sheet, will there be any need to retain the existing guide, Promoting pensions to employees – a guide to employers?

No comment.

Q12: Do you agree with these examples in this Annex? In particular do you agree with the range of information which might be excluded by firms in the particular scenario outlined?

We note Annex A. Example 1. Streamlined advice scenario – an example (stocks and shares ISA) states:-

Disclosure: In its description of its service the firm makes clear that it only provides personal recommendations on stocks and shares ISAs.

The definition of personal recommendation per the glossary is essentially *advice on investments* that is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person. A stocks and shares ISA is not a designated investment or a retail investment product – it is a tax wrapper not a product or investment. As such, whilst a firm may make a recommendation to the client to subscribe to an ISA this would not be a personal recommendation. A personal recommendation(s) would arise where a firm subsequently recommend that the client buys a particular product or financial instrument within the ISA tax wrapper. Our understanding is that FCA will clarify this point in the Final Guidance.

An example in respect of a SIPP would also be helpful.