

## Guidance consultation

### GC17/4: Financial Advice Market Review (FAMR): Implementation part 1

April 2017

#### 1. Introduction

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- 1.1 The Financial Advice Market Review (FAMR) was launched in August 2015 by HM Treasury (the Treasury) and the FCA to explore ways in which the Government, the industry and regulators could stimulate the development of a market which delivers affordable and accessible financial advice and guidance to everyone, at all stages of their lives. The FAMR final report, published in March 2016, made a series of recommendations for the FCA, the Treasury and other regulators to take forward. The FCA and the Treasury have published a report on progress against those recommendations over the past twelve months.
- 1.2 During 2017, we propose to consult on a number of measures to address these recommendations. In order to align the measures with the recent amendment to the regulated activity of 'advising on investments' in article 53(1) of the Regulated Activities Order (RAO), this consultation process will form two parts.
- 1.3 This Guidance Consultation (GC) is part 1 and sets out proposed guidance in response to the following FAMR recommendations:
  - **Streamlined advice (FAMR Recommendation 4)** - The Review recommends developing a clear framework that gives firms the confidence to provide streamlined advice on simple consumer needs in a proportionate way. As part of this, the FCA should produce new guidance to support firms offering 'streamlined advice' on a limited range of consumer needs. This should include a series of illustrative case studies highlighting the main considerations when developing such models.

- **Fact find process (FAMR Recommendation 10)** - The FCA should consult on guidance to provide clarity on the standard types of information required as part of the fact find process. In addition, the guidance should also set out key considerations for verifying a fact find that has been performed by third parties.
- **Non-advised services (FAMR Recommendation 3)** – The FCA should consult on new guidance to support firms offering services that help consumers make their own investment decisions without a personal recommendation. This should include a series of illustrative case studies highlighting the main considerations firms need to take into account when developing such services and dealing with specific areas of uncertainty identified during the Review.
- **Employer and trustee factsheet (Recommendation 11)** – The FCA and The Pensions Regulator (TPR) should develop and promote a new factsheet to set out what help employers and trustees can provide on financial matters without being subject to regulation.

1.4 In summer 2017, we will publish our part 2 consultation which will set out proposals in the following areas:

- **Consequential Handbook changes** – the changes to the RAO will necessitate a number of consequential amendments to the FCA Handbook.
- **Perimeter and non-advised services** - we will propose revised guidance on the amended advice perimeter. The proposals on non-advised services in the part 1 consultation will be subject to a shortened consultation period, to allow us to take into account feedback when developing this draft guidance.
- **Consolidation of non-Handbook guidance** – we are currently reviewing the existing non-Handbook material in this area<sup>1</sup> with a view to removing material that is no longer relevant and consolidating the remaining guidance with the proposals on streamlined advice and fact finds in our part 1 consultation. The Part 2 consultation will include details of how we conduct this consolidation process.
- **Guidance informed by the experiences of the FCA's Advice Unit** – the FCA's Advice Unit was set up in May 2016 to support firms developing automated advice models. We expect to set out further guidance informed by the Advice Unit's work with firms in this area.

1.5 We aim to publish the response to our part 1 consultation in September 2017. Our response to the part 2 consultation will follow in December 2017. Our aim is for the package of measures to take effect in January 2018 in line with the Handbook changes implementing the Markets in Financial Instruments Directive (MiFID) II and the changes to the RAO. However, we expect firms will be able to use any material that we publish

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<sup>1</sup> FG15/1 'Retail Investment Advice' <https://www.fca.org.uk/publication/finalised-guidance/fg15-01.pdf> and FG12/10 'Simplified Advice' <https://www.fca.org.uk/publication/finalised-guidance/fg12-10.pdf>

in September from that time. The timeline in Annex C sets out the proposed timetable for the two consultations.

- 1.6 This GC is based on MiFID II requirements and, where relevant, the proposed rules which are subject to consultation in CP16/29 (which sets out our approach to implementing MiFID's conduct of business requirements)<sup>2</sup>. The response to the consultation on CP16/29 is due to be published in June 2017 and we will seek to ensure that this guidance is consistent with the outcome of that consultation. The current version of the relevant rules in the Conduct of Business Sourcebook (COBS) will continue to apply to other types of business pending implementation of the Insurance Distribution Directive (IDD), which will involve consideration of the extent to which there should (and can) be consistency across all investment business. Our consultation on the implementation of the IDD is under way and a second consultation paper is expected later in 2017.
- 1.7 Where we give examples (see for example Annex A), we consider that these examples provide guidance for firms equally on the existing rules and the new rules (as set out in CP16/29).

### Streamlined advice

- 1.8 The FAMR report noted that the existing suitability rules allow firms to narrow the scope of their advice from a consideration of all a client's needs and objectives ('full' advice) to a sub-set of them ('streamlined' advice); however, these narrower scope advisory services had been slow to develop.
- 1.9 FAMR recommended that the FCA should produce new guidance to support firms delivering 'streamlined' advice, supported by examples of good and poor practice. The FAMR report described streamlined advice as:
- 'A term used to collectively describe advisory services (such as focused and simplified advice) that provide a personal recommendation that is limited to one or more of a client's specific needs. The service does not involve analysis of the client's circumstances that are not directly relevant to those needs.'
- 1.10 Streamlined advice is used in this paper as an umbrella term which covers both simplified and focused advice. Simplified advice involves a firm setting out the boundaries of the service it provides, whereas focused advice involves the client stipulating the boundaries of the service<sup>3</sup>. While streamlined advice includes both automated, 'robo advice' services and also face to face advice, we recognise that many of these services will be automated and this guidance is intended to reflect this. These

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<sup>2</sup> CP16/29 MiFID II Consultation Paper - <https://www.fca.org.uk/publication/consultation/cp16-29.pdf>

<sup>3</sup> The FAMR report used the following definitions: Simplified Advice: A personal recommendation which is limited to one or more of a client's specific needs and does not involve analysis of the client's circumstances that are not directly relevant to those needs. Focused Advice: Advice which is focused, at the request of the client, on the provision of personal recommendations relating to a specific need, designated investment or certain assets.

terms are designed to facilitate discussion. They are not used in the Glossary of definitions in the Handbook and it is not suggested that firms use them as part of client communications. Instead, firms should make clear the nature of the service they are offering in terms that their potential clients will understand.

- 1.11 This guidance is intended to provide greater clarity on the regulatory framework around streamlined advice services. It builds on earlier guidance on simplified advice models<sup>4</sup> and takes account of new developments in the market such as the growth of automated services. It also responds to specific concerns that firms have raised around the provision of streamlined advice and draws on the experience of the FCA's Advice Unit. As described above, we aim to consolidate the guidance in this area later in the year and expect that this guidance will replace most of FG 12/10 and the relevant parts of FG 15/1.

### Fact find process

- 1.12 Firms must obtain all the necessary information about the client's knowledge and experience, financial situation and investment objectives<sup>5</sup> before they can provide a personal recommendation. This process of collection and recording is known as the fact find.
- 1.13 Completion of the fact find can be a lengthy process and some firms told FAMR that they would value more clarity on the extent to which they might rely on 'standardised' client information from third parties to help them make a suitability assessment, i.e. the information that all firms require. So long as firms are satisfied that they have taken all reasonable steps to ensure the accuracy of client data, this could be provided through the client, a product provider or other third party.
- 1.14 Firms have suggested that this would help reduce some of the costs associated with providing advice, whilst still ensuring that any recommendation is suitable for the client. This would have the potential to make advice a more affordable option for consumers. Shortening and simplifying the fact find process may also make it a more attractive prospect for those consumers who might previously have been daunted by the process.
- 1.15 This guidance discusses the potential for fact finds to be portable, the limitations to this and the ways in which portability could contribute to the greater accessibility and affordability of advice.

### Non-advised services

- 1.16 During the FAMR review, a number of respondents asked for further guidance on how firms might provide services that help consumers make their own financial decisions but which do not involve advice.

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<sup>4</sup> FG15/1 'Retail Investment Advice' and FG12/10 'Simplified Advice'

<sup>5</sup> COBS 9A as consulted on in CP16/29 but note that for non-MIFID business the current COBS 9 will remain applicable.

- 1.17 Since that time, the government has announced an amendment to Article 53 of the RAO. This has the effect that a regulated firm with permission to carry out a regulated activity other than, or in addition to, the permissions of advising on investments and/or agreeing to advise on investments will only require the permission to advise on investments where that firm provides a personal recommendation. The FCA has previously published a technical note explaining this change<sup>6</sup>.
- 1.18 We will be consulting later this year on consequential amendments to the Handbook as a result of the RAO change as well as supporting guidance for firms. We will also consult on guidance on the perimeter and consider our approach with regard to the guidance previously issued in FG15/1 'Retail Investment Advice: Clarifying the boundaries and exploring the barriers to market development' (January 2015).
- 1.19 This consultation sets out our thinking on some areas of uncertainty around the boundary between personal recommendations, regulated advice (for firms that will remain subject to the current advice boundary), and generic advice which have been highlighted by stakeholders. We also seek views on whether further clarification is needed or whether there are other specific areas that need to be addressed. We will consider feedback to this section when developing our consultation on the consequential Handbook changes flowing from the Article 53 change.
- 1.20 In order that responses can be used to inform consultation later this year, we are operating to a slightly shorter timetable for responses to this section. See paragraph 1.26 for detail on this.

### **Employer and trustee factsheet**

- 1.21 FAMR also identified a need for greater support for employers and pension trustees, to help them understand how they can support employees on financial matters without carrying out a regulated activity. It recommended that the FCA and TPR should produce a factsheet to help with this. A draft of the proposed factsheet is included for comment.
- 1.22 This section of the consultation has been developed in conjunction with TPR in accordance with FAMR recommendation 11. We may share responses with TPR that relate to this factsheet and seek views from TPR with regard to any changes arising from this consultation.

### **Consultation**

- 1.23 This consultation contains general guidance given under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA). We are consulting on this guidance in accordance with our duty under section 139A(3) to consult on general guidance in relation to rules to which FCA-regulated persons are subject.

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<sup>6</sup> <https://www.fca.org.uk/firms/financial-advice-market-review-famr/changes-regulated-activities-order>

- 1.24 This guidance is not binding, however, we expect firms to take note of the guidance and, where appropriate, use it to inform development and delivery of their streamlined advice services to retail clients. The issuance of this guidance advances our objective to secure an appropriate degree of protection for consumers because it aims to facilitate the availability and accessibility of advice services for consumers whilst ensuring that they are appropriately protected.
- 1.25 The guidance is not exhaustive, nor should it be read in isolation from the Handbook. Firms should consider this guidance in the context of their overarching obligations under the regulatory system. Guidance on rules, the Financial Services and Markets Act (FSMA) or other legislation represents our view, and does not bind third parties, such as the courts.
- 1.26 We are consulting on the majority of these proposals for three months; however, we are seeking views on the proposals on non-advised services over a shorter period, so that we can incorporate feedback in our part 2 consultation. You can respond by email to [gc17-04@fca.org.uk](mailto:gc17-04@fca.org.uk) by 11 July 2017 for feedback on streamlined advice, facts finds and the employers' factsheet and 23 May 2017 for feedback on non-advised services.

### Who does this consultation affect?

- 1.27 This guidance is aimed at firms providing advice on or distributing retail investment products<sup>7</sup> and financial instruments to retail clients. Section 5 targets employers and trustees wishing to provide financial help to employees and members without the need to be regulated. The guidance may also be of interest to trade associations and consumer groups.

### Equality impact assessment

- 1.28 We are required under the Equality Act 2010 to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy or guidance proposals are considered.
- 1.29 We believe the guidance in this consultation does not raise equality or diversity issues. In summary, the proposals are not aimed at protected groups specifically, as any new or remodelled advised or non-advised services would be available to all consumers equally. However, the development of new streamlined advice services could allow access to advice for those who had not previously sought it, due either to the cost or the

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<sup>7</sup> Defined in our glossary as (a) a *life policy*; or (b) a *unit*; or (c) a *stakeholder pension scheme* (including a *group stakeholder pension scheme*); or (d) a *personal pension scheme* (including a *group personal pension scheme*); or (e) an interest in an *investment trust savings scheme*; or (f) a *security* in an *investment trust*; or (g) any other *designated investment* which offers exposure to underlying *financial assets, in a packaged form which modifies that exposure when compared with a direct holding in the financial asset*; or (h) a *structured capital-at-risk product*; whether or not any of (a) to (h) are held within an ISA or a CTF.

practicalities of approaching an adviser. This could be the case with consumers approaching retirement and wishing to get pensions advice. For example, a good streamlined advice model could be a helpful option for someone who has concluded after a Pension Wise guidance session that they would like an annuity, but need advice before buying one.

- 1.30 In general, if this guidance results in firms being able to deliver suitable personal recommendations at a lower cost, this will particularly benefit those who are typically less willing or able to pay for advice at the moment. Younger individuals, for example, are more likely to have fewer funds available for investment, making full advice services less likely to be cost effective for them. They may also have relatively simple and focused needs, such as investment of small lump sums e.g. saving for a deposit or a nest egg for a new child. Older people may not be able to access online services but should still be able to benefit from simplified face-to-face or telephone advice services.

## 2 Streamlined advice services

### Developing a streamlined advice service

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- 2.1 We believe that firms with well designed processes and with governance which focuses on the needs of their clients are more likely to develop streamlined advice services that deliver good outcomes and that comply with our rules. This guidance considers how firms might approach this task and provides examples of good and poor practice as well as questions for firms to ask themselves.
- 2.2 To help firms identify potentially relevant issues, the guidance also includes examples designed to show how certain types of information may or may not be necessary to collect to establish suitability in different scenarios (see Annex A). However, these are provided by way of illustration only and should not be used by firms as a definitive statement of how a firm can or should comply with the applicable rules. Firms will need to assess how their streamlined advice models can meet their regulatory obligations on a case by case basis.
- 2.3 Although streamlined advice services may be designed to deal with more limited client needs and may not, therefore, involve an analysis of all the client's circumstances, any personal recommendation which is given to a client through a streamlined advice service must nevertheless be suitable (as is also the case where a firm provides 'full-scope' advice to a client). Offering a streamlined advice service, with a narrower scope, does not allow a firm to lower the level of protection due to clients.<sup>8</sup>

### Who is the service aimed at?

- 2.4 When designing streamlined advice services, it is important that firms give early consideration to the type(s) of client the service is aimed at. Understanding the needs of those clients can help firms develop a service which is capable of delivering an outcome that meets their needs. Moreover, having a clear idea of the nature of the clients at whom the service is aimed and their needs will help firms to identify the scope of the service, select products that are potentially capable of meeting the needs of the relevant clients and take appropriate steps to filter out customers who are unlikely to have their needs met by the service at an early stage.
- 2.5 A separate but related issue is likely to arise in the context of firms' product governance obligations. At present we provide guidance on product governance based on our Principles for Businesses in the Responsibilities of Providers and Distributors in the Fair

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<sup>8</sup> See ESMA's Guidelines on certain aspects of the MiFID suitability requirements, at para. 32 - [https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387\\_en.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf)



Treatment of Customers (RPPD). In CP16/29 we consulted on applying new product governance requirements to, amongst others, MiFID firms, MiFID optional exemption firms, and branches of third country investment firms when manufacturing and distributing financial instruments and structured deposits, and also distributing investment services.<sup>9</sup>

2.6 The new MiFID rules and guidance are similar to the RPPD provisions but there are certain aspects of the MiFID II product governance provisions that go beyond the RPPD. MiFID II contains obligations which:

- Require product manufacturers to establish procedures to identify the target market and assess the risks to that target market for each new product that the firm manufactures and/or distributes; to consider and define a distribution strategy and identify appropriate distribution channels, and ensure that the distribution strategy is consistent with the target market of end clients.<sup>10</sup>
- Require a product distributor to understand the financial instruments it offers, recommends or sells; assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services, taking account of the identified product manufacturer's target market of end clients; ensure that financial instruments are offered, recommended or sold only when this is in the best interests of clients; and identify a distribution strategy which considers the nature of the financial products to be recommended and how they fit in with the end clients' needs and risk appetite.<sup>11</sup>

2.7 For products and services which are not covered by MiFID II, RPPD will remain relevant. However, we would expect that firms which are not subject to MiFID II would want to consider similar product governance issues when looking at how they can comply with their more general obligations under the regulatory regime (for example, the requirements that firms conduct their business with due skill, care and diligence, that they take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems, and that they pay due regard to the interests of their customers and treat them fairly<sup>12</sup>).

2.8 The draft rules in CP16/29 require distributors to have in place procedures and measures to ensure that, when deciding the range of financial instruments and services to be distributed, and the target market, all applicable rules are complied with, including the rules on suitability.<sup>13</sup> The determination of the target market for the particular product(s) can, therefore, inform the design of key elements of the service provided by the firm. This includes the distributing firm's marketing strategy, the range of investments on offer, the design of the customer interface and the controls it puts in place to monitor the quality of client outcomes.

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<sup>9</sup> See draft PROD 1.3.1R in CP16/29. Similar requirements are contained in the IDD. In CP16/29 we also proposed that for other firms which manufacture or distribute financial instruments, the MiFID II rules are to be read as guidance.

<sup>10</sup> See draft PROD 3.2.3R, PROD 3.2.4R, PROD 3.2.8R and PROD 3.2.18G in CP16/29; see also RPPD 1.17 and 1.18.

<sup>11</sup> See draft PROD 3.3.1R, PROD 3.3.10R and PROD 3.3.11G in CP16/29; see also RPPD 1.23.

<sup>12</sup> See Principles 2, 3 and 6.

<sup>13</sup> See draft PROD 3.3.17R in CP16/29.

### Questions for firms to consider

Once a firm has determined the type of client which the streamlined advice service is aimed at, it can use its analysis of the needs of the target market of end clients for the particular products and its service to ensure that the likely clients of the streamlined advice service and the products to be offered through it are consistent and compatible. The firm's analysis can also inform the design of key elements of the service to be provided by the firm, including the distributing firm's marketing strategy, the range of investments on offer, the design of the customer interface and the controls put in place to monitor the quality of client outcomes. Types of questions which firms might consider, including when identifying the intended clients for the service are:

What is the specific consumer need that this service is designed to fulfil?

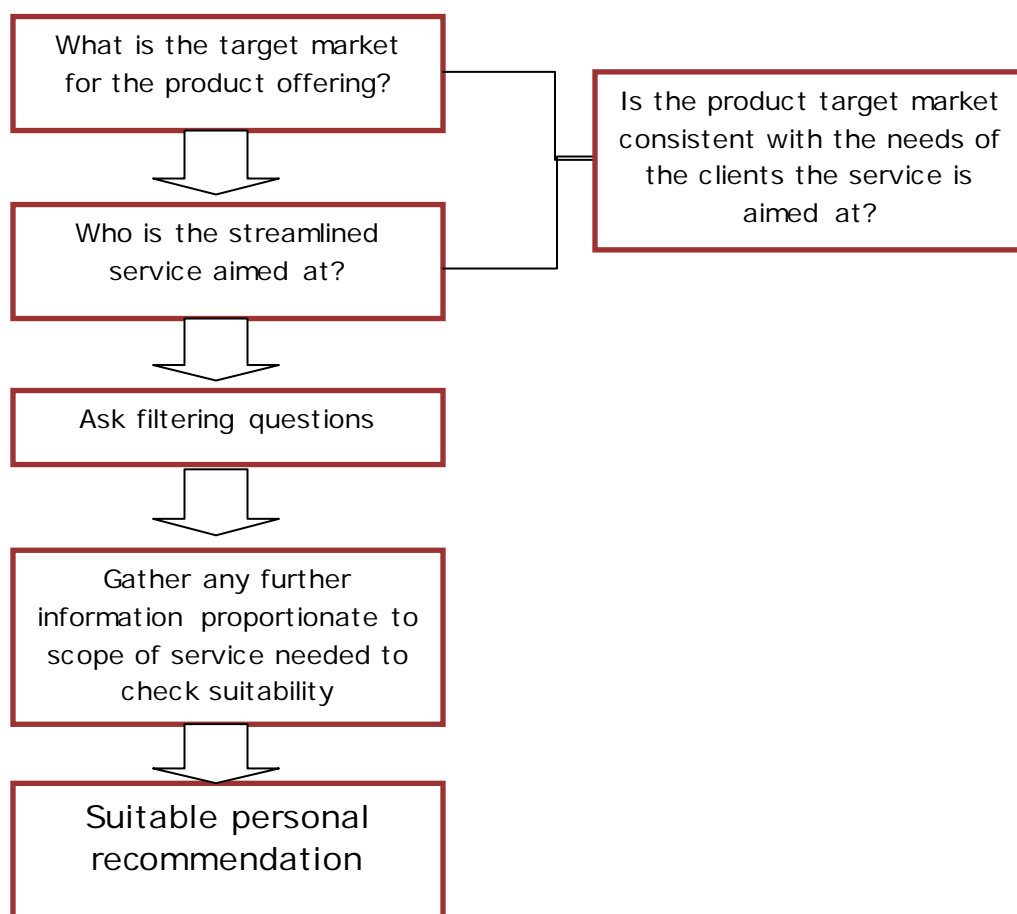
What type(s) of client(s) is the service likely to be appropriate for? Are there consumer needs and/or type(s) of consumer(s) for whom the service would not be appropriate?

How much do these clients have to invest?

What level of financial capability, knowledge and experience do these clients have? How does this affect the choice of products and the customer interface?

### Filtering processes

- 2.9 To ensure that products are distributed in accordance with the needs of the intended clients for the service, firms could use their analysis to put in place a 'triage' or filtering process at the start of the advice process to filter out those clients whose needs, characteristics and objectives would not be compatible with the particular products on offer through the streamlined advice process and/or for whom a streamlined advice service would not be appropriate. This is shown in the flow chart below:



#### Good practice illustration

A firm looking to offer a streamlined automated advice service on a range of exchange traded funds could conduct research on consumers within the target market for the funds. They could use the output from this research to identify risks to client outcomes and use this to design a 'triage' or filtering process at the start of the advice process. They could ask a series of questions to elicit whether the client is inside or outside the target market. For example, by asking questions about the client's risk tolerance and the compatibility of the risk/reward profile of the product with the client's objectives and needs. This would mean that they could filter out clients from outside the target market from the outset.

#### Ongoing monitoring of the use of their service

- 2.10 To ensure that they comply with their regulatory obligations, firms should maintain ongoing monitoring of who is using a streamlined service and take action if consumers are receiving unsuitable personal recommendations.

### Good practice example of use of management information (MI)

A firm's analysis of its MI identified that a significant proportion of the clients who had contacted the firm with concerns about their investment were outside the 'ideal' intended market for its service. It also identified that this same group of clients had decided to use the firm's service after seeing financial promotions within a specific channel. The firm made the decision to review its future use of this channel, as well as the content of future financial promotions, to try to ensure that it did not promote its service to customers outside its intended market.

## Design of client interface

2.11 The design of the client interface is particularly important in sales which are made through a streamlined advice service, especially in fully automated services where there is no human interaction. The suitability requirements for simplified advice are the same as for all other forms of retail investment advice<sup>14</sup>; in other words, our rules are technology neutral and the mode of distribution or method of communicating with the client do not change the requirement that firms only recommend those services or financial products which are suitable<sup>15,16</sup>. This is also true of other rules which are relevant to this issue such as the obligations on a firm:

- to act honestly, fairly and professionally in accordance with the best interests of the client<sup>17</sup>, and to have due regard to the interests of its customers and to treat them fairly<sup>18</sup>
- to have due regard to the information needs of clients, and to communicate information in a way which is clear, fair and not misleading<sup>19</sup>, and
- in the light of the above, to provide appropriate information about its services so that the client is reasonably able to understand the nature and risks of the service and of the specific type of designated investment that is being offered and, consequently, to take investment decisions on an informed basis<sup>20</sup>.

2.12 Firms could approach the question of how to design the client interface by considering the nature and characteristics of the intended clients for their streamlined advice service, including the likely level of financial knowledge and experience, and use this to inform the

<sup>14</sup> See Finalised Guidance on 'Simplified advice' (FG12/10, March 2012), at paras. 4.15 and 4.16.

<sup>15</sup> See: COBS 9.2.1R, COBS 9.2.2R; and draft COBS 9A.2.1R in CP16/29.

<sup>16</sup> This is also expressly reflected in article 54(1) of the MiFID Org Regulation which provides that where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, a firm's responsibility to make a suitability assessment is not reduced by use of an electronic system to provide personal recommendations (see also draft COBS 9A.2.23EU in CP16/29).

<sup>17</sup> See: COBS 2.1.1R and the proposed amendments in CP16/29.

<sup>18</sup> Principle 6.

<sup>19</sup> Principle 7 and COBS 4 (and the draft amendments in CP16/29).

<sup>20</sup> See: COBS 2.2.1R(1); and draft COBS 2.2A.2R COBS 2.2A.3R in CP16/29.

type and format of the questions they ask and the supporting information they supply to clients.

#### Good practice examples

##### Firm that used consumer testing to inform the design of its website:

Prior to the launch of its online streamlined advice service, a firm carried out client testing of its prospective website. It used the testing to check whether clients navigated their way through the firm's website as expected. It also designed the exit points to its advice process with the financial capability of the intended market in mind and then tested whether they were effective at excluding the relevant clients. This meant ensuring that the questions that were asked were straightforward and also helped the client understand the implications of giving a particular answer.

##### Firm that used web analytics to assess the effectiveness of its website:

A firm analysed how clients navigated through its website to understand how the online advice process was used and, where necessary, update its design. It used software that tracked the web journeys made by a sample of users to assess whether clients proceeded through the advice process as anticipated, whether clients made use of the supporting information provided and the 'dwell time' for each part of the process, particularly webpages that contained key material (such as risk profiling). The firm used the output from this analysis to modify the content and layout of its website to try to better support its clients.

### Support from non-qualified individuals

- 2.13 Firms have asked if it is acceptable for a 'non-qualified' individual to provide some support and information to clients when taking a client through a system-delivered personal recommendation, where the individual does not provide a personal recommendation.
- 2.14 Firms are required to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. So staff who support clients through a system-delivered personal recommendation should have knowledge and competence commensurate with their role and responsibilities, including appropriate qualifications where necessary.<sup>21</sup> An employee who provides support to clients in a streamlined advice model must not provide personal recommendations when they are not qualified to do so.

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<sup>21</sup>As set out in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC): employees need the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1.1R).

- 2.15 Whether an individual member of staff provides a personal recommendation depends on what they say, how it is delivered and the scope that they have to influence the process (e.g. by steering the client down particular paths or explicitly or implicitly encouraging the client to answer questions in a particular way).<sup>22</sup> Firms will, therefore, need to have robust risk management controls to ensure that the staff concerned do not provide personal recommendations to clients and that they are capable of recognising when a client needs to be referred to an individual who is qualified to give a personal recommendation. The individual's role, in terms of what they can and cannot do, must be clear to the individuals involved and should also be clearly explained to the customer when the firm describes the nature of its services.
- 2.16 Article 25(1) of MiFID II broadly requires firms engaged in MiFID business to ensure, and be in a position to demonstrate to us, that individuals at a firm who give information to clients about financial instruments, investment services (such as investment advice – giving personal recommendations) or ancillary services, possess the necessary knowledge and competence to fulfil their investor protection obligations. Article 25(1) of MiFID II is supported by the European Securities and Markets Authority's (ESMA) Guidelines on the assessment of knowledge and competence<sup>23</sup>.

### Product selection

- 2.17 Once a firm has identified a target market for a particular product, including the needs of that target market, it can decide whether that product should be offered through its streamlined advice service. Firms should not offer products through their streamlined advice services if there is an incompatibility between the target market for the products to be offered and the clients to whom the firm intends to promote its streamlined advice service. This could arise because of particular product characteristics such as:
- Minimum contribution rates – are they affordable for the firm's target clients?
  - Access and flexibility - for example, do the firm's target clients need to be able to change contribution levels easily or switch products without penalty?
  - The risk of each product, including the volatility and whether this is consistent with the typical risk and knowledge/experience profiles of the firm's target clients.
- 2.18 Some financial products are also unlikely to be appropriate for a streamlined advice process because of the amount of information likely to be needed by the firm in order to make a suitable personal recommendation to a retail client. In general we would expect that the more complex, highly concentrated or illiquid the product, the more likely it is that firms will need more information about the client's broader portfolio in order to meet the firm's suitability obligations.

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<sup>22</sup> See FG12/10, paras. 4.50 and 4.51.

<sup>23</sup> See chapter 14 of CP16/29.

## Disclosing the nature of the service

- 2.19 A firm must disclose information about the nature of the streamlined service being provided by the firm. A firm must provide appropriate information in a comprehensible form to a client about its services so that the client is reasonably able to understand the nature and risks of the service and of the specific type of designated investment that is being offered and, consequently, to take investment decisions on an informed basis.<sup>24</sup> This information must be provided in good time before the service is provided.<sup>25</sup> In doing so, a firm must pay due regard to the information needs of its clients (for example, the nature of customers in its intended market), and communicate information to them in a way which is clear, fair and not misleading.<sup>26</sup>
- 2.20 This is likely to involve a firm explaining the differences between the scope of its streamlined advisory service and other types of advice available (either within the same firm or the wider market). If a firm chooses to describe other types of advice services available in the market, it should do so in a way which is clear, fair and not misleading. It would not be good practice for firms to steer clients to a particular type of advisory service (or indeed a non-advised one) if it is likely to prove inadequate for their needs, or simply because the service is cheaper for the firm to provide without consideration of whether it meets the client's needs.

### Poor practice examples

We have seen examples of streamlined advice models which inaccurately describe their service as not providing advice, when in fact they do deliver personal recommendations, or where the nature of the service is hidden away in 'FAQs' which are hard to find. Similarly we have seen some models which use lots of industry jargon and assume knowledge at the level of an industry professional, rather than the likely clients when explaining the service and its limitations. Where firms fail to disclose the nature of their service in a clear, fair and not misleading way, there is an increased risk of poor consumer outcomes.

### Good practice illustration:

A firm's automated streamlined advice model did not include protection products. This was clearly disclosed at the point the client entered the service. The firm made clear that its clients should consider whether they have any unmet protection needs in terms which would be easily understood by its clients (for example 'Would your family be able to cope financially in the event of your death?'). Where the answer was 'No', it explained that clients could

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<sup>24</sup>See COBS 2.2.1R(1); and Article 24(5) of MiFID II and draft COBS 2.2A.2R in CP16/29.

<sup>25</sup>See COBS 6.1.11R and draft COBS 6.1-A.2.1 EU.

<sup>26</sup>Principle 7.

either consider buying protection cover instead of investing or lower the amount invested.

This was integrated within the firm's filtering process, which included a series of questions designed to identify clients with protection needs before proceeding with the advice service.

- 2.21 In addition, MiFID II imposes specific requirements in relation to information which firms must provide about investment advice, for example, about whether the advice is provided on an independent or restricted basis and the relationship between the product provider and the adviser.<sup>27</sup> We are currently consulting on rules transposing the MiFID II requirements, and on extending their application to firms providing advice to retail clients in the UK in relation to retail investment products.
- 2.22 A firm which provides a streamlined advice service at a distance should also consider the requirements of the Distance Marketing Directive, which require certain information about the service to be provided by the firm to be given to clients.<sup>28</sup>

### Client information and suitability

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- 2.23 The current suitability rules require a firm to take reasonable steps to ensure that a personal recommendation is suitable for its client. The rules provide that when making a personal recommendation the firm must obtain the necessary information about the client's:

- (a) knowledge and experience in the investment field relevant to the specific type of product or service,
- (b) financial situation, and
- (c) investment objectives,

to enable it to make the recommendation which is suitable for him.<sup>29</sup>

- 2.24 To do this, a firm must obtain from the client information necessary to understand the essential facts about him and have a reasonable basis for believing that the recommendation, taking into account the nature and extent of the service provided:

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<sup>27</sup>See Articles 52 and 53 of the MiFID Org Regulation and draft COBS 6.2B in CP16/29.

<sup>28</sup> Directive on the distance marketing of consumer financial services (Directive 2002/65/EC). The Directive has been implemented in various places in the Handbook including COBS 5 and ICOBS 3.

<sup>29</sup> See COBS 9.2.1R(2). The MiFID II requirements are broadly the same except that they require the firm to obtain the necessary information regarding the client's: (a) knowledge and experience in the investment field relevant to the specific type of financial instrument or service; (b) financial situation **including the client's ability to bear losses**; and (c) investment objectives **including the client's risk tolerance** (emphasis added) – see Article 25(2) of MiFID II and draft COBS 9A.2.1R in CP16/29.



(a) meets his investment objectives

(b) is such that he can financially bear any related investment risk consistent with his investment objectives, and

(c) is such that he has the necessary experience and knowledge to understand the risks involved in the transaction.<sup>30</sup>

2.25 When considering what information to obtain from the client, the new MiFID rules allow firms to give due consideration to the nature and extent of the service provided.<sup>31</sup> When considering the client's investment objectives, MiFID requires that firms must obtain, where relevant, information on the length of time the client wishes to hold the investment, his risk taking preferences, his risk profile, and the purposes of the investment.<sup>32</sup>

2.26 The same principle applies to the information regarding the client's financial situation. Firms must obtain, where relevant, information on the source and extent of the client's regular income, assets (including liquid assets, investments and real property) and regular financial commitments.<sup>33</sup>

2.27 The rules also require firms to take into account the nature of the client, the nature and extent of the service to be provided and the product or transaction envisaged, including its complexity and the risks involved when considering what information to obtain on the client's knowledge and experience.<sup>34</sup>

### Streamlined advice - collecting proportionate levels of information

2.28 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 advice service. 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.

2.29 As noted above, however, firms are not allowed to lower the overall level of protection due to clients. For example, to comply with the suitability requirements, a firm should not recommend that a client purchase an investment product unless they have a reasonable basis for believing that they can afford the new commitment. This requires the firm to consider its client's level of indebtedness and access to liquid cash to meet an emergency.

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<sup>30</sup>COBS 9.2.2R(1). The MiFID II requirements are broadly the same except that the firm must, amongst other things, obtain such information as is necessary for the firm to have a reasonable basis for determining that the specific transaction to be recommended meets the investment objectives of the client in question, **including the client's risk tolerance** (emphasis added) – see Article 54(2) of the MiFID Org Regulation and draft COBS 9A.2.4EU in CP16/29.

<sup>31</sup> See article 54(2) of the MiFID Org Regulation and draft COBS 9A.2.4EU in CP16/29.

<sup>32</sup> See article 54(5) of the MiFID Org Regulation and draft COBS 9A.2.8EU in CP16/29.

<sup>33</sup> See article 54(4) of the MiFID Org Regulation and draft COBS 9A.2.7EU in CP16/29.

<sup>34</sup>COBS 9.2.3R; see Article 55(1) MiFID Org Regulation and draft COBS 9A.2.6EU in CP16/29.

2.30 When collecting information from a client in order to assess suitability, the firm may determine that the services or products which the firm is offering are unsuitable for the client. As noted above, we would expect there to be points at which a client exits from the streamlined advice process to ensure that the client is not given an unsuitable recommendation. For example, this may be where:

- the client wants a service that provides advice on their wider financial needs, rather than advice on a specific need
- the firm considers that the client's circumstances are too complex for the nature and scope of its service
- it is not possible to provide advice on the specific need on which the client wants advice without looking at the client's wider circumstances
- the client's debt is considered too high
- the client has insufficient emergency savings given the firm's process and product suite
- the client's desired investment horizon is too short given the asset allocation of the range of funds on offer (perhaps they have indicated that they can only commit their investment for a maximum of three years but the risk profile of the fund means that it is recommended that clients invest for a minimum of five years)
- the client indicates that he requires a service which takes existing investments into account, whereas the service on offer does not do so
- the client's appetite for risk or capacity for loss is not met through the particular products which might be offered, or
- the client does not have sufficient knowledge or experience for any of the products offered through the streamlined advice service.

2.31 Some firms have asked for more clarity on the amount of information they should collect from their client when offering such a service. It is not possible to be prescriptive about the detailed information required, since it will always depend on the particular situation and the many factors involved. However, to help firms we have set out a series of examples of particular streamlined advice services and indicated the information which might be relevant in establishing suitability in Annex A.

2.32 We have also suggested information which might not be necessary – for example, if it is made clear that the service is not suitable for investors who wish to use their ISA for retirement purposes, that the investor's pension provision will not be assessed, and that the service only covers stocks and shares ISAs, it is unlikely that the process would need to capture detailed information on the client's pension provision. Since a firm must take reasonable steps to ensure that any personal recommendation given to the client is suitable, the firm may wish to take the step of asking the investor to expressly

acknowledge the nature and extent of the service rather than relying solely on disclosure.

- 2.33 The examples in Annex A are provided by way of illustration and should not be used by firms as a definitive statement of how a firm can or should comply with the applicable rules.

### **Relying on information**

- 2.34 A firm is entitled to rely on the information provided by its clients, unless it is aware that the information is manifestly out of date, inaccurate or incomplete<sup>35</sup>. MiFID II introduces express requirements on firms to take reasonable steps to ensure that the information they do collect is reliable. Those steps include making sure that their clients understand the importance of providing accurate and up-to-date information, ensuring that all tools used in the suitability assessment process are appropriate and fit for purpose, and checking for consistency of client information, including any obvious inaccuracies.
- 2.35 For ongoing relationships with a client, such as advice or portfolio management services, firms must have, and be able to demonstrate, effective processes for maintaining adequate and up-to-date information about their clients.<sup>36</sup>

### **Existing information held by a firm**

- 2.36 Some firms have asked to what extent they are required to use information that they already hold about a client. In particular, some firms face a challenge where they hold information in a different part of the firm or group which is not available to the adviser e.g. on separate legacy systems which are not linked.
- 2.37 If a firm is unsure whether it needs to take into account all the information in their possession, they might first consider what information is needed for them to provide a personal recommendation to their client. The firm should make sure they have all the information necessary to make a suitable recommendation, whether from their client, from a third party or from their own records, before proceeding. If a firm has insufficient information to make a suitable recommendation, the firm must not recommend investment services or financial instruments to the client.<sup>37</sup>
- 2.38 When considering whether there are any inaccuracies or inconsistencies in the information provided by the client, as required by relevant rules<sup>38</sup>, a firm should check against the client's history with their own firm if they are able to do so. If it is not possible to check the existing information within the firm, the firm should consider other ways of complying with this requirement. This is especially the case where the client might reasonably expect the firm to have access to information about him and use that

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<sup>35</sup> COBS 9.2.5R and draft COBS 9A.2.12 EU.

<sup>36</sup> Article 54(7) of the MiFID II Regulation and draft COBS 9A.2.10EU in CP16/29.

<sup>37</sup> See COBS 9.2.6R, and Article 54(8) of the MiFID II Regulation and draft COBS 9A.2.13EU in CP16/29.

<sup>38</sup> COBS 9.2.5R and draft COBS 9A.2.12 EU.

in their suitability assessment. For example, a firm might do this by confirming with the client that all the information the client has given is complete and correct and reminding them of the importance of telling the firm about all relevant matters, including information about any products held with the same firm or group, to allow the firm to act in their best interests.<sup>39</sup>

### Considering existing investments

- 2.39 Some firms have asked us to clarify our expectations where a client seeking streamlined advice does not provide information on their existing investments and specifically requests that these investments not be considered as part of the advice process.
- 2.40 As explained above, it is for the firm as part of its suitability obligations to determine what information they need to obtain in order to provide advice in any given scenario. If a firm considers certain information is necessary to carry out the suitability assessment and the client refuses to provide it, the firm must not make a personal recommendation.<sup>40</sup> However, the firm may consider that in the particular instance information about the client's existing investments is not necessary for a suitability assessment, and therefore can proceed without it.

### Asking clients to 'self-assess' suitability

- 2.41 A firm which provides a personal recommendation must recommend services and products which are suitable for the client.<sup>41</sup> The assessment of suitability is, therefore, a core element of providing a personal recommendation. Firms must not create any ambiguity or confusion about their responsibilities in the suitability assessment process.<sup>42</sup> The suitability assessment is a firm's responsibility and a firm should avoid indicating to the client that a certain financial instrument is the one that the client chose as being suitable, or requiring the client to confirm that an instrument or service is suitable.<sup>43</sup>
- 2.42 We have seen examples of models where firms ask clients to 'self-assess' elements of the suitability assessment.

#### Non-compliant example:

A firm asked clients to 'self-assess' that they had the required knowledge and experience to be able to understand the risks of investing in the more complex products on offer through their streamlined advice process, instead of assessing this themselves.

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<sup>39</sup> See Article 54(1) of the MiFID Org Regulation and draft COBS 9A.3.1EU in CP16/29.

<sup>40</sup> See COBS 9.2.6R; and Article 54(8) of the MiFID Org Regulation and draft COBS 9A.2.13EU.

<sup>41</sup> See Article 25(2) of MiFID II. and draft COBS 9A.2.1R in CP 16/29.

<sup>42</sup> See Article 54(1) of the MiFID Org Regulation and draft COBS 9A.3.1EU.

<sup>43</sup> See ESMA's Guidelines on certain aspects of the MiFID suitability requirements, at para. 17.

The rules are clear that a firm must inform clients that the reason for assessing suitability is to enable the firm to act in the client's best interests.<sup>44</sup> In doing so, the firm must obtain such information as is necessary for it to understand the essential facts about the client and to have a reasonable basis for determining that the client has the necessary experience and knowledge to understand the risks involved in the specific transaction to be recommended. Any tools employed by the firm to assess knowledge and experience must be fit for purpose and appropriately designed for use with clients, with any limitations identified and actively mitigated through the suitability assessment process.<sup>45</sup>

If a firm is not able to determine that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction then the client should be exited from the process.

## Risk profiling

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- 2.43 A client's investment objectives must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.<sup>46</sup>
- 2.44 Establishing the risk a customer is willing and able to take with their money is a key part of the suitability assessment and we have previously published relevant guidance<sup>47</sup>. We set out some of the key issues below.
- When considering a customer's attitude to risk as part of assessing suitability, the client's capacity for loss (the client's ability to absorb falls in the value of their investment) should also be taken into account. If any loss of capital would have a materially detrimental effect on their standard of living, this should be taken into account in assessing the risk that they are able to take.
  - Design of risk profiler questions - questions that are not clearly worded, or where the content is unlikely to be understood, can result in clients not giving answers that accurately reflect the risk they are willing and able to take. The possibility of clients misunderstanding the questions they are being asked could be exacerbated if the questions are:
    - (a) vague, or use double negatives or complex language that the customer may not understand, or
    - (b) are not suitable for use with the firm's customer base, for example, because they assume the client has particular knowledge or experience such as a good level of financial knowledge or mathematical ability, and that the customer is comfortable in applying it, or

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<sup>44</sup> See Article 54(1) of the MiFID Org Regulation and draft COBS 9A.3.1EU.

<sup>45</sup> See Article 54(7) of the MiFID Org Regulation and draft COBS 9A.2.9EU in CP16/29.

<sup>46</sup> See COBS 9.2.2R(2); and Article 54(5) of the MiFID Org Regulation and draft COBS 9A.2.8EU in CP16/29.

<sup>47</sup> <https://www.fca.org.uk/publication/finalised-guidance/fsa-fg11-05.pdf>

(c) are structured in a way that could invite different answers - for example, because they ask two questions in one and the client might want to record a different answer to each sub-question.

- Poorly worded risk descriptions - unclear or misleading descriptions which do not effectively explain the nature of the risks involved can also result in unsuitable recommendations. For example, statements within descriptions are not balanced or use language that is misleading, judgemental, emotive or not objective (for example, using text such as 'you are a sensible investor'). Language such as this can inappropriately influence rather than validate the level of investment risk the customer is willing to take.
- Inappropriate approach to scoring question answers – where firms use a set of questions and a number of the questions asked have the option to answer 'neither yes or no', a middle weighting may be inappropriately attributed to these answers. Customers that choose the middle answer for all or some of these questions could be assessed as having a risk profile in the middle of the scale of risk categories. This could result in an inaccurate assessment of the risk the customer is willing to take where the customer's answers actually reflected 'non-answers'.
- These issues may be of particular concern in a fully automated advice situation where the client is reliant on the information provided to understand the nature of the risk they are exposed to and may not have the ability to ask clarificatory questions of an adviser.

#### Poor practice examples

We have seen risk profiling tools which assume clients have a high level of financial capability and are unduly complex, by requiring clients to use a series of percentages to calculate potential investment losses based on different scenarios and then confirm the level of loss they would be willing to accept. For example:

*"With the money you have to invest, would you select:*

*(a) a product where there is very low risk of losing your money and the return is 5% pa on average, or*

*(b) a product where you could lose up to 15% in a year and the return is 10% pa on average, or*

*(c) to split your money between the two products?"*

This question is complex, assumes a high level of mathematical and financial ability, and assumes that all customers will be able to identify an accurate reflection of their preferences in the three options provided.

We have also seen firms looking to assess risk using charts based upon stochastic models which do not contain sufficient explanation to enable clients to understand them. For example, the chart may graphically depict the relative probabilities of the likely range of returns without explaining what is being conveyed, the likelihood of the returns being achieved and the limitations of the modelling approach. This could result in the firm failing to accurately assess the level of risk clients are willing and able to take.

- 2.45 The use of third-party risk-profiling systems has increased in recent years, including their use in delivering automated streamlined advice. In addition, we have seen regulated firms making use of third-party 'white-labelled' automated advice solutions. We would remind firms that they are responsible for ensuring that their personal recommendations are suitable. MiFID II will require firms to ensure that all tools, such as risk assessment profiling tools or tools to assess a client's knowledge and experience, employed in the suitability assessment process, are fit for purpose and are appropriately designed for use with their clients, with any limitations identified and actively mitigated through the suitability assessment process.<sup>48</sup>

#### Good practice example

A firm had risk categories with relatively broad definitions supported by brief sub-sections within each definition that in combination aided understanding. It attempted to explain the risk in a number of different ways to help engage different clients. This included:

A short summary description of the risk that was fair and balanced by reflecting the risk-reward trade off and making use of plain English. Further bullet points that provided more detail of the risk of capital loss and the nature of typical investments in each category, and a simple chart showing the variability of annual returns over a period that was intended to help the client understand the potential gains and losses associated with a particular level of risk.

- Q1: Do you agree with the guidance set out in this section?**
- Q2: Is there any guidance in FG 15/1 or FG 12/10 which is not covered here which you consider helpful and which should be retained?**
- Q3: Is there any guidance in FG 15/1 or FG 12/10 which you believe is no longer relevant and should be withdrawn?**

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<sup>48</sup> Article 54(7) of the MiFID Org Regulation and draft COBS 9A.2.9 EU.

## 3 Fact find information and portability

- 3.1 The COBS rules<sup>49</sup> set out the requirements of firms when assessing suitability, record keeping and retention periods. To meet these requirements, firms must collect all the necessary information about the client, including their knowledge and experience, financial situation and investment objectives, to enable the firm to make a suitable recommendation. The collection of information for these purposes is referred to in this guidance as a fact find.
- 3.2 Completing a fact find can be time consuming and is often carried out face to face, so this can be a significant contributor to advisers' costs. We have been told that any reduction in the length of the fact find process could reduce the overall cost of advice for the consumer.
- 3.3 The length of the fact find process can also act as a potential barrier to the consumer seeking advice and/or switching to a new adviser. A lengthy or repeated fact find process is likely to be particularly unattractive to consumers who are used to more immediate online solutions.
- 3.4 The ability of firms to use pre-existing information to facilitate a subsequent fact find, coupled with the high degree of standardisation of some sub-sets of fact find information between different advisers, presents opportunities in terms of 'porting' a fact find from one adviser to another. This could be more convenient and cost-effective for the client and facilitate switching between advisers.
- 3.5 The potential for porting fact finds is likely to be maximised through the innovative use of technology. There are a growing number of initiatives in the market currently offering this digital functionality. These third-party services are being offered to consumers as an opportunity to store and manage their personal information securely, and to consent to share it with the financial services companies of their choice. There is potential for greater time efficiencies for consumers, who can avoid duplication by updating information once with a single provider. A further advantage is the possibility for consumers to use their central data storage to more easily compare opportunities across the market. This is an area of growth, supported by legislation such as the General Data Protection Regulation which includes an individual's right to portability of their data.
- 3.6 These digital personal data solutions can integrate with financial firms operating online streamlined advisory services. However, there is no reason why a consumer's personal repository of information could not be used, with their express permission, as the basis for a conventional advice consultation.

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<sup>49</sup> Currently COBS 9.2 (will be varied by MIFID II and proposed COBS 9.2A).



An example of good practice by a firm that has a relationship with a client for ongoing advice:

- Prior to their annual review meeting the firm contacts their client by email and attaches a proforma document into which the client's information has been uploaded directly from the firm's systems.
- The firm's message invites their client to carefully review the information to see whether there have been any changes since the last transaction. They emphasise the key areas for checking, such as those things which are most likely to have changed e.g. credit card and loan balances, and income.
- The message is sent in good time before the meeting so that their customer can check the information at a time convenient to them.
- The firm reflects any consequent reduction in the contact time with their customer in their charges for advice.

- 3.7 We are aware that some firms have already adopted more efficient fact-finding practices, such as asking clients to pre-populate the objective elements of the fact find prior to a face to face meeting, thus minimising the necessary contact time and reducing fees. Other firms are using their systems to carry over existing information into a fresh fact find.
- 3.8 The COBS rules set out the requirement for firms to obtain the necessary information about their clients to assess suitability, and state that a firm is entitled to rely on the information provided by its clients, or potential clients, unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.
- 3.9 The information that firms collect from their clients to carry out the suitability assessment could include a fact find which has been completed by the client independently at the start of the advice process or during a previous transaction with the firm or a third party.
- 3.10 A pre-completed fact find, therefore, attested by the client as correct and up-to-date *could* provide the basis for that suitability assessment. However, it remains the responsibility of the firm looking to give advice to ensure that it has the information it needs to provide that service. The firm cannot seek to shift this responsibility onto its client. However, they can ask the client to confirm that the information is complete and up-to-date as a means of meeting this obligation.
- 3.11 In order to obtain reassurance that the information collected is reliable, advisers using a pre-completed fact find may wish to incorporate into their advice process an explicit opportunity for the client to review any pre-captured information and to record their approval of this information. Firms should give careful thought to how they do this. A firm might consider ways in which it can make clear to clients that the adviser will be

relying on the pre-captured information and that it is important that the client is satisfied that the information is still correct.

- 3.12 For example, firms might indicate items of information such as short term borrowings, instant access savings or monthly outgoings which are more likely to have changed or to include a set of questions testing whether the client has considered changes in particular areas in more detail.
- 3.13 When a client is asked to review information online, firms might consider how any online tool mitigates the risks that a client may not notice information which is no longer current. For example, clients may find it more convenient to review information in manageable sections rather than being asked to download a large document containing information. Similarly, firms may consider that the reliability of information may be enhanced by asking a client to confirm information by section rather than by completing a single tick box or similar to confirm their details as a whole.
- 3.14 It may also be possible to build controls into the client process to ensure that all relevant information has been viewed by the client before it is possible to proceed to the next step of the advice process. Pop-up messages that require action by the client before proceeding could be used at critical points in the process to alert the client to the fact that they are making a significant declaration.
- 3.15 Firms might also consider that there are circumstances where it would be appropriate to offer a client a new fact find. This might be the case, for example, where a long time has elapsed since the last advice transaction or a vulnerable client experiences difficulty in assimilating and confirming pre-captured information without being guided through the fact find by their adviser. Another example where a new fact find is likely to be needed would be where the client has experienced a significant life change, e.g. marriage, the birth of a child or a career change,
- 3.16 In addition, a firm should identify and follow up on any obvious inaccuracies in the information provided by clients<sup>50</sup>. It may be possible for automated checks to be built into systems to identify inconsistencies across the information. An adviser may also wish explicitly to re-visit those areas of the fact find that it has reason to believe are likely to have changed.
- 3.17 So long as firms ensure that they obtain all the necessary client information and take all reasonable steps to ensure that it is correct and up-to-date, the source of that information might be the client themselves, a third party, such as a digital storage solution, or a product provider.

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<sup>50</sup>COBS 9.2.5R and draft COBS 9A.2.12 EU.

An example of good practice by a firm giving a personal recommendation through an automated streamlined service, using information from a pre-completed fact find:

The firm displays a clear message informing the client that the recommendation will be based on the information they have provided. Their system displays that information to the client, in a simple and easy-to-read format and broken down into sections.

The firm then asks the client to read and check that all the information is correct and confirm that for each section before they can move on to the next. Dividing the information into manageable sections and presenting it clearly makes it easier for the client to check and confirm that it is correct.

There are controls within the firm's system so that the process cannot be continued until all the client's information has been displayed back to them and their confirmation obtained. The firm also displays a message to the client making it clear that a personal recommendation based on incorrect information could result in unintended outcomes for the client. As further reassurance, the firm requires the client to confirm that they have read and understood this message - and provides the client with a final opportunity to correct their information - before completion of the process.

- 3.18 We have considered the possibilities for standardising the information collected by firms for the purposes of giving a personal recommendation and have consulted with a range of firms and trade bodies.
- 3.19 Fact find information can be broadly divided into two categories. Firstly, there is objective information about the client, such as their name, address, date of birth, occupation, etc. We consider that this objective information lends itself more readily to standardisation. However, stakeholders have told us that this part of the fact find is already broadly standardised in the market and there would be limited value in us prescribing further standardisation.
- 3.20 The remaining information, however, is more qualitative. This includes information such as the client's level of knowledge, previous investment experience, and attitude to risk. The qualitative information may present greater challenges in terms of standardisation, because the manner in which this is collected is generally determined by firms' methodology for assessing the qualitative information. For example, firms assess attitude to risk in very different ways. So, a firm that uses a question and scoring system to analyse their clients' attitude to risk will collect information in a format that

supports that process. Information collected in this format might be of limited value to a firm that assesses attitude to risk using a different methodology, such as psychometric testing. In those areas where the format and content of the fact find are determined by a firm's internal processes, it is difficult to prescribe a universal fact find without also requiring that firms adopt similar processes which we consider would be disproportionate to any benefit that might be achieved.

- 3.21 Any standardised fact find must have the capacity to capture adequate information about the knowledge and expertise, financial situation and objectives of clients with complex circumstances or seeking more comprehensive advice services. It would also need to be sufficiently flexible to facilitate the adviser asking supplementary questions to clarify the client's responses or to follow up on information received from the client.
- 3.22 In addition, because the adviser should ensure<sup>51</sup> that questions used in the process are likely to be understood by the client, there may be a need to adapt the form of questions in a fact find to suit the client's level of experience.
- 3.23 Given the challenges of designing a standardised proforma for the qualitative elements of the fact find and the high existing levels of consistency in the objective elements of fact finds, we do not intend to introduce a mandatory standardised fact find at this stage. We welcome views on this.

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

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

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

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<sup>51</sup>COBS 4.2.1R.

## 4 Non-advised services

- 4.1 We will be consulting later this year to follow up on the changes arising from the amendment to the RAO that will take effect in January 2018.<sup>52</sup>
- 4.2 Following this change, the majority of regulated firms will only require permission under Article 53(1) of the Regulated Activities Order when they provide a personal recommendation. This means that the relevant consideration for the majority of regulated firms will be whether a service they provide might amount to a personal recommendation.
- 4.3 Unregulated firms, and firms who hold only the Article 53(1) permission, and/or the Article 64 permission of 'agreeing to carry on the Article 53(1) activity', will remain subject to the current advice boundary.
- 4.4 FG15/1 sets out our current guidance on advice and personal recommendations in relation to retail investments, including a number of example scenarios illustrating the types of services that might amount to a personal recommendation. Below we set out our initial thinking on the specific areas where stakeholders have indicated that they still have uncertainty in spite of existing guidance.
- 4.5 Ahead of consultation later this year, we are seeking views on whether greater detail is needed on these areas. We are also aware that a number of FAMR respondents requested further clarification beyond FG15/1 in general terms. We would welcome views from stakeholders on whether there are any other specific areas beyond those set out below where further clarification might be needed and what form of clarification might be most helpful. This will help inform our work later this year.

### Implicit personal recommendations

- 4.6 Our current guidance on the difference between a personal recommendation and regulated advice is set out in FG15/1<sup>53</sup>. Firms also asked for further clarification on the extent to which they can refer to the actions of similar clients when communicating options to a client, without giving a personal recommendation. For example, a firm might wish to say 'clients like you often do X'.
- 4.7 If a firm tells its clients that similar clients to them often invest in or disinvest from a particular regulated financial instrument, this is likely to be a personal recommendation. It would amount to presenting an opinion on the suitability of an action or product for a

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<sup>52</sup><https://www.fca.org.uk/firms/financial-advice-market-review-famr/changes-regulated-activities-order>

<sup>53</sup><https://www.fca.org.uk/publication/finalised-guidance/fg15-01.pdf>

client rather than providing balanced information that supports them making their own decision. Statements such as 'people like you do x' or 'I would do y if I were you' give the impression that what is being discussed is suitable for the client.

- 4.8 In such a case the firm is effectively placing a special emphasis on one product over others for a client in a way that would tend to influence the decision of the client to select that particular product over others presented. This could amount to a personal recommendation. It is not necessary for a firm to tell a client that a recommendation it is making is suitable for the client in order for its recommendation to be viewed as being presented as suitable. This is set out in greater detail by ESMA.<sup>54</sup>
- 4.9 However, this does not prevent firms from providing factual material designed to educate the client about investment, include phrasing such as 'before deciding whether to invest money, you might consider factors such as.....' without necessarily making the document a personal recommendation as long as such material is not specifically designed around the particular circumstances of the client.
- 4.10 For example, an adviser might say to a client 'all fund managers apply an annual management charge to the funds that they manage to cover the cost of ongoing management. This is deducted directly from the fund and therefore affects returns. As such the amount charged is something for you to consider when choosing a fund to invest in'. Depending on the context, this may not involve the provision of a personal recommendation because the information is not being presented as suitable or based on a consideration of the client's circumstances.

### **Discussing the implications of a transaction**

- 4.11 Some firms have asked for clarification on what they can do if a client seeks to make a transaction that the firm believes is not in the client's interests without making a personal recommendation. They have asked whether they can warn the client of the possible adverse consequences.
- 4.12 In other cases, where a firm is approached by a client that wishes to undertake a transaction on an execution only basis that the firm believes would not be in the interests of the client, if the firm informs the client that it does not believe what they are proposing is suitable for them or suggests an alternate course or product then this could amount to a personal recommendation.
- 4.13 However, it would not amount to a personal recommendation if a firm suggests to a client that, before undertaking the transaction, they might wish to consider taking regulated advice to discuss any relevant implications.
- 4.14 If the product is a complex one (as defined by MiFID), the rules on carrying out the appropriateness test require the firm to give the client a warning and to decide whether it is willing to carry out the transaction if the client wishes to go ahead despite the

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<sup>54</sup>[https://www.esma.europa.eu/sites/default/files/library/2015/11/10\\_293.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/10_293.pdf)

warning. The rules governing the appropriateness test envisage the firm being able to refuse to carry out a transaction where a client has been given a warning but still wishes to proceed.

- 4.15 In other cases, it might be possible for the firm to refuse to carry out the transaction under certain circumstances as long as it does not provide any opinion that would amount to a personal recommendation when explaining why it will not carry out the transaction.
- 4.16 It would also be possible for a firm to respond to a client's request for factual information about the implications of a transaction, without giving a personal recommendation – for example, whether there would be any redemption penalties associated with disinvesting, or what generic tax consequences might be involved. This would generally be regarded as supporting the client in making their own decision.

### Use of risk profiling

- 4.17 In addition to these queries on personal recommendations, some firms have asked for further clarification on when risk profiling might amount to a personal recommendation, regulated advice, or neither.
- 4.18 It is possible to provide general information on investment risk alongside a risk profiling tool, to help educate a client who wishes to make their own investment decisions, without giving regulated advice or a personal recommendation. However, much will depend on how information is presented to the client. Any firm which is concerned about its risk profiling tool constituting a personal recommendation will need the article 53(1) permission. The firm will also need to consider the specific rules that apply when giving personal recommendations (e.g. assessing suitability).
- 4.19 Presenting generic explanations of factors such as different asset classes and the likely risks attached, the benefits of diversification, or of the relative merits of investing, saving, and paying down debt would not of itself amount to giving regulated advice or a personal recommendation as long as no additional comment or value judgement is offered on the relevance of the information to any investment decision the client may make.
- 4.20 For example, if a firm expressed its opinion of the importance or merits of the features of a product, this would be likely to amount to giving regulated advice. If the firm expressed its opinion on whether those features of a product made it appropriate for a certain investment objective of the client, regardless of whether that happened to be the objective of their client, this might also amount to presenting a product as suitable or unsuitable to the client's circumstances and so could be a personal recommendation.
- 4.21 Information regarding risk in a non-advised service should be presented in a balanced manner as a tool to help a client make their own decision. For example, if a platform offers a range of passively managed products and, before a client accesses a list of the products available, they are presented with a screen setting out the generic risks

associated with passively managed products, this would generally not constitute regulated advice or a personal recommendation.

- 4.22 In order to not constitute regulated advice, information on risk given to clients of a non-advised service must be balanced and not exhibit any clear bias towards particular products offered. The information should not be presented in a way which could be seen as potentially leading a client to a particular outcome.
- 4.23 For example, if a platform offers a range of both passively and actively managed products and, before a client accesses a list of the products available, they are presented with a screen setting out the generic risks associated with passively managed products in detail but only a cursory explanation of the risks associated with actively managed products, this process is likely to be regarded as the provision of regulated advice.
- 4.24 If any information is given that would amount to an opinion by the firm providing the service – for example, on the likelihood of risks or any hierarchy of how important different risk considerations might be, this is likely to be regulated advice. Similarly if a firm offers generic information on risk produced by a third party and the firm makes any statement on the quality or relevance of this information, this is also likely to be regulated advice.
- 4.25 It would likely amount to a personal recommendation if the risks are presented in such a way that would link them to the client's personal circumstances.

### **Budgeting and regulated advice**

- 4.26 Firms have also asked whether supporting a client with budgeting can be regulated advice.
- 4.27 Generic financial planning is not regulated financial advice. For example, it is possible to inform a client about issues such as the merits of paying down debt, switching providers and shopping around. However, firms are likely to be giving regulated advice if they recommend a particular course of action with regard to debt or a financial instrument – for example, that a consumer should make overpayments on their mortgage over investing, or that they should invest a certain amount of money each month.

### **Examples**

If a firm operates a platform that sells a range of funds, it could provide links on technical terminology that provides information to help clients understand those terms. This will not necessarily amount to regulated advice or a personal recommendation as long as that information remains purely factual and objective. For example, the firm might provide a link to explain share classes stating -



'With accumulation share classes, any income from the funds is reinvested. With income share classes, any income from the fund is distributed to the investors in the form of cash.'

That would amount to mere information.

However, the statement might be expanded to say:

'With accumulation share classes, any income from the funds is reinvested. Accumulation products are generally purchased by individuals who are seeking capital growth. With income share classes, any income from the fund is distributed to the investors in the form of cash. Income products are generally purchased by individuals who are looking to produce an income from their investment.'

An element of opinion has been added in this case which could make this regulated advice, depending on the context and how the statement is presented. This is unlikely to amount to a personal recommendation. This is a general statement given to all clients and is not being made in light of information taken from a particular client about their circumstances. In order for this to become a personal recommendation it would generally need to be directed towards individual clients in a way that presents specific products as being suitable or unsuitable for their needs depending on the context.

A firm may offer its own funds ranked by risk as set out in their product literature through a platform that it operates. It may take clients through a series of screens setting out general information regarding investment products, the risks involved and key considerations for determining whether investment is appropriate. This by itself would not amount to regulated advice or a personal recommendation as long as the information presented is balanced, only generic information is provided to support the client's own decision, and the products are not presented in a way that suggests they are suitable for the client.

**Q7: Do you agree with the guidance in this section?**

**Q8: Are there any further specific areas where there is insufficient clarity in existing guidance?**

**Q9: Are there specific areas where further clarity will be needed as a result of the forthcoming amendment to the Regulated Activities Order?**

# 5 Employer and Trustee Factsheet

## Introduction

- 5.1 Among the recommendations outlined in the final FAMR report was a proposal that the FCA and TPR should develop and promote a new factsheet to set out what help employers and trustees can provide on financial matters without being subject to regulation.
- 5.2 Stakeholders reported to FAMR that many employers and trustees do not attempt to offer support or guidance to employees or pension scheme members because they are worried about the risk of crossing the regulated advice boundary without being authorised to give advice. It was reported that some employers and trustees believed they could be exposed to regulatory sanction or liability to employees or members if they offered any support to help them.
- 5.3 This factsheet aims to provide an outline to employers and trustees on how they can support informed decision making on financial matters by employees or members without stepping over the boundary into regulated advice. In addition to this, in line with FAMR Recommendation 12, the Financial Advice Working Group is developing a guide setting out ways that an employer can support their staff's financial health.

## Advice and authorisation

- 5.4 Where an employer or trustee is thinking about giving advice and help to their employees on their workplace pension scheme, or other aspects of their financial affairs, they will generally not need to be authorised by the FCA.
- 5.5 An employer or trustee will only need authorisation from the FCA if they are in the business of providing investment advice or if they receive any commercial benefit for helping their employees. A 'commercial benefit' could take a number of forms but the most obvious would be where the provider of a financial product offers the employer commission or a reduction in their commercial insurance premiums.
- 5.6 Employers and trustees are not generally in the business of giving investment advice and do not normally receive any commercial benefit for helping their employees with pensions or their financial advice. So in most cases employers should be able to help their staff if they want to do so without needing to be authorised.

## What advice should an employer or trustee not give?

- 5.7 Even though an employer or trustee may not need to be authorised many employers and trustees are unlikely to be in a position to give detailed advice on questions such as:

- Which of the investment funds on offer under the pension scheme should I choose?
- Would I be better off putting my money into something instead of a pension such as an ISA or the Lifetime ISA?
- Is it a good idea to transfer benefits under my old pension scheme into this scheme?

5.8 Such questions would need a detailed understanding of an individual's financial circumstances and their expectations and priorities. So whilst an employer or trustee may not need to be authorised to answer specific questions such as these, because they are not in the business of giving investment advice and do not receive a commercial benefit for doing so, it is unlikely that an employer or trustee would be in a position to properly advise an employee. An employer or trustee should not suggest that they are able to provide such advice – if they do, and employees or scheme members act on the basis of the advice, the employer or trustee may be liable to the employee/scheme member for loss. Trustees will also need to bear in mind that, unlike employers, they have a fiduciary duty to their membership and therefore will need to carefully consider whether it would be appropriate for them to offer any advice, in their capacity as trustees, to members.

### **What advice might an employer or trustee give?**

5.9 Rather than answering specific questions, an employer or trustee might instead consider how they might provide more general information and support to help staff make their own financial decisions such as:

- Signposting publicly available resources for information and guidance about financial matters such as The Pensions Advisory Service, the Money Advice Service and Pension Wise, or specific documents they have published on key subjects.
- Providing the Key Features Document of the workplace pension scheme provider which contains essential information that staff will need to know.

5.10 Information which does not relate to investments or financial products is also out of scope of FCA rules, and as such an employer might freely provide support to encourage their staff to ensure that, for example, their tax code is correct, that they are claiming appropriate benefits, or have a will in place.

5.11 An employer or trustee might also suggest that staff seek formal advice from an authorised financial adviser or their pension scheme provider.

### **Promoting financial products**

5.12 In general, communications which promote investments such as personal pensions and other workplace benefits (e.g. protection products) can only be communicated by those people who are authorised by the FCA or where promotional material has been approved by someone authorised by the FCA.

- 5.13 These communications are called 'financial promotions'. They include written documents as well as promotional information given orally such as during face to face conversations with individuals or as part of a group presentation.
- 5.14 Information about an occupational scheme would not normally be a financial promotion and therefore is not subject to the same restrictions. The Pension Regulator's Code of Practice 13 and related guidance set out expectations for trustees when communicating with their members about defined contribution occupational pension schemes.

### **Promoting pensions**

- 5.15 Employers may communicate promotional material to their employees about a group personal pension or a stakeholder pension scheme without it needing to be approved by someone authorised by the FCA, as long as they meet the following criteria:
- The employer must contribute to the scheme in the event that the employee becomes a member of it, and the communication must contain a statement informing the employee of this.
  - The employer must notify the employee in writing what the employer's contribution will be or the basis on which the contribution will be calculated before the employee joins the scheme.
  - The employer must not receive a direct financial benefit as a result of promoting the scheme.
  - The promotion must be made by the employer.
  - Any written promotional material must contain or be accompanied by a statement informing the employee of their right to seek professional advice from an authorised firm or an appointed representative.
- 5.16 There is also a specific exemption for third party contracted service providers that make financial promotions to employees, which applies in similar circumstances.
- 5.17 An employer or trustee may provide purely factual information on any aspect or type of pension arrangements. This could take the form of written material, or a presentation or discussion with an individual or group. However, if the information provided seeks to promote the scheme or persuade individuals to join it, then it could constitute a financial promotion and would need to be approved by an authorised firm (irrespective of whether the employer benefits commercially from the financial promotion) unless one of the exemptions applies.

### **Promoting other financial workplace benefits**

- 5.18 There are a number of exemptions which allow an employer to promote employee share schemes, certain insurance products (e.g. life assurance, critical illness, medical, dental and income protection insurance), or staff mortgages to their employees provided certain conditions are met. We have published detailed guidance on these conditions in the Perimeter Guidance manual on financial promotion and related activities.

## Examples of practice and considerations

### Example 1: occupational pension scheme - provision of information

The trustees of the ABC Pension Scheme Limited, a defined contribution occupational pension scheme with multiple sponsoring employers, are concerned that inconsistent information is being provided by the different employers. They therefore prepare a series of documents for members setting out the terms of the scheme and the different investment options the member can choose.

As the scheme is an occupational pension scheme, the communications are not a financial promotion and do not constitute regulated advice.

Trustees have a duty of care imposed by trust law to ensure that their actions are in the best interests of the membership. So they need to make sure that the communications are accurate.

### Example 2: employer-sponsored at retirement seminars

Employer DEF is aware that many of their employees are over 50 and so potentially starting to consider their retirement options. Employer DEF has both a legacy occupational pension scheme and a newer group personal pension scheme (which they use for automatic enrolment).

DEF decides to commission an employee benefit consultancy (EBC) to give a series of in-work retirement seminars to interested employees. These seminars cover generic information only, but there is also the possibility to get individual advice from an FCA-regulated adviser, which the firm will subsidise.

As the seminars cover generic information, this would not be regulated advice but may be classed as a financial promotion, depending on the content (the EBC should be able to advise the employer about this). In the event that it does amount to a financial promotion then it would need to be approved by an FCA authorised individual. Individual advice may or may not be regulated, but – as it is delivered by an FCA-regulated adviser – the adviser bears the responsibility for complying with relevant FCA rules.

**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*<sup>55</sup> ?**

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<sup>55</sup> <http://www.fsa.gov.uk/pubs/other/guide4employers.pdf>



## Annex A Examples

These examples are provided by way of illustration and should not be used by firms as a definitive statement of how a firm can or should comply with the applicable rules. Firms will need to assess how their streamlined advice models can meet their regulatory obligations on a case by case basis.

### Examples of information required for particular streamlined advice scenarios

#### 1. Streamlined advice scenario – an example (stocks and shares ISA)

A firm intends to offer streamlined advice on a stocks and shares ISA with a range of well diversified funds.

**Intended market:** The firm has identified that its service is best suited to clients who:

- Have disposable income or spare funds to invest
- Have already set aside sufficient accessible emergency funds (for example, at least three months' outgoings) and funds for any planned short-term expenditure)
- Would like advice on a specific investment need, rather than holistic financial planning
- Understand that the service will not provide advice on any of their existing investments
- Plan to remain invested for at least five years, and
- Are willing and able to accept a fall in the value of their investment.

The firm has also identified that its service would NOT meet the needs of clients who:

- Have significant levels of unsecured/unmanaged debt, or
- Struggle to meet regular financial commitments, or
- Have very complex tax circumstances, or
- Are expecting their financial situation to deteriorate in the short/medium term – e.g. through redundancy, retirement, illness, or
- Are unwilling or unable to accept a fall in the value of their investment, or
- Have not joined, but would benefit from joining a workplace pension where the employer matches employees' contributions, or
- Want the advice to also consider their existing investments.

It is worth noting that whilst on the face of it the service would not be right for certain clients, it may be that some further questioning results in responses that could lead to the service being right for the client after all. For example, the client may say that they have access to a workplace pension, but further questions reveal that they are already making the maximum contributions hence the requirement for an ISA. These clients could be re-routed back into the process after secondary questions.

**Disclosure**<sup>56</sup>: In its description of its service the firm makes clear that it only provides personal recommendations on stocks and shares ISAs, not a full advice service which

<sup>56</sup> A firm will also need to ensure it is satisfying its other disclosure obligations as set out in COBS 6.

would look at the client's wider financial needs, and sets out the types of clients its service is aimed at and who it is not aimed at in line with their analysis above. It explains that the filtering questions which follow are intended to make sure that the service is right for the client.

**Filtering questions:** Before the client enters the service, the firm asks a series of 'basic' filter questions to determine whether a client falls into the intended market for the service based on their analysis above. For example:

- Do you want to receive advice specifically in relation to stocks and shares ISAs and not on your whole financial situation?
- 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?
- How much have you put into the various types of ISA this year?
- Are you a higher rate taxpayer?
- Do you have a workplace pension where the employer matches employees' contributions?
- Do you expect your financial situation to change in the short/medium term? For example: as a result of redundancy, retirement, illness, change in tax status?
- Are you willing and able to accept a fall in the value of your investment?

Firms should consider whether they need to provide supporting information to help customers understand the questions and use this to inform their answer.

Depending on the nature of the responses, the firm's system might direct the client down a route leading to a set of further questions (as described above). Negative answers to these questions may not necessarily mean that the clients should be excluded from the service. Instead, they might be given an appropriate warning and be asked to expressly confirm that they understand the warning, offered more information or possibly be referred to a full advice service. The firm should, however, exclude those clients whose answers indicate that their needs would not be met by this process.

The firm would then go on to gather further information from the clients who appear to be right for the service. The following examples illustrate what information the firm might need to gather so that it can determine which, if any, of its funds are suitable for them.



<b>Client information that might be needed to determine suitability (non-exhaustive) in addition to the filtering questions above</b>	
<p>Once the firm has completed the filtering process, the next step would be to consider what information it would need to obtain to establish suitability in addition to the details already gathered during the filtering process. Examples of the additional information which may be needed are set out below as well as suggestions of what might not be necessary for this scenario.</p>	
<b>Topic</b>	<b>Example information</b>
Investment objectives	<p>What does the client want to achieve/purpose of investment?</p> <p>For how long does the client wish to hold the investment?</p>
Financial situation	<p>What is your regular monthly income? What is the source of that regular income?</p> <p>How much are your regular monthly financial commitments?</p>
Knowledge and experience	<p>Does the client have a sufficient understanding of investing in funds linked with the stock market to understand the risks, e.g. has the client invested in stocks and shares previously? The process could also provide educational information about the key risks of investing in the ISA prior to assessing the customer's knowledge.</p>
Risk and capacity for loss	<p>Questions to establish the level of risk a customer is willing and able to take with their money. Please see previous guidance on this topic such as FG11/05<sup>57</sup></p>

<b>Client information that may not be needed in this scenario</b>	
<b>Area</b>	<b>Example information</b>
Information on other 'needs' not relevant to the streamlined service	<p>It may not be necessary to obtain information relating to the client's objectives for retirement, protection or mortgage needs where information on these aspects is not needed to determine whether a streamlined advice process is likely to meet their needs (as set out above).</p>
Detailed information on existing investments	<p>Provided the firm has made clear that it will not be taking account of the client's existing investments and has explained the implications of this to the client. Also pertinent is that the funds available through a streamlined process are sufficiently well-diversified so they do not pose</p>

<sup>57</sup> [http://www.fsa.gov.uk/pubs/guidance/fg11\\_05.pdf](http://www.fsa.gov.uk/pubs/guidance/fg11_05.pdf)

	a concentration risk.
Health	It should not be necessary to gather health information in this scenario.

The firm's process should take account of the fact that the customer might give information later in the process that suggests they are not part of the intended market for their service. If this happens, they might gather more information, refer the client to a full advice service or not proceed with the sale.

**2. Streamlined advice scenario (workplace pension)**

A firm intends to offer a streamlined advice service on the fund choice for employees who have been automatically enrolled into their employer's scheme (which is not a group self-invested personal pension). There is a range of well diversified funds on offer.

**Intended market:** The firm has identified that its service is best suited to clients who:

- Have been enrolled into their employer's scheme
- Are content to receive advice solely on the fund composition of their workplace pension and do not want advice on, for example, whether to increase their contributions level

The firm has also identified that its service would NOT meet the needs of clients who:

- Have not joined their employer's scheme
- Are content for all the contributions to be invested in the scheme's default fund
- Are looking for advice on their levels of contribution.

**Disclosure<sup>58</sup>:** In its description of its service the firm makes clear that it only provides personal recommendations on clients' fund choice within their workplace pension. If they are unsure about any of this, then they should not use this service and should seek advice which will consider their needs more broadly.

**Filtering questions:** Before the client enters the service, the firm asks a series of 'basic' filtering questions to determine whether a client falls into the intended market for the service based on their analysis above. For example:

- Have they joined their employer's pension? (This information may already be known to the firm)
- Do they want the contributions to be invested into the default fund?
- Do they want to receive advice specifically on the issue of which fund(s)

<sup>58</sup> A firm will also need to ensure it is satisfying its other disclosure obligations as set out in COBS 6.

would be suitable and not on other issues such as the level of their contributions?

The firm would then go on to gather further information from the clients who appear to be right for the service. The following examples illustrate what information the firm might need to gather so that it can determine which of the available funds are suitable for them.

**Client information that might be needed to determine a suitable fund choice (non-exhaustive)**

Once the firm has completed the filtering process, the next step would be to consider what information they would need to obtain to provide a suitable fund choice recommendation in addition to the details already gathered during the filter process. Examples of the additional information which may be needed are set out below as well as suggestions of what might not be necessary for this scenario.

<b>Topic</b>	<b>Example information</b>
Investment objectives	What does the client want to achieve/purpose of investment?  When does the client expect to want to access the benefits?
Knowledge and experience	Does the client have a sufficient understanding of investing in funds linked with the stock market to understand the risks, for example, has the client invested in stocks and shares previously? The process could also provide educational information about the key risks for those without significant knowledge/experience prior to assessing their knowledge.
Risk and capacity for loss	Questions to establish the level of risk a client is willing and able to take with their money.

**Client information that may not be needed in this scenario**

<b>Area</b>	<b>Example information</b>
Information on other 'needs' not relevant to the streamlined service	It may not be necessary to obtain information relating to the client's objectives for regular savings or investments or their protection or mortgage needs.
Financial situation – including information on existing investments	Details of the client's financial situation may not be relevant to this particular advice service (of solely recommending which investment fund(s) would be suitable). This would include information on income and outgoings, debts, emergency fund and existing

	pensions and investments, provided that the funds on which the firm is advising are sufficiently well diversified so they do not pose a concentration risk.
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### Pension decumulation example

There are a range of pension decumulation options available and the most suitable for any client will depend on their own specific circumstances and needs. As it is not possible to cover all possible scenarios, we set out below an example of just one of the available options, for the purpose of illustrating how a streamlined model might work.

### 3. Streamlined advice scenario – an example in relation to purchasing an annuity

A firm intends to offer streamlined advice on retirement decumulation options, specifically the recommendation of annuities from an available range that covers the different types of annuity.

**Intended market:** The firm has identified that its service is best suited to clients who:

- Are aged at least 55<sup>59</sup>
- Are approaching retirement
- Have an existing pension fund(s) with no safeguarded benefits
- Are looking to access part or all of their pension fund(s)
- Are looking to draw their pension benefits in the form of guaranteed lifetime income
- Are not willing to invest their pension fund and be subject to the risks associated with that
- Are not interested in being able to pass on their pension fund to beneficiaries following their death
- Do not want holistic financial advice or advice on any other specific areas

The firm has identified that its service would NOT meet the needs of clients who:

- Are aged under 55
- Are not yet approaching retirement
- Have neither a personal or workplace pension
- Have a pension that includes safeguarded benefits, such as guaranteed annuity rates
- Wish to maintain flexibility in how they make use of their pension funds
- Require a complete review of their financial situation

As every situation is different, and not all possible scenarios can be covered here, we give an example of one specific situation only.

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<sup>59</sup> Note the proposed increase in the normal minimum pension age from age 55 to age 57 in 2028

**Disclosure:** In its description of its service the firm makes clear that they only provide personal recommendations relating to annuity purchase and sets out the types of clients the service is aimed at, and who it is not, in line with their analysis above. The firm also sets out the limits of its service and what elements of a client’s financial situation will not be addressed.

**Filtering questions:** In this example, the client is seeking advice regarding a specific amount of money that is already invested. This means the firm is unlikely to need to take into account all other financial factors if they are not relevant given the client’s immediate requirements.

Before the client enters the process, the firm asks a series of 'basic 'filter' questions to determine whether a client falls into the intended market for their service, based on their analysis above. For example:

- Do you understand that you will only receive advice specifically in relation to how you might use your pension benefits to generate an income and not on your whole financial situation?
- Are you over 55 years of age?
- Do you have an existing pension with no safeguarded benefits, such as guaranteed annuity rates?
- Are you looking to use your pension to provide a guaranteed income for the rest of your life?
- Do you have any unsecured/unmanaged debts, such as credit cards, store cards or personal loans?
- Do you have any health problems? If not, have you had any in the past?
- Are you currently a higher rate taxpayer?

Depending on the nature of the client’s responses to the questions, the firm’s system might direct them down a route leading to a set of further questions, offer more information or possibly refer them to a full advice service. The firm should exclude any clients whose answers indicate that the service would not be right for them.

The firm would then go on to gather further information from those clients who appear to be right for the service. The following examples illustrate what information the firm might need to gather so that it can determine which, if any, annuities are suitable for them.

**Client information that might be needed to determine suitability (non-exhaustive)**

Once the firm has completed the filtering process, the next step would be to consider what information they would need to obtain to establish suitability in addition to the details already gathered during the filter process. Examples of the additional information which may be needed are set out below as well as suggestions of what might not be necessary for this scenario.

Topic	Example information
Investment	Does the client want to use their pension pot to generate guaranteed

objectives	<p>income for their lifetime? How do they want to receive their regular income?</p> <p>Does the client have a requirement for tax free cash from their pension pot?</p> <p>Details to establish client's needs in respect of options such as escalation, joint/dependents annuity and guarantee periods.</p>
Financial situation	<p>Details of all assets the client holds, for example, their ease of accessibility</p> <p>Full details of any other income the client will have in retirement</p> <p>Debts and liabilities, particularly any unsecured/unmanaged or expensive debt</p>
Family	<p>Marital status</p> <p>Children</p> <p>Dependants</p>
Knowledge and experience	Does the client understand the nature of an annuity, e.g. that it is irreversible? That their fund will no longer have the capacity to grow?
Attitude to risk	Would the client be prepared to accept stock market fluctuations in their income, or would they prefer a fixed income?
Health	Details of any health problems the client has, or has had
Tax position	The client's current and expected rates of income tax
Anticipated changes	Are there any likely changes in the client's financial situation, for example, plans for capital outlay, or expenditure?
<b>Client information that may not be needed in this scenario</b>	
<b>Area</b>	<b>Example information</b>
Information on other 'needs' not relevant to the streamlined service	It may not be necessary to obtain information relating to the client's objectives for regular savings or their protection or mortgage needs, where this is not needed to determine whether a streamlined advice process is likely to meet their needs (as set out above).
Detailed information on existing investments	It may not be necessary to obtain detailed information on existing investments in this scenario, where the advice is restricted solely to pension decumulation by a cautious route. The advice addresses funds that are already invested for a specific purpose which the client is now looking to realise.

The firm's process should take account of the fact that the client might give information later in the process that suggests they are not part of the intended market for their service. If this happens, they might gather more information or not proceed with the service.

### Pension Accumulation Example

This example involves defined contribution (DC) to DC transfers. Firms may be considering versions which involve transferring safeguarded benefits such as defined benefit (DB) to DC transfers in which case there are additional considerations to take into account. We are expecting to publish a consultation paper on advising on safeguarded benefits in due course.

#### 4. Focused advice scenario – pension accumulation

A potential client approaches an adviser firm for advice regarding the client's existing pension pots. The client has had a number of previous employers from each of whom the client had a workplace pension. The client wants advice on whether they should consolidate their holdings and if so into what product.

**Intended market** – the adviser has identified that a focused service (determined by the needs of the client, rather than the firm) would meet the needs of a particular category of clients. They are able to offer a service that would be suitable for an individual who:

- Is less than 55 years in age and so is not currently able to drawdown their pension
- Is not anticipating retirement in the near future
- Does not require a review of their current pension contributions or wider retirement planning
- Has existing pension pots as well as a workplace pension into which their employer is currently making contributions
- Wants to consolidate existing pension pots that do not contain safeguarded benefits

**Disclosure<sup>60</sup>:** If the firm wished to make available a focused service, it would need to make clear in its financial promotions and initial disclosures the category of clients for whom the service is aimed at. So it will need to be clear that its advice will be in relation exclusively to the client's existing pension pots and how best to invest them. In particular that it will not give advice on whether the pension pots will provide an adequate retirement income or whether the client's proposed retirement date, if they have one, is realistic, as the firm will not consider any current pension contributions that the client is making.

**Filtering questions:** In this example, the client has chosen a service that will provide advice regarding money that is already invested and can be switched but not disinvested. As such many of the considerations relating to other forms of investment advice or retirement planning would fall away.

Nevertheless it would be important to check the client falls within the intended market (under 55 years of age and not intending to retire in the near future, consolidating pots

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<sup>60</sup> A firm will also need to ensure it is satisfying their other disclosure obligations as set out in COBS 6.

without safeguarded benefits), as it is unlikely that advice on the investments could be suitable without considering the format of the likely retirement income.	
<b>Client information that might be needed to determine suitability (non-exhaustive)</b>	
<b>Topic</b>	<b>Example information</b>
Investment Objectives	When does the client intend to retire?
Detailed information on existing pension investments	<p>The firm would need to know full details of the existing pension pots on which the client is seeking advice, in particular the existence of any safeguarded benefits or protected benefits, their charging structure and whether or not the underlying funds are suitably balanced and are appropriate to the client's risk appetite before being able to advise on whether or not to move their money into a different scheme.</p> <p>This is likely to include the details of any workplace scheme the client is currently paying into, as consolidating pots into this scheme might be the best option.</p>
Knowledge and experience	The firm would need to gather information that demonstrates that the client has adequate knowledge or experience on any product it might recommend the client use for pension consolidation; however, this could likely be established in the course of gathering details about the existing pension holdings to be consolidated.
Risk and capacity for loss	Questions to establish the level of risk a customer is willing and able to take with their money.

<b>Client information that may not be needed in this scenario</b>	
The firm should outline to the client what the personal recommendation will, and will not cover. This will enable the client to understand the nature of the service (COBS 2.2A.3R).	
<b>Area</b>	<b>Example information</b>
Information on other 'needs' not relevant to the streamlined service	It is unlikely to be necessary to obtain information relating to the client's regular savings or their protection or mortgage needs, given that they are looking for advice on existing investments which cannot be disinvested.
Detailed information on non-pension existing investments	It may be helpful to know how other, non-pension investments are invested, so the firm can check the balance of the client's investments overall.
Broader financial situation	As the firm would be considering how best to rebalance money that is already invested and that cannot be



	<p>redeemed for a number of years, information that a firm would generally use to determine whether a client can afford to make an investment in the first place becomes less relevant. For example -</p> <ul style="list-style-type: none"><li>• An overview of the client's income and outgoings</li><li>• Whether the client has adequate money set aside for emergencies</li><li>• Assets including any existing investments</li></ul>
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**Q 12: 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?**

## **Annex B List of questions**

### **Section 2 – Streamlined Advice**

- Q1: Do you agree with the guidance set out in this section?
- Q2: Is there any guidance in FG 15/1 or FG 12/10 which is not covered here which you consider helpful and which should be retained?
- Q3: Is there any guidance in FG 15/1 or FG 12/10 which you believe is no longer relevant and should be withdrawn?

### **Section 3 – Fact Find Information and Portability**

- Q4: Do you agree with the guidance in this section?
- Q5: Do you agree with our proposal not to publish a standardised fact find proforma?
- Q6: Is there anything else that could be added to the guidance in relation to fact finds that would be helpful?

### **Section 4 – Non Advised Services**

- Q7: Do you agree with the guidance in this section?
- Q8: Are there any further specific areas where there is insufficient clarity in existing guidance?
- Q9: Are there specific areas where further clarity will be needed as a result of the forthcoming amendment to the Regulated Activities Order?

### **Section 5 – Employer and Trustee Factsheet**

- 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*<sup>61</sup> ?

### **Annex A - Examples**

- Q12: Do you agree with the 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?

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<sup>61</sup> <http://www.fsa.gov.uk/pubs/other/guide4employers.pdf>

# Annex C Consultation timeline

