

Summary of feedback received

September 2017

Consultation title	GC17/4: Financial Advice Market Review (FAMR): Implementation part 1
Date of consultation	11 April 2017 to 11 July 2017
Summary of feedback received	<p>In April 2017, we published guidance consultation GC17/4. This set out draft guidance on streamlined advice, fact find information and portability. We also consulted on a factsheet (now known as the guide) for employers and trustees to help firms assist employees on financial matters without being subject to regulation.</p> <p>We received 26 responses to our guidance consultation. The respondents include: product providers, advisers, third-party service providers, trade bodies, legal firms, independent consumers and the FCA's statutory panels.</p> <p>Broadly, respondents supported our proposals and did not raise significant objections to our overall policy approach. Some questioned the extent to which our proposals would have a major impact on the market.</p> <p>Some respondents asked for clarification or amendments to our guidance, which we summarise below along with our responses. We have taken the following approach in responding to feedback:</p> <ul style="list-style-type: none"> • Where respondents have asked for more detail or clarification on the substance of our proposed guidance, we have tried to provide this. • In a number of areas, respondents asked for amendments which go beyond the scope of this consultation. For example some respondents asked for: <ul style="list-style-type: none"> ○ Our guidance to be more prescriptive, effectively asking us to make new rules. ○ Guidance on areas not covered by this consultation. For example, how to meet our suitability rules more generally, not just in relation to streamlined advice.

We have not made amendments of this kind because some of the suitability rules come from EU law and we are unable to amend them. Also, we do not have the necessary evidence to support rule changes or new guidance beyond the scope of our consultation.

- Respondents asked for more guidance in areas where we are already consulting, for example, personal recommendations or insistent clients. We will signpost other relevant consultations in our guidance.

Response to feedback received

Streamlined Advice

Terminology

Respondents suggested the range of terms used (such as streamlined advice, focused and simplified advice) may confuse consumers. **Our response:** Our guidance makes clear that the term streamlined advice is used as an umbrella term which covers both simplified and focused advice. These services are the same, except that with simplified advice the firm sets the boundaries of the service, whereas with focused advice the client stipulates the boundaries. These 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. There are specific requirements which set out how firms providing investment advice must describe their services to clients, and these are set out in COBS 6.2A and, from 3 January 2018, COBS 6.2B.

Focused advice

Some respondents considered that the guidance was overly concentrated on simplified, rather than focused advice and asked for more clarity in this area. **Our response:** Our rules and guidance apply equally to simplified and focused advice, and we have made this clear in the finalised guidance. We have now clearly signposted one of the worked examples provided in the finalised guidance as based on a focused advice scenario.

Product-led processes

Two respondents expressed a view that a process that starts with the product, rather than with the client's needs, could result in the client being directed towards a product which is not suitable. That could also occur if the underlying design of the process channels clients towards a pre-determined outcome, e.g. through the type of questions asked. **Our response:** The guidance is clear on the need for firms to identify a target market of clients whose needs would be met by the firm's intended product(s). The guidance is also clear that a well-designed filtering process would be able to filter out those

clients who are identified as being outside the target market. We are clear that clients should not be guided towards a pre-determined outcome. We have added guidance to remind firms that when designing a process they should consider whether it might potentially steer a client to a pre-determined recommendation.

Existing information held by a firm

Some respondents asked us to clarify expectations around the use of information firms already hold on a customer. Specifically, we were asked what the requirements are for firms who are unable to access information they hold in another part of their group, without significant expense or delay. We were also asked what the requirements are on firms to check the consistency of the information they obtain through their streamlined advice service with the information they may hold elsewhere on the same client, if pre-existing information is not easily accessible. **Our response:** The guidance sets out the obligations on firms to collect all the necessary information about a client in order to allow them to make a suitable recommendation. We also make clear the needs for firms to check the consistency of the information. We clarify in the guidance that, where it is not possible to cross-check information obtained from the client against other information the firm may already hold, for example because it is held in a separate business division of the group, it is still obliged to obtain all the information from the client needed in order to make a suitable recommendation and ensure that it is reliable. We also clarify that in such a situation the firm should make this clear to the client and consider other ways in which the firm can ensure the reliability of the information obtained. The client then knows that no other information which the group may hold will be taken into account in the client's investment recommendation. We also make reference to the need for firms to ensure that clients understand the importance of providing accurate and up-to-date information about their circumstances.

Model Design

Some respondents requested further guidance on how advice models should be structured. For example:

- a. Whether models could use decision trees and drop-down menus or whether they needed to use free text boxes.
- b. How firms should treat customers who fall outside their target market. They asked if it is sufficient to warn such customers against using the service or whether they must prevent the customer from using the service.
- c. The interaction of the filtering questions with the suitability assessment. One respondent highlighted how the information obtained from the filtering process

would likely need to be used to inform part of the suitability assessment. Others expressed the view that the number of filtering questions in our examples was so large that they were not materially different to advice taking into account all of a client's circumstances or might give the client the impression that they were receiving such advice.

Our response: Our finalised guidance clarifies that we do not prescribe how information should be gathered, provided the questions posed during this process do not lead the client to a pre-determined outcome. The guidance does not specify how clients for whom the streamlined advice service would not be appropriate should be filtered out of firms' processes. It is for firms to understand their target market and ensure that their process delivers only suitable recommendations. The finalised guidance clarifies that firms may use the information gathered in their filtering stage to inform their suitability assessment, as is the case with the worked examples in the finalised guidance. The balance between the volume of questions at the filtering stage and those at the suitability assessment stage is a matter for individual firms' discretion. However, firms should ensure that they clearly disclose the nature of their streamlined service to the client.

Information gathering

Some respondents requested further guidance on whether firms operating streamlined advice models should ensure that they collect certain types of information. This information included: a client's pre-existing levels of debt; a client's resilience to asset price volatility; and a client's preference for socially, ethically and environmentally sustainable investments. Another response requested more detailed examples. **Our response:** Our rules require firms to gather the information they need to ensure their advice is suitable. The general requirements setting out what information is needed can be found in COBS 9, MiFID II and COBS 9A. It is not our intention to go beyond these general requirements.

Requests for further guidance

Similarly, some respondents requested that we provide examples in granular detail. For example, on how streamlined advice would work in a range of other scenarios, how filtering questions and risk warnings might work, or how non-qualified individuals might be involved in the streamlined advice process. **Our response:** We provided examples in order to provoke discussion and assist firms in considering how they might design their own filtering and suitability processes. They are not intended to be an exhaustive and prescriptive set of guides. We consider the range of examples in the guidance is sufficient to illustrate some of the ways in which firms could make use of the approach outlined in the main guidance document. Whilst we are not providing examples on non-qualified individuals'

involvement in the advice process, we would remind firms of the need to ensure that staff not qualified to provide personal recommendations do not, inadvertently or otherwise, do so. We are consulting on aspects relevant to this issue in CP17/28: Financial Advice Market Review implementation Part II and insistent clients. We are open to further discussions with firms on how to tackle demands for further guidance.

Product choice

We received two responses about product selection. Some financial products may not be appropriate for streamlined advice, because of the amount of information a firm would need in order to make a suitable recommendation. Some respondents suggested that the complexity in a range of products (including those which are on the surface relatively simple) may result in firms having to gather much a broader range of client information than envisaged by this consultation, which would be tantamount to full advice. Another response suggested that we reference the FCA's recent CP17/16. This addresses potential difficulties around providing streamlined advice on safeguarded benefits. **Our response:** This guidance is not seeking to prescribe the products for which streamlined advice may or may not be appropriate. It is the responsibility of firms to ensure that they make only suitable recommendations and have all the client information necessary to do so. The guidance confirms that some financial products are unlikely to be appropriate for a streamlined advice process because of the amount of information likely to be needed to make a suitable personal recommendation. In general we would expect that the more complex, risky, highly concentrated or illiquid the product, the more likely it is that firms will need more detailed information about the client's broader portfolio in order to meet the firm's suitability obligations.

Scope of guidance

One respondent requested examples of how this guidance might apply to other regulated products such as mortgages and life insurance. Another respondent suggested that we remove reference to streamlined advice on ETFs in our example due to the lack of FSCS protection. **Our response:** We confirm that our guidance is in respect of relevant rules for retail investment products and MiFID financial instruments. However, our guidance does not take into account the changes that will be needed to implement the Insurance Distribution Directive which are still being consulted upon. In relation to ETFs, FSCS protection covers claims in connection with specific regulated activities, rather than specified products. So the FSCS could cover a claim in connection with (regulated) streamlined advice given by a firm on an ETF where all the other conditions for FSCS cover are satisfied (e.g. that the claimant is eligible, that the firm is in default, that the claim is a valid civil claim in connection with protected investment business, etc.).

One respondent asked us why we had not carried out a cost benefit analysis (CBA) for this consultation. **Our response:** The statutory requirements for FCA to conduct a CBA when consulting on new rules do not apply to the production of FCA guidance. We have therefore not conducted a CBA as part of this consultation. Our guidance is designed to clarify our requirements and help firms comply with our rules, but not to set new standards. We do not expect our guidance to result in additional costs to firms.

The Financial Ombudsman Service

A range of respondents said that this guidance should also bind the Financial Ombudsman Service in their response to any future complaint made to them about advice provided. **Our response:** Whilst the FCA does have the power to bind the Financial Ombudsman Service in certain limited circumstances (specifically, in the context of firm or industry-wide consumer redress schemes), the FCA does not otherwise have the power to bind the Financial Ombudsman Service. The Financial Ombudsman Service determines cases on the basis of what is fair and reasonable, in all the circumstances of the case. In considering this, the Financial Ombudsman Service will take into account, amongst other things, relevant law and regulations, and relevant regulators' rules and guidance.

Previous guidance

As part of our consultation, we asked for views on the extent to which we should retain earlier related Guidance in FG 12/10 and FG 15/1, as well as whether there was anything we should retire.

Some respondents thought there was a need to retain sections of the previous guidance, whilst others were happy for it to be retired. However, there was general support for a single source of guidance going forward.

We therefore propose to retire the guidance in FG 12/10 and 15/1 where:

- a. it has been superseded by material in this finalised guidance
- b. it will be superseded by material that is currently under consultation in CP 17/28
- c. it is now manifestly out of date, for example because there have been changes to the relevant parts of the Handbook, e.g. because of MiFID II.

On this basis, following areas of guidance from FG 12/10 and 15/1 have been retired:

- o definition of advice and its boundary

- automated sales models
- collecting customer information
- use of disclaimers
- simplified advice
- aspects of suitability
- process design
- product selection
- assessing risk
- liabilities and responsibilities
- focused advice
- existing customers
- issues and examples

The following areas of guidance from FG15/1 and FG12/10 have been incorporated into this guidance.

- adviser charging
- professional standards
- complaints and redress
- appropriateness test
- discretionary investment management

We have made some changes to ensure that it is correct, consistent and reflects subsequent changes to the regulatory regime.

There will therefore be a single location set up for all the relevant guidance.

Fact finds information and portability

In our consultation, we explained that we did not intend to introduce a mandatory standardised fact find and would maintain the flexibility for firms to design fact finds in a way that suits their particular services and process. There was broad support for this approach.

However, some respondents asked us to introduce new standards for certain aspects of the fact find process, including requirements:

1. for firms always to collect certain types of information, for example an investor's views on socially, ethically and environmentally sustainable investments
2. setting the length of time after which a firm must refresh the information in its fact finds
3. setting standardised terminology to be used in fact finds

Our response: Guidance is designed to help firms comply with our rules but not to introduce new standards. Consequently, we will not be incorporating these suggestions into our final guidance. Our rules already make it clear that firms must

collect all the necessary information about the client to enable the firm to make a suitable recommendation. This includes information about the client's knowledge and experience, financial situation and investment objectives. Regarding the need to refresh a fact find, our current rules state that a firm is entitled to rely on the information provided by its clients, unless it is aware, or ought to be aware, that the information is clearly out of date.

In our guidance we also refer to the additional requirements on firms with ongoing relationships with clients under MiFID II. However, we do not require firms to re-check existing client data after a set period of time. The point at which it becomes necessary to review existing data will differ, depending on the client's advice needs, the information in question and the nature of the service being provided by the firm. We consider that it is better to allow firms the scope to ensure that they have reliable and up-to-date information in a way that suits their business model. We clarified this position within the finalised guidance.

One respondent asked us to clarify the extent to which a firm is responsible for the accuracy and completeness of information collected by another firm. **Our response:** The rule in COBS 2.4.4R sets out when a firm can rely on information received from another firm in the course of carrying on MiFID or equivalent third country business. In other situations, COBS 2.4.6R provides that a firm can rely on information provided by a third party, provided the firm can show that it was reasonable to rely on this information.

Another respondent suggested that there should be prescribed warnings to clients on the consequences of a firm using incorrect information about the client when giving advice. **Our response:** Our guidance confirms the obligation on firms to make sure the information they collect is reliable, for example by asking the client to confirm, and that clients understand the importance of providing accurate and up-to-date information. We don't believe that it is necessary for us to prescribe exactly how firms communicate this message. Rather, we think that it is better to allow firms the scope to ensure that they have reliable information in a way that suits their business model.

Two respondents suggested that we ensure the guidance retained flexibility so it can remain relevant in the face of technological developments. **Our response:** The guidance is clear that our rules are technology neutral, and the requirements on advisors will generally remain the same irrespective of technological development. We will continue to review this position.

One respondent suggested that the issue of client confidentiality and consent should be covered by the guidance, specifically with regards to transferring fact find data from one party to another. **Our response:** Our finalised guidance clarifies that all

rules around handling client data and client consent will continue to apply.

Employer/Trustee guide

We consulted on key information for employers and trustees seeking to help their employees and members on financial issues without requiring FCA authorisation. We also consulted on whether there was any need to retain the existing guide for employers / trustees. While responses on this were mixed, the consensus was that information in the existing version would be useful to maintain. **Our response:** The earlier FSA guidance will be retained on our website as the information it contains remains of value. We will be signposting the new guide alongside the publication of the finalised guidance, as well as on the FCA and the Pensions Regulator websites.

We received suggestions on the presentation and format of the new guide. These include adding a flow chart and a FAQ section, as well as splitting the new guide into two, one for employers and another for trustees. We also received comments about ensuring that the wording of the new guide is clear and user-friendly. **Our response:** We considered all feedback on the presentation and format as it is a key part of the efficacy and usefulness of the guide. We have chosen the final format as we feel it will best meet the needs of the various targeted stakeholders.

On specific elements of the new guide, a number of respondents asked that we provide more guidance on the following issues:

- a. what an employer/trustee is able to do to assist employees/members
- b. when an employer/trustee would cross the boundary into regulated advice
- c. the definition of promotional material, and exemption from financial promotion rules for firms that automatically enrolling employees
- d. providing guidance on the requirements around 'introducing'

Our response: The new guide explains what employers and trustees may be able to do. Through this we have sought to provide more clarity on where the boundary between needing to be regulated lies. We are consulting on perimeter guidance in our current consultation paper (CP17/28) which closes on 2 October 2017. The new guide clarifies the role that employers can play in promoting their pensions to their employees without straying into giving regulated advice. It also explains how

employers may be able to refer employees to advisors without being subject to regulation.

We received a response requesting that we provide more information on what amounts to a commercial benefit. For employers to provide assistance to their employees without crossing the boundary into regulated advice, employers will need to ensure that they receive no direct commercial benefit from their employees' pension contribution. **Our response:** The new guide clarifies our example of where a 'commercial benefit' might be received. We have also provided an example where it would not be considered that a commercial benefit had been received. We have not sought to provide further examples beyond this.

We also received responses highlighting the need to publicise this new guide as fully and effectively as possible. **Our response:** The new guide will be published on our website and also on that of the Pensions Regulator. We are currently in discussion with other organisations about the best way to promote the guide.

This new guide will be complementary to other work being done by the Money Advice Service to promote financial well-being in the workplace, alongside a set of Rules of Thumb and Nudges aimed at the financial well-being of all UK consumers. Both initiatives resulted from recommendations made by the Financial Advice Working Group, which was established by FAMR.

Changes made to the guidance as a result of feedback received

We made a number of changes to the wording of the finalised guidance, designed to give greater clarity on the points identified above.

We have incorporated some parts of the earlier guidance FG12/10 and FG15/1 into the finalised guidance document.

We have made some changes to text where necessary, either to improve the drafting or to ensure consistency with other policy developments and publications, e.g. MiFID II implementation, ESMA guidelines, etc.

In addition to the guidance, following this consultation we are also publishing a 'Guide for Employers and Trustees' to help firms who want to discuss financial matters with their employees.

You can access the full text of the guidance consulted on [here](#).
