

Government/FCA Financial Advice Market Review

On 3 August, HM Treasury (HMT) and Financial Conduct Authority (FCA) announced that they will be undertaking “a major new review looking at how financial advice could work better for consumers”.

The subject of advice and guidance in retail financial services has seen significant regulatory activity over the past decade, with much focus on regulated professional investments/pensions advice, but there has also been work on unregulated guidance such as the availability of national free-at-point-of-use services including the Money Advice Service and more recently Pension Wise.

The Financial Advice Market Review (FAMR) currently has a very wide scope, covering consumer financial advice and guidance including information.

At least initially, it will include not just investments/pensions but will also review evidence from mortgages/consumer credit and general insurance.

Next steps:

Autumn 2015: HMT/FCA “consultation in Autumn 2015;

End 2015: consultation closes (to be confirmed);

Budget 2016: proposals expected.

Overview

On 3 August, HM Treasury (HMT) and Financial Conduct Authority (FCA) announced that they will be undertaking “a major new review looking at how financial advice could work better for consumers”. For more information, see: www.gov.uk/government/news/major-new-review-to-radically-improve-access-to-financial-advice-launched and www.fca.org.uk/news/financial-advice-market-review

The Treasury explained that the initial evidence gathering for this Financial Advice Market Review (FAMR) will have a broad scope across not just investments but other areas of retail financial services advice and guidance before narrowing down to consider “those areas where the so-called advice gap would be most acute”.

Policy context

The subject of advice and guidance in retail financial services has seen significant regulatory and policy activity over the past decade. Much of this has focused on regulated professional advice in the area of investments and pensions, but there has also been work on unregulated guidance such as the availability of national free-at-point-of-use services including the Money Advice Service and more recently Pension Wise to support the Government’s pension freedoms initiative.

Retail investment advice regulation and the Retail Distribution Review

Regulation of the distribution of retail investment products came under the spotlight in the FSA's Retail Distribution Review (RDR) which ran from 2007 until implementation in December 2012. The review looked at all aspects of this regime including professional standards, professional indemnity rules, remuneration, and service labeling. It culminated in an overhaul of the Conduct of Business (COBS) sourcebook as well as other related aspects of the FCA Handbook. The scope of the RDR was limited to those performing the regulated activity of transacting and/or giving advice on retail investment products under UK and EU regulatory definitions.

Generic financial advice and guidance

The concept of a free, nationally available money guidance service has become an integral part of the Government's national strategy for financial capability. In 2007-2008, the Government undertook a feasibility study which explored in detail practical issues on the concept and delivery, and included a series of small pilots in towns in the North of England, and then launched the Money Advice Service (MAS) in late 2010.

Creating and implementing generic advice has not been without significant debate over the practicality of giving consumers personalised information about the broad range of financial products and their general financial situation without straying into the area of regulated advice.

Mortgage Market Review

Later in the RDR process, and partly on the back of the financial crisis, the FSA also undertook a review and reform of the reform mortgage market regulations. It resulted in significant changes to defining advice in a mortgage context, and settled on a broad definition that catches any sale that stems from any sort of consumer-seller interaction, in which case the seller will have to assess suitability. Lenders had to demonstrate detailed income/expenditure stress-test analysis for each application, execution-only is possible in limited situations, and the non-advised regime and income self-certification mortgages were scrapped.

Chronology of key events in recent advice regulation

2007-2012: Financial Services Authority's RDR into how retail investment products are transacted. Looks at a range of issues including professional standards for advisers, service description of advisers (independent versus non-independent) and remuneration.

2008: Treasury review of "generic financial advice" undertaken by Otto Thoresen. Recommends creation of national service providing unregulated guidance on household financial matters that is available free at point of use.

2010: Government launches the Money Advice Service (MAS) following the Thoresen Review recommendations.

Dec 2012: RDR goes into force with changes to the FSA Conduct of Business and Training & Competence sourcebooks.

2010-2014: debates about the availability of professional advice to consumers as a result of the RDR, including claims of a growing "advice gap". Includes a Treasury Select Committee inquiry.

2010-2014: debates about the effectiveness of MAS, especially among the financial advice sector and others.

2012-2015: debates about creation of "Simplified" financial advice, including several clarification statements by the FCA on the boundaries between advice and guidance in accordance with EU legislation.

2014: Chancellor's Budget statement announces reforms to private pension decumulation taxation including the "guidance guarantee" to be in force by April 2015.

2014: Government undertakes a review of the Money Advice Service by Christine Farnish, which reported in May 2015 recommending significant changes to remit and role. The Government commits to some of the recommendations, while others are reviewed in more detail by MAS itself.

April 2015: Chancellor's pension reforms come into force.

Financial Advice Market Review

The Treasury and FCA announced the FAMR on 3 August in a press release and statement from City Minister Harriet Baldwin. Its enclosed terms of reference set out objectives, scope, outputs and review governance.

In terms of scope, the FAMR has gone very wide. The terms of reference state that the review will “consider the current regulatory and legal framework governing the provision of financial advice and guidance to consumers and its effectiveness in ensuring that all consumers have access to the information, advice and guidance necessary.” So there appears to be little or no distinction between “advice”, “guidance” and even information.

More importantly, it least initially, the review will go much wider than investments to include mortgages/consumer credit and general insurance. This scope gives rise to questions about:

- the implications of the RDR including the FCA’s post-implementation review which began last December;
- the implications of the regulator’s mortgage market review which just looked at rules around advice for regulated mortgage contracts;
- the extent to which consumers access financial advice for unsecured credit agreements; and
- whether general insurance mediation also constitutes advice, and the implications of ongoing activities such as the EU Insurance Distribution Directive.

The review explained that the initial evidence gathering will have a broad scope across not just investments but other areas of retail financial services advice and guidance before narrowing down to consider “those areas where the so-called advice gap would be most acute”.

The review will also look at the provision and effectiveness of advice across retail markets “to consider whether differences in regulatory requirements around advice lead to unintended consequences”. However, given the wide range of types of advice situations across the full spectrum of financial advice and guidance services, and across pensions, mortgages and general insurance; obtaining such comparable examples might be quite difficult.

Governance

The FAMR is being conducted jointly by HM Treasury and the Financial Conduct Authority, reporting into Charles Roxburgh (HMT Director-General Financial Services) and Tracey McDermott (FCA Acting CEO).

It will comprise an independent expert panel of 12-15 senior figures representing providers, financial advisers and consumer representatives, and chaired by Nick Prettejohn (Chairman of Scottish Widows and former Chair of the Financial Services Practitioner Panel).

Outputs

Although the scope has been deliberately wide to begin with, the Terms of Reference still set out possible outputs, namely “reforms to empower and equip all UK consumers to make effective decisions about their finances” and that will “facilitate the establishment of a broad based market for the provision of financial advice to all customers.”

The review also mentioned five key outputs that could be of particular interest:

Terms of Reference	Implications
Set of principles to govern the operation of financial advice	How will these principles differ from existing conduct of business rules that cover advice on retail investments, mortgages and insurance?
Measures to ensure standards of behaviour for firms within all types of financial advice markets are in accordance with those principles	See above
Proposals as to whether the regulatory perimeter for financial advice should be amended, taking into account European legislation	Will this have profound implications on the advice-guidance boundary? Will services offered by the Money Advice Service and Pension Wise be affected?
Examination of the role that might be played by regulatory carve-outs such as a so called safe-harbour	This may be in response to concerns about advisers unwilling to advise on certain products for fear of subsequent regulatory or Ombudsman rulings/interpretations. However what about the regulatory risk of offering a safe harbour for practices that might subsequently be deemed unacceptable?
Consideration of the proportionality of rules and their impact on affordability and availability of financial advice and products	What new, cost-effective routes might evolve if regulatory rules are simplified?

Next steps

Following an initial evidence gathering and analysis through the summer, the Government and FCA will publish a “consultation in Autumn 2015” which “will close by end 2015 with a view to producing proposals ahead of Budget 2016.”

If the consultation adheres to the standard three-month rule, then the consultation would be expected around late September or early October.

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