

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: Thematic review – Inducements & Conflicts of Interest

Lead regulator: FCA

Date of assessment: 06/03/17

Commencement date: 25/06/15

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? Whole of UK

Brief outline of proposed new or amended regulatory activity

We published a webpage on 18 April 2016 setting out the key findings of the thematic review which had assessed payments and benefits provided to retail investment advisers by providers of retail investment products. We assessed the compliance of 23 firms with the requirements of the FCA Handbook (mainly COBS 2.3).

This review was intended to assess the standard of compliance with regulatory requirements that had been in place for a considerable period of time. The review was not intended to set new standards and the webpage stated that we were reminding firms of our expectations under the current rules.

Which type of business will be affected? How many are estimated to be affected?

Product providers and intermediaries who carry out MiFID business or carry out regulated activities in relation to a retail investment product.

We estimate the number of firms is:

Financial advisers: 5730

Asset managers: 1840

Wealth managers: 230

Life insurers: 150

Investment Platform Providers: 30

Total: 7980.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	2016	10	-2.35	0.3	1.5

Please set out the impact to business clearly with a breakdown of costs and benefits

The thematic review identified significant potential non-compliance with FCA requirements and factually reported the key types of non-compliance that were observed on the FCA Website. Firms were asked to consider the findings and expectations and ensure they meet the current requirements.

For all cost estimates below we have assumed the changes will be applied by experienced compliance staff at an estimated rate of £48/hour. The 2016 Robert Half salary guide estimates that a compliance manager in the risk and compliance function of a financial services company based in London earns between £70,000 and £104,000 per annum. Based on working 8 hours per day for 260 days each year our rate equates to £100,000 per annum and is therefore considered a suitably prudent figure for the purposes of our estimates.

Familiarisation costs

The webpage contained 755 words. At a reading speed of 100 words a minute*, it would take around 8 minutes to read. Therefore we estimate the familiarisation cost for all affected businesses was:

$$\text{£48 per hour} \times (8 \text{ minutes} / 60\text{minutes}) \times 7980 \text{ businesses} = \text{£51k}$$

GAP analysis costs

This section estimates the costs related to the assumed average time to review relevant sections of procedures documents and make minor clarifications to internal guidance. We assume that for each firm this will take 6 hours. Therefore we estimate the GAP analysis cost for all affected businesses was:

$$\text{£48 per hour} \times 6 \text{ hours} \times 7980 \text{ businesses} = \text{£2.3m.}$$

(We have estimated an average gap analysis will take six hours based on the procedures and process documents submitted for our review. These varied considerably in length and complexity depending on each firm's business model, but based on a typical submission we consider that it would take around two hours to read through and identify potential changes, and a further four hours to write up a gap analysis report and recommendations.**)

* "EFTEC (2013), "Evaluating the cost savings to business from revised EA guidance – method paper".

** We arrived at this estimate based on our broader supervisory knowledge of how firms respond to our thematic reviews and also on supervisory conversations with firms about their procedures relating to this specific issue

Remediation costs

We consider that this publication creates no costs for business because the expectation set out in it are wholly inherent in the existing rules and add no new obligations to those rules for any firms.

This is clear from the following table which sets out all of the published findings and expectations and explains the rules or guidance from which they derive:

Our findings & Expectations	Existing rule/guidance
<p>Hospitality provided or received did not always appear to be designed to enhance the quality of service to the client. When providing or receiving a non-monetary benefit we expect firms to consider and assess whether all aspects of the benefit are designed to enhance the quality of the service to the client including the location and nature of the venue, and those activities which are not conducive or required for business discussions, e.g. sporting and social events and activities.</p>	<p>Common sense application of COBS 2.3.1R (2b (ii)) - A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than: in relation to MiFID or equivalent third country business or when carrying on a regulated activity in relation to a retail investment product, or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client.</p>
<p>Hospitality that is not designed to enhance the quality of service to clients is offered in connection with other benefits that do meet the requirements. Where an activity or event provides a number of non-monetary benefits, you must consider each benefit separately. Just because one benefit provided by the firm is designed to enhance the quality of service to a client and is capable of being paid or received without breaching the client's best interest rule does not mean that another benefit (that does not meet these requirements) can be included in or alongside the compliant activity or event.</p>	<p>Common sense application of COBS 2.3.1R (2b (ii)):</p> <p>A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than: in relation to MiFID or equivalent third country business or when carrying on a regulated activity in relation to a retail investment product, or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client.</p>
<p>Hospitality logs did not always record relevant detail or were not well maintained. Sufficient detail should be recorded to ensure effective monitoring and compliance.</p>	<p>Common sense application of:</p> <p>SYSC 9.1.1R: A firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the appropriate regulator or any other relevant competent authority under MiFID or the UCITS Directive to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.</p> <p>COBS 2.3.17R: (1) A firm must make a record of the information disclosed to the client in accordance with COBS 2.3.1R (2)(b) and must keep that record for at least five years from the date on which it was given.</p> <p>(2) A firm must also make a record of each benefit given to another firm which does not have to be disclosed to the client in accordance with COBS</p>

	2.3.1R (2)(b)(ii), and must keep that record for at least five years from the date on which it was given
Advisory firms incur costs when facilitating training or educational material supplied by product providers. Providers may make payments to advisory firms to cover these costs, but these payments should only cover the costs incurred, and should not include a profit for the advisory firm. Payments in excess of the costs incurred are likely to be an inducement and are not allowed.	Common sense application of COBS 2.3.1R(2b (ii)) : A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than: in relation to MiFID or equivalent third country business or when carrying on a regulated activity in relation to a retail investment product, or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client.
MiFID firms were not providing clients with an indication of the value of allowable benefits provided. When disclosing a summary of the allowable benefits provided, MiFID firms must ensure clients are given an indication of the value of those benefits in order for the client to be aware of the possible level of inducements. Clients may then decide whether to go ahead with the investment or seek more detailed information.	Common sense application of COBS 2.3.1R (2b) : A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than: (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, if: (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

As compliance with regulatory requirements is assumed as part of the Enterprise Act, any costs incurred by firms to bring themselves to a compliant standard are not included. Therefore we have estimated a cost to business of zero.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

Link to Robert Half salary centre

<https://www.roberthalf.co.uk/news-insights/salary-centre-2016>