



Guernsey Financial
Services Commission

IMPLEMENTATION OF GUERNSEY FINANCIAL ADVICE STANDARDS

**FEEDBACK ON
THE CONSULTATION PAPER ISSUED
BY THE GUERNSEY FINANCIAL
SERVICES COMMISSION
ON 23 SEPTEMBER 2013**

FEEDBACK ON

CONSULTATION PAPER

This paper reports on the responses received by the Commission on the Consultation Paper entitled Implementation of Guernsey Financial Advice Standards issued by the Commission on 23 September 2013.

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Glossary of Terms

The glossary of terms provides a definition of terms in this report.

AIR	Authorised Insurance Representative
AIR Code	Code of Conduct for Authorised Insurance Representatives
C&E	Commerce and Employment Department
CPD	Continuing Professional Development
the Commission	Guernsey Financial Services Commission
FA Code	Code of Conduct for Financial Advisers
FCA	Financial Conduct Authority (formerly Financial Services Authority)
FCA level 4	Relevant qualifications at level 4 on the Qualifications and Credits Framework published by Ofqual in the UK
Financial Adviser	Natural person appointed to give advice on retail investments products to retail clients
GIC	Guernsey Insurance Certificate
GFAS	Guernsey Financial Advice Standards
IMIL	The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
IMIL COBR	The Licensees (Conduct of Business) Rules, 2009 issued under the IMIL
Licensee	Any business which holds or is deemed to hold a licence under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended or The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
New Staff	Staff that have not previously worked for an investment licensee or a licensed insurance intermediary that are employed after the implementation of GFAS and do not hold a relevant level 4 qualification.
POI Law	The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended.
POI COBR	The Licensees (Conduct of Business) Rules, 2009 issued under the POI Law
Relevant level 4 qualification	A qualification deemed acceptable by the Commission as complying with FCA level 4
Retail Investment Product	Falling under Schedule 1 of POI and Schedule 1 of IMIL, excluding permanent health, credit life assurance and any contracts on human life that are payable annually
RDR	Retail Distribution Review conducted by the UK Financial Services Authority
SPS	Statement of Professional Standing

1: Executive Summary

1.1 Background

The Commission published a consultation paper on the proposed implementation of the Guernsey Financial Advice Standards (“GFAS”) on 23 September 2013. The consultation paper set out the Commission’s proposals to meet the key areas identified by the Commerce and Employment Department (“C&E”) relating to the giving of investment advice.

This paper provides feedback on the responses received in respect of the GFAS consultation paper and sets out the policy conclusions drawn by the Commission as a result of these representations.

1.2 Feedback on the proposals contained in the GFAS Consultation Paper

The Commission received 26 responses to the consultation paper.

The following table identifies the number of questions answered by these respondents.

<u>Number of questions answered</u>	<u>Number of respondents</u>
1	8
3	2
4	3
5	2
9	1
15	1
17	<u>9</u>
Total number of respondents	<u>26</u>

The Commission is grateful to all respondents for taking the time to consider the consultation paper and respond. These respondents are listed in Appendix A.

1.3 Summary of the issues

The consultation has highlighted the anomalies between requirements of the POI COBR and IMIIL COBR and the AIR Code and the difficulties faced by Licensees in being subject to these different requirements. The Commission intends to streamline such requirements through the implementation of GFAS and will shortly be issuing a consultation paper which will include a draft of rules and codes, as explained in this paper.

The consultation paper will also propose a licence condition on POI licensees with retail clients such that these licensees must appoint staff members who they authorise to advise retail clients.

A licence condition is also proposed for POI licensees who do not have retail clients which will formally restricted the licensee from advising retail clients.

Those POI licensees who do not have authorised advisers will be unable to advise retail clients, although execution-only services may be provided.

The proposals for these conditions will be fully explained in the consultation paper but are required to implement GFAS within the timescale established by C&E and, without which, would require amendment to the POI Law, which is not achievable in the timescale for implementation.

The main issues identified in connection with the GFAS proposals were as follows:

- 1.3.1 Definition of the products subject to the GFAS proposals;
- 1.3.2 The inconsistency between the definition of advising in the POI Law and advice in the IMIL;
- 1.3.3 The use of the term “independent”;
- 1.3.4 The content of appendix 1 in the consultation paper regarding acceptable qualifications; and
- 1.3.5 The timetable for qualification of new advisers and guidance on supervision.

The Commission’s response on each of these matters is set out in section 2.

2: Summary of Responses

2.1 Structure of section 2

The following sections set out the Commission's proposals, the questions posed in the GFAS consultation paper, a summary of the responses received and the Commission's responses to those representations.

2.2 Response to questions raised relating to the definition of *long term single premium products*, *long term regular premium products* and *long term pure protection products*

2.2.1 The Commission proposed that the following definitions are included in the IMIIL COBR with reference to the definitions in Schedule 1 to the IMIIL.

“Long term single premium products (where the premium is paid in one single lump sum) – linked long term business; and capital redemption contracts (each as defined in Schedule 1 to the IMIIL).”

“Long term regular premium products (where the premium is paid in regular instalments (for example monthly or quarterly) – linked long term business; and capital redemption contracts (each as defined in Schedule 1 to the IMIIL).”

“Long term pure protection products (formerly long term life products) – long term business (as defined in Schedule 1 to the IMIIL) where the benefits are not determined by reference to -

- a) the value of, or the income from, property of any description, or,
- b) fluctuations in, or an index of, the value of property of any description.”

2.2.2 The Commission's intention was that the new rules and codes will not apply to advice in respect of *Long term pure protection products*.

Question 1

Do you envisage any practical difficulties in applying these definitions? If so, please provide examples to illustrate your comments.

12 responses to this question were received, 8 of which did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) providing a full definition of the products that are intended to be captured by GFAS;
- (b) clarification on whether annuity contracts were intended to be excluded from the higher qualification standard as, within the proposals, *long term pure protection products* would not include annuities as there is no investment element in an annuity contract;
- (c) the inclusion of *long term pure protection products*, for example payment protection insurance and critical illness insurance within the scope of GFAS to ensure that clients do not receive inferior advice from less qualified advisers as poor advice in these areas could result in cost and anxiety on products deemed to be “simple”;

(d) refining the definition of long term business to be in line with the UK and Jersey, identifying the following anomalies:

- Group life contracts (which are usually annually renewable) are considered as general insurance for a UK or Jersey regulated intermediary. The current definition in Guernsey does not have a minimum term and therefore effecting or carrying out contracts of insurance on human life requires a long term licence.
- A permanent health insurance or long term disability policy which is usually only offered by an insurer as a rider to a life contract and, providing the permanent health insurance or long term disability policy contract is expressed to be in effect for a period of not less than five years, would not be classed as long term business. The effect of this is that an IFA holding a long term licence could offer the life contract but would need general insurance licence to offer the group permanent health insurance or long term disability policy contract.

Commission response

(a) Products falling within the scope of GFAS are to be defined as “retail investment products”. This definition will be included in the POI COBR and the IMIIL COBR as retail products falling under Schedule 1 of the POI and Schedule 1 of the IMIIL. Annually renewable contracts of insurance on human life, permanent health insurance and credit life assurance which form part of Schedule 1 to the IMIIL will be specifically excluded to fall outside the scope of GFAS.

The Commission will not therefore introduce the definitions set out in 2.1.1 above.

(b) Annuities are considered by the Commission as being *long term single premium products* in the consultation paper and therefore included within the higher qualification standard. The definition in (a) above makes clear that annuities are within the scope of GFAS.

(c) Payment protection insurance and critical illness cover were not specifically identified within the consultation paper. The Commission does not propose to extend the scope of GFAS to cover such advice and permanent health insurance will be excluded from the scope of GFAS under the definition of retail investment products. However see (d) below.

(d) The Commission will look to review the descriptions of long term business in Schedule 1 to the IMIIL, in particular in relation to group life contracts, at the next available opportunity.

Question 2

Is there anything in the proposals that is unclear? If so, please provide examples.

10 responses to this question were received, 9 of which did not raise any issues.

One respondent:

- (a) commented that the consultation paper did not specifically define how the proposed new rules and codes would apply to controlled investment business and sought confirmation that the POI definition of controlled investments remained unaltered;
- (b) suggested clarity on the overall label for products caught by the proposals and suggested the term “regulated products”.

Commission response

- (a) No changes are to be made to the POI definition of controlled business. However to implement these proposals, changes will be made to the POI COBR and IMIIL COBR to define the products to which these rules apply.

Having given consideration to the difficulties faced by those licensed under both the POI Law and IMIIL through the differing requirements of the respective COB rules, the Commission intends to streamline the IMIIL COBR to be more in line with the POI COBR.

Under the IMIIL, individuals who advise clients or arrange contacts of insurance must be an AIR. Their actions and conduct are the responsibility of the licensee by whom they are employed. The POI Law contains no similar provision. In order to address this disparity the Commission intends to introduce a requirement for POI licensees to appoint staff members who provide advice to retail clients on “retail investment products” as Financial Advisers. This requirement will be introduced by way of a condition on the licence of POI licensees who are licensed for the activity of advising.

A condition on the licence will also be introduced for those POI licensees who do not advise retail clients creating a formal restriction to this effect.

The Commission also proposes to amend the POI COBR to introduce a notification requirement in respect of Financial Adviser appointments and any subsequent changes to these appointments.

The Commission also intends under IMIIL, to issue a code for AIRs providing advice on “retail investment products”. This code will be known as the Code of Conduct for Financial Advisers (“the FA Code”).

The Commission would also wish to introduce a similar code under the POI Law. However this law does not provide a power for the Commission to issue codes of conduct and consequently the Commission intends to introduce a schedule to the POI COBR (“the Schedule”) setting out requirements for investment advisers advising retail clients. This schedule will mirror the content of the FA Code.

The Commission will shortly be issuing a further consultation paper which will include drafts of the condition for relevant POI licensees, a revised POI COBR (including Schedule), a revised IMIIL COBR, a FA Code and a revised AIR Code. If possible, and subject to any responses to the second consultation paper which the Commission receives, the Commission would propose that a revised POI COBR (including Schedule), an IMIIL COBR, a FA Code and a revised AIR Code would be introduced with effect from 1 January 2015. However, the Commission will, of course, consider all responses received in respect of the second consultation prior to committing to issuing any such rules and codes.

- (b) See (a) above.

2.3 Response to questions raised relating to the definition of Client

2.3.1 The Commission’s intention was that the definition of retail client, professional client and eligible counterparty included in rule 7.3, 7.4 and 7.5 respectively of the POI COBR would be included in the IMIIL COBR.

Question 3

Do you envisage any practical difficulties in applying the enhanced definitions of client? If so, please provide examples to illustrate your comments.

10 responses to this question were received. No issues were raised.

Commission response

The IMIIL COBR will be revised to include the same definitions as in the POI COBR.

Question 4

Is there anything in the proposals that is unclear? If so, please provide examples.

10 responses to this question were received. No issues were raised.

2.4 Response to questions raised relating to the definition of *Advising* and *Advice*

2.4.1 The Commission's intention was to retain the definition of *advising* in the POI Law.

2.5.2 The Commission's intention was also to retain the definition of *advice* in the IMIIL.

Question 5

Is there anything in the proposals that is unclear? If so, please provide examples.

11 responses to this question were received, 7 of which did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) introducing a common definition for advising/advice to ensure consistency in application of the new standards;
- (b) extending the definition of advice in the POI Law to include general recommendations in relation to investments or a portfolio of investments and not limited "to the purchase, sale, subscription for or underwriting of particular investments or advice as to the exercise of rights conferred by particular investments." An example given was that advice may be given on a generic hedging strategy to mitigate currency exposure in an investment portfolio;
- (c) clarifying the difference between advising or arranging in relation to a contract of insurance and whether arranging falls within the scope of the FCA level 4 qualification requirement.

Commission response

- (a) The Commission agrees with this suggestion, however amending the definitions of advising/advice will not be possible within the proposed timescale for implementing GFAS from 1 January 2015. This is because the terms "advising" and "advice" are defined in the primary laws, which generally require considerably more time to amend, requiring the approval of the States of Guernsey and amendment by legislative process.

The Commission will keep this representation in mind when the primary laws are next amended.

(b) See (a) above.

(c) GFAS is currently intended to apply in respect of advising/advice. Arranging an execution-only transaction will fall outside the scope of GFAS.

At this stage the Commission does not intend to extend the scope of GFAS as this exceeds the areas identified to the Commission by the Commerce and Employment Department.

2.5 Response to questions raised relating to financial advice

2.5.1 The Commission's intention was to introduce a requirement in the POI COBR and the AIR Code requiring disclosure, in writing, to the client regarding the extent of products from which recommendations are made, for example in the written advice.

2.5.2 The Commission's intention was to introduce a requirement in the POI COBR and the AIR Code requiring disclosure, in writing, to the client regarding whether the licensee is able to recommend products from a single provider, a limited range of providers or from the whole market.

2.5.3 The Commission's intention was to introduce a requirement in the POI COBR and the AIR Code requiring disclosure of a description of the services provided by the licensee.

2.5.4 The Commission's intention was to introduce a requirement in the POI COBR and the AIR Code disallowing the use of the term "independent" as the use of this term is confusing and unhelpful to retail clients.

Question 6

Do you envisage any practical difficulties in applying enhanced disclosure of:

- a) products; and**
- b) services?**

If so, please provide examples to illustrate your comments.

10 responses to this question were received, 7 of which did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) including within the scope of GFAS, categorisation for discretionary or advisory services being provided;
- (b) the definition of "the whole market" and whether this is intended to mean the whole UK market or the whole market globally;
- (c) clarifying if written advice would include email communication;
- (d) clarifying whether when products or services are brokered from one product provider and that provider has sourced the products from the whole of market, disclosure should be for the primary sole provider or the secondary whole of market;
- (e) whether there is the need for the adviser's written advice to summarise the Key Features Document, prepared by the providers to summarise their full policy wording. This respondent did not believe that this should be included in the written advice given by the financial adviser.

Commission response

- (a) This will be included in the FA Code.
- (b) Please refer to the Commission's response regarding the representations received on Question 7 below.
- (c) Email communication is intended to be within scope. This will be set out in the FA Code.
- (d) Client disclosure should make clear to the client how the product is being sourced. This will be set out in the FA Code.
- (e) Retail clients should be provided with information that enables them to make a decision on the recommendation being made. Referring a retail client to product provider literature places the onus on the client to read and understand this material. As the financial adviser is acting as the agent of the client it is incumbent on the financial adviser to present a balanced view of the advantages and disadvantages within his recommendation; this would incorporate relevant facts extracted from the provider information. This will be set out in the FA Code.

Question 7

Do you envisage any practical difficulties through the disallowance of the use of the term “independent”?

15 responses to this question were received, 7 of which did not raise any issues.

6 representations were strongly against the Commission's intention to disallow the use of the term “independent”. Representations included that:

- (a) the proposal to disallow the use of the term independent is inconsistent with that of the UK and Jersey. Furthermore to be a true ‘independent’ is extremely difficult and to maintain that status requires very heavy investment in research, systems, controls and training;
- (b) “independent” is a well-established industry term and if disallowed could result in another term being adopted locally which potentially may not be as clear internationally and may be even less clear to retail clients;
- (c) the evolution of the term independent financial adviser (“IFA”) has become a general industry standard and is reasonably recognised in wider parlance. Furthermore those who simply do not understand the generic usage of the term would be no wiser with an alternative term;
- (d) the word “independent” does not significantly alter the perception of clients;
- (e) the term IFA is recognisable to the general public and that disallowing the use of the word “independent” would compromise business;
- (f) to disallow the word “independent” would be misleading and incorrect as local advisers offer independent advice in a restricted market. This is distinctly different to offering restricted advice in a wider market such as the UK where a lot more products and providers are available;
- (g) the “independent” description is key to defining activities undertaken and where advisers interact with the public and corporate entities. The title IFA defines the difference between activities

undertaken (and licence) and the product providers or direct selling companies, with great efforts have been made to promote the “independent” brand in the UK and Channel Islands. Also, by the raising of standards through GFAS, the industry is taken closer to ensuring that true independence is achieved.

Commission response

Following consultation with industry, the Commission no longer proposes to disallow the use of the term “independent”. The Commission will enhance the requirements for written advice to disclose how the product has been sourced through identifying the advice being given (including any limitations on this advice) and the range of product providers and the scope of their products.

Enhanced disclosure requirements will also extend to conflicts of interest to ensure the client is fully aware of any potential conflict which may be caused by a lack of independence.

Question 8

Is there anything in the proposals that is unclear? If so, please provide examples.

10 responses to this question were received, 2 of which did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) further clarification in respect of “Whole of market” as this term would suggest “Independent” which would be disallowed in the GFAS proposals. This respondent considered that the “whole of market” could not be realistically achieved and if there is a need for this category to be included.

The respondent highlighted that retaining “whole of market” would raise issues on how this would be monitored by both the adviser firm and the regulator and as to how the adviser firm would evidence that they have properly considered whole of market rather than limited range and that “whole of market” is effectively “independent” by another name.

The respondent suggested that consideration be given to alternative descriptors which would negate the use of the terms “whole of market” or “independent” such as “advice on products from a single provider” or “advice on a selected range of products/providers”;

- (b) further clarification on the definition of ‘whole of market’ and the requirements to satisfy the use of that description for investment management and advisory clients.

The respondent also queried if they deemed a particular product range as unsuitable, if it would preclude them from describing their investment advice as ‘whole of market’.

Commission response

In relation to (a) and (b), please refer to the response to Q7 above.

2.6 Response to questions raised relating to educational requirements and transitional arrangements

2.6.1 The Commission’s intention was to introduce a requirement in the POI COBR requiring those staff employed by investment licensees, *advising a retail client*, to hold such qualifications to the minimum standard as determined by the Commission.

2.6.2 The Commission's intention was to issue a list of qualifications compliant with FCA level 4 which will be the minimum standard of qualification to be held by relevant staff of investment licensees and AIRs. The proposed list of relevant level 4 qualifications was set out in appendix 1 to the consultation paper. Should other qualifications be deemed by the Commission to be acceptable at FCA level 4, this list would be extended.

2.6.3 The Commission's intention was to retain the mandatory requirement for all relevant AIRs to hold the GIC.

2.6.4 *Transitional arrangements*

The Commission's intention was to allow a transitional period of 1 year after the implementation date (currently proposed to be 1 January 2015) of the new rules by which all current staff must have obtained a qualification as listed by the Commission.

This provided relevant staff over 2 years from the date of release of the first consultation paper to pass the relevant exams and provided an allowance for possible re-takes. Grandfathering is not to be permitted. No discretion by the Commission will be allowed.

This will create two tiers of staff for a short specified period of time i.e. those that had a relevant level 4 qualification prior to the implementation date and those who do not and are subject to the transitional arrangement. At the end of the transitional period, all current relevant staff will be required to hold a relevant level 4 qualification.

2.6.5 *Educational requirements for New Staff*

The Commission's intention was to amend the POI COBR and the IMIIL COBR to allow New Staff to provide advice to retail clients, subject to the following:

1. The staff member must have completed the regulatory module of a qualification listed by the Commission; and
2. The staff member is supervised at all times by another staff member who holds a relevant level 4 qualification; and
3. The staff member must have obtained the relevant level 4 qualification within 30 months of their appointment as a financial adviser or AIR.

In calculating the 30 month period, a licensee must aggregate periods of time spent during different periods of relevant employment (i.e. a person cannot spend 30 months employed as a Financial Adviser by one licensee, fail to obtain the relevant level 4 qualification and then move to another licensee and have the 30 month period start again).

If the staff member does not obtain a relevant level 4 qualification within the 30 month period they must cease providing advice to retail clients until the relevant level 4 qualification is obtained.

2.6.6 *Continuing Professional Development ("CPD")*

The Commission's proposal was to amend the POI COBR and the IMIIL COBR to include a requirement for CPD mirroring that currently required by the FCA in respect of retail investments advisers. The FCA's current requirements are to complete a minimum of 35 hours compulsory CPD each year (of which at least 21 hours must be structured CPD).

2.6.7 *Statement of Professional Standing (“SPS”)*

The Commission’s intention was to amend the POI COBR and the IMIIL COBR to include a requirement for licensees to obtain a Statement of Professional Standing (“SPS”) for relevant staff on an annual basis by 31 March.

Question 9

Do you agree with the content of the list of acceptable qualifications set out in Appendix 1? If not, please provide details to illustrate your comments.

20 responses to this question were received, of which 4 did not raise any issues.

13 respondents commented that the list of qualifications in Appendix 1 of the GFAS consultation paper (“Appendix 1”) was too restrictive.

The representations made were that consideration should be given to:

- (a) extending the list of qualifications in Appendix 1 to be in line with the FCA Appropriate Qualifications table thereby allowing more options for gap-fill on currently held qualifications. Representation was made for a consistency of approach to qualifications between the proposals under GFAS and those set out by the FCA and in the other Crown Dependencies;
- (b) extending the acceptable qualifications to include advanced diplomas or fellowships in the professional qualifications included in Appendix 1;
- (c) whether qualifications, from non-UK professional bodies or institutions, that are not listed in Appendix 1 of the consultation paper or in the FCA Appropriate Qualifications table, will be acceptable as meeting the required standard;
- (d) extending qualification requirements to include the compulsory requirement to pass additional relevant modules in order to give advice in these areas. For example, an individual qualified to give advice on securities and wishing to advise on long term insurance products should be required to pass the GIC and a relevant packaged product module.

Commission response

- (a) The Commission has extended the content of Appendix 1 of the GFAS consultation paper to include all acceptable qualifications, which may be supplemented by gap-fill, as set out in the FCA Appropriate Qualifications table. This revised list, the Acceptable Qualifications Table, is available on the Commission’s website.
- (b) Advanced diplomas and fellowships are now included in the Acceptable Qualifications Table and may require an element of gap-fill.
- (c) The Commission understands that certain accredited bodies may map across such qualifications to identify appropriate gap-fill which when completed and certified by the accredited body, will enable the accredited body to confirm that the appropriate standard has been met.
- (d) Advice may be given by advisers who hold relevant qualifications in that area of advice. Where a qualified adviser does not hold the relevant module, another suitably qualified adviser should provide

the advice. This is clarified in the Guidance Note on Financial Adviser Supervision Schemes issued by the Commission and available from its website.

Question 10

Do you envisage any practical difficulties, for existing staff, in achieving the required qualification by 1 January 2016? If so, please provide examples to illustrate your comments.

15 responses to this question were received, 12 of which did not raise any issues. The UK professional bodies who responded to the consultation paper have each confirmed that FCA level 4 can be achieved within the implementation period in the GFAS proposals.

The representations made by the other respondents were that consideration should be given to:

- (a) ensuring that existing advisers are clear as of now that FCA level 4 qualification, required by 31 December 2015, is non-negotiable as this date will not be achievable if solely mandated in the changes to be made;
- (b) extending the time period for existing advisers to acquire FCA level 4 qualification. Concern was raised regarding the availability of courses and exams being limited and the timescale being restrictive with no scope for having to re-sit any exams. The disparity between new and existing advisers was also highlighted with new advisers being given 30 months and existing advisers only 24 months (from a January 2014 start date) to qualify.

Commission response

- (a) Commerce and Employment has proposed that GFAS will take effect from 1 January 2015. The Commission's proposals have been communicated to the industry highlighting the qualification deadline.
- (b) As the UK professional bodies who responded to the consultation paper have confirmed that FCA level 4 can be achieved within the implementation period in the GFAS proposals, the Commission intends to retain the 31 December 2015 for existing advisers.

Question 11

Do you envisage any practical difficulties for New Staff in respect of:

- a) supervision;
- b) qualification period;
- c) having to cease to provide advice to retail clients if that person has failed to obtain a relevant level 4 qualification within 30 months of their appointment?

If so, please provide examples to illustrate your comments.

14 responses to this question were received, of which 5 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

a) Supervision

- (a) the provision of a clear definition of the role of supervisor and what tasks are expected to be performed under such a role together with a definition of qualified or competent adviser.

Representation was made that effective supervision is the backbone of an advisory training and development scheme and should also ensure that competence is maintained;

- (b) the provision of guidance by the Commission on its expectations regarding the requirement for a training and competency scheme for advisers and supervisors, including record keeping requirements;
- (c) ensuring there is a level playing field across the industry, for example that a new AIR should not see a client unsupervised without having passed the GIC or level 4 insurance based modules;
- (d) one respondent expressed concern due to availability of qualified supervisors, cost implications and the effect on new business whilst supervision is being carried out.

Commission response

- (a) - (d) A guidance note on Financial Adviser Supervision Schemes, including transitional arrangements, has been issued by the Commission. This guidance is available on the Commission's website.

b) qualification period

- (a) Two respondents suggested extending the time period in which new entrants should achieve FCA level 4 qualification to 36 months; one of these respondents referred to the progress of recent new graduates entering the insurance sector and their progression with studies. A further respondent commented that the timeline was very tight and another that, as the GIC would also be part of the qualification requirement, 48 months would be a more realistic deadline;
- (b) One respondent had understood that the 30 month period commences from the date that the regulatory module is passed.

Commission response

- (a) The UK professional bodies who responded to the consultation paper have confirmed that a 30 month time period is adequate time for a candidate to pass a level 4 qualification.

One of these bodies commented that this timescale could be challenging for someone with no relevant knowledge at the commencement of their employment. As clarified below, the 30 month period will commence on the employee's appointment as a Financial Adviser which is subsequent to successfully completing the regulatory module. This has the effect of extending the period of study to beyond 30 months.

- (b) New staff, having successfully completed the regulatory module, will be able to provide advice, under supervision, to retail clients. It is at this point that a Licensee may appoint this member of staff as a Financial Adviser and the 30 month time period will commence.

In order to address the disparity between the IMIIL and the POI Law the Commission intends to introduce a requirement for POI licensees to appoint staff members who provide advice on "retail investment products" as Financial Advisers and to notify the Commission of such appointments and any subsequent changes.

These requirements will be introduced:

- for the appointment by way of a condition on the licence of POI licensees who are licensed for the activity of advising; and
- for the notification by way of amendment to the POI COBR. This will include a transitional arrangement for the Commission to be notified of existing relevant advisers.

New Staff of POI licensees, having successfully completed the regulatory module, will be able to provide advice, under supervision, to retail clients; the Commission having been notified of such appointment. Guidance on supervision has been issued by the Commission as set out in Supervision above.

c) having to cease to provide advice to retail clients if that person has failed to obtain a relevant level 4 qualification within 30 months of their appointment?

- One respondent highlighted the need to consider the continued employment of individuals failing to obtain the relevant qualification who, after 30 months, would be protected by employment law. The respondent suggested that consideration may have to be given to employment contracts for staff providing investment advice to establish conditions for future employment in the event of failure to reach the qualification standards required or the option of only employing qualified staff;
- Increasing the frequency of examinations for the GIC, understood to be two sittings per annum, to enable an appropriately qualified FCA level 4 individual from the UK to be appointed as an AIR in a timely manner;
- One respondent queried how the 30 month period would be “policed” by the Commission to ensure that this was adhered to;
- One respondent proposed that exceptions for extenuating circumstances (for example an inability to study due to illness, family bereavement or child birth) should be made to the requirement to qualify within 30 months and that in these circumstances the Commission should be able to approve a request to extend the qualification period unless this is covered in the calculation of the aggregate period of employment.

Commission response

- This is a matter for licensees to address.
- The GIC is administered by the industry itself. It is examined online on a convenient date agreed with the GTA University Centre. Although the Commission intends to retain the mandatory requirement for anyone advising on long term insurance business to hold the GIC, this will not prevent appointment as a Financial Adviser prior to this examination being achieved, subject to supervision in accordance with the guidance issued by the Commission.
- Licensees will be required to monitor the 30 month period and notify the Commission if an adviser fails to obtain an appropriate level 4 qualification within this period. The Commission would also expect a staff member’s qualification progress to be monitored by the licensee through the licensee’s training and competency scheme.
- Having considered representations received, the calculation of the aggregate 30 month period will exclude period(s) of maternity leave and medically certified absence of longer than six weeks.

If the staff member has failed to attain a relevant FCA level 4 qualification as listed by the Commission on the Acceptable Qualification Table within this aggregate period, the staff member must cease providing advice to retail clients, including under full supervision, until the relevant qualification has been obtained. The licensee will be required to notify the Commission as the staff member will have ceased to be regarded as a Financial Adviser.

Question 12

Do you envisage any practical difficulties in undertaking CPD and obtaining a SPS? If so, please provide examples to illustrate your comments.

17 responses to this question were received, of which 8 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) a reciprocal recognition of advisory qualifications through the SPS or Channel Islands equivalent, in the first instance between Jersey and Guernsey, followed by a joint Channel Islands approach to the UK for reciprocal recognition. The respondent believed that this could avoid the need for the presence of a locally qualified person in the relevant jurisdiction to also be present and suggested that this should be considered by a wider consultation within Guernsey's finance industry;
- (b) clarification as to where the validation of CPD is to be undertaken and whether advisers will have discretion on the nature of the CPD;
- (c) whether the Commission will undertake its own inspection of adviser's CPD records;
- (d) clarification as to when a SPS would first be required and who would provide this;
- (e) confirmation from the Commission that it will recognise a SPS issued in respect of professional qualifications from another professional body;
- (f) one respondent commented that the number of courses available locally to meet CPD requirements is very restricted;
- (g) one respondent suggested that SPS could be provided locally by the Commission or the GTA University Centre or internally by licensees.

Commission response

- (a) This suggestion is outside the scope of the request from the Commerce and Employment Department.
- (b) The FCA-accredited professional bodies will validate the CPD of their members who will have to comply with the CPD requirements of the body who issues the SPS.
- (c) Responsibility for CPD lies primarily with the adviser and secondly with the licensee who, as part of the minimum criteria for licensing must ensure that staff, of adequate numbers, have adequate skills, knowledge and experience to undertake and fulfil their duties. The Commission, in its assessment of whether the licensee complies with this requirement may review the licensee's training and competency scheme and adviser CPD records.
- (d) Existing advisers are required to attain a relevant qualification at FCA level 4 by 31 December 2015. The FCA-accredited professional bodies have agreed in principle to issue Guernsey-specific SPS to

their Guernsey members in a similar manner to with their UK members. Advisers will therefore be required to hold a SPS with effect from their professional body membership renewal in 2016.

- (e) The Commission will recognise a Guernsey SPS that is issued by an FCA-accredited body.
- (f) This is a matter for the local branches of the FCA-accredited professional bodies and the local training providers. CPD requirement has previously been a member commitment for each member of a professional body. GFAS does not extend the volume or nature of the CPD required by these bodies.
- (g) The FCA-accredited professional bodies are willing to provide the SPS to their members. It would neither be appropriate nor cost-effective for the suggested options to be pursued.

Question 13

Do you envisage any practical difficulties with the timescale for licensees to receive a SPS from a relevant staff member?

13 responses to this question were received, of which 7 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) whether the professional bodies are able to meet the requirement to provide a SPS;
- (b) whether a fixed date for the employer to be provided with a SPS is appropriate as the professional body CPD year may be linked to when a member registers. This may not be a calendar year and so in theory the SPS could be up to 11 months old;
- (c) deadline requirements in respect of any delay by the professional body in the issue of a SPS outside the control of the adviser;
- (d) one respondent identified that if an adviser is not a member of a professional body they will be unable to obtain a SPS;
- (e) one respondent understood this question as suggesting that the SPS can be issued by an AIR's employer.

Commission response

- (a) The FCA-accredited professional bodies have agreed in principle to issue Guernsey-specific SPS to their Guernsey members in a similar manner to with their UK members.
- (b) The POI COBR and IMIIL COBR will be amended to include a requirement for licensees to obtain a SPS for relevant staff on an annual basis. In view of this representation, the fixed date requirement of 31 March will **not** be effected.

If a Financial Adviser has failed to provide the Licensee with their SPS within 3 months of the end of the adviser's CPD year, their appointment must be revoked and the adviser must cease to provide advice to retail clients. The Financial Adviser may be re-appointed if a SPS is subsequently received. The Licensee will be required to notify the Commission of any revocation of Financial Adviser appointments.

- (c) The timescale in (a) above addresses this matter.

- (d) Although in general this is correct, the Commission understands that application may be made to the Institute of Financial Services for a SPS irrespective of whether the adviser is a member or not as long as the adviser meets the eligibility criteria.
- (e) The SPS is to be issued to the adviser by an FCA-accredited professional body and in turn is to be provided to the adviser's employer.

Question 14

Is there anything in the proposals that is unclear? If so, please provide examples.

11 responses to this question were received, of which 6 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) requiring, after the implementation of GFAS, the absence of the appropriate qualification to be fully disclosed in writing to the client being advised by unqualified staff. This should apply not only to new staff meeting the conditions specified but also to existing advisors;
- (b) further clarity around any requirements to register qualified advisers and supervisors with the Commission with submission of Forms PQ or PD;
- (c) further clarification in relation to unqualified staff that are within the 30 month study period and the level of advice they may provide, for example, if these staff may have telephone conversations with clients or will they only be allowed to provide written / face to face advice which has been supervised;
- (d) an exemption for non-executive directors of POI Licensees that do not have physical presence and/or employees in Guernsey and who would generally outsource investment advice functions or appoint investment advisers to act on their behalf.

Commission response

- (a) The POI COBR requires a licensee, before providing investment services to a client, to disclose to him in writing the professional experience of the licensee, the regulatory history of the licensee (including any disciplinary history) and the basis or amount of its charges for the provision of those services. A similar requirement will be included in the revision of the IMIIL COBR.

The implementation of GFAS will result in the provision of advice on retail investment products to retail clients being given by individuals qualified to an acceptable standard or under supervision by such persons. As the Licensee will be responsible for the actions and conduct of the Financial Adviser the Commission does not intend to extend the disclosure requirement set out above.

- (b) Notification to the Commission regarding the appointment of, and changes to, Financial Advisers will be required.

The Commission does not currently propose to require the submission of Forms PQ or PD for those being appointed solely to the position of Financial Adviser.

A guidance note on Financial Adviser Supervision Schemes, including transitional arrangements, has been issued by the Commission. This guidance is available on the Commission's website.

- (c) Exemption will not be required as the non-executive directors will not actually be providing the advice themselves.

2.7 Response to questions raised relating to remuneration for providers

2.7.1 The Commission's intention was to retain the current requirements under the POI COBR to disclose to a client, in writing, the basis of, or the amount, of its charges for its services.

2.7.2 The Commission's intention was to amend the AIR Code to require disclosure in writing of the basis of, or the amount of, charges for services provided, in all cases of long term business, including in relation to long term pure protection products and non-retail clients.

2.7.3 The Commission's intention was to retain the current requirements under the AIR Code to explain that deductions are made by the product provider to cover the cost of life cover, commission, expenses, surrender penalties and other charges. However the Commission intended to change the AIR Code so that this explanation is in writing.

2.7.4 The Commission's intention was to not be prescriptive in its disclosure requirements but to assist the industry provided, in an appendix to the consultation paper, an example of disclosure adhering to the general principles of fairness, clarity and transparency.

Question 15

Do you envisage any practical difficulties in the written disclosure of remuneration?

11 responses to this question were received, of which 8 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) further guidance being issued by the Commission on its expectations regarding the rules under the prescriptive model of commission disclosure;
- (b) clarification, with particular reference to retirement annuity trust schemes as to who is the client that the disclosure needs to be made to, not just for the initial advice but for the on-going services;
- (c) one respondent did not agree that commission should continue to be allowed and cited the complete ban in the UK and Jersey as being more clear and transparent for clients. However another respondent commented that the ability to charge commission as well as fees, subject to full disclosure, as being a positive proposal.

Commission response

- (a) The Commission no longer intends to provide an example. However written advice will be required to include the disclosure of all charges in a way that is easily understood by the recipient and enables them to make an informed decision. These requirements will be set out by the Commission in the FA Code and in the schedule to the POI COBR.
- (b) Client and disclosure requirements in respect of retirement annuity trust schemes will depend on factors such as the deed itself, any ancillary agreements or indemnities and the Financial Adviser's ongoing relationship with the person(s) for whom the scheme was established. Financial Advisers should always prioritise the member's best interest above other considerations.

The detail of these requirements will be set out in the FA Code and in the schedule to the POI COBR.

Furthermore, rule 7 of The Retirement Annuity Trust Schemes Rules, 2010, as amended (“the RATS Rules”), which applies both when the RATS is formed and on a continuing basis, requires the trustee of a RATS to “ensure that its member is aware of fees and commissions which will apply to the assets at any level, including but not limited to the trustee’s own fees and fees or commissions payable from the assets to the trustee, any independent financial advisor, other intermediary, investment or fund manager or adviser. The disclosure to the member must cover both the fact and the amount of the fee or commission. If the amount is not known at the time disclosure is required to be made (for example because it is calculated on a percentage basis), an illustration of how the amount will be calculated must be given, and disclosure must then be made when the amount of the fee or commission is known.”

Rule 7 of the RATS Rules continues by stating that fees charged at arm’s length for transactions, such as stockbrokers’ share dealing fees, which are not shared with any other party need not be disclosed to the member unless the member so requests.

- (c) Commission will continue to be allowed subject to full disclosure in accordance with the request from the Commerce and Employment Department.

Question 16

Do you agree that the example should be issued by the Commission? If yes, do you have any comments on the example provided? If no, please provide examples to illustrate your comments.

12 responses to this question were received, of which 4 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

- (a) whether commission as stated in the commission example shown in appendix 2 of the consultation paper will be around in a couple of years’ time and therefore if this example is realistic. The adviser’s fee will replace commission as single premium bonds paying commission are unlikely to continue. Likewise continuing trail commission may be “turned off” at some future date. The commission rate in the example was also felt to be unrealistically high. Also RDR compliant contracts will no longer enable allocation rates exceeding 100%;
- (b) specific disclosure in respect of higher annual management charges during the life of a product as a direct result of commission payments being made up front;
- (c) other firms who may charge on a time or set fee basis and how these should be presented to the client and that the example provided would be less appropriate for discretionary investment managers;
- (d) one respondent commented that the example related to insurance products and is not appropriate for a business that does not take up front fees;
- (e) one respondent commented that the example provided will help to create an industry wide level of disclosure and therefore ensure a consistent approach with the industry;
- (f) one respondent identified failings in the example provided and, recommended that in order to clarify all charges, product provider charges should be included thus disclosing the precise nature of all commission and charges that may affect yield;

- (g) one respondent, although agreeing it was useful, suggested adding a caveat that it assumes that the product runs full term and in the event that early redemption occurs the commission would be reduced. Furthermore that the compounded impact of £4 per month in the example would be less than £500 upfront;
- (h) two respondents provided alternative examples in respect of the disclosure of charges.

Commission response

- (a) – (h) Although the example provided at appendix B of the consultation paper adheres to the general principles of fairness, clarity and transparency, in view of the representations received, it does not appear that this would be of assistance to the industry. As mentioned in the consultation paper the Commission does not intend to be prescriptive in its disclosure requirements however written advice will be required to include disclosure of all charges in a way that is easily understood by the recipient and enables them to make an informed decision.

Question 17

Is there anything in the proposals that is unclear? If so, please provide examples.

10 responses to this question were received, of which 9 did not raise any issues.

One respondent asked how the Commission proposed to deal with the disclosure of retrocession commissions as the consultation paper is silent on this issue and mentioned that the FCA disallows the payment of retrocessions. The respondent asked if the Commission will follow a similar line or if the Commission will require disclosure to be made to clients?

Commission response

Retrocession commissions will continue to be allowed. However disclosure of such commission should be made to clients in a way that is easily understood by the recipient and enables them to make an informed decision.

For the avoidance of doubt, all remuneration, from whatever source and to whomever it is paid, in relation to advice given to a retail client, should be identified to enable the retail client to be able to make an informed decision on that advice.

3: Next Steps

3.1 Progressing the implementation of GFAS

The Commission, having considered the representations received in response to the GFAS consultation paper, has now made the changes to its proposals and intentions that it considers appropriate as a result of these representations.

The Commission has issued the following on its website:

- 3.1.1 Proposed qualification table in respect of acceptable level 4 qualifications;
- 3.1.2 Guidance on training and supervision schemes for Financial Advisers.

The Commission will shortly be issuing a consultation paper which will include drafts of:

- 3.1.3 proposed revisions to the POI COBR, which will inter alia include the notification to the Commission of the appointment of Financial Advisers and any subsequent change to these appointments;
- 3.1.4 proposed revision to the AIR Code. This revised code will apply to AIRs advising on general insurance and products relating to permanent health, credit life insurance and any contracts on human life that are payable annually;
- 3.1.5 proposed revisions to the IMIIL COBR to replace that currently in existence;
- 3.1.6 the proposed FA Code;
- 3.1.7 the condition to be placed on the licence of POI licensees, licenced for the activity of advising, who do not advise retail clients creating a formal restriction to this effect; and
- 3.1.8 the condition to be placed on the licence of POI licensees, licenced for the activity of advising, that staff advising retail clients on controlled investments must be appointed as a Financial Adviser.

The Commission will request representations to this consultation paper to be made within a six week time period.

3.2 Timescale for the implementation of GFAS

The Commission will endeavour to finalise any amendments to the draft documentation set out above arising in response to the consultation paper during the third quarter of 2014 with these changes becoming effective from 1 January 2015.

Appendix 1

The Commission received responses to the GFAS consultation paper from the following persons

2mi Financial Services Limited (two responses)
ABN-AMRO Private Banking
Anthony Le Blanc & Partners Limited
Association of Guernsey Banks
Bank Julius Baer & Co Ltd
Barclays Private Clients International Limited, Guernsey Branch
BPP Professional Education
Brooks Macdonald Retirement Services (International) Limited
BWCI Insurance Broking Limited
Callum Beaton
Chartered Institute for Securities & Investment
Chartered Institute for Securities & Investment - Guernsey Branch
Chartered Insurance Institute
Credit Suisse (Channel Islands) Limited
Gower Financial Services Limited
GTA University Centre
Heritage Insurance Brokers Limited
HSBC Bank plc Guernsey Branch and HSBC Private Bank (C.I.) Limited
HSBC Private Bank (C.I.) Limited
Lloyds Bank International Limited
Ogier
Schroders (C.I.) Limited
SPF Private Clients (Channel Islands) Limited
Sydney Charles Financial Services Limited
The Royal Bank of Scotland International Limited