Consultation Response

FSA CP10/12 Competence and Ethics

September 2010

SUMMARY

- *The CII welcomes this consultation paper and the proposals to bring about advanced professional standards across the financial services industry. We have been active in calling for a step-change in the professional standards, and this should apply to not just the retail investment market but also other areas of retail financial services such as mortgages, protection, and general insurance.*
- *We welcome the FSA's **robust approach to ethics**. These high-level principles that guide practitioners on what professional behaviour "looks like" on a day-to-day basis will have the greatest impact on the public.*
- *We also emphasise the importance of the existing **non-regulatory machinery for supporting and promoting better ethical behaviour**, such as training and adherence to professional body codes. The visibility given to ethics in an organisation will be a key determinant of that organisation's culture of behaviour, and of its people towards customers.*
- *We welcome the FSA's stance in **reviewing qualifications requirements** for practitioners performing retail activities at all levels.*
- *In relation to the **30-month time limit**, our view is that this is a reasonable time limit for new advisers (who joined the market after 30 June 2009) to meet the new qualification requirements.*

About the CII and PFS

The Chartered Insurance Institute is the world's leading professional body for insurance and financial services with 95,000 members in more than 150 countries. We are committed to protecting the public interest by maintaining the highest standards of professional and technical competence and ethical conduct. Our Charter remit is to secure and justify public confidence in our members. This includes over 27,000 members of the Personal Finance Society which is the UK's largest grouping of financial advisers and related roles. We promote the highest standards of professionalism for the financial services community.

1. Introduction: Our General View

We believe that this CP outlines the central features of advanced professional standards within the financial services industry. Not just the Retail Distribution Review on which we have been very active in the debate for a step-change in the professional standards in the retail investment distribution market, but for other areas such as the Mortgage Market Review where we have also expressed a view. The central objective of this paper, and the wider calls by senior FSA figures such as chief executive Hector Sants to increase the FSA's involvement with the oversight of ethical behaviour in a regulatory context is a project that we strongly support, and for which the CII has been supportive of for some time.

That said, we must emphasise the importance of the existing non-regulatory machinery for supporting and promoting better ethical behaviour, such as training and professional body codes. These are critical elements in the armoury of ethical and competence measures for individual practitioners, and must not be neglected as part of a wider and laudable exercise to bring competence and ethics into the regulatory processes.

Firms also have a key role to play in ensuring employees are guided as to appropriate behaviour and receive training to support this, but there is also a responsibility on the individual adviser – especially if they work for a small firm or are a sole practitioner to be aware of and uphold the highest standards of professionalism. In recent years, the CII has revised its code of ethics to provide more guidance to members as to how to fulfil the code in everyday situations. We have also recently provided all members with free access to an easy to use online course of ethics which can fit into their CPD requirements. It is important to recognise that a true professional should see ethical behaviour as part and parcel of their professional obligations to their clients or customers.

Oversight of Qualifications Standards

This consultation and the subsequent one from the FSA (CP10/14 relating to professional standards through the Retail Distribution Review) raise the question of who is best placed to oversee these qualifications and the future development of appropriate examination standards. Such oversight is required – certainly for the foreseeable future to at least guarantee a level playing field amongst examining bodies but also to provide visible assurance to the public at large. Our view is that the FSA is the best placed to carry out this function, but – and this is a crucial but – it must be resourced adequately with people with appropriate skills to undertake these tasks competently.

Strengthening and Refocusing Competence Requirements

We strongly welcome this exercise by the FSA to “put training and competence back on the agenda for firms.”[1] Many of the recent public trust and confidence issues in the retail financial services market have been rooted in consumer-facing practitioners not having a sufficient level of technical knowledge about the areas in which they are working. It is clear from the study carried out for this consultation that the lighter touch provided recently for training and competence has meant that some firms no longer take enough heed of the importance of competence requirements for their key advisory staff.

Witness the equity release market, a market where despite introduction of statutory regulation in October 2004, standards at point of sale were found to be problematic by both consumer group situation research as well as thematic investigations by the regulator itself. By 2007, many firms were still hiding behind grandfathering requirements under the old Mortgage Code. Transacting lifetime mortgages requires a thorough understanding of issues well beyond the confines of the conventional mortgage market, such as investments, post-retirement planning issues like annuities, and a detailed knowledge of the complexities of means-tested benefits. The public were instead forced to rely on help making informed decisions on complex equity release products by advisers who were blatantly falling well short of these necessary competence requirements. As equity release is not a mainstream product, the market has fortunately not been blighted by another widespread PPI-type mis-selling scandal. However, grandfathering advisers in such a sensitive area should not have been allowed to happen.

The FSA’s own research finds that “T&C may be slipping off the agenda.” A central finding of the research report on T&C requirements by Chales Cattell seems to be that too many firms are starting to treat T&C as a compliance issue. Moreover the responsibility between T&C and the management of

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[1] Quote from Katherine Leaman, Manager of FSA Professional Standards Team, in “Interview with the FSA,” by Jeff Abbott, *T&C News*, July 2010, p.24.

professionalism is inconsistent between firms, with “no formality or guarantee about direct special interest functions engagement and the professionalism and competence agenda.”[2]

Allied to this is our strong support for the approach the FSA has taken regarding supervisors within firms (paragraphs 2.6-2.10). For example the emphasis on monitoring rather than coaching in many firms has been an area of concern for a while, and a closer supervisor-trainee relationship from which more natural coaching situations arise benefits both parties in ways that no other form of training can yield. We would support any incentives to narrow the ratio between supervisors and trainees.

Qualifications

We welcome the FSA’s stance in reviewing qualifications requirements for practitioners performing retail activities at all levels. Undertaking such a risk based review across the retail market, in an effort to apply the best practice from the RDR is a positive exercise, whether or not the review results in any changes in particular parts of the market.

It is also sensible for the review to scrutinise the extent to which qualification providers are meeting appropriate standards themselves through your proposed internal framework. As a leading professional body operating in the public interest in the investment, life, pensions, protection, mortgage broking and general insurance markets, we take very seriously our role in calling for the highest standards of practitioner conduct and ethical behaviour. We are regulated as an awarding body by Ofqual, so our qualifications are recognised within the Qualifications & Curriculum Framework, and thus appreciate your provision in paragraph 4.15 for qualification providers that are regulated in this manner to demonstrate their compliance.

Ethical Behaviour

We welcome the robust approach to ethics that the FSA is taking. Ethics must be at the heart of the proposals to bring about a step change in the standards of practitioners in retail financial services. In fact our firm view is that while qualifications standards and CPD are critical, the high-level principles that guide practitioners in the clearest possible way on what professional behaviour “looks like” on a day-to-day basis will have the greatest impact on the public.

Therefore we support the efforts by the FSA to place new emphasis on corporate ethics and individual responsibility by modifying the existing APER principles rather than establishing a whole new Code of Ethics as previously consulted. This seems a sensible approach and uses existing mechanisms already familiar to most practitioners. There is no reason this should conflict with the various code of ethics currently operated by profession and other bodies.

Responses to Specific Questions

1: Do you agree with our proposal to introduce an overall time limit of 30 months, within which individuals must be qualified?

We believe that 30 months is a reasonable time limit for new advisers (who joined the market after 30 June 2009) to meet the new qualification requirements. This would require one exam to be passed every five months using the CII’s new Diploma route, which is no more demanding than other professions. To the extent possible, firms should make provision to allow trainees to study while working, and qualification providers should deliver study options to enable this. Moreover, firms should

[2] *Training and Competence Requirements: A Report*, by Charles Cattell for the FSA, April 2010.

have in place a supervised and structured training system to ensure that learning is congruent with daily workplace situations

2: Do you agree that no Transitional Provision is required to accommodate the new 30-month time limit for attaining qualifications?

Yes. We do not see why new advisers should require a transitional period provided the 30 months starts from when they are registered as a trainee.

3: Do you agree that these Transitional Provisions should now be removed on the basis that individuals relying on them will have thirty months (noting activities that involve 'overseeing on a day-to-day basis' will not be subject to a time limit), provided through a further Transitional Provision, in which to attain a qualification?

Yes. The transitional provisions should now be removed for reasons explained in the consultation. It is very important that all firms operating in these markets have met the necessary level of technical knowledge needed for the role, and recent history, for example in the equity release market, has shown that transitional provisions provide a "back door" through which some firms have been allowed to carry on business with some or all of their advisers falling short of the stated minimum qualification level. The regulator has said that its own research has indicated that this has slipped off the agenda in some parts of the market, so we welcome attempts to renew this commitment. To continue to allow firms to circumvent these new requirements using transitional provisions would risk undermining this very important and welcome exercise.

4: Do you agree that we should amend APER to clarify our expectations of competence governance within firms as suggested in the draft Handbook text?

Yes. Guidance will focus senior management attention on an area of oversight that has previously been delegated or neglected.

5: Do you think that we should create a separate activity for 'dealing in securities and/or derivatives'?

This is not within our area of expertise.

6: Do you agree that we should add guidance to our Handbook suggesting that firms may wish to implement a TC scheme?

Yes. As with our response to Question 4, additional guidance for firms is a sensible step which we support.

7: Do you agree that all the appropriate examination standards should be updated every three years?

Yes. Given the highly dynamic nature of the financial services market, three years should be the minimum timeframe for updating standards. As regards more frequent changes, while we review the content of our examinations annually to take into account changes in regulation and legislation, too frequent reviews of the standards could cause unnecessary expense to awarding bodies and firms,

Any urgent need to update any of the standards should be instigated by the industry/sector and be subject to consultation. It would be impractical to expect the standards to be reviewed on an 'as necessary' basis and we would be cautious about suggesting FSA has unrestricted control here i.e. no consultation. There is a marked difference in keeping exam content current to changing the scope of the standards.

8: Which appropriate examination standards do you think we should review first and why?

As a rule, exams standards which cover product areas that have the greatest risk of consumer detriment by volume should be reviewed as a matter of priority, followed by areas exposed to potential longer-term detriment.

Considering this approach, we recommend that mortgage exam standards should be reviewed first as - this has not been done for nearly six years and would correspond with the Mortgage Market Review and new regulation. We also think that exam standards for protection insurance, long-term care and post-retirement planning should be reviewed and in particular.

9: Are there any other criteria we should consider when determining whether qualifications meet regulatory requirements?

The suggested criteria are appropriate so long as they are applied consistently and fairly. Firms that have been through the Qualifications and Curriculum Framework regulation process and are recognised by Ofqual should not be required to duplicate the information provision.

We welcome the regulator's intention to review qualification and competency requirements for all types of financial services practitioners, not just those related to distributing retail investment products. This is a positive step towards creating more public trust and confidence in the market. However, it is critical that the FSA applies a consistent methodology for comparing qualifications, and qualification providers including awarding bodies that already meet many of these criteria by virtue of their Ofqual recognition should be recognised as such by any FSA verification process.

10: Do you agree that we should add additional descriptions of behaviour to APER as outlined above?

Yes. Including these two extra descriptions would make the code of conduct set out in APER more closely aligned with our own Code of Ethics that our members are required to observe. “Paying due regard to the interests of the customer” is also aligned with the wording in the Principles of Business.

For more information on any of the issues raised in this consultation response, please contact Laurence Baxter, CII Head of Policy & Research, tel 020 7417 4783; email: laurence.baxter@cii.co.uk.

Chartered Insurance Institute
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