

Consultation Response

FSA CP10/14: RDR and Professionalism

September 2010

SUMMARY

- The CII has consistently supported the original RDR objectives, particularly to promote and improve better standards of professionalism across the advisory sector.
- The development of professionalism must not be seen as a tick-box compliance process. While necessary as part of the RDR process, the current proposals place excessive emphasis on compliance rather than the promotion of higher standards.
- Statements of Professional Standing: while we are happy with the ideas set out in the latest consultation, more detail is needed on implementation, particularly division of responsibilities between the FSA and accrediting bodies.
- CPD: the proposed criteria are in line with our current practices, but we look forward to a more output-based approach once a CPD culture is better embedded in the profession post-2012.
- Accrediting body criteria: these must be sufficiently robust to provide the standards and capacity to support professional development and inspire public trust in the robustness of standards.
- We believe that for these proposals to secure and retain the confidence both of the industry and the public, a consistent level playing field needs to be maintained. Our experience of the development of the new qualifications for the new benchmark points towards the danger of arbitrage developing and undermining the step change.
- We look forward to engaging with the FSA to develop the detail outlined in this consultation.

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 Overall View

The Retail Distribution Review Generally

We welcome the opportunity to respond to this latest Retail Distribution Review consultation. The CII has consistently supported the RDR objectives, particularly to promote and improve better standards of professionalism across the advisory sector. This is inherently in the long-term public interest. Levels of qualifications and behaviour across the market are being raised, and we believe this will bolster the public's trust and confidence in the sector, which is vital for prosperity in the long run.

These sentiments are reflected our latest survey of parliamentarians which showed strong support for a code of ethics (75% of MPs in favour), mandatory professional body membership (81%), and sanctions for misconduct (83%) – see the Appendix at the end of this consultation response for detailed information. This survey shows that opinion formers are supportive of the move towards higher standards in the market place even if some of the individual components are being redefined in the FSA’s professionalism package. These sentiments are also echoed in the five membership surveys we have conducted since 2007 and which we have communicated to the FSA over time.

The Proposals

The consultation outlines the central features of a “package of professionalism” (on higher standards of qualification, the introduction of mandatory CPD underpinned by adherence to code of ethics and a robust disciplinary system) which we have championed throughout the RDR process.

Much of the success of delivering this will depend on getting the detail right. It needs to::

- be as simple as possible for advisers to navigate;
- have buy-in from firms to endorse professionalism and standards of excellence rather than create a compliance tick-box process; and
- ensure the accrediting body criteria are sufficiently robust to provide the standards and capacity to support professional development, and ultimately what the public requires and deserves.

Real professionalism will only take off if it is seen to go beyond a compliance culture and perception of box-ticking. The journey towards Chartered is a case in point. Already there are over 2,100 Chartered Financial Planners and 280 Chartered Firms who espouse these values through a commitment to the highest standards of knowledge and behaviour. Professionalism must aspire to the principles, not just comply with rules.

There is a danger which is inherent in the current proposals that the focus on getting everybody up to a basic standard of professionalism, which, while necessary as part of the RDR process, gives too much emphasis to compliance rather than the promotion of higher standards. This concern is amplified by the decision to opt for an in-house (FSA) rather than an independent oversight model, which we believe may, unwittingly, emphasise the compliance aspects rather than focus on the broader focus of professionalism to secure the confidence of the public. Throughout the RDR process, we have called for practical solutions that practitioners can understand to overcome this challenge: codes of ethics, practicing certificates and CPD, so we remain supportive of the general thrust of the proposals but with the caveat that they do not, over time, retreat to a box-ticking mentality.

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We believe that this consultation outlines a viable approach to developing higher professional standards within the financial services industry within the scope of RDR .

2. Professionalism Framework

We have already had productive conversations with the FSA team on these issues and we look forward to discussing with the FSA our more detailed views on specific aspects of the accrediting body status and how this might evolve.

Statements of Professional Standing

We are pleased to have started constructive discussions with the FSA about how the SPS will be constructed. The ideas set out in the latest consultation will require more detail in terms of their implementation, particularly around where the accrediting body role ends and the FSA's begins. Critically, clarification will be needed on managing disciplinary offences, and the issues related to withholding an SPS on advisers' ability to practise.

We are looking at the implications of introducing the SPS into our regular membership management system. However, most of the challenges will come in the initial phase of obtaining the first SPS, whereas the issuing of subsequent statements could be built into the membership renewal process.

Timetable

We would welcome, once this consultation has been completed, that the FSA sets out as clearly as possible the timetable for the accreditation process and the subsequent issuing of SPSs by accredited bodies.

Continuing Professional Development

We support the proposed criteria around CPD, requiring the accrediting body to undertake verification of at least 10% of the retail advisers who have used its service in the previous 12 months. This is very much in line with our current practice and similar to that undertaken by comparable professions in terms of CPD monitoring.

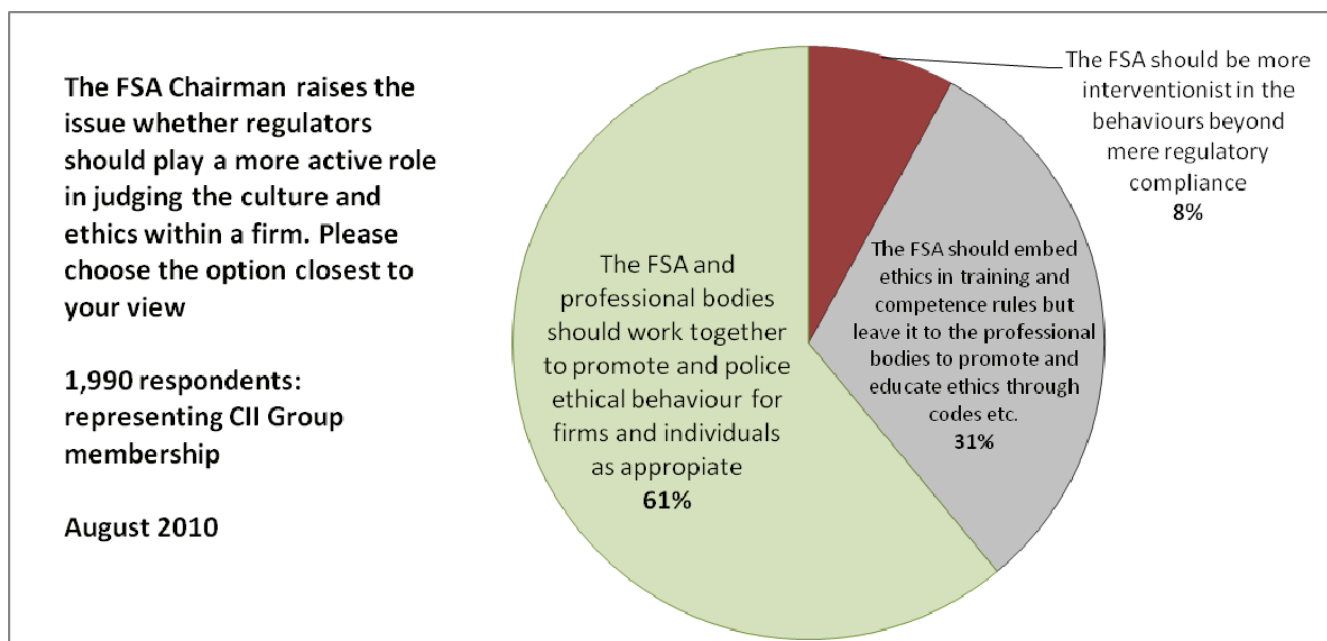
The specific approach set out in the CPD proposals with a specific number of hours including structured CPD is – in professional body terms – arguably a step backwards from an output-based system. However, we accept that with so many advisers expected to do formal CPD recording for the first time, it is sensible to use this approach in the first instance and then modify the process in time once it has been firmly established as part of the culture of advisers.

Ethics

A robust approach to ethics is at the heart of the proposals to bring about a step change in the standards of retail investment advisers. While the FSA Principles of Business provide the main information source underpinning day-to-day behaviour, this is directed towards firms in conjunction with other elements of the Handbook. On the other hand, a code of ethics and conduct sets out the high level principles to help guide practitioners in the clearest possible way what professional behaviour "looks like" on a day-to-day basis.

We have set our detailed views in the response to CP10/12 on Competence and Ethics but we support the FSA's move to a more activist approach to individual behaviour and ethics.

A recent membership survey of relevant CII members supported this view, but emphasised the role of professional bodies in working with the FSA towards this end:



3. Criteria for Recognising Accredited Bodies

We support the principles set out in the consultation paper, however further detail is vital for this whole exercise to work effectively.

While promoting competition between accrediting bodies is important, we believe this should be balanced against the objective of building public trust and confidence in the industry by ensuring appropriately high standards for practitioners. However some of the calls for competition come from those who do not understand that Chartered bodies exist to fulfil a public interest remit rather than maximise profit. It is therefore essential that all accrediting bodies are able to demonstrate adequate processes to manage conflicts of interest. We welcome similar sentiments expressed by the industry such as AEGON who are expressing concern about the possibility of “professional bodies or commercial organisations masquerading as one.”

Our view is that the criteria guiding the accrediting bodies need to be robust and stretching in the same way as other professions. Advisers being asked to raise their standards will, rightly, expect the same from their professional body or bodies.

The criteria must also be designed to reflect what accredited bodies would realistically be able to do. For example, bodies would be unable to verify in the sense of “in a sufficiently clear and unambiguous manner” whether an individual “meets professional standards.” Professional standards consist of a variety of aspects, which include “competence” verified through qualifications, as well as ongoing learning, and behaviours.

For competence, we are able to confirm that an individual has undertaken a qualification. If we offer these qualifications, we can verify that the person has retained a minimum proportion of the knowledge through examination assessment. We can also confirm that they are a member of us, and for how long this membership has lasted. Most CPD schemes consist of the professional body offering a range of activities that the practitioner can undertake in an effort to keep their knowledge up to date.

This is based on the principle of self-certification backed by sampled checking by the professional body. This range of activities includes ongoing training, seminar events, publication subscriptions, etc. Practitioners can be asked to submit CPD records by way of verification that they have endeavoured to comply with professional requirements. There is however a difficulty in retrospectively “verifying” in great detail CPD beyond the past year or so. For example, seminars and events can have attendance sheets, but this is not a legally accurate way of confirming whether the practitioner actually attended. So the definition of verification needs to embrace this. We believe the final set of criteria must focus on the key aspects of how an accrediting body will be viewed in this new role – they, like advisers, must meet the challenges and a public interest test which will be singularly important in ensuring this new framework works.

We believe that the three central criteria are 1-3 as outlined in the consultation paper, namely

- Enduring financial strength and
- Appropriate governance standards
- Acts in the public interest – i.e. free from commercial pressures

We are clear that the FSA are right to encourage a plurality of professional bodies to ensure there is appropriate choice and to reflect the diversity of the marketplace. However, it is important that that this does not lead to the lowering of standards through woolly criteria inadvertently caused by trying to broaden the definition of an accrediting body beyond that generally recognised across the professions and which is well articulated in the PARN research paper which accompanies the consultation.

We provide brief comments below on the criteria as set out in the CP but are happy to go into more detail as part of our ongoing discussions. We will provide more detailed comment outside of our response in the near future. We note that the FSA wants to keep the criteria at a high level and therefore it is important that the FSA – as part of the auditing process – clearly signals to the market and the general public it has applied rigor to the application process for the criteria to be an accrediting body as it has pledged.

	Proposed criteria	Possible measures
1	<p>Acting in the public interest and furthering the development of the profession</p> <p>The accredited body is expected to:</p> <ul style="list-style-type: none"> ▪ have an objective to act in the public interest; ▪ contribute to raising consumer confidence and professional standards in the retail investment advice market and promoting the profession; and ▪ act in a way that is consistent with that objective. 	<ul style="list-style-type: none"> ▪ Part of an overall group that is solvent ▪ Submits audited reports and accounts within three months of year end ▪ Has appropriate committees to oversee systems and controls (eg risk committees) ▪ Board members pass FSA’s fit and proper persons test ▪ Professional body has no information on its board members that, to a reasonable person, would render them inappropriate for the role ▪ Application of Nolan principles as well as some form of lay representation to act as the voice of the public interest in addition to a mechanism like a Royal Charter.

(continued)

	Proposed criteria	Possible measures
2	<p>Carrying out effective verification services</p> <p>The FSA will expect the accredited body to provide the retail adviser with evidence of that verification in a durable medium and in an agreed form.</p> <p>The body would have in place effective procedures for:</p> <ul style="list-style-type: none"> ▪ verifying that each retail adviser member has made a written annual declaration of compliance with the APER rules and completed the required CPD; ▪ verifying annually the accuracy of CPD records of at least 10% of the retail advisers who have used its service in the previous 12 months; and ▪ verifying that, if required by TC, the retail advisers members have attained an appropriate qualification, including where appropriate gap fill activities. 	<ul style="list-style-type: none"> ▪ Not for profit distribution (ie, no shareholders). Within this broad category, specific legal status can include chartered bodies, charities ▪ Corporate objectives (eg Royal Charter or articles of incorporation) commit the organisation to the public interest ▪ No commercial activities or relationships that present a conflict of interest with the pursuit of the public interest ▪ Lay representation in governing body and other key governance bodies ▪ Maintain a publicly available membership list ▪ All profits (surpluses) are reinvested in the work of the professional body, not distributed to other parties ▪ For example minimum 10% sampling of CPD records per annum.
3	<p>Having appropriate systems and controls in place and providing evidence to the FSA of continuing effectiveness. This includes having in place:</p> <ul style="list-style-type: none"> ▪ adequate resources and systems and controls; ▪ effective procedures for the management of conflicts of interest and have a well-balanced board with at least one independent board member; and ▪ a code of ethics and to ensure that its code of ethics and verification service terms and conditions do not contain any provisions that conflict with APER. 	<p>Disciplinary procedures which are clearly set out in the public domain, including public transparency of outcomes, and pass a test of public interest.</p>
4	<p>Ongoing cooperation with the FSA, by providing to the regulator:</p> <ul style="list-style-type: none"> ▪ such documents and information as the FSA reasonably requires and cooperate with the FSA in an open and transparent manner; ▪ information in relation to the professional standards of the retail advisers who use its service as appropriate; and ▪ an annual report by a suitable independent auditor setting out an assessment of the body's satisfaction of the FSA criteria. 	<ul style="list-style-type: none"> ▪ Agreement between recognised professional bodies and FSA to set out mutual duties and obligations <p>We would welcome a more detailed discussion of what this might entail.</p>

4. The Qualifications List

We have already written to you requesting the reinstatement of Chartered Financial Planner on the appropriate qualification list. Whilst we previously treated it as a designation, we have had to re-evaluate this decision in light of the less prescriptive approach to the definition of 'qualification' adopted by the FSA that has permitted entries onto the list that do not strictly adhere to our definition and therefore we suggest Chartered Financial Planner is on the list to ensure a level playing field

Chartered Financial Planner does fully meet all of the criteria set out in CP10/12.

- The level of difficulty should be at, or above, a QCF Level 4 qualification (or equivalent such as SCQF, NQF, FHEQ);
- Chartered Financial Planner is underpinned by clearly defined examination criteria which are well in excess of the level 4 standards. It is only awarded to individuals that have acquired, by formal examination, sufficient credits on the CII framework to attain at least the Advanced Diploma in Financial Planning, which is at Level 6 in the NQF.
- The content must be relevant to the investment adviser's role. For example, where the qualification was awarded after 2004, the test would be whether it met the FSSC appropriate examination standards; and if it was awarded before 2004, the test would be whether it was listed in the rules of the FSA's predecessor regulators; and

The examinations required to be awarded Chartered Financial Planner must be relevant to financial planning and the qualifications that underpin it are on the appropriate list.

- The qualification must be awarded by a recognised UK awarding organisation (for example, one given awarding powers by Ofqual, the SCQF or the QAA), or an overseas equivalent.
- The CII is an Ofqual regulated awarding body.

Taking account of these facts, we request that the FSA lists Chartered Financial Planner as an appropriate qualification when the list is next published.

5. Responses to Specific Questions

1: Do you have any views on the possible equality and diversity impact of our CPD draft Handbook text?

2: Do you have any views on the possible equality and diversity impact of our draft Handbook text in Appendix 1?

We must ensure that the requirements should reflect unique work patterns by some practitioners: for example part-time workers and those returning after an extended absence.

3: Is the proposed content of the Statement of Professional Standing (SPS) sufficiently clear and unambiguous to be: (a) effective in providing evidence to firms that their advisers have met the new professional standards; and (b) helpful to consumers?

The proposed information is sensible in that it provides evidence of an adviser's professionalism and adherence to appropriate standards.

4: Can you provide evidence to show how much it will cost your firm to submit these professional standards data to the FSA? Do you have a view on the merits of the alternative approach suggested?

Not applicable.

5: What are your views on the most effective way for the FSA to obtain systematic individual transaction data linked to the individual adviser? Do you have a view on the merits of the alternative approach suggested?

The approach must recognise that the Product Sales Data only captures transactional based business. To add systemic individual transaction data linked to individual advisers would create a significant administrative exercise and costs with questionable benefit:

- the system would need to identify what activity and product constitutes a transaction: how would business on platforms be captured?
- the system would need to distinguish which individual actually completed the transaction, as on some occasions more than one adviser in more than one interaction is involved in leading the customer to transact a product.
- the systems burden for especially small firms would be considerable.
- the costs of delivering should not be disproportionate to the perceived benefit. The FSA approved persons regime already provides the capability to manage individual accountabilities and records, and the Statements of Professional Standing would provide an additional control measure, however we struggle to see how individualised Product Sales Data would add much to this considering the costs.

Appendix - CII MP Survey Shows Strong Support for RDR and Ethics

MPs show strong support for the package of professionalism for the financial planning sector as set out in the Retail Distribution Review. They also agree that professional qualifications are only part of this goal, which also includes membership of a relevant professional body, monitoring sanctions, and enforcing ethical practices.

ComRes surveyed an MP panel comprising a representative sample of backbenchers of the new Parliament on behalf of the Chartered Insurance Institute between 23 June and 19 July 2010.

