

Finalised Guidance

FG17/8: Streamlined advice and related consolidated guidance.

September 2017

1. Introduction

- 1.1 The Financial Advice Market Review (FAMR) was launched in August 2015 by HM Treasury (the Treasury) and the FCA to explore ways in which the Government, the industry and regulators could stimulate the development of a market which delivers affordable and accessible financial advice and guidance to everyone, at all stages of their lives. The FAMR final report, published in March 2016, made a series of recommendations for the FCA, the Treasury and other regulators to take forward.
- 1.2 This paper sets out finalised guidance in response to the following FAMR recommendations:
 - **Streamlined advice (FAMR Recommendation 4)** – The Review recommended developing a clear framework that gives firms the confidence to provide streamlined advice on simple consumer needs in a proportionate way. As part of this, FAMR recommended that the FCA should produce new guidance to support firms offering ‘streamlined advice’ on a limited range of consumer needs. This should include a series of illustrative case studies highlighting the main considerations when developing such models.
 - **Fact find process (FAMR Recommendation 10)** – The Review recommended that the FCA should consult on guidance to provide clarity on the standard types of information required as part of the fact find process. In addition, the guidance should

also set out key considerations for verifying a fact find that has been performed by third parties.

- **Advice Unit guidance (FAMR recommendation 9)** – FAMR recommended that the FCA should establish an Advice Unit to help firms develop their automated advice models. The FCA set up the Advice Unit in May 2016 and, as part of this work, committed to publish tools and resources which may be useful to all firms in the financial advice space. On 8 December 2017 we added Chapter 5 to this document, setting out guidance based on the experiences of the Advice Unit¹.

1.3 This guidance also incorporates the following elements of our earlier guidance in FG15/1 'Retail Investment Advice' and FG12/10 'Simplified Advice' -

- adviser charging
- complaints and redress
- professional standards
- appropriateness, and
- discretionary investment management

1.4 We have made some changes to this guidance to ensure it is correct, consistent and reflects subsequent changes to the regulatory regime. Where necessary, we have included references to rules.

1.5 All of the other guidance in FG15/1 and FG12/10 will be retired from 3rd January 2018, apart from the guidance covering the advice boundary, which is currently the subject of a separate consultation in CP17-28.² Subject to the outcome of the consultation process, we propose to publish guidance on the advice boundary in the Perimeter Guidance Manual (PERG).

1.6 This paper contains general guidance³ and is not binding. However, we expect firms to take note of the guidance and, where appropriate, use it to inform development and delivery of their streamlined advice services to retail clients. The issuance of this guidance advances our objective to secure an appropriate degree of protection for consumers because it aims to facilitate the availability and accessibility of advice services for consumers whilst ensuring that they are appropriately protected.

1.7 The guidance is likely to be relevant to a firm providing streamlined advice on a financial instrument or retail investment product. However, the guidance is not exhaustive, nor should it be read in isolation from the Handbook. In particular, this guidance does not address potential changes which may arise from implementation of the Insurance Distribution Directive.⁴ Firms should consider this guidance in the context of their

¹ Chapter 5 is effective from 3 January 2018. No changes were made to the previously published guidance material in Chapters 2 to 4 of FG17/8 on 8 December 2017.

² <https://www.fca.org.uk/publications/consultation-papers/cp17-28-financial-advice-market-review-famr-implementation-part-ii>

³ Under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA).

⁴ Directive (EU) 2016/97 of 20 January 2016 on insurance distribution.

overarching obligations under the regulatory system. Guidance on rules, the Financial Services and Markets Act (FSMA) or other legislation represents our view, and does not bind third parties, such as the courts.

- 1.8 This guidance is drafted in line with the Handbook changes implementing the Markets in Financial Instruments Directive (MiFID) II, which come into force on 3 January 2018. The new requirements in MiFID II relating to suitability and product governance expand on the current requirements and to that extent firms may choose to use this guidance with immediate effect.

2 Streamlined advice services

Developing a streamlined investment advice service

2.1 The FAMR report described streamlined advice as:

'A term used to collectively describe advisory services (such as focused and simplified advice) that provide a personal recommendation that is limited to one or more of a client's specific needs. The service does not involve analysis of the client's circumstances that are not directly relevant to those needs.'

- 2.2 Streamlined advice is used in this paper as an umbrella term which covers both simplified and focused advice. These services are the same in every respect, except with simplified advice the firm sets the boundaries of the service, whereas with focused advice the client stipulates the boundaries.⁵ The principles in this guidance apply equally to both simplified and focused advice services.
- 2.3 These terms are designed to facilitate discussion. They are not used in the Glossary of definitions in the Handbook and it is not suggested that firms use them as part of client communications. Specific rules apply to firms when describing their services to clients. One example is the requirement to provide appropriate information to clients in a comprehensible form about the firm's services such that the client is reasonably able to understand the nature and risks of the service being offered.⁶
- 2.4 Streamlined advice services might include automated, 'robo advice' services or more traditional face to face or telephone-based models; however, we recognise that many services will be automated and this guidance is intended to reflect this.
- 2.5 We believe that firms with well-designed processes and with governance which focuses on the needs of their clients are more likely to develop streamlined advice⁷ services that deliver good outcomes and that comply with our rules. This guidance considers how firms might approach this task and provides examples of good and poor practice as well as questions for firms to ask themselves. To help firms identify potentially relevant issues, the guidance also includes examples designed to show what sort of information it may or may not be necessary to collect to establish suitability in different scenarios (see paragraph 2.54). These examples include one scenario where the streamlined advice process results from a request from the client. However, these are provided by way of

⁵ The FAMR report used the following definitions: Simplified Advice: A personal recommendation which is limited to one or more of a client's specific needs and does not involve analysis of the client's circumstances that are not directly relevant to those needs. Focused Advice: Advice which is focused, at the request of the client, on the provision of personal recommendations relating to a specific need, designated investment or certain assets.

⁶ For MiIFD, equivalent third country or optional exemption business, see e.g. COBS 2.2A and COBS 6.1ZA; for other business, see e.g. COBS 2.2 and COBS 6.1.

⁷ For the purposes of this guidance, when we refer to advice we mean personal recommendations on retail investments.

illustration only and should not be used by firms as a definitive statement of how a firm can or should comply with the applicable rules. Firms will need to assess how their streamlined advice models can meet their regulatory obligations on a case by case basis.

- 2.6 Although streamlined advice services may be designed to deal with more limited client needs and may not, therefore, involve an analysis of all the client's circumstances, any personal recommendation which is given to a client through a streamlined advice service must nevertheless be suitable (as is also the case where a firm provides 'full-scope' advice to a client). Offering a streamlined advice service, with a narrower scope, does not allow a firm to lower the level of protection due to clients.⁸

Identifying the target market

- 2.7 When designing streamlined advice services, it is important that firms give early consideration to the type(s) of client the service is aimed at. Understanding the needs of those clients can help firms develop a service which is capable of delivering an outcome that meets their needs. This should also help firms identify the scope of the service, select products that are potentially capable of meeting the needs of the relevant clients and take appropriate steps at an early stage to filter out clients who are unlikely to have their needs met by the service.
- 2.8 Firms will also need to consider their product governance obligations. From 3 January 2018 specific product governance requirements will be set out in the Product Intervention and Product Governance Sourcebook (PROD) and will apply to, amongst others, MiFID firms, MiFID optional exemption firms, and branches of third country investment firms when manufacturing and distributing financial instruments and structured deposits, and also distributing investment services.⁹ We have applied these requirements as guidance to other firms that manufacture or distribute financial instruments or structured deposits.¹⁰ For firms that do not come under the PROD rules, we also provide guidance on product governance which is based on our Principles for Businesses in the Responsibilities of Providers and Distributors in the Fair Treatment of Customers (RPPD). The requirements in PROD are similar to the RPPD provisions but there are certain aspects of the PROD provisions that go beyond the RPPD.
- 2.9 The PROD requirements apply to both product manufacturers and distributors of products. Firms looking to operate through a streamlined model will need to take the relevant requirements into account at the outset.
- 2.10 Amongst other things, a product manufacturer is required by PROD to:
- specify an identified target market of end clients within the relevant category of clients;

⁸ See ESMA's Guidelines on certain aspects of the MiFID suitability requirements, at para. 32 - https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf

⁹ See PROD 1.3.1R.

¹⁰ See PROD 1.3.2R.

- assess all the risks relevant to that target market for each new product that the firm manufactures;
- ensure that products which it manufactures are designed to meet the needs of the identified target market of end clients;
- ensure that the intended distribution strategy is compatible with the identified target market; and
- take reasonable steps to ensure that the financial instrument is distributed to the intended target market.¹¹

2.11 A product distributor is required by PROD to:

- understand the financial instruments it offers, recommends or sells to clients;
- assess the compatibility of the financial instruments with the needs of the clients to whom it distributes investment services, taking account of the identified product manufacturer's target market of end clients;
- ensure that financial instruments are offered, recommended or sold only when this is in the best interests of the client; and
- consider, in identifying the target market and creating a distribution strategy, amongst other things, the nature of the financial products to be recommended and how they fit in with the end clients' needs and risk appetite.¹²

2.12 The PROD rules also require distributors to have in place procedures and measures to ensure that, when deciding the range of financial instruments and services to be distributed, and the target market, they comply with all applicable rules, including those on suitability.¹³ Determining what the target market is for the particular product(s) is likely, therefore, to inform the design of key elements of the service the firm provides. This includes the distributing firm's marketing strategy, the range of investments it offers, the design of the customer interface and the controls put in place to monitor the results for clients.

2.13 Identifying the target market for particular products in advance will help ensure firms end up with the type of clients whose needs and objectives the product was designed to meet, rather than other clients whose needs and objectives may not be compatible with the products.

2.14 For products and services which are not covered by PROD, RPPD remains relevant. However, we would expect that firms which are not subject to PROD would want to consider similar product governance issues when looking at how they can comply with their more general obligations under the regulatory regime.¹⁴

¹¹ See PROD 3.2.1R and PROD 3.2.4R.

¹² See PROD 3.3.1R and PROD 3.3.11G.

¹³ See PROD 3.3.18R.

¹⁴ For example, the requirements that firms conduct their business with due skill, care and diligence, that they take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management

2.15 Once a firm has identified a target market for a particular product, including the needs of that target market, it can decide whether that product should be offered through its streamlined advice service. Firms should not offer products through their streamlined advice services if there is an incompatibility between the needs and objectives of the target market for the products to be offered and the clients to whom the firm intends to promote its streamlined advice service. This could arise because of particular product characteristics such as:

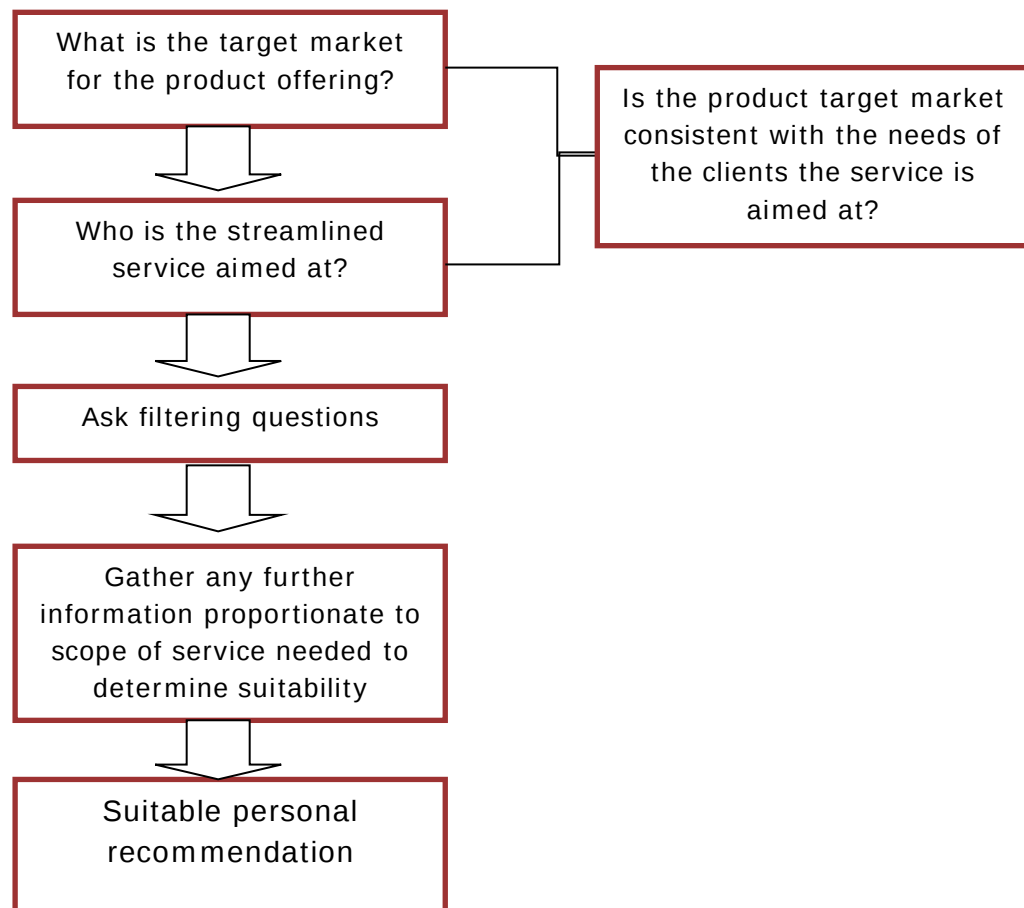
- Minimum contribution rates – are they affordable for the firm's target clients?
- Access and flexibility - for example, do the firm's target clients need to be able to change contribution levels easily or switch products without penalty?
- The risk of each product, including the volatility and whether this is consistent with the typical risk and knowledge/experience profiles of the firm's target clients.

2.16 Some financial products are also unlikely to be appropriate for a streamlined advice process because of the amount of information likely to be needed by the firm in order to make a suitable personal recommendation to a retail client. In general we would expect that the more complex, risky, highly concentrated or illiquid the product, the more likely it is that firms will need more detailed information about the client's broader portfolio in order to meet the firm's suitability obligations. This is also likely to be the case where the firm is advising on transferring out of one product into another. This will be particularly important where the existing product is complex, such as a defined benefit pension transfer, and the firm will need detailed information about the client's needs.

Filtering processes

2.17 To ensure that products are distributed in accordance with the needs of the intended clients for the service, firms could use their analysis to put in place a 'triage' or filtering process at the start of the advice process to filter out those clients whose needs, characteristics and objectives would not be compatible with the particular products on offer through the streamlined advice process and/or for whom a streamlined advice service would not be appropriate. This is shown in the flow chart below:

systems, and that they pay due regard to the interests of their customers and treat them fairly. See Principles 2, 3 and 6.



- 2.18 We are not prescribing the method firms should use to filter clients and gather information. Firms can use different mechanisms for filtering, such as decision trees or drop down lists, according to what best suits their potential clients and type of process.
- 2.19 A firm may decide to use warnings as part of their filtering process to alert the client to the narrowed scope of the service. For example, a warning may state that the advice given will not take into account the client's protection needs, or existing investments. Where a firm discovers that a client falls outside their target market it could choose to warn the client not to proceed or 'lock' them out of the system. Again, we are not prescribing the approach that firms should take.
- 2.20 Where a firm obtains information from the client during the filtering stage, that information could, where appropriate, also be used during the suitability assessment, rather than asking for the same information again. That information would need to be

sufficiently detailed for the purposes of assessing suitability. A firm that intends to rely on information obtained at the filtering stage must also comply with any other applicable requirements.¹⁵ The examples set out at paragraph 2.54 are based on this approach, with suitability being assessed both by the data from the suitability assessment and the information gathered during the filtering stage.

Good practice illustration

A firm looking to offer a streamlined automated advice service on a range of funds could conduct research on consumers within the target market for the funds. They could use the output from this research to identify risks to client outcomes and use this to aid design of a 'triage' or filtering process at the start of the advice process. They could ask a series of questions to elicit whether the client is inside or outside the target market. For example, by asking questions about the client's risk tolerance and the compatibility of the risk/reward profile of the product with the client's objectives and needs. This would mean that they could filter out clients from outside the target market from the outset.

2.21 As noted above, we would expect there to be points at which a client exits from the streamlined advice process to ensure that the client is not given an unsuitable recommendation. For example, this may be where:

- the client wants a service that provides advice on their wider financial needs, rather than advice on a specific need;
- the firm considers that the client's needs or circumstances are too complex for the nature and scope of its service;
- it is not possible to provide advice on the specific need on which the client wants advice without looking at the client's wider circumstances;
- the client's debt is considered too high given the firm's process and product suite;
- the client has insufficient emergency savings given the firm's process and product suite;
- the client's desired investment horizon is too short given the asset allocation of the range of funds on offer (perhaps they have indicated that they can only commit their investment for a maximum of three years but the risk profile of the fund means that it is recommended that clients invest for a minimum of five years);
- the client indicates that they require a service which takes existing investments into account, whereas the service on offer does not do so;
- the client's appetite for risk or capacity for loss is not met through the particular products which might be offered; or

¹⁵ For example, informing clients clearly and simply that the reason for assessing suitability is to enable the firm to act in the client's best interests (Article 54(1) of the MiFID Org Regulation and COBS 9A.2.6EU), and ensuring clients are aware of the importance of providing accurate and up-to-date information (Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9EU).

- the client does not have sufficient knowledge or experience for any of the products offered through the streamlined advice service.

2.22 The list above includes some examples of situations where a client might exit the streamlined advice process. When designing their processes, firms should consider how best to ensure that their process leads to suitable recommendations, and that they meet the requirement that a firm must not recommend a product or service if none is suitable for the client.¹⁶

Ongoing monitoring of the use of their service

2.23 To ensure that they comply with their regulatory obligations, firms should maintain ongoing monitoring of who is using a streamlined service and take action if consumers are receiving unsuitable personal recommendations.

Good practice example of use of management information (MI)

A firm's analysis of its MI identified that a significant proportion of the clients who had contacted the firm with concerns about their investment were outside the 'ideal' intended market for its service. It also identified that this same group of clients had decided to use the firm's service after seeing financial promotions within a specific channel. The firm made the decision to review its future use of this channel, as well as the content of future financial promotions, to try to ensure that it did not promote its service to clients outside its intended market.

Design of client interface

2.24 The design of the client interface is particularly important in sales which are made through a streamlined advice service, especially in fully automated services where there is no human interaction. The suitability requirements for streamlined advice are the same as for all other forms of investment advice; in other words, our rules are technology neutral and the mode of distribution or method of communicating with the client do not change the requirement that firms only recommend those services or financial products which are suitable.¹⁷ This is also true of other rules which are relevant to this issue such as the obligations on a firm:

¹⁶ For MiFID business see Article 54(10) of the MiFID Org Regulation and COBS 9A.2.20EU. For non-MiFID business see COBS 9.2. See also COBS 2.1.1R and Principle 6.

¹⁷ This is also expressly reflected in article 54(1) of the MiFID Org Regulation and COBS 9A.2.23EU which provides that where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, a firm's responsibility to make a suitability assessment is not reduced by use of an electronic system to provide personal recommendations.

- to act honestly, fairly and professionally in accordance with the best interests of the client,¹⁸ and to have due regard to the interests of its customers and to treat them fairly;¹⁹
- to have due regard to the information needs of clients, and to communicate information in a way which is clear, fair and not misleading;²⁰ and
- in the light of the above, to provide appropriate information in a comprehensible form about its services so that the client is reasonably able to understand the nature and risks of the service and of the specific type of designated investment that is being offered and, consequently, to take investment decisions on an informed basis.²¹

2.25 Firms could approach the question of how to design the client interface by considering the nature and characteristics of the intended clients for their streamlined advice service, including the likely level of financial knowledge and experience, and use this to inform the type and format of the questions they ask and the supporting information they supply to clients. For example, firms should consider whether the client is likely to understand the intended questions and whether they will accurately capture the client's objectives and needs. They should also consider if they can formulate these questions in a way that minimises the risk of behavioural biases affecting the accuracy and reliability of the information the client gives. For these purposes, a firm should consider whether the client interface is clear and comprehensible, and whether it avoids confusing, imprecise or excessively technical language which the client may not understand. A firm should also consider whether the layout inadvertently directs the client towards particular responses or choices and a pre-determined outcome.

Good practice examples

Firm that used consumer testing to inform the design of its website:

Prior to the launch of its online streamlined advice service, a firm carried out client testing of its prospective website. It used the testing to check whether clients navigated their way through the firm's website as expected. It also designed the exit points to its advice process with the financial capability of the intended market in mind and then tested whether they were effective at excluding the relevant clients. This meant ensuring that the questions that were asked were straightforward and also helped the client understand the implications of giving a particular answer.

Firm that used web analytics to assess the effectiveness of its website:

A firm analysed how clients navigated through its website to understand how the online advice process was used and, where necessary, update its design. It

¹⁸ See: COBS 2.1.1R.

¹⁹ Principle 6.

²⁰ Principle 7 and COBS 4.

²¹ See COBS 2.2.1R(1), COBS 2.2A.2R and COBS 2.2A.3R.

used software that tracked the web journeys made by a sample of users to assess whether clients proceeded through the advice process as anticipated, whether clients made use of the supporting information provided and the 'dwell time' for each part of the process, particularly webpages that contained key material (such as risk profiling). The firm used the output from this analysis to modify the content and layout of its website to try to better support its clients.

Support from non-qualified individuals

- 2.26 Firms are required to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.²² So staff who support clients through a system-delivered personal recommendation should have knowledge and competence commensurate with their role and responsibilities, including appropriate qualifications where necessary. An employee who provides support to clients in a streamlined advice model must not provide personal recommendations when they are not qualified to do so. The Training and Competence sourcebook (TC) contains additional rules and guidance relating to specified retail activities undertaken by a firm.²³
- 2.27 Whether an individual member of staff provides a personal recommendation²⁴ depends on what they say, how it is delivered and the scope that they have to influence the process (e.g. by steering the client down particular paths or explicitly or implicitly encouraging the client to answer questions in a particular way). Firms will, therefore, need to have robust risk management controls to ensure that the staff concerned do not provide personal recommendations to clients and that they are capable of recognising when a client needs to be referred to an individual who is qualified to give a personal recommendation. The individual's role, in terms of what they can and cannot do, must be clear to the individuals involved and should also be clearly explained to the client when the firm describes the nature of its services.
- 2.28 In addition, under MiFID, a firm must ensure, and be able to demonstrate to us, that any relevant individuals at the firm who give information to clients about financial instruments, investment services (such as investment advice – giving personal recommendations) or ancillary services, possess the necessary knowledge and competence to fulfil their obligations in relation to, amongst other things, the assessment of suitability.²⁵ This obligation is supported by the European Securities and Markets Authority's (ESMA) Guidelines on the assessment of knowledge and competence and the

²² See Article 21(1)(d) of the MiFID Org Regulation and the competent employee rules in SYSC 5 which apply to both MiFID and non-MiFID business.

²³ See para 4.14 of this guidance for more information

²⁴ See PERG 13 Q19 at <https://www.handbook.fca.org.uk/handbook/PERG/13/?view=chapter>

²⁵ This applies to investment firms and credit institutions in relation to their MiFID or equivalent third country business, and to firms which advise on or sell structured deposits.

FCA expects firms to act consistently with those guidelines in relation to their MiFID business.²⁶

Disclosing the nature of the service

- 2.29 A firm must disclose information about the nature of the streamlined service being provided by the firm. A firm must provide appropriate information in a comprehensible form to a client about its services so that the client is reasonably able to understand the nature and risks of the service and of the specific type of designated investment that is being offered and, consequently, to take investment decisions on an informed basis.²⁷ This information must be provided in good time to enable the client to take the decision to proceed on an informed basis. In doing so, a firm must pay due regard to the information needs of its clients (for example, the nature of clients at whom the service is aimed), and communicate information to them in a way which is clear, fair and not misleading.²⁸
- 2.30 Amongst other things, this is likely to involve a firm first explaining that they are providing regulated advice; and second, explaining the differences between the scope of its streamlined advisory service and other types of advice available (either within the same firm or the wider market). If a firm chooses to describe other types of advice services available in the market, it should do so in a way which is clear, fair and not misleading and do so in a way that their clients are likely to understand. For example, clients are unlikely to understand regulatory/industry terms such as 'streamlined', 'focused' or 'full' advice. Firms could consider the extent to which they use these labels to describe their services to clients or whether greater understanding is likely to be achieved by using more client-facing labels or easily understood descriptions to make clear the service on offer, and how it might differ from others available. Furthermore, firms should not steer clients to a particular type of advisory service (or indeed a non-advised one) if it is likely to prove inadequate for their needs, or simply because the service is cheaper for the firm to provide without consideration of whether it meets the client's needs. A firm that does so is unlikely to be acting honestly, fairly and professionally in accordance with the best interests of the client.²⁹

Poor practice examples

We have seen examples of streamlined advice models which inaccurately describe their service as not providing advice, when in fact they do deliver personal recommendations, or where the nature of the service is hidden away in 'FAQs' which are hard to find. Similarly we have seen some models which use lots of industry jargon and assume knowledge at the level of an industry professional, rather than the likely clients when explaining the service and its limitations. Where firms fail to disclose the nature of their service in a clear,

²⁶ See SYSC 5.1.5ABR, SYSC 5.1.5ADG and SYSC 5.1.5AEG; ESMA's Guidelines are available here: <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-mifid-ii-guidelines-assessment-and-knowledge>

²⁷ See COBS 2.2.1R(1); and Article 24(4) and (5) of MiFID, COBS 2.2A.2R and COBS 2.2A.3R.

²⁸ Principle 7.

²⁹ COBS 2.1.1R. See also Principle 6.

fair and not misleading way, there is an increased risk of poor consumer outcomes.

Good practice illustration:

A firm's automated streamlined advice model did not include protection products. This was clearly disclosed at the point the client entered the service. The firm made clear that its clients should consider whether they have any unmet protection needs in terms which would be easily understood by its clients (for example 'Would your family be able to cope financially in the event of your death?'). Where the answer was 'No', it explained that clients could either consider buying protection cover instead of investing or lower the amount invested.

This was integrated within the firm's filtering process, which included a series of questions designed to identify clients with protection needs before proceeding with the advice service.

- 2.31 In addition, there are specific requirements in relation to information which firms must provide about investment advice, for example, about whether the advice is provided on an independent or restricted basis and the relationship between the product provider and the adviser.³⁰ A firm which provides a streamlined advice service at a distance should also consider the requirements of the Distance Marketing Directive, which require certain information about the service to be provided by the firm to be given to clients.³¹

Client information and suitability

- 2.32 The high-level suitability rules³² require a firm to obtain the necessary information regarding the client's:
- (a) knowledge and experience in the investment field relevant to the specific type of financial instrument or service;
 - (b) financial situation including the client's ability to bear losses; and
 - (c) investment objectives, including the client's risk tolerance.³³

³⁰ See Articles 52 and 53 of the MiFID Org Regulation and COBS 6.2B.

³¹ Directive on the distance marketing of consumer financial services (Directive 2002/65/EC). The Directive has been implemented in various places in the Handbook including COBS 5 and ICOBS 3.

³² These rules are also applicable to firms providing investment advice of portfolio management services in the course of carrying on equivalent third country and optional exemption business.

³³ See COBS 9A.2.1R(1).

- 2.33 The rules allow a firm offering a streamlined advice service to collect only the information that is necessary to provide a suitable recommendation in relation to a streamlined advice service. This means that firms can collect the level of information proportionate to the client, and the products and services they offer, or on which the client requests specific investment advice.³⁴
- 2.34 A firm is required to obtain this information in order to recommend investment services and financial instruments (or take a decision to trade) which are suitable for the client and in particular, in accordance with the client's risk tolerance and ability to bear losses.³⁵
- 2.35 To do this, a firm must determine the extent of the information to be collected from clients in light of all the features of the investment advice service (or portfolio management service) to be provided to the client. The firm must obtain from the client such information as is necessary to understand the essential facts about the client and to have a reasonable basis for determining that the specific transaction to be recommended:
- (a) meets the client's investment objectives, including the client's risk tolerance;
 - (b) is such that the client is able to financially bear any related investment risk consistent with the client's investment objectives; and
 - (c) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction (or in the management of their portfolio).³⁶

There are requirements which further specify the detailed information which may be relevant and to the extent appropriate for each of the areas above to meet this commitment.³⁷

Streamlined advice – collecting proportionate levels of information

- 2.36 Although the rules allow firms to collect information which is proportionate, firms are not allowed to lower the overall level of protection due to clients. For example, to comply with the suitability requirements, a firm should not recommend that a client purchase a product unless they have a reasonable basis for determining that the client can afford the new commitment³⁸. Amongst other things, this is likely to require the firm to consider its client's level of indebtedness and access to liquid cash to meet an emergency.
- 2.37 When collecting information from a client in order to assess suitability, the firm may determine that the services or products which the firm is offering are not suitable for the

³⁴ See Articles 54 and 55 of the MiFID Org Regulation and COBS 9A.2. The non-MiFID provisions are in COBS 9.2.

³⁵ See COBS 9A.2.1R(2). The high-level suitability rules for non-MiFID business are contained in COBS 9.2.1R and are broadly similar.

³⁶ See Article 54(2) of the MiFID Org Regulation and COBS 9A.2.4EU. The non-MiFID requirements are broadly the same – see COBS 9.2.2R(1).).

³⁷ See COBS 9.2.2R, COBS 9.2.3R, Articles 54 and 55 of the MiFID Org Regulation, and COBS 9A.2.4EU to COBS 9A.2.8EU.

³⁸ See Article 54(2) of the MiFID Org Regulation and COBS 9A.2.4EU. The non-MiFID provisions are in COBS 9.2.2R.

client and in such a case the firm should not recommend a service or product to the client.

- 2.38 It is not possible to be prescriptive about the detailed information required, since it will always depend on the particular situation and the many factors involved. However, to help firms we have set out a series of examples of particular streamlined advice services and indicated the information which might be relevant in establishing suitability, at paragraph 2.54.
- 2.39 We have also suggested information which might not be necessary – for example, if it is made clear that the service is not suitable for investors who wish to use their ISA for retirement purposes, that the investor's pension provision will not be assessed, and that the service only covers funds to be held within a stocks and shares ISA, it is unlikely that the process would need to capture detailed information on the client's pension provision. Since any personal recommendation given to the client must be suitable, the firm might wish to obtain explicit confirmation that the client understands the nature and extent of the service rather than relying solely on disclosure.
- 2.40 The examples set out in this guidance are provided by way of illustration and should not be used by firms as a definitive statement of how a firm can or should comply with the applicable rules.

Relying on information

- 2.41 A firm is entitled to rely on the information provided by its clients, unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.³⁹ For firms that are subject to COBS 9A requirements⁴⁰, there are express obligations on firms to take reasonable steps to ensure that the information they collect is reliable. Those steps include (but are not limited to):
- ensuring the client understands the importance of providing accurate and up-to-date information;
 - ensuring that all tools used in the suitability assessment process are appropriately designed for use with clients and fit for purpose; and
 - taking steps, as appropriate, to ensure the consistency of client information, such as considering whether there are any obvious inaccuracies in the information being provided.⁴¹

A firm should also ask the client to confirm that the information the client has provided is correct.

³⁹ COBS 9.2.5R and COBS 9A.2.12 EU.

⁴⁰ The requirements in COBS 9A which apply to firms subject to MiFID, and firms which provide investment advice of portfolio management services in the course of carrying on equivalent third country and optional exemption business.

⁴¹ See Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9EU.

- 2.42 For ongoing relationships with a client, such as ongoing advice or portfolio management services, firms must have, and be able to demonstrate, effective processes for maintaining adequate and up-to-date information about their clients.⁴²

Existing information held by a firm

- 2.43 Some firms have asked to what extent they are required to use information that they already hold about a client. In particular, some firms face a challenge where they hold information in a different part of the firm or group which is not available to the adviser e.g. on separate legacy systems which are not linked.
- 2.44 If a firm is unsure whether it needs to take into account all the information in their possession, it might first consider what information is needed for them to provide a suitable personal recommendation to their client. If a firm has insufficient information to make a suitable recommendation, the firm must not recommend investment services or financial instruments to the client.⁴³ As noted in paragraphs 2.41 and 2.42 above, there are specific requirements around ensuring reliability of information.
- 2.45 Firms should use relevant existing information on the client to cross-check the reliability of the information obtained from the client unless, for example, it is not possible for them to do so because existing information is held in a separate business division on systems which cannot be accessed. Where this is the case, the firm should consider other ways of complying with the requirements to obtain the necessary information about the client to provide a suitable recommendation, to ensure that the information received from the client is reliable, and that it is not inaccurate or incomplete.⁴⁴ This is especially the case where the client might reasonably expect the firm to have access to other information previously provided by the client and to use that in the suitability assessment. For example, in such a situation a firm might inform the client that they do not have access to information which the client may previously have provided to the firm and ask the client sufficient questions to get the information needed to provide a suitable recommendation. In this case, the firm could remind the client clearly and simply of the importance of telling the firm about all relevant matters, including information about any products held with the same firm or group, to enable the firm to act in their best interests.⁴⁵

Considering existing investments

- 2.46 Some firms have asked us to clarify our expectations where a client seeking streamlined advice does not provide information on their existing investments and specifically requests that these investments not be considered as part of the advice process.
- 2.47 As explained above, it is for the firm as part of its suitability obligations to determine what information they need to obtain in order to provide advice in any given scenario. There are certain situations in which a firm is required to consider a client's existing

⁴² Article 54(7) of the MiFID Org Regulation and COBS 9A.2.10EU.

⁴³ See COBS 9.2.6R, and Article 54(8) of the MiFID Org Regulation and COBS 9A.2.13EU.

⁴⁴ See Article 55(3) of the MiFID Org Regulation and COBS 9A.2.12EU. For the non-MiFID provisions, see COBS 9.2.5R.

⁴⁵ See Article 54(1) of the MiFID Org Regulation and COBS 9A.3.1EU.

investments, for example, where the advice involves switching either by selling and buying a product or exercising a right to change an existing product.⁴⁶ In other cases, if a firm considers information about existing investments is necessary to carry out the suitability assessment and the client refuses to provide it, the firm must not make a recommendation.⁴⁷

2.48 Some possible considerations with regard to a client's existing investments are set out below⁴⁸:

- *The extent of information required on a client's existing investments may be reduced, in that the firm may not need to know certain details about these investments, such as the broad asset allocation, product types or country/sector exposure. This is because this specific information may not be relevant for the limited advice service being provided. To understand a client's regular financial commitments, firms should understand the level of any regular contribution products owned by a client. In order to recommend a tax-efficient investment solution, firms should understand whether clients (who are eligible) have used up their annual ISA allowance.*
- *The implications of a client's existing investments not being considered in detail could include, for example, that the process: does not consider whether their existing investment products match their stated risk appetite; only considers the objectives of investing the particular sum identified, and does not consider whether these objectives align with the client's broader financial objectives; and will not take into consideration any implications the recommendation has for the diversification or balance of the client's broader portfolio.*
- *Client understanding of the limitations of the service could be achieved through mechanisms such as timely alerts, by playing back answers to the client for confirmation (both during the process, and at the point that the recommendation is given), and filters throughout the process. For automated advice services, confirmation processes will need to be designed in a way that reflects how individuals typically interact with such screen-based systems, and should not allow, for example, clients to simply 'click through' important information.*
- *To comply with the suitability rules (and Principle 6 and the client's best interests rule) firms should understand the type and level of clients' debt, and not recommend a product if a client would be better advised to repay debt rather than investing money. Similarly, firms should not recommend a product unless they have reason for believing that the client has adequate savings to access in an emergency. If a client has debt that they should repay or insufficient emergency savings, they should exit from the process and be referred on as appropriate.*

⁴⁶ In broad terms, Article 54(11) of the MiFID Org Regulation and COBS 9A.2.18EU provide that where the service involves switching, a firm must collect the necessary information on the client's existing investments and recommended new investments and analyse the benefits and costs so that the firm is reasonably able to demonstrate that the benefits of switching outweigh the costs.

⁴⁷ COBS 9.2.6R; and Article 54(8) of the MiFID Org Regulation and COBS 9A.2.13EU.

⁴⁸ This guidance text was previously published as part of FG12/10 – Simplified Advice, most of which will be retired from 3rd January 2018.

Asking clients to 'self-assess' suitability

- 2.49 A firm which provides a personal recommendation must only recommend those services and products which are suitable for the client.⁴⁹ The assessment of suitability is, therefore, a core element of providing a personal recommendation. A firm must not create any ambiguity or confusion about its responsibilities in the suitability assessment process.⁵⁰ The suitability assessment is a firm's responsibility and a firm should avoid indicating to the client that a certain financial instrument is the one that the client chose as being suitable, or requiring the client to confirm that an instrument or service is suitable.
- 2.50 This principle applies equally to elements of the suitability assessment. For example, firms should not rely on clients to 'self-assess' their circumstances by asking subjective questions such as whether clients have 'sufficient' knowledge and experience or 'significant' levels of debt.

Non-compliant example:

A firm asked clients to 'self-assess' that they had the required knowledge and experience to be able to understand the risks of investing in the more complex products on offer through their streamlined advice process, instead of assessing this themselves.

The rules are clear that a firm must inform clients that the reason for assessing suitability is to enable the firm to act in the client's best interests.⁵¹ In doing so, the firm must obtain such information as is necessary for it to understand the essential facts about the client and to have a reasonable basis for determining that the client has the necessary experience and knowledge to understand the risks involved in the specific transaction to be recommended. Any tools employed by the firm to assess knowledge and experience must be fit for purpose and appropriately designed for use with clients, with any limitations identified and actively mitigated through the suitability assessment process.⁵²

If a firm is not able to determine that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction then the client should be exited from the process.

⁴⁹ See 9.2.1R(1) and COBS 9A.2.1R.

⁵⁰ See Article 54(1) of the MiFID Org Regulation and COBS 9A.3.1EU.

⁵¹ See Article 54(1) of the MiFID Org Regulation and COBS 9A.3.1EU.

⁵² See Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9EU.

Risk profiling

2.51 Information about a client's investment objectives must include, where relevant, the length of time for which the client wishes to hold the investment, their preferences regarding risk taking, their risk profile, and the purposes of the investment.⁵³

2.52 Establishing the risk a client is willing and able to take with their money is a key part of the suitability assessment. We set out some of the key issues below.

- **Capacity for loss** - When considering a client's attitude to risk as part of assessing suitability, the client's capacity for loss (the client's ability to absorb falls in the value of their investment) should be taken into account. If any loss of capital would have a materially detrimental effect on their standard of living, this should be taken into account in assessing the risk that they are able to take.
- **Design of risk profiler questions** – questions that are not clearly worded, or where the content is unlikely to be understood, can result in clients not giving answers that accurately reflect the risk they are willing and able to take. The possibility of clients misunderstanding the questions they are being asked could be exacerbated if the questions:
 - (a) are vague, use double negatives, or complex or excessively technical language that the client may not understand, or
 - (b) are not suitable for use with the firm's client base, for example, because they assume the client has particular knowledge or experience such as a good level of financial knowledge or mathematical ability, and that the client is comfortable in applying it, or
 - (c) are structured in a way that could invite inconsistent answers from clients in the same circumstances – for example, because they ask two questions in one and a client might want to record a different answer to each sub-question.
- **Poorly worded risk descriptions** – unclear or misleading descriptions which do not effectively explain the nature of the risks involved can also result in unsuitable recommendations. For example, statements within descriptions are not balanced or use language that is misleading, judgemental, emotive or not objective (for example, using text such as 'you are a sensible investor'). Language such as this can inappropriately influence rather than validate the level of investment risk the client is willing to take.
- **Inappropriate approach to scoring question answers** – where firms use a set of questions and a number of the questions asked have the option to answer 'neither yes or no', a middle weighting may be inappropriately attributed to these answers. Clients that choose the middle answer for all or some of these questions could be assessed as having a risk profile in the middle of the scale of risk categories. This could result in an inaccurate assessment of the risk the client is willing to take where the client's answers actually reflected 'non-answers'.

⁵³ See Article 54(5) of the MiFID Org Regulation and COBS 9A.2.8EU. For the non-MiFID business provisions, see COBS 9.2.2R(2).

These issues may be of particular concern in a fully automated advice situation where the client is reliant on the information provided to understand the nature of the risk they are exposed to and may not have the ability to ask clarificatory questions of an adviser.

Poor practice examples

We have seen risk profiling tools which assume clients have a high level of financial capability and are unduly complex, by requiring clients to use a series of percentages to calculate potential investment losses based on different scenarios and then confirm the level of loss they would be willing to accept. For example:

“With the money you have to invest, would you select:

(a) a product where there is very low risk of losing your money and the return is 5 % pa on average, or

(b) a product where you could lose up to 15 % in a year and the return is 10 % pa on average, or

(c) to split your money between the two products?”

This question is complex, assumes a high level of mathematical and financial ability, and assumes that all clients will be able to identify an accurate reflection of their preferences in the three options provided.

We have also seen firms looking to assess risk using charts based upon stochastic models which do not contain sufficient explanation to enable clients to understand them. For example, the chart may graphically depict the relative probabilities of the likely range of returns without explaining what is being conveyed, the likelihood of the returns being achieved and the limitations of the modelling approach. This could result in the firm failing to accurately assess the level of risk clients are willing and able to take.

- 2.53 The use of third-party risk-profiling systems has increased in recent years, including their use in delivering automated streamlined advice. In addition, we have seen regulated firms making use of third-party ‘white-labelled’ automated advice solutions. We would remind firms that they are responsible for ensuring that their personal recommendations are suitable. There are express requirements on firms to ensure that all tools, such as risk assessment profiling tools or tools to assess a client’s knowledge and experience, employed in the suitability assessment process, are fit for purpose and are appropriately

designed for use with their clients, with any limitations identified and actively mitigated through the suitability assessment process.⁵⁴

Good practice example

A firm had risk categories with relatively broad definitions supported by brief sub-sections within each definition that in combination aided understanding. It attempted to explain the risk in a number of different ways to help engage different clients. This included:

A short summary description of the risk that was fair and balanced by reflecting the risk-reward trade off and making use of plain English. Further bullet points that provided more detail of the risk of capital loss and the nature of typical investments in each category, and a simple chart showing the variability of annual returns over a period that was intended to help the client understand the potential gains and losses associated with a particular level of risk.

⁵⁴ Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9 EU.

2.54 Examples

These examples are provided by way of illustration and should not be used by firms as a definitive statement of how a firm can or should comply with the applicable rules. Firms will need to assess how their streamlined advice models can meet their regulatory obligations on a case by case basis.

These examples use the data from the entire process (i.e. both the filtering stage and the suitability assessment) to establish suitability. The approach set out is illustrative and not prescriptive. For example, firms may decide to ask fewer questions at the filter stage, preferring to gather more of the information at the suitability assessment stage or vice versa. A firm intending to rely on information obtained at the filtering stage must also comply with any other applicable requirements.⁵⁵

Similarly, firms may also consider whether their description of the nature of the service will be sufficient to prevent clients who are not in their target market from progressing through the process. If so, they may decide they need to ask fewer filtering questions.

Examples of information required for particular streamlined advice scenarios

1. Streamlined advice scenario – funds within a stocks and shares ISA

A firm intends to offer streamlined advice on a range of well diversified funds to be held within a stocks and shares ISA.

Intended market: The firm has identified that its service is best suited to clients who:

- Have disposable income or spare funds to invest
- Have already set aside sufficient accessible emergency funds (for example, at least three months' outgoings) and funds for any planned short-term expenditure)
- Would like advice on a specific investment need, rather than holistic financial planning
- Understand that the service will not provide advice on any of their existing investments
- Plan to remain invested for at least five years, and
- Are willing and able to accept a fall in the value of their investment.

The firm has also identified that its service would NOT meet the needs of clients who:

- Have significant levels of unsecured/unmanaged debt, or
- Struggle to meet regular financial commitments, or
- Have very complex tax circumstances, or
- Are expecting their financial situation to deteriorate in the short/medium term – e.g. through redundancy, retirement, illness, or
- Are unwilling or unable to accept a fall in the value of their investment, or

⁵⁵ For example, informing clients clearly and simply that the reason for assessing suitability is to enable the firm to act in the client's best interests (Article 54(1) of the MiFID Org Regulation and COBS 9A.2.6EU), and ensuring clients are aware of the importance of providing accurate and up-to-date information (Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9EU).

- Have not joined, but would benefit from joining a workplace pension where the employer matches employees' contributions, or
- Want the advice to also consider their existing investments.

It is worth noting that whilst on the face of it the service would not be right for certain clients, it may be that some further questioning results in responses that could lead to the service being right for the client after all. For example, the client may say that they have access to a workplace pension, but further questions reveal that they are already making the maximum contributions hence the requirement for an ISA. These clients could be re-routed back into the process after secondary questions.

Disclosure⁵⁶: In its description of its service the firm makes clear that it only provides personal recommendations on the funds to be held within the stocks and shares ISAs, not a full advice service which would look at the client's wider financial needs, and sets out the types of clients its service is aimed at and who it is not aimed at in line with their analysis above. It explains that the filtering questions which follow are intended to make sure that the service is right for the client.

Filtering questions: Before the client enters the service, the firm asks a series of 'basic' filter questions to determine whether a client falls into the intended market for the service based on their analysis above. For example:

- Do you want to receive advice specifically in relation to funds which you will hold in a stocks and shares ISA and not on your whole financial situation?
- Do you have any dependents (partners, children, etc.)? If something were to happen to you (e.g. you were unable to work, or you were to die) would you/ your dependents be provided for?
- Do you have £x left over each month after you have paid your monthly financial commitments?
- Do you have money set aside in cash savings to cover any emergency expenditure - at least enough to cover three months' usual outgoings?
- Do you have any unsecured/unmanaged debts, such as credit cards, store cards, personal loans? (We do not mean the mortgage on your home)
- Are you able to leave any money invested through this process untouched for at least five years?
- How much have you put into the various types of ISA this year?
- Are you a higher rate taxpayer?
- Do you have a workplace pension where the employer matches employees' contributions?
- Do you expect your financial situation to change in the short/medium term? For example: as a result of redundancy, retirement, illness, change in tax status?
- Are you willing and able to accept a fall in the value of your investment?

Firms should consider whether they need to provide supporting information to help clients understand the questions and use this to inform their answer.

Depending on the nature of the responses, the firm's system might direct the client down a route leading to a set of further questions (as described above). Negative answers to these questions may not necessarily mean that the clients should be excluded from the service. Instead, they might be given an appropriate warning and be asked to expressly confirm that they understand the warning, offered more information or possibly be referred to a full advice service. The firm should,

⁵⁶ A firm will also need to ensure it is satisfying its other disclosure obligations as set out in COBS 6.

however, exclude those clients whose answers indicate that their needs would not be met by this process.

The firm would then go on to gather further information from the clients who appear to be right for the service. The following examples illustrate what information the firm might need to gather so that it can determine which, if any, of its funds are suitable for them.

Client information that might be needed to determine suitability (non-exhaustive) in addition to the filtering questions above

Once the firm has completed the filtering process, the next step would be to consider what information it would need to obtain to establish suitability in addition to the details already gathered during the filtering process. Examples of the additional information which may be needed are set out below as well as suggestions of what might not be necessary for this scenario.

Topic	Example information
Investment objectives	What does the client want to achieve/purpose of investment? For how long does the client wish to hold the investment?
Financial situation	What is your regular monthly income? What is the source of that regular income? How much are your regular monthly financial commitments?
Knowledge and experience	Does the client have a sufficient understanding of investing in funds linked with the stock market to understand the risks, e.g. has the client invested in stocks and shares previously? The process could also provide educational information about the key risks of investing in the ISA prior to assessing the client's knowledge.
Risk and capacity for loss	Questions to establish the level of risk a client is willing and able to take with their money. Please see previous guidance on this topic such as FG11/05 ⁵⁷

Client information that may not be needed in this scenario

⁵⁷ http://www.fsa.gov.uk/pubs/guidance/fg11_05.pdf

Area	Example information
Information on other 'needs' not relevant to the streamlined service	It may not be necessary to obtain information relating to the client's objectives for retirement, protection or mortgage needs where information on these aspects is not needed to determine whether a streamlined advice process is likely to meet their needs (as set out above).
Detailed information on existing investments	Provided the firm has made clear that it will not be taking account of the client's existing investments and has explained the implications of this to the client. Also pertinent is that the funds available through a streamlined process are sufficiently well-diversified so they do not pose a concentration risk.
Health	It should not be necessary to gather health information in this scenario.

The firm's process should take account of the fact that the client might give information later in the process that suggests they are not part of the intended market for their service. If this happens, they might gather more information, refer the client to a full advice service or not proceed with the sale.

2. Streamlined advice scenario (workplace pension)

A firm intends to offer a streamlined advice service on the fund choice for employees who have been automatically enrolled into their employer's scheme (which is not a group self-invested personal pension). There is a range of well diversified funds on offer.

Intended market: The firm has identified that its service is best suited to clients who:

- Have been enrolled into their employer's scheme
- Are content to receive advice solely on the fund composition of their workplace pension and do not want advice on, for example, whether to increase their contributions level

The firm has also identified that its service would NOT meet the needs of clients who:

- Have not joined their employer's scheme
- Are content for all the contributions to be invested in the scheme's default fund
- Are looking for advice on their levels of contribution.

Disclosure⁵⁸: In its description of its service the firm makes clear that it only provides personal recommendations on clients' fund choice within their workplace pension. If they are unsure about any of this, then they should not use this service and should seek advice which will consider their needs more broadly.

Filtering questions: Before the client enters the service, the firm asks a series of 'basic'

⁵⁸ A firm will also need to ensure it is satisfying its other disclosure obligations as set out in COBS 6.

filtering questions to determine whether a client falls into the intended market for the service based on their analysis above. For example:

- Have they joined their employer's pension? (This information may already be known to the firm)
- Do they want the contributions to be invested into the default fund?
- Do they want to receive advice specifically on the issue of which fund(s) would be suitable and not on other issues such as the level of their contributions?

The firm would then go on to gather further information from the clients who appear to be right for the service. The following examples illustrate what information the firm might need to gather so that it can determine which of the available funds are suitable for them.

Client information that might be needed to determine a suitable fund choice (non-exhaustive)

Once the firm has completed the filtering process, the next step would be to consider what information they would need to obtain to provide a suitable fund choice recommendation in addition to the details already gathered during the filter process. Examples of the additional information which may be needed are set out below as well as suggestions of what might not be necessary for this scenario.

Topic	Example information
Investment objectives	What does the client want to achieve/purpose of investment? When does the client expect to want to access the benefits?
Knowledge and experience	Does the client have a sufficient understanding of investing in funds linked with the stock market to understand the risks, for example, has the client invested in stocks and shares previously? The process could also provide educational information about the key risks for those without significant knowledge/experience prior to assessing their knowledge.
Risk and capacity for loss	Questions to establish the level of risk a client is willing and able to take with their money.

Client information that may not be needed in this scenario

Area	Example information
Information on other 'needs' not relevant to the streamlined service	It may not be necessary to obtain information relating to the client's objectives for regular savings or investments or their protection or mortgage needs.
Financial situation – including information on existing investments	Details of the client's financial situation may not be relevant to this particular advice service (of solely recommending which investment fund(s) would be suitable). This would include information on income and outgoings, debts, emergency fund and existing pensions and investments,

	provided that the funds on which the firm is advising are sufficiently well diversified so they do not pose a concentration risk.
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Pension decumulation example

There are a range of pension decumulation options available and the most suitable for any client will depend on their own specific circumstances and needs. As it is not possible to cover all possible scenarios, we set out below an example of just one of the available options, for the purpose of illustrating how a streamlined model might work.

3. Streamlined advice scenario – an example in relation to purchasing an annuity

A firm intends to offer streamlined advice on retirement decumulation options, specifically the recommendation of annuities from an available range that covers the different types of annuity.

Intended market: The firm has identified that its service is best suited to clients who:

- Are aged at least 55⁵⁹
- Are approaching retirement
- Have an existing pension fund(s) with no safeguarded benefits
- Are looking to access part or all of their pension fund(s)
- Are looking to draw their pension benefits in the form of guaranteed lifetime income
- Are not willing to invest their pension fund and be subject to the risks associated with that
- Are not interested in being able to pass on their pension fund to beneficiaries following their death
- Do not want holistic financial advice or advice on any other specific areas

The firm has identified that its service would NOT meet the needs of clients who:

- Are aged under 55
- Are not yet approaching retirement
- Have neither a personal or workplace pension
- Have a pension that includes safeguarded benefits, such as guaranteed annuity rates
- Wish to maintain flexibility in how they make use of their pension funds
- Require a complete review of their financial situation

As every situation is different, and not all possible scenarios can be covered here, we give

⁵⁹ Note the proposed increase in the normal minimum pension age from age 55 to age 57 in 2028

an example of one specific situation only.

Disclosure: In its description of its service the firm makes clear that they only provide personal recommendations relating to annuity purchase and sets out the types of clients the service is aimed at, and who it is not, in line with their analysis above. The firm also sets out the limits of its service and what elements of a client's financial situation will not be addressed.

Filtering questions: In this example, the client is seeking advice regarding a specific amount of money that is already invested. This means the firm is unlikely to need to take into account all other financial factors if they are not relevant given the client's immediate requirements.

Before the client enters the process, the firm asks a series of 'basic' filter questions to determine whether a client falls into the intended market for their service, based on their analysis above. For example:

- Do you understand that you will only receive advice specifically in relation to how you might use your pension benefits to generate an income and not on your whole financial situation?
- Are you over 55 years of age?
- Do you have an existing pension with no safeguarded benefits, such as guaranteed annuity rates?
- Are you looking to use your pension to provide a guaranteed income for the rest of your life?
- Do you have any unsecured/unmanaged debts, such as credit cards, store cards or personal loans?
- Do you have any health problems? If not, have you had any in the past?
- Are you currently a higher rate taxpayer?

Depending on the nature of the client's responses to the questions, the firm's system might direct them down a route leading to a set of further questions, offer more information or possibly refer them to a full advice service. The firm should exclude any clients whose answers indicate that the service would not be right for them.

The firm would then go on to gather further information from those clients who appear to be right for the service. The following examples illustrate what information the firm might need to gather so that it can determine which, if any, annuities are suitable for them.

Client information that might be needed to determine suitability (non-exhaustive)

Once the firm has completed the filtering process, the next step would be to consider what information they would need to obtain to establish suitability in addition to the details already gathered during the filter process. Examples of the additional information which may be needed are set out below as well as suggestions of what might not be necessary for this scenario.

Topic	Example information
Investment objectives	Does the client want to use their pension pot to generate guaranteed income for their lifetime? How do they want to receive their regular income? Does the client have a requirement for tax free cash from their pension pot? Details to establish client's needs in respect of options such as escalation, joint/dependents annuity and guarantee periods.
Financial situation	Details of all assets the client holds, for example, their ease of accessibility Full details of any other income the client will have in retirement Debts and liabilities, particularly any unsecured/unmanaged or expensive debt
Family	Marital status Children Dependants
Knowledge and experience	Does the client understand the nature of an annuity, e.g. that it is irreversible? That their fund will no longer have the capacity to grow?
Attitude to risk	Would the client be prepared to accept stock market fluctuations in their income, or would they prefer a fixed income?
Health	Details of any health problems the client has, or has had
Tax position	The client's current and expected rates of income tax
Anticipated changes	Are there any likely changes in the client's financial situation, for example, plans for capital outlay, or expenditure?
Client information that may not be needed in this scenario	
Area	Example information
Information on other 'needs' not relevant to the streamlined service	It may not be necessary to obtain information relating to the client's objectives for regular savings or their protection or mortgage needs, where this is not needed to determine whether a streamlined advice process is likely to meet their needs (as set out above).
Detailed information on existing investments	It may not be necessary to obtain detailed information on existing investments in this scenario, where the advice is restricted solely to pension decumulation by a cautious route. The advice addresses funds that are already invested for a specific purpose which the client is now looking to

	realise.
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The firm's process should take account of the fact that the client might give information later in the process that suggests they are not part of the intended market for their service. If this happens, they might gather more information or not proceed with the service.

Pension Accumulation Example (at the request of the client)

This example involves defined contribution (DC) to DC transfers. Firms may be considering versions which involve transferring safeguarded benefits such as defined benefit (DB) to DC transfers in which case there are additional considerations to take into account. We have recently published a consultation paper on advising on safeguarded benefits.⁶⁰

4. Streamlined advice scenario – pension accumulation (at the request of the client)

A potential client approaches an adviser firm for advice regarding the client's existing pension pots. The client has had a number of previous employers from each of whom the client had a workplace pension. The client wants advice on whether they should consolidate their holdings and if so into what product.

Intended market – the adviser has identified that by giving a focused service in this way (determined by the needs of the client, rather than the firm) it would meet the needs of a particular category of clients. They are able to offer a service that would be suitable for an individual who:

- Is less than 55 years in age and so is not currently able to drawdown their pension
- Is not anticipating retirement in the near future
- Does not require a review of their current pension contributions or wider retirement planning
- Has existing pension pots as well as a workplace pension into which their employer is currently making contributions
- Wants to consolidate existing pension pots that do not contain safeguarded benefits

Disclosure⁶¹: The firm needs to make clear the limitations of a focused service. So it will need to be clear that its advice will be in relation exclusively to the client's existing pension pots and how best to invest them. In particular that it will not give advice on whether the pension pots will provide an adequate retirement income or whether the client's proposed retirement date, if they have one, is realistic, as the firm will not consider any current pension contributions that the client is making.

Filtering questions: In this example, the client has chosen a service that will provide advice regarding money that is already invested and can be switched but not disinvested. As such many of the considerations relating to other forms of investment advice or

⁶⁰ <https://www.fca.org.uk/publication/consultation/cp17-16.pdf>

⁶¹ A firm will also need to ensure it is satisfying their other disclosure obligations as set out in COBS 6.

retirement planning would fall away.

Nevertheless it would be important to check the client falls within the intended market (under 55 years of age and not intending to retire in the near future, consolidating pots without safeguarded benefits), as it is unlikely that advice on the investments could be suitable without considering the format of the likely retirement income.

Client information that might be needed to determine suitability (non-exhaustive)

Topic	Example information
Investment Objectives	When does the client intend to retire?
Detailed information on existing pension investments	The firm would need to know full details of the existing pension pots on which the client is seeking advice, in particular the existence of any safeguarded benefits or protected benefits, their charging structure and whether or not the underlying funds are suitably balanced and are appropriate to the client's risk appetite before being able to advise on whether or not to move their money into a different scheme. This is likely to include the details of any workplace scheme the client is currently paying into, as consolidating pots into this scheme might be the best option.
Knowledge and experience	The firm would need to gather information that demonstrates that the client has adequate knowledge or experience on any product it might recommend the client use for pension consolidation; however, this could likely be established in the course of gathering details about the existing pension holdings to be consolidated.
Risk and capacity for loss	Questions to establish the level of risk a client is willing and able to take with their money.

Client information that may not be needed in this scenario

The firm should outline to the client what the personal recommendation will, and will not cover. This will enable the client to understand the nature of the service.

Area	Example information
Information on other 'needs' not relevant to the streamlined service	It is unlikely to be necessary to obtain information relating to the client's regular savings or their protection or mortgage needs, given that they are looking for advice on existing investments which cannot be disinvested.
Detailed information on non-pension existing investments	It may be helpful to know how other, non-pension investments are invested, so the firm can check the balance of the client's investments overall.

Broader financial situation	As the firm would be considering how best to rebalance money that is already invested and that cannot be redeemed for a number of years, information that a firm would generally use to determine whether a client can afford to make an investment in the first place becomes less relevant. For example - • An overview of the client's income and outgoings • Whether the client has adequate money set aside for emergencies • Assets including any existing investments
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3 Fact find information and portability

- 3.1 The requirements on firms when assessing suitability, record keeping and retention periods are set out in the MiFID Org Regulation⁶² and the COBS sourcebook. In broad terms, to meet these requirements, firms must collect all the necessary information about the client's knowledge and experience, financial situation and investment objectives, to make suitable personal recommendations. The collection of information for these purposes is referred to in this guidance as a 'fact find'.
- 3.2 Completing a fact find can be time consuming and is often carried out face to face, so this can be a significant contributor to advisers' costs. We have been told that any reduction in the length of the fact find process could reduce the overall cost of advice for the consumer.
- 3.3 The length of the fact find process can also act as a potential barrier to the consumer seeking advice and/or switching to a new adviser. A lengthy or repeated fact find process is likely to be particularly unattractive to consumers who are used to more immediate online solutions.
- 3.4 The ability of firms to use pre-existing information to facilitate a subsequent fact find, coupled with the high degree of standardisation of some sub-sets of fact find information between different advisers, presents opportunities in terms of 'porting' a fact find from one adviser to another. This could be more convenient and cost-effective for the client and facilitate switching between advisers.
- 3.5 The potential for porting fact finds is likely to be maximised through the innovative use of technology. There are a growing number of initiatives in the market currently offering this digital functionality. These third-party services are being offered to consumers as an opportunity to store and manage their personal information securely, and to consent to share it with the financial services companies of their choice. There is potential for greater time efficiencies for consumers, who can avoid duplication by updating information once with a single provider. A further advantage is the possibility for consumers to use their central data storage to more easily compare opportunities across the market. These digital personal data solutions can integrate with financial firms operating online streamlined advisory services. There is no reason why a consumer's personal repository of information could not be used, in line with applicable data protection rules, and with the client's express permission, as the basis for a conventional advice consultation. However, the firm would need to have suitable arrangements in place to confirm the accuracy of the data before it could be used.

⁶² For firms subject to MiFID.

An example of good practice by a firm that has a relationship with a client for ongoing advice:

- Prior to their annual review meeting the firm contacts their client by email and attaches a proforma document into which the client's information has been uploaded directly from the firm's systems.
- The firm's message invites their client to carefully review the information to see whether there have been any changes since the last transaction. They emphasise the key areas for checking, such as those things which are most likely to have changed e.g. credit card and loan balances, and income.
- The message is sent in good time before the meeting so that their client can check the information at a time convenient to them.
- At the meeting, the firm goes over the form again to check that the client has properly completed the form and address any inconsistencies.
- The firm reflects any consequent reduction in the contact time with their client in their charges for advice.

- 3.6 We are aware that some firms have already adopted more efficient fact-finding practices, such as asking clients to pre-populate the objective elements of the fact find prior to a face to face meeting, thus minimising the necessary contact time and reducing fees. Other firms are using their systems to carry over existing information into a fresh fact find.
- 3.7 In obtaining the necessary information about their clients to assess suitability, a firm is entitled to rely on the information provided by its clients, or potential clients, unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.⁶³ The information that firms collect from their clients to carry out the suitability assessment could include a fact find which has been completed by the client independently at the start of the advice process or during a previous transaction with the firm or a third party.
- 3.8 A pre-completed fact find, therefore, attested by the client as correct and up-to-date *could* provide the basis for that suitability assessment. However, it remains the responsibility of the firm looking to give advice to ensure that it has the information it needs to provide that service, that the information is accurate and up-to-date. The firm cannot seek to shift the responsibility of deciding which information it requires to provide advice, onto its client. However, a firm can ask the client to confirm that the information is complete and up-to-date as a means of meeting this obligation, unless the firm is

⁶³ For MiFID, equivalent third country or optional exemption business, see Article 54(2) of the MiFID Org Regulation and COBS 9A.2.4EU. For other business, see COBS 9.2.2R.

aware or ought to be aware that the information is manifestly out of date, incomplete or inaccurate.

- 3.9 In relation to MiFID, equivalent third country or optional exemption business, firms are also expressly required to take reasonable steps to ensure that the information they collect from clients is reliable. This includes ensuring that the questions they use in the process are likely to be understood by clients and capture an accurate reflection of the information needed to carry out a suitability assessment.⁶⁴
- 3.10 In order to obtain reassurance that the information collected is reliable, advisers using a pre-completed fact find may wish to incorporate into their advice process an explicit opportunity for the client to review any pre-captured information and to record their approval of this information. Firms should give careful thought to how they do this. A firm might consider ways in which it can make clear to clients that the adviser will be relying on the pre-captured information and that it is important that the client is satisfied that the information is still correct and up-to-date.
- 3.11 For example, firms might indicate items of information such as short term borrowings, instant access savings or monthly outgoings which are more likely to have changed or to include a set of questions testing whether the client has considered changes in particular areas in more detail.
- 3.12 When a client is asked to review information online, firms might consider how any online tool mitigates the risks that a client may not notice information which is no longer current. For example, clients may find it more convenient to review information in manageable sections rather than being asked to download a large document containing information. Firms should also consider how behavioural biases can potentially affect clients' ability to provide reliable information, for example, by considering whether the language is clear and comprehensible and avoiding misleading, confusing, imprecise and excessively technical language. Similarly, firms may consider that the reliability of information may be enhanced by asking a client to confirm information by section rather than by completing a single tick box or similar to confirm their details as a whole.
- 3.13 It may also be possible to build controls into the client process to ensure that all relevant information has been viewed by the client before it is possible to proceed to the next step of the advice process. Pop-up messages that require action by the client before proceeding could be used at critical points in the process to alert the client to the fact that they are making a significant declaration.
- 3.14 Our rules do not set a specific time period at which firms must ask clients to review existing fact find information but firms with ongoing relationships with clients are required to have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date client information⁶⁵. Firms should consider the likely period of time during which information might become out of date and need to be refreshed if there

⁶⁴ See Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9EU.

⁶⁵ In relation to MiFID, equivalent third country or optional exemption business, see Article 54(7) of the MiFID Org Regulation and COBS 9A.2.10EU.

have been no intervening advice points. For example, certain information – such as a person's employment status – may need to be verified more often as they approach retirement age. Firms might also consider that there are circumstances where it would be appropriate to offer a client a new fact find. This might be the case, for example, where a long time has elapsed since the last advice transaction or a vulnerable client experiences difficulty in assimilating and confirming pre-captured information without being guided through the fact find by their adviser. Another example where a new fact find is likely to be needed would be where the client has experienced a significant life change, e.g. marriage, the birth of a child or a career change, or is approaching retirement.

- 3.15 In addition, a firm should identify and follow up on any obvious inaccuracies in the information provided by clients⁶⁶. It may be possible for automated checks to be built into systems to identify inconsistencies across the information. An adviser may also wish explicitly to re-visit those areas of the fact find that it has reason to believe are likely to have changed.
- 3.16 So long as firms ensure that they obtain all the necessary client information and take all reasonable steps to ensure that it is reliable, accurate and up-to-date, the source of that information might be the client themselves, a third party, such as a digital storage solution, or a product provider.

⁶⁶ In relation to MiFID, equivalent third country or optional exemption business, see Article 54(7) of the MiFID Org Regulation and COBS 9A.2.9EU.

An example of good practice by a firm giving a personal recommendation through an automated streamlined service, using information from a pre-completed fact find:

The firm displays a clear message informing the client that the recommendation will be based on the information they have provided. Their system displays that information to the client, in a simple and easy-to-read format and broken down into sections.

The firm then asks the client to read and check that all the information is correct and confirm that for each section before they can move on to the next. Dividing the information into manageable sections and presenting it clearly makes it easier for the client to check and confirm that it is correct.

There are controls within the firm's system so that the process cannot be continued until all the client's information has been displayed back to them and their confirmation obtained. The firm also displays a message to the client making it clear that a personal recommendation based on incorrect information could result in unintended outcomes for the client. As further reassurance, the firm requires the client to confirm that they have read and understood this message – and provides the client with a final opportunity to correct their information – before completion of the process.

4 Guidance brought forward from FSA

FG12/10: Simplified Advice guidance and FCA

FG15/1: Retail Investment Advice guidance

The guidance in the following section was originally published in FSA non handbook guidance FG 12/10 or FCA non handbook guidance FG 15/1, both of which will be retired from 3rd January 2018. It now forms part of this guidance. Some changes have been made where necessary to ensure that it is correct, consistent and reflects subsequent changes to the regulatory regime.

Adviser charging

- 4.1 Streamlined advice involving the giving of personal recommendations to retail clients in the UK on retail investment products (or P2P agreements) must comply with the adviser charging and remuneration rules in COBS 6.1A.⁶⁷
- 4.2 These rules require that personal recommendations, and related services, provided to retail clients in respect of a retail investment product, be paid for by 'adviser charges'.⁶⁸ They ban commission, remuneration, or benefits of any kind in relation to personal recommendations. Related services may include arranging or executing a transaction which has been recommended to a retail client by the firm, an associate or another firm in the same group, or conducting administrative tasks associated with that transaction (COBS 6.1A.6R).
- 4.3 If the firm is the retail investment product provider, the firm must ensure that the level of its adviser charges is at least reasonably representative of the services associated with making the personal recommendation (COBS 6.1A.9R). There is guidance on when adviser charges are likely to be 'reasonably representative' of the cost of the services associated with providing advice (6.1A.10G).

⁶⁷ The adviser charging rules do not apply to a firm giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme. These rules also do not apply when a firm is giving basic advice in accordance with the basic advice rules.

⁶⁸ An adviser charge is any form of charge payable by or on behalf of a retail client to a firm in relation to the provision of a personal recommendation by the firm in respect of a retail investment product or P2P agreement (or any related service provided by the firm) which is agreed between that firm and the retail client in accordance with the rules on adviser charging and remuneration (COBS 6.1A) and is not a consultancy charge.

- 4.4 Firms must determine and use an appropriate charging structure for calculating its adviser charge for each retail client (COBS 6.1A.11R). They must not use a charging structure which conceals the amount or purpose of any of its adviser charges from a retail client (COBS 6.1A.14R). Adviser charges can be contingent on the client going through with the recommendation.
- 4.5 A firm must disclose its charging structure to a retail client in writing, in good time before making the personal recommendation (or providing related services) (COBS 6.1A.17R). To meet their responsibilities under Principle 7 (Communications with clients), firms should ensure that their charging structure is disclosed in a way which is clear, fair and not misleading.
- 4.6 The charging structure should be disclosed, along with the basis (if any) upon which the rates may vary (including the circumstances in which there will be no charge), at the point that the retail client starts going through the advice process. This may be after a short screening process, where clients have been assessed to determine if they are likely to be suitable for the process or not.
- 4.7 The total adviser charge payable to the firm for the service must be disclosed and agreed with the retail client as early as practicable (COBS 6.1A.24R(2)(b)). This disclosure must meet a number of other conditions, for example, it must be in cash terms and be in a durable medium or through a website, if the website conditions are satisfied. If the process results in a personal recommendation, which is implemented elsewhere in the firm or group, adviser charging rules will still apply.⁶⁹
- 4.8 If the adviser charge varies depending on the type of recommendation, 'as early as practicable' for the disclosure of the actual charge is likely to be at the point where the personal recommendation is made. This is the second stage in the disclosure of adviser charges, the first being the disclosure of the charging structure at the start of the process.
- 4.9 In order to meet its responsibilities under the client's best interests rule and Principle 6 (Customers' interests), a firm should consider whether the personal recommendation is likely to be of value to the retail client when the total charges the retail client is likely to be required to pay are taken into account (COBS 6.1A.16G). To meet its responsibilities under Principle 7 (Communications with clients), firms should consider whether their charging structure can be easily understood by those clients at whom the service is aimed, in particular if it sells commission⁷⁰ and non-commission attracting products through streamlined advice. Firms who also sell products that could attract commission through streamlined advice could choose to operate a fee-only charging model.

Complaints, redress and compensation

⁶⁹ These are services related to the personal recommendation, so covered by the adviser charging rules (COBS 6.1A.6R(1)).

⁷⁰ For example, a protection product.

- 4.10 The Dispute Resolution: Complaints (DISP) sourcebook sets out the rules for complaints handling by firms and the jurisdiction of the Financial Ombudsman Service. The rules require firms to deal with complaints promptly and fairly in the first instance and provide a final response to the consumer within eight weeks. From 3 January 2018, there are specific complaints handling requirements for firms who receive 'MiFID complaints' from their clients (i.e. complaints about a firm's MiFID business).⁷¹ If the client remains dissatisfied with the firm's response, they may be able to refer their complaint to the Financial Ombudsman Service⁷². The complaints-handling rules and access to the Financial Ombudsman Service apply to complaints arising from a streamlined advice process in the same way as for other advice processes.
- 4.11 Firms have told us that the response by the Financial Ombudsman Service to complaints is a barrier to developing new streamlined services that match the requirements of our Handbook. This risk may be perceived to be more significant for firms using automated systems where there is potential for systemic mis-selling.
- 4.12 The Financial Ombudsman Service's decisions are based on what it believes is fair and reasonable in all the circumstances of each individual case. Their rules require the ombudsman to take into account relevant laws and regulations, FCA rules and guidance, and also good industry practice; see this from its website on simplified advice:
- "Simplified advice" processes must comply with the same regulatory requirements as those involving full advice – including the requirement that the advice has to be "suitable". But in any complaints we might receive, we would judge the advice in the specific context in which it was given. So we would not expect a "full fact-finding" exercise. But we would look at the questions asked and the options open to the particular consumer concerned.*
- Where the "simplified advice" involves an automated process, we would look – as part of our consideration of any complaint – at whether there was a good record of the information the consumer gave and the choices they made.'*
- 4.13 The Compensation (COMP) sourcebook sets out the rules and guidance that allow the Financial Services Compensation Scheme (FSCS) to pay compensation. The rules specify who is eligible to receive compensation, in what circumstances and the limits on how much compensation can be paid. Consumers receiving advice through a streamlined process may have recourse to the FSCS when a firm is unable, or likely to be unable, to pay claims against it.

Professional standards

⁷¹ See Article 26 of the MiFID Org Regulation and DISP 1.1A. The requirements apply to complaints from a firm's clients and need not be from 'eligible complainants'.

⁷² The customer must be an eligible complainant.

- 4.14 Our training and competence regime supports consumers by making sure the financial services workforce is appropriately qualified and well regulated. The regime comprises:
- a high-level competence requirement (the ‘competent employees rule’) that applies to individuals engaged in the regulated activity in all UK authorised firms (including wholesale firms) as set out in our [Senior Management Arrangements, Systems \(SYSC\) sourcebook](#),⁷³
 - more detailed requirements for certain activities such as advising or giving personal recommendations on securities, retail investment products and P2P agreements, including the need to attain a qualification where relevant, as set out in our [Training and Competence \(TC\) sourcebook](#).⁷⁴
- 4.15 An automated process can provide a personal recommendation with the firm providing the automated service being responsible for that recommendation, including whether it is suitable. A firm may choose to have an employee support clients through their streamlined advice process, and the role of that employee can be considered separately from the personal recommendation given by the automated process, if they do not have the ability to influence that recommendation.
- 4.16 There are three main options available to firms in considering the role of an employee to support a streamlined advice process, which are that:
- Option 1: there is no employee involved in the provision of the personal recommendation, so it is provided wholly through an automated system;
 - Option 2: a retail investment adviser⁷⁵ takes the client through the streamlined advice process, or participates in the process in other ways, for example, by guiding the client if they have any questions, or discussing the merits of the personal recommendation; and
 - Option 3: the client has access to an employee who can answer questions of a purely factual manner and help clients through the process, but does not give advice to the client (and therefore does not give a personal recommendation).

Personal recommendation provided through a fully automated streamlined advice system (option 1)

- 4.17 If a firm wishes to provide a personal recommendation through a fully automated streamlined advice system, i.e. there is no employee involved in the provision of the recommendation, so it is provided wholly through an automated system, then the design of this system is of critical importance.
- 4.18 We consider that the design, testing and ongoing maintenance and supervision of the operation of such a system is likely to be more complex than the design of procedures to provide a personal recommendation to clients face-to-face, or over the telephone. We

⁷³ <https://www.handbook.fca.org.uk/handbook/SYSC/>.

⁷⁴ <https://www.handbook.fca.org.uk/handbook/TC/>.

⁷⁵ Terms defined in our Glossary: <https://www.handbook.fca.org.uk/handbook>.

would expect the work that firms would need to do if they wished to use such systems to reflect this.⁷⁶

- 4.19 In practice, the design of such systems would need to involve competent individuals with expertise in a number of different areas, including IT specialists. However, given that the purpose of the system would be to provide personal recommendations on investments, we would expect that a fully competent retail investment adviser would be involved in the design process from the beginning and would confirm that the system was fit for purpose before it entered into use. By 'fully competent' we mean that they meet the Training and Competence (TC) standards of a retail investment adviser. Further details on our training and competence regime can be found on our website.⁷⁷

Employees who give personal recommendations (option 2)

- 4.20 The second of the options is where the client is taken through the streamlined advice process by an employee, is able to ask questions of the employee for guidance as the client goes through the process, or can discuss the merits of the personal recommendation with the employee. In this scenario the employee must meet the Training and Competence (TC) standards of a retail investment adviser. These requirements are summarised below.

Firms must ensure that their retail investment advisers:

- hold an appropriate qualification as set out in TC where required;
- undertake a minimum of 35 hours of continued professional development per annum; and
- hold a Statement of Professional Standing (SPS) issued by an accredited body.

In addition, retail investment advisers must comply with the Statements of Practice for Approved Persons (APER) or the Code of Conduct (COCON) as applicable.⁷⁸

Employees who do not give personal recommendations (option 3)

- 4.21 The third of the options involves an employee that provides purely factual information to clients, but does not provide advice and therefore does not provide personal recommendations. This employee must not provide a personal recommendation if they do not meet the requirements of a retail investment adviser in TC. Whether the employee provides a personal recommendation or not depends on what they say, how it is delivered, and the scope that they have to influence the process. This employee should have the knowledge and expertise to recognise when a client needs to be referred to a retail investment adviser.⁷⁹

⁷⁶ For example, if the development and maintenance of the algorithms are outsourced firms should consider our rules and guidance on outsourcing.

⁷⁷ See our training and competence web-page: <https://www.fca.org.uk/firms/training-competence>.

⁷⁸ See our training and competence web-page: <https://www.fca.org.uk/firms/training-competence>.

⁷⁹ See also section 2.26 of this finalised guidance: 'Support from non-qualified individuals'

The requirements on appropriateness

- 4.22 If a client wants to purchase a MiFID financial instrument from a firm providing investment services in the course of MiFID or equivalent third country business not involving a personal recommendation or portfolio management, the firm will need to consider the rules on appropriateness.⁸⁰ The rules on appropriateness also apply in certain other circumstances.⁸¹
- 4.23 Under MiFID, where the service being provided by the firm relates to certain specified 'non-complex' financial instruments,⁸² the firm need not carry out an appropriate assessment provided certain conditions are met.⁸³ Very broadly, a firm is not required to assess appropriateness if (amongst other things):
- (a) the service only consists of the execution or reception and transmission of client orders, with or without ancillary service, the service relates to particular 'non-complex' financial instruments, and the service is provided at the initiative of the client;
 - (b) the client has been clearly informed that in the provision of the service the firm is not required to assess the appropriateness of the 'non-complex' financial instrument or service provided or offered and that therefore the client does not benefit from the protection of the rules on assessing appropriateness; and
 - (c) the firm complies with its obligations in relation to conflicts of interest.
- 4.24 Where these conditions are not met, or the service relates to other financial instruments (MiFID II has narrowed the scope of products deemed automatically non-complex), the firm will need to assess appropriateness.⁸⁴ This section describes how the appropriateness test applies to sales of financial instruments and how firms can integrate the test into their service model.
- 4.25 Where an appropriateness assessment is required, a firm must seek information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client.⁸⁵ This involves determining whether the client has the knowledge and experience to understand the risks involved in the transaction or service that is envisaged. How the appropriateness test can best be

⁸⁰ See Article 25 of MiFID, Articles 55 to 57 of the MiFID Org Regulation and COBS 10A.1.

⁸¹ The rules on appropriateness in COBS 10 apply where a firm arranges or deals in relation to a non-readily realisable security, derivative or a warrant for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion. In addition to applying to services provided in the course of MiFID or equivalent third country business, the rules on appropriateness in COBS 10A also apply where a MiFID investment firm, third country investment firm or optional exemption firm sells a structured deposit (see COBS 1.1A.1R).

⁸² See Article 25(4)(a) of MiFID and COBS 10A.4.1R(1)(2). Other financial instruments may be considered as 'non-complex' where they meet the relevant criteria – see Article 57 of the MiFID Org Regulation and COBS 10A.4.2EU.

⁸³ See Article 25(4)(a) to (d) of MiFID and COBS 10A.4.

⁸⁴ Under MiFID, there are two further limited circumstances where a firm may not need to assess appropriateness – see COBS 10A.6.

⁸⁵ See Article 25(3) of MiFID and COBS 10A.2.1R.

integrated into a firm's particular business model and processes will be for each firm to determine (e.g. online, or face-to-face, over the telephone or in hard copy).

- 4.26 The information that firms are required to collect regarding a client's knowledge and experience includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged (including the complexity and the risks involved):⁸⁶
- (a) the types of service, transaction and financial instrument with which the client is familiar;
 - (b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;
 - (c) the level of education, and profession or relevant former profession of the client or potential client.⁸⁷
- 4.27 We would expect an appropriateness assessment to be particularly rigorous if a firm were offering more complex financial instruments to less experienced customers who may be less likely to understand the risks.
- 4.28 Firms may also wish to use targeted questions designed to establish the customer's knowledge and experience in order to understand the risks relevant to the specific type of financial instrument or transaction envisaged. It is also possible to seek to increase the customer's level of knowledge about a financial instrument or service through providing pertinent information to the customer before assessing appropriateness (though in doing so, firms should be mindful of the risk of this amounting to a personal recommendation). If a firm proposes to increase a client's level of understanding by providing information, the firm should consider, amongst other things, the nature and complexity of the information and the client's existing level of understanding.⁸⁸
- 4.29 The assessment could work online. For instance, a firm could use electronic application forms that automatically process customers' answers to targeted questions to help the firm come to a decision.
- 4.30 If, having carried out an appropriateness assessment, a firm considers that the product or service is not appropriate for the client, the firm must warn the client⁸⁹. If the client does not provide the information needed to enable the firm to assess appropriateness, or if the client provides insufficient information regarding their knowledge and experience, the firm must warn the client that it is not in a position to determine whether the service or product is appropriate for the client.⁹⁰

Model investment portfolios: provision of discretionary services

⁸⁶ See Article 55(1) of the MiFID Org Regulation and COBS 10A.2.4EU.

⁸⁷ See Article 55(1) of the MiFID Org Regulation and COBS 10A.2.4EU.

⁸⁸ See COBS 10A.2.9G.

⁸⁹ See Article 25(3) of MiFID and COBS 10A.3.1R.

⁹⁰ See Article 25(3) of MiFID and COBS 10A.3.2R.

- 4.31 In FG 12/15: Independent and restricted advice we described “model portfolios to mean a pre-constructed collection of designated investments, including some retail investments products that meet a specific risk profile, sometimes offered with a periodic rebalancing of investments to maintain a consistent asset allocation. Model portfolios allow a firm to pre-determine what will generally be its advised asset allocation for certain investment objectives or attitudes to risk, and to distil its product research in line with these asset allocations”.
- 4.32 The terminology we have seen used by firms in the market to describe these sorts of model portfolios is varied, but in many cases firms are describing a discretionary investment portfolio.
- 4.33 When a firm offers a model investment portfolio that involves discretionary decision-making, they must establish a mandate with the customer based on stated investment needs / parameters. The discretion must be exercised in relation to the composition of the portfolio under management and not in relation to some other function (such as proxy voting) carried on by the firm.⁹¹
- 4.34 Firms must be aware of their obligation with this type of service when they ‘re-balance’ the investments contained in a portfolio to bring it in line with a particular model or approach. ‘Re-balancing’ involves trading investments without prior reference to the customer (or otherwise exercising a customer’s rights, for example to switch between fund choices associated with an investment), i.e. acting on a discretionary basis. As set out in our Handbook⁹², a firm must ensure that any decision to trade is suitable for its customer based on the mandate established with the customer. When managing a customer’s investment the firm must obtain the necessary information to take a decision which is suitable for the customer.
- 4.35 The firm would not be acting with discretion if the customer decides that they want the firm to return the portfolio to a predetermined asset allocation (for example, the asset allocation of the model portfolio as originally purchased) on a set date each year regardless of performance and market developments. As an illustration, the client would instruct the firm to revert every 1 April to a 60/40 split between a specific fund and a specific bond. Since the specific assets were chosen by the customer at the outset, the firm is not exercising any discretion. But, should the firm decide to delay the re-balancing for a few days until, say, the Budget has been announced, changing to a different asset allocation, deciding for itself to use a different fund, or if the firm is given a high-level instruction to invest in an asset class and decides on behalf of the client which specific assets to invest in, this would mean that the firm is acting with discretion and the requirements above would apply.

Application of suitability requirements to discretionary investment management

- 4.36 We have seen propositions for the sale of model portfolios being developed in a way that allows customers to buy model portfolios without a personal recommendation. While the FCA welcomes innovative approaches that allow customers the option of accessing a wide

⁹¹ PERG 2.7.8 G.

⁹² See COBS 9.2.1R and COBS 9A.2.18EU.

range of products and services, firms must be aware of the requirements that are set out in MiFID and our rules⁹³ for the provision of discretionary investment management services; in particular, firms are required to obtain the necessary information regarding the client's knowledge and experience in the investment field relevant to the specific type of service, the client's financial situation and ability to bear losses, and investment objectives including risk tolerance, so that when the firm re-balances a model investment portfolio on a discretionary basis each decision to trade is suitable for the client and, in particular, in accordance with the client's risk tolerance and ability to bear losses.⁹⁴

- 4.37 As for all other areas the nature of the suitability obligation and the range and level of information requested from customers will depend on the type of service being provided and the nature of the customer.
- 4.38 A firm is required to obtain the necessary information so as to enable the firm to take a decision that is suitable for its customer. What is 'necessary' will vary from case to case. A firm is required to determine the extent of the information to be collected from the client in light of all the features of the service to be provided to that client and so may vary depending on the nature of the customer, the product and the service concerned.⁹⁵
- 4.39 A firm must obtain such information from the client as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining that the portfolio management service:
- (a) meets the clients investment objectives, including their risk tolerance;
 - (b) is such that the client is able financially to bear any related investment risks consistent with the client's investment objectives; and
 - (c) is such that the client has the necessary experience and knowledge to understand the risks involved in the management of the portfolio.⁹⁶
- 4.40 In doing so, a firm will need to give due consideration to the nature and extent of the service provided, the specific transaction to be entered into and the nature of the customer.⁹⁷ So the amount of information required may also vary depending upon the size of the proposed investments and the range of financial products for which the firm intends to provide discretionary portfolio management services. The detail needed for the suitability assessment is also likely to reflect whether the discretionary mandate relates to the whole of the customer's portfolio or only a portion of the whole, and whether the firm sets the investment strategy or this is dictated by the customer. Some investors may have a pre-determined investment strategy. Where reasonable, a firm may rely on

⁹³ The requirements relating to firms providing services in the course of MiFID, equivalent third country or optional exemption business, are set out in COBS 9A along with relevant excerpts from MiFID. For other business, see COBS 9.

⁹⁴ For MiFID, equivalent third country and optional exemption business, see Article 25(2) of MiFID and COBS 9A.2.1R. For other business, see COBS 9.2.1R which contains broadly similar provisions.

⁹⁵ For MiFID, equivalent third country or optional exemption business see Article 54(2) of the MiFID Org Regulation and COBS 9A.2.4EU.

⁹⁶ For MiFID, equivalent third country or optional exemption business, see Article 54(2) of the MiFID Org Regulation and COBS 9A.2.4EU. For other business, see COBS 9.2.2R.

⁹⁷ For MiFID, equivalent third country or optional exemption business, see Articles 54(2) and 55(1) of the MiFID Org Regulation, and COBS 9A.2.4EU and COBS 9A.2.6EU. For other business, see COBS 9.2.2R and COBS 9.2.3R.

instructions to follow such strategies as the basis of the customer's investment objectives. But this does not in any way remove the firm's obligation that each decision to trade is suitable for the customer. Where a firm has an ongoing relationship with the client, for example, it provides an on-going portfolio management service the firm must have and be able to demonstrate appropriate policies and procedures to maintain adequate and up-to-date information about clients.⁹⁸

Are discretionary management firms able to exclude some aspects of key client information?

- 4.41 As explained above, a firm must obtain the information that is necessary for it to take decisions to trade that are suitable for the client and, in particular, in accordance with the client's risk tolerance and ability to bear losses. The information regarding the financial situation of the customer must include, where relevant, information on the source and extent of the client's regular income, their assets, including liquid assets, their investments and real property, and their regular financial commitments.
- 4.42 If the customer wishes to limit the nature and extent of the service they wish the firm to provide, it would be possible for the firm to focus the scope of the service it provides to fit with the service the customer requires. The firm must then obtain the necessary and relevant information from the customer to enable the firm to provide that service. Therefore, the firm could not ignore, for example, the customer's capacity for loss if the nature of the mandate being granted meant that there would be a potential for that customer to incur financial loss.
- 4.43 If the customer wishes to invest a discrete sum of money and grant the firm a limited discretionary mandate to manage that sum of money, then the information a firm would be required to obtain is likely to be less than the information the firm would be required to obtain in relation to advising a customer on the whole or a substantial proportion of their investment portfolio. In the latter example, the firm is likely to need to obtain a more extensive set of information to be able to 'understand the essential facts about the customer' (see paragraph 4.39).

Customers are unwilling to discuss / disclose their wider financial circumstances

- 4.44 A firm must not discourage a client from providing the information required for the purposes of assessing suitability⁹⁹. However, a customer may choose not to discuss their wider financial circumstances with a firm or may request that the firm provides a limited service. In these circumstances, it may be possible for the firm, with the customer's agreement, to focus the scope of its service to fit with the customer's request. For example, if a customer asks a firm to manage only a limited part of their portfolio, the firm would only need to obtain sufficient information to enable it to assess suitability in relation to that limited part. But if, in effect, the customer is not prepared to provide sufficient information to enable the firm to take a suitable decision to trade for the client

⁹⁸ See Article 54(7) of the MiFID Org Regulation and COBS 9A.2.10EU.

⁹⁹ See Article 55(2) of the MiFID Org Regulation and COBS 9A.2.11EU. For the non-MiFID provisions, see COBS 9.2.4R.

in respect of that limited part of the portfolio, then the firm must not provide portfolio management services to the client and should inform the client of this.¹⁰⁰

- 4.45 Although a firm may not be permitted to make a personal recommendation or take a decision to trade because it does not have sufficient information, the client may ask the firm to provide another service on a non-advised basis, for example, arranging a deal for the client or dealing as agent for the client.¹⁰¹ If this happens, the firm should obtain written confirmation of the instructions from the client. The firm should also bear in mind the client's best interests rule and any obligations it may have for assessing appropriateness when providing a different service.¹⁰²

¹⁰⁰ See Article 54(8) of the MiFID Org Regulation and COBS 9A.2.13EU. For the non-MiFID provisions, see COBS 9.2.6R.

¹⁰¹ See also consultation paper CP17/28 on FAMR Implementation and insistent clients.

¹⁰² See COBS 9A.2.14G and COBS 9.2.7G. For the requirements on appropriateness, see Articles 55, 56 and 57 of the MiFID Org Regulation and COBS 10A. The non-MiFID provisions on appropriateness are in COBS 10.

5 Guidance based on the experience of the Advice Unit

The guidance below is based on questions submitted to the Advice Unit. Each question has been presented as a case study to give further context and answered on the basis of the specific facts set out in the case study. This means that our responses may not be relevant to firms which, for example, are providing advice on the types of investment which are not covered by the specific case study or are using different processes to give advice.

1. Clients with uncertain investment needs

Case Study:

A firm is using an automated advice service to provide personal recommendations on financial instruments to clients. The firm wants to serve clients who do not have a clear 'purpose' for the basis of the investment (for example they have a very broad objective such as 'save for a rainy day', and therefore are unable to be specific about the purpose and time period of their investment). The firm thinks there may be some merit in referring to 'goals' rather than 'objectives' ('goals' being seen by the firm as less specific than 'objectives').

Question:

- **To what degree do the rules on suitability allow the firm to provide personal recommendations to clients where there is some uncertainty around the purpose and time period of the desired investment?**

Our response:

In broad terms, a firm needs to obtain such information as is necessary to determine that a personal recommendation is suitable for the relevant client.¹⁰³ A firm will need to have sufficient information about those factors that are relevant (e.g. that all the money invested will be needed in three years' time).

To assess suitability, a firm must obtain the necessary information regarding, among other things, the client's investment objectives.¹⁰⁴ Our rules are clear that information about a client's

¹⁰³ From 3 January 2018, see COBS 9A.2.1R and Article 25(2) of MiFID. COBS 9.2.1R(1) makes similar provision in respect of investment products not subject to the MiFID II requirements.

¹⁰⁴ From 3 January 2018, see COBS 9A.2.1R(1), COBS 9A.2.4EU and COBS 9.2.8EU (Article 25(2) of MiFID and Article 54(2) and (5) of the MiFID Org Regulation. COBS 9.2.1R(1) and COBS 9.2.2R make similar provision in respect of investment products not subject to the MiFID II requirements.

investment objectives should include, where relevant, information about the length of time for which the client wishes to hold an investment and the purposes of the investment. It is difficult to envisage many cases where, for example, the client's approximate time period for investing would be irrelevant.

A firm which does not obtain sufficient information to enable it to recommend a product which is suitable for the client must not make a personal recommendation.¹⁰⁵ So, if the client's investment objectives are not sufficiently clear to enable the firm to give a suitable personal recommendation the firm should ensure it draws out the information necessary to enable it to provide a personal recommendation which is suitable.

The consumer's time period for the investment

Any recommendation that is made must be supported by the relevant information gathered from the client, including the desired investment period. The firm may be able to provide a personal recommendation with a broad (rather than a specific) time period in mind, or with a minimum time period in mind, as long as the recommendation provided is suitable for any time period within that range.

For example, if a client has indicated an investment period of three to five years, then the firm will need to ensure that the recommendation is suitable for a time frame of anywhere between three and five years. If this is not possible then the firm will need to gather more specific information regarding the time period to support the suitability of the recommendation.

Investment objectives and investment goals

To offer a personal recommendation to a client a firm must obtain such information as is necessary to have a reasonable basis for determining (giving due consideration to the nature and extent of the service) that the firm's recommendation meets the client's investment objectives, including the client's risk tolerance.¹⁰⁶

The client might express these objectives in broad terms, such as 'saving for a rainy day', 'building wealth' and 'outstripping inflation'. These terms will mean different things to different customers and may be considered ambiguous without further clarification.

In such circumstances, the firm's personal recommendation would need to be suitable for all possible interpretations of the objective in question. But if some possible interpretations of the broad objective could make the personal recommendation unsuitable, then the firm would need to gather further information to support its investment advice.

Moreover, the broad 'objectives' listed above would not, in our view, inform the firm about the (broad or narrow) time period for the investment, the customer's need to access money over that time or the client's risk profile. It is difficult to envisage cases where the firm could ensure that its recommendation was suitable without gathering further information about these issues.

¹⁰⁵ From 3 January 2018, see COBS 9A.2.13EU and Article 54(8) of MiFID. COBS 9.2.6R makes similar provision in respect of investment products not subject to the MiFID II requirements.

¹⁰⁶ From 3 January 2018, COBS 9A.2.4EU and Article 54(2) of MiFID. COBS 9.2.2R(1) makes similar provision in respect of investment products not subject to the MiFID II requirements.

2. Assisting a client with the automated advice service

Case Study:

A firm providing an automated advice service intends to use staff that are not QCF level four qualified to assist (but not provide personal recommendations to) clients.

The firm wants those staff to be able to direct clients to the online automated process or help clients by answering questions on how to complete the process.¹⁰⁷

Question:

- **Could direction by the staff member towards an online automated advice process (which may result in a personal recommendation being made) ever be reasonably interpreted as being a personal recommendation?**

Our response:

If a staff member does nothing more than direct a client towards an automated advice service this is unlikely to be a personal recommendation. However, if the staff member's interaction with the client goes beyond this, then the firm should consider whether this could be a personal recommendation.¹⁰⁸

3. Firms' regulatory responsibility when providing a personal recommendation

Case Study:

A firm offers automated advised and non-advised services side by side. Clients can undertake the advised journey up to the point of receiving a recommendation but then choose not to proceed, for example if they do not want to pay the firm's adviser charge. Clients can then use the non-advised¹⁰⁹ service to purchase the same investment(s) that has been recommended to them without paying an adviser charge.

Questions:

- **Has the firm provided a personal recommendation, even though the client has opted not to proceed with the advised service, but has instead chosen to execute the recommended transaction through the non-advised service?**
- **Should the firm block the client from using its non-advised service after it has provided a personal recommendation?**

¹⁰⁷ For example, the process could be offered in person, such as in a branch, where the staff member offers the consumer an electronic tablet device to complete the automated advice process or, alternatively, over the phone where direction is made to the firm's automated advice service via a website.

¹⁰⁸ See for example Q19, Q20 and Q21 of PERG 13.3. Firms should be aware that although giving generic advice or purely factual information is generally not a regulated activity, if it is given in the course of or in preparation for a regulated activity it can form part of that regulated activity. For example, if the member of staff provides generic advice to a client or potential client (for instance, on the merits of investing in UCITS funds over listed shares) and the automated advice model identifies as suitable a particular UCITS fund for the client or potential client, the generic advice will form part of the personal recommendation. See recitals 15 and 16 of the MiFID Org Regulation.

¹⁰⁹ This could be either the firm's non-advised service or a similar service offered by a competitor firm.

Our response:

A recommendation to a client to buy a particular financial product which is presented as suitable or based on a consideration of the consumer's circumstances will be a personal recommendation whether the client goes on to buy that product or not.¹¹⁰ Where a firm gives a personal recommendation it must comply with any applicable FCA rules.

In this particular circumstance, whether or not the firm chooses to block the client from completing its own non-advised process after receiving a personal recommendation is ultimately a commercial decision for the firm's senior management.¹¹¹ However the firm cannot use the non-advised option as a means of avoiding the adviser charging requirements in COBS 6.1A, as these apply where the firm makes a personal recommendation, not only where the client proceeds with the recommended transaction.

4. Timing of disclosure of advice charges

Case Study:

A firm has designed its automated advice process with a natural break. This break allows the exit from the process of clients for whom investing is not appropriate. The firm's initial assessment stage will identify a client's primary needs (for example, repayment of debt) to establish whether they are clients for whom the automated advice process is intended. No personal recommendation is given at the initial assessment stage.

The firm proposes to disclose its charging structure at the start of the second stage of the process, where the firm seeks the necessary information about the client (their investment objectives, financial situation and knowledge and experience) to enable it to give a suitable personal recommendation at the end of the process.

Question:

- **Does the firm's process meet our requirement to disclose its charging structure to the retail client 'in good time'¹¹²?**

Our response:

Where the firm's process works as described, i.e. the initial stage purely acts as a filter (with no advice given) and the second stage of the process involves the collection of the necessary information about the client, and results in the provision of a personal recommendation, then disclosing the charging structure at the start of the second stage is likely to meet the requirements of the relevant rule.

¹¹⁰ Q19 of PERG 13.3 sets out the definition of 'investment advice' under MiFID.

¹¹¹ Firms should also bear in mind that they may not solicit or accept any commission, remuneration or benefit of any kind in relation to a personal recommendation or any other related service and so a firm cannot avoid the inducements ban by providing a personal recommendation and then getting clients to transact through a non-advised channel. This is because the ban on soliciting or accepting inducements in COBS 6.1A.4R applies in relation to the personal recommendation or any other 'related service' (which includes arranging or executing a transaction which has been recommended by the firm – see COBS 6.1A.6R(1)).

¹¹² COBS 6.1A.17R

5. Timing of suitability reports

Case Study:

A firm's automated advice service will be providing personal recommendations in relation to UK listed shares. The automated advice service will upload a suitability report to an electronic consumer area immediately after the consumer has received an online personal recommendation and before the transaction has been executed.

Question:

- **Will the firm's model comply with the new MiFID II requirement to provide the report after the personal recommendation has been provided but before the transaction is concluded?**

Our response:

If the firm uploads the suitability report (which must be provided in a 'durable medium'¹¹³) to an electronic consumer area that is personal to that client immediately after the client has received the online personal recommendation, it then points the client to the availability of the suitability report and gives the client a reasonable opportunity to view the report before deciding whether to proceed with the transaction, this would likely comply.

6. Timing of disclosure of a Key Features Document / Key Investor Information Document

Case Study:

A firm's automated advice service will provide personal recommendations on units in UCITS schemes or non-PRIIPs packaged products and upload, as appropriate, a key features document (KFD) or key investor information document (KIID) to the client area of its website for review and ongoing reference immediately after the client has received a personal recommendation. The firm is unsure if this is 'too late' in its process and wants to know whether it can make use of the exception to the general timing rules in COBS 14.2.16R.

Questions:

- **Does the firm's model comply with the timing requirements for disclosure of a KFD / KIID to clients?**
- **Can the firm make use of the exception to the timing rules in COBS 14.2.16R?**

Our response:

The requirement in COBS 14.2.14R (2) and (3) is to disclose 'in good time' before the firm carries on the relevant business (in relation to KFDs) or 'in good time' before the client's proposed subscription for units in the scheme (in relation to KIIDs).

¹¹³ See the definition in the FCA Glossary (www.handbook.fca.org.uk/handbook/glossary/?starts-with=D) and Article 3 of the MiFID Org Regulation

In the above case, if the firm provides the necessary disclosures immediately after the personal recommendation is made, giving the client a reasonable opportunity to review the KFD or KIID before deciding whether to conclude the contract, this would comply with the timing rules in COBS 14.2.14R (2) and (3).

COBS 14.2.16R (1) contains an exception to the timing rules in COBS 14.2.14R (2). The exception is available where the contract has been concluded at a client's request using a means of distance communication that would not enable the KFD to be provided in good time before the client is bound by the contract. In such a case, the relevant document or requisite information must be provided to the client immediately after the distance contract concludes.

However, we consider that this exception is unlikely to be available for a wholly automated advice service since the means of distance communication (through a website) should enable the firm to provide the required documents in good time before the client is bound. In other words the technology being used should allow the firm to comply with the relevant timing rule and therefore the exception is not engaged.¹¹⁴ The exception in COBS 14.2.16R (1) does not apply to contracts for units in the UCITS scheme¹¹⁵

7. Identification of clients who are unwilling to take any risk with their capital

Case Study:

As part of a firm's online discretionary investment management service the client is asked questions to establish tolerance for risk. The firm then places the client into various categories to help quantify and explain the risk. The firm is unsure whether the definitions of 'preferences regarding risk taking' and 'risk profile' should capture those clients who are unwilling to take any risk at all with their capital (i.e. for whom investing is unlikely to be suitable). So it is unsure whether it is required to have a 'zero risk tolerance' categorisation for clients.

Question:

- **Is a firm always required to identify clients who have zero investment risk tolerance?**

Our response:

A discretionary investment manager must only take decisions to trade which are suitable for the client. To determine suitability, the firm will need to obtain the necessary information regarding, amongst other things, the client's financial situation, including their ability to bear losses and their investment objectives, including their risk tolerance¹¹⁶. In addition, the firm must obtain from the client such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining (giving due consideration to the

¹¹⁴ COBS 14.2.14R

¹¹⁵ See COBS 14.2.16R(2)

¹¹⁶ From 3 January 2018, see COBS 9A.2.1R and Article 25(2) of MiFID. COBS 9.2.1R makes similar provision in relation to investment products not subject to MiFID II requirements.

nature and extent of the service) that the specific transaction to be recommended or entered into in the course of providing a portfolio management service, satisfies, amongst other things, the client's investment objectives, including their risk tolerance.¹¹⁷

As we have previously said:

- firms should ensure they have a robust process for assessing the risk a client is willing and able to take, including identifying those clients who are best suited to placing their money in cash deposits because they are unwilling or unable to accept the risk of loss of capital.¹¹⁸
- we consider it would be poor practice for a firm not to filter out customers who were unwilling to risk capital loss.¹¹⁹

However, we do not prescribe how firms establish the risk a customer is willing and able to take.

¹¹⁷ From 3 January 2018, see COBS 9A.2.4EU and Article 54(2) of the MiFID Org Regulation. COBS 9.2.2R makes similar provision in relation to investment products not subject to MiFID II requirements.

¹¹⁸ FG 11/05: Establishing the risk a customer is willing and able to take and making a suitable investment selection (pg. 6)

¹¹⁹ FG 11/05: Establishing the risk a customer is willing and able to take and making a suitable investment selection (pg. 12)