

ITC Group submission to the Financial Regulator – CP45 Review of Minimum Competency Requirements – August 2010

Proposals included in the draft revised Requirements

- **Definition of advice**

We support a more streamlined approach to the definition of 'advice' with the proposal to amend the current definition under the MCR to closely reflect the definition contained in MiFID as follows.

"investment advice", subject to paragraph (4), means the provision of personal recommendations to a client, either upon the client's request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;
However the definition of a 'client/consumer' is very different in the CPC and MiFID. Should consideration be given to streamlining this also?

- **Change in CPD cycle**

We agree with the proposal to amend the three year cycle to an annual requirement for formal hours only. However we suggest that a maximum of 5 hours surplus in one year be allowed to be carried over to the following year where an individual has completed more than 15 hours in any one year.

This will allow for life decisions to be incorporated into the work schedule including gap years, maternity/paternity leave, unemployment etc

Additional proposals

- **Grandfathering**

The services that an advisor provides to a client are ultimately a mixture of knowledge and experience. Whilst knowledge can be taught experience is earned. It should be possible for the system to recognise this.

We would suggest the following:

20+ years experience – grandfathered for life.

10+ years experience – grandfathered for further 10 years; review after 10 years

Less than 10 years – QFA by 2015.

- **Internet**

We suggest that anyone providing 'advice' regardless of the medium should be subject to the provisions of the MCR. We do not believe that internet providers of financial service products should be exempt from the requirements.

Use of the internet presents a particular challenge. Whilst it is possible for many financial decisions to be automated it is still appropriate to ensure that the client is not short-changed. We believe this can be managed by recognising:

1. Not all on line transactions are “execution only”.
2. Where the options available are limited the process is more likely to be “advisory” i.e. the client has been steered in a particular direction.
3. The advice provided should issue as a formal report to the client and should indicate “reasons why” etc in line with offline processes
4. All online services should have an ability to provide a telephone based and/or offline alternative. This should be provided by suitably qualified persons.

- **Loan restructuring**

In the area of mortgage/loan arrears we agree with the requirements being applied to individuals giving advice on the restructuring of existing loans.

- **Investment Management**

We believe that this is more a matter for MiFID and should be dealt with in that context.

- **Administrative functions**

The proposal to extend the scope of the MCR to areas that deal directly with consumers in relation to amendments to policies appears to be going too far; We feel that a more correct process should recognise that once these staff do not have sales targets, have an approved script and are required to refer ‘advisory’ queries to appropriately qualified staff there is no ‘advice’ occurring which requires administrative staff to hold the QFA.

Chapter 2: Scope & Application

Definitions:

Please see our earlier point regarding the definition of ‘Advice’ and ‘Consumer’ or ‘Client’.

2.1.2 Referring/introducing

While this provision is not changing it appears to us to be ineffectual particularly ‘knowing the different registers maintained by the FR’. What is the purpose of these requirements?

2.6 – New entrants/new activities

In regard to Point 4 can guidance be provided where the 4 year period to attain a relevant qualification has expired and an individual has failed to attain that qualification. We particularly ask the Regulator as to what prescribed action needs to be taken, other than the removal of the individual from the register. Is the individual re-categorised as a new entrant? Does the regulated firm prevent that individual from advising/selling a retail financial product entirely or is there a requirement to have increased levels of supervision for that individual whilst they work toward their relevant qualification?

We would also point out that in some cases employment contracts may be in place before the revised MCR and there maybe issues arising under employment law where an individual has failed to attain the relevant qualification.

We suggest that prescriptive guidelines on the levels of supervision that should be carried out on new entrants are covered in the MCR so that there is a level playing field on this issue. This should reflect the individuals experience and also if some of this was obtained in another EU or EEA Member State

Chapter 3: Continuing Professional Development (CPD)

3.1 – Qualifications that have CPD requirement

3.1.2 Failure to comply

See our earlier point. This needs to set out how an individual whether accredited or specified accredited can be reinstated.

3.2 – Qualifications without a CPD requirement & grandfathered individuals

3.2.2 – Formal Hours

The current requirement for accredited individuals who hold qualification without CPD requirements and grandfathered individuals to return CPD hours falls on both the individual and the regulated firm to ensure that (a) this is being carried out and (b) to record the return of CPD hours carried out.

We suggest that a central body maintains a full register of all accredited individuals and specified accredited individuals and full returns are required to this body on a regular basis via their website. Currently, the LIA grants membership to grandfathered individuals for CPD purposes however it is not compulsory to be a member. We would recommend that it is mandatory for these individuals to be members of an external professional central body. This body will inform the regulated firms of any individuals who fail to comply. In addition, the external professional body will have a list of all events and activities that have been approved for CPD for verification purposes. This allows the regulated firm to monitor the CPD activity of its accredited individuals and ensure that it is being met.

As stated earlier we also feel that a maximum of 5 hours surplus in one year be allowed to be carried over to the following year.

3.2.3 – Pro-Rata Adjustment of CPD Hours

We feel that given the current economic climate, pro-rata adjustment should apply for unemployment subject to a maximum period of 6 months in the calendar year.

3.2.4 – Failure to comply

Refer to 3.2.2 – allowance of a maximum of 5 hours surplus should reduce the likelihood of failure to comply. We would add that where the deficit has occurred in two consecutive years, then the individual lose their accreditation.

3.2.5 – Reinstatements

In respect of reinstatement within one year, we feel that this requirement is flawed as it is reliant on each firm where an individual has worked to ensure that their register is maintained accurately to record any removal of that individual. Registering with an external professional body as suggested above who will have a central record of the individual's CPD returns and any shortfalls ensures that there are no inaccuracies.

Under the subheading, the Regulator has stated that there is a requirement of an individual who holds a recognised qualification where there is no CPD requirement having to pass the final examination within two years of reinstatement. We would ask that if the individual holds a qualification where there is no CPD requirement in the first instance, how can they comply with the requirement for CPD? This may be particularly the case for specified accredited

individuals who give legal guidance on category 3 specified activity. Again we suggest that all individuals with a CPD requirement under these regulations must be obtaining CPD approval from a central source as suggested above.

The last paragraph of this heading has stated that failure to meet the condition of reinstatement will result in the loss of capacity to act as an accredited individual or specified accredited individual. I would refer you to a similar point raised under paragraph 2.6. Has the Regulator considered the potential issues arising under employment law where an individual has failed to meet this requirement and their employment contract was issued by the regulated firm before the implementation of MCR and as a result, does not take this matter into consideration. Is there also a defamation problem if you remove an individual wrongly? Should legislation protect employers acting in good faith?

Chapter 4: Demonstrating Compliance

4.1 – Register

We would advise that most of the general public is unaware of the requirement for a regulated firm to keep a register of its accredited individuals and that this register or an extract of this register must be produced by the firm on request. The new proposal that the firm can provide each accredited individual and specified accredited individual with a certificate on the firms headed paper is welcomed.

We would recommend that reference of whichever option a firm chooses should be made on firms Terms of Business.

4.3 – New entrants/new activities

Under point 4. –As stated above we ask that the FR and/or financial industry bodies offer guidelines on the prescriptive measures and levels of supervision that should be carried out on new entrants and that these guidelines are implemented as an industry standard

4.4 – Grandfathering individuals: documentation to be provided on leaving a regulated firm

In addition to the format of the Certificate of Compliance with the Experience Requirement for Grandfathering as set out in Appendix 5 of the Regulator’s document, we would recommend the inclusion of CPD hours returned in the previous year and compliance with that requirement of the MCR.

4.5 – Compliance with CPD requirements

We refer to paragraph 3.2.2 and 3.2.5 and in addition to the recommendations under these paragraphs, we would recommend that all returns for CPD activity for both grandfathered and qualified individuals who are required to carry out CPD are made through external professional bodies and that the regulated firms are given access to these returns and any shortfalls are reported to the regulated firm who will take appropriate action with the individual.

This recommendation and that made under 3.2.2 is in our opinion a much more suitable option to the onerous task of firms having to carry out this monitoring

In regard to Point 1 under this paragraph (see Page 23), we would recommend that those records be held by an external professional education body in the same way as the footnotes recommends this course of action for Points 2 & 3.

