

Review of Minimum Competency Requirements

Consultation Paper CP45

Introduction

We believe it is important for all practitioners and stakeholders in the financial services industry to fully accept that the primary focus of the Minimum Competency Requirements (“the Requirements”) should be on the quality of the interface with all consumers and **not solely the acquiring of certain levels of product knowledge.**

At the very outset the minimum competency requirement for all practitioners dealing with consumers must be verifiable experience. To set the minimum level any lower than this is dangerous. We believe the Financial Regulator is misguided in assuming that recognised educational qualifications; together with formal CPD hours represents the minimum professional standard and the minimum level of competency required to interface with consumers. Nothing, absolutely nothing, is a substitute for experience. We believe the Financial Regulator must understand and accept this proposition.

It is quite feasible under the current requirements for an inexperienced employee of a regulated entity to take maternity leave, leave of absence, extended ill-health leave, etc and, during such leave, to successfully complete various stages of recognised educational qualifications. Thereafter, this inexperienced employee may be deemed suitably competent to provide financial advice to consumers. This is a highly dangerous and wholly inappropriate (and surely unintended) consequence of the Requirements.

It is equally feasible for an unemployed individual with no previous experience to successfully complete the recognised educational qualifications while unemployed. And then, on employment with a regulated entity (and, perhaps or perhaps not, on completion of a short induction course), be deemed suitably competent to provide financial advice to consumers. This is a highly dangerous and wholly inappropriate (and surely unintended) consequence of the Requirements.

It is also feasible for an employee of a regulated entity dealing exclusively with, say, personal lines general insurance to successfully complete recognised educational qualifications in, say, life policies, investment instruments, etc. and, thereafter, be deemed competent to provide financial advice to consumers in such products . This is a highly dangerous and wholly inappropriate (and surely unintended) consequence of the requirements.

Verifiable experience must be the minimum competency requirement for all practitioners when providing financial advice to consumers. Educational qualifications are simply one option for gaining knowledge on retail financial products. Many years of hands-on practical experience is another. It is terribly misguided to assume that educational qualifications alone provide superior competency in the provision of financial advice to consumers.

We believe the Financial Regulator views recognised educational qualifications as a benchmark against which to measure product knowledge standards within the financial services industry. In our opinion, this approach, of itself, is weak and unimaginative.

The Financial Regulator must put the consumer at the heart of its thinking in this matter. It must be the position that knowledge gained through hands-on experience dealing with consumers is, at all times, recognised as superior to knowledge gained through educational achievement alone.

The Financial Regulator must find a way to recognise that the level of experience of individuals can be measured and verified just as accurately as the results of exams. We suggest that employment records, senior executive certification, sales records, consumer testimonials, membership of professional bodies are just some of the ways of verifying the length and breadth of experience of individual practitioners, should there be any doubt about such matters.

Definitions

We agree with the revised definition of “advice” and note that it more closely reflects the definition contained in the MiFID.

However, it seems inconceivable to us that there could ever be a retail employee (including CEOs and senior management) within a regulated entity who is not captured by these Requirements, save, perhaps, a robotic receptionist/telephonist who is clearly recognised as such by consumers and whose function it is to pedantically switch phone calls (and/or meet and greet) without comment.

We also recognise that larger regulated entities may create certain departments of employees, which, it is maintained, have no consumer interface. If such persons truly exist in the financial services industry then they should be clearly branded in order that consumers can easily identify them should they stray outside of their remit.

It seems inconceivable to us that bank employees providing advice on basic banking products and services (current account, overdraft, ordinary deposit account, term deposit account with a term of less than one year) and foreign exchange products and services are deemed exempt from this definition and, thereby, the provisions of the Requirements. They should unquestionably be covered by the definition and subject to the Requirements.

The Financial Regulator should examine its own conscience and consider in how many circumstances, at the counters of credit institutions, do consumers seek advice only on a deposit account of eleven and a half months and not of twelve months duration. And, more pertinently, how may employees of regulated entities refrain from responding to consumer enquiries about a 12-month deposit account admitting to themselves and to the consumer that they do not retain the competency to continue the conversation.

It is our experience that consumers want to talk about many different aspects of their finances when they engage with an employee of a regulated entity. For example, it is beyond belief that the Financial Regulator accepts that consumers buy/sell foreign exchange products without enquiring about the currency rate and whether or not it will be better tomorrow or next week. Any employee responding to such enquiries is providing financial advice under the proposed definition and must be competent to do so.

The proposed definition of "advice" assumes no exemptions for any retail financial products. To allow exemptions in this matter is a clear dereliction of duty by the Financial Regulator.

Should the Financial Regulator deem it appropriate to continue to defer to the lobbying of credit institutions then it should reconsider its definition of "advice". There are many, many other retail financial products which could similarly be deemed "basic" and, by implication, might equally justifiably be outside the scope of the Requirements (and the Consumer Protection Code). We do not believe there should be exemptions for any retail product but the Financial Regulator must be cognisant of even-handed consumer protection where it deems certain products to be exempt from the Requirements (and the Consumer Protection Code) but, at the same time, considers the full rigours of the Requirements apply to other 'basic' products within the financial services' industry. The current and proposed approach does not seek to protect consumers in this regard. It should.

The Financial Regulator has chosen to segment the market in retail financial products into six distinct categories. This undoubtedly helps the Financial Regulator to identify the various products and to ponder over which box should contain which product. Whereas, consumers, who should be at the heart of all of our thinking, do not deal in financial boxes.

Consumers purchasing a home, for example, will need to discuss all aspects of their finances and an experienced practitioner will recognise this and provide competent advice on, say, housing loans, life assurance, household insurance, savings, etc. Inexperienced employees of regulated entities who have studied segmented educational modules and who are trained in the boxes technique will not, in the most part, be in a position to provide rounded and competent financial advice to consumers who wish to purchase a home.

The Financial Regulator needs to recognise that consumers regularly require a seamless approach to the provision of financial advice. Some

regulated entities and employees are in a position to provide this while others, patently, are not. Such differentiation of function and the limitations of competency within each function must be made abundantly clear to consumers at all times.

2.1.3

This section should apply only to standard call-centre activity. Face-to-face meetings and/or exchanges of correspondence, by whatever means, can never be considered "prescribed script and routine". In the latter case, the power and influence of the regulated entity's letterhead/logo will convince consumers that they are receiving financial advice from duly authorised and professionally competent individuals.

Consumers must be made aware, on each and every occasion, when they are dealing with a non-accredited individual. We suggest a consumer friendly warning by way of a pre-recorded message at the beginning of a telephone conversation and a formal sign off by the unaccredited individual before the end of the conversation along the lines; 'You have been speaking with Daphne Pewter-Muggs from Hope Unlimited. I am not an accredited individual and I am not in a position to give you financial advice. Would you like to speak with an accredited individual now?'

2.2

See our comments under **Definitions** above.

2.6

The last paragraph states; "It is the responsibility of the regulated firm to ensure that a new entrant is competent in relation to those retail financial products or specified activities in respect of which the new entrant is acting".

Achieving certain educational standards assumes, as a given, minimum competency as endorsed by the Requirements. In our opinion, knowledge of financial retail products, alone, does not demonstrate sufficient competency. The Financial Regulator must insist that regulated firms should have responsibility for ensuring that individuals have the necessary experience and are competent to interface with consumers.

3.2.1.

The proposal of the Financial Regulator to disallow informal CPD hours seems to centre solely on the difficulty in establishing an acceptable validation process. This is understandable but misguided. Once more the Financial Regulator's position seems to be that educational forums, preferably arranged by recognised industry bodies, are superior to gatherings and discussions arranged elsewhere. The Financial Regulator needs to recognise the flaws in its thinking on this matter.

It is beyond question that informal discussions often produce much more meaningful dialogue and provide more specific product knowledge than formal gatherings which necessarily offer generic presentations in order to appeal to larger audiences (and so make the event financially viable).

This firm will certainly continue to encourage its own employees to attend fringe events, read financial journals and engage with other practitioners within the industry in order to enhance their ability to interface with consumers.

We recommend that informal CPD hours should continue to be encouraged and supported by the Financial Regulator.

The Financial Regulator must recognise that existing industry bodies, which have assumed an educational capacity, have a vested financial interest in encouraging support for their own educational stream and in promoting their own formal CPD as the only mechanism for maintaining competency. The Financial Regulator appears to accept that undertaking certain CPD hours on common areas, such as legislation, regulation, economic issues, etc. is an acceptable approach for practitioners across the financial services industry. Accordingly, it must be accepted that grandfathered individuals, for example, need not be members of such industry bodies and should not be required to undertake formal CPD exclusively with those bodies. The subject of economics throws up an interesting paradox and clear conflict of interest. An application by this firm to have a formal presentation on the current state of the global economy and financial markets given by a leading economist accepted for CPD hours was turned down as not being directly relevant. And yet, the same industry body itself arranged formal CPD hours for its members for a 45 minute presentation by the same economist on the same subject matter. We suggest that such a decision was driven by financial considerations and represents a clear conflict of interest on the part of the educational body in question.

3.2.3

We strongly suggest that some level of pro-rata adjustment should apply in the case of forced unemployment (compulsory redundancy), which can be a very traumatic time for individuals.

Additional Proposals

Grandfathering

Please see our earlier comments under **Introduction**.

The Financial Regulator is wholly misguided in assuming that the achievement of a recognised educational qualification is superior to hands-on experience. We respectfully suggest that the Financial Regulator continues to be confused between product knowledge, which it contends can only be achieved through educational pursuits, and the provision of

competent financial advice to consumers, which we contend can only be achieved through hands-on practical experience.

Rather than compelling grandfathered individuals to sit exams the Financial Regulator should insist that those with the minimum educational qualifications demonstrate their ongoing hands-on experience in the relevant retail financial products or the specified activities for which the individual is accredited.

Internet

We believe that all providers of financial advice on retail financial products should be subject to the Requirements. We are not in favour of any exemptions.

Outsourcing

Notwithstanding the anomaly within the IMD we believe that all providers of financial advice on retail financial products should be subject to the Requirements. We are not in favour of any exemptions.

CPD hours

Your proposal that individuals may reduce the number of hours to be completed overall by undertaking CPD on common areas is very sensible but appears incompatible with your insistence at **3.2.2** that “the content of the CPD hours must be directly relevant to the retail financial products or the specified activities for which the individual is accredited”.

We have long held the view that the fulfilment of CPD hours on the topic of retail financial products and/or related matters such as compliance, regulation, legal, etc is wholly appropriate to the enhancement of each individual’s ability to competently interface with consumers.

Loan restructuring

While the restructuring of consumer loans is highly topical at the moment this activity has been commonplace in the Irish market for well over a decade.

The provision of advice in relation to the restructuring of existing loans should already be included in the Requirements under Housing Loans (5.) and Consumer Credit (6.).

Administrative Functions

We believe that all providers of financial advice on retail financial products should be subject to the Requirements. We are not in favour of any exemptions.

Appendix 1

We are surprised and particularly concerned that the 'required' competencies listed under the various subject matters do not include specific mention of how accredited individuals should interface with consumers; nor the special competencies required for dealing with older and vulnerable consumers.

**Moloney Mortgages Pensions & Investments Limited
August 2010**

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