

Response to HM Treasury Open Consultation

Amending the definition of financial advice

15 November 2016

The Personal Finance Society is the largest professional body for the financial advisory profession in the UK, with 36,690 members of which 5287 are Chartered Financial Planners (as at October 2016). We promote the highest standards of professionalism for technical knowledge, client service, culture and ethical practice across the entire financial advice community for the ultimate benefit of the public, engendering confidence and trust in our profession.

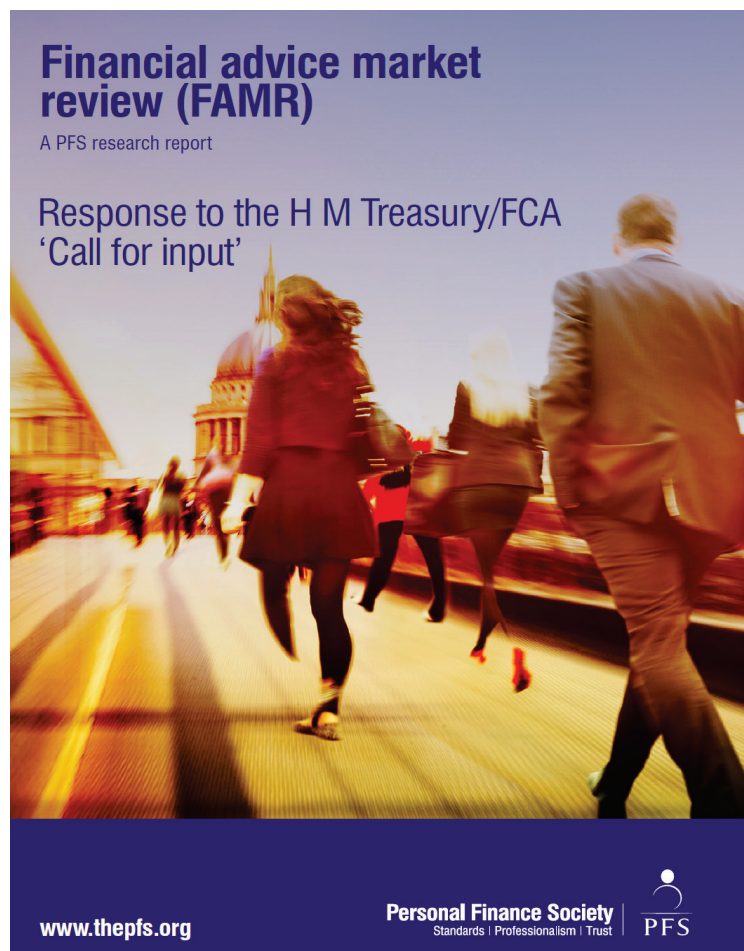
Our mission is to serve the public by guiding the financial advice community towards higher levels of professionalism. This is exhibited through ethical and behavioural standards, interpersonal and business skills and technical knowledge. We support our members with achieving this goal through a wide programme of activities, including advocacy, good practice guidance, continued professional development (CPD) events, publications and related tools.

The Personal Finance Society is part of the CII Group and therefore we share the CII mission and Royal Charter to secure and justify public confidence and trust in our members and the sector more broadly.

This input forms part of our wider Financial Advice Market Review (FAMR) considerations and input to increase access to advice.

For further comment please contact:

Keith Richards
Chief Executive
Personal Finance Society
20 Aldermanbury
London
EC2V 7HY
T: 0207 417 4474
M: 0778 6023033
Keith.Richards@thepfs.org



Executive Summary

The Personal Finance Society recognises the government's implicit endorsement of the benefits associated with more people being able to access information, guidance and advice in respect of their financial needs.

We support the Treasury in seeking to clarify the boundary between regulated advice and guidance and, in so doing, provide greater certainty to allow firms to be confident in their development of both guidance and advice services. We believe that this will be an essential enabler to increasing access to savings and investment services to better address the needs of the public and in a way, that meets their expectations.

Mitigate the increasing risk of mis-buying and scams: extending the scope of guidance to address entry level or less complex savings and investment needs will help consumers make better informed decisions and protect them from the increasing risks of 'mis-buying' and scams. We believe, however, that only authorised firms committed to an agreed set of standards should be allowed to provide 'extended guidance', especially if it is to include arranging products on behalf of the consumer.

We are particularly concerned at the growth in both scams and 'mis-buying', which will further impact public confidence and trust in the financial services framework, because consumers are unlikely to recognise the difference, and in turn, will do little to underpin a balanced return to a national savings culture.

Consumer protection: consumers should be able to rely upon minimum standards from any firm or individual offering financial guidance, coupled with appropriate levels of protection. However, this should not simply be viewed from the perspective of when advice or guidance doesn't meet a future expectation which has significantly restricted access to regulated activity. The consequence of not being able to access guidance and advice is leaving the public vulnerable, often providing no option but to fend for themselves, increasingly susceptible to fraudsters, or with the belief that they can depend on the Welfare State. For consumers who either don't require full advice or can't afford it, guidance offers significantly greater protection than unregulated activities – addressing this issue and the growing social exclusion from accessing advice, or guidance is a matter which can't continue from a public interest perspective.

If the cost of regulation and, in particular, the FSCS were to be addressed via the introduction of a transparent product levy, it would be feasible to extend protections for guidance in a similar way to advice. We believe that a product levy collected in a similar way to Insurance Premium Tax (IPT) would also provide HMT with funding to support better financial awareness, promotion and education, in addition to providing a pooled compensation fund.

We would not want to see guidance operated outside of an authorised firm. This could, of course, be an authorised firm offering guidance only.

Clarity required: we believe that clarity between advice and guidance, coupled with certainty of future liability and regulatory treatment will help to open up access for all consumers, especially hard working people who want to do the right thing and secure a better independent financial future.

Allowing the public to make decisions: the government has seen it appropriate to empower the public to have greater freedom over their pensions, allowing them to accept more responsibility for their choices and decisions. For extended guidance to work in the way intended, the public must be allowed greater freedom and choice of how they wish to receive savings, investment advice and guidance. This must include certainty of future treatment between the two services from both a regulatory and compensation perspective. Firms will be less inclined to adopt guidance if it carries the same level of regulatory cost and risk exposure as advice, we therefore see this as a key opportunity to address a fundamental barrier to simplification.

The need to simplify has been evident for many years: past attempts to introduce simplification and bridge the gap between full regulated advice and simplified advice needs has led to the introduction of labels such as 'basic', 'simplified', 'streamlined', 'focused' and 'gated' advice, all of which have added to both industry and consumer confusion, ironically pushing more consumers towards unregulated 'advice' and scams.

Reflecting on past attempts at labelling we are of the view that consumer centric terminology, which is both logical and intuitive, is the only way to arrive at a workable solution. As such, regulated advice which is based on a comprehensive review and personal recommendation, will be logically different from guidance which is based on information and support to help consumers make informed decisions, but doesn't include a personal recommendation, should feel more straightforward and intuitive for consumers to understand. Overtime we believe that advice and guidance could become better established, allowing the public to differentiate and match the level of service required to their specific needs.

" I know what I want to do, I just need someone to guide me in making an informed decision or help me to arrange it" ...guidance.

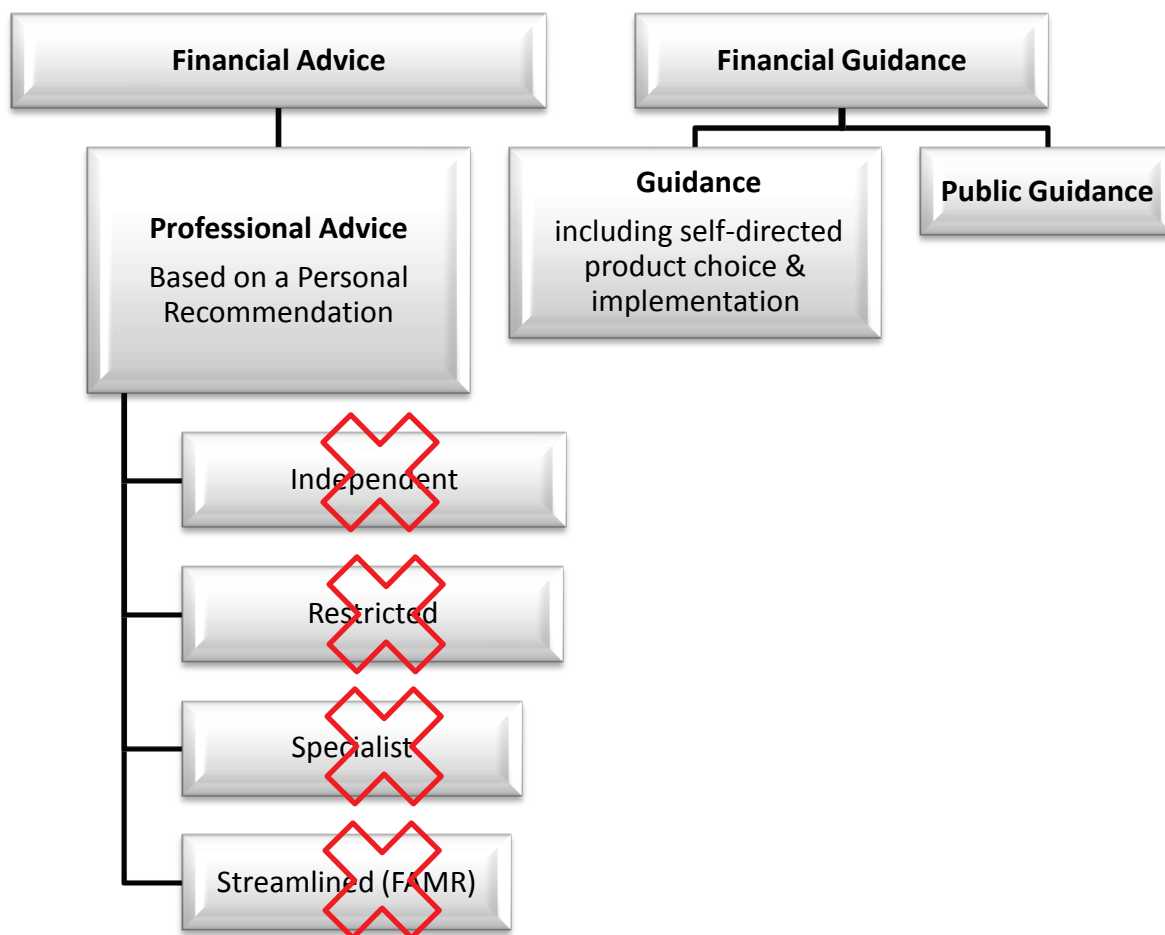
Our recommendation is to drop advice labels.

There is already a regulatory requirement to describe what service is being offered and at what price, which are the factors that are the most relevant for consumers. The added option of guidance required to clearly describe what service is being offered and, for how much, should create intuitive clarity and simplicity.

Revised 'consumer intuitive' Financial Advice & Guidance Landscape

Based on the above, we support the proposed amendment to the definition of financial advice, but also recommend the removal of the number of labels used to describe advice, as well as a more intuitive description of public financial guidance, extended guidance and financial advice as illustrated in (Figures 1 & 2).

Figure 1 – Revised Landscape



Opportunity to simplify - just as there is confusion in respect of the definition of, and distinction between 'advice' and 'guidance', this is also the case in respect of 'independent' and 'restricted' advice labels. For example, from a consumer perspective the restricted advice label provides no clear distinction between advisers who are restricted by product or investment choice and those who are restricted because they are specialist rather than general practitioners. For most the word 'restricted' implies a lesser service whilst the word 'specialist' implies the opposite.

Neither does it make sense to have to describe a service as 'restricted', that offers in all practical terms, a whole of market service that meets many consumer needs, but excludes some retail investment products that many consumers would view as unsuitable or 'toxic'. Furthermore, the industry and advice sector believes that regulation (real or perceived) forces a 'one size fits all' comprehensive process applied to regulated advice, and therefore simplifications would always run the risk of compromising a firm at some future point, particularly in the event of an FCA thematic review or client complaint. It is acknowledged the FCA COB rules do not restrict simplifications, but the general belief and perception is that they do.

This consultation provides an opportunity to deliver effective policy reform in respect of these issues and contradictions to help consumer understanding and engagement, as well as addressing the definition of advice.

Figure 2 – Proposed Framework (including applied standards)

A possible advice framework:

Figure 2 below compares these four broad categories of services: professional advice, extended guidance, public guidance and information in respect of the following categories:

- **Personal recommendation:** whether this service should provide the customer with a personal recommendation as for example set out in Article 4.1(4) of the European Markets in Financial Instruments Directive (MiFID)¹
- **Standards, Training, Accreditation and Revalidation (STAR):** whether this service be covered under the safeguards proposed by the CII in our initial response to the Financial Advice Market Review. If the practitioner delivering the service is not caught by formal conduct of business rules, this person should be subject to certain minimum standards around standards of conduct to govern day-to-day behaviour at all stages in the contractual process with the customer, training to meet knowledge requirements, accreditation to demonstrate to the customer that the individual has met these requirements, and revalidation to ensure that these standards and knowledge are maintained over time
- **Financial Services Compensation Scheme (FSCS):** whether this service be caught under the FSCS regime and therefore consumers using it would be able to obtain appropriate redress. If it is not caught, what steps would be set out to explain this potential risk to consumers?

Cont.....

¹ Markets in Financial Instruments Directive 2004/39/EC Level 1 Directive.

Figure 2 – Proposed Framework (including applied standards)

Advice Service	Personal Recommendation	STAR	FSCS	Qualifications	Nature of service	Regulation
Professional Advice	Yes	Yes	Yes	QCF L4	<p>1. We will advise and make a personal recommendation for you after we have assessed your needs. Our recommendation will be based on a comprehensive and fair analysis of the market.</p> <p>2. We will advise and make a recommendation for you after we have assessed your needs, but we only offer advice on limited types of products, or products from one company or a limited number of companies.</p>	<p>Yes. Subject to all relevant rules including suitability</p> <p>May need a different set of rules / regulatory framework for mass market automatic advice models</p>
Extended Guidance	No	Yes	No	QCF L2/3	You will not receive a personal recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed. If instructed, we will facilitate taking out policy/policies of your choice.	Yes. Subject to TCF and ‘fair, clear and not misleading’ principles and a limited number of conduct of business rules – but NOT suitability
Public guidance	No	Yes	No	Structured learning	This service is available nationally by telephone, on-line service or face-to-face appointment, and is free at point of use. You will not receive a personal recommendation, rather some rudimentary information and tips on what to do subsequently that might be personalised based on some questions we may ask you.	Yes. Subject to some rules set out by the Government and public agencies about the type and manner the information is given, and its independence from any sales process
Information	No	No	No	No	This encompasses any customer-facing material that is not in any way personalised but designed to provide basic information and could include investment brochures or the personal finance press.	No, apart from rules governing form & content and financial promotions

We believe the proposed framework is clearer than that which currently exists, having the potential to give firms the confidence to deliver an appropriate level of service, to meet the consumer's needs and expectations. The recognition of an 'advice gap' and public social exclusion from advice due to certain barriers identified during the FAMR consultation is a critical factor. Addressing simple consumer needs as recommended by FAMR, in a proportionate and understandable way that does not expose consumers to demonstrably greater detriment or risk can be delivered through these proposed changes.

The proposed changes will result in a healthier market in which a range of different models can exist and develop to best suit the needs of a broad range of consumers.

Given that the starting point for those seeking guidance is an already identified need, it seems illogical for guidance not to include the facilitation of product or solution. Advice and guidance should be able to execute facilitation, either via a personal recommendation in respect of the former, or the client's decision and selection, in respect of the latter. For the consumer, the distinction should be primarily and instinctively about whether a personal recommendation is included or not, and the extent of redress.

Clear Standards - extended guidance should also be accompanied by the creation and application of clear generic guidance principles to be applied to all under the Chartered Insurance Institute's (CII) **STAR** principle and framework (Standards, Training, Accreditation and Revalidation).

We believe the above will make the regulatory landscape clearer for both firms and consumers, so that they can deliver appropriately described advice and high-quality guidance services for consumers who want help in making their own decisions, again in line with the recommendation from FAMR.

Furthermore, extended guidance could also help some firms bring in much needed new blood into the sector. Currently a major barrier to this is the need for an extensive training programme to include qualifications aligned to full regulated advice. A clearly defined guidance strategy would mean recruits not giving regulated advice but being trained and qualified up to an appropriate level to meet the simple, less complex needs of some consumers. In addition, extended forms of guidance in excess of that available through Pension Wise, would allow firms to offer paid-for guidance services that do not conflict with and augment current free guidance services, offered through a diversified business model. Whether independent or restricted, advised or guided, the requirement to clearly describe what service is offered, and at what price, will make far more sense to most consumers than labels that are not intuitive, add little value and have a strong tendency to confuse.

Remuneration for guidance – we support the Treasury's view not to reintroduce commission in line with our own FAMR submission and recommendation. We do, however, believe that whilst an initial guidance meeting should be without financial obligation, implementation should be paid for via a transparent disclosure of client agreed remuneration (CAR) which can be facilitated via a product or service. This would be consistent with RDR rules.

Whatever the detail and wording in respect of eventual policy outcome, we would further encourage both extensive illustrative case studies, as well as universal adoption of revised terminology and definitions. Thereafter, the next step will be for HM Treasury, the FCA, FOS

and the wider financial services community to help educate consumers about what the new definitions mean in a practical sense.

Consultation Questions

Q 1 – Is the proposed wording a suitable and effective way to achieve the stated policy? Is there anything else needed in drafting terms to achieve the policy objective set out above?

Whilst the wording would bring the definition of advice in line with European regulations introduced in the original Mifid, it does little to directly clarify the difference between advice and guidance (most advisers would already make a distinction between them based on the presence of a personal recommendation, rather than the arranging of an investment). To create a climate of confidence in developing guidance services, which can be applied to a range of consumer needs (the policy objective), absolute clarity in terms of the distinction and boundaries between ‘guidance’ and ‘advice’ is critical. Whilst consumers see little distinction, comments from the FCA that people ‘shouldn’t get too hung up’ about the differences between ‘guidance’ and ‘advice’ is not something that will encourage financial advisers to embrace guidance services.

Put simply, there needs to be absolute clarity in exactly where the line(s) sit(s) between a prompt to act, advice and product implementation. As already mentioned, that clarity should make use of the proposed wording to focus primarily on whether a personal recommendation is included and the extent of redress.

Q 2 – Do you agree that these are the main costs and benefits that firms and consumers will face? Yes.

Q 3 – Can you provide further details of the costs and benefits associated with the change, including quantifying them where possible?

Given increased clarity and the ability to provide more advanced forms of extended guidance, including facilitation of product and greater certainty regarding future regulatory treatment. However, we cannot see how firms would be able to offer this proposition economically without charging for it.

This will also allow a new route into the advice profession for new entrants, as it would allow earlier engagement at an appropriate level, but also at an appropriately lower cost for consumers. Recruitment and training costs would also be potentially lower.

If a clear differentiation regarding regulatory risk exposure, future treatment and the cost of regulatory levies, were clear between guidance and advice, other operating costs such as PII would also be lower.

Q 4 – Do you agree that the regulatory requirements set out above are enough to limit the commercial benefit of unregulated firms providing guidance on regulated products?

We believe it is common sense for guidance to be extended to include the facilitation of a product transaction, and for such ‘extended guidance’ to have certainty in respect of its future treatment to differentiate it from advice with a personal recommendation. As with advice, for guidance to be meaningful, both need to be able to execute product: advice in respect of a personal recommendation, and guidance in respect of a client decision and

selection. If this requires changes in legislation and regulation, such changes should be considered, if only to avoid large numbers of consumers in receipt of guidance, and who have made an informed decision, wanting to transact a product but unable to do so easily.

Firms offering guidance should be subject to professional standards such as STAR, TCF and 'fair, clear and not misleading' principles. A limited number of conduct of business (COB) rules could potentially apply – but NOT those in respect of suitability to provide necessary certainty of future treatment. These should mitigate the risk of firms attempting to use guidance services to distribute products without being subject to regulation.

Q 5 – Do you agree with the government's view on the risk of unregulated firms offering guidance on regulated products?

Yes. The risks of unregulated firms offering guidance on regulated products can be mitigated by reference to our answer to Q4. In addition to existing regulatory restrictions in place that prevent consumer detriment.

Q6 – Are there additional risks that are not covered above?

What needs to be considered and mitigated is an associated risk of regulated firms offering guidance and the FCA/FOS deciding at some future date that the regulated firm should have offered regulated advice (not guidance). The issue of future certainty of treatment is critical in respect of any form of extended guidance if it is to be adopted in any meaningful way by regulated firms.

The lack of a clearly defined middle ground between current information/guidance offerings and full regulated advice, coupled with ongoing consumer confusion, has been partly responsible for the increase in non-advised services that offer the consumer no protection when compared with full regulated advice as well as the proliferation of scams.

Q7 – Should the government take further steps to mitigate potential risks?

Yes. We refer to the changes suggested in the executive summary of this submission, the need for a consumer centric advice landscape that doesn't involve unnecessary and confusing labels, as well as far greater certainty around the future regulatory treatment of extended guidance (see answer to Q6) and financial advice. We are calling for a streamlining of the advice and guidance framework.

Q 8 – Are people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, impacted by the policy proposed?

Any extension of information, guidance and advice services are likely to impact positively on consumers in vulnerable circumstances, given our assertion that it will help reduce non-advised services and scams.

Regardless of the above, our research suggests that women are less likely to have an existing relationship with, or experience of dealing with, a financial adviser and as such may be less likely to benefit from the policy proposed.

Q9 – Is there anything else that we should consider in the context of this change to deliver affordable and accessible advice to consumers?

Yes. The advice landscape as described in the Executive Summary of this submission. We need to stop trying to shoehorn consumers into industry driven advice models and labels. We need to create a guidance and advice landscape that better meets consumer needs, provides proportionate consumer protection (both now and in the future) and that the consumer will intuitively understand, be more likely to engage with and ultimately trust.

The advice landscape has evolved over the past 20 years following significant reform, but still carries a long trail of mistrust which is perpetuated by some who seem fixated on promotion their own views in the name of public protection.

Based on the primary objective of FAMR, we need to move everyone on to better protect and serve the public's best interests through positive reform of the market by increasing access. This will be difficult to achieve unless HMT take a similar approach to that of pension reforms and empower the public.