



Supervising retail investment advice: inducements and conflicts of interest

The ABI's response to GC 13/5

The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has almost 350 members, accounting for some 90% of premiums in the UK.

The ABI's role is to:

- Be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- Advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- Promote the benefits of insurance to the government, regulators, policy makers and the public.

The ABI welcomes the opportunity to respond to the FSA's guidance consultation on supervising retail investment advice: inducements and conflicts.

Executive Summary

The ABI welcomes the FCA's thematic review on inducements and conflicts of interest and is keen to assist in the development of guidance in this area. We supported the introduction of the RDR and all parts of the industry need to ensure that the potential benefits it offers to consumers are not undermined by poor practice. It is essential for providers and distributors to have clarity on the regulatory framework for distribution agreements and we seek consistent supervision.

We are pleased that the FCA recognises that some payments to distributor firms are acceptable and can be properly managed. However, in some parts of the consultation paper it is unclear whether the regulator considers that some of the findings were unacceptable agreements/payments in themselves or whether the *level* of the payment was unacceptable. Where the regulator considers that any payment (of whatever level) would breach the rules this should be made explicit in the finalised guidance.

It is vital that new guidance can easily be read alongside the relevant Handbook Rules and Guidance on inducements, and we think the linkage could be made clearer. In particular we believe a clearer distinction needs to be made between 'non-monetary benefits' and 'payment for services'. We suggest this requires some changes to the Handbook Guidance in addition to this new guidance. In particular, the current format of the table in COBS 2.3.15 requires review.

It is also vital to have clarity on the responsibilities and limitations of both parties in the agreements. While providers will usually seek to benchmark proposed payments for services, they cannot be held responsible for determining whether the distributor's profit is unreasonable, and they must be able to rely on the information given to them by the distributor. The FCA is best placed to supervise the distributor's compliance with the inducement rules.

We consider that there are two main areas that require further clarity:

- Definition of a non-monetary benefit and payments for services, and any disclosure requirements
- Definition of reasonable distributor profit generated from benefits/services

Non-monetary benefits/payment for services

It is apparent from the guidance that the FCA is categorising payments for services as a 'non-monetary benefit' for the purpose of assessing compliance with the inducement rules. This is problematic and is causing considerable confusion in the industry. We suggest that the FCA should review and consult on changes to the 'non-monetary benefits' table in COBS 2.3.15G, separately identifying non-monetary benefits and payments for services and making clear in what circumstances there is a requirement to disclose. While we accept that this would necessitate further consultation, we believe this would be the most effective way to resolve the regulator's concerns going forward and to provide certainty for the industry.

We would be keen to understand the types of payments that the FCA believes *should* have been disclosed to the customer but were not, as stated in section 3.18 of the paper. Disclosure of the non-monetary benefits to the customer for non-MiFID business is not required where the payment is in relation to those payments which are set out in the non-monetary benefits table (COBS 2.3.15G). The findings state that the FCA believes that firms are taking an 'overly broad' interpretation of these benefits. However the consultation paper does not adequately clarify what services would breach this guidance table, as the issues flagged in the paper could be interpreted as falling into the table. For example:

- Payment for MI could relate to COBS 2.3.15G (9) – '*access to data*'
- Payments for marketing could fall into COBS 2.3.15G (6); and
- Participation at conferences could be interpreted as COBS 2.3.15 G (7)

With regards to whether these should be disclosed to the customer or not, it is reasonable to conclude that they should not, as they fall into the description of services as set out in the existing guidance. By changing the table that is set out in COBS 2.3.15G, this would be much clearer for firms to understand and ensure they are complying with the guidance.

Distributor profit margins

We agree that distributor firms should be able to earn a reasonable profit from the provision of services. However, it is also important to be clear on the limitations upon providers in this regard. Providers rely on distributors to set the price for their services and therefore will be unaware of any profit margin on the service. Whilst a provider will usually have controls in place to assess whether the charge for the service is likely to be reasonable i.e. 'market rate test', the provider can't reasonably assess whether any profit gained from this rate is 'significant' to the adviser firm or whether the payment potentially causes a conflict of interest. We suggest that the final guidance should make it clear that attestations from distributors should be acceptable. The FCA is in a better position to supervise intermediary firms in relation to their compliance with the inducement rules.

Overall, the provider must be able to rely on information given by a distributor, such as a breakdown of costs involved in events such as training.

Other areas

Management Information (MI)

Management information regarding target market and customer base is often of value to providers. Many providers do not have a direct to customer channel and rely on the information that is given by distributors in order to reshape a proposition or improve services to customers.

While MI appears to be referenced in the 'non-monetary benefits' table (COBS 2.3.15G) the review findings describe this as a 'payment for services'. Clarification on this issue would be helpful and again, clarifying the table in COBS 2.3.15G should achieve this.

In addition, the paper indicates that there shouldn't be a charge for on-going MI at all. We propose that FCA needs to clarify the intention behind this suggestion.

Scope of the guidance

There seems to be some ambiguity as to how the scope of the guidance is interpreted. Section 1.8 sets out that the scope includes those circumstances where payments are made by providers to unregulated third party firms that are for the ultimate benefit of any advisory firms. We suggest clarity may be needed in the finalised guidance as to whether this means the payments are for the ultimate benefit of the advisory firm or the services provided by the unregulated third party are for the benefit of the advisory firm.

Good practice

While we think it is helpful for the guidance to set out several examples of poor practice, it would be helpful if the FCA could set out more examples of what good practice looks like.

ABI
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