

Financial Services Consumer
Panel response to:
FSA Consultation Paper 34
*Training and Competence
Sourcebook*

The Training and Competence Regime

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Introduction

1. This paper is the response of the Financial Services Consumer Panel (‘the Panel’) to the Financial Services Authority (FSA) Consultation Paper 34, *Training and Competence Sourcebook*. The FSA established the Panel to advise the FSA Board on the interests and concerns of consumers and to report on the FSA’s effectiveness in meeting its consumer protection and public awareness statutory objectives. Further information about the Panel can be found at the end of this response.

Summary

2. The Panel strongly supports efforts to instil a positive training culture and move away from a “tick box”, mechanical approach to compliance (paras 9–11).
3. We also warmly welcome the FSA’s inclusion of life and pensions back office supervisory staff in the proposed regime, which should bring benefits for consumers and the industry (paras 19, 43). We invite the FSA to give further consideration to including stockbrokers’ back office staff within the regime and recommend that the FSA consider whether the activities of staff responsible for the interface with consumers through information technology systems (eg internet sites and security) also need to be brought within the regime (paras 44 – 46).
4. However, the FSA has not set out a strategy for supervising the training and competence regime. We conclude that a convincing case has not yet been made that a move away from the more prescriptive approach of the present regime will secure the right level of protection for consumers (para 12). Further analysis of what existing regimes have and have not delivered could have helped to clarify what risks to consumers need to be tackled and identify the most appropriate means of doing so (para 20).
5. We call for greater clarity on the status of the rules, commitments and other guidance and the reasons for excluding certain activities, such as

deposit taking and general insurance, from the regime (para 14-18). We also call for clarification of the standards which firms will be expected to meet and for the FSA to publish guidance to help them meet those standards (para 23-25). We express concern that, if this does not happen, the regime may be difficult and resource-intensive to supervise and enforce and standards for continuing professional development may be hard to maintain (para 26-29).

6. We argue that because the service consumers receive depends both on the firm and the individuals who deal with that consumer the balance of responsibility between the individual and the firm needs to be clarified (paras 21–22, 28).
7. We comment on the specific rules and guidance in the draft Sourcebook, identifying several areas where drafting ambiguities remain and highlighting the need for record-keeping requirements to be specified (paras 31-42).
8. We recommend that further progress is made in reviewing the comparability of examinations and argue that a timescale for completing this exercise should be included in the FSA's proposed timetable for introducing the new regime (para 47, 51). We argue that the FSA needs to put in place procedures to ensure that examinations are kept up to date, that individuals have the capability to keep up to date and that the FSA considers further how it will be able to assess whether competence has been maintained and updated as required (paras 48-49).

General comments: the overall approach (FSA Qi)

9. Consumers have the right to expect that their financial affairs will be handled by a competent and effectively supervised work force in order to lessen the scope for errors and permit a lighter, and so less costly,

regulatory regime. We look forward to a climate of opinion in which training is viewed positively, not as a burden imposed on the firm, and where standards are continually being driven up by the competitive process.

10. We agree with the FSA that there needs to be a move away from a culture which considers mechanical compliance to be sufficient to deliver an effective regime. Both firms and the FSA need to focus on the outcomes the regime delivers in practice rather than simply ensure that particular boxes are ticked.

11. We also welcome the FSA's emphasis on the need to maintain competence as markets, products and best practices develop.

12. However, we are surprised that what is otherwise a fairly detailed document should be put out for consultation without a reasonably clear indication of the supervision strategy which will underpin the new regime. In general the training and competence proposals envisage moving away from detailed prescription and focussing on outputs. Paragraphs 4.5/6 of the Consultation Paper (CP) are of such generality that it is impossible to say that a convincing case for the new approach has been made.

13. Our concerns about the FSA's proposals, which relate to this and other omissions, fall under four related headings:

- clarity and scope
- consumer focus
- standards and guidance
- supervision and enforcement.

Clarity and scope

14. We commend the FSA's efforts to produce clear, comprehensible draft rules and to explain the relationship between commitments, rules and guidance. Where drafting ambiguities remain in individual rules and guidance, these are pointed out in paragraphs 31 to 42 below.
15. However, the relationship between the principles, commitments, rules and guidance needs to be set out with greater clarity than in the body of the CP or the prefatory notes and Chapter 1 of the draft sourcebook. The terms themselves are confusingly applied; for example, the "guidance" in paragraphs 1.2.1 refers to the "obligation" on firms and what the FSA's Principle 3 "requires" firms to do. Our three main reasons for seeking greater clarity are outlined below.
16. First, the FSA has not made a strong case for excluding certain activities, such as deposit taking and general insurance, from the scope of the rules and guidance. The market has changed since the present regimes were established and there is no analysis here of whether existing boundaries are still the most appropriate. In any case, the proposed Principle 3 for businesses requires *all* regulated firms to take reasonable care to organise and control their affairs responsibly and effectively. An alternative approach to that proposed by the FSA would be to bring all activities into the training and competence regime and use a risk-based approach to determine the appropriate degree of supervision and enforcement. We recognise that not all activities are within the scope of the existing regime and that the FSA has undertaken not to extend conduct of business regulation into new areas. However, the reasoning behind the FSA's apparent decision to treat the training and competence regime as part of the conduct of business provisions is unclear and should be explained.
17. Second, it is not clear whether there will be any difference in the way the commitments, as distinct from the other guidance in Chapter 2 of the draft Sourcebook, will be supervised and enforced. Take an example where a

bank and an IFA firm both have weak training programmes and ambiguous training manuals. As a result their advisers fail to draw the correct distinction between maxi- and mini- ISAs, leading to customers being given incorrect advice. Would the two firms be dealt with in the same way by monitoring teams who became aware of the problem? Would the monitoring teams take steps to look for sources of potential mis-selling like this in both firms?

18. Third, we are concerned that the “guidance” in the sourcebook is more in the form of elaboration of the rules than assistance to firms about how to devise effective training and competence systems. We set out our concerns about the lack of guidance to firms in more detail in paragraphs 23 to 25 below.

Consumer focus

19. We warmly welcome the FSA’s proposal to extend the regime to the administration of long term insurance because we agree with the FSA that this should deliver both improved service to customers and market efficiencies. We discuss this issue in more detail in paragraphs 43 to 46 below.

20. However, it would have been helpful if the Consultation Paper had contained similar analyses of other aspects of the present and proposed regime in order to explain what risks to consumers the regime is intended to tackle and how it will do so. We understand that the FSA does not want to look backwards but we feel that analysis of the range of regimes presently in operation could help to identify the most suitable option across the board and shed light on how to tackle perimeter issues. At present only the section on back office requirements has such analysis.

21. From a consumer perspective what matters most is the competence of the service actually received. This will depend on both the firm’s approach to training and competence and the competence of the particular individuals responsible for dealing with that consumer. For that reason we think that

the relationship between the training and competence regime and the approved persons regime, the balance of responsibility between individual and firm, and the scope of each regime needs to be clarified. There is a danger that there are gaps between the two regimes which might result in consumer detriment. A possible example is the scenario where a member of staff whose role is to give information to the public, but not advice, does in fact give advice without being qualified to do so, despite having been trained in the distinction drawn between the two. How would this scenario be detected and where does the responsibility lie – with the individual or the firm?

22. There are transparency issues which have yet to be fully thought through from a consumer perspective. For example, will consumers be able to find out about the training and competence commitments and whether the firm or individual they are dealing with has satisfied them? If so, how? With the current plethora of examinations, would consumers be able to disentangle whether their advisers' qualifications are appropriate?

Standards and guidance

23. The sourcebook as drafted does not give firms guidance about the output standards which can be taken to indicate that their approach to training and competence is working well, nor does it encourage firms to set such standards. By comparison, PIA guidance proposes that firms should specify quantity and quality standards for activities such as fact finds and document individual performance against them.¹ In the absence of such guidance there is a risk that firms will not understand what standards the regulator requires and that pressure for high standards will not be maintained. A further issue is the potential for firms to work to inconsistent standards. We address this further in paragraphs 26 - 27. Over time, significant problems for consumers could emerge in terms of poor quality advice.

¹ Training and competence: rules and guidance, PIA, January 1998, paragraph 2.4.3

24. The draft sourcebook does not explain how to go about setting up a high quality training and competence regime. We appreciate that FSA wants firms to take responsibility for this, but without guidance there will be a large number of firms who are not well placed to do so. It is not clear from the CP whether the FSA envisages providing further assistance to firms who are seeking to comply with the training and competence regime. We recommend that the FSA explains whether it has plans to provide such assistance and, if so, what form it will take, in its response to the consultation. We also recommend that FSA considers making separate guidance for small firms, as they may face particular difficulties.

25. In our view, the FSA does need to take some responsibility for implementation of the new regime. Experience with the PIA regime has shown that detailed guidance helps to raise and maintain standards. If the FSA expects other bodies such as trade associations to play a role in the development of guidance and best practice standards then the FSA should make this clear. Further, because new standards would take time to establish, the FSA should set out how it proposes to ensure that standards are maintained meanwhile. For example, should a firm working to PIA guidance issued only a year ago continue to work to that guidance? Will it be deemed to be non-compliant if it does not? Where will the firm go for guidance on the implications of new market developments?

Supervision and enforcement

26. We are also concerned that, without benchmark standards for outputs or for inputs other than examination passes, and in the absence of detailed guidance to firms, the regime will be difficult to enforce. This is for the reasons outlined below.

Assessing outputs

27. In the absence of agreed standards it may be difficult for firms and their regulators to identify good practice and for the FSA to determine where the boundary between compliance and non-compliance lies. If a failing in the

output occurs, for example, in the quality of advice given to a customer, how will this be detected? And, if detected, how will it be related back to possible failings in the training and competence regime? Without benchmarks for training and competence systems it may be hard for FSA staff to identify and direct resources towards areas of high risk. For example, if the FSA does not give indications about how firms might organise their systems in order to meet their obligations, it may need to review firms' systems in greater detail than at present, as well as assessing the output. The equally undesirable alternative would be to rely on systems which may look good on paper but have not been proven to work.

28. There are other practical problems to be addressed. We do not wish to re-open the debate here about the merits of a "driving licence" approach, under which individuals would be certified as competent through modular examinations appropriate to their career changes. However, there are a number of issues which would have been relatively straightforward to resolve under a "driving licence" approach but appear to be harder to tackle under the proposed regime. These are

- Will the training and competence regime be enforced differently depending on whether the individuals involved are inside or outside the scope of the approved persons regime? For example, will advisers, who are within the scope of both regimes, be expected to bear more individual responsibility if things go wrong than staff dealing with administrative functions, who may be within the scope of the training and competence regime only?
- What are the incentives for *individuals* to undertake CPD?
- Who will be responsible for maintaining an accurate record of an individual's qualifications and experience – the individual or the firm? How can these be checked by firms or consumers?

Continuing professional development

29. A particular test is how the FSA will monitor the requirement for continuing professional development. The CP sets out the difficulty with specifying the minimum number of hours to be spent but it does not explore the alternative option of compulsory re-testing at defined intervals. We acknowledge that neither requirement is perfect, but recommend that if the FSA does not adopt either a minimum hours or re-testing requirement it sets out what alternative benchmarks it will use to determine whether firms' CPD arrangements are adequate. FSA will need to use benchmarks to supervise firms and in the interests of certainty and encouraging compliance it should publish them.

Supervision of the regime

30. We were very concerned to see that no detail is given on how the training and competence regime will be supervised. The FSA will need to consider whether monitoring teams will have a sufficient understanding of the operation of training and competence systems and their impact on outputs to spot problems early on without the benefit of detailed guidance to help identify them. This is an issue which we plan to discuss with the FSA further and will seek regular updates on the number of FSA monitoring posts, the number of posts vacant and staff turnover.

The sourcebook requirements (FSA Qii)

Defining the required degree of supervision

31. Various terms are used to describe the degree of oversight from supervisors within firms (as distinct from regulatory supervisors), including "appropriate supervision" (2.4.6), "adequately monitored", without any real indication of what these terms mean in practice. For example, since the paper states that there will be no reduction in the required standards we assume that an adviser not yet assessed as competent would be

prohibited from advising consumers without a qualified supervisor being present? Yet the sourcebook says only that the firm must take 'reasonable steps' to ensure that this does not happen.

Who can do what at what stage

32. We think that the clarity of the provisions would be improved by including a diagram showing who is within the scope of the provisions and what they can do before and after being assessed as competent, with the requirements for supervision at each stage also included.

Record keeping

33. We note that firms' obligations to keep sufficient records to demonstrate compliance will be dealt with in another sourcebook. We think that the FSA should set out what the requirements are likely to be, even if this is not in the form of rules and guidance, in its response to the consultation. Alternatively, the FSA should make a commitment to regard a lack of evidence as prima facie evidence of non-compliance.

Chapter 1: Commitments

34. In this section we set out our comments on some of the individual draft rules and guidance contained in Chapter 1 of the draft Sourcebook.

35. In 1.3.1 (1) replace "advance and maintain" with "maintain and advance". This is not, as it may seem, purely semantic. The emphasis should be on reaching the training and competence standard and then pushing forward to ensure that standards are advanced to improve customer service and reflect changing circumstances rather than, as implied by the present wording, to focus on keeping staff at the initial standard.

36. In 1.3.1 (5) at the end add ", the needs of its customers,"

Chapter 2: Rules and Guidance

37. In this section we give detailed comments on the draft Rules and Guidance in Chapter 2 of the draft Sourcebook.

38. In 2.2.2 there is a question regarding what happens if a person was grandfathered into the existing regime, or has since been given an exemption from the required examinations, and the reference gained from previous employers is only formulaic: can the firm still go ahead and employ without then requiring the employee to take exams? We think that if no information is available then the employer should be required to re-train the employee and assess their competence. Further guidance might be needed on this point.

39. Regarding 2.4.6 see our comment in paragraph 31 about what “appropriate supervision” signifies. In addition, we think there is scope for argument about the wording and intention of this rule. We deduce from paragraph 2.18 that the intention is to allow employees who have passed only the regulatory module of an approved examination, rather than the whole thing, and have reached an adequate level of knowledge and skill, to undertake activities directly with or for private customers *provided that* they are appropriately supervised. However, the present wording is ambiguous and needs to be clarified.

40. In 2.6.2 the caveat “must take reasonable steps to” ensure implies that there are circumstances in which an employee could legitimately undertake activities for which they have not been assessed as competent without “appropriate supervision”. We do not think that this delivers the appropriate level of consumer protection, because there is already a degree of leeway given to firms to determine what constitutes “appropriate supervision”. We recommend that “must take reasonable steps to” should be deleted.

41. In 2.6.3-4 we believe that the range of qualifiers – “appropriate”, “adequate”, “suitable” – is unhelpful: do they all amount to the same thing? If not what is the difference?

42. 2.6.5 is the only rule dealing explicitly with the skills which *supervisors* require and we think that, as presently drafted, its effect is unclear. Is it intended to differentiate the requirements in relation to packaged products from those relating to other investment business? Is it limited to supervisors of investment *advice* on packaged products or (as suggested by 2.1.1 (2) (c)) does it also capture supervision of the *administration* of packaged products?

Requirements for administrative functions (FSA Qiii)

43. We strongly support the FSA's conclusions on Options 1, 2 and 4 set out in paragraph 22 of the CP:

- that the requirement for supervision of administrative functions in relation to managing designated investments should be maintained,
- that it should be extended to firms undertaking those activities regardless of which body currently regulates them, and
- that the provisions should be extended to similar functions in relation to the effecting or carrying out of contracts of long term insurance.

44. However, we would argue that Option 3, introducing training requirements for supervisory staff in the “back office” of stockbrokers should be given further consideration.

45. There is less analysis of this Option than of Option 4 and the conclusion does not appear to follow from the analysis given. First, the analysis focuses on inputs (money spent, number of staff per supervisor) rather than outcomes. Second, if, as suggested in paragraph 36 of the CP, stockbrokers are spending large amounts each month in correcting errors,

we believe there may be a business case for improving training and competence to prevent the errors from happening in the first place.

46. A further issue is whether the distinction will perpetuate a differentiation between parts of the market which may soon be out of date. In relation to this issue of market change we also recommend that the FSA consider whether the activities of staff responsible for the information technology systems which underpin the interface between the financial services industry and private customers (eg internet sites and security) also need to be brought within the regime.

Interim Approved Examinations (FSA Qiv)

47. We have no comment at this stage on the specific selection of examinations. The Training Advisory Panel will be better placed than we are to form a view. However, we do consider it important that the standards of the differing examinations which are deemed to meet a particular requirement are comparable and remain appropriate. We regret that the project assessing the comparability of examinations begun by the PIA Training Advisory Group in 1997 has not progressed during the transition to the new regulator. We recommend that FSA now gets this work under way as a matter of priority.

48. We believe that further consideration needs to be given to how competence is maintained and updated and how the FSA will be able to monitor whether this has been achieved. We believe that the FSA should consider requiring all approved examinations to have "bolt-on" updating modules which individuals would need to take periodically.

49. It is also important that examination syllabi are updated quickly to reflect changes in the market, legislation and regulatory practice. The FSA must minimise the time taken for market developments which might have implications for the training and competence regime to filter through to syllabi and CPD programmes. This will involve having mechanisms in

place to enable the FSA, or its Training Advisory Panel, to ensure that issues are identified and incorporated promptly. We recommend that the FSA set out in its response to this consultation paper how this will be done. In addition, it should be a component of the initial assessment of competence that individuals show they are capable of identifying and using CPD sources.

Timetable for introduction (FSA Qv)

50. We do not think the FSA can finalise the rules and guidance for the regime without ensuring that it can be supervised and enforced effectively. Consequently, we think that further information is needed on how the regime will be supervised before we could endorse the FSA's planned timetable. For example, what will be the ongoing role of the Training Advisory Panel? How will responsibility for the policy and policing of the training and competence regime be co-ordinated within the FSA?

51. We would add to the timetable a target timescale for the review of examination standards.

About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives. There are eleven members of the Panel representing a broad range of consumer interests. The Panel is independent of the FSA – it can raise its own concerns, initiate its own research and publish its own reports.

Who is on the Panel?

Barbara Saunders (Chairman)

Barbara is a public interest member of the PIA Board. She is an independent consumer consultant and past Chairman of the Council of the Insurance Ombudsman Bureau. Among other public and professional appointments she is a Non-Executive Director of the St Albans and Hemel Hempstead NHS Trust and a member of the Architects Registration Board.

Colin Brown (Vice Chairman)

Colin is an independent consultant specialising in consumer affairs. Previously Deputy Director of Research at Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 20 years' experience of social and consumer research.

Jean Gaffin

Jean was Chairman of the Advisory Committee on Telecommunications for Disabled and Elderly People (until 31.12.1999) that provides advice to the telecommunications regulator, OFTEL, and is a Non-Executive Director of Harrow & Hillingdon Healthcare NHS Trust. She has extensive experience of working on behalf of vulnerable consumers. Previous positions include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care.

Yvonne Gallacher

Yvonne is Chief Executive of Money Advice Scotland, which was set up by the Scottish Consumer Council. She has over 10 years experience of consumer credit/money advice issues and of working with vulnerable consumers in a variety of roles, including debt counsellor, trainer and manager. She is Co-Director and Secretary of the Government funded Lead Body for Advice, Guidance, Counselling & Psychotherapy (CAMPAG). Yvonne is a member of the Scottish Consumer Council.

Joan Harbison

Joan is Chief Commissioner of the Equality Commission for Northern Ireland. She was Chair of the Commission for Racial Equality for Northern Ireland since its inception in 1997 and is a former Chairman and member of the Executive Committee of the Northern Ireland Association of Citizens' Advice Bureaux. She has held a number of public appointments including being Vice Chairman of the Eastern Health and Social Services Board and the Northern Ireland Standing Advisory Commission on Human Rights and was a founding member of the Human Fertilisation and Embryology Authority.

Noel Hunter

Noel is County Trading Standards Officer for Warwickshire. A National Council member of the National Consumer Council, he also chairs the Management Board of the Institute of Trading Standards Administration and is an adviser to the Local Government Association.

Gerald Lanchin

Gerry is a Vice President of the National Federation of Consumer Groups. He is a former Under Secretary of the Consumer Affairs Division of the Department of Trade and Industry and author of "Government and the Consumer". His involvement in consumer protection includes being a former Council Member of Consumers' Association and of Consumer Congress Committee. He was the first chairman of the Direct Mail Services Standards Board and a member of the Data Protection Tribunal for 10 years.

Nick Pearson

Nick is the National Money Advice Co-ordinator for the Federation of Independent Advice Centres. A career spent in advice organisations including the National Association of Citizens' Advice Bureaux where he was manager of the Money Advice Support Unit, he has particular experience of credit, debt and personal finance issues and of working with vulnerable consumers.

Richard Smethurst

Richard is Provost of Worcester College, Oxford University; he chairs the Training Standards Panel of IMRO, of which he is a non-executive Director. He has served as an economic adviser in Whitehall, and the Monopolies and Mergers Commission, where he was Deputy Chairman. Richard lectures widely on financial and economic topics to businessmen and adult education groups. He is President of the National Institute of Adult Continuing Education.

Jane Vass

Jane is an independent consumer researcher specialising in financial services. She was previously Head of the Financial and Economic Research Group at Consumers' Association and is still author and editor of a number of Consumers' Association publications in addition to other research, including work for the National Consumer Council. Her current committee memberships include: Council of the Ombudsman for Estate Agents, the Inland Revenue Tax Law Rewrite Project Consultative Committee and the FSA Training Advisory Panel.

Dave Watts

Dave is a partner in a media business which is involved in publishing, editing and journalism - personal finance plays a large part in this. He is a former editor of "Which?" and "Money Which?" and former Assistant Director of Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years.

How to contact the Panel

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