



04 July 2011

Our ref: ICAEW Rep 62/11

Your ref:

Anita Flannigan
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
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London
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Dear Ms Flannigan

Consultation Paper 11/8 Data Collection: Retail Mediation Activities Return and complaints data

ICAEW is pleased to respond to your request for comments on *Consultation Paper 11/8 Data Collection: Retail mediation Activities Return and complaints data*.

Please contact me should you wish to discuss any of the points raised in the attached response or if you would like to arrange a meeting to consider any matters arising in more detail.

Yours sincerely

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ICAEW REPRESENTATION

CONSULTATION PAPER 11/8 DATA COLLECTION: RETAIL MEDIATION ACTIVITIES RETURN AND COMPLAINTS DATA.

Memorandum of comment submitted in July 2011 by ICAEW, in response to the Financial Services Authority discussion paper Data Collection: Retail mediation Activities Return and complaints data published in May 2011.

Contents	Paragraph
Introduction	- 1
Who we are	2 - 4
General comments	5 - 9
Responses to specific questions	10 - 31

INTRODUCTION

1. We welcome the opportunity to comment on Consultation Paper 11/8 *Data Collection: Retail Mediation Activities Return and complaints data*.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. The ICAEW Financial Services Faculty was established in 2007 to become a world class centre for thought leadership on issues and challenges facing the financial services industry, acting in the public interest. It draws together professionals from across the financial services sector. This includes those working for regulated firms, in professional service firms, intermediaries and regulators.

GENERAL COMMENTS

5. ICAEW is a professional institute and as such its activities do not fall directly within the scope of this consultation paper. However, a significant number of ICAEW firms and individual members and other stakeholders will be affected by these proposals. We have, therefore, consulted with members and others to submit an informed response, acting in the public interest.
6. We support the objectives behind these proposals in respect of monitoring the behaviour of providers and firms in connection with the implementation of Adviser Charging and in connection with complaints data. However, in practice it will be difficult and costly to obtain meaningful data in the format that has been suggested. We are not therefore convinced that the proposals in their current format will necessarily achieve the objectives (as defined in the consultation paper) on a cost effective basis. However, we believe that greater clarity and relatively small changes could greatly simplify the requirements, whilst still producing sufficiently useful data for the regulator.
7. We are concerned about the consultation paper's apparent discrepancy with standard income reporting procedures when invoicing clients. Administration will be more straightforward and costs should be reduced if reporting is based on the income recognition of each respondent, which is largely similar across the sector. A significant majority of product providers, wealth managers and advisers recognise income and costs on an accruals rather than a cash basis, with any resultant analysis stemming from that accruals based data. For the FSA's monitoring purposes, the basis use is not a first order consideration.
8. Close attention needs to be given to ensure data relating to client complaints fully distinguishes if a complaint relates to poor administration or unsuitable advice, and if the complaint was in respect of the unsatisfactory practices of the firm or the shortcomings of an individual financial adviser. The anticipated consolidation of adviser firms means collecting accurate information in

this area will not be straightforward, particularly if it involves legacy issues relating to advice provided by a former adviser and/or firm.

9. As the starting point, we believe the regulator should obtain sufficient information to develop a detailed understanding of the mechanics of business models that individual organisations use to generate different types of income and complaints data. This approach will help firms submit data in a format that will enable the regulator to monitor and assess how Adviser Charging is working in practice and identify problem areas. Firms should be required to submit information that is consistent with this approach on a six monthly basis, to include notification of any changes in their business model and terms of business.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do you expect to have any difficulty in providing the breakdown of Adviser Charging in the way proposed? If so, please explain these difficulties.

10. We believe that providing the breakdown of data referred to in Table 1 will prove to be less straightforward in practice than it appears in theory. For many firms the introduction of Adviser Charging is a new concept and it is not generally current practice to analyse time or fees in this way. This implies that existing systems will need to be adapted and/or new systems developed from scratch, and staff will need training, which will be time-consuming and costly.
11. The identification and categorisation of revenue relating to each element of the financial and investment advice and implementation process is complex and does not easily lend itself to a straightforward compartmentalisation approach. The delivery of professional financial planning and investment advice consists of a complex mix of interrelated activities that tend to simultaneously involve both generic and regulated activities and ongoing and one-off advice services. It will therefore be difficult to obtain an accurate and consistent analysis of revenues either within a single firm or between firms. Individual firms need to adopt very different approaches to serve the particular needs and best interests of their individual clients, which makes simplistic comparisons across firms difficult.
12. Charging for this complex mix of services can be arranged in a combination of ways, including monthly retainers to pay for services that often encompass generic and regulated advice, and both ongoing and one-off advice services. The flow of revenue between clients, products providers and platforms adds a further layer of complexity. Identifying exactly what falls under each category will not be easy. For example, if an adviser transfers existing funds into a 'new' ISA, under the authority of an existing management agreement and fee, is this to be reported as ongoing or initial advice? There will be other similar examples which, on the information provided so far, will be capable of more than one interpretation. Disaggregating, classifying and recording this mix of revenue into a table will not be straightforward, particularly when the complications relating to VAT are added into this already complicated matrix of activities.

Q2: Do you expect to have any difficulty in providing the number of initial adviser charging payments in the way proposed? If so, please explain these difficulties.

13. The information relating to payments of initial adviser charges should be recorded at the point that such a contractual payment is incurred, not at the point that payment is received. Once a fee has been raised, analysing income from debtors is not an activity normally carried out and, to the best of our knowledge, there are no existing back office or accounting systems that have the capability to easily categorise and record information in this format. This implies that existing systems will need to be adapted and/or new systems developed from scratch, probably involving a significant duplication of recording, and staff will need training, which will be time-consuming and costly.
14. For similar reasons as referred to in our answer to Q1, disaggregating, categorising and recording data in respect of what is required in Table 2 will not be straightforward. Firms will

need to review and revise their terms of business, billing and recording systems to accommodate these complexities.

15. We do not believe that the proposals referred to in paragraph 2.27 are sufficiently clear or that the proposal will necessarily be workable at a practical level.

Q3: Do you expect to have any difficulty in providing the number of contracts for one-off advice services in the way proposed ? If so, please explain these difficulties.

16. Disaggregating and categorising contractual obligations into the format required will require crystal clear clarity to establish precisely which aspects of a client's relationship relates to the fulfilment of an existing service, and which aspects relate to the fulfilment of an entirely new obligation to provide a one-off advice service. Matters are further complicated by the increasing use of platforms and outsourcing of investment management, which means that a complex, inter-related chain of relationships exist between clients, advisers, product and service providers and investment managers. Providing the information required in respect of contracts for one-off advice services will not therefore be straightforward, especially during the transitional period.

Q4: Do you expect to have any difficulty in providing the number of clients receiving ongoing advice services in the way proposed? If so, please explain these difficulties.

17. Ongoing advice service will need to be clearly defined. There are many firms, such as chartered accountants, who give financial advice to clients on an ongoing basis. From time to time, where authorised, they may give regulated advice. Some of their clients have ongoing agreements in relation to such ongoing regulated advice. Others, some of whom receive regulated advice on a one-off basis from time-to-time, have ongoing agreements for the provision of general advice, possibly including generic financial services advice. The question as posed does not clarify which clients should be included in the report.

Q5: Do you expect any difficulty in providing the charging structure information proposed? If so, please explain why.

18. We do not believe there should generally be any difficulty in providing the information as proposed.

Q6: Do you have any difficulty in providing the breakdown of Consultancy Charging and fee revenue in the way proposed? If so, please explain these difficulties.

19. Providing information in connection to the above will require a clear delineation of the precise nature of client relationships and obligations therein. Provided firms ensure terms of business are clear from outset, there generally should not be any substantial difficulty in recording accurate information. However, there may be some scope for complication in circumstances whereby limited advice is provided to employees.

Q7: Do you expect to have any difficulty in providing information on the number of employers receiving either one-off services, ongoing services or both in the way proposed? If so, please explain these difficulties.

20. We have no further comments to add in respect of this question.

Q8: Do you expect to have any difficulty in providing the range of consultancy charges and charging structure information proposed ? If so, please explain these difficulties.

21. Organisations should not generally have any particular difficulties in providing this information, although we do not believe it is entirely clear how this data in its current format can be used to provide any meaningful analysis.

Q9: Do you expect to have any difficulty in changing your systems and/or procedures to accommodate the changes proposed to Sections B and G of the RMAR? If so, please explain these difficulties.

22. This should be fairly straightforward.

Q10: Do you expect to have any difficulty in changing your systems and /or procedures to accommodate changes proposed to Sections B and G of the RMAR? If so, please explain these difficulties.

23. We do not believe that this matter will be straightforward. Data will need to reflect whether a complaint relates to poor administration or bad advice. It will need to be made explicitly clear if a complaint related to the shortcomings of a particular financial adviser or if the complaint related to the unsatisfactory practices of a firm. The situation is further complicated given that advisers will often be dealing with legacy issues which in some way or another related to advice provided by a previous adviser or firm. All advisers will need to be offered adequate opportunity to have sight of and to challenge information that is submitted, including circumstances where individuals are no longer with the advising firm.

Q11: Do you agree with the amendments to Form D to capture additional complaints information? Please justify your answer.

24. We have reservations regarding the practicality of these proposals, particularly with respect of smaller firms, and believe the onus should remain with senior management within firms.

Q12: Do you expect to have any difficulty in providing the breakdown of adviser complaints in the way proposed for firms' ongoing complaints alerts? If so, please explain these difficulties.

25. We do not see any significant difficulty in providing the breakdown required provided there is clarity as to what should be included and at what stage. Some difficulties could arise in assessing whether a complaint involves a claim of £5K or more at the outset. Many complainants do not quantify what they believe they have lost and many are not sure who or what they are complaining about. As above, a complaint could be in relation to a service issue which may not be the fault of the FSA authorised person. Clarity should be given as to whether it is only complaints about misleading or unsuitable advice which needs to be allocated to a specific financial adviser.

26. The same comments apply to reporting 3 complaints in a 12 month period in relation to clarity on what should be included.

Q13: We believe that, although costs to firms of the interim and strategic options are broadly the same, firms need a longer lead time to start notifying us of complaints against their advisers, so we propose to adopt the strategic option for ongoing reporting. Do you agree?

27. We agree that the strategic option is generally the most practical provided the clarity mentioned above is given well in advance of the start date.

Q14: Do you have any comments on the cost benefit analysis?

28. It is not possible to undertake a meaningful cost benefit analysis (CBA) until it is clear exactly what reporting requirement is required. For example, if reporting is required on a cash basis, analysed by category as referred to above, wholesale rewriting of software and/or dual systems will be required. This would be very expensive. However, if reporting has to be undertaken in a way that is sympathetic to all normal accounting systems the changes required would be relatively minimal, which would mean substantial savings in costs. Furthermore, the existing analysis does not appear to adequately consider the costs of underlying software changes that would be required to supply the information under Table 2.

- 29.** The introduction of detailed reporting requirements which are not aligned to existing financial accounting practice is likely to impose disproportionately larger increase in costs to smaller firms, who may not be able to justify the substantial cost of automating the reporting requirements on the basis as referred to in this consultation. The likely consequences of this would be to reduce the number of small professional firms that are able to operate in this market at a time when the implementation of the RDR is projected to generally increase costs and reduce the supply of independent financial advice. This would not be in the best long-term interests of consumers and would be counter to the RDR objectives.
- 30.** We do not believe a meaningful CBA can be worked through until the various definitions (such as clarification as to what exactly initial advice in practice will mean) and reporting requirements have been better defined and applied in practice. The nature of the sector means that different firms need to use different business models and charging structures to serve the differentiated needs of customers – this has not been adequately factored into the CBA.
- 31.** Considerable care will be needed when assessing data relating to client complaints. As referred to in our answer to Q10, it will need to be made explicitly clear if a complaint related to poor administration or to unsuitable advice. It will not necessarily be straightforward to unravel to what extent the root cause of a complaint related to the particular practices of a firm or to the attitude and practice of a 'rogue' individual adviser, or if the complaint related to the shortcomings of both the firm and the individual financial individual adviser. The anticipated consolidation in the financial advice sector will add to these complications.

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