

## Chapter 6

Information about the firm, its  
services and remuneration



## 6.1 C Consultancy charging and remuneration

### Application - Who? What?

6.1C.1

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- (1) This section applies to a *firm* that gives advice, or provides services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.
- (2) Without prejudice to (1), this section does not apply to a *firm* that makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*.

### Application - Where?

6.1C.2

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This section does not apply if the employer is outside the *United Kingdom*.

### Interpretation

6.1C.3

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In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:

- (1) giving advice or assistance to an employer on the operation of such a scheme;
- (2) taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a *scheme*; and
- (3) giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a scheme.

### Requirement to be paid through consultancy charges

6.1C.4

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■ COBS 6.1C.1 (Application - Who? What?) and ■ COBS 6.1C.3 (Interpretation) mean (for example) that the cost of any advice given to an employee pursuant to an agreement between the employer and the adviser about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of a *group personal pension scheme* or *group stakeholder pension scheme* are subject to the *rules* in this section, not the *rules on adviser charging* (■ COBS 6.1A).

**6.1C.5** **R** Except as specified in ■ COBS 6.1C.5A R, ■ COBS 6.1C.5B R and ■ COBS 6.1C.5C R, a *firm* must:

- (1) only be remunerated for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* by *consultancy charges* or by a fee payable by the employer;
- (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the *group personal pension scheme* or *group stakeholder pension scheme*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *consultancy charges* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *consultancy charges* are recovered from the relevant *group personal pension scheme* or *group stakeholder pension scheme*.

**6.1C.5A** **R** A *firm* and its *associates* may, except in relation to a *qualifying scheme*:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1C.5 R if:
  - (a) the employer's part of the relevant scheme was established on or before 30 December 2012; and
  - (b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit in (1) is transferred to that *firm* or its *associate*.

**Re-registration of commission when an employer moves to a new adviser**

**6.1C.5B** **R** If an employer chooses to appoint a *firm* to provide advice or services in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1C.5AR (2), the *firm* must:

- (1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;
- (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and
- (3) as soon as reasonably practicable after it makes the disclosure in (1):
  - (a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and

(b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).

**6.1C.5C** **R** In connection with a *qualifying scheme*, a *firm* may only solicit or accept *consultancy charges* from an operator of a *qualifying scheme* if the *operator* has confirmed that express agreement has been given by members of that scheme under **COBS 19.6.4 R**.

**6.1C.6** **G** A *firm* may receive a *consultancy charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* passes any such payments to the relevant *group personal pension scheme* or *group stakeholder pension scheme*.

**6.1C.7** **G** The requirement to be paid through *consultancy charges* does not prevent a *firm* from making use of any facility for the payment of *consultancy charges* provided by another *firm* or other third parties provided that the facility complies with the requirements of **COBS 6.1D.9 R**.

**6.1C.8** **G** Examples of payments and benefits that should not be accepted under the requirement only to be paid through *consultancy charges* include:

- (1) a share of the charges applied to a *group personal pension scheme*, *group stakeholder pension scheme* or the scheme provider's revenues or profits (except if the *firm* providing the advice to an employer in relation to such a scheme is the scheme provider);
- (2) a commission set and payable by a *retail investment product* provider in any jurisdiction.

Requirements on a product provider giving advice to an employer in respect of the product provider's own *group personal pension scheme* or *group stakeholder pension scheme* products.

**6.1C.9** **R** If the *firm* or its *associate* is the *group personal pension scheme* or *group stakeholder pension scheme* provider, the *firm* must ensure that the level of its *consultancy charges* is at least reasonably representative of the cost associated with giving the advice to the employer in relation to the relevant scheme.

**6.1C.10** **G** A *consultancy charge* is likely to be reasonably representative of the cost of the services associated with giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* if:

- (1) the total expected costs associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* will:
  - (a) be recovered through *consultancy charges*; and

- (b) not be recovered by charges for, or profits from, other services (such as those associated with establishing and operating that scheme);
- (2) *consultancy charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm's* established payback period; and
- (3) (were the services to be provided by an unconnected *firm*), the level of *consultancy charges* would be appropriate in the context of the service being provided by the *firm*.

**6.1C.10A** G

- (1) In ■ **COBS 6.1C.10G(1)**, the total costs associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* include attributable indirect costs of the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.
- (2) In ■ **COBS 6.1C.10G(2)**, the *firm's* established payback period is the period of time in which the cash outflows associated with an investment made by the *firm* (or *group*) are expected to be recovered from the cash inflows generated by the *adviser charges*.

**Requirement to use a charging structure**

**6.1C.11** R

A *firm* must determine and use an appropriate charging structure for calculating its *consultancy charge* for each employer.

**6.1C.12** G

A *firm* can use a standard charging structure.

**6.1C.13** G

- (1) In determining its charging structure and *consultancy charges* a *firm* should have regard to the best interests of the employer and the employer's employees.
- (2) A *firm* may not be acting in the best interests of the employer and the employer's employees if it:
  - (a) varies its *consultancy charges* inappropriately according to product provider; or
  - (b) allows the availability or limitation of services offered by third parties to facilitate the payment of *consultancy charges* to influence inappropriately its charging structure or *consultancy charges*.
- (3) *Firms* are reminded that the *client's best interests rule* may also apply.

**6.1C.14** R

A *firm* must not use a charging structure which conceals the amount or purpose of any of its *consultancy charges* from an employer or an employee.

**6.1C.15** G

A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *consultancy charges* if, for example, it makes arrangements for amounts in excess of its *consultancy charges* to be

deducted from an employee's investments from the outset, in order to be able to provide a cash payment to the employer or employee later.

**Initial information for clients on the cost of consultancy services**

**6.1C.16** **R** A firm must disclose its charging structure to an employer in writing, in good time before giving advice, or providing services, to the employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

**6.1C.17** **G** A firm should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses *cash terms*. If a firm's charging structure is in non-cash terms, examples in *cash terms* should be used to illustrate how the charging structure will be applied in practice.

**Disclosure of total consultancy charges payable**

**6.1C.18** **R**

- (1) A firm must agree with and disclose to an employer the total *consultancy charge* payable to it or any of its *associates*.
- (2) A disclosure under (1) must:
  - (a) be in *cash terms* (or convert non-cash terms into illustrative cash equivalents);
  - (b) be made as early as practicable and, in any event, before the employer:
    - (i) selects a particular *group personal pension scheme* or *group stakeholder pension scheme* for the benefit of its employees; or
    - (ii) if applicable, reviews its *group personal pension scheme* or *group stakeholder pension scheme* arrangements;
  - (c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied;
  - (d) if there are payments over a period of time, include:
    - (i) the amount and frequency of each payment due; and
    - (ii) the period over which the *consultancy charge* is payable;
    - (iii) an explanation of the implications for the employer and its employees if an employee leaves the employer's service; and
    - (iv) an explanation of the implications for the employer and its employees if contributions to the *group personal pension scheme* or *group stakeholder pension scheme* are cancelled before the *consultancy charge* is fully paid.

**6.1C.19** **G** To comply with the *rule* on disclosure of total *consultancy charges* payable (**R** COBS 6.1C.18R) and the *fair, clear and not misleading rule*, a firm's disclosure of the total *consultancy charge* should:

- (1) provide information to the employer as to which particular service a *consultancy charge* applies;

- (2) include information as to when payment of the *consultancy charge* is due;
- (3) if an ongoing *consultancy charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure how that *consultancy charge* may increase as the fund grows.

### **Requirement not to make a consultancy charge in certain circumstances**

**6.1C.20** **R** When an employer asks a *firm* to provide advice to the employer's employees, the *firm*:

- (1) may make a *consultancy charge* for the cost of preparing and giving advice to each employee who chooses to accept his employer's offer of advice;
- (2) must not make a *consultancy charge* for the cost of preparing or giving advice to an employee who chooses not to accept the offer of advice;
- (3) (if the *firm* prepares generic advice to be given to more than one employee) must not make more than one *consultancy charge* for preparing that advice.

### **Disclosure to employees**

**6.1C.20A** **R** A *firm* must take reasonable steps to ensure that its *representatives*, when making contact with an employee with a view to giving a *personal recommendation* on his or her employer's *group personal pension scheme* and/or *group stakeholder pension scheme*, inform the employee:

- (1) that the *firm* will be providing a *personal recommendation* on a *group personal pension scheme* and/or *group stakeholder pension scheme* provided by the employer;
- (2) whether the employee will be provided with a *personal recommendation* that is restricted to the *group personal pension scheme* or *group stakeholder pension scheme* provided by the employer or the recommendation will also cover other products; and
- (3) that the employee will have to pay an *adviser charge* (if applicable) unless the *representative* is making contact pursuant to an agreement made between the *firm* and the employer under which the *firm* is remunerated by *consultancy charging* or a fee payable by the employer.

### **Record-keeping**

**6.1C.21** **R** A *firm* must keep a record of:

- (1) its charging structure;

- (2) the *consultancy charges* payable by each employer and each of the employer's employees; and
- (3) if the *consultancy charge* for a particular service has varied materially from that indicated in the *firm's* charging structure, the reasons for that difference.