

## Chapter 6

Information about the firm, its  
services and remuneration

**6.1A Adviser charging and remuneration**

**Application - Who? What?**

- 6.1A.1** **R** (1) This section applies to a *firm* which makes *personal recommendations* to *retail clients* in relation to *retail investment products* or *P2P agreements*.
- (2) This section does not apply to a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

**6.1A.1A** **G** ■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity of advising on investments (except P2P agreements)*. That guidance is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The guidance in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity of advising on P2P agreements*.

**6.1A.1B** **G** In this section, ■ COBS 6.1A.4AR, ■ COBS 6.1A.4ABR and ■ COBS 6.1A.4BR are not relevant to a *firm* making *personal recommendations* in relation to *P2P agreements*.

**6.1A.2** **R** This section does not apply to a *firm* when it gives *basic advice* in accordance with the *basic advice rules*.

**6.1A.2A** **R** This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

**Application - Where?**

**6.1A.3** **R** This section does not apply if the *retail client* is outside the *United Kingdom*.

**Requirement to be paid through adviser charges**

**6.1A.4** **R** Except as specified in ■ COBS 6.1A.4A R, ■ COBS 6.1A.4AB R, ■ COBS 6.1A.4AC G, ■ COBS 6.1A.4B R and ■ COBS 6.1A.5AR(1), a *firm* must:

- (1) only be remunerated for the *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*; and

- (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 connection with the *firm's business of advising* or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* or *P2P agreement* 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 *adviser charges* are recovered from the *retail client*.

**6.1A.4A** **R** A *firm* and its *associates* may:

- (1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ **COBS 6.1A.4 R** if:
  - (a) the *personal recommendation* was made on or before 30 December 2012;
  - (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;
  - (c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
  - (d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
  - (e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to that *firm* or its *associate*.

**6.1A.4AA** **G**

- (1) A *firm* may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a *retail investment product* which was made by the *retail client* following a *personal recommendation* made, or a transaction executed, on or before 30 December 2012. This is the case even if the *firm* makes a *personal recommendation* to the same *retail client* after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 *personal recommendation* or transaction, rather than the new *personal recommendation*. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.
- (2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a *retail investment product* and can therefore continue to be accepted

include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):

- (a) no change is made to the *retail client's* investment in the relevant *retail investment product*;
  - (b) the *retail client's* investment in, or regular contribution to, the relevant *retail investment product* is reduced; the *firm* may continue to accept the payment associated with the reduced investment amount;
  - (c) the *retail client's* investment in the relevant *retail investment product* is transferred from accumulation *units* to income *units* or vice versa;
  - (d) the *retail client* transfers all or part of his investment between funds within a *life policy*.
- (3) If a *firm* makes a *personal recommendation* to a *retail client* and wishes to:
- (a) receive remuneration for that *personal recommendation* in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or
  - (b) be paid additional amounts for any actions which are linked to a new amount invested by the *retail client* in the relevant *retail investment product*;

it should only be paid those additional amounts for that *personal recommendation* or for those actions by *adviser charges*.

- (4) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

**6.1A.4AB R**

A *firm* and its *associates* may solicit and accept a commission, remuneration or benefit of any kind from a *discretionary investment manager* in the circumstances in ■ COBS 6.1A.4 R if:

- (1) the *firm* or its *associates* recommended the *discretionary investment manager* to a *retail client* on or before 30 December 2012;
- (2) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
- (3) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
- (4) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
- (5) the *retail client* agreed an investment mandate with the *discretionary investment manager* within a reasonable time of the recommendation to use the *discretionary investment manager* being made.

**6.1A.4AC** G

- (1) If a *firm* makes a recommendation of a *discretionary investment manager* to a *retail client* and wishes to:
  - (a) receive remuneration for that recommendation in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by ■ COBS 6.1A.4AB R; or
  - (b) be paid additional amounts for any actions linked to a new amount invested by the retail client through the same *discretionary investment manager*;

it should only be paid those additional amounts for that recommendation or for those actions by *adviser charges*.
- (2) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in ■ COBS 6.1A.4AB R.

**Re-registration of commission when a retail client moves to a new adviser**

**6.1A.4B** R

If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1A.4AR (2), the *firm* must:

- (1) before the arrangement is entered into, disclose to the *retail client* 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 *retail client* with an ongoing service; and
- (3) as soon as reasonably practicable after it makes the disclosure in (1):
  - (a) disclose to the *retail client*, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
  - (b) provide the *retail client* with a description of the ongoing service it will provide to the *retail client* in accordance with (2).

**6.1A.5** G

A *firm* may receive an *adviser 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* refunds any such payment to the *retail client*.

**Acceptable minor non-monetary benefits**

**6.1A.5A** R

- (1) For the purposes of ■ COBS 6.1A.4R(2), a *firm* or its *associate* may solicit or accept minor non-monetary benefits which meet the requirements of:
  - (a) ■ COBS 2.3A.15R, in relation to the provision of *investment services*; or
  - (b) paragraph (2), in relation to other business.
- (2) An acceptable minor non-monetary benefit is one which:

- (a) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way;
- (b) is capable of enhancing the quality of service provided to the *client*;
- (c) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
- (d) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
- (e) consists of:
  - (i) information or documentation relating to a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;
  - (ii) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;
  - (iii) participation in conferences, seminars and other training events on the benefits and features of a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*; and
  - (iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).
  - (v) research relating to an issue of *shares, debentures, warrants or certificates representing certain securities* by an *issuer*, which is:
    - (A) produced:
      - (1) prior to the issue being completed; and
      - (2) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and
    - (B) made available to prospective investors in the issue; or
  - (vi) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
    - (A) it is received during a trial period that lasts no longer than three *months*;
    - (B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
    - (C) the trial period is not commenced with the research provider within 12 *months* from the termination of an

arrangement for the provision of research (including any previous trial period) with the research provider; and

- (D) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (A) to (C) were satisfied for each such trial period.

**6.1A.5B** G ■ COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a *client* in relation to *MiFID*, *equivalent third country* or *optional exemption business* or the distribution of an *insurance-based investment product*. For the purposes of ■ COBS 2.3A.19R(2) and ■ COBS 6.1A.5AR(2), those conditions are also likely to be relevant to *firms* considering whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a *client* in relation to the restriction in ■ COBS 6.1A.4R(2).

[**Note:** articles 24(7) and (8) of *MiFID* refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the *client*]

**Related and other services**

**6.1A.6** R 'Related service(s)' for the purposes of ■ COBS 6.1A includes:

- (1) *arranging* or *executing* a transaction which has been recommended to a *retail client* by the *firm*, an *associate* or another *firm* in the same *group* or conducting administrative tasks associated with that transaction; or
- (2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations* on *retail investment products* or *P2P agreements*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments managed by such a manager; or
- (3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* or other services in relation to *retail investment products* or *P2P agreements*).

**6.1A.6A** G 'Other services' in ■ COBS 6.1A.6R (3) includes:

- (1) providing information relating to *retail investment products*, *P2P agreements* or *operators of electronic systems in relation to lending* to the *retail client*, for example, general market research; or
- (2) passing on information from the *discretionary investment manager* to the *retail client*.

**Guidance on the requirement to be paid through adviser charges**

**6.1A.7** G The requirement to be paid through *adviser charges* does not prevent a *firm* from making use of any facility for the payment of *adviser charges* on behalf of the *retail client* offered by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1B.9R.

- 6.1A.8** G Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:
- (1) a share of the *retail investment product charges* or *platform service provider's charges*, or *retail investment product provider's* or *platform service provider's* revenues or profits;
  - (2) a commission set and payable by a *retail investment product provider* or an *operator of an electronic system in relation to lending* in any jurisdiction; and
  - (3) a share of the *operator of the electronic system in relation to lending's* charges, revenues or profits.

**Requirements on a firm making a personal recommendation in respect of its own retail investment products or P2P agreements**

- 6.1A.9** R If the *firm* or its *associate* is the *retail investment product provider*, *platform service provider* or *operator of an electronic system in relation to lending*, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the cost of the services associated with making the *personal recommendation* (and related services).

- 6.1A.10** G An *adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:
- (1) the total expected costs associated with making a *personal recommendation* and distributing the *retail investment product* will:
    - (a) be recovered through *adviser charges*; and
    - (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *retail investment product*);
  - (2) the *adviser 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 *personal recommendation* and any related services to be provided by an unconnected *firm*, the level of *adviser charges* would be appropriate in the context of the service being provided by the *firm*.

- 6.1A.10A** G
- (1) In ■ **COBS 6.1A.10G(1)**, the total costs associated with making a *personal recommendation* and distributing the *retail investment product* include attributable indirect costs from the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.
  - (2) In ■ **COBS 6.1A.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**

- 6.1A.11** **R** A firm must determine and use an appropriate charging structure for calculating its *adviser charge* for each *retail client*.
- 6.1A.12** **G** A firm can use a standard charging structure.
- 6.1A.13** **G** In determining its charging structure and *adviser charges* a firm should have regard to its duties under the *client's best interests rule*. Practices which may indicate that a firm is not in compliance with this duty include:
- (1) varying its *adviser charges* inappropriately according to provider or, for substitutable and competing *retail investment products*, the type of *retail investment product*; or
  - (2) allowing the availability or limitations of services offered by third parties to facilitate the payment of *adviser charges* to influence inappropriately its charging structure or *adviser charges*; or
  - (3) varying its *adviser charges* inappropriately according to *operator of an electronic system in relation to lending*.
- 6.1A.14** **R** A firm must not use a charging structure which conceals the amount or purpose of any of its *adviser charges* from a *retail client*.
- 6.1A.14A** **R** A firm must not make a *personal recommendation* to a *retail client* in relation to a *retail investment product* or *P2P agreement* if it knows, or ought to know, that:
- (1) the product's charges, the *platform service provider's* charges or the *operator of the electronic system in relation to lending's* charges are presented in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable by that *retail client*; or
  - (2) the product's charges or other payments are maintained by the *retail investment product provider* or *operator of the electronic system in relation to lending* at a level such that a cash rebate, other than a cash rebate permitted by **COBS 6.1B.7A R** or **COBS 6.1E.10R (2)**, is payable to the *retail client*.
- 6.1A.15** **G** A firm is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *adviser charges* if, for example:
- (1) it makes arrangements for amounts in excess of its *adviser charges* to be deducted from a *retail client's* investments from the outset, in order to be able to provide a cash refund to the *retail client* later; or
  - (2) it provides other services to a *retail client* (for example, *advising on a home finance transaction* or *advising on an equity release transaction*), and its *adviser charges* do not represent a reasonable proportion of the costs associated with the *personal recommendation* for the *retail investment product* or *P2P agreement* and its related services.

**Calculation of the cost of adviser services to a client**

**6.1A.16** **G** In order to meet its responsibilities under the *client's best interests rule* and *Principle 6* (Customers' interests), a *firm* should consider whether the *personal recommendation* or any other related service is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account.

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

**6.1A.17** **R** A *firm* must disclose its charging structure to a *retail client* in writing, in good time before making the *personal recommendation* (or providing related services).

**6.1A.18** **G** A *firm* may wish to consider disclosing as its charging structure a list of the advisory services it offers with the associated indicative charges which will be used for calculating the *adviser charge* for each service.

**6.1A.19** **G** In order to meet the requirement in the *rule* on information disclosure before providing services (**COBS 2.2.1 R**), 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.

**6.1A.20** **G** A *firm* is unlikely to meet its obligations under the *fair, clear and not misleading rule* and the *client's best interests rule* unless it ensures that:

- (1) the charging structure it discloses reflects, as closely as is practicable, the total *adviser charge* to be paid; for example, the *firm* should avoid using a wide range; and
- (2) if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each service is likely to require.

**6.1A.21** **G** [deleted]

**Ongoing payment of adviser charges**

**6.1A.22** **R** A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:

- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:
  - (a) the *firm* has disclosed that service along with the *adviser charge*; and
  - (b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances,

without penalty and without requiring the *retail client* to give any reason; or

- (2) the *adviser charge* relates to a *retail investment product* or arrangement with an *operator of an electronic system in relation to lending* for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.

**6.1A.22A** **G** To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (■ COBS 6.1A.22R (1)(b)) a *firm* should:

- (1) ensure that any notice period of the *retail client's* right of cancellation is reasonable;
- (2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and
- (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* or to assign any *P2P agreements* to which the ongoing service relates.

**6.1A.22B** **R** If a *retail client* exercises his right to cancel an ongoing service, the *firm* must clearly disclose to the *retail client* whether charges for other services provided by the *firm*, such as *custody services*, will continue to be payable by the *retail client*.

**6.1A.23** **R** If ■ COBS 6.1A.22R(1) or ■ (2) do not apply, a *firm* may not offer *credit* to a *retail client* for the purpose of paying *adviser charges* unless this would be in the best interests of the *retail client*.

**Disclosure of total adviser charges payable**

**6.1A.24** **R**

- (1) A *firm* must agree with and disclose to a *retail client* the total *adviser charge* payable to it or any of its *associates* by a *retail client*.
- (2) A disclosure under (1) must:
  - (a) be in cash terms (or convert non-cash terms into illustrative cash equivalents);
  - (b) be as early as practicable;
  - (c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied; and
  - (d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the *adviser charge* is payable and the implications for the *retail client* if the *retail investment product* or arrangement with the *operator of an electronic system in relation to lending* is

cancelled before the *adviser charge* is paid and, if there is no ongoing service, the sum total of all payments.

**6.1A.24A** **G** If the price of the *retail investment product* may vary as a result of fluctuations in the financial markets and the *adviser charge* is expressed as a percentage of that price, a *firm* need not disclose to the *retail client* the total *adviser charge* payable to the *firm* or any of its *associates* by the *retail client* until after execution of the transaction, provided it then does so promptly.

**6.1A.25** **G** A *firm* may include the information required by the *rule* on disclosure of total *adviser charges* (■ COBS 6.1A.24 R) in a *suitability report*.

**6.1A.26** **G** To comply with the *rule* on disclosure of total *adviser charges* (■ COBS 6.1A.24 R) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *adviser charge* should:

- (1) provide information to the *retail client* as to which particular service an *adviser charge* applied to;
- (2) include information as to when payment of the *adviser charge* is due;
- (3) inform the *retail client* if the total *adviser charge* varies materially from the charge indicated for that service in the *firm's* charging structure;
- (4) if an ongoing *adviser charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure that the *adviser charge* may increase as the fund grows; and
- (5) if an ongoing *adviser charge* applies for an ongoing service, clearly confirm the details of the ongoing service, its associated charges, and how the *retail client* can cancel this service and cease payment of the associated charges.

**Record keeping**

**6.1A.27** **R** A *firm* must keep a record of:

- (1) its charging structure;
- (2) the total *adviser charge* payable by each *retail client*; and
- (3) if the total *adviser charge* paid by a *retail client* has varied materially from the charge indicated for that service in the *firm's* charging structure, the reasons for that difference.