

Qualifications and requirements for advisers

This paper explores ideas on how to improve qualification of advisers, based on the UK experience before and after the Retail Distribution Review.

*We consider this topic particularly relevant in the context of **Q6, Q13 and Q42** of ESMA's Call for Evidence.*

Background to the UK

Although a lot of attention has been paid to the so-called “inducements ban” or commission ban, which was brought in by the Retail Distribution Review in the UK, the more controversial, and arguably more important, change was the heightened qualification requirement for anyone offering investment advice to retail investors. The FSA (as it was then) introduced a requirement that all investment advisers be qualified to “Level 4” (see below - described as roughly equivalent to first year university). The most controversial aspect was that there was no grandfathering of existing advisers – any adviser, however longstanding, was required to demonstrate competence at a minimum level, as evidenced by a recognised qualifications awarding body.

This was the provision which was most resisted, and was probably more important in improving the quality of investment advice than the commission ban. It was probably also a more important factor in the reduction of the numbers of individual investment advisers than the commission ban – with those leaving arguably being those the regulator was comfortable to lose: if they did not take their profession sufficiently seriously to want to demonstrate their commitment to it through holding an externally recognised qualification, they were probably not the type of advisers who were wanted in the future. The most committed demonstrated their commitment by stepping up their qualification level yet further in order to demonstrate how they were “better than the rest”.

Importantly, the qualifications requirements are complemented by requirements in relation to Continuing Professional Development, with requirements around minimum hours to be spent in formal, structured continuing learning as well as unstructured learning.

The FCA does not itself award qualifications, but it recognises “appropriate qualifications” awarded by professional and other bodies. It does this, first, by identifying the level of qualification expected, as laid down in the existing national qualifications framework. All investment advisers must be qualified to “Level 4”. This has been mapped across to the European Qualifications Framework as Level 5, the relevant outcomes of which are:

	Knowledge	Skills	Competence
Level 5 The learning outcomes relevant to Level 5 are	Comprehensive, specialised, factual and theoretical knowledge within a field of work or study and an awareness of the boundaries of that knowledge	A comprehensive range of cognitive and practical skills required to develop creative solutions to abstract problems	Exercise management and supervision in contexts of work or study activities where there is unpredictable change; review and develop performance of self and others

While the levels may be discussed, intuitively, this would seem to be the sort of level an investor might expect from an adviser. (The reference to “an awareness of the boundaries of that knowledge”, which does not apply to lower levels, would seem to be particularly apt).

Together with industry input the FCA then develops, consults and publishes the “appropriate examination standards” guidance which qualifications providers use to develop their syllabi and learning materials.

Not all these qualifications are necessarily exams based, and may be based, for example, on workplace assessment – which helped some of the advisers who were required to demonstrate their competence under the RDR but had not taken a traditional exam for a very long time.

Interaction with MiFID

In the appendix we list a number of the provisions of MiFID which are relevant. A requirement for advisers to hold a minimum qualification would seem in line with such requirements, the most important of which would seem to be article 24 (11):

“Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence”.

The obligation is very clearly at Member State level, but it would presumably be entirely possible for the appropriate authority, whether the European Commission, or the ESAs, to offer guidance, either to Member States, or to competent authorities, as to how these obligations could be met, based on a minimum, European-wide framework. I have not been able to review the criteria which are published by Member States, but this could be a useful piece of work by the Commission and/or ESMA going forward (on the basis of which they might identify best practices).

What a European framework for financial planners/financial advisers might be based on

The development of an appropriate framework would need a lot more work and consultation, but it is also worth noting that there is already a well-developed international framework in place for financial planners, developed by the Financial Planning Standards Board, <https://www.fpsb.org/about/> which leads to the recognised status of a “certified financial planner”. This may be seen as something of a “gold standard” (it covers all financial planning, not just investment) and it may be unrealistic to expect all advisers to meet this standards, but could act as an (ambitious) starting point. Within the EU there are organisations affiliated to the FPSB in Austria, France, Germany, Ireland and the Netherlands. Broadly the qualification covers “factual knowledge”, which includes issues such as the financial planning process; law and regulation; tax principles; client profiling; financial management; investment planning; risk management and insurance planning; retirement planning. There might be merits in adding (local) product knowledge. It also covers professional competence such as professional responsibility (ethical, recognising one’s own limits); communication and cognitive skills.

This is pitched at a higher level than the minimum required by the FCA, but examples of qualifications which are accredited by the FCA can be found here:

<https://www.cisi.org/cisiweb2/cisi-website/study-with-us/wealth-retail/investment-advice-diploma>

<https://www.libf.ac.uk/study/professional-qualifications/financial-advice/diploma-for-financial-advisers-dipfa>

Other considerations

Other considerations might be around the fact that the robo-advice process would need to be approved and overseen by a qualified adviser. Provisions could also be introduced to allow non-qualified advisers to operate under supervision of a qualified one.

Conclusions: Possible questions for ESMA and policy makers

- Should advisers be required to meet a minimum qualification requirement and a requirement around mandatory continuing professional development?
- Should this apply to all “financial planners” in order to strengthen that concept and develop a holistic approach to financial planning, or just to those advising retail investors on investments (eg instruments covered by MiFID)?
- If the former, should there be room for “sub-qualifications” which cover specific aspects such as investment?
- At which level should such qualifications be pitched (at least at Level 5 of the EQF)?
- Should (no) grandfathering of qualifications for existing advisers be allowed? (This may require more understanding of what existing standards are around the EU and what the implications of this might be).
- Should regulators recognise qualifications and qualification awarding bodies rather than awarding them themselves?
- What might be the process for implementing this – a recommendation/guidance framework developed and issued by the Commission? ESAs?

Last but not least, there remains a question on the language used in referring to different client-facing staff (“salesperson” vs “adviser”) and how this is reflected in the required qualifications.

Relevant MiFID II provisions re advisers and qualifications

General duty to act honestly, fairly and professionally

Article 9.3 : Management body

Without prejudice to the requirements established in Article 88(1) of Directive 2013/36/EU, those arrangements shall also ensure that the management body **define, approve and oversee:**

(a) the organisation of the firm for the provision of investment services and activities and ancillary services, **including the skills, knowledge and expertise required by personnel**, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with;

....

(c) a remuneration policy of persons involved in the provision of services to clients aiming to encourage **responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.**

Article 21.1 Regular review of conditions for initial authorisation

Member States shall require that an investment firm authorised in their territory comply at all times with the conditions for initial authorisation established in Chapter I.

Article 24.1: Investor protection – general principles and information to clients

Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, **an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients** and comply, in particular, with the principles set out in this Article and in Article 25.

Article 24.11

An investment firm which provides investment services to clients shall ensure that **it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment firm could offer a different financial instrument which would better meet that client's needs**

.....

Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by this Article. Such requirements must be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.

Article 25 Suitability and appropriateness

Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.