



FINANCIAL SERVICES FACULTY FAQs

1. Can you please explain what the FSA mean by ‘independent ‘and ‘restricted ‘financial advice under the Retail Distribution Review?

The FSA refers to the new regulatory standard of Independent financial advice in terms of advice that is ‘genuinely free from bias towards particular solutions or any restrictions that would limit the range of solutions that a firm can recommend to clients’. The FSA continues to say that Independent advice must ‘not be restricted by product provider and should also be able to objectively consider all types of retail investment products which are capable of meeting the investment needs and objectives of retail clients’.

Restricted financial advice under the Retail Distribution Review (RDR) is defined in terms of financial advice that does not meet the FSA standard of Independent advice.

In June 2012 the FSA published Finalised Guidance on [Independent and Restricted financial advice](#).

2. Please explain what the FSA means by the term ‘relevant market’ and provide some examples of what this actually would look like in practice?

The FSA says that a relevant market should comprise all retail investment products which are capable of meeting the investment needs and objectives of a retail client. This standard is defined in terms of a client’s needs and objectives. The FSA states that Independent advice firms will also be required to consider a broader range of products beyond retail investment products.

The FSA recognises that some firms will operate in very specific and easily identified segments of the market, such as ethical investments, trustee Investments, Islamic (Sharia compliant) financial products, and clients that just want advice on taking an income in retirement. Firms that operate in broad or in narrow relevant market segments can provide advice on either an Independent or a Restricted basis.

The FSA requires a firm is clear, fair and not misleading in its marketing, and makes sure that only appropriate clients approach the firm for advice and that all clients are suitably advised.

3. Will advisers be obligated to consider the merits of all types of appropriate financial products and how does this differ from advisers that will be labelled as ‘independent’ under the new regime?

Firms that do not meet the FSA’s standard of Independence will be labelled as Restricted advisers under the RDR. This means that Restricted advisers will not have to consider the merits of all types of products or particular providers in the relevant market when advising clients. However, Restricted advisers ARE required to be able to identify when the client’s needs require solutions that are not in their range. The FSA has made clear that recommending the “least unsuitable” option is not good enough. The FSA has also made it clear that Restricted advisers must not give the impression that it has restricted its product range to those products that are most suitable for a particular client or segment of clients.

Independent advisers are expected to be able to advise clients on all appropriate products that would be suitable for meeting the client's needs in a relevant market. The FSA's twin test of Independence is that advice must be based on a 'comprehensive and fair analysis of the relevant market', which must be 'unbiased and unrestricted', whether or not the firm is specialising in a relevant market. If the Independent adviser uses a panel to assist their research process, then they will be expected to be able to go "off-panel" when necessary and appropriate. If a firm is able to identify a common relevant market across all its clients that does include certain retail investment products, it would not need to consider this type of product in providing Independent advice.

4. Will a financial adviser who is a specialist need to be labelled as a restricted adviser?

The FSA's terms of Independent and Restricted advice relates to the firm, and to the individual recommendation given to a particular client, not to the individual adviser. If a firm decides to specialise in a particular area of advice or market segment, such as ethical investments, trusts and charities, annuities and pension drawdown, or providing advice to older clients on long-term care, it can still provide advice on either an Independent or a Restricted basis. Firms that specialise in certain areas of regulated advice may need specific authorisations from the FSA, and individual advisers may also be required to hold specialist financial services qualifications.

5. Advisers will no longer be able to receive commissions but will be able to be paid by adviser charging, instead of a fee. What is the difference?

The rate and payment of commission is set between product providers and adviser firms. As from the end of 2012, the RDR will replace the commission system with something called Adviser Charging. Adviser Charging will be agreed in advance between clients and advisers. This changes the nature of the relationship between advisers, clients and product providers, and the dynamics of agreeing and paying for the costs of advice. The new regulatory approach is intended to help consumers compare the cost of different financial products and services and eliminate commission bias.

When the client has agreed the costs of advice (the Adviser Charge) with their adviser, the client may pay it directly, for example by writing a cheque. Alternatively, the client can instruct the adviser to arrange for the agreed charge to be deducted from a product (assuming that the product provider will facilitate the payment), which is then paid to the adviser to cover the costs of advice and execution. It is the nature of the services supplied that determines liability to VAT, not the method of payment.

In certain circumstances, commission can still be payable in respect of business effected before 31 December 2012. The FSA refers to this in terms of Legacy Business. The rules in this area are not straightforward, but do not necessarily mean that commission receipts will stop overnight.

6. Will all financial advisers need an SPS?

From 31 December 2012 all retail investment advisers will need to hold a Statement of Professional Standing (SPS) from an FSA accredited body if they want to give Independent or Restricted advice.

The SPS needs to be considered in conjunction with the firm's FSA regulatory permissions and the individual advisor's FSA authorisation to provide regulated advice in specific areas, such as packaged retail investment products, securities, derivatives and long-term care.

ICAEW is an FSA accredited body. All retail investment advisers that hold an ICAEW SPS will be subject to ICAEW's code of ethics and its disciplinary regime. Details of the ICAEW accredited body scheme and SPS can be found at icaew.com/sps

Ethics FAQs

1. Why do we have a restriction in the Code on who we can refer to?

One of the Code's Fundamental Principles is that members should be objective. This means that a member should not allow bias, conflict of interest or undue influence of others to affect their judgements. This naturally follows through into the guidance on referrals in [Section 241](#) of the Code. Subcontracting the work to someone who could not be objective would make the principle meaningless.

2. If I want to refer to a restricted adviser, what do I need to do?

The most straightforward option would be to consider whether there is an Independent Adviser (as defined by the FSA) that would be able to undertake the work. If you want to refer to a Restricted Adviser then you need objectively to analyse the specific client's requirements. You should then consider the independence of the potential Restricted Adviser. You need to consider whether they are able to provide objective advice across the majority of products in the market that is relevant to your client's need. If they do then you are able to make the referral.

3. Can I refer to a restricted investment adviser linked to my firm?

If you are referring to a Restricted Adviser then first you need to follow the process in question two. If you are able, in principle, to make the referral then you should consider the guidance on conflicts of interest in [Section 220 of the Code of Ethics](#). This takes a threats and safeguards approach, with the principal safeguard being disclosure. If this guidance does not prevent you from acting then you may make such a referral. You need to bear in mind the new FSA instructions on how investment advice is remunerated.

4. I'm an accountant in general practice. How do the changes affect me?

As the changes to Section 241 of the Code are mainly cosmetic there will not be a great deal of change for you. You will need to bear in mind the change in terminology and go through the same threats and safeguards approach and assessment of your client's needs as you do now. We would recommend that you record the reasoning for your choice of adviser in case it is challenged at a later date. The only change would be if an adviser you tend to use changes from being a provider of Independent advice to providing Restricted advice.

5. Is the safest and least time consuming, course of action to adopt a policy of always making referrals to independent advisers only?

Generally speaking it is likely that a chartered accountant will be able to assume compliance with the ICAEW's Code of Ethics and the statutory regulatory rules without further consideration if a referral is made to an Independent adviser.

The financial services market is complex. This implies that a reasonably detailed level of knowledge of this market will be required to be able to make an informed decision whether it would be appropriate to introduce a client to a Restricted rather than an Independent adviser, as defined by the RDR. Accountants will need to assess the position on a case-by-case basis and there may be circumstances where referring to a restricted adviser would be appropriate, for example, for reasons of geography or if a client wanted advice only on a limited area that the Restricted Adviser specialises in and actually covers comprehensively.

6. Even though the choice of an adviser by an Institute member has to be undertaken on a client by client basis, will accountancy firms be able to maintain a panel who they have pre-checked and from whom they choose for individual clients?

There is no objection to you maintaining and using a panel. You should however ensure that the panel itself is reviewed at regular intervals to ensure that its members are still acceptable and that before a referral is made to a panel member the usual pre-referral checks on the adviser are made as to his continuing independence and suitability for the client's needs.