apricity
Where compliance comes naturally

These are the burning questions that were asked during our 'TALK: What Makes a Good File?' webinar – we've popped the answers to each below. We hope you find this useful!

Should the fact find be signed by the client?

There is no FCA requirement for a client to sign a fact find but this is something we like to see at Apricity. Under GDPR you are gathering data which should be confirmed by the client that they have agreed or you to hold the data. If this is addressed within your Initial Disclosure Document and signed by the client prior to gathering personal data, then there is no need for the client to sign the fact find.

Has the amendment to the RAO regarding a personal recommendation been enacted in legislation?

The FCA has stated that Advising on Investments (Article 53(1) of the Regulated Activities Order) was effective on the 3rd January 2018.

The definition of advice under the Regulated Activities Order (RAO) was amended after a HM Treasury consultation. The FCA has moved away from the term 'regulated advice' to a wider definition of advice to be classed as a 'personal recommendation'. The reason why this has changed is the FCA wanted to clarify what advice was given and the term 'regulated advice' was seen to be too generic and could easily be none specific to the client.

This wider definition remains in place for unregulated firms, most regulated firms will now be exempt from the regulated activity of 'advising on investments' under Article 53(1), unless the firm is providing a 'personal recommendation'.

At what point do you carry out IDD on your client - when you have won a tender for services or when the engagement letter is being signed?

We would like to see the IDD completed as soon as possible within the advice process. Technically, this should be completed prior to applications being submitted under COBS rules.

? How can we define capacity for loss using a percentage as in the example?

The biggest problem we see is how this is documented - we often see the clients' 'tolerance' for risk being documented as capacity for loss. The risk profile will explain the level of volatility they are willing to accept but the capacity for loss will show what level of reduction in value could be accepted, before this would impact on the clients' standard of living.

So, let try and clarify this, the FCA definition is –

"By 'capacity for loss' we refer to the customer's ability to absorb falls in the value of their investment. If any loss of capital would have a materially detrimental effect on their standard of living, this should be considered in assessing the risk that they are able to take."

We know that asking your client 'how much of your investment could you afford to lose?' is always going to be a hard question, but done well, this will help the client understand the potential volatility of investing and you can confirm if the risk profile outcome is actually comfortable or affordable for their own objectives.

The conversation should also address how the client would deal with a market loss.

- How willing is the client to spend some of the capital value?
- Is the client's willing and ability to reduce outgoings, even if only temporarily?
- What other assets or income would the client rely on if this the degree to which other assets or sources of income contribute to the client's expenditure needs?

CFL will also be impacted by the clients' situation and relative points such as: individual's age, time horizon, state of health, dependants, savings or debts are just a few things that will affect the clients' decision.

To document this as a % will help the client understand the impact of this loss and by converting this to a £ figure will also clarify the agreed potential loss to ensure a clear understanding.

? CFL - A loss at which point? This year? Next year? in 10 years' time? I cannot get my head around how this can be calculated into a single figure?

The clients' CFL will change over time and as your client creeps closer to retirement or their greed investment objective, their capacity for loss will change as they don't have the time for their investments to 'bounce back' for high risk investments. The point above should help to clarify the requirement for a figure.

For the capacity for loss though, what size figures are realistic based on their risk profile e.g. is 20% realistic for cautious etc?

There is no set guide to state which CFL and risk combination is best, but a logical approach should be taken to make the correct judgment. It is important to validate why you feel that the clients' CFL and attitude for risk is appropriate. Some clients may have no dependency on the capital and any loss would not impact their personal situation therefore, they would be deemed to have a high capacity for loss, the same client may have a low tolerance to risk and therefore this is ok. The report needs to explain this.

AML - if we use electronic ID, do you recommend that we obtain copies of ID and re check every 12 months?

The use of electronic verification is acceptable and if used, must consist of one match on an individual's name and current address and a second match on an individual's full name and either his current address or his date of birth.

Beware that some electronic checking systems may not have the latest information on record so we would always like to see copies of ID on file if possible. \ Any documents held should always include a statement such as "this document is a true and accurate copy of the original seen on DD/MM/YYYY", or if identifying a person, certify that it is a 'true likeness' of the individual.

The need to renew every 12 months is good practice unless there has been a change in address or marital status.

Did you suggest KF/TVC does not HAVE to be included in the suitability report? Can they be sent separately?

The FCA requires that Key Features are given to the client. This would be expected either be before, or at with the recommendation. When completing a file review, we would like to see either a copy of the documents on file, or a reference in the report to state that they have been given to the client.

Do you require an illustration of the client is investing in an ISA or Unit Trust Portfolio?

We would expect an illustration to be given to the client for ISA and UT investments and a copy held on file to support this.