



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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Financial Advice - Sales and Advisory Guidance

This guidance is of particular relevance to Class 2 licenceholders with sub-class (3) and (7) permissions or sub-class (3), (6) and (7) permissions.

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STATUS OF GUIDANCE

The Isle of Man Financial Services Authority (“the Authority”) issues guidance for various purposes including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

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1. Background

This guidance is intended to assist licenceholders in meeting the standards required by the Isle of Man Financial Services Authority (“IOMFSA”) in Part 6 – Conduct of Business and Part 8 – Risk Management and Internal Control of the Financial Services Rule Book (“Rule Book”), and the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015. This document should be read alongside the relevant parts of the Rule Book and is not a substitute for the Rule Book.

This guidance outlines the IOMFSA’s expectations of licenceholders when providing protection, investment or pension advice to prospective or existing clients. It details the documentation that needs to be collated and evidenced on files in order to demonstrate that the licenceholder has acted in a compliant manner with the client’s best interests in mind.

Licenceholders service a wide range of clients; it is therefore necessary to implement a structured advisory process which complies with the regulatory requirements and is appropriate to the business being undertaken.

This guidance is not prescriptive; licenceholders may adopt other appropriate measures to those set out in this guidance, provided that the licenceholder can demonstrate that such measures achieve compliance with the regulatory requirements.

2. Types of Service

2.1. Execution Only Service (rule 6.17)

This service may be provided in relation to arranging a deal for a client where the licenceholder has documented that the client is not relying upon the licenceholder to advise him on, or to exercise any judgement on his behalf as to the merits of or the suitability for him of, that transaction.

A licenceholder must not provide an execution only service unless the client has specifically requested this service (in respect of a particular transaction or for the purposes of all transactions) and the licenceholder has confirmed the execution only status in writing, pointing out the consequent reduction in investor protection to the client.

2.2. Limited Advice¹ (rule 6.18)

This service will cover where any information relating to the client’s circumstances has not been collected, at the client’s initiative, and the licenceholder’s assessment of the client’s circumstances is thereby restricted by the absence of this information.

¹ Limited Advice means, in relation to advising on and arranging a deal for a client, where limited information relating to his circumstances has been provided to the licenceholder in relation to an identified specific need.

Limited advice may be offered where a client does not wish to disclose information requested by the adviser (e.g. information requested as part of a client fact-find) and the adviser considers the information to be relevant to the advice being provided. For example:-

- The client seeks pension advice and does not want to disclose information about health.

Depending upon the information provided and the nature of information withheld, the licenceholder should also consider whether it is appropriate to provide advice in this circumstance. For example:-

- The client seeks pension advice and does not want to disclose information about their income.

A licenceholder must not provide limited advice unless the client has stated he seeks only limited advice and the licenceholder has confirmed the limited advice status in writing, pointing out the consequent reduction in investor protection to the client (rule 6.18). In practice, the consequent reduction in investor protection relates to the fact that rules 6.32 (Suitability) and 6.38 (Understanding of Risk) only apply to the extent of the information provided by the client. In all other respects, the Rule Book applies as per a full advice arrangement.

2.3. Restricted Advisory Service

A licenceholder that is restricted in the range or type of investments on which it is permitted to advise, or has chosen only to offer a restricted or limited service, must not undertake any regulated activity for a client unless it has confirmed these limitations in writing (rule 6.19).

For example, a restricted advisory service would be provided where the licenceholder's Financial Services Licence restricts it to only advising on retail type products, or where the licenceholder only offers the products of one product provider (either by the licenceholder's choice or because there are few providers offering a particular solution). The nature of the restricted service should be confirmed to the client in advance of any recommendations being made.

2.4. Full Advisory Service

Where a licenceholder is not able to evidence that its advice is in accordance with 2.1, 2.2, 2.3, 2.5 or 2.6, it will be considered to be a full advice arrangement with the client, and must be in compliance with all requirements relating to such advice.

2.5. Tied Advice

In accordance with rule 6.35(1), where a licenceholder is a tied agent it must describe the advice it provides as tied advice.

2.6. Independent Advice

Where a licenceholder defines its investment advice as independent (whether using the word independent specifically or a synonym of it), it must assess a sufficient range of products available on the market, being sufficiently diverse with regard to type, issuers or product providers to ensure that the client's objectives can be suitably met (rule 6.35(2)).

That range should not be limited to products provided by the licenceholder itself or by group companies or entities having close links with the licenceholder and/or products of only one product provider.

Where an adviser presents its advice as independent it should be in a position to assess all the products within the markets it advises upon, however it will not be necessary to assess all the products within the market.

Where a licenceholder specialises in advice on a narrow market the IOMFSA would not expect the advisor to present itself as independent in a wider context. For example, if a licenceholder only offers independent advice on pensions it should not hold itself out as independent unless it is also made clear that independent advice is only offered in relation to pensions.

Where a licenceholder is a tied agent for certain investments and independent for others, this must be clearly disclosed (rule 6.35(3)).

Please also note that a member of a UK pension scheme with 'safeguarded benefits' worth more than £30,000 must receive appropriate independent advice from a Financial Conduct Authority (FCA) authorised adviser who has permission to advise on the conversion or transfer of pension benefits before the member can convert the benefits into 'flexible benefits', transfer the benefits to another scheme or take a cash lump sum in respect of those benefits. For further details, please see section 48 of the UK Pension Schemes Act 2015 and the UK Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015.

3. Types of Client

3.1. Vulnerable² Clients (rule 6.31)

² A vulnerable client may have one or more of the following characteristics —

- inexperienced, with little understanding of financial matters and financial planning;
- lower income or little disposable income;
- significantly impaired health;
- mental impairment or disability;
- reduced or limited life expectancy;
- not fluent in English (including where English is not a first language);
- other factors of a similar nature which make a person more vulnerable.

Licenceholders are under an obligation to ensure that all advice provided is suitable to the investor. Appropriate care should be taken when providing advice to vulnerable clients.

Licenceholders are required to establish and implement a policy in relation to the provision of advice to vulnerable clients. This policy requires advisers to consider the special factors regarding the client's potential vulnerability; ensure that advice provided to the client takes into account such vulnerability; and it should require that the adviser documents in the client file any vulnerability and how the advice provided is suitable for that client.

Depending on the client's circumstances, the licenceholder should consider whether it is appropriate to offer the client the opportunity to discuss the recommendation with a third party, e.g. a next of kin.

In taking account of any vulnerabilities identified, the licenceholder should consider whether additional steps should be taken e.g. encouraging the client to bring a 3rd party to any meetings, recommending the client discusses proposals with a third party, offering the client a written record of any meetings.

The IOMFSA expects licenceholders to properly understand and take into consideration a client's potential vulnerability when providing financial advice; a vulnerability may affect not only the client relationship and how information is presented but also the suitability of the advice, e.g. health and life expectancy issues should be fully documented where an adviser is providing medium to long-term investment advice.

Advisers should also be prepared to refuse to undertake transactions if the situation warrants it, i.e. if the requested action is so unreasonable in the circumstances.

3.2. Retail Clients

A licenceholder must treat a client who is an individual as a retail investor unless the licenceholder has undertaken an adequate assessment of the client's relevant expertise, experience and knowledge, which gives a reasonable assurance that the client is capable of understanding the risks involved in making his own investment decisions.

The Rule Book contains additional protections for retail investors; rules 6.29 and 6.30 require licenceholders to find out enough about a retail investor's personal and financial circumstances, investment objectives, attitude to risk and time horizons to enable it to act properly for him in investment matters.

3.3. Non-retail Investors

A licenceholder may treat a client who is an individual as a non-retail investor only where the licenceholder has undertaken an assessment of the client's relevant expertise, experience and knowledge, which gives a reasonable assurance that the client is capable of understanding the risks involved in making his own investment decisions.

The assessment must be evidenced in writing and retained on the client's file; the licenceholder should inform the client in writing that the level of protection afforded to him is lower than that offered to a retail investor. The client agreement with the client should also state that he is not a retail investor.

3.4. Pension Trustees

It should be noted that licenceholders must hold a Class 2 (6) permission to advise a trustee or manager of a retirement benefits scheme with two or more members on the suitability or otherwise of -

- (a) buying, selling, subscribing for or underwriting investments; or
- (b) exercising any right conferred by such investments to buy, sell, subscribe for or underwrite other investments.

When dealing with self-directed pension schemes in particular, members should be informed that the role of the corporate trustee, should one be appointed, will be limited and that care must be taken to ensure that investment decisions are fit for purpose as it is ultimately the member who will bear almost all of the risk.

4. Client Files

Outlined below is the documentary evidence that the IOMFSA expects to see on a client file (whether held electronically or in physical form), from the initial contact with a client to the execution of the transaction. Reference should also be made to section 2 above (Types of Service).

4.1. Stage 1 (pre-sale) - Initial Contact

4.1.1. Details of contact between the licenceholder and the prospective/existing client should be retained on the client file. For example, was this a direct approach from a prospective new client, a referral, introduction or part of an annual review conducted by the licenceholder? It is also recommended that clients are provided with a business card.

The IOMFSA expects that all clients will be provided with a copy of the IOMFSA's 'Explanatory Guide about Financial Advice' as part of the initial consultation process. Advisers should provide a copy of this document to all existing investors who have not already received a copy at their next point of contact. This document is available in PDF at: <https://www.iomfsa.im/media/1578/anexplanatoryguideaboutfinancial.pdf>

4.1.2. The client file should evidence the steps that the licenceholder has taken to establish whether the client is a retail investor (rule 6.42) and the basis of the relationship: execution only, limited advice, restricted advice, tied advice, independent advice or full advice (rules 6.17, 6.18, 6.19 and 6.35). NB. The client will be a retail client and be treated as full advice unless it is evidenced otherwise.

4.1.3. Documentary evidence to demonstrate that the client has been provided with terms of business (signed by the client with a copy held on file (rules 6.1, 6.41 and 6.43).

The terms of business or client agreement must comply with rules 6.41, 6.42, 6.43 and 6.44.

Additional requirements for retail investors - A client agreement with a retail investor should be easy to understand, not likely to be misunderstood and not deprive the client of any rights which he would have had if the agreement or terms had not existed. Also, in relation to any fees payable by the client to the licenceholder, the client agreement must detail the basis of the calculation; the notice required for any increase of fees which must not be less than one month in advance; the method of payment (e.g. deduction from income or capital belonging to a client or billing); the frequency of payment; and, whether or not any fees payable are to supplement or be abated by any remuneration receivable by the licenceholder in connection with transactions effected by the licenceholder with or for the client (rule 6.44).

4.1.4. Documentary evidence on file to demonstrate that suitable and appropriate AML/CFT requirements have been met in accordance with the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 and the AML and Countering the Financing of Terrorism Handbook and rules 6.1, 6.29 and 6.30.

Details of the risk assessment of the client in accordance with Part 3 of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.

4.1.5. In all cases except for execution only - Completed client fact-find or profile, which must be signed by the client, to demonstrate and capture the client's current circumstances in terms of knowledge of client and their understanding of risk should be retained on file. A copy of the signed client fact-find should be provided to the client and a copy retained on the client file (rules 6.1, 6.29, 6.30 and 6.38).

Where a client undertakes further business the fact-find must be annotated accordingly to capture any changes. If any further business is to be transacted more than 12 months after the initial advice, a new fact-find should be completed prior to any advice being given. A copy of the signed updated or new client fact-find should be provided to the client and a copy retained on the client file (rules 6.1, 6.29 and 6.30).

Additional requirement for retail investors - A licenceholder must find out enough about a retail investor's personal and financial circumstances, investment objectives, attitude to risk and time horizons to enable it to act properly for that retail investor in investment matters.

Additional requirement for pensions business - In the case of pensions business, the adviser should also document the client's retirement objectives; the financial situation of the client, both current and anticipated at retirement (including earnings, income and expenditure, potential taxation considerations and any existing pension and retirement planning arrangements); the client's career aspirations, desired retirement age and planned country of retirement; the client's health and any factors which may compromise life expectancy; and, the client's personal situation including the need to make provision for spouse/ partner / dependents and children.

Additional requirement for Limited Advice - Where a client does not wish to disclose any or part of the information requested in the client fact-find, this should be annotated accordingly.

4.1.6. A record of all communication with the client about the financial advice and/ or transactions should be retained on the client file. E.g. detailed file-notes of all conversations/ meetings the licenceholder has with the client to support the rationale for the advice provided (rules 6.1, 6.29 and 6.30).

4.1.7. Details of all research undertaken by the licenceholder in reviewing the investment, protection or pension options available to the client should be retained on file. In particular, care should be exercised when offering advice on structured products and the inherent counterparty risk associated with these arrangements (rules 6.32, 6.33 and 6.34).

Details of alternative products reviewed but not chosen by the licenceholder in relation to advice provided and details of why these alternative products were not chosen when making the final recommendation should also be retained (rule 6.32) (see also “reasons why letter” below). At this stage consideration should be given to appropriate diversification of investments for the client.

4.1.8. Evidence that the product/s recommended fall within the licenceholder’s authorisation and that it is permitted to advise on such products (rule 6.1). This consideration can be on the client file or held centrally with the product appraisal. Advice provided without licence permissions is a breach of the Financial Services Act 2008.

4.1.9. Details of why a) the surrender of an existing plan/policy to invest in another product or b) switching from an existing pension arrangement to another pension arrangement is in the best interests of the client and that the client has been made fully aware of any associated charges this may attract and any guarantees or protections that may be lost must be retained on file (rules 6.1, 6.32, 6.33, 6.34 and 6.39). See [Appendix 1](#) for more guidance on pension transfers.

4.2. Stage 2 (pre-sale) – Reasons Why Letter (“RWL”) – Limited Advice, Restricted Advice, Tied Advice, Independent Advice and Full Advice (not required for Execution Only transactions)

4.2.1. The client should be provided with a RWL following the initial meeting and any necessary subsequent meetings but prior to any investment being made. The RWL should enable the client to be fully aware of the product(s) recommended and the rationale for the advice and how it meets their investment objectives and risk appetite (rules 6.32, 6.33, 6.34, 6.37, 6.38 and 6.39).

The RWL does not diminish the licenceholder’s responsibility to ensure that each recommendation is suitable for the investor.

4.2.2. The RWL should be tailored to each individual client and should be written using plain, jargon-free English. In accordance with rule 6.37, it must include –

- a summary of the client's financial position, including any limitations of information provided by the client;
- a balanced rationale for the recommendations made, including details of the recommended products' characteristics and risks, and why those products are suitable for the particular client;
- product literature or illustrations where available (see below);
- details as to whether each product has a cooling off period, and where there is no cooling off period, a statement informing the client of the risk of losing a substantial amount of the investment if he has a change of mind and decides, after starting the investment, not to continue with it;
- a cost benefit analysis of any switches or surrenders, or gearing³ and why these are in the best interests of the client; and,
- whether an annual review will or will not be undertaken on the investments.

The RWL should explain clearly to the client why any recommendations are suitable for him, having regard to the client's personal and financial circumstances, investment, protection or pension objectives and time horizon (including any period for which the client may be willing to restrict access to his money) and diversification of the client's portfolio.

4.2.3. The RWL should clearly identify the costs for proceeding with the recommendation(s) in terms of charges, fees, any early surrender penalties or market value reduction factors. Any commission, or other payment, received by the licenceholder for the transaction must be disclosed to the client (rules 6.7, 6.32 and 6.37). The RWL should:-

- Clearly cross reference to relevant parts/ pages in accompanying literature; and,
- Ensure the client has sufficient information at the right level to enable him to make an informed decision.

4.2.4. The adviser should furnish the client with relevant details of other products considered and not chosen.

4.2.5. Details of the product literature (for example, prospectus, key features document, etc.) which has been provided to the client should be clearly specified in the RWL. Also, copies of all illustrations or comparative quotes (where available) should be provided to the client to support the recommendation(s) being made (rules 6.1, 6.32 and 6.37).

4.2.6. Details of the product selection process, including a copy of the research undertaken, the risk assessment of the product and the rationale for the advice must be retained (rule 6.32(3)). This can be held on the client file or in a central product appraisal file.

4.2.7. The adviser should ensure that detailed research and analysis is undertaken to support their assessment that the recommended pension/investment product and any underlying funds are suitable to meet the needs of the client situation including potential taxation

³ Except in exceptional circumstances, gearing is not appropriate for a retail, or any other client, that requires a low risk investment.

considerations. Advisers should fully document their understanding of both the product recommended and the underlying funds contained within it (rule 6.32).

Details on underlying fund charges should also be disclosed to the client and how they can affect the product's performance including the resultant reduction in yield. Where a pension product accesses a range of funds or other investments with different charging structures an average Total Expense Ratio (TER) may be used. In this case the client must be made aware of the differing charging structures to enable him to make informed decisions on actual investments (rule 6.32 and 6.37).

The IOMFSA views the use of "mirror funds"⁴ to fall under existing licence parameters i.e. if the licenceholder's licence conditions do not permit it to advise on the underlying fund then it will not be able to advise on the mirror fund.

4.2.8. A RWL that fulfils the above requirements should result in the client being better informed about the appropriateness of an adviser's recommendations for his needs and give the client the opportunity to identify any areas where he may wish to seek further clarification (rule 6.7). Ideally, the RWL should be countersigned by the client. A copy of the RWL must be retained on the clients' file (rule 6.37).

4.2.9. Additional Requirement for Retail Investors - A licenceholder must ensure that a retail investor is only recommended products suitable for his circumstances (including attitude to risk, time horizon for the investment, age, state of health and vulnerability in terms of rules 6.29, 6.30 and 6.31).

If a licenceholder enters into any transaction in futures, options and contracts for differences with or for a retail investor, the licenceholder must ensure the investor receives, signs and returns to the licenceholder a risk disclosure statement in the form set out in Appendix 7 to the Rule Book. It should be noted that this does not apply to discretionary management portfolios.

In relation to any underlying fund selection the adviser should ensure that the risk profile of the client has been ascertained, documented within the client profile and re-confirmed to the client within the RWL.

Where investment recommendations are being made regarding the underlying funds the adviser should ensure that all funds recommended and chosen have been risk rated and match the risk profile of the client. Evidence of such should also be retained within the client file (rule 6.38).

Additional Requirement for Limited Advice - Where limited advice has been provided, the RWL should explicitly state the limitations of information provided by the client and how this impacts upon the investment advice (rule 6.18, 6.32 and 6.37).

⁴ A mirror fund is a fund that is set up by a life company that invests in an underlying fund managed by an external fund manager. Mirror funds 'mirror' the performance of the underlying funds that they invest in.

The requirements of rule 6.38 (understanding of risk) only apply to limited advice relationships in relation to the limited advice provided.

Additional Requirement for Pensions Transfers - Where the licenceholder plans to effect a transfer, there should be sufficient information about the ceding scheme(s) and the recommended pension arrangements and a full cost benefit analysis. The RWL should include an analysis of the transfer value and the reasons for the proposed transfer should be clearly identified and based on the genuine needs of the client.

The cost/benefit analysis should contain sufficient detail and be appropriate for the nature of the circumstances advised upon and be presented in a clear and understandable manner. The analysis should detail all charges for the products considered i.e. existing pension product and recommended pension product and explain clearly why the recommended product is in the best interests of the client.

4.3. Stage 3 - Post Sale

4.3.1. Once a client has decided to proceed the transaction should be carried out by the licenceholder in a timely manner and the policy document/contract note issued to the client immediately once it is available from the product provider (rules 6.26 and 6.52).

4.3.2. Records (contact notes, vouchers and entries in books or electronic recording media relating to clients' transactions) must be retained for at least 6 years or indefinitely for pension transfers, pension opt-outs or free-standing additional voluntary contributions (rule 8.58(4)).

5. Training and Competence of Advisers (rule 8.5)

5.1. The licenceholder must demonstrate on-going continuous professional development ("CPD") for all financial advisers which is relevant to their roles and in line with rule 8.5 and the IOMFSA's training and competency framework, which can be found on the IOMFSA's website - www.iomfsa.im.

5.2. Additional requirement for Retail Investors - Investment advice to retail investors must only be provided by individuals that hold a relevant qualification and undertake a minimum of 35 hours relevant CPD per annum (rule 8.5(2)).

Investment advice to retail investors may only be provided by individuals that hold an 'Isle of Man Statement of Professional Standing' issued in the previous 12 months by a professional body accredited by the IOMFSA. A copy of this statement must be retained on the individual's training record (rule 8.5(4)).

5.3. Additional requirement for Pensions Advice - Where pension advice is being given advisers should ensure that sufficient relevant pension CPD is undertaken to allow suitable and accurate advice to be given to clients. The IOMFSA strongly recommends that if not already, advisers become members of relevant professional bodies to allow them to keep up

to date on all technical matters. Advisers who advertise as being pension specialists should be appropriately qualified as pension specialists.

Performance of a pension plan relative to a client's circumstances can have a profound effect on a client's financial position and thus well-being in the future. There is therefore an overriding responsibility on pension advisers to be satisfied that they are sufficiently qualified and knowledgeable to provide advice on the range of pensions options including the pension arrangements being recommended in particular circumstances.

6. Notes on Long-Term Insurance⁵ and other underwritten products

6.1. For some investment products that involve underwriting, such as long-term insurance contracts, it may not always be practicable for a licenceholder to provide the client with an accurate RWL at an early stage in the advice process, as certain details (such as the premium payable) may alter in the period between the recommendation being made and the policy going 'on-risk'. In such circumstances the IOMFSA would find it acceptable for the RWL to be provided to the client at a later stage in the process, but before the transaction is executed. It should be issued to the client promptly once any variable details have been confirmed. In any event the client must be given sufficient time to consider recommendations made prior to the arrangement of any deals (rule 6.37).

7. Notes on Portfolio Advice Services

7.1. There has been a recent increase in financial advisers offering 'portfolio advice services' – ongoing investment advice services that do not amount to discretionary portfolio management, but typically involve recommending a portfolio of investments to meet an asset allocation and reviewing this on a periodic basis.

7.2. Where such services are offered the licenceholder needs to take care that any recommendations for changes to the portfolio are agreed with clients to ensure that the services do not constitute discretionary management and therefore fall outside of its licence permissions.

7.3. There may be clients whose best interests are served by having a simpler, lower cost solution. Accordingly, licenceholders should consider the total cost of the solution recommended when assessing suitability, including product charges, adviser charges (initial and ongoing) and any platform charges. As with any investment, advisers should evidence on the client's file that any additional services add genuine value for that client.

⁵ As defined in the Regulated Activities Order 2011 (as amended 2013 and 2016)

8. Notes on the Recommendation of Discretionary Managers

8.1. A recommendation for a client to use a Discretionary Manager is not an investment recommendation as Discretionary Managers are not investments as defined in the Regulated Activities Order. Nevertheless the IOMFSA would expect advisers ensure that referrals to Discretionary Managers are suitable for the client's circumstances and the client is given sufficient information in order to consider the recommendation.

8.2. As the client will be receiving advice from the adviser and investment management from the Discretionary Manager, it should be ensured that the client understands where the respective responsibilities lie vis-à-vis suitability etc.

9. Disclosure of Conflicts of Interest (rule 6.40)

Where a licenceholder has identified conflicts of interest with the policy/ pension provider and/ or underlying funds and/or itself, it should ensure that these are disclosed to the client in writing at the earliest opportunity. In addition a licenceholder should document all identified conflicts within its internal conflicts of interest register.

Appendix 1 – Additional Guidance on Pension Transfers

Knowledge of Client (rule 6.29)

The adviser should ensure that he is in receipt of, and has considered, details of the client's full benefits under the ceding scheme including:

- Spouse/ partner/ dependent's/ children's benefits;
- Any early retirement provisions (including ill health);
- Lump sum death benefits payable;
- Period of service(s);
- Any ill health benefits, annuities or guarantees;
- Any other benefits provided under the scheme;
- Any redemption penalties, (including Market Value Reductions ("MVR"s), reductions in terminal bonuses and any taxation implications of a transfer);
- Key features and product documentation (copies) of the ceding scheme(s); and
- Historical correspondence regarding the original recommendation into the scheme (where appropriate and available).

NB The above list is not exhaustive.

The IOMFSA recognises that there will be scenarios where it is not always possible to obtain all information from a client. For example, the client's future plans may yet still to be determined. Where information is sought and not obtained, or where the adviser determines information is not relevant and/or is not sought from the client, this should be documented and be transparent to the client.

Suitability (rule 6.32)

The adviser should consider and document within the RWL their consideration of:

- Whether rights, guarantees and / or bonuses will be lost from the ceding scheme (if so this should be explained and presented to the client as part of the pre-sale RWL).
- Whether the client is transferring from a pension linked to a with profits fund (if so this should be explained and presented to the client with confirmation of whether a Market Value Reduction (MVR) would be applied and/ or terminal bonus lost and the implications of this).

The transferring member should be directed to relevant information that helps him scope the various considerations and work through the advice to ensure that all factors are considered.

Disclosure and Information Including Reasons Why and Cost/Benefit Analysis (rule 6.37)

Where the adviser deems the ceding scheme⁶(s) to be inadequate or unsuitable, the assessment should be based upon objective documented evidence. **All recommendations must be demonstrably in the clients' best interests.**

Examples

- i. The ceding scheme may be a pension scheme or alternate source of funding planned for retirement. For example, a pension contribution arising from earnings, a lump sum arising from redundancy or from other forms of investment such as property, bonds and equities.
- ii. The purpose of the planned investment might be to provide for retirement income, to secure tax efficient use of funds, to secure higher rates of return or to access benefits in a different way to that permitted in the existing arrangement: for example a higher lump sum paid on more flexible terms than permitted under the existing arrangement.
- iii. Where investment flexibility is stated as the reason for the recommendation the adviser must demonstrate that he has considered whether the client will really benefit from utilising the more flexible arrangements. The adviser needs to be able to demonstrate and evidence how the arrangement will benefit the client in a better way than the existing arrangement and offer value for money. This is particularly relevant to a pension transfer where the investment offering of the existing pension scheme may be satisfactory in meeting the investment needs of the client. For example, a potential new pension scheme may offer access to many more funds, whereas the ceding scheme provides access to fewer funds but those funds are suitable to meet the client's needs and risk appetite.
- iv. In the case of a pension transfer, the adviser may quote poor fund performance within the ceding scheme as the reason for the recommendation to transfer. In this case, the adviser must demonstrate, in addition to being suitable, that the new scheme offers better performance relative to risk than the ceding scheme and the alternative schemes considered and discounted. The analysis of performance should be over a five year period, broken down annually. Where a product has not been available for the preceding 5 years, performance should be since launch, broken down at least annually.
- v. The adviser may state that there is more flexibility in a SIPP⁷ as opposed to an annuity type product. In this case the adviser should demonstrate and evidence (for example, in the client fact find) that this meets the client's requirements and best interests.

⁶ "Ceding scheme" means the scheme from which the client is to be disinvested, switched or transferred.

⁷ A SIPP (Self Invested Pension Plan) is a pension plan that allows the holder greater freedom than a conventional plan in what to invest in. A SIPP also allows investments to be held directly by the individual rather than by a third party. The individual can control the investment strategy or can appoint a fund manager or stockbroker to manage the fund or a financial adviser to advise on the plan.

Relevant factors may include whether the client has specified currently or previously a requirement for additional flexibility and any other specific needs, including early retirement.

- vi. It should be demonstrated and evidenced that charges are sufficiently transparent and that the client understands how they operate at each level of the product and how they affect the ultimate return. It is not sufficient to disclose charges at top level only. All charges and commissions should be fully and separately disclosed to the client in clear, accessible language.
- vii. In relation to pension transfers, the adviser should demonstrate that the new arrangement meets the client's needs and also that the existing product does not meet those needs. The adviser should demonstrate how the new arrangements increase or reduce risk, for example:
 - access to investment management services;
 - pooling of investments to safeguard individuals in a group;
 - defined benefit arrangements;
 - the applicability of the Pension Protection Fund in the UK to existing arrangements;
 - the impact on annuities and guarantees;
 - the impact of charges (including the resultant reduction in yield); and
 - the need to take personal responsibility for investment matters including the increased awareness of financial matters that may be required to manage and respond to risk.
- viii. When considering proposed arrangements it may also be relevant to consider the needs of potential dependents or other beneficiaries.

NB. The examples above are purely illustrative and are not exhaustive. It is for the adviser to ensure that the advice provided is appropriate to the client's circumstances, including the complexity of arrangements.

Where advisers are considering lower value, simple pension arrangements accumulated by a client the nature of analysis undertaken may be more straightforward than for high value, complex arrangements where a more comprehensive analysis is required. In all cases, the IOMFSA expects advisers to take account of the nature of the arrangements, and ensure that advisers document and evidence the basis of all discussions with, and decisions and recommendations to, clients.

If there is any information that the financial adviser is unable to obtain, this should be fully documented and any limitations on advice provided must be transparently explained to the client in writing.

Finally, advisers are reminded of the consumer awareness information recently issued by the Authority in relation to Pension Scams and Risky Pension Investments [available at:

<https://www.iomfsa.im/consumer-material/pension-scams-and-risky-pension-investments/>

This information outlines some of the key risks relating to pension investments and stresses the importance of taking advice from regulated financial advisers, and advisers may wish draw clients' attention to this information.