

FCA Answers to RMAR Section K & L Queries

A guide produced by CEI Compliance for retail intermediaries



Contact us on **0800 689 9689**

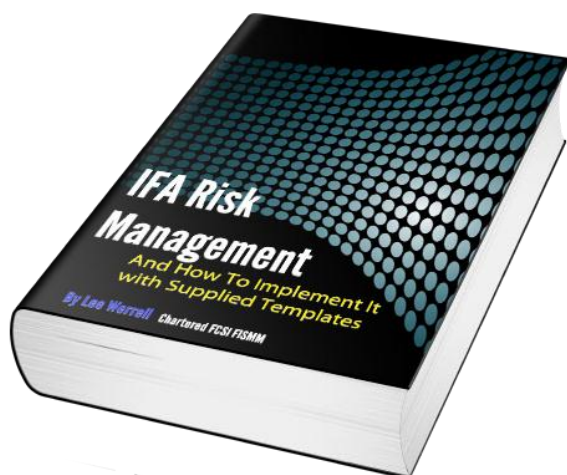
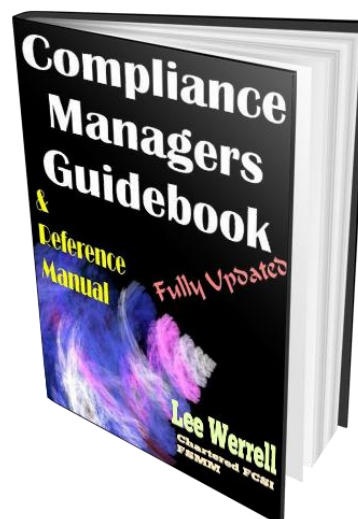
Also Available for purchase at Amazon.co.uk

Compliance Managers Guidebook & Reference Manual – *Fully Updated for FCA/PRA use*

This EBook gives you the answers to 17 important questions and challenges every Compliance Manager faces, including:

- The regulatory terrain; how did it evolve to today's landscape?
 - How do you map your firm's activities to the compliance universe?
 - What is good and bad compliance?
 - How to form a compliance charter
 - What do you need to perform a Compliance Risk assessment?
 - How do you involve senior management and other departments in their compliance responsibilities?
- ... and more!

Buy it today [HERE](http://bit.ly/10x2t2C) (<http://bit.ly/10x2t2C>)



In These Modern Financial Times Regulatory Compliance Requires Your Firm to Have Robust Risk Management

If You Are A Financial Advisor, Wealth Management Firm or a Mortgage Broker, You Need A Risk Assessment Template and a Risk Management System You Can Demonstrate Comfortably To The Regulator and Stakeholders.

Templates provided for a full risk system including risk assessment templates and a reporting tool, all using common office software with no expensive software or subscriptions.

Buy it today [HERE](http://bit.ly/10KQH3J) (<http://bit.ly/10KQH3J>)

Questions were posed to the FSA regarding the RMAR sections K & L and their correct completion. A response has been received and hopefully will help Answer any outstanding queries you may have.

I have arranged the questions in Section K – Section L and general.

Section K Questions

Ref: *Adviser charging*

Question

- 1. Adviser charges facilitated by the product provider/platform provider will not be invoiced as such, there would merely have been an agreement at the start of the engagement with the client, and notified to the provider through the application process. So, for ongoing services, especially those that are based on a percentage of funds invested, the cash amounts will not be known at this agreement stage. It is likely firms will only know the amounts involved once they have been received, but reporting this information would be on a received rather than an accrued basis.**
- 2. Presumably the number of clients paying for ongoing advice services (rows 8 and 9) should include those pre-RDR clients receiving new advice on pre-RDR products that now generates an adviser charge as opposed to a commission?**

FCA Answer

- 1. The amount reported should be the amount charged to the client, on an accruals (not received) basis. There does not need to be an invoice as such – this is shorthand for ‘amount agreed with and due from the client’. For ongoing services, where the charge is a percentage of funds invested, the firm should be aware of the value of the fund and can, in the rare cases where this may be necessary, provide a best estimate of the adviser charges due.*
- 2. Yes*

Question

Section K is based on amounts invoiced but needs to be split by methods of payment, which may cause problems. At the point of invoice the adviser may not know what the eventual recommendation will be so the method of payment may not be known (e.g. not all providers and fund managers are facilitating adviser charging). How is this to be answered?

FCA Answer

Cases where the method of payment is not agreed with the client at the same time the charges are agreed are likely to be rare. In such cases, the firm can provide a best estimate.

Question

For IFA firms that also have in-house discretionary management there is confusion on what income would count as Adviser Charge and what would be the AMC for the discretionary service when they charge just one fee that effectively covers both.

The guidance the FSA gave in PS 11/13 referred to 'investment managers' but the definition can mean an individual as well as the firm as a whole. If the reference to 'investment managers' means the individual (as opposed to the firm) then they may not themselves have given 'personal recommendations relating to retail investment products to a retail client'. It is the financial adviser within the firm that might have done that but there may be no separate charge for it. If the management charge covers the DPM service and there is no additional charge for any ongoing advice, in theory, there is no revenue from ongoing adviser charges and no clients paying for advice services.

If however the reference to investment managers means the firm as a whole then part of the firm's overall service could involve advising on investment products but it may just be a general discussion about how the portfolio has performed

FCA Answer

The full amount of the charges should be reported if the firm cannot split them up between different types of services. However, the firm should be able to differentiate between discretionary management and advice services. The different services and related charges need to be clear to the customer, and it must be possible for the customer to cancel ongoing advice services at any time without penalty and stop paying the charges for that service. As we told a trade body:

"Our rules do not require allocation of ongoing charges to particular RIPs. Ongoing charges for the provision of advice and related services (whether for a set period, e.g. a year, or indefinitely until the service is terminated) will need to have been agreed and disclosed to the customer at the time the ongoing service is agreed, together with information on what the service covers and the customer's right to cancel the service. If advice at a later date is fully covered by the ongoing charge, it will be sufficient to inform the customer of this in the overall charges disclosure (covering all types of charges) for the specific transaction. If there is a charge for a service not covered by the ongoing charge, it will be necessary to specify which service the additional charge is for and say that it is not covered by the ongoing charge. "

Question

Section K, row 11 refers to minimum adviser charges per hour. If, for example, a firm has minimum hourly rates for 'related services' such as administration of say £50 per hour, a para-planner of £80, research of £100 and adviser advice time of £150. Are we correct in thinking that in this circumstance the minimum would be £50 per hour?

FCA Answer

Our rules state that adviser firms can only be paid for advice and related services through adviser charges. So the charges listed are all part of the adviser charge, and the total figure should be given.

Question

Box 1 clarification as to what should be included here. Their guidance states 'Initial adviser charges' however within the help text it states this would only include initial adviser charges where 'no ongoing' service is provided. We would like clarification as to whether all initial adviser charges should be included or only ones where no ongoing service is provided.

Clarification as to what is meant by 'initial adviser charges' – is this arrangement and advising fees?

Box 5 – how should this figure be worked out. This area is really grey and firms are massively struggling with this. Clarification would be really appreciated.

***Scenario A* – firm invoices for full amount up front and is paid by instalments. Should the proportion be worked out for each individual client (work out percentage and add all together or should it be worked out as a whole?**

***Scenario B* – firm invoices each time an instalment is due.**

Box 6 is asking for total. Clarification as to what this is the total of. It appears to be the total of Box 4 and 5 however these are asking for different information for instance Box 4 is asking for the number of lump sum payments whereas Box 5 is asking for the proportion of the total regular instalments due.

Box 7 - One off service – What is the definition of 'one off fee'

Charging structure – minimum and maximum should these show the minimum and maximum amounts for lump sum and regular advising and arranging?

FCA Answer

Box 1 – this should give all initial adviser charges as a monetary amount, and covers both initial advice and subsequent ad hoc advice not covered by any agreement on ongoing advice.

You should note that initial adviser charges can only be paid over time in the case of a regular payment product, and the payments must end when the initial charge has been paid off. The initial adviser charges should cover all the initial advice and related services – COBS 6.1A.6R gives examples of related services, including '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'.

Box 5 - is the proportion of fees due from investors in the reporting period where an initial adviser charge is payable in regular instalments. So, for example, if a client is charged £600 for initial advice on a regular premium investment which is paid through three equal sixth monthly instalments (e.g. £200 would be due in the reporting period) 0.33 would be reported in Box 5.

Box 6 – this is the sum of the numbers provided for rows 4 and 5.

Box 7 – this asks for the number of one-off services. Re one-off fees, see our comments on Box 1 above.

Charging structure - yes.

Question

Section K – charging structure. Where there is a combination, the calculation of minimum and maximum amounts can cause problems and has the potential to be very time-consuming e.g. there may be a flat fee for the overall financial planning report which is invoiced to the client and, if they wish to proceed with the recommendation, any implementation fee may be an adviser charge facilitated by a number of providers based on percentage of funds invested. So, the invoice is at client level for general financial planning services but the percentage-based adviser charges would be at product level.

The actual percentage-based adviser charge may not be known until it has been received (because the final investment fund value may not be known at the date of the client's agreement to the engagement) so we may have to rely on provider statements for this information – but received basis, not accrued. If the client has received more than one service during the period, they presumably need to be differentiated and to then combine all the sets of details and marry up a particular series of adviser charges to the service in question for hundreds of clients is not easy.

FCA Answer

The services and related charges should be made clear to the client under the charging structure provided before any advice is given, and the total charge must be agreed with the client as soon as practicable. So it should be possible to distinguish between different services and charges.

The amount to be invested should be known, so it should be possible to provide at least a best estimate of the total amount of the adviser charge.

Question

We have encountered an issue with trying to complete the section regarding the firm's charging structure within Section K (row 11 onwards).

Where a firm charges an ongoing advice fee as a % but the % charged is tiered it is difficult for the firm to confirm the minimum charge as a % in row 16 of the return

For example if a firm charges an ongoing fee of 1.5% on the first £50,000 and 0.5% on anything over £50,000 - the max fee is 1.5% but the minimum fee is difficult to disclose as a % as it will vary depending on the size of the portfolio. The larger the portfolio the smaller the overall percentage is.

Having spoken to the FCA I was advised that they are interested in the business transacted during the reporting period therefore we have advised the firm to calculate the lowest ongoing charge during the reporting period but we feel that it would be helpful if the FCA could provide some clarity regarding this as the guidance in SUP16 Annex 18B and the Policy Statement and Consultation Paper regarding the RMAR post RDR does not cover the event of a charging structure being tiered.

The guidance we have read also gives the impression that firms can base the information in this section on their Client Agreement unless they offer a combined fee e.g. fixed fee and a % of amount investment. However, using the example above the firm would be basing the information on actual business transacted which does not fit in with the guidance in SUP16B and the relevant CP & PS.

The guidance also states this section of the report only needs to be completed at the next return if there have been changes to the charging structure – it is not clear from the guidance whether firms who have not changed their charging structure leave rows 11-18 blank at the next report or copy the same information across e.g. if at this return their min fee is 0.5% and a fee 2% of the amount invested and this has not changed by their Jan 2014 return do they put the same info in the return or leave it blank. It would be helpful if the guidance clarified this. A number of firms have queried this with us

FCA Answer

In the example given, the minimum should be reported as 0.5% and the maximum as 1.5%.

Even if there have not been changes to the charging structure, it would be helpful for the information to be reported again.

Question

An example regarding reporting the amounts of ongoing adviser charges facilitated by the product provider.

- At the beginning of June their client agreed to an ongoing annual adviser charge of 0.75% on new ISA, unit trust and OEIC investments.
- The total investment of £72,000 was submitted soon afterwards.
- The RMAR reporting date is 30 June.
- How much should be reported in B2?
 - is it £540 or
 - should it be £540 pro-rata for the number of days that have passed since the actual commencement of the investment contracts to 30/06/13 out of 365 or

- should it not be reported until it has actually been received because the fund values on which the 0.75% is calculated will obviously vary each time a payment is made?
- For that same client, how much should be reported at the next RMAR?
 - Nothing because the original client agreement (presumably equivalent to the invoice date?) was in a previous reporting period, or
 - £270 – i.e. £540 pro-rata for the number of days that have actually passed from 01/07/13 to 31/12/13 out of 365 or
 - The amount that has actually been received from the product provider during the period?

FCA Answer

In both cases the amount reported should be the amount due on a pro-rata basis – the second option in both examples.

Section L Questions

Ref: **Consultancy charging**

Question

1. Consultancy charges facilitated by the product provider will not be invoiced as such. Same comments as above.
2. We assume that section L is NOT relevant for those pre RDR GPPs which are continuing on a commission basis (PS11/13 2.56)

FCA Answer

1. *The amount to be reported is the amount due – there does not need to be an invoice as such.*
2. *Commission paid in relation to pre-RDR GPPs should be reported in Section B of the RMAR.*

Question

Section L Row 9 – There is confusion over the interpretation of the meaning of the word ‘typical’ with regard to consultancy charges – is this intended to capture modal average? Given that you want firms to report the highest, lowest and typical consultancy charges *calculated* as the first year’s *projected* consultancy charges (as % of first year’s total employer and employee contributions) this might suggest the calculation of a mean average across all schemes – i.e. because each scheme may well be different in terms of projected number of employees, tiered contribution rates etc

FCA Answer

The modal average would be a reasonable approach

Question

There is some confusion about the definition of ‘consultancy charge’ and whether this a) only refers to remuneration paid from the members’ policies or b) also includes fees invoiced to and paid directly by the employer.

Section L relates to consultancy charging and includes information about employer-paid fees. The guidance in SUP16 annex18 states: *Firms* are asked to split the data on revenue from *consultancy charges* by payment mechanism, i.e. whether the *consultancy charges* have been received directly as a *fee* from the employer, via *product providers*, or via *platform service providers*. clearly indicating b) but COBS 6.1C.5 (1) states ‘....a firm must only be remunerated....by consultancy charges or by a fee payable by the employer’ indicating a).

The Glossary definition might indicate a) i.e. 'any charge payable by or on behalf of an employee...' but it could be argued that, because the GPP is for the benefit of the employees, even a fee paid directly by the employer is ultimately on behalf of the employee.

PS10/10 2.13 Clarification stated:- 'We confirm that, where an employer pays fees to an adviser for his services and these fees are not funded from the pension contributions or pension fund, the fees are not subject to the consultancy charge rules ...' So what fees are required to be disclosed in data item 1A?

We have tried to research this matter ourselves and found the Report to the FSA from the Consultancy Charging Working Group March 2011

<http://www.fsa.gov.uk/pubs/other/ccwg.pdf>

This mentions 2 charge recovery methods i.e. –

Employers should be offered a choice of charge recovery methods, which may include:

- Fees (paid by the employer and/or recovered from employer and/or employee contributions) and/or
- Consultancy charges (deducted from employer and/or employee contributions received by the pension scheme, and/or from funds under management)

... but it is not even clear from this what the difference is intended to be between the two, when recovered from the employee contributions.

FCA Answer

The position regarding different types of charges is as follows:

Where commission can continue to be paid in relation to a GPP set up pre-RDR, the commission payments should be recorded in Section B of the RMAR.

The term 'consultancy charges' relates only to charges for GPPs set up post-RDR. These charges are payments agreed with the employer which are recovered from employees and should be reported in Section L under Columns B and C.

If the employer pays a fee - which is borne by the employer and is not recovered from employees through their pension funds - the fees payable during the reporting period should be recorded in Column A of Section L under the heading 'Fees invoiced directly to employer clients'.

General Questions For Sections K & L

Question

- 1. Are firms to report on the amount invoiced as at the exact invoice date? If not, please can you confirm what this trigger point should be i.e. if this is an earlier point in the process such as the date a client signed a charging agreement.**
- 2. If the firm is to use the exact invoicing date, how do you define the exact invoice date?**
 - a. In the case of platforms / providers facilitated payments is this the date that an application form was filled in? If not please can you confirm the trigger point you expect firms to base their invoice dates on.**
 - b. In the case of direct to client charges we would anticipate this to be the date an invoice was sent to the client. If not, please can you confirm the trigger point?**
- 3. Assuming that firms are to report amounts invoiced as at an invoicing date rather than a 'charging agreement' date how do the FCA expect firms to determine an invoice date where the firm is making ongoing charges and no specific 'invoice' is being sent to the client?**
- 4. In the case of ongoing charges in future that are based on levels of funds invested, how does the FCA expect firms to represent this amount? So, for example, row 2 in section K asks for 'revenue from ongoing charges'. If this is based on a charging structure where that figure cannot be determined at the date the charging structure is agreed, such as percentage funds under management, then how are firms supposed to represent this amount?**
- 5. In the case of ongoing charges the firm may not actually issue 'an invoice' for all payments due. In other words the payment will be as per an amount agreed in advance. Please can you confirm what you expect firms to base their charge on in this circumstance? Is it enough for this to have been agreed in an adviser charging agreement with the expectation of a particular level of payment on a fixed date in the future?**
- 6. It is noticeable in the guidance that the FCA do not mention the invoice date for a number of fields. For example, rows 7 to 10 inclusive in section K make no mention of whether there is an invoiced payment due in the reporting period. Is this a requirement or is just that there is still a charging agreement in place that spans the period in question?**

FCA Answer

1-3 As stated above, there does not need to be an actual invoice, so the date of any invoice is not relevant. The amount to be reported is the amount due from the client during the

reporting period. It is irrelevant whether the amount due has actually been paid, or whether payment is facilitated by a provider or platform.

4. Where necessary, as stated above, a best estimate can be provided.

5.-6 as above, an actual invoice is not necessary.

Question

We have spoken to a number of accountants and they have different views on the invoice of on-going charges. Some say you should only record invoiced amounts per se whereas others state that you should include amounts to cover periods up to the reporting period end as well. E.g. invoice due on 15th. Account for the 15 days amount due to the 30th. If accountants find it difficult to interpret GAAP, there is less hope for adviser firms to provide the information you actually want.

FCA Answer

The amount to be reported is the amount due from the client during the reporting period, irrespective of whether it has actually been paid.

Question

There is a section asking for maximum and minimum fees. Clients are saying the minimum will always be nil because they do either pro bono work - or are paid effectively by pre RDR trail - which is the historic method of brokers receiving payment.

The maximum can be Infinity! - a little high perhaps - but advising clients who are in the process of selling a business for in excess of £10m the maximum fee would be very high.

There are also sections asking for regular fees which do not say over what time scale. Monthly or annual would be normal however quarterly or even triennially would not be unreasonable

FCA Answer

Pro bono work is not relevant here. And advisers cannot be paid for new post-RDR advice through trail commission unless this is covered by the legacy guidance in COBS 6.1A.4AAG, although they can offset trail commission against adviser charges if they wish (in the latter case, they should still report the full amount of adviser charges in Section K and the trail commission in Section B). See COBS 6.1A.4AAG(3).

The example given of selling a business does not fall under the definition of 'retail investment product'. The RDR adviser charging rules only relate to advice on retail investment products to retail clients.

Regular fees – the amount to be reported is the amount due from the client during the reporting period.

Question

How to establish whether Mr & Mrs Client should be counted as one, two or three – i.e. Mr, Mrs and joint. For example, if overall financial planning is being provided as a couple, one client agreement and engagement letter, but is delivered in stages – ISAs and pensions individually – how many clients is that?

FCA Answer

This depends on whether there is one advice case or two. If advice is provided separately to the two clients on separate products, this should be reported as two advice cases.

So if there is a joint agreement, this should be recorded as one client. If there are separate agreements, say for one-off pieces of advice, these should be recorded separately.

Question

Complaints reporting against retail investment advisers.

If the adviser is no longer with the firm, should the details still be allocated to that ex-adviser's IRN?

FCA Answer

Yes

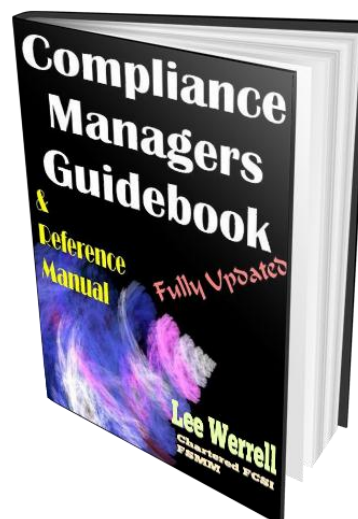
Also Available for purchase at Amazon.co.uk

Compliance Managers Guidebook & Reference Manual – *Fully Updated for FCA/PRA use*

This EBook gives you the answers to 17 important questions and challenges every Compliance Manager faces, including:

- The regulatory terrain; how did it evolve to today's landscape?
 - How do you map your firm's activities to the compliance universe?
 - What is good and bad compliance?
 - How to form a compliance charter
 - What do you need to perform a Compliance Risk assessment?
 - How do you involve senior management and other departments in their compliance responsibilities?
- ... and more!

Buy it today [HERE](http://bit.ly/10x2t2C) (<http://bit.ly/10x2t2C>)



In These Modern Financial Times Regulatory Compliance Requires Your Firm to Have Robust Risk Management

If You Are A Financial Advisor, Wealth Management Firm or a Mortgage Broker, You Need A Risk Assessment Template and a Risk Management System You Can Demonstrate Comfortably To The Regulator and Stakeholders.

Templates provided for a full risk system including risk assessment templates and a reporting tool, all using common office software with no expensive software or subscriptions.

Buy it today [HERE](http://bit.ly/10KQH3J) (<http://bit.ly/10KQH3J>)