

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref: CP10/26

Dear Emily

CP10/26 Pension reform – Conduct of business changes**

This is the Financial Services Consumer Panel's response to CP10/26** Pension reform – Conduct of business changes.

The FSA has made it clear in the Paper that it believes that it is in the best interests of most people to stay in (or join) a workplace pension where employers contribute and that it will generally be impossible to identify in advance, the small number of people who are at risk of not benefiting from saving. We have some reservations about that assessment. There are groups of individuals who are likely to be better off saving in a cash ISA, or reducing their debts, than enrolling in a pension scheme. In addition those on low incomes and no previous savings currently in their forties and fifties who are likely to be living in rented accommodation after retirement, are at high risk of being worse off unless the current benefit system changes. We believe that further work is needed to identify the probable size of these groups and consideration given of how to reflect their circumstances in the programme of education and publicity on the 2012 changes which should be underway shortly. Responsibility for this is likely to rest with the DWP and CFEB rather than the FSA, and we plan to contact them directly to make this point.

We were pleased to see that the FSA is proposing no changes to COBS 19.2.2 ('RU64') in this paper. We continue to be strong supporters of this requirement and we are not aware of any issues arising as a result of NEST/auto enrolment that could justify the removal of RU64.

We are conscious that advising employers on their choice of pension scheme is not an activity regulated by the FSA. We are concerned that this might become a significant regulatory gap in future and a source of indirect consumer detriment. We suggest that this is an issue the regulator and H M Treasury might want to address.

We have set out below our answers to the detailed questions contained in the Paper.

Q1: Do you agree with our proposal to clarify that automatic enrolment under the employer's statutory obligation does not fall within the definition of a distance contract?

Although we do not necessarily agree that there is a risk that the provisions of the Distance Marketing Directive could apply when automatic enrolment is used to fulfil the employer's statutory obligation under the Pensions Act 2008, we are pleased that any ambiguity has been addressed by the agreement between the Department for Work and Pensions and the European Commission. Similarly it is important that there is clarity for firms on this issue. We are not certain that changing the Handbook Glossary alone will be sufficient and would like the FSA to consider producing guidance on this particular point, particularly given that the DMD will continue to apply where an individual is joining a workplace pension scheme other than by auto enrolment.

Q2: Do you agree that it is unnecessary for us to require additional protections beyond the opt-out legislation for all those joining a GPP being used for automatic enrolment?

The FSA's preferred option – in effect the adoption of the DWP opt-out legislation rather than COBS cancellation rights for those joining a GPP being used as an automatic enrolment scheme – has the benefit of simplicity and a prescribed format, but is by definition more limited than current cancellation rights, where providers have to accept “any indication” that the consumer wishes to cancel the contract. We have no objection to using the DWP opt-out legislation provided that consumers are made aware of the opt-out procedure and have access to a pro forma opt-out notice.

Q3: Do you agree with the proposal to clarify through guidance that the COBS 15 requirements are modified by the opt-out process in the DWP legislation in relation to all those joining a GPP being used for automatic enrolment?

Yes, additional guidance is required to clarify the circumstances in which the DWP opt-out legislation rather than cancellation rights will apply.

Q4: Do you agree with our analysis that there are no difficulties in meeting the disclosure requirements of both sets of requirements within the current rules? If you think there are difficulties, please provide details in your response.

We agree that consumers should not be given two sets of similar documents in order to meet two sets of regulatory/legislative disclosure requirements and we support the continued use of Key Features Documents, subject to any relevant future EU requirements.

Q5: Do you agree with our proposal to remove the requirement for a statement about stakeholder pensions to be made in the Key Features Document for any Group Pension Plan used for automatic enrolment?

We agree that the requirement to refer to stakeholder pensions should be removed in these circumstances.

Q6: Do you agree with our proposal to extend the definition of a pension opt-out to cover any workplace pension scheme to which the employer contributes?

Yes, we strongly support this proposal which will extend the same protection to consumers who are auto enrolled in a GPP as currently applies to those enrolled in occupational pensions.

Q7: Do you agree with our proposal to extend the additional requirements about advice on additional contributions to GPPs?

Yes, we believe this is appropriate.

Q8: Do you agree with our interpretation of COBS 6.2A17G in its application to NEST?

We agree with the FSA's interpretation of National Employment Savings Trust pensions savings as "relevant financial products" in the context of COBS 6.2A17G, but we think it would clarify the question beyond doubt if the guidance was amended to include NEST as a example of such a product alongside national savings and investments and cash deposit Individual Savings Accounts.

Q9: Do you agree that the charging structure and default option are factors that should be taken into account in the design of GPPs used for automatic enrolment? Are there other factors that are of particular relevance?

We agree that the charging structure and default option are factors that should be taken into account in the design of GPPs used for automatic enrolment. We recommend that volatility in asset values as retirement approaches should also be taken into account.

Q10: Do you agree that firms will need to make preparations to ensure their administrative systems are able to deal with the potential increase in volumes. Are there any other aspects of administration which may cause issues for firms?

Administration of defined contribution schemes can be complex. We would like the FSA to take what steps it can to ensure that firms make all necessary preparations ahead of 2012.

Q11: Do you agree with our assessment that no additional rules or guidance are needed to address the possible impact of many policies lapsing and becoming paid up?

The Panel is not in a position to comment on whether additional rules or guidance will be required, but we would expect firms to be in a position to address these issues in a fair and appropriate way.

Q12: Do you agree that it is unnecessary for providers to contact policy holders about the contributions to their existing pensions in relation to the workplace pension reforms?

The consultation paper states that the FSA does not consider it necessary for providers to proactively contact policyholders about the possibility of being auto enrolled in a workplace scheme and whether they would wish to continue their existing personal pension, in order to meet existing rules. While this may be the

case, we would expect advisers who are providing an on-going service to their clients to address these questions in the course of their routine review and advice procedures.

Q13: Do you agree that it is not necessary to introduce specific interim guidance to deferring savings until automatic enrolment comes into effect?

We would expect advisers to be giving suitable and appropriate pensions and savings advice to individual clients in the lead-up to October 2012, but to ensure that this is the case we recommend that guidance is issued.

Q14: Do you have any comments on our analysis of the costs and benefits of the proposals we are making?

The Panel is not in a position to comment on the CBA.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel