Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email:jointpensionstrategy@fca.org.uk

Dear Donald

Regulating the pensions and retirement income sector: our strategic approach (Call for Input)

The FSCP welcomes the opportunity to respond to this call for input. Consistent, collaborative working between the FCA and the Pensions Regulator (TPR) is key to setting a pensions strategy that will deliver the best outcomes for consumers.

Recent events such as those involving Carillion, BHS and the British Steel Pension Scheme underline the urgent need for a clear joint regulatory approach. This is a chance to explore opportunities for much greater harmonisation of the objectives and cultures of the two regulators. This extends to IGCs and trustee boards, which should be working to the same methodology when assessing the extent to which pension schemes deliver value for money and good consumer outcomes. Consumer protection and good outcomes should not be dependent on which regulator their scheme falls under.

Yours sincerely

Sue Lewis

Chair, Financial Services Consumer Panel

Questions for discussion:

Q1: FCA and TPR's remits intersect in some areas. Do you see this working effectively, or are there areas where this could be improved?

The two regulators should articulate their shared priorities more clearly.

There is room for much better cooperation too. For example, as the launch of the pension freedoms neared, the FCA and TPR took contrasting approaches to risk warnings, with the former requiring providers to issue tailored communications and the latter putting in place a regime of generic warnings.[1] This was despite a pledge the previous year to work closely on embedding pension reforms.

The two regulators have similarly struggled to deliver clear and coherent messaging on pension scams. Operating two different scam schemes is a duplication of effort and is confusing for consumers. There is scope here to work more closely with consumer-facing bodies, notably the Single Financial Guidance Body (SFGB).

These examples indicate a conflict of regulatory cultures that must be addressed if scheme members are to benefit. This should be supported by greater sharing of resources, knowledge and personnel, and greater alignment of the objectives of the two organisations. Information needs to be shared between the two regulators openly and regularly. We recommend a review of the current information sharing protocols to ensure they are robust enough to enable early action on conduct issues. This should include consideration of whether changes to legislation are necessary.[2]

The two regulators should use recent instances of harm, including those relating to Carillion and the British Steel Pension Scheme, to conduct a gap analysis to identify where the roles and responsibilities between the two regulators might have created regulatory arbitrage or opportunity for poor conduct.

While there is little appetite for a merger between the two regulators, the Pensions Ombudsman could – and should - be merged with the Financial Ombudsman Service (FOS). Consumers need to know where to turn when things go wrong. Consumer awareness of the Pensions Ombudsman is low and people cannot be expected to understand the instances in which they would go to it rather than to the more widely-recognised FOS.

[1] https://www.moneymarketing.co.uk/tpr-and-fca-in-conflict-over-second-line-of-defence-risk-warnings-stance/
[2] http://www.thepensionsregulator.gov.uk/docs/mou-fca-regulator.pdf

Q2: Do you agree that the areas we have identified are the right ones? If not, which themes would you add or remove from our list? In which areas could the FCA and TPR singly or jointly have the most impact?

Yes, as far as the focus is on people who are already saving.

Regarding 'making sure pensions are well run and funded', the review should set out what "well run" pensions mean for consumers (as well as for trustees, IGCs and employers/sponsors). The same goes for "supporting good choices and outcomes for consumers and members". Unless good consumer outcomes are defined, it will not be possible to evaluate the effectiveness of the strategy.

Attention needs to be paid to the regulatory perimeter, with the work on pension scams being one area where responsibilities are too narrowly defined. For instance, persuading someone to transfer money to a third party that purports to be their bank is not within the pension scams activity, but it clearly should be.

The government should clarify the joint regulatory role, particularly in the light of the failures highlighted by the Carillion, BHS and Tata Steel cases. TPR has the objectives of protecting pension schemes and the PPF and promoting sustainable economic growth. According to the Work & Pensions Committee, TPR "failed in all its objectives regarding the Carillion pension scheme".[3] This should be a catalyst for a review of its objectives and greater alignment with those of the FCA. An objective to promote economic growth is bound to conflict with members' interests if it is interpreted too narrowly, or – as has been alleged – there is scope for government intervention.

Both consumers and the industry need greater consistency of regulatory objectives and culture. There should be an expectation on both regulators to be proactive in identifying conduct issues and risks to members and acting quickly to address them.

Q3: Given our regulatory remits, what more, if anything, should the FCA and TPR do to support people as they start to save in a pension?

The quality and clarity of communications is important in promoting engagement and participation.

More thought should be given as well to the timing of communications (i.e. wake-up packs that are often presented far too late in the pensions journey) and more effective tailoring of messaging.

The two regulators should explore the potential for joint consultations and work on developing shared language/terminology, for purposes of consistency and clarity.

The joint strategy must have a sharper focus on ensuring scheme members are able to understand how they can secure the retirement outcomes they need.

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[3] https://www.theguardian.com/business/2018/may/16/mps-dole-out-the-blame-over-carillions-collapse

While responsibility for direct consumer communications should lie primarily with the SFGB, regulators need to ensure that where they do communicate with consumers – such as in signposting and scams – the message is consistent and joined up.

Q4: Is there more scope for TPR/FCA working, either singly or jointly, in this area? To what extent should the emphasis be on collaboration with a wider group of bodies to improve the advice and services supplied to schemes (e.g. administrators, investment consultants)?

Please see comments to Q3. TPR/FCA should collaborate extensively with organisations whose remit it is to communicate directly with employers.

In addition, the paper refers to products that sit outside FCA and TPR regulation but which can "affect schemes' ability to be well-run and funded, for example, highly speculative assets like art being held in SIPPs".

The Panel would like to see the reintroduction of an approved investments list, which was available prior to pensions simplification. An FCA-approved investment list would provide clarity for consumers (and advisers) and help reduce SIPP-related scams. This argument grows stronger with every new instance of SIPPs being used as a vehicle for selling consumers into unregulated and high-risk investments (the British Steel cases being one high profile example[4].)

The FCA is already asking SIPP providers about the non-standard assets they hold. One option to consider is a ban on non-standard investments, given their high risk of losses and their association with pension scams. However, it also needs to establish the extent to which the problems arise from poor advice, and to build on its work in this area by clarifying when liability for poor advice lies with SIPP providers and when it lies with advisers.

Given the rapid evolution of the SIPP market since the pension freedoms took effect – with the rise of platform SIPPs in particular - the Panel believes the regulation of this area should be overhauled to ensure that it reflects the reality of the sector as it is now, and the way that consumers access and interact with SIPPs and SIPP providers. The FCA is currently regulating the SIPPs market on the basis of rules that were set out when it was very different. The starting point would be a review of how SIPPs are defined.

SSASs are a similarly popular tool among scammers. TPR has already noted that "SSASs are increasingly marketed as 'products' offering exotic investments and unrealistic returns, and there is evidence that some consumers have lost their pension savings as a result".[5]

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[4]https://www.ft.com/content/7e64e7b8-d6a3-11e7-8c9a-d9c0a5c8d5c9
[5]https://www.gov.uk/government/consultations/pension-scams/pensions-scams-consultation

While SSASs are registered by HMRC they also fall under TPR's jurisdiction as they are classified as occupational schemes. The FCA has taken a closer interest in the market, but there needs to be much greater cooperation between the two regulators and HMRC in establishing the extent of the SSAS market and addressing serious governance issues in the sector. One option is to allow only firms with FCA permissions to operate SSASs, while the reintroduction of pensioner trustees should also be considered.

Q5: How can pension providers and schemes, employers and other firms in the sector improve the security of the money and data they hold? What role is there for FCA and TPR in further driving up standards?

No comment.

Q6: Are there any further opportunities for FCA and TPR to support the delivery of value for money, either singly or together?

The Panel believes the FCA should rethink its decision to shelve its planned review of the effectiveness of IGCs. An IGC effectiveness review offers an opportunity to examine the role they can play for both regulators in framing, promoting and delivering VFM.

In its response to the Law Commission's recommendations on IGCs, the FCA has stated that its work on retirement outcomes includes "potentially making IGCs responsible for ensuring that decumulation products provide value for money – and to explore whether competition is operating effectively in the interests of non-workplace pension customers."[6] This is worth exploring, but it would be difficult to do so effectively without first reviewing the effectiveness of IGCs.

IGCs and Trustees were both tasked with assessing whether pension schemes offered value for money for their members but very few have achieved this. IGC and Trustee Boards should be working to the same methodology for assessing value for money, but this is not happening – or anywhere near happening.

This is one area where the combined strategy for the FCA and TPR can really make a difference. The Panel suggests that a working group which combines the expertise within both the FCA and TPR – as well as organisations such as the PLSA, Share Action, Which?, MAS/TPAS/PensionWise and consumer groups - come together to develop a formula for assessing value for money.

[6] https://www.fca.org.uk/news/news-stories/our-response-law-commission-recommendations-pension-funds-and-social-investment

Q7: How can FCA and TPR work, singly or together, to ensure that information and advice helps people make appropriate decisions? When are people most vulnerable to taking poor decisions?

The recent non-advised drawdown pension sales review found that savers aren't engaging with the information they are given, are investing in unsuitable investments and risk running out of money prematurely in retirement.[7]

Last year's retirement outcomes review offered some similar insights into the non-advised drawdown market. It noted, in particular, that large numbers of people are taking money out of their pots and leaving it in cash, often because of a mistrust of pensions, and a desire to 'take control' of their money. These findings underline the need for impartial guidance and/or advice when making retirement income decisions.

While Pension Wise is working effectively for the small minority who use it, too many people are entering retirement without taking any advice or guidance. The Panel has (with the support of others including the Work and Pensions Select Committee) called for the introduction of a default pensions guidance system.[8] The Financial Guidance and Claims Bill merely requires providers to refer savers to guidance if they have not yet done so, but this adds nothing to existing rules that are clearly inadequate for the purpose.

It is now up to the FCA to make rules and regulations to specify how and to whom a member of a pension scheme must confirm they are opting out of pensions guidance. We urge the FCA to consider new rules requiring providers to actively encourage savers to use impartial pensions guidance from age 50 (as recommended by the Work and Pensions Committee). As it stands, the Bill will require non-advised savers to either receive independent, impartial pensions guidance or to opt out. However, it needs strengthening to ensure that consumers make the opt-out decision through the SFGB (or an independent delivery partner), so that their decision isn't influenced by their provider and its commercial interests.

The Panel also supports the Committee's call for the FCA and TPR to require all pension providers to issue simple, standardised one-page pensions passports as part of their pre-retirement communications with members.[9] It noted correctly that pension wake-up packs have proved woefully inadequate in promoting engagement with retirement decisions.

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[7] https://www.fca.org.uk/publication/multi-firm-reviews/non-advised-drawdown-pension-sales-review.pdf
[8] https://www.fscp.org.uk/sites/default/files/fscp_response_hoc_work_and_pensions_committee_pensions_freedoms_inquiry.pdf
[9] https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/917/91706.htm

Q8: Do you believe that the macro trends that we have identified are those most likely to drive change across the pensions and retirement sector? If not, what are the trends that matter? Which trends should be the highest priority for TPR and FCA? How will those trends (and any other drivers of future risks and opportunities) affect the areas we have identified?

The following could be considered:

- The impact of master trust authorisation on members, both in the short and long term.
- Cross-border arrangements pose Brexit
- The impact of long-term care costs on pension decumulation if there is more call on individual contributions. Long-term interactions here are unclear until Government policy is set out.