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By email: cp18-07@fca.org.uk

Dear Sandra and David

Financial Services Consumer Panel response to the consultation on improving the quality of pension transfer advice (CP 18/7)

The Panel welcomes the opportunity to respond to the FCA's consultation on the quality of advice to people transferring from Defined Benefit (DB) to Defined Contribution (DC) schemes. The value of DB to DC pensions transfers increased from £7.9 billion in 2016 to £20.8 billion in 2017. Given the FCA found under half of DB to DC pension transfers advice to be suitable,¹ this is an issue that needs to be addressed urgently.

The Panel is in broad agreement with many of the proposals in the Consultation Document. However, we disagree with the FCA's proposals on:

- Triage. This is guidance and should be delivered by an independent, unbiased organisation such as (currently) the Money Advice Service or the Pensions Advisory Service. If firms are not aware of the regulatory boundary for advice by now then the FCA needs to exercise its supervisory powers more rigorously and not issue yet more guidance.
- Advisers working together. A dual approach does not work well for consumers and the FCA should regulate to stop it.

¹ October 2017, FCA's work on defined benefit pension transfers (www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers)

On contingency charging, imposing a requirement on advice firms to charge a fee, irrespective of whether the advice is to transfer or not, may reduce access to specialist advice and will increase costs for all those that take advice. We have made some suggestions for wider solutions in our response to Q11.

Yours sincerely

Sue Lewis
Chair, Financial Services Consumer Panel

Questions for discussion:

Q1: Do you agree with the proposed changes to the qualifications for a PTS? If not, how would you suggest we amend it?

Yes. We believe combined PTS and investment advice qualifications are the absolute minimum that advisers working in this complex and crucial area should have. The recommendation to transfer is only half the story, so an adviser who does not hold the relevant investment advice qualifications should not produce a full suitability report. If two advisers are required to produce the suitability report this would result in a very unsatisfactory and confusing consumer journey.

Q2: Do you agree with our proposed arrangements for the transition period?

No. If advisers working in this field need two years to obtain a relatively straightforward qualification which is the equivalent to the first year of a university degree - they should not be advising on such complex matters as pension transfers.

Q3: Do you agree with the proposed changes to the exam qualification standard, ApEx 21? If not, how would you suggest we amend it?

Yes. The introduction of pension freedoms means the pensions landscape is very different to pre-2015.

Q4: Do you agree with the proposed changes to the pension transfer definition? Please indicate if you consider there are any other consequences that have not been identified.

No comment.

Q5: Do you agree with our proposed guidance for advisers working together? If not, how should we amend it?

This practice should be stopped. Consumers get the best service when they are able to establish a relationship with a particular firm. But, if one firm is providing pension transfer advice and a different firm is providing investment advice, what happens if the individual concerned prefers one firm over the other? Who effectively 'owns' the client? Having two firms is also likely to add to costs for the consumer.

Two advisers working together in the same firm is difficult enough, but two firms with two sets of processes and possibly two different professional indemnity insurers providing different cover, sounds like a recipe for disaster from the consumers' viewpoint.

Firms should decide whether they are going to deal with pension transfer business or not. If they are, they need the required specialism in-house. If not, they should refer any customers coming to them to firms with the necessary expertise. To be clear, we are not suggesting that non-specialist firms act as introducers or receive a procurement fee, given what happened in Port Talbot. Instead, firms should ensure that individuals needing a service the firm has chosen not to provide are referred to a firm that does provide the service and has the necessary expertise. This would be acting in the consumer's best interests.

Rather than issue more guidance, the FCA should regulate to prevent a dual approach.

Q6: Do you have any comments on our explanation for advising self-investors?

We agree that advisers should still take into account the destination of investments – even where the investor has chosen these themselves.

Q7: Do you agree with our proposed guidance on triage? If not, how could we approach it differently?

No. Regulated firms that sell products cannot provide adequate free guidance. Conflicts of interest are hard to avoid as is the temptation to turn 'guidance' into non-advised sales.

Our suggestion is that the FCA should direct firms to transfer individuals who need a triage service to the Pensions Advisory Service (currently) and to the Single Financial Guidance Body when it comes into being. Existing guidance services have no conflict of interest and they have advisers with the necessary expertise to provide individuals with the information they need to be able to make an informed decision as to whether they need regulated financial advice. Existing guidance services can also help individuals find that advice.

The FCA has already found some firms straying from guidance into regulated financial advice.² The system is not working. Further guidance is not going to help. Firms are well aware (or certainly should be well aware) of the boundary between advice and guidance. Further FCA guidance to firms will not help consumers receive a better service.

Q8: Do you agree with our proposed guidance on assessing attitude to transfer or convert risk?

We are surprised the FCA thinks there is a need for yet more guidance. Surely advisers working in this specialist and complex area should already be taking into account all of these requirements? If they are not, then this is a matter for supervision. We need proper enforcement of the FCA Conduct of Business Rules rather than more guidance.

Q9: Do you agree with our proposals to modify the Handbook rules and guidance in respect of suitability reports and the advice confirmation?

The Panel agrees that advisers should produce suitability reports even when the advice is not to transfer. This is still a recommendation and should be documented. However, it will have a cost implication, which the FCA has recognised.

Q11: Do you think that contingent charging increases the likelihood of unsuitable advice? If so, can you provide any evidence to support intervening in the way pension transfer advice is charged, or would another approach be more effective?

Yes. Contingent charging is, effectively, commission. Payment for advice that is dependent on whether or not the 'product' is sold is commission, no matter how this is dressed up. In this case the 'product' is the transfer of the pension pot, rather than the advice on whether or not to transfer. Given the argument for banning commission put forward by the FCA to justify the Retail Distribution Review – which the Panel fully supported – it is difficult to understand why commission should continue to be permitted for this particular type of investment advice, which is arguably one of the most complex and crucial areas of advice given to people in a range of circumstances, including the most vulnerable.

Q12: If we proceeded to restrict the way in which pension transfer advice can be charged, do you have views on how this should be implemented? In particular, how could we avoid different forms of restriction from being gamed?

The potential for gaming means the FCA will need to be prescriptive about what firms can charge for the different elements of transfer advice.

The Panel suggests that the cost of advice on pension transfers is split between the cost of advising on whether or not a transfer is suitable (initial advice) and

² <https://www.fca.org.uk/publication/consultation/cp18-07.pdf#summary>, Pg 17

the cost to transact the transfer if it is appropriate (transactional advice). If the advice is not to transfer but the client is 'insistent' the transaction advice cost could reflect this.

The work involved in initial advice should be the same whether the pension pot value is £30,000 or £300,000, so we suggest there should be a maximum fee for this advice. This should reflect accurately the work the adviser has to do to establish whether or not a transfer is appropriate. Some firms are able to conduct this business profitably at 1% of transfer value, while others charge 3% or more – this does not seem fair or justifiable. We believe there should be a capped fee for initial advice and a variable fee for transaction, depending on the type of scheme and the complexity involved in the transfer.

Splitting costs in this way would bring down the cost of initial advice. However, there will still be many individuals who are unhappy about being charged for advice they do not want to hear – namely, not to transfer. The pensions advice allowance should be permitted to be used for this type of advice, but currently this can only be used three times before benefits are accessed and each time the withdrawal is capped at £500.

We would therefore suggest that the FCA carries out some research into what a fair and equitable level of fee for initial advice might cost and how the pension allowance might be used to pay for some, if not all, of the advice.

Q13: How would different forms of restriction on pension charging impact consumers and firms? Are there any ways in which we would mitigate any negative impact? For example, to address concerns about reduced access to advice (due to increased advice costs for consumers who do not transfer); could we require firms to 'signpost' consumers to internal or external guidance/triage services, including The Pensions Advisory Service?

Individuals should be encouraged to seek advice before they commit to transferring, so they fully understand the consequences. However, a fee for that advice – irrespective of whether or not a transfer takes place – will be a barrier for many people.

Therefore, we believe there must be free and readily accessible guidance and this should be provided through the Pensions Advisory Service and ultimately through the Single Financial Guidance Body. However, this guidance must have a wider scope than is currently allowed under the Pension Wise standards.

The Panel suggests that a limited number of specialist money advisers, qualified to the same level as those required for regulated financial advisers, are permitted to provide an initial assessment of whether or not a transfer is suitable. In those circumstances where a transfer is deemed to be suitable, individuals would be referred to a regulated advice firm that has the relevant in-house expertise to conduct the transfer. This would be charged for in the normal way. For those individuals where the advice is that a transfer is not suitable there would be no charge.

These 'advisers' would be qualified to the same level as pension transfer specialists but would not be permitted to transact. There would therefore be no conflict of interest. They would be subject to scrutiny through the standards for guidance set by the FCA.

Q14: Do you have any comments on our cost benefit analysis?

No comment.