

Pension Wise – recommendation policy

March 2015



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We are asking for comments on this Consultation Paper by 8 May 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-12-response-form.

Or in writing to:

Iain Horn
Strategy and Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 6346
Email: cp15-12@fca.org.uk

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Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Abbreviations used in this paper

DC	Defined contribution
DWP	Department for Work and Pensions
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
TPAS	The Pensions Advisory Service

1. Overview

Introduction

- 1.1** In the 2014 Budget the Government announced reforms to retirement options including a proposal that all consumers with Defined Contribution (DC) pensions should be entitled to access free impartial guidance at retirement about their options when accessing their pension savings. This has recently been launched under the brand Pension Wise and becomes fully operational from 6 April 2015.
- 1.2** In November, we (the FCA) published standards for the Treasury's designated guidance providers to meet in delivering Pension Wise.¹
- 1.3** We are required to monitor the designated guidance providers' compliance with our standards and, where providers have breached them, we may make recommendations to the designated guidance providers and the Treasury where appropriate. In the Policy Statement in November we outlined our proposed approach to monitoring and said we would consult on a policy on recommendations.
- 1.4** We are now consulting on our policy for making recommendations to the designated guidance providers and to the Treasury. We also include further information on our approach to monitoring guidance service providers.
- 1.5** While we describe our approach for the steady state, it is clearly important to analyse the performance of the service closely in its initial months of operation. From April we will use a combination of real-time management information and early findings from consumer research to understand how consumers are experiencing the service and the quality of guidance provided in its first months of operation.
- 1.6** If necessary, we may make recommendations to the designated guidance providers and/or the Treasury to take immediate action to address any significant consumer protection issues that arise.

Who does this consultation affect?

- 1.7** This consultation primarily affects the designated guidance providers delivering Pension Wise.

¹ Designated guidance providers are delivery partners appointed by the Treasury to give pensions guidance. At commencement there will be 4 designated guidance providers appointed by the Treasury being the Pensions Advisory Service (TPAS) which will provide a telephone service and the three Citizens Advice Bureaus of England and Wales, Scotland and Northern Ireland which will provide a face to face service.

- 1.8** In addition, given the importance to consumers using the Pension Wise service, the consultation paper is also likely to be of interest to:
- consumer representative bodies interested in the outcomes of Pension Wise
 - charities and other organisations with a particular interest in retirement advice and
 - individual consumers
- 1.9** It will also be of indirect interest to providers of and advisors on pensions and retirement income products as well as trustees of DC pension schemes.

Is this of interest to consumers?

- 1.10** By setting and monitoring standards for designated guidance providers, we aim to help protect consumers using Pension Wise. Our approach to monitoring and our policy on making recommendations may be of interest to consumers who intend to use or are considering using Pension Wise once it is operational.

Context

The 2014 Budget reforms

- 1.11** The 2014 Budget announced fundamental changes to the options consumers will have for accessing their DC pension savings at retirement. From 6 April 2015, consumers from the age of 55 will be able to:
- take their pension savings as cash (in one lump sum or in smaller amounts over time²)
 - buy an annuity (or other income generating guaranteed products that may emerge)
 - use drawdown but without any limits applied
 - use a combination of these
- 1.12** To support this increased flexibility, Pension Wise is being introduced to help empower consumers to make informed and confident decisions on how they use their pension savings in retirement. People will not be required to take this guidance to access their pension savings, but they will be directed to do so before they make a decision.

² This is termed an 'uncrystallised pension fund lump sum' or 'UFPLS' within the Taxation of Pensions Act 2014

The FCA's role in delivering Pension Wise

- 1.13** The organisations appointed as designated guidance providers will not be regulated as authorised firms by the FCA for the delivery of the guidance service. However, the Government is placing a duty on the FCA to set standards and to monitor the designated guidance providers' performance against these standards. It is also affording us powers to require information for these purposes and to make recommendations to the designated guidance providers and the Treasury as necessary.
- 1.14** The Treasury is responsible for appointing the designated guidance providers that will be subject to the standards regime, and will ultimately be responsible for ensuring designated guidance providers take action in response to FCA recommendations. The Treasury also has overall responsibility for implementing and delivering the service.

Summary of our proposals

- 1.15** Chapter 2 introduces our proposed policy on making recommendations contained in Annex 1. Annex 1 contains the proposed policy including details of what we have to do in making recommendations, when we might make them and the process we will follow.
- 1.16** We intend to publish this policy as guidance on the same webpage as the standards rather than as part of our Handbook.
- 1.17** In Chapter 3 we give some more detail on our monitoring approach.
- 1.18** The costs and benefits associated with this are included in the Cost Benefit Analysis on the Standards we recently published.³

Equality and diversity considerations

- 1.19** Under the Equality Act 2010, we are required to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions.
- 1.20** As part of this, we have assessed the likely equality and diversity impacts and rationale of these proposals through an Equality Impact Assessment, and concluded they do not give rise to any concerns for particular groups as a result of any protected characteristic. Comments are still welcome.

Next steps

- 1.21** Please send us your comments on our proposed approach to making recommendations by 8 May 2015 using the online response form or using the address on page 2 of this paper.
- 1.22** We will also continue to consult with the Treasury about our plans throughout this period.
- 1.23** Once we have considered responses to this Consultation Paper, with the Treasury's consent we plan to publish a Policy Statement on the finalised recommendations policy and feedback in the summer.

³ www.fca.org.uk/your-fca/documents/ps14-17-cost-benefit-analysis

2. Policy for making recommendations

- 2.1** In this chapter, we set out how we propose to make recommendations in relation to the designated guidance providers' adherence to the standards set out for Pension Wise. We also give an overview of the legislative context for our duties and functions in this area.

Context

FCA requirements

- 2.2** Where our monitoring of designated guidance providers indicates a failure to comply with the standards, we may recommend steps they should take to ensure they comply with the standards and rectify any breaches. We may also recommend they pay redress to those affected by the failure.
- 2.3** Following a recommendation to the designated guidance provider, we can then make a recommendation to the Treasury that they give a direction to the provider.
- 2.4** If we make a recommendation to the Treasury we must publish this recommendation unless we consider it would be against the public interest to do so or would be inappropriate for some other reason.

Recommendation policy

- 2.5** Under FSMA⁴ (as amended by the Pensions Schemes Act 2015), we must prepare and issue a statement of our policy on making of recommendations to designated guidance providers and to the Treasury in relation to breaches of the standards by the designated guidance providers. Before issuing the statement, we must consult the Treasury and publish a draft of the proposed statement to bring it to the attention of the public. We must consider any representations made within a specified time (in this case a one month consultation period) and then can issue the statement with the consent of the Treasury.
- 2.6** We may alter or replace the statement at any time subject to Treasury consent. The altered or replaced statement should then be published.
- 2.7** We set out in Annex 1 the Statement of policy for public consultation. It should be noted, that while this is our proposed formal recommendation policy, as part of our normal monitoring role, we may also discuss lower order issues with designated guidance providers to be dealt with under less formal action plans. This is consistent with our normal supervisory approach for authorised firms.
- 2.8** We intend to bring the agreed policy to the attention of the public by publishing it on the FCA website, but it will not be included in the FCA Handbook.

⁴ Section 333K of Part 20A to FSMA

- Q1: Do you have any comments on the recommendation process as outlined in the policy in Annex 1 ?**
- Q2: Is there anything else you think we should include in the policy in Annex 1?**
- Q3: Are there any other instances, other than those included in the policy in Annex 1, where you feel we should consider making a recommendation?**

Next steps

- 2.9** We would welcome any comments on the recommendation policy in the annex and, in particular, the questions posed above. We would expect these mainly to be from the designated guidance providers and possibly some interested consumer representative bodies but will be happy to take comments from others.
- 2.10** We have decided that a six week consultation period is appropriate, given the nature of the policy, and would ask for any responses by 8 May 2015. We will, of course, continue to discuss this policy with the main stakeholders during this period.

3. Monitoring approach

- 3.1** The standards set by the FCA are designed to secure an appropriate degree of protection for users of Pension Wise. The ongoing monitoring of compliance with these standards is vital in ensuring this is achieved.
- 3.2** Each year we will gather evidence on whether each of the standards is being met through for example: regular Management Information (MI); direct self-assessment by the designated guidance providers; FCA-commissioned market research on users of the service; designated guidance provider assessments and discussions with stakeholders such as consumer organisations.
- 3.3** We will be asking providers to evidence their compliance with the standards. This will include the designated guidance provider's written documented processes; written quality controls; and data they use to monitor their compliance with quality controls.
- 3.4** While the monitoring process will be the same for all of the designated guidance providers, we may vary the self-assessment, to allow for differences in their operating models. Having analysed this information, we will arrange onsite visits, carry out file checks or call monitoring and possibly use mystery shopping as appropriate and necessary.
- 3.5** The legislation only requires us to monitor the designated guidance partners and not the other aspects of Pension Wise. However, to support our monitoring role (given the cross-cutting nature of the standards) we also intend to take account of other parts of Pension Wise including the website, contact centre and any providers that the Treasury may use for dealing with surges in work flows. This analysis is required to help us understand how the areas of the service we do not monitor affect the ability of the designated guidance providers to meet the standards.
- 3.6** Once we have completed our analysis we will discuss our findings with the designated guidance providers. We may also consider making a recommendation to the designated guidance provider and the Treasury. Examples of where we envisage that we will consider making recommendations to designated guidance providers and the Treasury are set out in Annex 1.
- 3.7** Monitoring will begin from the commencement of the service and we recognise the importance of ensuring providers' performance against standards from April. To this end we intend from the outset to put supervisory attention and resource into analysing the early MI, market research and feedback received to ensure that the providers are complying as expected.

Annex 1

Policy for making recommendations on designated guidance providers

Recommendation process

1. When we (the FCA) believe a designated guidance provider has failed to comply with a standard set under section 333H of FSMA⁵, we may recommend to the designated guidance provider steps that it might take to:
 - prevent the continuance or recurrence of the failure
 - make redress to those affected by the failure
 - both prevent the continuance or recurrence of the failure and make redress to those affected.
2. A recommendation to a designated guidance provider will typically follow from discussions with them as part of the monitoring process. Designated guidance providers will be informed as part of this process that we intend to make a recommendation and we expect we will normally give them two weeks to review and respond, although a shorter period may be appropriate in some situations. At this stage we would expect designated guidance providers to respond setting out any factual corrections and comments on any steps proposed in the recommendation e.g. whether they can be practically achieved.
3. The recommendation, once made, will be set out clearly in writing, stating clearly at the outset that it is a recommendation made under s333J of FSMA. A recommendation made to a designated guidance provider will not be published. We would expect designated guidance providers to respond, normally within two weeks, outlining actions they propose to take to address the issues raised in the recommendation.
4. Having made such a recommendation we may recommend to the Treasury that it direct the designated guidance provider to take such steps or any others the Treasury considers appropriate to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure. This will typically occur in circumstances where we are not satisfied that the actions taken by the designated guidance provider are sufficient to address our concerns.
5. We would normally expect to address issues with the designated guidance providers in the first instance, before raising issues with the Treasury and publishing our recommendations as appropriate. However, we may vary this approach depending on the seriousness of the issue and the public interest in transparency. We may also proceed to making recommendations to the Treasury more quickly; this is more likely to occur in the circumstances set out in our general and contextual considerations outlined below.

⁵ as amended by the Pension Schemes Act 2015

- 6.** We would expect disputes between individuals and designated guidance providers, whether they concern breaches of the standards or not, to be dealt with outside of our process, via the Pension Wise complaints procedure and, where appropriate, the Parliamentary and Health Service Ombudsman. While our monitoring would consider patterns of complaints in its analysis, the FCA is only likely to make a recommendation that a designated guidance provider make redress in a limited number of circumstances. These include, but are not limited to, where the designated guidance provider has breached the standards resulting in a financial loss for a significant number of individuals.
- 7.** We expect a recommendation to make redress to be comparatively rare. We would expect such a recommendation to follow our general process for making recommendations with the calculation of the level of redress based on the size of detriment experienced. Where a consumer has already received adequate redress, as set by the Parliamentary and Health Service Ombudsman, we would not require it to be paid again as a result of our recommendation.
- 8.** Before we make such a recommendation to the Treasury, we will give the designated guidance provider a copy of the proposed recommendations. At the same time, we will give the designated guidance provider access to material on which the proposed recommendation is based unless we consider, in the circumstances, that it is inappropriate to do so.
- 9.** The decision to make such a recommendation to the Treasury will be taken by a senior staff committee (up to and including the Executive Committee). The senior staff committee will be made up of FCA staff who have not been directly involved in establishing the evidence on which the decision is made.
- 10.** Each meeting of a senior staff committee will include:

 - i. an individual with authority to act as its chairman and
 - ii. at least two other members
- 11.** A senior staff committee will operate on the basis of a recommendation from a FCA staff member, and with the benefit of legal advice from a FCA staff member.
- 12.** The senior staff committee will be accountable for its decisions to the FCA Board.
- 13.** The designated guidance provider may contest our proposed recommendation to Treasury, and/or our publication of the recommendation, provided this is done within two weeks (or such shorter period as may be appropriate in the circumstances) of the designated guidance provider being informed of the recommendation.
- 14.** If the designated guidance provider asks to make representations in respect of the proposed recommendation to Treasury, or the FCA's decision to publish the recommendation, or part of it, the senior staff committee will decide whether this is appropriate and, if it is, how best to ensure that these representations are taken into consideration.
- 15.** The senior staff committee will determine what recommendation is made to Treasury, if any, and whether the FCA will publish the recommendation, or part of it, taking into account whether publication would be against the public interest, or would be inappropriate for some other reason. The FCA's General Counsel Division will advise the senior staff committee on the recommendation.

16. The monitoring powers provided to the FCA under legislation do not provide for designated guidance providers to refer FCA recommendations, or our decision to publish recommendations, to the Upper Tribunal. We anticipate that representations may be made to the Treasury.

When we might make a recommendation

17. In most cases, we will discuss our concerns with the designated guidance providers before making a recommendation to the designated guidance provider and the Treasury.
18. In general terms, we will consider making recommendations where we identify consumer detriment or a risk of consumer detriment, arising from the failure of a designated guidance provider to comply with the standards. We will generally have regard to the other considerations set out below (but, depending on the particular circumstances, may take into account other factors).

Contextual considerations for making recommendations

19. Our guiding principle is that we will be more inclined to make recommendations in circumstances where there is material or recurrent detriment occurring. In making the decision to recommend we will generally have regard to the following considerations:
- whether the breach had an adverse effect on the recipients of the guidance generally and, if so, how serious that effect was
 - whether the breach had an effect on particularly vulnerable people, whether intentionally or otherwise
 - where alternative market mechanisms such as improved information disclosure or competition could not generally be expected to address the concerns we have raised to protect consumers in the absence of specific recommendations
 - whether the recommendation or the timing of the recommendation would in itself create undue risk of further consumer detriment, including harm to those currently using the service.

General considerations for the content of a recommendation

20. In addition to the above, in determining what recommendation to make, we would expect to have regard to general considerations that include, but are not limited to, whether the recommendation is:
- a proportionate response to the nature and impact of the breach of the standard by the DGP
 - a proportionate and practical means of addressing actual or potential consumer detriment
 - supported by sufficient and appropriate evidence
 - clear and transparent in respect of the grounds and objectives for making the recommendation
 - likely to be beneficial for consumers of Pension Wise, when taken as a whole. In other words where our assessment of the benefits for users of Pension Wise collectively from making the recommendation outweighs any dis-benefit to specific users of the service.

- 21.** The FCA will also consider the risk that the recommendations have a negative impact on protected groups in the Equality Act and whether the recommendations can promote equality and good relations.
- 22.** Examples of where we might make a recommendation to a designated guidance provider and the Treasury, include but are not limited to, circumstances where we believe that:
- a designated guidance provider’s non-compliance with FCA standards poses a serious threat to consumers
 - there are issues that indicate a widespread problem or weakness at a designated guidance provider
 - a designated guidance provider has failed to comply with an action plan (agreed with the designated guidance provider further to our monitoring of the designated guidance providers and prior to making any recommendations)
 - a designated guidance provider failed to bring the potential breaches of FCA standards to the attention of the FCA
 - the conduct in question is particularly egregious
- 23.** However, these are simply illustrative examples and not an exhaustive list of potential scenarios. In practice additional considerations may apply.

Annex 2

List of questions

- Q1:** Do you have any comments on the recommendation process as outlined in the policy in Annex 1 ?
- Q2:** Is there anything else you think we should include in the policy in Annex 1?
- Q3:** Are there any other instances, other than those included in the policy in Annex 1, where you feel we should consider making a recommendation?

Annex 3

Compatibility Statement

- 1.** This annex explains our reasons for concluding that our proposals relating to the recommendation policy in this consultation are compatible with certain requirements under FSMA.
- 2.** We are required to publish a draft recommendations policy under section 333L(1)(b) of FSMA (as inserted by the Pension Schemes Act 2015) as part of our new duties to set and monitor standards on the delivery partners involved in Pension Wise.
- 3.** We are required by section 333O of FSMA to discharge our general pensions guidance functions with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated guidance providers. The relevant pensions guidance function for this consultation is referenced in section 333O(3)(b) of FSMA and is our policy on making recommendations under section 333J of FSMA. Our requirement to consult the Treasury and the public on this policy is contained in section 333L of FSMA.
- 4.** Our proposed policy set out in this consultation is intended to discharge our general pensions guidance functions so far as they relate to our policy on making recommendations, and in doing so we have had regard to our strategic and operational objectives in section 1B(2) and (3) of FSMA and the regulatory principles in section 3B of FSMA.
- 5.** We decided on a six week consultation period due to the short timescales before the wider retirement reforms come into effect and the limited number of organisations directly affected by the Policy.

Financial Conduct Authority



PUB REF: 005025

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London E14 5HS
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