

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Sandra Graham and David Berenbaum
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp19-25@fca.org.uk

30 October 2019

Dear Sandra and David

Financial Services Consumer Panel (The Panel)'s response to CP 19/25 Pension Transfer Advice: Contingent Charging

The Panel welcomes the opportunity to respond to this consultation to express our support for the banning of contingent charging.

As we have said before, contingent charging is, effectively, commission. Payment for advice that is dependent on whether 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 to transfer or not. 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 - arguably one of the most complex and crucial areas of advice given to people in a range of circumstances, including the most vulnerable.

The FCA has stated 'given the advantages of DB pensions, the proportion of consumers advised to transfer is too high and many of these transfers will not have been in consumers' best interests.' 69% of consumers are advised to transfer despite the FCA's guidance stating that it would be in the consumers' best interests *not* to do so. This is £1.6bn to £2bn of consumer harm each year,¹ and evidence enough that FCA intervention to address this is much needed and welcomed by the Consumer Panel.

We are concerned that the role of MAPS has not been fully integrated into the identified solution to reduce detriment. Matters such as triaging and abridged advice would benefit from MAPS being the provider. The resource implications seen as a barrier to this should be reviewed with MAPS in the context of their new business plan.

Yours sincerely

Wanda Goldwag
Chair, Financial Services Consumer Panel

¹ <https://www.fca.org.uk/publication/consultation/cp19-25.pdf>

FCA questions

Q1: Do you have any comments on the intended commencement dates of our proposals or the draft Handbook text set out in Appendix 1?

The dates seem reasonable and should not be any longer. The detriment currently, as suggested by the FCA, is considerable and delays without justification are unacceptable. The onus will be on the FCA Board to ensure that they receive a speedy report from this consultation so that action can be initiated.

Q2: Do you agree that a ban on contingent charging is likely to be effective in reducing the numbers of consumers receiving unsuitable advice? If not, how would you suggest we effectively reduce the numbers of consumers receiving unsuitable advice? Do you think we should address the conflict of interest issues differently?

We agree with the FCA that banning contingent charging protects consumers by reducing the likelihood of biased advice to transfer or convert their DB pensions.

A ban on contingent charging is the only reliable way to reduce unsuitable advice. This may limit access to advice for some consumers, but the 'carve out' should mean that those most likely to benefit from a transfer, and being in an extreme category of vulnerability, will still be able to access advice.

However, the FCA should be prepared for a reduction in the number of firms willing to provide the service for other reasons – namely the restrictive terms being offered by PI Insurers acknowledged in section 1.11 of the consultation paper.²

The FCA appears to have thoroughly considered the alternative of managing conflicts of interest through management accountability and rejected it. We agree with the conclusions.

Q3: Do you agree that the way in which we have set out the ban should be effective and adequately reduces scope for gaming? If not, how should we amend it?

By imposing a restriction so that a fee must be charged irrespective of whether the advice is to transfer or not to transfer, is the only effective way to stop gaming. We welcome the clarification to firms in section 3.21 of the consultation paper.

Q4: Do you agree with the scope of the proposed carve-out and our proposals for monitoring its use? If not, how would you change it?

We understand the motivation of the FCA to create a category of exceptional circumstances which would not be included within the ban on contingent charging. However, we want to ensure that those in this category are not subject to new detriment, nor is this a future gateway for new exceptions to the ban.

To protect these consumers from poor advice to transfer, the proposal assumes suitability rules will protect them but, we would prefer an initial assessment to be undertaken via MAPS.

² <https://www.fca.org.uk/publication/consultation/cp19-25.pdf>

A mandatory referral to MAPS would be preferable, but as regulation is currently drawn this appears not to be possible. Therefore, as good practice, advisers should recommend that consumers in exceptional circumstances take guidance from MAPS on their circumstances, and what a reasonable cost might be. In an engagement letter, the FCA might mandate information to be provided specifically to those in exceptional circumstances.

The FCA proposes no fee for advice would be higher than for other consumers and that is most welcome. In the absence of a reference price, this will be difficult to determine at the point of advice being given. While Supervision teams will give a retrospective view, we believe as much as possible needs to be done to prevent detriment from the outset.

The FCA plans to review the new rules in practice, and a specific review of the exceptional category, not subject to the ban, should be undertaken within 12 months from the commencement of the new approach. Specific attention should be given to firms that concentrate on consumers in exceptional circumstances in their marketing, or have a disproportionate percentage of such consumers in their caseload.

Q5: Do you agree with our decision not to propose a price cap? If not, how could the shortcomings of a price cap be overcome?

The FCA consultation indicates that a price cap has been ruled out because it does not entirely remove the inherent conflict of interest within contingent charging.

We strongly agree a price cap would not be as effective as a ban on contingent charging. Mitigation measures on access and guidance are the route to consider and develop.

Q6: Do you agree that changes to our existing conflict of interest and accountability rules would not effectively address the harm to consumers occurring in this market? If not, what changes to systems and controls would be most effective?

We agree that the limitations for the impact of changes for the existing rules would not be as effective as a ban on contingent charges.

Q7: Do you agree that separating responsibility for transfer advice potentially has unintended consequences that may not be in clients' best interests? Are there any ways in which a separation of advice or independent checking of transfer advice could work effectively?

Separating responsibility for transfer advice may not be in the clients' best interest as indicated.

Q8: Do you agree that banning percentage charging is unlikely to have a significant impact on consumer outcomes? If not, how could it be used effectively?

We agree that *on its own* this would not address the conflict of interest issues.

Q9: What are your views on the potential for 'scheme pays', changes to the pension advice allowance and partial transfers to improve the quality of advice or address conflicts of interest adequately, or both?

If the overall aim of the intervention is to reduce consumer detriment by reducing the numbers of consumers actually transferring against their interests, then allowing either a 'scheme pays' option or 'pension advice allowance' is only going to muddy the waters. The FCA could review this after the operation of the new rules.

Q10: Given the time frames that apply to guaranteed transfer values, what are your views on the need to provide guidance to members considering a pension transfer? Should guidance be mandatory and, if so, who should deliver it?

We support the idea that MAPS has a significant role to play in guidance on transfers and the role could be developed with the FCA for implementation of the ban. It is for the FCA and MAPS to determine how this would work and be resourced. Individual sessions with consumers about pensions and divorce; self-employed mid-life MOT, and Pension Wise sessions are a guide to what a pension transfer 'session' could be developed into. With the FCA consistently finding that only half the advice to transfer is suitable, and with unsuitable advice on DB transfers potentially costing the consumer billions a year, the detriment is high enough to justify the adequate resourcing of MAPS for this function.³

Undoubtedly, mandatory advice gives the prospect of greater protection against the wrong decision being taken by a consumer, but the consultation flags up the logistical problem of time frames to require that. It is a matter where the logistics would need to be agreed with MAPS, if MAPS was to be the provider.

Q11. Do you agree with our additional guidance on triage services? If not, please indicate alternative ways of addressing the issue.

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 MAPS. 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.⁴ 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.

Q12: Do you agree with that our proposed abridged advice service will enable firms to provide a low-cost alternative to full advice for those consumers that need it? If not, how would you suggest we amend it?

The concept of abridged advice has merit but it seems wise for a wholly impartial and independent organisation (i.e. MaPS) to provide this 'abridged advice'.

However, if the FCA decides to allow abridged advice to be offered by firms it will be necessary for the FCA to review what happens in practice. How will consumers, where the advice is not to transfer or convert but who decide that course of action, find a firm to arrange this? There must be no conflicts created by arrangements between firms.

In our response to the Improving the Quality of Pension Transfer Advice consultation,⁵ we said "*individuals should be encouraged to seek advice before they commit to*

³ <https://www.fca.org.uk/publication/consultation/cp19-25.pdf>

⁴ <https://www.fca.org.uk/publication/consultation/cp18-07.pdf#summary> pg. 17

⁵ https://www.fs-cp.org.uk/sites/default/files/fscp_response_to_improving_the_quality_of_pension_transfer_advice.pdf

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 [now MAPS]. 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."

Q13: Do you agree that requiring firms to demonstrate that an alternative scheme is more suitable than a WPS is the most effective way to reduce the numbers of consumers being transferred into schemes that do not meet their needs and limit unnecessary charges paid? If not, how would you suggest we address this issue more effectively?

Having firms demonstrate suitability with a rule analogous to RU64 would be appropriate. The benefit of a WPS in terms of lower charges and governance protection, means that such a rule would be sensible. The exceptions in 4.8 – 4.10 for the basis of a suitability test under a RU64 type rule.

Q14: Do you agree with our proposals for requiring the disclosure of charges in engagement letters? If not, please indicate what alternatives should be considered.

Disclosure should always be presented at the right time and in the right way. The initial charging disclosures are poor and improvements are welcome.

We would be concerned that confusion could arise between abridged/full advice if that is introduced for firms to offer without adequate consumer testing of disclosure literature, if consumers are to understand the charges they will pay initially and for ongoing advice.

Q15: Do you agree with our proposals to introduce a one page summary at the front of a suitability report? If not, please indicate what alternatives should be considered to improve disclosures to consumers.

Yes. Excessive information may overload rather than inform or engage. More does not mean better.

Q16: Do you agree with our proposal to require that suitability reports are always provided before a transaction is undertaken?

We agree but the FCA will have to provide good examples of 'best practice.' We have seen before how different firms can interpret rules and use very different language. There should be prescribed text that all firms must use and that is suggested by the FCA.

The FCA has done this for disclosure and risk warnings on pension freedoms that have to be provided by pension providers – so there is no reason why content that intermediary firms undertaking pension transfers, could not be prescribed.

Q17: Do you agree with our approach to checking that the client has a reasonable understanding of the risks of proceeding? If not, what alternative approaches might achieve the same outcome?

Consumers as reported in section 5.17 have low levels of pension knowledge and capability to make an informed decision. We agree with the concept of checking understanding of risk but, Supervision will need to ensure it is being effective. The more sophisticated approach identified in section 5.19 may need to be revisited in due course.

Q18: Do you agree with our proposals to introduce CPD requirements for PTSs? If not, what other approaches could be used to help PTSs maintain knowledge?

Yes – a CPD requirement is important.

Q19 –Q29 We do not intend to reply to these questions