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21 June 2016

Dear James and Philip,

**CP 16/12 Secondary Annuity Market – proposed rules and guidance**

This is the response of the Financial Services Consumer Panel (the Panel) to the FCA's consultation on proposed rules and guidance for the secondary annuity market.

In our response<sup>1</sup> to HM Treasury's (HMT) call for evidence on creating a secondary annuity market we expressed serious concerns about the potential for consumer detriment. We urged the government not to proceed with the proposals without robust analysis to ascertain the impact on the supply and demand for annuities in the primary market, and the money's worth of those sold in the secondary market.

Although the government delayed implementation to 2017, we are disappointed that HMT did not use the interim period to undertake market and economic analysis as we suggested. In view of this, our concerns remain. We would urge the government and the FCA to keep this market under review, and intervene if it appears it is not working well for consumers.

We appreciate that the FCA has put in a lot of effort to ensure suitable consumer protection is in place. The proposals for regulation outlined in this consultation are robust, comprehensive and reflect the high-risk nature of the market and the potential vulnerability of many of the individuals who will transact within it.

We are in broad agreement with the proposals, but have some concerns about how providers will formulate a quote; and the lack of an independent comparison tool that will allow consumers to compare quotes from across the whole market, whether or not they choose to use an adviser or broker. This is vital, as advisers and brokers will be permitted to deal with restricted panels of buyers.

The 'value' which determines whether or not an individual must seek advice should not be the capital value of the annuity in the secondary annuity market, but expressed as a percentage of the individual's overall income. We understand that this may be a more complex process than focusing on capital value, but this is how the government can best

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<sup>1</sup> Response by the Financial Services Consumer Panel to HMT's call for evidence on creating a secondary annuity market, June 2015: [https://www.fs-cp.org.uk/sites/default/files/fscp\\_response\\_-\\_secondary\\_annuity\\_market\\_june\\_2015\\_0.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_response_-_secondary_annuity_market_june_2015_0.pdf)

satisfy its policy objective of ensuring "*consumers are empowered and equipped to make the most of their assets, and to make decisions that best suit their personal circumstances and risk appetite for the duration of their retirement*"<sup>2</sup>.

Finally, we note the FCA will be consulting on the standards for extending Pension Wise later in 2016. We urge the FCA to propose that any Pension Wise adviser providing guidance on the sale of an annuity should be qualified to the same level as an authorised financial adviser providing regulated advice in this area.

Yours sincerely,

Sue Lewis  
Chair  
Financial Services Consumer Panel

## **Consultation questions**

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<sup>2</sup> Joint HM Treasury and Department for Work and Pensions, Creating a Secondary Annuity Market: Response to the Call for Evidence, December 2015, Paragraph 4.1:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/485286/creating\\_a\\_secondary\\_annuity\\_market\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485286/creating_a_secondary_annuity_market_response.pdf)

**Q1: Do you agree with our proposal to require specific risk warnings to be given to consumers at first contact? Would you suggest any changes to the format and content of the risk warnings?**

Yes, but risk warnings should also be repeated at subsequent points of contact to drive the message home, as selling an annuity could take some time.

The FCA should prescribe the format and content of risk warnings, and closely supervise how they are being delivered. We have seen time and time again that providers of financial services are notoriously bad at providing crucial information in a digestible format. A requirement to use FCA wording would also reduce the potential for confusion where consumers receive differently worded risk warnings from different providers.

Firms must also ensure that consumers read, and understand, the risk warnings and not (as often happens now) tell the consumer that this is just 'regulatory red tape' which can be put in a drawer.

We struggle to understand the benefit of the proposal that a firm doesn't need to issue risk warnings if a consumer can 'prove' they have already received them from another provider. Even if consumers have received a risk warning elsewhere, they may not have fully understood the implications. Receiving them with every enquiry can only heighten the importance of the transaction they are about to undertake. It should also be more straightforward for firms, especially if the risk wording is standardised, and protect them from future misunderstanding about whether or not the risk warnings were delivered or needed to be.

The FCA could learn a lot from the Pension Regulator's excellent 'scorpion' campaign<sup>3</sup> on pension fraud, which has clear risk messages and a compulsion on schemes to issue risk warnings every time they are contacted regarding transfer.

We also think the risk warnings should be seen as being issued by a regulatory or independent body as well as the buyer, adviser or broker. We suggest dual branding with either the FCA or perhaps the new pension guidance body.

**Q2: Do you agree:**

- **That at first contact all sellers should be:**
  - **informed about the compulsory advice requirement**
  - **given a recommendation to take advice and/or Pension Wise guidance**
  - **given a recommendation to shop around**
- **That annuity providers should check that legally required 'appropriate advice' has been taken, by receiving confirmation in a durable medium, prior to proceeding with annuity income sale?**

Yes, however The FCA should learn from the advice requirements for the transfer of safeguarded benefits. There has been a high level of confusion amongst providers on what they should and shouldn't do and a high level of frustration amongst consumers who have struggled to find the advice they need. There appear to be very few financial advisers willing or able to provide regulated advice on the transfer of safeguarded benefits (we believe due primarily to restrictions from their professional indemnity

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<sup>3</sup> <http://www.thepensionsregulator.gov.uk/pension-scams>

insurer)<sup>4</sup>. These problems must not be repeated with the secondary annuity market.

The recommendation to shop around is essential, however unless this is easy to do, consumers simply will not do it. Consumers need an independent, separately branded, online comparison table. All potential buyers of annuities should provide 'real time' quotes to ensure the table is up to date. It should also be available to Pension Wise advisers to take consumers through if they do not have access to online tools or do not wish to use them.

**Q3: Do you agree with our proposals that at first contact all sellers should be informed about the possible need for contingent beneficiary consent, and that the FCA should make rules in relation to contingent beneficiary consent?**

Yes. In making rules, FCA should make clear the standard expected of the provider in discharging this duty (e.g. if it is reasonable endeavours, what does this mean in practice?).

**Q4: Do you agree that, at first contact, all sellers should be informed about:**

- **the ancillary costs the relevant firm reasonably believes it may charge for**
- **the possibility that the relevant annuity provider may cover its costs, directly or indirectly from the seller?**

Yes. There should be full disclosure of all costs and charges a consumer may encounter during a secondary annuity sale. If the sale is through a broker or adviser it should be the responsibility of the intermediary to disclose all costs (their own and the buyers' costs). In addition providers should publish their costs so that intermediaries can advise the consumer of their provider's costs.

**Q5: Do you agree with our proposals on panel disclosure rules?**

We would have preferred all brokers and advisers involved with this market to be forced to provide a whole of market service. There will always be some consumers who do not understand the implications of a restricted panel and believe they have 'shopped around'.

However, if restricted panels are to be allowed, we do agree that the number of buyers on the panel should be disclosed to the consumer as early as possible in the transaction. In addition to the number of buyers the broker can choose from, the total number of buyers in the market should be stated so the consumer can judge, broadly, what percentage of the market they are making their choice from. So a statement along the lines of: *"We can provide quotations from 5 buyers. There are currently 25 buyers in the market"* should be contained in the disclosure documentation.

Restricted panels heighten the need for an independent comparison table that contains details of all potential buyers in the market (similar to the Money Advice Service annuity comparison table).

**Q6: Do you agree that firms providing quotes should be required to:**

- **present quotes for annuity income in certain prescribed ways**

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<sup>4</sup> Financial Services Consumer Panel response to the joint HMT and FCA Financial Advice Market Review Call for Input, December 2015: [https://www.fs-cp.org.uk/sites/default/files/financial\\_services\\_consumer\\_panels\\_response\\_to\\_famr\\_24122015.pdf](https://www.fs-cp.org.uk/sites/default/files/financial_services_consumer_panels_response_to_famr_24122015.pdf)

- **provide the price comparator alongside their quotes for annuity income?**

Yes, but we have some concerns.

Whilst it is important for consumers to have some value to judge the quote against – it is equally as important for the consumer to have access to a tool that will show them the quote against all the other potential buyers in the market.

Currently this market does not exist and we have no way of knowing how these annuities will be valued. Therefore it will be imperative that consumers can compare quotes from all buyers across the market – in the same way they can do so when purchasing an annuity.

A comparison site could ask a few simple medical questions (in the same way as the Money Advice Service annuity comparison table<sup>5</sup> does) and also questions about contingent beneficiaries or whether any guaranteed periods exist. The key is that all potential buyers of annuities should be compelled to provide quotes through the comparison table so that consumers can compare across the whole of the market. If the comparison site asks medical questions this reduces the risk of providers choosing to provide an initial offer that could be reduced significantly once the underwriting process has been completed.

As the FCA suggests, all quotes for an annuity should also display the cost of buying that particular annuity on the open market. Only by comparing quotes across the whole market and then comparing the best quote against the value of the annuity in the open market will an individual be able to understand the value of the asset they want to sell.

In addition, initial offers may not include all costs for selling an annuity, particularly where a two-stage process is used. It is unclear when these additional costs will surface in the consumer journey and how much of an impact they will have on the initial offer.

**Q7: Do you agree that the 14 day stop period requirement should be extended to all secondary annuity market interactions?**

Yes. This should be clearly stated on all literature that accompanies the sale and buyers should be compelled to advise sellers verbally and in writing.

**Q8: Do you agree with our proposals on broker incentives and charging?**

Yes. We are really pleased to see the FCA banning commission on non-advised sales. This will make charges far more transparent and allow consumers to compare costs through both the advised and non-advised routes. We recommend that consumers using non-advised sales should get a statement that tells them clearly they are making their own decision and therefore losing the valuable protection afforded by the Financial Ombudsman Service.

Given the FCA has taken this stance on non-advised secondary annuity sales, we would encourage this regime to be extended to the purchase of annuities.

**Q9: Do you agree that the FCA should make rules requiring that an annuity provider can only cover reasonable costs when charging to help facilitate or execute an annuity income sale?**

Yes, but the FCA needs to stipulate what it considers 'reasonable'. What one provider

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<sup>5</sup> Money Advice Service Annuity Comparison Tool: <https://www.moneyadviceservice.org.uk/en/tools/annuities>

considers 'reasonable' may be very different to another. Charges should reflect the actual costs incurred by the provider in the transfer of the annuity. They should also be disclosed and itemised. The FCA should monitor costs and, if necessary, cap them.

**Q10: Do you agree with our proposals to continue to provide access to the ombudsman service in relation to the sale of annuity income on the secondary market?**

Yes.

**Q11: Do you agree with our proposal to continue to provide access to the FSCS in relation to the sale of annuity income on the secondary market?**

Yes.

**Q12: Do you agree with our proposal to continue to apply IPRU (INV) Chapter 13 to firms when these new regulated activities are their principal business?**

Yes.

**Q13: Do you agree that we should provide guidance reminding firms active in this market about their existing legal responsibilities in respect of sellers who may lack full mental capacity?**

Yes.

**Q14: Do you have any comments on our proposed amendments to FEES?**

No.