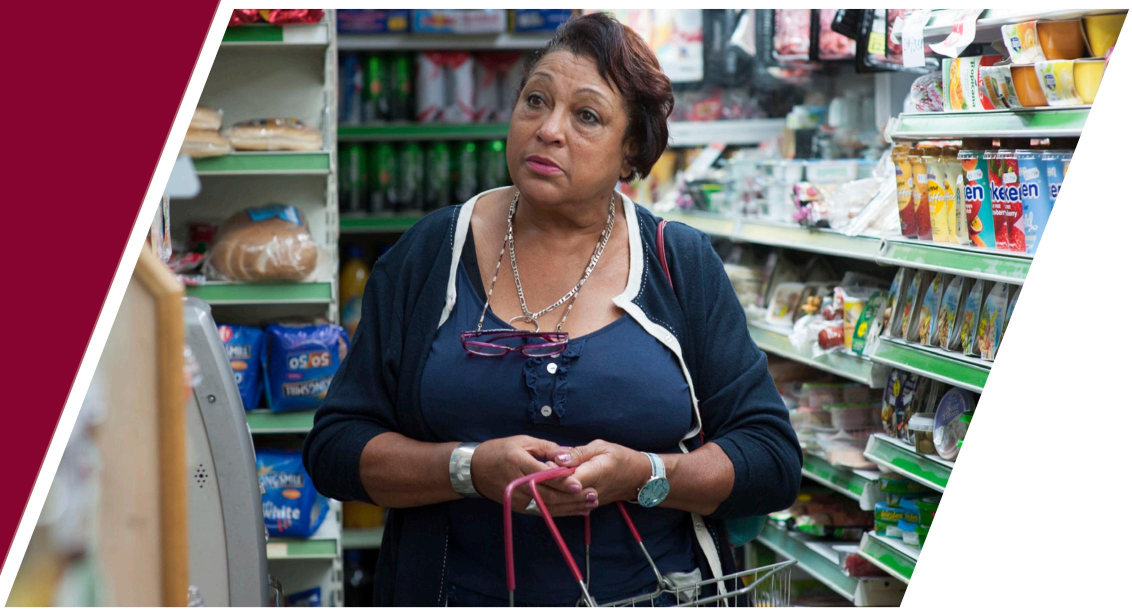
Financial Conduct Authority

Policy Statement

PS16/12

Pension reforms – feedback on CP15/30 and final rules and guidance



April 2016

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In this Policy Statement we report on the main issues arising from Consultation Paper 15/30 (*Pension Reforms – proposed changes to our rules and guidance*) and publish the final rules and guidance.

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Abbreviations used in this paper

ABI	Association of British Insurers
CETV	Cash Equivalent Transfer Value
CBA	Cost Benefit Analysis
COBS	Conduct of Business sourcebook
CONC	Consumer Credit sourcebook
CP	Consultation Paper
DB	Defined benefit
DC	Defined contribution
DP	Discussion Paper
DWP	Department for Work and Pensions
FCA	Financial Conduct Authority
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FG	Finalised Guidance
FAMR	Financial Advice Market Review
FRC	Financial Reporting Council
GAR	Guaranteed annuity rate
HNWI	High net worth investor
ISA	Individual savings account
KFI	Key Features Illustration
MCOBS	Mortgages and Home Finance Conduct of Business sourcebook
MiFID	Markets in Financial Instruments Directive

OMO	Open market option
PERG	The Perimeter Guidance Manual
PI	Professional indemnity
PIA	Personal Investment Authority
PPF	Pension Protection Fund
PRIIPS	Packaged Retail and Insurance-based Investment Products
PS	Policy Statement
RI	Restricted investor
RPPD	The Responsibilities of Providers and Distributors for the Fair Treatment of Customers
SIPP	Self invested personal pension
SMPI	Statutory Money Purchase Illustration
The Ombudsman	Financial Ombudsman Service
TR	Thematic Review
TVA	Transfer value analysis
UFPLS	Uncrystallised fund pension lump sum

1. Overview

Introduction

1.1 In October 2015 we published Consultation Paper 15/30: Pension reforms – proposed changes to our rules and guidance (CP15/30[1]). This followed a thorough review of our regulatory requirements in light of the Government's pension reforms.

1.2 This Policy Statement (PS) summarises the responses we received to CP15/30 and publishes final rules and guidance on the areas where we proposed changes to our Handbook. We also give an update on the areas where we invited discussion and set out our next steps.

Who does this affect?

1.3 This PS will be relevant to all those with an interest in the pensions and retirement space including:

- providers of pensions, including operators of self invested personal pensions
- providers of retirement income products
- trustees of Defined Contribution (DC) pension schemes (and schemes with a DC element)
- employer sponsors of Defined Benefit (DB) and DC schemes; both trust and contract based (and schemes with a DC element)
- providers of other financial services products that play a role in consumers' retirement planning
- individuals and firms providing advice and information in this area
- distributors of financial products, in particular retirement income products
- firms carrying out debt collection or giving debt advice
- trade bodies representing financial services firms
- consumer representative bodies

1 FCA, *CP15/30: Pension reforms – proposed changes to our rules and guidance*, www.fca.org.uk/news/cp15-30-pension-reforms

- charities and other organisations with a particular interest in the ageing population and/or financial services more generally
- individual consumers

Is this of interest to consumers?

1.4 The rules and guidance will affect consumers who have or will have, contract-based DC pension funds, or who will look to access their pension savings from a DC fund (including by transferring into a contract-based pension). The rules and guidance set out in this PS will play an important role in determining the way in which consumers interact with pension and retirement income markets now and in the future.

1.5 The guidance we are adding to our Consumer Credit sourcebook (CONC) will be of interest to consumers who may choose to use pension savings to pay off debt.

Context

1.6 Since the pension freedoms were announced in the 2014 Budget, we have made a number of necessary changes to our Handbook to protect consumers and ensure that firms were clear about our expectations in the new environment.

1.7 These changes were very much about supporting implementation of the reforms from April 2015. However we also wanted to take a step back and review all of our regulatory requirements in this area in light of the reforms.

1.8 We undertook this work in the first half of 2015. In doing so, we wanted to ensure consumers have access to products and services that are well governed and deliver value for money in competitive markets that work in their interests. Regulation plays a vital part in delivering these objectives by helping to protect consumers from poor outcomes. Specifically, regulation can ensure that products and services are designed and distributed in an appropriate way and that consumers are given the right information, at the right time, in the right way to help them make informed decisions.

1.9 As a result of our review we published CP15/30, in which we:

- set out our expectations regarding how our existing rules and guidance operate in the new environment, providing examples
- brought forward proposals for changes to our Handbook including improving disclosure and introducing a simpler risk warning process for consumers with small pots
- invited discussion on areas where we are minded to carry out further work
- asked for views on the range of information we intend to examine as part of the follow up to our Retirement Income Market Study[2]

2 FCA, *MS14/3.3: Retirement income market study: final report*, www.fca.org.uk/news/market-studies/retirement-income-market-study

1.10 The proposals in CP15/30 were designed to advance the following operational objectives:

- **Securing an appropriate degree of protection for consumers:** consumers will be given relevant, useful information in a form they can best engage with in order to help them make informed decisions about their pension savings that are in their best interests.
- **Promoting effective competition in the interests of consumers:** ensuring that consumers receive the right information, at the right time, should improve their confidence to make decisions and encourage them to shop around to ensure they get the right products and services for their needs. This will help drive competition in the market, ensuring that firms offer consumers products and services that meet their needs and offer value for money.
- **Ensuring markets work well:** ensuring that pension schemes are well governed and that regulated firms act in the best interests of customers, have appropriate oversight and are held accountable.

Summary of feedback and our response

1.11 Overall the majority of respondents broadly agreed with the proposed changes to our regulatory requirements. We received many useful comments on the proposals which, in some areas, have helped us to refine our rules and guidance, while remaining consistent with the original policy intention. We are therefore taking forward the proposals as consulted on with some minor adjustments set out below.

1.12 One area where we are introducing further flexibility, as a result of responses to CP15/30, is in our retirement risk warning rules. Here we are allowing firms delivering retirement risk warnings to start asking the consumer questions before the consumer has decided how to access their pension savings; firms will still be required to deliver the risk warnings after the consumer has made their access decision.

1.13 In a number of areas[3] firms felt that six months was not long enough to implement the systems changes required by our proposals. In respect of these changes we intend to delay the commencement date of the rules and guidance from six months to one year; we would however, encourage (and our rules will allow) firms to adopt these changes as soon as possible.

3 SIPP retained interest, pension freedom communications (except advice on pension freedoms), projections including guarantees and determining maximum projection rates.

1.14 Overall the final rules and guidance, as made by our Board, will do the following:

Chapter	Area	The final rules and guidance will:
Promoting competition	Communication concerning accessing pension savings	• Restructure and add application and purpose provisions to Conduct of Business sourcebook (COBS) 19.4. • Add guidance setting out non-exhaustive examples of good practice to assist firms in complying with the client's best interests and the fair, clear and not misleading communications rules whenever they communicate with customers about retirement options (whether these communications are made together with, alongside, or separate from the wake-up pack and reminder). • Prevent firms from sending application forms with wake-up packs and reminders. • Restrict firms sending illustrations (that are not requested or required) to only those that fulfil the purpose of comparing all the pension decumulation options offered by the firm, excluding small lump sum payments. • Require firms to make customers aware of the key factors relevant to the option they are seeking information about, and add guidance as to what the relevant factors might be for each option.
	Pension freedom communications	• Set out the methodology for firms providing illustrations to customers wishing to access their pension savings flexibly. • Remove the requirement to illustrate a future annuity when a customer goes into drawdown. • Where there is a planned pattern of regular withdrawals, allow firms to show the age of the consumer at the date when funds will expire at each of the assumed projection rates. • Set out guidance that provides a number of suggestions for the ways in which firms can provide information to customers on the sustainability of their income so that consumers have a better idea of how long their funds are likely to last. • Extend the rules and guidance in COBS 9 to uncrystallised fund pension lump sums (UFPLS).
	Self Invested Personal Pension (SIPP) retained interest	• Require firms to include SIPP retained interest in projections and charges information.
Ensuring the market works well	Design and distribution of retirement income products and facilities for accessing pension savings	• Retain our existing regulatory requirements in relation to the design and distribution of all retirement income products and facilities used for accessing pension savings, including new options available following the introduction of the pension freedoms. We expect firms to refer to 'The Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD) and ensure that both new and existing products are designed and distributed in the interests of their customers.

	Retirement risk warnings	• Retain our core rules on the retirement risk warnings but introduce flexibility to allow firms to start asking the consumer questions (to identify which risk warnings should be given) before the consumer has decided how to access their pension savings. Firms are still required to give risk warnings after the consumer has decided how to access their pension savings. • Remove the requirement for a firm to go through the question and answer process of the rules where a consumer has a pension pot of £10,000 or less and where there are no safeguarded benefits attached. Firms are still required to give appropriate risk warnings.
Protecting consumers	Cancellation rights	• Ensure that consumers continue to benefit from cancellation rights that already apply in our Handbook. In order to ensure appropriate consumer protection, we will continue to monitor the evolving market and consider whether appropriate regulatory action is required in the future.
	Restrictions on the promotion and distribution of high risk investments	• Amend our certification criteria for high net worth investors (HNWI) and restricted investors (RI) so that it is clear that, except where the withdrawals are used directly as income in retirement: – lump sum pension withdrawals are expressly excluded from the HNWI criteria – money released from pensions as cash is excluded from the definition of net investable assets for the purposes of HNWI and RI certification (in addition to the current exclusion of money held in pensions).
	Using pension savings to repay debt	• Add Handbook guidance to make explicit the application of existing rules in CONC. Particularly in relation to debt collection and debt advice on the issue of using pension savings to repay debt.
	Attachment orders	• Add Handbook guidance for providers and advisers on pension attachment orders following divorce or dissolution of a civil partnership.
	Determining maximum projection rates	• Standardise the methodology for determining maximum projection rates.
	Projections including guarantees	• Require firms to show contractually obliged future values in projections, including guaranteed annuity rates (GARs).
	Projecting a future annuity – mortality assumptions	• Update references in our rules to the 2008 mortality tables and set out that, in future years, firms should use the improvement factors published the previous year.
	Glossary amendments	• Amend the Glossary definitions of 'income withdrawals', 'short-term annuity' (and by consequence 'drawdown pension') to ensure that our rules align with legislation. • Add a glossary definition for small lump sum payment. • Amend our definition of 'pensions guidance' to allow for the change in control of Pension Wise from the Treasury to Department for Work and Pensions.

1.15 Stakeholders welcomed the opportunity to have early input on the discussion areas set out in CP15/30. In this paper we set out a summary of the responses received and our proposed next steps. We summarise our next steps below:

Area	Next steps
Non-advised annuity purchase	• We will gather evidence on the market and the issues involved and come to a view on the harm which could exist. • We will consider the extent of the issues and any associated detriment as part of our Retirement Outcomes Review. Any policy recommendations we decide to take forward would be consulted on after the conclusion of that Review.
Lifestyling investment strategies	• We will continue our supervisory monitoring of how firms' lifestyling investment strategies are evolving in response to the pension freedoms and review our requirements again if necessary.
Pension transfers	• Responses covered a wide range of issues and included a number of suggestions which we will consider in more detail as we look at possible policy options going forward. We will provide firms with a further opportunity to input into our developing thinking later in the year.
Product disclosure	• We have considered the responses carefully in light of the current environment and other priorities. We will not progress a full review of our product disclosure regime in the short-term. • We will still undertake work such as the projection rate review and can confirm that research for the next review will take place this year. Once this research is completed and peer reviewed, we will outline our proposed next steps in more detail. • Firms should also consider other areas of our work which have consequences for product disclosure and related client communications such as our work on Smarter Customer Communications[4] and TR16/2: Fair treatment of long-standing customers in the life insurance sector.[5] Firms will also need to be mindful of European initiatives such as PRIIPs.
Financial Services Compensation Scheme (FSCS) protection of pensions	• The responses have informed our thinking on the forthcoming review of the FSCS funding regime. • We will consider the responses again as part of the review, along with the recommendations of the Financial Advice Market Review (FAMR) and data on the types of products being sold post pension freedoms. This will allow us to form a view on the feasibility and affordability of any changes to the FSCS compensation limits. • We will consult on any changes to the FSCS funding regime later in 2016.

Next steps

What do you need to do next?

1.16 Firms that operate personal and stakeholder pensions will need to act to make the necessary changes to enable them to comply with the final rules once they come into force.

4 FCA, *DP15/5: Smarter consumer communication*, www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html

5 FCA, *TR16/2: Fair treatment of long-standing customers in the life insurance sector*, www.fca.org.uk/news/tr16-02-fair-treatment-of-long-standing-customers-in-the-life-insurance-sector

Commencement of the final rules and guidance

1.17 As a result of feedback received, we are delaying the commencement of the following proposals from six months to one year:

- pension freedom communications (except advice on pension freedoms)
- SIPP retained interest
- determining maximum projection rates
- projections including guarantees

1.18 While delaying the commencement dates for these proposals, we would encourage, and our rules will allow, firms to comply with the changes as soon as possible.

1.19 The final rules and guidance set out in this PS will come into effect on the following dates:

Area	Commencement date
Communications concerning accessing pension savings	10 October 2016
Pension freedoms communications (except advice on pension freedoms)	6 April 2017
Advice on pension freedoms (see page 23, paragraph 2.43)	25 April 2016
SIPP retained interest	6 April 2017
Retirement risk warnings – minimum pot size	25 April 2016
High net worth investors and restricted investors	10 October 2016
Using pension savings to repay debt	25 April 2016
Attachment orders	25 April 2016
Determining maximum projection rates	6 April 2017
Projections including guarantees	6 April 2017 (transitional available immediately)
Projecting a future annuity – mortality assumption	6 April 2017
Glossary amendments	10 October 2016

What will we do?

1.20 We are conscious that the market is still adapting and developing in light of the reforms introduced by the Government and through the consequential changes to regulation. We are continuing to monitor the market and, where necessary, we will consider further changes to our regulatory requirements as a result of market developments and changes in consumer behaviour.

1.21 The Retirement Outcomes Review is a follow-up to the 2015 Retirement Income Market Study[6] and will consider the impact of the pension reforms on competition and switching in the market. As set out in our Business Plan 2016/17[7], we anticipate that we will launch this work in Q2-Q3 2016.

6 FCA, *MS14/3.3: Retirement income market study: final report*, www.fca.org.uk/news/market-studies/retirement-income-market-study
7 FCA, *Business Plan 2016/17*, www.fca.org.uk/news/our-business-plan-2016-17

2. Promoting competition

2.1 In this chapter we summarise the feedback received, and provide our response on our proposals relating to:

- communications concerning accessing pension savings
- pension freedoms communications
- SIPP retained interest

Communications concerning accessing pension savings

2.2 In CP15/30 we set out our expectations of firms when communicating with their customers at retirement including proposals for the provision of timely, relevant and adequate information to:

- Encourage consumers to explore the full range of options for accessing their pension savings, including on the open market.
- Enable informed decision-making by consumers about the options for accessing pension savings at their intended retirement date and beyond.

2.3 Our proposals aimed to ensure firms do not direct consumers to specific options when they are seeking to access their pension savings.

2.4 In developing the proposals we considered the requirements of the Association of British Insurers (ABI) Code of Conduct on Retirement Choices (the ABI code)[8] as well as our own discussion paper DP15/5[9] and the changes in the pension landscape following the introduction of pension freedoms last year.

COBS 19.4

2.5 Most of our regulatory requirements for firms' communications with customers approaching retirement are set out in COBS 19.4. However, COBS 19.4 is not the only area of our Handbook that needs to be considered. For example, when communicating with customers about their options for accessing pension savings, firms must also comply with the client's best interests rule and fair, clear and not misleading communication rules (COBS 2.1.1R and COBS 4.2.1R respectively) as well as our Principles.

8 The output published in 2013 of a dedicated OMO Review Working Group, comprised of a wide range of stakeholders and chaired by the Department for Work and Pensions: www.abi.org.uk/Insurance-and-savings/Products/Pensions/Retirement-and-your-pension/Code-of-Conduct-on-Retirement-Choices

9 FCA, *DP15/5: Smarter consumer communication*, www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html

2.6 We proposed to restructure COBS 19.4 to more closely reflect the different elements of the typical customer journey. We also proposed to add guidance to the Handbook that effectively restates our existing expectations on firms and clarifies that these expectations extend to the full range of options in the new pensions environment.

2.7 As part of the restructure of COBS 19.4 we proposed to add application and purpose provisions at the beginning of COBS 19.4 to emphasise that the rules in this section of the Handbook apply in specified circumstances where a firm communicates with a customer about their retirement options. We asked:

> ***Q1:*** ***Do you agree with the proposal to add these application and purpose provisions in COBS 19.4?***

2.8 All but one of the respondents who commented on this question agreed with this proposal although there were a few who made additional comments or raised queries on specific issues.

2.9 A few respondents took the opportunity to say that providing a wake-up pack[10] four to six months before the customer's intended retirement date was too late. One respondent suggested that the use of intended retirement date was outdated and instead wake-up packs should be based on age 55. Several respondents also suggested that there was a need for more ongoing communications rather than a one off wake-up pack.

2.10 Two respondents requested clarification whether in COBS 19.4.5R(1)(c)(ii) "a further sum of money" included taking money from funds that had already been used for income withdrawals.

2.11 There was also some concern that using the term "adequate information" in COBS 19.4.4G was too subjective.

Our response

We are proceeding with the proposal.

We acknowledge the comments on the timing and frequency of wake-up packs. However, as set out in CP15/30, the wake-up pack rules set out the minimum requirements; firms can do more. For example, in DP 15/5 we encouraged firms to discuss with customers when and how they would like to be engaged with.

Firms should note that the wake-up pack is also required to be sent when customers ask for a retirement quotation and meet eligibility requirements for retirement before their intended retirement date and so the point of engagement also depends on when the consumer engages with the process (COBS 19.4.5R(1)(a)).

In COBS 19.4.5R(1)(c)(ii) "a further sum of money" does not include money from funds that have already been used for income withdrawals.

We consider "adequate information" is an appropriate requirement; ultimately it is for a firm to determine what is adequate in the context of their customers information needs. Further specification would, we believe, be unhelpful in restricting the flexibility for firms to respond to their customers' needs.

10 The open market option statement is commonly known as wake-up pack which we use in the rest of this paper.

Guidance on communicating about retirement options

2.12 In CP15/30 we proposed to add guidance to COBS 19.4 to assist firms in complying with the client's best interests rule (COBS 2.1.1R) and the fair, clear and not misleading rule (COBS 4.2.1R) when providing information in addition to the wake-up pack and six-week reminder. We asked:

> ***Q2:*** ***Do you agree with our proposal to add guidance on communications about retirement options?***

2.13 Of the respondents who commented on this question, the majority agreed that we should add the guidance. Those who disagreed with the proposal felt that the extra guidance might lead to information overload for consumers.

2.14 A number of respondents, as in Q1, also referred to the need to rethink the timing and frequency of the wake-up packs.

2.15 Some respondents asked for clarification regarding whether COBS 19.4.12R and COBS 19.4.13G are only required for firms that sell annuities.

2.16 One respondent asked if we could clarify if the wake-up pack would or would not fall within COBS 5.1 and COBS 5 Annex 1R as distance marketing information.

Our response

We are proceeding with the proposal.

We note the concern regarding too much information but consider that on balance the need for consumers to have access to all of the facts that they need to make an informed decision is more important. Firms should consider lessons outlined in DP15/5 – Smarter Consumers Communications[11], where we encourage firms to think carefully how they communicate and should seek wherever possible to empower consumers to take good decisions.

We highlight in our response to Q1 that the rules about timing and frequency of the wake-up pack are minimum requirements but firms may choose to do more.

COBS 19.4.12R and COBS 19.4.13G will apply to any firms that communicate with a retail client about their pension annuity options regardless of whether they offer annuities themselves.

It is for firms to determine whether they are undertaking distance marketing activity and therefore whether or not the Distance Marketing Directive requirements apply to their wake-up packs.

Prohibiting application forms in wake-up packs and reminders

2.17 As set out in CP15/30, we are concerned that sending out application forms for pension decumulation products with the wake-up pack or reminder undermines other efforts to encourage consumers to shop around.

11 FCA, *DP15/5: Smarter consumer communication*, www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html

2.18 We therefore proposed to ban the inclusion of application forms in wake-up packs and reminders. We asked:

> ***Q3:*** ***Do you agree with our proposed rule to prevent application forms being sent in wake-up packs and reminders?***

2.19 No one disagreed with this proposal.

2.20 A few respondents asked if it was acceptable to include a form to allow the customer to ask for more information. In addition, some asked if we would allow a form to defer retirement/change retirement age to be sent out.

2.21 Some respondents asked for clarity on the situation when a quote is requested which triggers a wake-up pack, whether an application form can be sent and whether links to application forms are prohibited under the rule.

2.22 One respondent asked whether application forms for small lump sum payments were covered by the rule.

Our response:

We are proceeding with the proposal.

The new rule will apply to application forms in any medium for a product. Forms which only allow consumers to change their retirement age or ask for further information are not product application forms and do not fall under this rule.

We consider COBS 19.4.8R and COBS 19.4.10R make clear that an application form for a product cannot be sent out with a wake-up pack even if the wake-up pack is triggered by a request for a quote by a consumer.

An electronic link to an application form would fall under our "durable medium" definition and therefore if provided with the wake-up pack would breach the new rules.

We have made a change to the definition of pension decumulation product to include small lump sum payments so that the new rules will also prevent firms sending application forms for these with the wake-up pack.

Restricting illustrations

2.23 CP15/30 proposed restrictions on the provision of unsolicited illustrations for pension decumulation products. Where provided these should only be for the purpose of comparing all the options offered by the firm. We asked:

> ***Q4:*** ***Do you agree with our proposal to restrict when firms can send illustrations?***

2.24 The majority of the responses agreed with this proposal. Some respondents were concerned that including illustrations for all products or a representative sample of the firm's products could be disproportionate and could confuse the consumer.

2.25 Many respondents felt we should go further and ban all unsolicited illustrations for a pensions decumulation product other than those required under COBS 14.2.1R.

Our response

We are proceeding with our proposal.

As we stated in CP15/30 we will continue to monitor the market and may consider banning unrequested illustrations in the future, if we identify that the new rules are disproportionate or lead to confusion for consumers or firms.

As the definition of pension decumulation product now includes small lump sum payments (which will not require illustrations), in COBS 19.4.11 R, we have specifically excluded small lump sum payment from being included as an option requiring an illustration.

2.26 We were also interested to hear of alternatives to these rules or to providing illustrations and why these might be more beneficial to consumers. We asked:

> ***Q5:*** ***Do you have any proposed alternatives?***
>
> ***Q6:*** ***In what ways would the alternative be more beneficial for firms and consumers?***

2.27 Some respondents commented that more could be done to promote interactive tools where outputs can be tailored to an individual's requirements. A few mentioned tools already provided by Money Advice Service and other independent services.

2.28 Respondents suggested that these tools could be simpler and less confusing than illustrations.

Our response

We agree that tools have the potential to aid consumers understanding of their retirement options and expect firms to consider using the tools that best support their customers' needs. As stated in CP15/30 we regard tools as distinct from illustrations.

Providing product information on request

2.29 In CP15/30 we proposed a rule requiring firms to provide customers with the information necessary to assess key aspects of a product relevant to their circumstances. We also proposed non-exhaustive guidance on what the key factors might be for the different options. We asked:

> ***Q7:*** ***Do you agree with our proposal to require firms to make customers aware of key factors relevant to the product the customer is seeking information for?***

2.30 Only one respondent disagreed with this proposal as they felt that it was overly prescriptive.

2.31 A number of respondents highlighted the fact that some of these factors duplicated or overlapped with the risk warnings required under COBS 19.7 and that this may lead to information overload for consumers.

2.32 Some respondents queried whether the factors set out in COBS 19.4.13 regarding communications about pension annuity options were also relevant for drawdown and UFPLS options.

2.33 There was also a concern that providing information on the sustainability of income could get close to giving advice.

Our response

We are proceeding with the proposal.

While inevitably there will be some crossover with the risk warnings in COBS 19.7, the risk warnings are delivered at the point the customer has made a decision (COBS 19.7.2R); whereas information about key factors is given at the point the customer is considering all of their options (COBS 19.4.12R; COBS 19.4.14R; COBS 19.4.15G).

This will help to ensure that the consumer receives adequate information prior to making a final decision. We understand the concern about information overload; however, on balance this is outweighed by the need to have all relevant information necessary to make an informed decision.

We did not specify how firms must comply with this rule. Firms have flexibility to adopt the most appropriate and effective mechanism for communicating this information to their customers. The risk of information overload is something that firms will need to take into consideration when deciding how to comply with these rules.

The factors in COBS 19.4.13G apply specifically to communications on pension annuity options but neither these, nor the factors in COBS 19.4.14R (which relate to communications about drawdown and UFPLS) are exhaustive. The drafting of the final rules and guidance confirms this.

Information about sustainability of income over time, including any guarantees and the implications of full encashment, can be given provided the information is fair, clear and not misleading and no recommendations are given.

It is important that the information firms may provide (other than the wake-up pack and reminder) at the latter stages of the decision-making process which is specific and focused to considering a particular option, does not undermine or compromise important messages provided to customers earlier in the process.

Q8: Do you agree with the factors we propose these are likely to be in relation to this rule?

2.34 All but two respondents who stated a position agreed with the factors proposed although several suggested other factors. These included mortality/longevity, interest rates, inflation and costs and charges.

2.35 Those who disagreed felt that the information was too prescriptive. A few respondents were concerned about information overload for consumers.

Our response

We are proceeding with the proposed factors.

We consider that some of the other factors suggested by respondents are inherent in our proposal. For example, mortality and inflation assumptions are part of the sustainability of income in drawdown or UFPLS.

The list we prepared is not exhaustive and firms can add other factors if they feel they are relevant. An exhaustive list would be too prescriptive and prevent firms adapting to changing environments.

However, we do agree that information about costs and charges is likely to be relevant and we have added this to the non-exhaustive list in the final rules.

We note the concern regarding too much information, but this must be balanced against the need for consumers to have access to all of the information that they need to make an informed decision. Firms' product governance arrangements should allow them to identify the information they should be providing.

Pension freedoms communications

2.36 We made a number of proposals in relation to the way firms provide product communications to customers who take advantage of pension freedoms. In general, our approach is driven by the need for customers to understand the importance of sustainability of income in retirement that they can reasonably expect to achieve from the level of pensions saving they have. Specifically, we proposed extending the current product disclosure requirements for income drawdown to UFPLS and removing the requirement to show a future annuity. We also suggested that instead of preparing long tables of fund and income projections at different growth rates, firms could instead show the age of the policy holder at which funds might expire. We also consulted on new guidance on ongoing reporting requirements when accessing pensions flexibly. We asked:

Q9: Do you agree with our proposals for providing product disclosures and information when accessing pensions flexibly? If not, what alternatives would you suggest?

2.37 The majority of respondents agreed with our proposals for product communications although some practical issues were raised. In general, the policy intent of focussing on sustainability of income was welcomed. Some respondents questioned how they should focus on sustainable income when a customer had taken a one-off or ad hoc withdrawal. This is particularly the case where the only access has been to take the pension commencement lump sum, and there may be no indication of when a regular income may start, if at all. Some respondents pointed out that projections following an UFPLS payment may be inconsistent with Statutory Money Purchase Illustrations (SMPIs).

2.38 One respondent considered that showing the income given up may be a way to better illustrate one-off or ad hoc withdrawals than a full illustration. Another thought that the removal of the requirement to show an annuity for flexi-access drawdown should be extended to all pension Key Features Illustrations (KFIs). One respondent thought the removal of the annuity projection would complicate critical yield[12] explanations while another asked for critical yield calculations to be removed.

2.39 The proposal to show the age at which funds would expire (rather than tables of projected figures) was welcomed by most although a minority of respondents thought that it would not be ideal to have projections being undertaken in different ways as it may confuse consumers. Another respondent thought there was already confusion due to the ability to show accessed funds on either a nominal or real basis, and considered this would increase as more people have both crystallised and uncrystallised funds.

2.40 A number of alternative and additional suggestions were made in the responses:

- average life expectancy could be shown on projections and ongoing communications
- further work is needed to make the projections regime work for fixed term annuities written under drawdown rules
- the introduction of mandatory risk warnings, for example, the risk of savings exhaustion akin to the standard mortgage risk warning that your home is at risk if you fail to keep up repayments, or a risk warning about making withdrawals during market setbacks

2.41 A small number of respondents disagreed with our proposals. Some of the reasons provided included the lack of such detailed requirements for alternative products such as Individual Savings Accounts (ISAs), a view that stochastic projections were necessary to show probabilistic risks and a perception that projections have a limited effect on consumer decisions. It was also considered that the draft rules will require multiple 'open market option' statements every time a projection is provided, which fitted poorly with existing rules. The proposals were also rejected by one respondent on the grounds that they differed from the modification by consent in requiring a projection when there is a withdrawal (variation) rather than simply 'sufficient information'.

2.42 A number of respondents commented on the challenging timeframes for implementation, especially for those who had not taken up the modification by consent.

12 Critical Yield requirements were laid out in Regulatory Update 55 (RU55), issued by the Personal Investment Authority (PIA) in August 1998. However, the FSA did not adopt the rules or guidance laid down by the PIA. It was confirmed in Handbook Notice 108 (para 4.37) that there is no requirement to provide critical yield information to consumers.

Our response

We are pleased that firms agreed with the need to provide product disclosures and communications which will be more meaningful to consumers, and more focussed on sustainability of income, and we plan to proceed with our proposals.

We have added additional guidance to the text we consulted on to make clearer our expectations in relation to providing ongoing communications following one-off or ad hoc withdrawals. We have reviewed how all of the rules work together to ensure they meet the policy intent and we are satisfied that they provide the relevant protections for consumers.

We believe the flexibility we are offering firms will enable them to tailor their communications more effectively for their own customer base. We remind firms that our rules in this area are minimum requirements and they are not prevented from adding other information, such as life expectancies or risk warnings where they consider it appropriate to do so, bearing in mind the need to maintain the readability of the documents and the risk of information overload. We would encourage firms to consider what meaningful information could be added in line with Principle 7 as long as it does not obscure the minimum information required by our rules.

We have previously explained that there is no requirement for firms to include critical yields in drawdown projections.

We are aware of the issues in relation to fixed term annuities and blended retirement products and encourage firms to engage with through the usual Supervisory channels if they are unsure how to apply the disclosure rules. Firms may also wish to engage with us if they are considering launching other innovative products which do not appear to fit easily into the disclosure regime.

In light of the feedback, we are delaying implementation of these rules to 6 April 2017 to give firms sufficient time to make system changes.

The current modification by consent of COBS 13 and 14 is due to be withdrawn on 31 October 2016. We are required to issue a new modification by consent to cover the period prior to 6 April 2017 so firms who wish to take advantage of it will need to notify the FCA. We hope that firms will look to introduce the changes as soon as possible and not necessarily wait until the final date to assist consumers who are accessing pension freedoms. We consider that there is nothing to prevent firms from adopting new approaches on ongoing communications (COBS 16) sooner.

We have undertaken a substantial amount of work recently on customer communications, both in the Smarter Communications project (DP15/5[13]) and as part of our Thematic Review on the 'Fair treatment of long-standing customers in the life insurance sector'.[14] When considering the content and structure of customer communications, firms are urged to consider the issues

13 FCA, *DP15/5: Smarter Consumer Communications*, www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html

14 FCA, *TR16/2: Fair treatment of long-standing customers in the life insurance sector*, www.fca.org.uk/static/documents/thematic-reviews/tr16-02.pdf

raised in these documents, and others, to ensure they are meeting the needs of their customers.

Advice on pension freedoms

2.43 We also made proposals in relation to advice on pension freedoms. In particular, we proposed that where our rules and guidance, on suitability reports and providing personal recommendations specifically refer to income withdrawals, they should be extended to include UFPLS. We asked:

> ***Q10: Do you agree with our proposals for extending the rules and guidance in COBS 9 to UFPLS? If not, please explain why you consider this is not appropriate.***

2.44 All but two respondents agreed with our proposal, noting that this ensures there is no bias introduced as a result of differing regulatory advice requirements when deciding between the two options. It was considered that the different tax treatments and potentially different charges justify the need for UFPLS payments to be covered in suitability reports. Some advisers stated they were already doing this.

2.45 The remaining respondents considered UFPLS to be a one-off payment with limited risk other than a reduction in the fund value and therefore reduced future income.

Our response

We are proceeding with the proposals. We consider that advisers have a responsibility to explain the implications attached to any pattern of withdrawals from an individual's pension fund.

SIPP retained interest

2.46 We consulted on the inclusion of the SIPP retained interest charge in product projections and effect of charges information in the KFI to ensure all costs and charges are transparent to consumers. This was driven by the uncertainty which currently exists in the market on whether these should be incorporated and the need to have consistency between SIPPs and other personal pensions to prevent SIPP providers from potentially having an unfair competitive advantage. We asked:

> ***Q11: Do you agree with our proposal to clarify that SIPP retained interest charges should be included in projections and charges information? If not, how would you suggest we level the playing field for disclosing charges between SIPP and other pensions?***

2.47 The majority of those responding to this question agreed with the proposals, although some alternative approaches were suggested by a small number of respondents. In general, respondents welcomed transparency and equivalent standards across all pension products. One respondent queried how SIPP providers had been able to avoid disclosing the retained interest charges in projections and charges information to date. It was also considered that the lack of transparency incentivises SIPP providers to hold large amounts of cash for reasons that are not aligned with the interests of the customer. It was noted that the expected increase in drawdown SIPPs due to pension freedoms may lead to an increase in assets held as cash which increases the importance of ensuring the charges are fully transparent. There was an impression amongst some respondents that the proposals would force SIPP providers to take a much-needed step towards greater transparency. One respondent with data on the SIPP market explicitly verified our estimate of the quantum of the undisclosed SIPP retained interest of £60m pa as being "of the right order".

2.48 A small number of those agreeing in principle to our proposal made some suggestions they thought more pragmatic, for example only applying the rules if a minimum cash balance existed, or using a constant margin based on historic data. A number of respondents requested more guidance on how to apply the rules in practice.

2.49 Just under a third of those responding to this question, mostly SIPP providers or representative bodies, disagreed with the proposals for a number of reasons:

- Some respondents considered that the cash account, as a transactional bank account, should not be subject to more stringent requirements than other bank accounts where there is no requirement to disclose the margin.
- Most of the respondents focussed on the transactional basis of the cash account. It receives investment income and pays various charges and retirement income, which means that the balance will be constantly fluctuating. It was considered that the fluctuating balance will make it too difficult to calculate the retained interest charge that might be levied.
- It was also suggested that retained interest should not be treated as a charge as the headline interest earned by the provider (which may be higher than they could obtain on an individual basis due to bulk purchasing power) is not available to customers anyway (unless the provider passed it on to the customer) and there is never an explicit charge to consumers.
- A number of firms told us that cash as a proportion of assets is very low so the retained interest charge is immaterial as well as commenting on falling margins due to restrictions on the assets which can be held.
- It was also stated that, unlike platforms, there is no ban on remuneration from sources other than customers, and SIPP operators often undertake administration activities for the banks in terms of managing the cash accounts.

2.50 Some of these respondents suggested that instead of incorporating the retained interest charge in projections, the wording of the current disclosure statement should instead be mandated (to include the gross rate, the margin and the net rate) as firms are currently interpreting the existing rule in different ways. It was also suggested that firms could report historic margins. It was requested that we provide clarification on the requirement to make a disclosure statement of retained interest "alongside" other charges information (COBS 13 Annex 3 1.2A R and COBS 13 Annex 4 1.2A). Another suggested it was sufficient to use the net interest rate to correct projections.

2.51 One respondent suggested the rules should go further and apply to other bank deposits held within SIPPs, as well as to other products which can hold cash accounts.

2.52 One software provider indicated that there appeared to be an oversight in the draft rules which only applied to SIPPs with facilitated adviser charges (COBS 13 Annex 4) and not those with non-facilitated adviser charges or commission.

2.53 One firm queried the comment in the CP15/30 text that "a personalised KFI will invariably be needed for a SIPP, rather than firms being able to rely on a generic KFI".

2.54 A number of respondents commented on the challenging timeframe for making changes.

Our response

We are proceeding with our proposals which should end the uncertainty around how to apply rules within SIPP KFIs. However, we have noted firms' concerns with the proposed implementation date and will delay the effective date to April 2017. We consider that the current rules do not preclude firms from introducing the requirements earlier and we urge firms to do so, in the interests of consumers; some firms have told us they already do this.

We do not consider that the reasons put forward for not proceeding are sufficiently robust. While cash accounts within SIPPs may be transactional, they still form part of a packaged product for which there are disclosure requirements. And these disclosure requirements generally require all charges to be disclosed where these result in a drag on investment. While SIPP retained interest may be implicit, rather than charged explicitly, our figures indicate that in aggregate it is a drag on returns of around £60m per annum. Therefore, in the same way as for any other asset, projections of future benefits from cash accounts should be projected at the gross rate and take account of future charges by using an appropriate figure for the retained interest charge.

We acknowledge concerns regarding the uncertainty of cash account balances although would note that this applies to a lesser extent to all assets, particularly where flexi-drawdown is being used. In the final rules, we have added additional guidance which may assist firms in the practical issue of determining the SIPP retained interest charge to be included in projections.

We confirm that the policy applies to all personal pensions where money is held within the scheme, whether adviser charges have been facilitated or not, as indicated in the CP15/30 text and Cost Benefit Analysis (CBA), and this is now reflected in the final rules in COBS 13 Annex 3.

Firms should note that the requirement to produce a disclosure statement of the SIPP retained interest "alongside" the other charges is contained in Annexes 3 and 4 of COBS which belong to COBS 13.4.1R (Contents of a Key Features Illustration). We would therefore consider it appropriate that the disclosure statement appears in the KFI alongside the other appropriate charges.

The use of generic KFIs was most recently consulted on in CP11/3[15] in light of the introduction of adviser charges and the use of group pension plans

15 FSA, *CP11/3: Product disclosure: Retail investments – changes to reflect RDR Adviser Charging and to improve pension scheme disclosure*, www.fsa.gov.uk/pubs/cp/cp11_03.pdf

for auto-enrolment. In PS11/14[16], we clarified that we would allow generic illustrations for Group Personal Pensions for subgroups of members but the rule reflects that this is only permitted for subgroups of members within a "default fund or other commonly selected fund". The adviser charges aspect of the rules was based on the premise that generic illustrations cannot reasonably provide potential investors with information to enable them to make an informed decisions where the charges vary from person to person.

We noted in PS11/14[17] that: "The number of potential variables for individual pensions that need to be reflected in a KFI means that few generic illustrations are produced."

Our rules[18] require that generic illustrations should not be prepared unless there are reasonable grounds for believing that it will be sufficient to enable a retail client to make an informed decision about whether to invest. We provide additional guidance that this is unlikely to be the case when investment returns on the product will be materially affected by the personal characteristics of the investor.

In light of this, firms need to consider carefully whether a generic illustration is appropriate for a SIPP which, by definition, is self-invested, and the assets selected for the SIPP are unique to each investor; consequently the investment returns and charges will also be individual to each customer.

16 FSA, *PS11/14: Product Disclosure: Retail investments – changes to reflect RDR Adviser Charging – feedback to CP11/3 and final rules*, www.fsa.gov.uk/pubs/policy/ps11_14.pdf

17 Ibid.

18 COBS 13.4.2R and COBS 13.4.3G

3. Ensuring the market works well

3.1 In this chapter we summarise the feedback received, and provide our response on our proposals relating to:

- the design and distribution of retirement income products and facilities for accessing pension savings
- retirement risk warnings

Design and distribution of retirement income products and facilities for accessing pension savings

3.2 In the context of the new pension flexibilities, existing products may now be used by different types of customer and in different ways, including through non-advised access to pension savings. In addition, many firms have developed, or are in the process of developing, a variety of new products and facilities for customers to access their pension savings.

3.3 Firms have important obligations under our rules regarding the operation, distribution and communication of existing products, as well as when developing new products or updating existing products. In CP15/30, we highlighted our regulatory guide 'The Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD), which gives our view on what the combination of our Principles for Business and our detailed rules require respectively of providers and distributors, in the circumstances set out in the guide, to treat customers fairly.

3.4 When firms make changes to the design and distribution of existing products, or where new pension and retirement income products are being developed, we said that firms should consider carefully their responsibilities under the RPPD, in particular where products are to be sold on a non-advised basis.

3.5 The RPPD applies across all regulated products. In CP15/30, we said that we did not believe it necessary to add any additional rules or guidance specific to pension and retirement products within COBS 19 at this time. We asked:

> ***Q12:*** ***Do you agree with our proposal not to add guidance at this stage to support firms in meeting their obligations to review the operation and distribution of products over time?***

3.6 Of respondents who commented on this question, the large majority agreed with our proposal not to add further guidance at this time. Respondents observed that 'the existing guidance in RPPD remains relevant' … '(RPPD) a reasonable set of rules' … 'suitable guidance is already in place' … 'firms should be sufficiently clear of their obligations without further guidance being added.'

3.7 One respondent considered that anything too prescriptive would be unduly burdensome on providers and distributors who are already dealing with an unprecedented amount of upheaval in the pensions area.

3.8 Some respondents agreed with our proposal but noted that the market is still evolving. These respondents thought that we should keep the decision under review since further guidance may be needed in the future. Respondents observed that additional data is required and we should wait to see how the market develops. One respondent commented that 'suggesting what the RPPD or any successor document should look like in the medium term is to put the cart before the horse.'

3.9 A minority of respondents disagreed with our proposal. This was primarily because they thought that further guidance now, with examples of best practice, would promote consistency and a proportionate approach across the industry. Some considered that further guidance would be helpful given the extent of the pension changes and because firms may have paid insufficient attention to this area in the past.

Our response

We are pleased that respondents generally considered that the RPPD remains relevant. We will not add any additional guidance specific to pension and retirement products within COBS 19 at this time. However, we refer firms to our draft guidance on the fair treatment of long-standing customers in the life insurance sector.[19] Our consultation on this draft guidance closes on 3 June 2016.

As target customers change and new products are developed, firms will need to consider their responsibilities and ensure that the design and distribution of their products remains appropriate for their customers. We expect firms to refer to the RPPD and ensure that both new and existing products are designed and distributed in the interests of their customers.

We will continue to monitor the development of these markets. While we believe that it would be premature and potentially counter-productive to provide detailed guidance on particular products at this time, we may consider further guidance in the future should we think this appropriate. We would consult on any future guidance.

19 FCA, *TR16/2: Fair treatment of long-standing customers in the life insurance sector*, www.fca.org.uk/static/documents/thematic-reviews/tr16-02.pdf

Retirement risk warnings

3.10 In CP15/30 we consulted on whether to retain the retirement risk warning rules that we published[20] without consultation in February 2015. These rules require firms to give consumers appropriate risk warnings when they access their pension savings. We asked:

> ***Q13:*** ***Do you agree that the rules in PS 15/4 should be retained? If not, please explain what change you would propose and why?***

3.11 Of the respondents who commented on this question the majority agreed that the rules should be retained.

3.12 A few respondents commented on the process of delivering the risk warnings in writing. One respondent acknowledged that there were different challenges when delivering risk warnings in writing compared to over the phone, however it was felt that the warnings could be given in a broadly comparable manner. Other respondents felt that giving risk warnings in writing was disengaging consumers and elongating the consumer journey when accessing pension savings.

3.13 Several respondents commented on validating the effectiveness of the rules, saying they should be kept under review and that the effect of the risk warnings on consumer behaviour should be understood.

3.14 A few respondents called for us to publish standardised risk warning statements for firms to use. Linked to this a couple of respondents suggested the risk warning process could be simplified to give generic key risks.

3.15 While agreeing that the rules should be retained, three respondents suggested alternative approaches. The first suggested the introduction of a cooling off/waiting period if the consumer has not sought guidance or advice. The second introduced the idea that the trigger could be based on the proportionality of the withdrawal. The third suggested we consider simplifying the process for high net worth individuals, particularly where the pension is not a significant part of their wealth.

3.16 A few respondents had specific questions on the operation of the rules. One respondent felt that the rules were not clear that risk warnings did not have to be given where an adviser is transacting on behalf of a client. Another respondent questioned whether the risk warning rules applied when a consumer withdraws their pensions savings as a small pot lump sum under regulation 11A of The Registered Pension Schemes (Authorised Payments) Regulation 2009 (SI 2009/1171). One respondent requested clarity on the reporting requirements set out in COBS 19.7.19. Finally another respondent asked for clarity regarding the requirements on the ceding scheme when an individual transfers their pension savings but the ceding scheme is only notified when they receive the transfer request from a third party.

20 FCA, *PS15/4: Retirement reforms and the guidance guarantee: retirement risk warnings*, www.fca.org.uk/news/ps15-04-retirement-reforms-and-the-guidance-guarantee

Our response

We are retaining the rules, with the additional flexibility described below. As we set out in CP15/30, we consider that the retirement risk warning rules are a proportionate response to our concern that the pension freedoms brought in an increased risk of poor financial outcomes if consumers accessed their pension savings without fully understanding the consequences of their decision.

Flexibility in the timing of asking the consumer questions
The policy intention of the rules is to engage consumers and give them tailored risk warnings when they have decided (in principle) how to access their pension savings, to help them understand the implications of the decision they are making. We do not believe that 'one and done' risk warnings (where the firm does not wait for a response to the question before providing the risk warning) engage the consumer or comply with our rules (except where using the minimum pot size rules, see below); however we do acknowledge the challenge of engaging consumers and in particular when giving the risk warnings in writing.

Given this, we have made a small change to our rules to allow firms to start asking the consumer questions (to identify which risk warnings should be given) before the consumer has decided how to access their pension savings. This does not represent a change of policy intention or a reduction of consumer protection. Firms will still be required to go through all of the steps in the existing risk warning process and give tailored risk warnings after the consumer has decided how to access their pension savings (therefore 'one and done' risk warnings will still not comply with the rules, except where using the minimum pot size rules). However, we are now giving firms some flexibility about the timing of the steps. We consider the change will improve the consumer journey. If firms use this approach they will be highlighting risks to consumers as they make their decision about how to access their pension savings, potentially better engaging consumers in the process and the decisions they have to make.

The change we have introduced is not mandatory; therefore we anticipate that firms will only make changes where it is cost effective to do so. Furthermore, we expect that where firms are delivering risk warnings in writing, they will link the process into existing communications, reducing the cost of changes to take advantage of the flexibility.

If firms choose to use this flexibility they will not know how the consumer wants to access their pension savings at that point. Firms should not use this as an opportunity to retain customers and/or seek to sell specific products or options for accessing pension savings. The important message of helping the consumer to understand all of the options they have and that they can shop around must not be undermined. Firms will also need to consider the information needs of the consumer and balance information overload with ensuring they ask the necessary questions to identify if risk factors are present and therefore which risk warnings should be given. Finally if firms use this flexibility they will need to ensure that the information on which they base the risk warnings is up-to-date, accurate and relevant at the time that they give the consumer the risk warnings. In this regard, firms should ensure that the consumer understands that the risk warnings they are being given relate to the information they have previously supplied.

Monitoring the rules
It is right that we monitor our regulatory requirements and keep them under review. We are monitoring our risk warnings rules as part of our supervisory work, which contributed to our work when reviewing the rules last year. As the freedoms bed in and the market and consumer behaviour develops we will consider whether further work is needed to monitor the effectiveness of the risk warning rules. We would also expect firms to monitor the effectiveness of their risk warnings and make changes as necessary.

Standardised risk warning statements
We are not going to prescribe the content or format of the risk warnings; this was discussed in both PS 15/4[21] and CP 15/30. Firms are best placed to identify the relevant risks for their customers and being more prescriptive would risk making the process and consumer journey rigid and turning it into a tick box exercise. Furthermore standardised statements would go against the policy intention of engaging consumers. When deciding how best to engage consumers, including which medium to use to deliver the warnings, firms should consider not just the business need but also what works best for their customers.

Alternative approaches
As outlined above we believe our rules are a proportionate response to our concerns. Other than introducing the flexibility in timing of the questions, outlined above, we do not intend to make changes to the rules at this stage.

Transacting on behalf of a client
COBS 19.7.2R states that the risk warning rules only apply when a firm communicates with a retail client. As such, if a firm communicates with a firm or adviser acting on behalf of the client, that firm or adviser will not be a 'retail client' under the agent as a client rule in COBS 2.4.3R. We consider that the rules are clear and do not intend to make any changes.

Small lump sum payments
It was originally intended that a consumer would be given risk warnings when they accessed their pension savings, regardless of pot size, unless an exception set out in the rules applied. This includes small lump sum payments under regulation 11A of The Registered Pension Schemes (Authorised Payments) Regulation 2009 (SI 2009/1171). However, inadvertently such payments were not included in the rules originally made. We have made a change to the rules to reflect the policy intention.

Risk warnings and transfer
As set out in in CP15/30, we do not intend to change the trigger for the risk warning process. While there may be situations where the consumer receives the risk warning twice, we believe this is preferable than the consumer not receiving risk warnings at all.

In the specific situation raised with us, when a firm only has contact with a third party who is facilitating the transfer of benefits, firms should note that the rules only apply when a firm is communicating with a retail client (COBS 19.7.2R). However, this doesn't prevent the firm contacting a customer directly if they believe certain risk warnings should be given, for example in relation to a guaranteed annuity rate.

21 FCA, *PS15/4: Retirement reforms and the guidance guarantee: retirement risk warnings*, www.fca.org.uk/static/documents/policy-statements/ps15-04.pdf

3.17 In addition to consulting on retaining the retirement risk warning rules, we also consulted on removing the requirement for firms to ask questions to identify whether risk factors are present (step 2 of the risk warning process) when a consumer has a pension pot below a minimum pot size, with no safeguarded benefits. In this situation firms would still be required to give the consumer generic risk warnings relevant to the way in which the consumer is accessing their pension savings. The proposed change does not prevent firms from going through step 2 if they consider that, given the circumstances, their customer would benefit from going through the full risk warning process. We asked:

> ***Q14: Do you agree with our proposal to remove the requirement on firms to go through step 2 of the risk warning process where the consumer's pension pot is below a minimum level and where there are no safeguarded benefits but that firms should still give the consumer relevant risk warnings? If not, why not and what alternative would you propose?***

3.18 The majority of respondents who commented on this question agreed with the proposal. These respondents welcomed the additional flexibility, commenting that this was a proportionate, cost effective approach that would improve the consumer experience when accessing their pension savings.

3.19 Those respondents who disagreed with the proposal commented that all consumers should be treated equally. Some consumers may have multiple pension pots under the threshold, which in aggregate could result in the risk warnings being beneficial to the consumer. Some firms commented that operationally it was simpler to have one process in place and that these processes had already been established to deliver the risk warnings, therefore they were unlikely to change their approach.

3.20 Some respondents seemed to misunderstand that under the proposed change firms will still be required to give generic risk warnings relevant to the way in which the consumer is accessing their pension savings. These respondents suggested that no risk warnings would be given at all under the proposal, which is not the case.

3.21 Two respondents questioned whether for very small pension pots risk warnings were needed at all. In these cases it was suggested that the risks to consumers were minimal and that requiring firms to give risk warning could be disproportionate.

3.22 One respondent commented that, as currently drafted the rules require firms to give risk warnings for all options for accessing pension savings rather than specific to the way in which the individual is accessing their pension savings.

Our response

We are proceeding with the proposal to include a minimum pot size rule.

We acknowledge the comments of those respondents who disagreed with the proposal however we believe this is an appropriate and proportionate approach for those consumers who have small pension pots. Furthermore the change does not prevent firms from continuing with the full risk warning process if they wish to do so or they consider their customers would benefit from this.

As set out in CP15/30, we consider that no matter what the size of the pension pot, there will still be a risk that the consumer does not understand the implications of their decision. Therefore, even where a consumer has a very small pension pot, all consumers, regardless of pot size, should at least receive generic risk warnings. Firms dealing with customers with pots smaller than our minimum pot size rule would no longer need to take these customers through a Q&A, but would still need to deliver generic risk warnings.

The policy intention of this change was that firms would only give consumers risk warnings relevant to the way in which the consumer is accessing their pension savings, not all risk warnings. We have made a change to the rules to reflect this.

3.23 We consulted on setting the minimum pot size limit at £10,000 or less. Therefore if a consumer has a pot of £10,000 or less and no safeguarded benefits, the firm would not be required to ask the consumer questions in order to identify whether risk factors are present. Rather the firms can give the consumer generic risk warnings relevant to the way in which the individual is accessing their pension savings. We asked:

Q15: Do you agree that the minimum level should be set at £10,000 or less? If not, what level do you think the minimum level should be set at and why?

3.24 The majority of those responding to this question agreed with setting the threshold at £10,000 or less. A small number of respondents suggested alternative thresholds ranging from £1,000 to £30,000.

3.25 Some respondents called for guidance as to how a firm determines whether a pot is £10,000 or less. Many respondents commented that we should keep the threshold under review.

Our response

We are proceeding with our proposal to set the threshold at £10,000 or less. We do not consider it is necessary to give firms guidance as to how to determine whether a pension pot is £10,000 or less. Firms should take a sensible and pragmatic approach to determine if the pot size is below the threshold and if in doubt they should go through the full risk warning process.

4. Protecting consumers

4.1 In this chapter we summarise the feedback received, and provide our response on our proposals relating to:

- cancellation rights
- restrictions on the promotion and distribution of high risk investments
- using pension savings to repay debt
- attachment orders
- determining maximum projection rates
- projections including guarantees
- projecting a future annuity – mortality assumptions
- glossary amendments

Cancellation rights

4.2 In CP15/30 we set out that the way in which our rules on cancellation apply is not altered by the introduction of the pension freedoms. However, we considered whether, and to what extent there is an absence of a right to cancel an access decision and whether this creates a consumer protection gap.

4.3 We concluded that at this stage, existing rights to cancel (which arise on entering a new contract or a change in contract) and other protections already in place, negate the need for any further regulatory requirements, for example a new post-decision period of reflection. We asked:

> ***Q16:*** ***Do you consider our cancellation rules expose some consumers to a risk that is not mitigated by any other measures? In what other ways might we reduce that risk and improve consumer outcomes?***
>
> ***Q17:*** ***Do you agree that monitoring the evolving environment is an appropriate and proportionate FCA response in the pursuit of consumer protection? If not, what action do you think we should take and how would this alter consumer outcomes?***

4.4 The majority of respondents did not feel that our current cancellation rules exposed consumers to risks not mitigated by other measures and agreed with our proposal not to alter our cancellation rules at this stage.

4.5 Some of those respondents who disagreed suggested we should extend cancellation rights to using options such as flexi access drawdown and UFPLS.

4.6 A few respondents suggested that we should require a firm to give the consumer a warning if there are no cancellation rights.

4.7 All but one respondent agreed that monitoring the environment and considering future proportionate responses was a sensible approach, although a few were concerned that data be gathered in a considered and appropriate way to avoid undue pressure on providers.

Our response

We will not make any changes at this point to our cancellation rules.

There is nothing to stop firms providing cancellation rights beyond our rules if they wish or from highlighting where cancellation rights do not apply. We also highlighted in CP15/30 that our data suggests that, in most cases, customers have some opportunity to change their minds.

As highlighted in CP15/30, awareness that an access decision may be irreversible could help sharpen a customer's focus on their retirement options and/or could incentivise them to seek guidance or advice. Compliance with our rules and principles for the best interests and fair treatment of customers is likely to involve firms giving serious consideration to whether irreversibility is information that:

- should be disclosed to the customer in good time
- could be a relevant risk factor for the purpose of our retirement risk warnings requirements

We are already monitoring the market closely and will continue to do so. We are also continuing to gather evidence about the impact of the reforms, including as part of our Retirement Outcomes Review. If we identify any consumer risks we will consider the appropriate regulatory tool and consult on any changes as required.

Restrictions on the promotion and distribution of high risk investments

4.8 In CP15/30 we proposed amendments to the rules which limit the type of consumers to whom authorised firms may promote and/or distribute non-mainstream pooled investments, non-readily realisable securities, contingent convertible instruments and mutual society shares ('the restricted investments').

4.9 Money held within a pension wrapper is excluded from the calculation of net investable assets for the purposes of the High Net Worth Investor (HNWI) and Restricted Investor (RI) certification. We do not consider that the act of withdrawing funds from a dedicated tax wrapper (into which consumers have saved, over a number of years, specifically to provide for their retirement) alters the consumer's overall wealth for the purposes of this calculation. We are concerned that some consumers' perception of their overall financial wealth following withdrawal of up to 100% cash from their pension savings may lead:

- consumers to certify themselves as HNWI
- consumers to invest more money than is appropriate under the RI category
- firms to distribute potentially inappropriate investments to these consumers.

4.10 To address this risk, we proposed to amend our 'certified high net worth investor' and 'restricted investor' certification criteria so that it is clear:

- The HNWI income criteria does not include money withdrawn from pension savings except where the withdrawals are used directly as income in retirement.
- Net investable assets for the purposes of HNWI and RI certification excludes money withdrawn from pensions savings (in addition to current exclusion of money held in pensions), except where the withdrawals are used directly as income in retirement.

4.11 We asked:

> *Q18: **Do you agree that amendments to HNWI and RI certification statements are necessary to provide appropriate protection to consumers who access their pension savings?***

4.12 Only two respondents disagreed. They felt that no change should be made until a full review is undertaken.

4.13 One respondent considered the proposal disproportionate to the benefit given the number of consumers affected.

4.14 One respondent queried whether, as drafted in CP15/30, withdrawals "intended to serve as an income in retirement" could be applied to lump sums that were to be used to purchase income bearing investments outside the pension scheme.

Our response

We are proceeding with our proposal.

We consider that these amendments are necessary to protect consumers (who would not have been considered high net worth investors while these funds were within their pension wrapper) from the inappropriate promotion of, or excessive investment in, restricted investments.

As noted in CP15/30, while the number of at-risk consumers is likely to be small the possible harm could be more severe for these consumers than for retail investors if the objective of the investment is to generate retirement income.

Our intention with regard to withdrawals "intended to serve as an income in retirement" was that it would only include money withdrawn from pension savings that would be used *directly* as income in retirement. We have changed the final rules to clarify this.

Q19: Do you agree that our proposals provide an appropriate initial safeguard for consumers accessing their pension funds? If not, what other measures could we consider?

4.15 The majority of those who responded agreed that this change was an appropriate initial safeguard.

4.16 Those who disagreed suggested that the criteria be reviewed now.

Our response

We are proceeding with our proposal. We discuss the wider review in our response to Q21 below.

4.17 In CP15/30 we raised the challenge of whether the exclusion should apply in respect of pensions savings accessed within a set period before the date of certification. We asked:

Q20: Should payments from pension savings only be excluded from the HNWI and RI criteria if they were accessed within a set period of time before the date on which the statement is signed? If so, what period of time would deliver the appropriate consumer protection?

4.18 Around half of the respondents supported a time restriction but there was no consensus as to the appropriate time period with suggestions ranging from one to five years.

Our response

We are not making any changes at this stage but as we noted in CP15/30 this could feature in a wider review of the restrictions discussed in Q21 below.

4.19 We consider the proposal outlined above to be an initial safeguard only and that additional steps are needed to provide appropriate consistent and effective protection to all ordinary retail consumers, not just those at retirement.

4.20 In CP15/30 we proposed to undertake a future wider review of these rules, in conjunction with HM Treasury, including an assessment of the monetary thresholds in the HNWI criteria. We asked:

Q21: Do you agree that we should undertake a wider review of the marketing and distribution restrictions in our rules?

4.21 Only one respondent disagreed with the suggestion of carrying out a wider review of these rules.

4.22 A few, however, suggested a review should only be instigated if we considered there is a need for it. Some considered this should not be a priority at this time. Others suggested a review should not start until after the FAMR was completed.

Our response

Given the mixed views on the timing of such a review and the fact that we are introducing the proposed changes to give appropriate consumer protection, we are not prioritising this review at this time.

However, we will continue to monitor the market to determine when prioritising the review might be appropriate.

Using pension savings to repay debt

4.23 In CP15/30 we consulted on proposals to add guidance to our consumer credit rules in relation to debt collection and debt advice on the issue of using pension savings to repay debt. We asked:

Q22: Do you agree with our proposal to add guidance to make explicit the application of existing rules on debt collection in relation to pension savings and remind both debt collection and advice firms that advising on the conversion or transfer of pension benefits is a regulated activity?

4.24 In relation to debt collection we proposed to add guidance to make clear that an example of behaviour likely to contravene CONC 7.3.10R and Principle 6 (treating customers fairly) is pressurising a customer to raise funds to repay a debt by accessing their pension savings.

4.25 We also proposed to add guidance to CONC 7 and 8 to remind firms of existing perimeter guidance (PERG 12.6G) on the regulated activity of providing advice on conversion or transfer of pension benefits and the overlap with advising on investments. The purpose of this would be to remind firms that they should take care not to stray into a regulated activity for which they do not have the appropriate permissions.

4.26 The majority of respondents who answered the question on pension savings and debt supported our proposals. One not-for-profit debt advice body requested that the FCA also publish guidance on the boundary between regulated financial advice and debt counselling.

Our response

Having considered the feedback we received on this issue we intend to proceed with the proposals we consulted on.

In relation to the call for guidance regarding the boundary between regulated financial advice and debt counselling, we would draw firms' attention to the existing perimeter guidance[22] in PERG 17 on debt counselling and FG15/1[23] on retail investment advice, both of which explicitly address boundary issues. We would also remind firms that it is their responsibility to understand how to navigate the boundary of regulated activities for which they have permission and those they do not.

The recently published report of the Financial Advice Markets Review also includes recommendations that may in due course lead to outcomes of relevance to the definition of regulated financial advice.

Attachment orders

4.27 Attachment orders may be placed on a person's pension in divorce cases, or on dissolution of a civil partnership. The attachment order requires the scheme administrator or pension provider to make specified payments out of the payments due to the individual. Since the individual as scheme member retains control of the pension, there is a concern that the pension freedoms might result in a former spouse or former civil partner receiving less than they expect.

4.28 In CP15/30, we proposed guidance for providers and advisers that they should take into account any attachment/earmarking orders made by a court on a divorce or dissolution of a civil partnership. In particular, we proposed guidance that an operator of personal or stakeholder pension schemes should:

- ensure that it is aware of, and acts fully in accordance with, any attachment or earmarking orders
- be mindful of its obligations to give notices to other parties where relevant events occur, such as transfers and significant reductions in benefits

4.29 With regard to guidance for advisers, we recognised that the adviser's client may be the scheme member and not their former spouse or former civil partner. Nonetheless, we considered that it will not be in their client's best interests to ignore or seek to circumvent an attachment order.

4.30 Therefore, we proposed guidance for advisers that they should enquire as to the existence of any pension attachment/earmarking orders and take these into account when providing advice to their clients. We asked:

Q23: Do you agree with our proposed guidance for providers and advisers on attachment orders? If not, what would you suggest and why?

22 The Perimeter Guidance manual, www.handbook.fca.org.uk/handbook/PERG.pdf

23 FCA, *FG15/1: Retail investment advice: Clarifying the boundaries and exploring the barriers to market development*. www.fca.org.uk/news/fg15-01

4.31 The large majority of respondents who commented agreed with our proposed guidance. Respondents observed that it was a reasonable and proportionate approach that reflected the existing obligations of providers and advisers. The guidance for advisers was considered particularly important since pension benefits could be accessed before the former spouse or former civil partner can take action.

4.32 Some respondents agreed with our proposals but observed that attachment orders are rare because pension sharing orders are now more commonly used by courts. Pension sharing orders do not pose the same risks because they transfer irrevocably a share of the value of the pension benefits to the former spouse or former civil partner.

4.33 While agreeing with our proposals, a number of respondents highlighted the Department for Work and Pensions (DWP) consultation on attachment orders published in November 2015.[24] The DWP's proposals would require a scheme operator to notify the former spouse or former civil partner within ten days of receipt of an application from the member to access benefits flexibly.

4.34 One respondent agreed broadly with our proposed guidance but raised some points of detail with the drafting to make it clear that the guidance applies to all relevant jurisdictions. This respondent also had a concern that the guidance for advisers as proposed might be restricted to personal and stakeholder pensions and might not cover transfers from occupational pension schemes.

4.35 A minority of respondents disagreed with the proposed guidance, primarily because they thought it insufficient. One respondent recommended that we follow the same approach as the DWP's proposal, to ensure consistency. Others thought that the issue was not for us to solve, since it depended on courts varying the attachment orders and on the DWP to make changes to relevant regulations.

Our response

Based on the feedback received, we remain of the view that providers and advisers should take into account any attachment/earmarking orders. This reflects their existing obligations under the regulations. We consider that the guidance for advisers that they should enquire as to the existence of attachment orders is consistent with an adviser's duty to know its client.

We agree that pension sharing orders are now more commonly used by the courts than attachment orders. However, there is a substantial number of existing pensions with attachment orders where former spouses and former civil partners may be at risk as a result of the pension freedoms.

In CP15/30, we explained how we were working with the DWP on how best to mitigate that risk. The changes proposed by the DWP are to regulations that apply to both personal pension schemes and occupational pension schemes and would therefore necessarily be consistent across all types of pension scheme. We continue to work with the DWP to ensure that their regulations and our

24 DWP, *Occupational and Personal Pension Schemes and the Pension Protection Fund (Miscellaneous Amendments) Regulations 2016*, www.gov.uk/government/uploads/system/uploads/attachment_data/file/482743/pensions-misc-amdts-2016-and-gar-valuations-consultation-nov-2015-2.pdf

rules are aligned. However, we do not see the need to repeat in our rules what is required under the regulations for all types of pension scheme.

On the points of detail regarding the drafting of the guidance, our policy intent is for our guidance to apply to all relevant jurisdictions. We also intend that our guidance for advisers apply to advice on transfers from occupational pension schemes to personal and stakeholder pension schemes. Our final guidance makes this clear.

We acknowledge that our guidance does not solve the issue. Ultimately it is for the courts to vary any attachment order that may not work as intended should the member take advantage of the pension freedoms to access the pension benefits. Nonetheless, we consider that our guidance will help ensure that attachment orders are taken into account by providers and advisers.

Determining maximum projection rates

4.36 We consulted on clarifying the rules to ensure that a consistent approach is used to determine maximum projection rates in projections. We proposed a methodology which would require firms to look through to the underlying assets and apply the maximum at the level of each underlying asset, rather than potentially using higher rates for each asset then applying the cap when the rates were combined for all assets in the fund. We asked:

> *Q24:* ***Do you agree that we should clarify the methodology as described? If not, what alternative would you propose which achieves similar outcomes?***

4.37 The majority of those responding to the question agreed with the approach proposed. A more consistent approach was recognised as removing any ambiguity. This will benefit consumers and prevent them from being misled, as well as reducing the potential for some firms to gain an unfair competitive advantage over their competitors. Some respondents commented that it is important that returns are not over-inflated as this may prevent consumers from making the necessary contributions.

4.38 Some respondents qualified their agreement to the proposal. While they recognised the need for consistency, they considered that the use of different growth rates by firms more generally negates the value of the proposed changes. One respondent commented that the draft rule did not appear to meet the policy intent as the maximum rate for the intermediate rate of return was not explicitly applied to the underlying investment option. Another respondent commented particularly in relation to the use of capped growth rates in the defined benefit to defined contribution pension transfer comparison; they considered that capping equity returns in this space introduces bias into the process which may increase the number of insistent clients.

4.39 Some respondents disagreed with the proposal. Again, there was concern that the proposed solution does not address differences created by having different providers using different growth rates for the same or similar assets in the first instance.

4.40 Some considered the cap should be based on the combined asset allocation as suggested by previous policy statements on maximum projection rates. A number of respondents commented that the proposed approach meant that the FCA should be prescribing asset specific growth rates to ensure consistency which will enable proper comparisons.

4.41 It was considered by some respondents that the proposed methodology further dilutes the realism of the projection rates, particularly for those with a higher risk profile and fails to meet the requirement of having an equal chance of under or overstating the likely returns. The likely reduction in the difference between growth rates for high risk and low risk assets was highlighted, with the consequence that it will make the value of investing in higher risk assets look very poor, and particularly once the higher charges attached to such assets are taken into account. One respondent considered that it introduces an inconsistency between managed funds and portfolios of funds set up to replicate a managed fund as each fund in the portfolio could be illustrated on the maximum rate but the managed fund would have to be projected on some rates that were lower

4.42 It was also commented that the approach retains inconsistencies with SMPIs.

4.43 A number of respondents commented that the timing for implementation would be challenging for those not using the proposed methodology already.

Our response

We are proceeding with our proposals but delaying the required implementation from 1 November 2016 to 6 April 2017. We are pleased that so many respondents recognised the need for greater consistency to prevent the unfairness of the existing approach. The current rules do not prevent firms from adopting the clarified methodology sooner.

We recognise that this will not lead to full consistency across projections and charges disclosure. However, we do not consider that this is the right time to be making significant changes to disclosures (see Chapter 8 on Product Disclosure). We urge firms to ensure that the growth rates they use for different asset types not only take account of the relevant regulatory requirements but also provide meaningful information to consumers which is clear, fair and not misleading.

We have considered the drafting point and made minor changes to the final rules in COBS to ensure that the maximum rate applies to the underlying investment options. Where appropriate, firms should continue to use lower rates for illustrations. We consider that where the rules are applied in line with the policy intent, this should result in consistent rates being used irrespective of whether the portfolio is created from a managed fund or a selection of replicating funds.

Projections including guarantees

4.44 In CP15/30, we proposed that firms could take account of contractual obligations to consumers in projections, both where these applied in the accumulation stage and exceeded the lower projection rate, and at the point of annuitisation, for example, in relation to a guaranteed annuity rate. We sought evidence from firms on whether there was a need to extend the proposals in the accumulation stage to the higher growth rates. We proposed that contractually obligated projections would replace the normal projections provided to consumers but made clear we were open to alternative views on this. We considered that these proposals would not only prevent consumers from receiving misleading communications but would enhance awareness of the contractual obligations to which they are entitled.

4.45 Firms are already able to take account of contractual obligations in the accumulation stage by applying to use the Modification by Consent of COBS 13 Annex 2 and individual firms have previously been provided with waivers which provided the ability to show guaranteed annuity rate (GAR). It was our intention to withdraw the Modification by Consent on the rules becoming effective and consider individual waivers with the relevant firms. We asked:

> *Q25:* ***Do you agree with our proposals to show contractually obligated future values in projections, including GARs? If not, how could we amend it?***

4.46 The majority of those responding to this question agreed with our proposals, although some qualified their agreement. In general, respondents agreed with our proposals considering it was not helpful to provide customers with information that did not reflect their contractual entitlement. An advisory firm also considered our proposals should make it harder for providers to hide behind vague statements on whether there are guarantees or not, and make it easier for advisers to identify the existence of a guarantee. A number stated that mandatory illustration of GARs should be extended to SMPIs.

4.47 Three issues were raised by those who provided qualified agreement:

1. A small group of respondents considered that showing guarantees should be voluntary, rather than mandatory. It was put forward that each firm could decide for their own customer base whether the value of showing the guarantees outweighed the costs attached to changing systems; it was also noted that treating GARs on this basis would be consistent with SMPIs.

2. A number of firms submitted information that suggested that the guaranteed growth rates during accumulation could exceed not only the lower growth rate but also the intermediate rate.

3. This issue related to how the information on GARs should be presented to consumers. Given the many different conditions attaching to GARs, a not insignificant number of respondents considered that it would be beneficial to show the GAR in addition to the three normal projections. It was considered that this would make the value of the GAR more explicit which would be helpful to consumers considering their retirement options. Further guidance was also requested on how a GAR projection should be illustrated, given the practical complications of GARs, for example GARs may start at different times from the main projection, or have a different annuity shape, or there may be multiple GARs on the fund.

4.48 Only two respondents explicitly disagreed with the proposals. One was primarily due to the mandatory status of the proposal and the need for extra clarity on how to present the information, given the complex structure of some GARs. One respondent considered that guarantees were an issue for the claims stage.

4.49 A number of respondents commented on the time that would be needed to develop systems to show guarantees, particularly as guarantees are largely confined to legacy products on legacy systems, and not all firms adopted the modification by consent.

Our response

We have considered the responses carefully and intend to proceed with the principle of showing contractual obligations in projections. We do not consider that it is appropriate to make this a voluntary exercise; our CBA indicates the value of making this mandatory. We specifically asked firms to comment on our proposals for presenting GARs and illustrating guaranteed growth rates in excess of the lower growth rate and, as a result of the feedback, our final rules reflect some changes to the text on which we consulted.

In particular, firms told us there were products where the contractual obligation exceeded the intermediate growth rate as well as the lower growth rate. In keeping with the general principle, we have therefore made rules which ensure that firms can provide projections which reflect their obligations at all three growth rates, if needed. We have also added guidance which suggests that firms should provide an explanation of any contractual obligations for which they have shown a projection.

On GARs, firms strongly told us that the value of the GAR will be most obvious to a consumer if it is shown in addition to the standard projections, not in place of these. So our final rules reflect this position. We believe this will increase knowledge of GARs which will particularly benefit consumers considering taking advantage of pension freedoms, and will assist consumers in understanding the need for advice, where appropriate and required. We have clarified that GAR projections should be based on a fund based on the intermediate rate of return.

We recognise that GARs can vary significantly and we have added guidance to the handbook text to assist firms when providing projections containing GARs. In particular:

a. A GAR projection should be shown at the earliest age it can be taken.

b. Where there are multiple GARs or non-guaranteed elements of the fund, firms should develop a proportionate methodology to reflect this in the income shown.

c. Firms should highlight any restrictions on taking the GAR, particularly highlighting any differences relative to the other projections shown.

The current modification by consent of COBS 13 Annex 2 involving projections of contractual obligations is due to be withdrawn on 31 December 2016. Firms wishing to extend the current modification will need to notify us.

As indicated in CP15/30, the changes on projecting contractual obligations apply to all packaged product projections prepared according to COBS 13, not just pension projections.

In light of the feedback and the changes to the final rules, we are delaying implementation of these rules to 6 April 2017 to give firms sufficient time to make system changes. However, we encourage firms to make customers aware of their guaranteed benefits and have therefore put in place a transitional provision for firms wishing to adopt the new rules sooner.

Projecting a future annuity – mortality assumptions

4.50 We proposed updating the mortality basis used for projecting a future annuity in projections and pension transfer value analysis. An update is needed from time to time to ensure that projections of future annuity income reflect the latest mortality trends which are used in pricing annuities. We proposed moving from the 2000 tables to the most recent 2008 tables with improvement factors based on those published in the previous year. We asked:

> ***Q26: Do you agree with our proposal to update the mortality table and timing of the improvement factors? If not, how could we amend it?***

4.51 The majority of respondents to the question agreed with the proposal. The pragmatic approach to using the previous year's improvement factors (rather than the latest year) was recognised. One respondent called for the same mortality tables to be applied consistently across the Handbook, including Mortgages and Home Finance Conduct of Business sourcebook (MCOBS). Most of the other comments received were out of scope for this question. Only one respondent considered the change was not necessary due to the small changes that would result in projected annuity incomes. Several respondents commented on the need for the Financial Reporting Council (FRC) to follow suit and change the mortality tables to the same basis for SMPIs.

Our response

We are proceeding with the proposal. We recognise that the differences in projected annuity income are small initially but we consider that using the most recent tables is the most appropriate approach. We have advised relevant colleagues of the feedback in relation to MCOBS and it will be considered in our wider Mortgage policy work. As we said in CP15/30, we understand that the FRC intends to review Actuarial Standard Technical Memorandum 1 in due course.

Glossary amendments

4.52 We consulted on minor amendments to two Glossary definitions in our Handbook to ensure that our rules and legislation are aligned by revising the definitions of 'income withdrawals' and 'short-term annuity' (and by consequence 'drawdown pension').

Q27: Do you agree with our proposals to amend the definitions?

4.53 There was unanimous support for these amendments.

4.54 A few respondents raised a concern that the definition does not extend to dependants, nominees and successors.

4.55 Others queried whether or not regular or multiple UFPLS withdrawals constitute income withdrawal.

Our response

We will make this amendment.

Section 151 of Finance Act 2004 says that after the member's death the beneficiary becomes the member for the purpose of making income withdrawals. Therefore dependants, nominees and successors will become the member after the member's death.

Consumers may use UFPLS withdrawals and income withdrawals to achieve similar outcomes, however, legally and operationally they are different, so the income withdrawal definition does not include UFPLS.

In addition, further to the comments in 2.22 and 3.16 above, we are also adding a definition of "small lump sum payments" to the glossary.

We have also taken this opportunity to amend our definition of 'pensions guidance' to allow for the change in control of Pension Wise from the Treasury to the DWP.

5. Non-advised annuity purchase

Summary of feedback and our response

5.1 CP15/30 included a discussion chapter on the purchase of non-advised annuities. Annuities can be bought in a number of ways and concerns had been expressed that where an annuity was bought without advice, the commission payment could be so high that it could be more than the cost of advice. The aim of our discussion chapter was to seek views on some of the issues associated with the non-advised sale of annuities, and some potential policy options for dealing with them.

Commission payments on non-advised annuity purchases

5.2 As we explained in the CP15/30, the majority of annuities are purchased without advice. The Retirement Income Market Study[25] observed that, in certain circumstances, the costs of purchasing an annuity without advice could be equivalent to purchasing through a full advice service. Meanwhile, the Financial Services Consumer Panel found qualitative evidence of very high commissions and there is anecdotal evidence that some providers were keen to use commission payments to secure high-volume distribution channels.

5.3 High commission could be unnecessarily expensive for consumers. It could also carry the risk of bias, where third parties only sell annuities that offer the highest commission. At the same time, however, it is unclear what advice might be available for consumers with small pension pots. Moreover, there is limited robust quantitative evidence on the nature and extent of any possible detriment. In addition, the implications may vary depending on the different pension pot size. As a result, we suggested collecting more evidence to understand the situation. We asked:

> ***Q28:*** ***Do you agree with the analysis of the issue? If not, what is your assessment of the situation?***

5.4 Most of the respondents who commented on this question agreed with the analysis. Among those, a number of respondents expressed disappointment that commission was still being paid in relation to annuity (and other) non-advised sales instead of a fee. However, there were respondents who disagreed and felt that there was a place for a commission-based service. One respondent also pointed out that there was often commission rebating, which could make a substantial difference. And a number of those who expressed general agreement also said that more work needed to be done to understand what the situation was.

25 FCA, *MS14/3.3: Retirement income market study: final report,* www.fca.org.uk/news/market-studies/retirement-income-market-study

Our response

The broad consensus of agreement suggests that there may well be an issue to explore further in relation to both annuities and other non-advised product sales. However, we agree with respondents who pointed out that there was a lack of firm data and evidence of consumer harm on which to base any policy recommendations at this stage.

Options for dealing with the issue

5.5 The discussion chapter identified a number of options for dealing with any consumer harm. These were: improving disclosure; restricting or banning commission on non-advised sales of annuities, and improving competition. We asked:

> *Q29: **Of the options above, which do you think is likely to be the most effective in dealing with the issue and why is that? Are there any alternatives that we should consider?***

5.6 The three options that were proposed were not mutually exclusive and some respondents offered support for more than one. The largest number of respondents supported improved disclosure – this was very popular among product providers – but there was considerable support for a commission ban. There was also recognition that any action in relation to annuities would have the potential to have a wider effect on the market for retirement income products.

Our response

There was no strong consensus on the best way of dealing with any harm identified. We therefore believe that the next step before considering potential policy proposals should be to gather evidence on the market and the issues, and come to a view on the harm which could exist. In the light of this, we will consider the extent to which these issues and any associated detriment exist as part of our Retirement Outcomes Review. We will collect data in order to have a market-wide evidence base on which to consult on potential policy options, if appropriate, following the conclusion of that review.

6.
Lifestyling investment strategies

Summary of feedback and our response

6.1 In CP15/30 we explained that, while the new pension freedoms mean that the information needs of customers are likely to be different, we believe that our existing rules and, in some instances, guidance provide:

- firms with sufficient clarity as to our expectations in this area
- an appropriate level of consumer protection.

6.2 We set out those of our existing rules and guidance that apply to lifestyling investment strategies – these broadly require 'sufficient' information be provided for the customer to be able to make an informed decision. We asked:

> *Q30: **What else do you think the FCA can and should do to make firms aware of their responsibilities in relation to lifestyling investment strategies?***

6.3 42 of the 86 respondents offered no comment in response to our question.

6.4 Among those providing comments there was a broad consensus around the importance of regular reviews - regardless of a lifestyling option being selected - and that policyholders should inform their advisers and/or seek advice if their circumstances or objectives change. There was a similar consensus around the increased complexity of decumulation options that lifestyling strategies would need to address.

6.5 A number of other respondents expressed varying degrees of opposition to our introducing further rules or guidance. Some simply expressed their belief that our current rules and guidance are sufficient; others set out the difficulties they felt were inherent in arriving at appropriate lifestyling strategies and explained why they didn't feel these would be best addressed by further rules or guidance.

6.6 Some respondents, opposed to further rules or guidance, did ask that we take steps to emphasise our existing requirements, monitor firms' compliance and publicise best practice in the market place.

6.7 A few respondents felt that – given the relatively recent introduction of the pension freedoms – it was too early to tell whether further rules and guidance might be required. They felt that we should continue to monitor market developments and re-visit our question once the full impact of the freedoms was apparent.

6.8 Those respondents who did want us to do more to make firms aware of their responsibilities offered a wide range of suggestions as to the actions we might take.

6.9 Some felt we should codify existing best practice around the communication of lifestyling to policyholders throughout the life cycle of their policy. In some cases they identified current disclosure requirements that they felt could, usefully, be amended to include information about lifestyling, e.g. firms being required to remind their policyholders, via their annual statements, of any lifestyling investment strategy that is in place and its purpose (annuity purchase, etc.). Other respondents asked for detailed guidance as to the form, content and frequency of policyholder communications that would meet our requirements.

6.10 Many respondents set out concerns relating to their experience of policyholders' lack of engagement with lifestyling options. A number of specific examples were offered, the most common being where firms wished to change a default lifestyling option for a number of policyholders, but found that, despite repeated reminders, a significant proportion of these policyholders had not responded to explicitly grant or deny their permission for the change to be actioned.

6.11 Some of these respondents offered specific solutions, designed to address this lack of engagement, for example:

- through focused advice, possibly delivered by Pension Wise and/or subsidised by employers
- by giving a greater role for Independent Governance Committees
- through our rules permitting these changes to be processed on an 'opt-out' basis, i.e. the change could proceed if the policyholder did not actively refuse their permission.

6.12 One respondent was particularly opposed to allowing changes to be processed on an 'opt-out' basis – arguing that firms should get the consent of their policyholders before making any such change.

6.13 Finally, some respondents offered more direct and focused suggestions – for example that we direct firms to review their lifestyle strategies and funds by an explicit deadline.

Our response

We are grateful to all of those who took time to provide considered responses to the question on lifestyling investment strategies.

Based on the responses we received, we consider that our existing requirements continue to provide firms with enough clarity as to our expectations in this area; and a sufficient level of consumer protection.

We note that a number of respondents identified lack of consumer engagement in the context of changing default lifestyling options as a particular issue and that their preferred solution is that we change our rules to permit these changes to be processed on an 'opt-out' basis. We expect firms in all cases to comply with our rules and principles, in particular the obligation to treat their customers fairly. Firms are also required to act in the clients' best interests, to act consistently with the contracts which they have entered into and ensure their terms are fair under unfair terms legislation. Otherwise, there is a risk of legal challenge from customers.

We accept that making changes to lifestyle investment strategies on an 'opt out' basis can provide good outcomes in situations where customers are shown to benefit. However, in the event that some customers could be made worse off by such a change, firms should consider the position of these customers and take appropriate action to ensure they are treated fairly, for example delivering enhanced communications or excluding such customers from the change.

Our supervisory work has shown varying levels of firm activity since the introduction of the pension freedoms.

Firms should continue to actively review their lifestyle investment strategies to ensure they remain appropriate for their customers and the retirement choices they are making.

Firms should remind customers of how their lifestyle investment strategy relates to the retirement options available to them and that, if their retirement needs change, they may need to review their investment strategy.

Where changes are being made to lifestyle investment strategies firms should consider:

- their right to make variations under the scheme, including whether any contractural terms are fair under unfair terms legislation
- on-going and one-off costs to the customer
- the need to model customer outcomes
- the position of customers who have recently received investment advice or who are in the lifestyle de-risking phase and take appropriate action to ensure they are treated fairly
- the customer communication strategy

This is not an exhaustive list and we would expect firms to act in accordance with our regulatory requirements.

We will continue our supervisory monitoring of how firms' lifestyling investment strategies are evolving in response to the pension freedoms and review our requirements again, if justified by that experience.

7. Pension transfers

Summary of feedback and our response

7.1 In this chapter, we set out the feedback provided by respondents to our discussion chapter on pension transfers (called Transfer Value Analysis in CP15/30). Prior to CP15/30, a number of interested stakeholders had raised issues with us on the regulatory approach to pension transfers from defined benefit to defined contribution schemes, in light of pension freedoms. Subsequently, the chapter discussed a number of different areas on which we were seeking views. Our response to all the questions jointly is provided at the end of the chapter.

Client's best interests

7.2 The starting point for a pension transfer when assessing the suitability of a pension transfer from DB to DC is that it will not be suitable, unless it can be shown to be in the client's best interests. It had been suggested by some stakeholders that the regulatory approach is incompatible with the concept of pension freedoms, especially given that the required methodology assumes subsequent annuity purchase and this is unlikely to be the retirement product of choice for those considering a transfer if they are transferring to access the pension freedoms. In the discussion, we considered this from the perspective of consumers who had already reached the minimum retirement age (currently 55) and those who had not. We asked:

> *Q31:* ***Should we be reviewing the starting assumption for those over minimum retirement age that a pension transfer will be unsuitable unless it is can be proven to be in the client's best interests? How, if at all, does pension freedom change the interpretation of client's best interests in respect of pension transfers?***

7.3 A slight majority of those responding thought that the starting assumption should be removed. Some of these thought that the current approach is inherently flawed in the context of pension freedoms, and that the regulatory framework should not create a barrier to consumers wanting to take advantage of the pension freedoms created by legislation. It was also suggested that, from a practical perspective, it is impossible to meet the current requirement of proving that a transfer is in the client's best interests (as opposed to being very likely) as the outcomes are inherently uncertain, making any recommendation a probabilistic one with a range of possible outcomes.

7.4 There were also views that the inherent principle of flexibility within pension freedoms changed the definition of "best interests" overnight. A number of respondents considered that having more flexibility over how to access their pension fund is a valid client objective in the new legislative environment which, for the adviser, means more subjective judgement, balancing a broader range of considerations and taking into account the complexities of a client's desires and lifestyle aspirations and well-being, not just whether a transfer makes economic sense.

7.5 Other changes associated with pension freedoms were also considered to have changed the suitability assessment for DB to DC transfers, e.g. the changes to the tax treatment of personal pension death benefits for inheritance planning purposes. It was also suggested that an increasing trend towards phased retirement makes DC schemes more attractive relative to DB schemes.

7.6 Some respondents considered that the overall suitability requirements in themselves provide sufficient consumer protection without the need to presume that a transfer is "good or bad" and that a more neutral starting position better supported the concept of comparing the alternative schemes. In particular, it was also stated that the client's personal circumstances may mean that the presumption itself can be challenged from outset of the advice process, particularly for those who are single or in poor health. However, some respondents did consider that if the starting point was removed, the rules could be more stringent in the suitability criteria that should be applied when considering a transfer.

7.7 One respondent commented that where a market is working well it should not be necessary for the regulator to take a predetermined view of the actions required by a customer, but noted previous failings in this market.

7.8 A number of respondents considered that it was inappropriate to review the starting assumption only for those over minimum retirement age as customers can plan for their retirement before retirement actually happens. The issue of serious ill health was also raised where those with extremely limited life expectancy may be able to access the full value of a personal pension before the normal minimum retirement age.

7.9 It was also considered that the starting point was unhelpful when considering very poorly funded schemes.

7.10 A number of respondents considered that removing the current starting point would result in more advisers being prepared to undertake pension transfer work - as it would reduce nervousness that a transfer would always be perceived as "bad" and the subsequent implications for long term liabilities. It was also considered that, not only may the removal of the presumption have a positive influence on the Financial Ombudsman Service (the Ombudsman) and professional indemnity (PI) insurers, it would improve the public perceptions on barriers to pension freedoms and potentially reduce the number of insistent clients.

7.11 A slight minority continue to believe that the current starting point should be retained. The view was expressed that a "burden of proof" test provides appropriate consumer protection. These respondents typically referred to the value of guaranteed benefits and the longevity protection provided by DB schemes, and considered that the primary purpose of pension planning remains provision of income in retirement. However, many also acknowledged that the changes introduced with pension freedoms increase the range of factors that have to be considered as part of the advice process and the increase the likelihood that a transfer may be suitable.

7.12 Other issues raised in this section included the lack of protection for those looking to transfer to Small Self-Administered Schemes, in what could potentially be pension scam and the lack of differentiation and clarity in the COBS 19.1 between different types of safeguarded benefit.

Transfer Value Analysis Methodology

7.13 When advising on a possible transfer from a DB scheme to a DC scheme, advice firms are required to undertake a transfer value analysis (TVA). TVA methodology is currently based on the growth rate that would need to be achieved on the transfer value to enable the income from the DB scheme to be replicated via a DC scheme, assuming annuity purchase. The introduction of pension freedoms has led to some firms starting to develop additional analyses when assessing the suitability of a transfer, e.g. for individuals who might want to enter drawdown. We asked:

> *Q32:* ***How should the pension freedoms be reflected in TVA in a way which results in good outcomes for consumers? Is there a need for change and if so, how?***

7.14 The majority of those responding thought that the TVA needed to be reconsidered following pension freedoms; it was considered that consumers will increasingly disengage with a TVA which only looks at an option that they are not interested in pursuing. Most of these respondents thought that the TVA should, at a minimum, allow for drawdown with a specific focus on income sustainability; the inclusion of a breakeven calculator was suggested as an addition to the current TVA. However, it was also recognised that including drawdown options would make a TVA even more complex for consumers to understand. Some considered TVA should work in a way that took full account of a customer's decumulation intentions although many recognised that was not straightforward, particularly if the intent was to access cash immediately. An industry working group was suggested as a way to try to reach some industry consensus prior to any future consultation on the way forward.

7.15 Some respondents thought the current method alone should be retained for those under the minimum retirement age where there is still a greater degree of uncertainty over the value of the DB benefits and some element of inflationary protection through revaluation. It was noted that critical yields become less relevant the closer a member is to normal retirement age.

7.16 A number of respondents look on the TVA as a 'value for money' assessment and, in particular, pointed out that Cash Equivalent Transfer Values (CETV) will vary according to economic circumstances as well as the individual funding position of the scheme. Some respondents considered that an assessment is also needed for members at normal retirement age where the TVA requirement does not bite; a couple of respondents suggested that this could be based on matching open market annuity rates. Another respondent considered that the increasing number of analyses of possible alternative benefit structures is reducing the emphasis on whether the TVA which has been offered is fair and reasonable. A small number of respondents commented on the difficulties of obtaining good quality information on the benefits offered by the DB scheme and the error rate which is prevalent in CETV calculations and how a proper assessment can help flush out such errors.

7.17 A small minority of respondents thought that TVA should not be extended to drawdown, and that it should remain focussed on a like-for-like comparison which takes account of the relevant guarantees. Others thought that most members seeking to transfer are doing so precisely because they do not want to take their benefits on a like-for-like basis. However, some of those who supported keeping the TVA in its current format recognised that it had its limitations.

7.18 Some respondents considered that TVA is now irrelevant – that it is simply not possible for TVA to capture the wide range of considerations that need to be factored into a recommendation to transfer or not. It was suggested instead that suitability should be focussed on consumers' needs which will vary throughout retirement, e.g. U-shaped expenditure, vis-à-vis the consumer's attitude to risk; consequently, the decision as to whether to transfer from DB to DC should be framed against the suitability of the income not meeting the needs, rather than against a guaranteed lifetime income stream which in itself may not fit the needs of the consumer. A compliance consultancy provided a quotation for a consumer who had been through the pension transfer process which indicated that the consumer saw the TVA as a process to be followed rather than of any assistance in decision making.

7.19 One respondent considered that giving up DB benefits could be likened to the secondary annuity market as both involve 'selling' guaranteed benefits and urged a consistent approach.

7.20 Other issues raised under this question included the need for clarification on TVA requirements for other safeguarded benefits apart from GARs, and the potential for an increasing number of partial TVAs so that individuals can have a mix of guaranteed and flexible income.

Insistent clients

7.21 Since the introduction of the pension freedoms, it has been suggested that the potential for an increase in the number of insistent clients is substantial in relation to pension transfer advice, especially given the compulsory advice requirement for potential transfers of at least £30,000. Insistent clients are those who choose to transfer against their adviser's recommendation. There is currently no Handbook reference to insistent clients although we did publish an insistent client factsheet[26] in 2015. We do not require firms (advisers or providers) to transact business for insistent clients. Firms have told us previously that FOS and PI insurance are barriers to executing the transaction. There are concerns that consumers perceive the failure of firms to undertake insistent client transactions as a barrier to using pension freedoms. We asked:

> ***Q33: Given that the main barriers to transacting insistent client business are external to the FCA, how do you consider that regulation could be amended in a way which facilitates such transactions more easily but still provides a satisfactory level of consumer protection?***

7.22 Responses to this question were diverse. Respondents provided a wide range of views on insistent clients including that, without a standard definition, the term 'insistent client' is used inconsistently.

7.23 At one end of the scale, some respondents thought it inappropriate that more insistent client transactions should be facilitated, where professional advice was not to transfer, and that consumer protection needed to be maintained at its current level. A small number commented that they would rather have a robust advice process than transact for an insistent client against their principles and that such transactions must remain a commercial decision for adviser firms. It was suggested that permitting contingent adviser charging on pension transfers can create a transaction bias. It was requested that the output from FAMR should be considered before any decision was taken on whether to undertake any policy work.

7.24 On the other hand, others would like to be able to assist consumers but were seeking a greater degree of regulatory certainty from us to transact for DB to DC insistent clients which would then act as a benchmark for a more consistent approach by the Ombudsman and PI insurers.

26 FCA, Factsheet 035: *Pension reforms and insistent clients*, www.fca.org.uk/static/documents/factsheets/fs035-pension-reforms-insistent-clients.pdf

7.25 Some advisers noted that they perceive that the Ombudsman makes inconsistent judgements which consequently makes adviser nervous about trying to document a client disclaimer when a client wishes to transact against their advice in a way that is future proof. It was suggested that that there could be a greater degree of separation between the adjudicator and the Ombudsman process (this was likened to our appeal tribunal process). Some suggested that greater co-operation/alignment is needed between the Ombudsman and us.

7.26 Some thought the insistent client factsheet was helpful; others considered it did not go far enough; some thought it was a waste of time and had no regulatory status. A number of respondents commented on the possible inclusion of insistent clients in the handbook: some thought there should be a definition and a process for transacting, possibly including a standard disclaimer template; others considered it would be best if there were no changes to the handbook. One respondent considered that changes to regulation may have unintended consequences such as causing new firms to enter the market to service insistent clients which could have the potential to create systemic risk. On the other hand, another respondent considered that regulating to reduce insistent clients might help to reduce the number of consumers caught up in pension scams.

7.27 A number of respondents called for a safe harbour for advisers who follow our best practice when transacting for insistent clients. It was also suggested that when transacting for an insistent client, something similar to the Markets in Financial Instruments Directive (MiFID) appropriateness test could be introduced which could be used to absolve advisers from liability. Some respondents also commented on the need for acknowledgement of consumer responsibility and it was suggested that becoming an insistent client should remove certain rights of redress from that customer, in the same way that certified high net worth investors may waive certain rights.

7.28 A number of providers took the view that they cannot logically accept business which an adviser has advised is against the client's best interests due to the risk of regulatory comeback. One provider referenced the need to pay compensation to execution only clients and insistent clients during the Pension Transfers and Opt-outs Review. One respondent suggested the creation of a provider of the last resort for insistent client business with an indemnity against liability claims.

7.29 A small number of respondents considered that the pension transfer rules themselves exacerbate the insistent client issue: both the starting point that any transfer is unlikely to be suitable, even though there may still be valid reasons for an action which on the face of it is not in the client's best interests, and the "unnecessarily cautious and restrictive" TVA process which has to be followed.

7.30 Further reasons put forward as deterring advisers from transacting for insistent clients are the lack of a longstop and the consequent long tail liability, and the confirmation of advice requirement which advisers are nervous may imply suitability. However, not all respondents agreed that regulation is the issue: one respondent considered that reluctance to facilitate insistent client transactions is driven more by fear of the "claims culture" and the reputational damage that can be achieved via social media, rather than the regulatory environment.

7.31 A number of respondents mentioned PI insurers as a barrier to transacting for insistent clients in their answers to the question but provided little additional information. There was comment that PI insurers need to reach consensus with FCA and FOS on the process for transacting for insistent clients; it was also suggested that the PI insurance market needs reviewing.

Communication to customers

7.32 In this section of CP15/30, we expressed concerns about the length and complexity of the TVA comparisons provided to consumers. We know that too much information can overwhelm consumers and may hinder their ability to make informed decisions, which is the reason for providing them with the comparison in the first place. We asked:

> ***Q34: How can TVA comparisons to members be improved to make them shorter, more meaningful and more likely to engage members in the TVA process? What changes, if any, are necessary to FCA rules to ensure that TVA comparisons are fit for purpose?***

7.33 It was acknowledged that consumers are unlikely to read the current reports, due to their length, or understand them although the role of advisers in helping them understand the implications was emphasised. However, the complexity of the TVA report was thought by some respondents to increase the likelihood of unsuitable consumer outcomes as the message can be lost in the detail. Some respondents considered that adviser liability in the current regulatory environment does not incentivise advisers to produce shorter communications. A small number of respondents thought that concise comparisons should not be an objective in itself.

7.34 Many respondents thought that the only way to make TVA comparison reports shorter would be for us to mandate the information within them. Many commented on the need for a short summary with key information of agreed metrics (some suggestions were provided), with the detail provided elsewhere (including, potentially online) or only on request. It was also considered that some of the detail could be reduced by restricting the number of options illustrated. A number of respondents referenced the need for smarter communications and improved terminology. It was also suggested that mandated documents could be consumer tested and accredited by the Plain English Campaign.

7.35 Some respondents considered there was a case for not providing TVA comparisons to consumers at all, especially given the number of other documents with which they need to be provided, but that it should be incumbent on advisers to incorporate the relevant information into the suitability report. The TVA was considered to be the research for the recommendation which it is the adviser's role to interpret and explain in a way the customer can understand. One respondent considered it to be more of an actuarial document than a consumer document. It was noted that the comparison report is generic in that it is not specific to the consumer's needs which reduces its usefulness. It was suggested instead that the focus should be on making suitability reports more understandable and ensuring they contain a clear recommendation.

7.36 A number of respondents considered that the inclusion (in the TVA comparison) of benefits that would be available if the DB scheme went into the Pension Protection Fund (PPF) was inappropriate unless there was an analysis related to the likelihood of that event. It was considered that advisers are generally not well placed to undertake such an analysis. The inclusion of PPF information was also thought by some to increase fear among consumers which may lead to inappropriate decisions to transfer. However, it was considered appropriate to retain some information on the PPF where the CETV has been reduced due to underfunding.

7.37 Many respondents noted that extending TVA comparisons to include flexi-drawdown options would result in even longer and more complex comparison reports.

7.38 Only a small number of respondents considered that no changes were necessary to the current approach.

7.39 One respondent considered that any rules/guidance for TVA comparisons needed to be aimed at external third party producers of TVA software. They considered that such firms may seek to include unnecessary or overly standardised wording in order to justify their fee, and make reports as all-encompassing and generic as possible to prevent the need for carrying out time consuming personalisation. It was also thought that the third party firms may design the content and wording of TVA reports for the financial adviser, rather than the taking into consideration the level of knowledge held by the average consumer. Another respondent considered that the TVA software providers producing the reports need to hold the pension transfer specialism for the report to be fit for purpose, given the requirement for advice to be provided or signed off by a pension transfer specialist.

7.40 One respondent highlighted risks in relation to "free" life insurance TVA software being made available to advisers where the only comparison is to the insurance company's own products. They noted that this might be to the detriment of the consumer as the life insurance company has a vested interest in producing reports that "encourage" the member to transfer.

7.41 Questions were also raised about the accuracy of reports which could lead to the adviser unwittingly providing incorrect or inappropriate advice. Some respondents considered that firms supplying TVA software and reports should be required to hold the pension transfer specialism and relevant PI cover. One respondent also raised questions on the accuracy of the information provided by DB scheme administrators and the liability they should carry if inaccurate information results in unsuitable advice to transfer.

7.42 Other issues raised included the need for more clarity over how to present the information from non-DB safeguarded benefits, particularly when these form only part of the transfer value, e.g. a guaranteed minimum pension, or when transfer is after the scheme's normal retirement age and the concept of the critical yield effectively disappears.

Enhanced transfer value exercises

7.43 In this section of CP15/30, we referenced the work undertaken in relation to TR14/12[27] on enhanced pension transfer exercises we found that only 52% of the advice we reviewed was clearly suitable. In the report, the role of 'focussed advice' where advice was limited in scope was raised as a possible cause of "unfair customer outcomes". In CP15/30, we noted the possible conflict between the client who is the employer who stipulates the boundary of the advice and pays for it, and the client who is the recipient of the advice. Noting the FAMR, we asked:

> ***Q35:*** ***What advice options should we be considering to ensure that members receive good outcomes when considering a pension transfer?***

7.44 A number of respondents commented on the potential for FAMR to make recommendations in this area and urged that we should not pre-empt the FAMR outcomes.

7.45 Focussed advice which is limited in scope was supported by some respondents, for cost reasons, with a view being expressed that the employer should be entitled to offer only to pay for advice limited to the transfer itself. However, some respondents thought there was a need for more guidance to ensure that the scope of the service is clear to those receiving it and indicating

27 FCA, *TR14/12: Thematic Review of Enhanced Transfer Values*, www.fca.org.uk/static/documents/thematic-reviews/tr14-12.pdf

how to obtain full advice. In particular, it was considered that the fact find should be sufficient to identify the risks associated with limiting the advice so that the process can be stopped if it is considered that it may not be in the client's best interests. In particular, the customer's dependency on the pension in question was mentioned. Some respondents noted that limited advice covered only the transfer to a selected product with a selected provider.

7.46 Reference was made to the low limit (£150) of employer sponsored advice which can be provided before the advice is treated as a benefit in kind to the employee. There were calls for the limit to be raised to reflect the current cost of providing advice and for pressure to be put on employers to provide a more flexible budget for the provision of advice. It was considered that low advice fees are a factor in the provision of limited scope advice which, consequently, will often take the form of telephone advice rather than face-to-face advice for enhanced exercises. Some respondents considered technology could be a helpful enabler going forward, with the provision of online guidance services and modelling tools to help members better understand the risks associated with different options. It was noted that the Industry Code of Good Practice on Incentive Exercises for Pensions only requires employers to pay for 'appropriate' advice, a term which is not defined in the FCA Handbook.

7.47 A number of respondents considered that the complex nature of pension transfer advice requires holistic advice and that any form of restriction increases the risk of unsuitable consumer outcomes. One respondent pointed out that for some consumers, a DB pension will be one of their most significant assets and that it is essential that a robust analysis that takes into account all income and expenditure. Some respondents considered that the advice could only be truly independent of the employer if it considered all the employee's circumstances. One respondent suggested that DB members should be able to choose their own adviser (paid for by the employer) which would spread the workload and provide an incentive for advisers to maintain and service the client in the future (which was considered unlikely to happen with advisers specialising in pension transfers). On a similar theme, another respondent suggested that employers could pay the first £500 of full advice which would mean that only those who are really serious about transferring and ready to engage would be likely to proceed. One respondent thought that only employees should be able to limit the scope of the advice.

7.48 One respondent considered that if the advice was wider, more recommendations to transfer would result as this would involve looking at more than just the mathematics of the single transfer. This could actually make it more attractive for employers looking to de-risk pension schemes to pay for full advice.

7.49 Another respondent suggested a new advice service label might be appropriate to distinguish advice where the scope has been limited by the employer, rather than by the end user of the advice service.

Our response

We are grateful to all of those who took time to provide considered responses to the questions on pension transfers. The comments provided reiterated our own view that there are some complex issues to work through and consider. We expect to undertake more work on pension transfers and will be considering the responses and suggestions in more detail as we look at possible policy options going forward.

It is our view that the issues raised in relation to client's bests interests and insistent clients extend beyond pension transfers and to the wider pension landscape. This requires a more holistic view to be taken of any possible regulatory interventions. While some of these issues have been around for a long time, we acknowledge that the introduction of pension freedoms has increased apprehensions of advising and transacting in some cases. This does create a risk that consumers will lose confidence in the ability of the industry to deliver on the promises of pension freedom. While we consider whether there is a need for us to undertake more work in this area, **we believe there is a responsibility upon the industry itself to consider how it can deliver on customers' expectations**. We do not see any case for moving away from client's best interests as a starting point for advice.

On pension transfers specifically, some respondents argued a strong case for extending the current methodology for TVA to incorporate other options. When we consider the options, we will put a strong emphasis on having a process which improves the chances of delivering good outcomes for consumers. As the actual outcomes may not be known for many years, this may mean that the focus needs to be on consumers understanding what they are giving up and the value and uncertainty attached to the alternative options on offer.

The need for consumer understanding means that communication is a key part of the pension transfer process. We consider that the current TVA comparisons are unlikely to be helping consumers to be making informed decisions; this is because the included information is so overwhelming that it is doubtful if the document is being read.

We will consider the comments on advice options for enhanced transfer exercises in light of the wider comments in FAMR on advice options and labelling.

We will continue to talk to stakeholders over coming months and would welcome further input from interested parties.

8.
Product disclosure

Summary of feedback and our response

8.1 In this chapter, we set out feedback provided by respondents to our discussion chapter on product disclosure. That chapter provided an overview of a number of issues which had been raised with us by firms.

Background

8.2 Last year we spoke with many firms ahead of consulting on our rule review. Many firms raised issues in relation to our product disclosure regime, some of which were addressed elsewhere in CP15/30.

8.3 In the discussion chapter, we reiterated the policy intent behind the current disclosure regime and presented the issues raised by firms. We reminded firms of their own ability to address some of the issues themselves (the rules set out minimum requirements) but acknowledged that some of the issues would need to be addressed by us. We also laid out the European background within which we are operating and the uncertainty this generates when assessing cost benefit analysis of possible changes (if the changes might be short lived).

8.4 We invited firms to comment on the background provided and on ways forward for product disclosure, considering both where we and firms themselves can bring about changes. We asked:

> *Q36:* ***Do you have any comments on possible future changes to our product disclosure regime? If there are any specific areas which you consider should be reviewed now, please include details of the changes you feel the FCA should introduce and those where firms should bring about improvements.***

8.5 While all of those responding thought there was potential for improving product disclosures, there was a variety of views on how this should be done or where the responsibility lay. However, for the most part, respondents thought that the issues we laid out in the CP15/30 were a fair representation of the issues that need to be addressed to make product disclosures more meaningful. Many respondents went into more detail on the issues that had been presented in the chapter. Some respondents also raised some further issues. Some of these were high level such as the tensions created by the dual purpose of KFIs others were technical issues, e.g. growth rates, flanking rates, critical yields, consistency between KFIs and capped drawdown reviews. Views were also expressed that disclosures are too complex and too product focussed, and consumers need more help in pulling together information on all their assets in a meaningful way to assist in planning.

8.6 There was general agreement that disclosures need to be more concise, and a number of respondents thought that more consideration was needed on the overall volume of paperwork that consumers receive at different stages of their consumer journey. However, in the current environment, some respondents could not see how to reduce the volumes of paperwork without taking an unnecessary degree of regulatory risk. A number of respondents commented that the changes to disclosure documents over time had not taken account of the fact that disclosures are now often presented to consumers without the benefit of an adviser to help them understand it, and that this is exacerbated with pension freedoms.

8.7 There was strong support for the concept of the Smarter Consumer Communications[28] to be applied to product disclosures; in particular, that they should empower consumers to make more effective decisions. However, it was also recognised that disclosure alone cannot guarantee good outcomes. The style of presentation of the information was mentioned by many respondents; it was considered that there is a need for more graphical and pictorial representations of information and less use of words and numbers, although the inclusion of risk warnings was mooted by some. There was also comment on the delivery of the information, generally focussing on moving away from a paper based format towards more interactive tools.

8.8 There were mixed views on whether there should be a wholesale review of product disclosures at the current time. Some firms considered it was not an appropriate time for a full review of the regime, due to the costs that would be incurred and the potential for pensions to be incorporated into the Packaged Retail and Insurance-based Investment Products (PRIIPs) regulatory framework in due course. Others thought that waiting four years to find out if pensions were included in PRIIPs was too long to not make changes and that, at the very least, changes could be made to incorporate elements of the PRIIPs regime. A number of respondents thought that focussing product disclosure changes on the changing legislative environment for pension freedoms was the correct approach, in the short term, and some respondents considered that new risks from pension freedoms may still emerge as the market evolves which may require further changes. It was also considered that, prior to any review; there should be work on a thorough understanding of customer behaviour, using the insights of behavioural economics and experience with existing forms of disclosure.

8.9 One major trade body thought that there is space for industry to do more within the rules, with us playing a role in developing solutions.

Our response

We would like to thank firms for taking time to respond to our discussion on product disclosure and sharing their thinking with us. It is obvious from the responses that there is no easy way forward and there are a number of tensions pulling in different directions.

We have considered the responses carefully, in light of the current environment and other priorities. Consequently, we will not progress any work on a full review of our product disclosure regime in the short term. This does not mean that there will be no changes; we still intend to undertake work such as reviewing the maximum projection rates and can confirm that research for the next review will take place this year. We will publish the results of this review and any next steps, once the economic research is complete and has been peer

28 FCA, *DP15/5: Smarter Consumer Communications*, www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html

reviewed. We will also consider making changes to the existing rules where we consider it is necessary to meet our objectives.

It is also possible that there may be other areas of work which have consequences for product disclosure, for example, our work on Smarter Customer Communications. It was encouraging to see the number of respondents who referenced our work on Smarter Customer Communications when responding to this chapter. We would also refer firms to TR16/2[29], particularly when considering ongoing communications to customers.

We welcome the comments from the trade body that firms can do more within the current rules and we look forward to seeing industry taking a lead in making this happen. While we are happy to engage with industry, firms can and should seek to make changes to their communications building on the ideas highlighted in our recent publications without the need for further engagement.

However, we urge firms to contact us if they are developing new products where the disclosures do not appear, at first sight, to fit easily into the product disclosure regime, e.g. products with different benefit structures merged into one contract. Early engagement can highlight the issues which firms need to consider further to ensure disclosures meet our requirements.

29 FCA, *TR16/2: Fair treatment of long-standing customers in the life insurance sector*, www.fca.org.uk/your-fca/documents/thematic-reviews/tr16-02

9.
FSCS protection of pensions

Summary of feedback and our response

9.1 The FSCS was set up in 2001 to replace a number of existing compensation schemes. Following consultation, the Financial Services Authority (FSA) decided that the overall maximum amount per claim should be set separately for each of the main sub-schemes within the compensation scheme (namely, deposits, investments and insurance) and that the new scheme should not result in a reduced level of cover to that which existed under the corresponding predecessor scheme. The FSA considered that there were differences in the purpose of compensation in the three main sectors (deposits, investments and insurance) and that the compensation limits should be set to reflect this.

9.2 At present, the FCA and Prudential Regulatory Authority rules do not differentiate in terms of compensation limits between claims in connection with pension related-deposits, long-term insurance contracts or investments and similar non-pensions-related activities. Therefore, for example, a person who purchases an investment product is in the same position with regard to FSCS limits whether the investment product is held in an ISA, in a SIPP, or a defined contribution occupational pension scheme.

9.3 Questions have recently been raised regarding the limits in the context of the pension reforms. We therefore sought to gather evidence to inform our analysis of possible changes to the limits as part of the review of the FSCS limits and funding regime during 2016. Our questions, a summary of the feedback and our response is set out below. We asked:

> *Q37:* ***Do you have any evidence or analysis to offer in relation to the impact on firm or consumer behaviour, or possible consumer outcomes, of the current difference in compensation limits for investment and insurance provision in relation to pensions?***

9.4 We received 39 responses to this question. Of these, 35 respondents stated clearly that they have no evidence to offer in relation to the impact on firm or consumer behaviour, or possible consumer outcomes. Of the other four, one respondent stated that they are aware of a very small number of instances where very sophisticated or advised ultra-high net worth individuals or family groups have chosen an insured product primarily because of FSCS coverage, but they have no evidence that the difference in FSCS limits has any impact on mass market consumer behaviour. Another respondent stated that while it also has no evidence to offer in respect of consumer behaviour, it said that some pension scheme trustees do attach importance to the 100% limit for insurance provision.

9.5 We received two comments to the effect that firms are beginning to use differential FSCS coverage as a basis for marketing. A further ten respondents commented that consumers were either unaware of the limits or were confused by them. We also asked:

Q38: Do you have any views on whether compensation limits should reflect the objectives of the consumer in making the investments? For example, regardless of the type of investment, if it is for the purposes of pension accumulation or decumulation, then the FSCS limit should be consistent between investment and insurance provision?

9.6 We received 43 responses. Of these, 39 responded in the affirmative, that the FSCS limit should be consistent, while four disagreed, but only one of those explained why they did so, which was on the basis of the possible increase to the levies on firms. Of the 39 respondents in agreement, two said that the 100% limit should not be reduced, while another seven respondents in agreement expressed concerns about the costs to firms of making the limits consistent. Seven of the respondents in agreement based their support for consistent limits on the confusing nature of current limits, or the need for simplification of the scheme. We also asked:

Q39: Would you support an increase in the limit for some or all investment provision, and if so, do you have any views on what the new limit should be, which types of claim or business it should apply to, and how any increase should be funded?

9.7 We received 38 responses. Of these, seven respondents set out that they would not support an increase, six of those on the basis of increased costs to firms; the other respondent did not offer a reason. There was limited support for an increase in the limit, but no consensus to what the new limit should be. Eight respondents suggested that we carry out a comprehensive review of the limits and funding regime.

9.8 Of the 38 respondents, 11 said they would support an increase but only with various conditions attached: if there was no reduction in insurance provision cover; if the limits for insurance provision and mediation were made consistent; conditional on the costs being acceptable; on a product risk-basis; and dependant on 'workability'.

Our response

We sought responses to these three discussion questions so as to inform the forthcoming formal review of the FSCS funding regime, which we will consult on later in 2016.

In the context of the FSCS funding review, we will consider all of the responses received, along with outcomes from the FAMR and data on the types of products being purchased by consumers following the introduction of the pension freedoms.

This will allow us to form a view on the feasibility and affordability of any potential changes to the FSCS compensation limits, both overall and with regard to pension products. We will consult on any proposed changes to the FSCS funding regime later in 2016.

Annex 1
Cost benefit analysis

1. In Annex 3 of CP15/30 we set out our cost benefit analysis (CBA) for the proposals in the paper that required one. For the proposals not requiring a CBA, we set out our reasons for this. At the conclusion of the chapter we asked stakeholders for any comments on the CBA.

2. This chapter provides a summary of stakeholder comments and sets out our response. We asked:

> ***Q40: Do you have any comments on the cost benefit analysis?***

3. Over 80% of respondents had no comments on the cost benefit analysis.

4. One respondent noted that even though they did not necessarily agree with all the changes, the full review that had been undertaken was necessary. Another considered the costs were not onerous given the need for change in communications to clients and considered the costs were a natural element of doing business. One respondent noted that they would be unable to verify the costs until they had undertaken the work themselves but considered that there would be benefit in having better informed customers who are more able to engage in the market. A small number of respondents noted that costs do get passed onto consumers and the need for charges to remain good value.

5. One respondent, while supporting the concept of shopping around (paragraph 13 of the CBA), considered that the provision of too many choices to consumers might have the opposite effect.

6. A small number of respondents commented on the need for ongoing engagement between us and firms on the future regulatory framework and a thorough consumer research programme to reduce the risk of future changes. It was noted that too many changes could have an impact on the products and options offered by firms and, consequently, unintended consequences for consumers, or that too much regulation could act as a barrier to entry or reduce innovation.

7. A small number of respondents raised concerns in relation to the costs we identified in relation to the proposed change to product disclosure documents and ongoing communications to customers. In particular, some respondents challenged the use of costs derived from the survey of disclosure compliance costs in 2006. Although recognising that they had been adjusted for inflation, these respondents considered that the changes which had occurred in the interim had made disclosure systems (and subsequent changes) much more complex. One respondent considered that the 2006 figures did not allow for systems testing.

8. Two respondents commented on the use of figures from the 2006 survey for large firms in the consideration of costs. They considered that the costs might be disproportionately larger for smaller SIPP firms and particularly referenced the proposed changes for illustrating UFPLS. They considered that smaller SIPP firms might be the sort of firms that are more likely to offer UFPLS as an option.

9. One respondent considered that calculating the cost on the basis of the number of illustrations to be produced is invalid, because the major expense is incurred in carrying out systems

development, which costs the same irrespective of how often the system is used. It was estimated that the industry might produce 750,000-1,5000,000 illustrations per annum.

10. One respondent considered the UFPLS development cost seems low compared to the cost of doing the initial work this year across the industry.

11. One respondent commented on the costs for showing guarantees in projections and queried if there might be a more cost effective way of showing contractually obligated values in projections.

12. One respondent considered the requirement to show retained interest in SIPP disclosures might be made obsolete by the impact that the Basel III provisions are likely to have on the payment of interest to deposit funds held by SIPPS. In brief these rules make it difficult for banks to pay any interest on short term deposit monies and many operators have already been informed of the cessation of interest from their clients' accounts from early 2016.

Our response

We welcome the comments from respondents agreeing with the benefits of our proposals for consumers. We note the comments relating to providing consumers with too much choice but, as noted earlier, consider that the information we are mandating is appropriate.

We have considered the comments in relation to the use of the inflated 2006 compliance disclosure costs carefully and have the following comments:

1. The survey remains the most recent and comprehensive survey of data on compliance costs for disclosure purposes. Respondents have not supplied us with alternative data on the costs of changing disclosure systems.

2. We consider that as the fundamentals of the KFI are the same as in 2006 (a projection, an effective of charges table, a description of charges, a reduction in yield calculation) and have remained so since the survey was undertaken, the basis for the cost base does remain appropriate. While there have been changes (such as requiring information in real terms rather than nominal terms for products in accumulation), these were one off changes for which a cost benefit analysis was undertaken at the time but should not have an impact on subsequent changes as the fundamentals remain unchanged. Other legislative changes such as the lifetime allowance and annual allowance have not directly impacted the calculations for projected values.

3. We consider that the 2006 costs would have allowed for systems testing. The guidance for firms taking part in the survey stated "When estimating initial costs you may also wish to include provision for user testing and re-testing of any systems changes, and any other iterative development costs."

4. The cost survey from 2006 looked separately at the costs for small, medium and large firms. The estimates in our analysis of costs were based on the highest costs, irrespective of the size of the firm.

We note the comments in relation to the fixed cost of systems development rather than a cost per contract. We note that if the number of illustrations was as suggested, the cost of implementing UFPLS would be in the range of around £20m-£40m. However, we consider there are a number of reasons why this may be overstated:

- around half of firms adopted the Modification by Consent and have already made changes voluntarily
- many firms have indicated to us during this consultation that they will not be including any illustrations in wake-up packs
- not all of our proposals will necessarily result in a full illustration, particularly where there is a variation to a contract requiring 'sufficient information' and firms have choices in how to provide the information

We also note that in relation to our overall proposals on existing business projections, firms do have choices on the extent to which these are produced at all and many choose not to do so, given that they are already providing SMPIs to consumers.

We have revised the date on which most of the changes to product disclosures will become effective from 1 November 2016 to 6 April 2017. As all of the changes will now coincide with the period when firms would be making changes to disclosure systems anyway, to allow for the regular annual changes to mortality and annuity interest rates, we consider this will enable firms to make changes more efficiently and cost-effectively.

Subsequent to CP15/30 and referencing the comments made in relation to alternative ways of showing contractual obligations in projections, we note that DWP has announced that it will be requiring occupational and personal pension schemes to send members with GAR pension benefits projections of the annual income they would potentially be entitled to, if they exercised their GAR. We consider that our final rules are consistent with DWP's intention where our projections are provided.

Retirement risk warnings
As set out in our response to Q13 (see our response on page 30) on retirement risk warnings, we propose to give firms additional flexibility in the risk warnings process. For the reasons we set out in our response under paragraph 3.16 above, the change does not reduce consumer protection. The additional flexibility will enable firms to improve the customer journey, which could lead to some benefits to consumers from greater convenience and informed decision making. As the additional flexibility is not mandatory we anticipate that the cost to firms, if any, will be minimal. It is possible that the increased flexibility will allow firms to deliver risk warnings more cheaply than they did in the past, in which case there could be some benefits to firms from lower costs in the delivery of the risk warnings. Our overall assessment is therefore that this change either results in no change in incremental costs or benefits for both consumers and firms, or else will result in some benefits to one or both groups.

Annex 2
List of consultation questions

Q1: ***Do you agree with the proposal to add these application and purpose provisions in COBS 19.4?***

Q2: ***Do you agree with our proposal to add guidance on communications about retirement options?***

Q3: ***Do you agree with our proposed rule to prevent application forms being sent in wake-up packs and reminders?***

Q4: ***Do you agree with our proposal to restrict when firms can send illustrations?***

Q5: ***Do you have any proposed alternatives?***

Q6: ***In what ways would the alternative be more beneficial for firms and consumers?***

Q7: ***Do you agree with our proposal to require firms to make customers aware of key factors relevant to the product the customer is seeking information for?***

Q8: ***Do you agree with the factors we propose these are likely to be in relation to this rule?***

Q9: ***Do you agree with our proposals for providing product disclosures and information when accessing pensions flexibly? If not, what alternatives would you suggest?***

Q10: ***Do you agree with our proposals for extending the rules and guidance in COBS 9 to UFPLS? If not, please explain why you consider this is not appropriate.***

Q11: ***Do you agree with our proposal to clarify that SIPP retained interest charges should be included in projections and charges information? If not, how would you suggest we level the playing field for disclosing charges between SIPP and other pensions?***

Q12: ***Do you agree with our proposal not to add guidance at this stage to support firms in meeting their obligations to review the operation and distribution of their products over time?***

Q13: ***Do you agree that the rules in PS 15/4 should be retained? If not, please explain what change you would propose and why?***

Q14: ***Do you agree with our proposal to remove the requirement on firms to go through step 2 of the risk warning process where the consumer's pension pot is below a minimum level and where there are no safeguarded benefits but that firms should still give the consumer relevant risk warnings? If not, why not and what alternative would you propose?***

Q15: ***Do you agree that the minimum level should be set at £10,000 or less? If not, what level do you think the minimum should be set at and why?***

Q16: ***Do you consider our cancellation rules expose some consumers to a risk that is not mitigated by any other measures? In what other ways might we reduce that risk and improve consumer outcomes?***

Q17: ***Do you agree that monitoring the evolving environment is an appropriate and proportionate FCA response in the pursuit of consumer protection? If not, what action do you think we should take and how would this alter consumer outcomes?***

Q18: ***Do you agree that amendments to HNWI and RI certification statements are necessary to provide appropriate protection to consumers who access their pension savings?***

Q19: ***Do you agree that our proposals provide an appropriate initial safeguard for consumers accessing their pension funds? If not, what other measures could we consider?***

Q20: ***Should payments from pension savings only be excluded from the HNWI and RI criteria if they were accessed within a set period of time before the date on which the statement is signed? If so, what period of time would deliver the appropriate consumer protection?***

Q21: ***Do you agree that we should undertake a wider review of the marketing and distribution restrictions in our rules?***

Q22: ***Do you agree with our proposal to add guidance to make explicit the application of existing rules on debt collection in relation to pension savings and remind both debt collection and advice firms that advising on conversion or transfer of pension benefits is a regulated activity?***

Q23: ***Do you agree with our proposed guidance for providers and advisers on attachment orders? If not, what would you suggest and why?***

Q24: ***Do you agree that we should clarify the methodology as described? If not, what alternative would you propose which achieves similar outcomes?***

Q25: ***Do you agree with our proposals to show contractually obligated future values in projections, including GARs? If not, how could we amend it?***

Q26: ***Do you agree with our proposal to update the mortality table and timing of the improvement factors? If not, how could we amend it?***

Q27: ***Do you agree with our proposals to amend the definitions?***

Q28: ***Do you agree with the analysis of the issue? If not, what is your assessment of the situation?***

Q29: ***Of the options above, which do you think is likely to be the most effective in dealing with the issue identified and why is that? Are there any alternatives that we should consider?***

Q30: ***What else do you think the FCA can and should do to make firms aware of their responsibilities in relation to lifestyling investment strategies?***

Q31: ***Should we be reviewing the starting assumption for those over minimum retirement age that a pension transfer will be unsuitable unless it is can be proven to be in the client's best interests? How, if at all, does pension freedom change the interpretation of client's best interests in respect of pension transfers?***

Q32: ***How should the pension freedoms be reflected in TVA in a way which results in good outcomes for consumers? Is there a need for change and if so, how?***

Q33: ***Given that the main barriers to transacting insistent client business are external to the FCA, how do you consider that regulation could be amended in a way which facilitates such transactions more easily but still provides a satisfactory level of consumer protection?***

Q34: ***How can TVA comparisons to members be improved to make them shorter, more meaningful and more likely to engage members in the TVA process? What changes, if any, are necessary to FCA rules to ensure that TVA comparisons are fit for purpose?***

Q35: ***What advice options should we be considering to ensure that members receive good outcomes when considering a pension transfer?***

Q36: ***Do you have any comments on possible future changes to our product disclosure regime? If there are any specific areas which you consider should be reviewed now, please include details of the changes you feel the FCA should introduce and those where firms should bring about improvements.***

Q37: ***Do you have any evidence or analysis to offer in relation to the impact on firm or consumer behaviour, or possible consumer outcomes, of the current difference in compensation limits for investment and insurance provision in relation to pensions?***

Q38: ***Do you have any views on whether compensation limits should reflect the objectives of the consumer? For example, regardless of the type of investment, if it is for the purposes of pension accumulation or decumulation, then the FSCS limit should be consistent between investment and insurance provision?***

Q39: ***Would you support an increase in the limit for some or all investment provision, and if so, do you have any views on what the new limit should be, which types of claim or business it should apply to, and how any increase should be funded?***

Q40: ***Do you have any comments on the cost benefit analysis?***

Annex 3
List of non-confidential respondents

Aegon UK

Age Partnership Retirement Limited

Age UK

AJ Bell

Altus Consulting

AMPS

Aon Hewitt

Association of British Insurers

Association of Member Nominated Trustees

Association of Pension Lawyers

Association of Professional Compliance Consultants

Association of Professional Financial Advisers

Aviva

Axa Wealth

Blake Dempster

Bob Champion

Briggs Murray Actuarial Limited

C Deacon

Caerus Financial Ltd

Capita Life & Pensions Regulated Services Limited

Charles Stanley & Co. Limited

Chris Jones

Clay Rogers & Partners Ltd

Close Brothers Asset Management

Compliance and Training Solutions Ltd

Corylus Compliance Services

CTC Software

Dentons Pension Management Ltd

Dunstan Thomas

Enhance Support Solutions Limited

Fidelity International

Finance & Leasing Association

Financial Services Consumer Panel

Foster Denovo

Hargreaves Lansdown

Hawthorn Life

HSBC

Informed Choice

Institute and Faculty of Actuaries

Intelligent Pensions

International Financial Data Services

James Hay Partnership

JLT Benefits Solutions

Just Retirement Group plc

Key Retirement

LEBC The Retirement Adviser

Legal & General

Lloyds Banking Group

LV=

Matthew Speck

Mercer

MetLife Europe Limited

Mitchell Consulting Actuaries Limited and 2020 Trustees Limited

Money Advice Trust

MoretoSIPPs

Nicola Foote

O&M Pension Solutions Ltd

Old Mutual Wealth Life Assurance Limited and Old Mutual Wealth Life & Pensions Limited

Partnership Life Assurance Company Limited

Paul Cobley

Pensions & Actuarial Services Limited

Pensions and Lifetime Savings Association

Peter Whawell

Prudential

Retirement Line Limited

RGA UK Services Limited

Rothesay Life

Royal London

Security of DC Assets Working Party

St James's Place plc

Standard Life

Talbot and Muir

Tenet Group Limited

The Money Charity

The Pensions Advisory Service

The Pensions Management Institute

The People’s Pension

The SimplyBiz Group

The Society of Pension Professionals

The UK Cards Association

threesixty services LLP

Wealth Management Association

Which?

Xafinity

Yorsipp Limited

Zurich

Appendix 1
Made rules (legal instrument)

CONDUCT OF BUSINESS (PENSIONS SUPPLEMENTARY RULES) INSTRUMENT 2016

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (General rule-making power);
(2) section 137FB (FCA general rules: disclosure of information about the availability of pensions guidance);
(3) section 137R (Financial promotion rules);
(4) section 137T (General supplementary powers); and
(5) section 139A (Power of the FCA to give guidance).

B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as follows:

Annex	Date comes into force
Part 2 of Annex A	10 October 2016
Part 2 of Annex B	10 October 2016
Part 3 of Annex B	6 April 2017
The remainder of this instrument	25 April 2016

Amendments to the Handbook

D. The modules of the Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Consumer Credit sourcebook (CONC)	Annex C

Citation

E. This instrument may be cited as the Conduct of Business (Pensions Supplementary Rules) Instrument 2016.

By order of the Board
21 April 2016

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 25 April 2016

Amend the following definition as shown.

pensions guidance	the guidance made available by ~~HM Treasury~~ <u>the Secretary of State</u> in accordance with section 333B of the *Act*.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

small lump sum payment	an authorised member payment under section 164 of the Finance Act 2004 that meets the conditions in regulation 11A of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (SI 2009/1171).

Part 2: Comes into force on 10 October 2016

Amend the following definitions as shown.

certified high net worth investor	a *person* who meets the requirements ~~set out in article 21 of the Promotion of Collective Investment Schemes Order, in article 48 of the Financial Promotions Order or~~ in *COBS* 4.12.6R.
income withdrawals	(a) (as defined in paragraph 7 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, amounts (other than an annuity) which the member is entitled to be paid from the member's<u>:</u> <u>(i)</u> drawdown pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement; or <u>(ii)</u> <u>flexi-access drawdown pension fund (as defined in paragraph 8A of that Schedule) in respect of an arrangement; or</u> …
short-term annuity	(as defined in paragraph 6 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, an annuity payable to the member if:

(A) the member becomes entitled to it before 6 April 2015 and:

…

(e) it is either a level annuity, an increasing annuity or a relevant linked annuity; or

(B) the member becomes entitled to it on or after 6 April 2015; and

(a) it is purchased by the application of sums or assets representing the whole or any part of the member's:

(i) drawdown pension fund (as defined in paragraph 8 of that Schedule) for an arrangement; or

(ii) flexi-access drawdown pension fund (as defined in paragraph 8A of that Schedule) for an arrangement; and

(b) it is payable by an insurance company; and

(c) it is payable for a term which does not exceed five years.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 25 April 2016

9.3 Guidance on assessing suitability

…

Income ~~withdrawals and~~ withdrawals, short-term annuities and uncrystallised funds pension lump sum payments

9.3.3 G When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals*, *uncrystallised funds pension lump sum* payments or purchase of *short-term annuities*, it should consider all the relevant circumstances including:

…

(3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his or her attitude to an *income withdrawal*, *uncrystallised funds pension lump sum* payment or purchase of a *short-term annuity* and other *investments*.

…

9.4 Suitability reports

Providing a suitability report

9.4.1 R A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

…

(3) elects to make income withdrawals, an *uncrystallised funds pension lump sum* payment or purchase a *short-term annuity*; or

…

…

9.4.10 G When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*~~,~~ or making *uncrystallised funds pension lump sum* payments, explanation of possible disadvantages in the *suitability report* should include the risk factors involved in entering into an *income withdrawal* ~~or~~ , purchase of a *short-term annuity* or making *uncrystallised funds pension lump sum* payments. …

…

Insert the following new text after COBS 19.2.3R. The text is not underlined.

19.2 Personal pensions, FSAVCs and AVCs

…

Attachment (or earmarking) orders

19.2.4 G A *firm* should take into account the existence of any attachment (or earmarking) orders in respect of a *client's personal pension scheme* or *stakeholder pension scheme*.

19.2.5 G (1) An *operator* should ensure that it is aware of, and acts fully in accordance with, any attachment or earmarking orders made in respect of any members of that scheme by a court.

(2) In particular, an *operator* should be mindful of its obligations under an attachment order to give notices to other parties, including transferee *operators* and relevant former spouses, where relevant events occur, such as transfers and significant reductions in benefits.

(3) A *firm*, when advising a *client* in relation to a *personal pension scheme* or *stakeholder pension scheme*, or in relation to a *pension transfer* or *pension conversion*, should enquire as to whether an attachment order exists and take it into account accordingly.

Amend the following as shown.

19.7 Retirement risk warnings

Definitions

19.7.1 R (1) ~~"payment out of uncrystallised funds" is an uncrystallised funds pension lump sum within the meaning of paragraph 4A of Schedule 29 of the Finance Act 2004;~~ [deleted]

(2) "pension decumulation product" is a product used to access pension savings and includes: ~~a facility to enable a *retail client* to make a payment out of uncrystallised funds an option to take a *small lump sum payment* a *drawdown pension*; or a *pension annuity*;~~

(a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum* payment;

(b) an option to take a *small lump sum payment*;

(c) a *drawdown pension*; and

(d) a *pension annuity*;

…

…

19.7.4 G …

(2) If the *retail client* has not yet decided what to do, the *firm* should consider whether it is required to signpost the *pensions guidance* under ~~COBS~~ *COBS* 19.4.5R (signposting pensions guidance) and whether it may be appropriate to provide information about the risks associated with the *client's* options to access their pension savings generally.

…

Trigger: when does a firm have to follow the steps?

19.7.7 R A *firm* must follow the steps specified in this section at the point when the *retail client* has decided (in principle) to take one of the following actions (and before the action is concluded):

…

(2) vary their *personal pension scheme*, *stakeholder pension scheme, FSAVC, retirement annuity* contract or *pension buy-out contract* to enable the *client* to:

…

(b) elect to make one-off, regular or ad-hoc ~~payments out of uncrystallised funds~~ *uncrystallised funds pension lump sum* payments; or

(3) receive a one-off, regular or ad-hoc ~~payment out of uncrystallised funds~~ *uncrystallised funds pension lump sum* payment; or

(4) access their pension savings using a *drawdown pension*; or

(5) withdraw the funds in full from their pension savings, reducing the value of their rights to zero.

…

Step 2: identify risk factors

19.7.9 R Based on how the *retail client* wants to access their pension savings, at step 2 the *firm* must ask the *client* questions to identify whether any risk factors are present, except where *COBS* 19.7.9AR applies.

19.7.9A R If the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, the *firm*:

(1) is not required to ask questions to identify whether any risk factors are present; and

(2) must prepare appropriate retirement risk warnings based on the risk factors relevant to each pension decumulation product it offers to enable *retail clients* to access their pension savings.

19.7.9B R A firm may ask the *client* the questions required by *COBS* 19.7.9R before the *client* has decided (in principle) to take one of the actions specified in *COBS* 19.7.7R to access their pension savings.

19.7.9C R If, to complete step 2, a *firm* relies on information gathered prior to the *client's* decision to access their pension savings, the *firm* must be satisfied that this information is relevant, accurate and up-to-date before giving the risk warnings at step 3.

…

19.7.13 R At step 3~~,~~:

(1) if the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, based on how the *retail client* wants to access their pension savings, a *firm* must give the *client* the appropriate retirement risk warnings prepared under *COBS* 19.7.9AR(2); and

(2) in all other cases, a *firm* must give the *retail client* appropriate retirement risk warnings in response to the *client's* answers to the *firm's* questions.

…

TP 2 Other Transitional Provisions

Amend the following as shown.

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the		Transitional provision	Transitional provision:	Handbook provisions:

	transitional provision applies			dates in force	coming into force
…					
2.24	*COBS* 13 Annex 2		A *firm* will comply with the provisions listed in column (2) if it chooses to comply with the following amendments made to those provisions by the Conduct of Business (Pension Supplementary Rules) Instrument 2016 as if those amendments were already in force: *COBS* 13 Annex 2 2.4R(3); *COBS* 13 Annex 2 3.3R; *COBS* 13 Annex 2 3.4G; *COBS* 13 Annex 2 5.1R(2)(g)	25 April 2016 to 5 April 2017	6 April 2017

Part 2: Comes into force on 10 October 2016

4.7 Direct offer financial promotions

4.7.10 R A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

"…	
Net assets for these purposes do not include:	
(a)	the property which is my primary residence or any money raised through a loan secured on that property;
(b)	any rights of mine under a qualifying contract of insurance;
(c)	any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or
(d)	any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

…”

…

4.12 Restrictions on the promotion of non-mainstream pooled investments

…

4.12.6 R A *certified high net worth investor* is an individual who has signed, within the period of twelve months ending the day on which the communication is made, a statement in the following terms:

“…

- I had, throughout the financial year immediately preceding the date below, an annual income to the value of £100,000 or ~~more;~~ more. Annual income for these purposes does not include money withdrawn from my pension savings (except where the withdrawals are used directly for income in retirement).

- I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include:

- …
- any rights of mine under a qualifying contract of insurance; ~~or~~
- any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; or
- any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

…”

…

13.3 Contents of a key features document

…

13.3.1A G When preparing a *key features document* for *pension annuity* and *drawdown pension* options *firms* should consider the information requirements for *firms* communicating with *clients* about their pension decumulation product options in *COBS* 19.4.12R and *COBS* 19.4.14R.

…

COBS 19.4 is deleted in its entirety and replaced with the following text. The deleted text is not shown and the new text is not underlined.

19.4 Open market options

Definitions

19.4.1 R In this section:

(1) 'fact sheet' means the *Money Advice Service* fact sheet "Your pension: it's time to choose" available on www.moneyadviceservice.org.uk or a statement provided by a *firm* that gives materially the same information;

(2) 'intended retirement date' means:

(a) the date (according to the most recent recorded information available to the provider) when the scheme member intends to retire, or to bring the benefits in the scheme into payment, whichever is the earlier; or

(b) if there is no such date, the scheme member's state pension age;

(3) 'open market options' means the options available to a scheme member to access their pension savings on the open market;

(4) 'open market options statement' means the information specified in *COBS* 19.4.6R, provided in a *durable medium*, to assist the *retail client* to make an informed decision about their open market options;

(5) 'pension decumulation product' is a product used to access pension savings and includes:

(a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum* payment;

(b) an option to take a *small lump sum payment*;

(c) a *drawdown pension*; and

(d) a *pension annuity*;

(6) 'pension savings' is the proceeds of the *retail client's personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract*;

(7) 'reminder' is the requirement in *COBS* 19.4.9R to remind the *retail client* about the open market options statement; and

(8) 'signpost' is the requirement in *COBS* 19.4.16R to provide a written or oral statement encouraging a *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement.

Application

19.4.2 R This section applies to a *firm* which operates a *retail client's personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity* contract or *pension buy-out contract*.

19.4.3 G This section specifies the circumstances where a *firm* must:

(1) provide a *retail client* with an open market options statement;

(2) signpost *pensions guidance*;

(3) provide information to enable a *retail client* to make an informed decision about how to access their pension savings at their intended retirement date and beyond; and

(4) remind a *retail client* about their open market options.

Purpose

19.4.4 G The purpose of this section is to ensure that *firms* provide *retail clients* with timely, relevant and adequate information:

(1) to enable them to make an informed decision about their options for accessing pension savings at their intended retirement date and beyond; and

(2) to encourage them to shop around.

Open market options statement

When?

19.4.5 R (1) A *firm* must give a *retail client* an open market options statement:

(a) if the *client* asks a *firm* for a retirement quotation more than four *months* before the *client's* intended retirement date;

(b) if a *firm* does not receive such a request for a retirement quotation, between four and six *months* before the *client's* intended retirement date; or

(c) if a *retail client* with open market options tells a *firm* that he or she is considering, or has decided:

(i) to discontinue an *income withdrawal* arrangement; or

(ii) to take a further sum of money from his or her pension to exercise open market options;

unless the *firm* has given the *client* such a statement in the last 12 *months*.

(2) If after taking reasonable steps to comply with the requirement in *COBS* 19.4.5R(1)(b) a *firm* has been unable to provide a *retail client* with an open market options statement the *firm* must provide the statement in good time before it *sells* a pension decumulation product to the *client*.

Contents

19.4.6 R An open market options statement must include:

(1) the *Money Advice Service* fact sheet "Your pension: it's time to choose" available on www.moneyadviceservice.org.uk or a statement provided by a *firm* that gives materially the same information;

(2) a summary of the *retail client's* open market options, which is sufficient for the *client* to be able to make an informed decision about whether to exercise, or to decline to exercise, open market options;

(3) information about the *retail client's personal pension scheme*, *stakeholder pension scheme*, *FSAVC, retirement annuity* contract or *pension buy-out contract* provided by the *firm*, including:

(a) the sum of money that will be available to exercise open market options;

(b) whether any guarantees apply and, if so, information about how the guarantees work;

(c) any other relevant special features, restrictions, or conditions that apply, such as (for *with-profits funds*) any market value reduction conditions in place; and

(d) any other information relevant to the exercise of the *retail client's* open market options; and

(4) a clear and prominent statement about the availability of the *pensions guidance* including:

(a) how to access the *pensions guidance* and its contact details;

(b) that *pensions guidance* can be accessed on the internet, telephone, or face to face;

(c) that the *pensions guidance* is a free impartial service to help consumers to understand their options at retirement; and

(d) a recommendation that the *client* seeks appropriate guidance or advice to understand their options at retirement.

19.4.7 G For the purpose of *COBS* 19.4.6R(1) where a *firm* provides its own statement as the fact sheet, it should include materially the same information in the *Money Advice Service* fact sheet about:

(1) the following options for accessing pensions savings, even if they are not offered by the *firm*:

(a) *pension annuity*;

(b) *drawdown pension*; and

(c) *uncrystallised funds pension lump sum* payments;

(2) the main features, benefits and risk factors relevant to the options for accessing pensions savings, such as:

(a) tax implications;

(b) what happens in the event of the *client's* death;

(c) the loss of any guarantees;

(d) the *client's* state of health;

(e) the *client's* lifestyle choices;

(f) whether the *client* is married or has dependants; and

(g) sustainability of income over time;

(3) how to access financial advice and information about the different ways in which the *client* might be able to access their pension savings;

(4) the availability of free, impartial guidance from the *pensions guidance*; and

(5) the *client's* option to shop around, with an explanation of how they may do so.

19.4.8 R An open market options statement must not include an application form for a pension decumulation product.

Reminder

19.4.9 R At least six weeks before the *retail client's* intended retirement date the *firm* must:

(1) remind the *client* about the open market options statement;

(2) tell the *client* what sum of money will be available to exercise open market options;

(3) remind the *client* about the availability of the *pensions guidance*; and

(4) recommend that the *client* seeks appropriate guidance or advice to understand their options at retirement.

19.4.10 R The reminder must not include an application form for a pension decumulation product.

Key features illustrations

19.4.11 R A *firm* must not provide a *key features illustration* to a *retail client* for a pension decumulation product, excluding a *small lump sum payment,* unless:

(1) it is required to provide the *client* with the *key features illustration* in accordance with the *rules* on providing product information to clients (*COBS* 14.2.1R);

(2) without prompting by the *firm*, the *client* requests the *key features illustration*;

(3) it includes a *key features illustration* for each of the pension decumulation product options that it offers; or

(4) it includes multiple *key features illustrations* as indicative representations of each of the pension decumulation product options that it offers.

Communications about annuity options

19.4.12 R When a *firm* communicates with a *retail client* about their *pension annuity* options the *firm* must provide the *client* with information about how their circumstances can affect retirement income calculations and payments for *pension annuities* offered by the *firm* and on the open market.

19.4.13 G For the purpose of *COBS* 19.4.12R, examples of the circumstances which can affect retirement income calculations and payments include:

(1) the *client's* marital status;

(2) whether the *client* has dependants;

(3) whether the *pension annuity* provides a fixed, increasing or decreasing income;

(4) the certainty of income associated with an annuity;

(5) the *client's* state of health; and

(6) the *client's* lifestyle choices.

Communications about drawdown and uncrystallised funds pension lump sum options

19.4.14 R When a *firm* communicates with a *retail client* about their *drawdown pension* and *uncrystallised funds pension lump sum* options, the *firm* must provide the *client* with such information as is necessary for the *client* to make an informed decision including, where relevant, information about:

(1) how the remaining fund is invested;

(2) sustainability of income over time including;

(a) the extent to which any income is guaranteed; and

(b) implications of full encashment on the *client's* retirement income;

(3) the need to review, make further decisions about, or take further actions during the life of the pension decumulation product;

(4) impact on means-tested benefits;

(5) the effect of costs and charges on the *client's* income; and

(6) tax implications.

Communications about options to access pension savings

19.4.15 G A *firm* should ensure that when it makes any communication with a *retail client* concerned with the *client's* options to access their pension savings it has regard to the *fair, clear and not misleading rule*, the *client's best interests rule* and *Principles* 6 and 7. In particular a firm should:

(1) refer to the contents of the *Money Advice Service* fact sheet to identify what information might assist the *client* to understand their options;

(2) consider whether it needs to include or refer to any information contained in the *Money Advice Service* fact sheet;

(3) ensure that the content, presentation or layout of any pension decumulation product information does not emphasise any potential benefits of the *firm's* own products and services in a way that disguises, diminishes or obscures important information or messages contained in the fact sheet;

(4) prominently highlight the ability to shop around and state clearly that other providers might offer pension decumulation products that are

more appropriate for the *client's* needs and circumstances and may offer a higher level of retirement income;

(5) present information in a logical order, using clear and descriptive headings and where appropriate cross-references and sub-headings to aid navigation; and

(6) where possible, use plain language and avoid the use of jargon, unfamiliar or technical language or, where this is not possible, provide easily accessible accompanying explanations in plain language.

Signposting pensions guidance

19.4.16 R (1) When a *firm* communicates with a *retail client* about the *retail client's personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract* which is provided by the *firm*, unless the circumstances in (2) apply, the *firm* must:

(a) refer to the availability of the *pensions guidance*;

(b) offer to provide the *client* with information about how to access the *pensions guidance*; and

(c) include a recommendation that the *client* seeks appropriate guidance or advice to understand their options at retirement.

(2) A *firm* is not required to provide the *client* with the statement required in (1) where:

(a) the *firm* communicates with the *client* for a purpose other than:

(i) encouraging the *client* to think about their open market options; or

(ii) facilitating access to the *client's* pension savings; or

(b) the *client* has already accessed the *pensions guidance*; or

(c) the *client* has already received advice from a *firm* on their open market options, for example from an independent financial adviser; or

(d) the *firm* is providing the *client* with an open market options statement or six-week reminder in accordance with *COBS* 19.4.5R or *COBS* 19.4.9R.

19.4.17 G An example of behaviour by or on behalf of a *firm* that is likely to contravene the *client's best interests rule* or *Principle* 6 and may contravene other *Principles* is for a *firm* to actively discourage a *retail client* from using the *pensions guidance*, for example by:

(1) leading the *client* to believe that using the *pensions guidance* is unnecessary or would not be beneficial; or

(2) obscuring the statement about the availability of the *pensions guidance* or any other information relevant to the exercise of open market options.

Tax implications

19.4.18 R If a *firm* receives an application from a *retail client* to access some or all of their pension savings, the *firm* must provide the *client* with a description of the tax implications before the *client* accesses their pension savings.

19.4.19 R A *firm* is not required to provide the information in *COBS* 19.4.18R where it is provided in accordance with *COBS* 14.2.1R.

…

Amend the following as shown.

19.7 Retirement risk warnings

…

19.7.4 G …

(2) If the *retail client* has not yet decided what to do, the *firm* should consider whether it is required to signpost the *pensions guidance* under ~~*COBS* 19.4.5R~~ <u>*COBS* 19.4.16R</u> (signposting pensions guidance) and whether it may be appropriate to provide retirement risk warnings.

Insert the following new Annex after COBS 19 Annex 1 Retirement risk warnings – steps to take. The text is all new and is not underlined.

19 Annex 2G Communications about options to access pension savings

This annex belongs to *COBS* 19.4

The definitions in *COBS* 19.4.1R are applied to these tables.

Table 1: Communications required to be made by the firm at specified times

Handbook	**Matters to be**	**Contents of**	**When**

reference	communicated	communication	
19.4.5R	Open market option statement	A statement satisfying the requirements of *COBS* 19.4.6R, *COBS* 19.4.8R and *COBS* 19.4.10R	Trigger events specified at *COBS* 19.4.5R
19.4.9R	Reminder	A statement satisfying the requirements of *COBS* 19.4.6R, *COBS* 19.4.8R and *COBS* 19.4.10R	At least six weeks before the *client's* intended retirement date

Table 2: Requirements for other communications

Handbook reference	Subject of communication	Contents of communication	Trigger
19.4.12R	*Pension annuity* options	Information about how the *client's* circumstances can affect *pension annuity* retirement income calculations and payments. *Firms* may also be required to provide a *key features illustration* (*COBS* 14.2.1R) or signpost *pensions guidance* (*COBS* 19.4.16R).	Any communication with a *client* about their *pension annuity* options
19.4.14R	*Drawdown pension*	Relevant information about *drawdown pension* option. A *firm* may also be	Any communication with a *client* about their *drawdown pension* options

		required to provide a *key features illustration* (*COBS* 14.2.1R) or signpost *pensions guidance* (*COBS* 19.4.16R).	
19.4.14R	*Uncrystallised funds pension lump sum*	Relevant information about *uncrystallised funds pension lump sum* option. *Firms* may also be required to provide a *key features illustration* (*COBS* 14.2.1R) or signpost *pensions guidance* (*COBS* 19.4.16R).	Any communication with a *client* about their *uncrystallised funds pension lump sum* options
19.4.15G	Communications about options to access pension savings	A *firm* should refer to the guidance in *COBS* 19.4.15G when communicating with a *client* about their options to access pension savings. *Firms* may also be required to signpost *pensions guidance* (*COBS* 19.4.16R).	Any communication with a *client* about their options to access their pension savings
19.4.18R	*Client* applies to access pension savings	A *firm* must provide a description of the tax implications unless it is provided in accordance with *COBS* 14.2.1R. *Firms* may be required to provide retirement risk warnings (*COBS* 19.7.7R). *Firms* may also be required to signpost *pensions guidance*	*Firm* receives an application from a *client* to access pension savings

		(*COBS* 19.4.16R).	

…

22.2 Requirements on the retail distribution of mutual society shares

…

22.2.3 R …

(2) The *firm* must give the *retail client* the following statement on paper or another *durable medium* and obtain confirmation in writing from the *retail client* that he <u>or she</u> has signed it, in good time before the *retail* client has committed to *buy* the *mutual society share*:

"… Net assets for these purposes mean my financial assets after deduction of any debts I have, and do not include:

…

(b) any rights of mine under a qualifying contract of insurance (for example, a life assurance or critical illness policy); ~~or~~

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled<u>; or</u>

<u>(d)</u> <u>any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement)</u>.

…"

…

…

Part 3: Comes into force on 6 April 2017

Amend the following as shown.

13.4 Contents of a key features illustration

…

13.4.4 R There is no requirement under *COBS* 13.4.1R to include a *projection* in a *key features illustration*:

(1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or

(2) if the product is a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*); or

(3) if a *retail client* proposes to withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

13.4.4A R Where *COBS* 13.4.4R(3) applies, if a *retail client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with a *standardised deterministic projection*.

…

13.5 Preparing product information: other projections

Projections for in-force products

…

13.5.1A R The requirement in *COBS* 13.5.1R does not apply where a *retail client* proposes to withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

Projections: other situations

…

13.5.2A R The requirement in *COBS* 13.5.2R does not apply where a *retail client* elects to withdraw the funds in full from their *personal pension scheme* or *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

…

13 Annex 2 Projections

…

R
Assumptions: rates of return

2.3	~~A *standardised deterministic projection* must be calculated using rates that accurately reflect the investment potential of the product and do not exceed the following maximum rates of return with the lower and higher rates each maintaining a differential of 3% relative to the intermediate rate:~~ A *standardised deterministic projection* must be calculated as follows:	
	(i)	the *intermediate rate of return* must accurately reflect the investment potential of each of the product's underlying investment options;
	(ii)	the *lower* and *higher rates of return* must maintain a differential of 3% relative to the *intermediate rate of return*; and
	(iii)	the rates of return for each underlying investment option must not exceed the following maximum rates:
…		

R		
2.4	~~Exception~~ Exceptions	
	A *standardised deterministic projection*:	
	…	
	(2)	may be calculated using a lower rate of return if a *retail client* requests it; and
	(3)	where there is a contractual obligation to provide a minimum rate of return that exceeds any one or more of the *lower*, *intermediate* or *higher rates of return*, the *standardised deterministic projection* must be calculated by substituting the obligated rate of return for the *lower*, *intermediate* or *higher rate of return*, as appropriate.

…

R		
Assumptions: charges		
2.6	The *charges* allowed for in a *standardised deterministic projection*:	
	…	
	(2)	must not include the *firm's* dealing costs incurred on the underlying portfolio; and
	(3)	must include the retained interest *charges* specified in *COBS* 13 Annex 3

		1.1R(4) or *COBS* 13 Annex 4 1.1R(4), where relevant.

…

G			
2.7	…		
	(8)	The methodology for a projection including retained interest *charges* should:	
		(a)	take account of any required minimum cash balances;
		(b)	be based on reasonable assumptions such that the overall charges in relation to the product and the investments are unlikely to be understated; and
		(c)	have regard to the overall level of retained interest *charges* across all relevant business.

…

R				
Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments				
2.9	(1)	A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the *rules* in this section.		
	(2)	A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments must ~~be based on an assumption that the current gilt-index yield will continue to apply throughout the relevant term and~~ include:		
		…		
		(d)	(under 'What the benefits might be' or similar heading), either:	
			(i)	the amount of income and the projected value of the fund at five yearly intervals to age 99 for the *lower, intermediate* and *higher rate of return* for as long as the fund is projected to exist (at the *higher rate of return*); or
			(ii)	a description of the income and a projection of the age at which the fund will cease to exist for the *lower*, *intermediate* and *higher rate of return*; and

		(e)	~~the projected open market values and the amounts of annuity that might be purchased after 10 years; and~~ [deleted]
		(f)	…
	(3)	A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments may also include the projected open market values and the amounts of annuity that might be purchased at some point in the future.	
	(4)	A *standardised deterministic projection* for a *drawdown pension* entered into before 6 April 2015 must, where relevant, be based on an assumption that the current gilt index yield will continue to apply throughout the relevant term.	

R		
Drawdown Pension: Exception		
2.10	A *standardised deterministic projection* ~~for a *drawdown pension*~~ can be prepared in nominal terms, rather than real terms for a:	
	(1)	*drawdown pension*; or
	(2)	*personal pension scheme* or *stakeholder pension scheme* from which there has been an election to take regular, ad-hoc or one-off *uncrystallised funds pension lump sum* payments.

…

R			
3	How to calculate a projection for a future annuity		
3.1	A *projection* for a future annuity must:		
	…		
	(2)		use a mortality rate based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables ~~PCMA00~~ PMA08 and ~~PCFA00~~ PFA08 and including mortality improvements derived from each of the male and female annual mortality projection models, in equal parts;
	…		

…

E			

3.1A			For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series ~~CMI(20YY-1)_M_[1.25%]~~ <u>CMI(20YY-2)_M_[1.25%]</u> and ~~CMI(20YY-1)_F_[1.25%]~~ <u>CMI (20YY-2_F)_[1.25%]</u>, where YY~~-1~~ <u>-2</u> is the year of the Model used, will tend to show compliance with *COBS* 13 Annex 2 3.1R(2).

<u>R</u>		
<u>3.3</u>	<u>A projection for an annuity with a *guaranteed annuity rate* must:</u>	
	<u>(1)</u>	<u>show an additional projection of the income that could be provided where that *guaranteed annuity rate* provides higher rates of return than those otherwise shown; and</u>
	<u>(2)</u>	<u>calculate the income that could be provided on the basis of the rates in the *guaranteed annuity rate*, using a projection of the fund calculated using the *intermediate rate of return*.</u>

<u>G</u>		
<u>3.4</u>	<u>When providing an additional projection for an annuity with a *guaranteed annuity rate*, a *firm* should:</u>	
	<u>(1)</u>	<u>show the projection at the earliest age at which it can be taken;</u>
	<u>(2)</u>	<u>take account of multiple *guaranteed annuity rates* on the fund or non-guaranteed elements of the fund on a proportionate basis; and</u>
	<u>(3)</u>	<u>provide an explanation of the key restrictions which may apply when the *guaranteed annuity rate* is taken up, particularly where these differ from the other projections shown.</u>

…

R			
5	Projections: accompanying statements and presentation		
5.1	A *standardised deterministic projection* must be accompanied by:		
	…		
	(2)	a statement:	
		…	

		(e)	of the sum of any actual *premiums* charged for any rider benefits or increased underwriting risks (where these have been charged); ~~and~~
		(f)	(for *personal pension schemes* and *stakeholder pension schemes*) of the assumptions used to calculate the regular income and that the *client* may choose when to take this income (if that is the case)<u>; and</u>
		<u>(g)</u>	<u>that the projection takes account of the existence of contractual obligations to provide a minimum rate (if that is the case)</u>.
	…		

…

13 Annex 3 Charges information for a packaged product

…

R			
Charges			
1	Appropriate charges information		
1.1	*Appropriate charges information* comprises:		
	(1)	(a)	a description of the nature and amount of the *charges* <u>(including, where applicable, any retained interest *charges* under (4), below)</u> a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product; <u>and</u>
		…	
	…		
	(4)	in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated) <u>of the *charges*</u>, if any, which a *personal pension scheme operator* or *pension scheme* trustee will receive as retained interest in relation to money held within the *personal pension scheme*.	
…			
Exceptions			
1.3	An effect of charges table and reduction in yield information are not required for:		
	…		
	(4)	a *stakeholder product* or a product that will be held in a *CTF* where the	

		relevant product and the *CTF* levy their *charges* annually, if the following is included instead: "There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we charge [£250 x y/100] that year. If your fund is valued at £500 throughout the year, this means we charge [£500 x y/100] that year. [After ten years these deductions reduce to [£250 x r/100] and [£500 x r/100] respectively.]" where 'y' is the annual charge and 'r' is the reduced annual charge (if any); or
	(5)	a *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* where the *client* elects to withdraw their funds in full, reducing the value of their rights to zero.
1.3A	Where 1.3(5) applies, if a *client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with an 'effect of charges' table and 'reduction in yield' information.	

…

13 Annex 4 Charges information for a personal pension scheme and a stakeholder pension scheme

…

R			
Charges			
1	Appropriate charges information		
1.1	*Appropriate charges information* comprises:		
	(1)	(a)	a description of the nature and amount of the *charges* (including, where applicable, any retained interest *charges* under (4), below) a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product;
	…		
	(4)	in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated) of the *charges*, if any, which a personal pension scheme operator or pension scheme trustee will receive as retained interest in relation to money held within the personal pension scheme.	
	~~Exception~~ Exceptions		
…			

1.3	An effect of charges table and reduction in yield information are not required for a *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* where the *client* elects to withdraw their funds in full, reducing the value of their rights to zero.
1.3A	Where 1.3 applies, if a *client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with an 'effect of charges' table and 'reduction in yield' information.

…

…						
2.2	…					
	Note 1	Note 2	Note 3	Note 4	Note 5	Note 6
	…					
	Note 1	This column must include at least the first, third and fifth year and the intended date of retirement.				
		For a *drawdown pension* or *uncrystallised funds pension lump sum* payments, figures must be included for each of the first ten years, or less if the value of the fund is projected at the ~~higher~~ *intermediate rate of return* to reach zero before then.				
	…					

…

14.2 Providing product information to clients

14.2.1 R A *firm* that sells:

…

(3B) the variation of a *personal pension scheme* to a *retail client*, which involves the election by the *client* to make *income withdrawals* or a purchase of a *short term annuity*, must provide that *client* with such information as is necessary for the *client* to understand the consequences of the variation, including where relevant, the information required by *COBS* 13 Annex 2.2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments);

(3C) the variation of a *personal pension scheme* to a *retail client*, which involves one-off, ad-hoc or regular *uncrystallised funds pension lump sum* payments, must provide that *client* with such information as is necessary for the *client* to understand the consequences of the variation, including (where relevant) the information required by *COBS* 13 Annex 2.2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments);

…

16.6 Communications to clients – life insurance, long term care insurance and income withdrawals

…

16.6.8 R At intervals no longer than 12 *months* from the date of an election by a *retail client* to make *income withdrawals* or one-off, ad-hoc or regular *uncrystallised funds pension lump sum* payments, the relevant *operator* of a *personal pension scheme* or *stakeholder pension scheme* must:

…

16.6.9 G The information provided to the *retail client* in *COBS* 16.6.8R(1) is likely to be sufficient for the *client* to review the election if it contains at least one of the following:

(1) the information required by *COBS* 13 Annex 2 2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments); or

(2) the effect of any significant one-off withdrawals or payments since the previous information was provided; or

(3) (where regular income is being taken) information about the sustainability of the *client's* income over time, which may refer to:

(a) the proportion of the fund remaining since outset; or

(b) an indication of when the fund may cease to exist; or

(c) the rate of withdrawals or payments relative to a sustainable rate.

…

19.1 Pension transfers, conversions and opt-outs

…

19.1.4 R When a *firm* compares the benefits likely to be paid under a *defined benefits pension scheme* or other pension scheme with *safeguarded benefits* with the benefits afforded by a *personal pension scheme, stakeholder pension scheme* or other pension scheme with *flexible benefits* (*COBS* 19.1.2R(1)), it must:

(1) assume that:

…

(g) the mortality rate used to determine the annuity is based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables ~~PCMA00~~ PMA08 and ~~PCFA00~~ PFA08 and including mortality improvements derived from each of the male and female annual mortality projections models, in equal parts;

…

…

19.1.4A E For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series ~~CMI(20YY-1)_M_[1.25%]~~ CMI(20YY-2_M_[1.25%] and ~~CMI(20YY-1)_F_[1.25%]~~ CMI(20YY-2_F_[1.25%], where YY ~~-1~~ -2 is the year of the Model used will tend to show compliance with *COBS* 19.1.4R(1)(g).

Annex C

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

…

Forbearance and due consideration

…

7.3.10 R …

7.3.10A G (1) An example of behaviour by or on behalf of a *firm* which is likely to contravene *CONC* 7.3.10R and *Principle* 6 is pressurising a *customer* to raise funds to repay a debt by arranging the receipt of a lump sum from the customer's *pension scheme*.

(2) *Firms* are also reminded of *PERG* 12.6G which contains *guidance* on the *regulated activity* of *advising on conversion or transfer of pension benefits*.

…

8.3 Pre contract information and advice requirements

…

8.3.2 R …

8.3.2A G *Firms* are reminded of *PERG* 12.6G which contains *guidance* on the *regulated activity* of *advising on conversion or transfer of pension benefits*.

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PUB REF: 005194

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