

Pension Wise – recommendation policy

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In this Policy Statement we report on the main issues arising from Consultation Paper 15/12 (*Pension Wise – recommendation policy*) and publish the recommendation policy.

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Abbreviations used in this paper

DC	Defined contribution
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
TPAS	The Pensions Advisory Service
PHSO	Parliamentary and Health Service Ombudsman

1. Overview

Introduction

- 1.1 In the 2014 Budget the Government announced reforms to retirement options. This included a proposal that all consumers with Defined Contribution (DC) pensions should be entitled to access free impartial guidance at retirement about their options when accessing their pension savings. This was launched by Treasury under the brand Pension Wise and became operational from 6 April 2015.
- 1.2 In November, we (the FCA) published standards for the Treasury's designated guidance providers¹ to meet in delivering Pension Wise.
- 1.3 We are required to monitor the designated guidance providers' compliance with our standards and, where providers have breached them, we may make recommendations to the designated guidance providers and the Treasury, where appropriate.
- 1.4 We consulted on our recommendation policy in CP-15/12 *Pension Wise – recommendation policy*² with the consultation period ending on 8 May. This Policy Statement summarises the feedback received and publishes the final policy.

Who does this affect?

- 1.5 This policy primarily affects the designated guidance providers delivering Pension Wise.
- 1.6 In addition, given the importance to consumers using the Pension Wise service, the policy is also likely to be of interest to:
 - consumer representative bodies interested in the outcomes of Pension Wise
 - charities and other organisations with a particular interest in retirement advice
 - individual consumers

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

2 www.fca.org.uk/news/cp15-12-pension-wise

- 1.7** It will also be of indirect interest to providers of, and advisers on, pensions and retirement income products, as well as trustees of DC pension schemes.

Is this of interest to consumers?

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

Context

- 1.9** The 2014 Budget announced fundamental changes to the options consumers will have for accessing their DC pension savings at retirement. From 6 April 2015, consumers from the age of 55 are now able to:
- take their pension savings as cash (in one lump sum or in smaller amounts over time³)
 - buy an annuity (or other income-generating guaranteed products that may emerge)
 - use drawdown but without any limits applied
 - use a combination of these
- 1.10** To support this increased flexibility, Pension Wise has been introduced to help empower consumers to make informed and confident decisions on how they use their pension savings in retirement. Consumers will not be required to take this guidance to access their pension savings, but they will be directed to do so before they make a decision.
- 1.11** The organisations appointed as designated guidance providers for Pension Wise are not regulated as authorised firms by the FCA for the delivery of the guidance service. However, the Government has placed a duty on the FCA to set standards and to monitor the designated guidance providers' performance against these standards. It has also afforded us powers to require information for these purposes and, where designated guidance providers are in breach of our standards, to make recommendations to the designated guidance providers and the Treasury as necessary.
- 1.12** The Treasury is responsible for appointing the designated guidance providers that will be subject to the standards regime, and will ultimately be responsible for ensuring designated guidance providers take action in response to FCA recommendations. The Treasury also has overall responsibility for implementing and delivering the service.

³ This is termed an 'uncrystallised funds pension lump sum' or 'UFPLS' within the Taxation of Pensions Act 2014

Summary of feedback and our response

- 1.13** The responses to the consultation paper were supportive of the proposed policy with no changes suggested to the policy other than requesting clarification of a number of issues. These are covered in more detail in Chapter 2.

Next steps

- 1.14** The new policy will be published on the FCA website from 3 July 2015.

2. Feedback on recommendation policy

- 2.1** This chapter summarises feedback received on our consultation and sets out our response.

General comments

- 2.2** Feedback from all of the parties responding to the consultation was broadly supportive of the proposed policy.
- 2.3** We have discussed all feedback received with the Treasury and have agreed some minor refinements as a result.
- 2.4** Comments on the wider monitoring process were generally supportive. In particular there was agreement that we should allow for the differences in the delivery channels of the designated guidance providers in our monitoring approach.
- 2.5** A number of areas were highlighted, such as the need to ensure that guidance providers understand the difference between guidance and advice, appropriate signposting of consumers to independent financial advice and the importance of training and expertise for those giving guidance.

Our response

Respondents were supportive of our proposed policy and we will progress as set out in the consultation paper on this basis. While we were not formally consulting on our approach to monitoring we have taken account of comments received in finalising our approach.

Responses to questions

- 2.6** In Question 1 we asked for specific comments on the recommendation policy. Most of the comments received were asking for clarification of specific points within the policy or consultation paper.
- 2.7** Several respondents asked for clarification of what we meant in the consultation paper when we referred to 'lower order issues' that will be dealt with in the normal monitoring process and whether or not action plans will only cover 'lower order issues'.

- 2.8** There were also a number of queries about our policy on redress, both seeking clarification of where any redress would come from and whether or not it would only apply where there is actual loss proven due to a failure of the guidance service.
- 2.9** Several respondents asked how we would communicate to designated guidance providers if the standard two week period for response was to be reduced to less than two weeks in any specific instance.
- 2.10** There were also a number of queries about the expected format if designated guidance providers were to contest a proposed recommendation to the Treasury and if it would be possible to make oral representations.
- 2.11** Finally, there was also a call to clarify in the policy that other sources of information, such as individual customer complaints or stakeholder comments, could act to trigger the recommendation process.

Our response

By 'lower order issues', we mean issues that do not have any major effect on the users of Pension Wise, or their ability to make informed decisions. It is likely that action plans would mainly be based on these 'lower order issues' but may include some other issues that are already being dealt with by the designated guidance provider. If a designated guidance provider fails to deal with an issue through the action plan this may potentially lead to a recommendation.

In terms of redress, S.333M of FSMA provides that the Treasury may direct the designated guidance provider to make redress to those affected by a failure to comply with a standard. We have made clearer in our policy when we might also consider recommending redress.

We have also added to the policy that, in the event that we consider that a shorter period is appropriate for designated guidance providers to respond to recommendations, we would aim to explain why this is the case and to discuss with the designated guidance provider any practical issues.

In addition we have added to the policy that if designated guidance providers wish to contest a recommendation we would expect this to be in writing, although we may also allow verbal representations at the discretion of the FCA senior staff committee.

We have clarified in the policy that all information received as part of the monitoring process may be considered and if investigated could ultimately lead to a recommendation.

In the policy we have also clarified which type of consumers we are referring to and articulated the role of the FCA Board in the recommendation process.

We also clarify here that we do not intend to deal with individual complaints, these will ultimately be dealt with by the Parliamentary and Health Service Ombudsman (PHSO). We will, however, work with the PHSO as we do now with the Financial Ombudsman Service and others to ensure an appropriate degree of consumer protection.

- 2.12** In Question 2 we asked if there was anything else that respondents felt should be added to the policy.
- 2.13** One respondent asked that we clarify what would happen following a recommendation to the Treasury.

Our response

Following a recommendation from the FCA to the Treasury, the Treasury may give a direction to the designated guidance provider [under section 333M of FSMA]. Such a direction is enforceable by law and we have therefore not included this in our policy.

- 2.14** Question 3 asked for other examples where we should consider making a recommendation. A couple of examples were suggested.
- Where there might be a conflict of interest for the designated guidance provider in terms of their Pension Wise role and their other activities. In particular if this could lead to a poor outcome for consumers.
 - Where a designated guidance provider refers the recipient to a further source of information or advice that is not appropriate.

Our response

As we highlight in the recommendation policy, the list of examples is not exhaustive. We do not intend to put more examples in the recommendation policy as we believe the above examples add little more to those already included.

Annex 1

List of non-confidential respondents

Association of British Insurers

Association of Professional Financial Advisors

Chartered Insurance Institute

Citizens Advice (England and Wales)

Citizens Advice (Northern Ireland)

Citizens Advice (Scotland)

The Equity Release Council

The Pensions Advisory Service

Appendix 1

Recommendation policy

Recommendation process

1. When we (the FCA) believe that a designated guidance provider has failed to comply with a standard set under section 333H of FSMA⁴, we may recommend to the designated guidance provider steps that it might take to:
 - prevent the continuance or recurrence of the failure
 - make redress to those affected by the failure
 - both prevent the continuance or recurrence of the failure and make redress to those affected.
2. A recommendation to a designated guidance provider will typically follow from discussions with them as part of the monitoring process (based on any information received as part of the monitoring process). We will inform designated guidance providers that we intend to make a recommendation and we expect we will normally give designated guidance providers two weeks to review and respond, although a shorter period may be appropriate in some situations. If less than two weeks is appropriate we would explain to the designated guidance provider why and discuss any practical issues this will cause. At this stage we would expect designated guidance providers to respond setting out any factual corrections and comments on any steps proposed in the recommendation e.g. whether they can be practically achieved.
3. The recommendation, once made, will be set out in writing, stating clearly at the outset that it is a recommendation made under section 333J (1) of FSMA. A recommendation made to a designated guidance provider will not be published. Designated guidance providers should respond, usually within two weeks, outlining actions they propose to take to address the issues raised in the recommendation.
4. Having made such a recommendation we may recommend to the Treasury that it direct the designated guidance provider to take such steps or any others the Treasury considers appropriate to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure. This will typically occur in circumstances where we are not satisfied that the actions taken by the designated guidance provider are sufficient to address our concerns. Recommendations to the Treasury must be published unless we consider that to do so would be against the public interest or inappropriate for some other reason.
5. We would normally expect to address issues with the designated guidance providers in the first instance, before raising issues with the Treasury and publishing our recommendations as appropriate. However, we may vary this approach depending on the seriousness of the issue and the public interest in transparency. We may also proceed to making recommendations to

⁴ as amended by the Pension Schemes Act 2015

the Treasury more quickly; this is more likely to occur in the circumstances set out in our general and contextual considerations outlined below.

- 6.** We expect disputes between individuals and designated guidance providers, whether they concern breaches of the standards or not, to be dealt with outside of our process, via the Pension Wise complaints procedure and, where appropriate, the Parliamentary and Health Service Ombudsman.
- 7.** As set out in section 333J (1)(b) of FSMA, if we consider that a designated guidance provider has failed to comply with a standard set under section 333H FSMA, we may recommend that the designated guidance provider make redress to those affected by this failure. While our monitoring would consider patterns of complaints in its analysis, we are only likely to make a recommendation that a designated guidance provider make redress in a limited number of circumstances. These include, but are not limited to, where the designated guidance provider has breached the standards resulting in a financial loss for a significant number of individuals.
- 8.** We expect a recommendation to make redress to be comparatively rare. This would follow our general process for making recommendations with the calculation of the level of redress based on the size of detriment experienced.
- 9.** Where a consumer has already received adequate redress, as set by the Parliamentary and Health Service Ombudsman, we would not recommend it to be paid again as a result of our recommendation.
- 10.** Before we make a recommendation to the Treasury, we will give the designated guidance provider a copy of the proposed recommendation. At the same time, we will give the designated guidance provider access to material on which the proposed recommendation is based unless we consider, in the circumstances, that it is inappropriate to do so.
- 11.** The decision to make such a recommendation to the Treasury will be taken by a senior FCA staff committee (up to and including the Executive Committee). The senior staff committee will be made up of FCA staff who have not been directly involved in establishing the evidence on which the decision is made.
- 12.** Each meeting of a senior staff committee will include:
 - i. an individual with authority to act as its chairman and
 - ii. at least two other members
- 13.** A senior staff committee will operate on the basis of a recommendation from a FCA staff member, and with the benefit of legal advice from a FCA staff member.
- 14.** The senior staff committee will be accountable for its decisions to the FCA Board. The FCA Board will be informed of all recommendations being made.
- 15.** The designated guidance provider may contest our proposed recommendation to Treasury, and/or our publication of the recommendation, provided this is done within two weeks (or such shorter period as may be appropriate in the circumstances) of the designated guidance provider being informed of the recommendation. If less than two weeks is appropriate we would explain to the designated guidance provider why and discuss any practical issues with them. We would usually expect any contest to the recommendations to be in writing although in some instances it could be accompanied by a verbal representation if the senior staff committee agrees.

16. If the designated guidance provider asks to make representations in respect of the proposed recommendation to Treasury, or our decision to publish the recommendation, or part of it, the senior staff committee will decide whether this is appropriate and, if it is, how best to ensure that these representations are taken into consideration.
17. The senior staff committee will determine what recommendation is made to Treasury, if any, and whether we will publish the recommendation, or part of it, taking into account whether publication would be against the public interest, or would be inappropriate for some other reason. Our General Counsel Division will advise the senior staff committee on the recommendation.
18. The monitoring powers provided to the FCA under legislation do not provide for designated guidance providers to refer FCA recommendations, or our decision to publish recommendations, to the Upper Tribunal. We anticipate that representations may be made to the Treasury.

When we might make a recommendation

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

Contextual considerations for making recommendations

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

General considerations for the content of a recommendation

- 22.** In addition to the above, in determining what recommendation to make, we would expect to have regard to general considerations that include, but are not limited to, whether the recommendation is:
- a proportionate response to the nature and impact of the breach of the standard by the designated guidance provider
 - a proportionate and practical means of addressing actual or potential consumer detriment
 - supported by sufficient and appropriate evidence
 - clear and transparent in respect of the grounds and objectives for making the recommendation
 - likely to be beneficial for consumers of Pension Wise, when taken as a whole. In other words where our assessment of the benefits for users of Pension Wise collectively from making the recommendation outweighs any dis-benefit to particular users or groups of users of the service.
- 23.** The FCA will also consider the risk that the recommendations have a negative impact on protected groups in the Equality Act and whether the recommendations can promote equality and good relations.
- 24.** Examples of where we might make a recommendation to a designated guidance provider and the Treasury, include but are not limited to, circumstances where we believe that:
- a designated guidance provider's non-compliance with FCA standards poses a serious threat to financial services consumers
 - there are issues that indicate a widespread problem or weakness at a designated guidance provider
 - a designated guidance provider has failed to comply with an action plan (agreed with the designated guidance provider further to our monitoring of the designated guidance providers and prior to making any recommendations)
 - a designated guidance provider failed to bring the potential breaches of FCA standards to the attention of the FCA
 - the conduct in question is particularly egregious
- 25.** However, these are simply illustrative examples and not an exhaustive list of potential scenarios. In practice additional considerations may apply.

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