

# Retirement Outcomes Review: feedback on CP19/5 and our final rules and guidance

**Policy Statement**

PS19/21

July 2019

## This relates to

Consultation Paper 19/5  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Overview

## Summary

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- 1.1** The Government's 2015 pension freedoms gave consumers more flexibility in how and when they can access their pension savings. In June 2016, we launched the Retirement Outcomes Review (ROR) to investigate how consumers and providers were responding to the pension freedoms.
- 1.2** We published the [ROR Final Report](#) in June 2018. This set out our findings and our proposed package of remedies, which we have consulted on in 2 tranches.
- 1.3** This Policy Statement (PS) summarises the feedback we have received to our consultation on the second tranche of remedies ([CP19/5](#)). It sets out our final rules on:
- introducing 'investment pathways' for consumers entering drawdown without taking advice
  - ensuring that consumers entering drawdown invest predominantly in cash only if they take an active decision to do so
  - giving consumers in decumulation annual information on all the costs and charges they have paid
- 1.4** The consultation showed strong support for our proposals, and we plan to implement them largely as planned. However, we have made some small modifications, where feedback suggested this would make our final rules clearer or more effective.
- 1.5** This publication marks the end of the rule-making phase of our work to implement our ROR remedy package. We consider these remedies will address the emerging issues we identified in the ROR Final Report, and put the market on a good footing for the future. We will, however, review the impact of our rules in a post-implementation review. The review will begin one year after implementation of these remedies.

## Who this affects

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- 1.6** This PS will be of interest to firms providing income drawdown.
- 1.7** This PS will also be relevant to stakeholders with an interest in pensions and retirement issues, including:
- individuals and firms providing advice and information in this area
  - distributors of pension and retirement income products
  - asset management firms
  - trade bodies representing financial services firms
  - consumer representative groups
  - charities and other organisations with a particular interest in the ageing population and financial services
  - consumers of pension and retirement income products

## What we are changing

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- 1.8** As set out in CP19/5, we are introducing these remedies primarily to help non-advised drawdown consumers who struggle to make investment decisions. Our new rules and guidance aim to improve consumer decision making, and promote competition by making the charges associated with drawdown products clearer and comparisons easier.
- 1.9** This PS confirms that we are finalising our rules and guidance in the following areas:
- Drawdown providers must offer non-advised consumers **investment pathways**. Consumers entering drawdown, or transferring-in assets already in drawdown, without taking advice must be presented with 4 options for how they might want to use their drawdown pot (eg 'I plan to start taking my money as a long-term income within the next 5 years'). Small providers can rely on an easement so that, while they have to present the investment pathways, they do not have to offer investment solutions - the 'pathway solutions' - themselves. While our current rules do not prevent drawdown providers from offering investment pathways, our research suggests that few do so. So, our proposals will change the options available to most non-advised consumers entering drawdown.
  - Drawdown providers must ensure that non-advised consumers entering drawdown **invest wholly or predominantly in cash only if they have taken an active decision to do so**. They must also give **warnings** to those consumers who do decide to invest in cash, as well as those already in cash when our rules and guidance come into force.
  - Pension providers must give consumers in decumulation **annual information on the costs and charges** they have paid on their pension pot, expressed as a single pounds and pence figure. This includes both advised and non-advised consumers who are either in drawdown or who have withdrawn at least 1 uncrystallised fund pension lump sum (UFPLS) payment.
- 1.10** In our opinion, the changes that have been made to our proposals, and reflected in the final rules and guidance, do not require a further Cost Benefit Analysis (CBA). Further, the changes to our proposals do not affect the Compatibility Statement.

## Outcomes we are seeking

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- 1.11** The interventions set out in this PS aim to achieve the following outcomes:
- Non-advised consumers accessing their pension savings through drawdown will be offered investment solutions that meet a range of different objectives for retirement. So, more non-advised drawdown consumers will choose investment solutions that better align with their objectives for retirement. As a result, fewer of these consumers will lose out on potential investment growth, and will instead enjoy a better income in retirement.
  - Drawdown consumers will not be invested (or remain invested) in cash or cash-like assets unless they have made an informed choice to do so. So, fewer consumers will be invested heavily in cash where cash investment does not meet their objectives for retirement. Many of these consumers will, instead, choose investment solutions that better align with their objectives for retirement. These consumers should enjoy a better income in retirement as a result.
  - Charges will be presented in a way that helps consumers understand the charges they are paying so they can make more informed decisions in the decumulation phase. This could increase shopping around and competitive pressure in the market, which in turn could result in lower prices for consumers.

## Summary of feedback and our response

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- 1.12** We received 62 responses to the consultation, from firms operating in the pensions and retirement income industry, trade bodies, individuals and consumer groups.
- 1.13** In general, our proposals received strong support. However, we received a lot of detailed feedback on our draft rules and guidance. Most of this was related to fine-tuning the technical detail, and did not suggest that we needed fundamentally to rethink our policy in any area.
- 1.14** So, we are proceeding largely on the basis on which we consulted in CP19/5, with some refinements to reflect the feedback we received. These refinements are set out in this PS.
- 1.15** We would like to thank all respondents for their feedback.

## The wider context of this policy statement

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### Pension freedoms and the Retirement Outcomes Review

- 1.16** The pension freedoms introduced in 2015 mean that consumers have more complicated choices to make about how to invest their pension savings, and when to draw on them. However, many consumers choose not to take advice. Our latest figures show that around 30% of consumers now enter drawdown unadvised. The ROR particularly focused on these consumers.
- 1.17** The ROR Final Report found that:
- Many consumers, particularly when focused on taking their tax-free cash, take the 'path of least resistance' and enter drawdown with their existing provider. Around 1 in 3 consumers who had gone into drawdown recently were unaware of where their money was invested.
  - Some providers were 'defaulting' consumers into cash or cash-like assets. Overall 33% of non-advised drawdown consumers were wholly holding cash. A consumer drawing down their pot over 20 years could increase their expected annual income by 37% by investing in a mix of assets rather than just cash.
  - Evidence suggests drawdown providers could improve investment outcomes for consumers by offering more structured options and making the decision simpler to navigate.
  - Charges for non-advised consumers vary considerably from 0.4% to 1.6% between providers. Average charges are higher than in accumulation, and can be complex and hard to compare.
- 1.18** We published final rules on our first tranche of ROR remedies in January 2019 (PS19/1). These remedies will improve the impact of information provided to consumers before accessing their pension savings, at the point of decision-making, and during their retirement. They aim to increase consumer engagement and promote competition. The new requirements in PS19/1 will all be in force by 6 April 2020.

**1.19** Also in January, we published our consultation on the second tranche of remedies ([CP19/5](#)). The full proposals in CP19/5, and the feedback we received, are summarised throughout Chapters 2 to 7 of this PS.

## Our wider work on pensions and retirement income

**1.20** ROR is only a part of our work to respond to changes in the pension and retirement income market. Other key or inter-related pieces of work include:

- Our **Defined Benefit (DB) to Defined Contribution (DC) transfer work**, following on from pension freedoms, has found high levels of unsuitable advice. A [consultation](#) published at the same time as this PS sets out a package of proposed remedies to address the harm in this market. This includes proposals to reduce the scope for conflicts of interest arising in relation to pension transfer advice and any ongoing advice after a transfer has taken place. We are proposing to ban contingent charging for pension transfer advice (except for specific groups of consumers).
- In 2018, we published a [discussion paper](#) on **effective competition in non-workplace pensions**. A [feedback statement](#) published at the same time as this PS presents findings of similar weaknesses to those previously identified and addressed in the DC workplace pensions market: consumer engagement is weak, exacerbated by the complexity of charges, leading to poor competition. The feedback statement outlines a set of potential remedies and seeks stakeholder views on these with the aim of developing and consulting on future remedies in the first quarter of 2020.
- In March, we published our [Investment Platforms Market Study Final Report](#), and a [consultation](#) on proposed remedies to improve competition in this market. Pension savings are often held on investment platforms, and pensions and drawdown consumers will benefit from these remedies.
- In April, we published a [consultation](#) on **Independent Governance Committees** (IGCs), which currently provide independent oversight of the value for money of workplace personal pensions. This proposes extending IGCs to investment pathways. Subject to consultation feedback, we plan to publish our final rules on this in a Policy Statement in the fourth quarter of 2019.
- In May, we published a [consultation](#) to require **IGCs to disclose costs and charges information, including transaction costs**, to consumers with workplace personal pensions. We plan to publish final rules later this year. While this work seeks to improve costs disclosure for consumers in the accumulation phase, our work in the ROR has sought to improve cost disclosure for consumers entering - or in - the decumulation phase.
- In October 2018, we published a [joint regulatory strategy with The Pensions Regulator](#) (TPR). The strategy outlines a number of ways in which the FCA and TPR will work together going forward. This includes 2 new priority areas for joint action: setting and enforcing clear standards for delivering value for money, and a strategic review of the entire consumer pensions journey. This strategy sets the framework and context for our interventions in the pensions and retirement income market.

**1.21** Our [2019/20 Business Plan](#) also gives an overview of our pensions and retirement income priorities, and how they fit together.

## How it links to our objectives

- 1.22** Our first ROR Consultation Paper ([CP18/17](#)) sets out how our package of remedies helps to meet the FCA's objectives of protecting consumers and promoting competition, and how they link to the harms we have identified.

## Equality and diversity considerations

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- 1.23** No respondents commented on our equality impact assessment. However, we have considered the equality and diversity issues that may arise from the final rules and guidance published in the Appendix to this PS.
- 1.24** Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. We expect our proposals to have a positive impact on groups with protected characteristics, particularly on older consumers.
- 1.25** As we explained in [CP19/5](#), respondents to CP18/17 did not raise any issues which would cause us to revisit our assessment. Similarly, respondents to CP19/5 did not raise any issues which would cause us to revisit our assessment.

## Next steps

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- 1.26** The final rules and guidance are set out in the Appendix. All of the changes to rules and guidance will come into force on 1 August 2020. Two changes to our Glossary of definitions came into force on 26 July 2019.

## 2 Investment pathways: the consumers and providers our requirements will apply to

- 2.1** In this chapter, we explain which consumers are covered by our rules on investment pathways. This includes an explanation of how our rules apply to those consumers that choose to enter drawdown in stages. We also explain which providers are covered by our rules.

### The consumers covered by our rules

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#### Our proposal

- 2.2** We proposed that providers should offer investment pathways when:

- a consumer moves all or part of their pension savings into drawdown, or
- a consumer transfers funds already in drawdown into a new drawdown arrangement

unless the consumer has received advice about the relevant transaction.

- 2.3** For the purposes of investment pathways, we proposed that a consumer would be an 'advised' consumer if they are advised on how to invest all or part of their drawdown pot. When a consumer later makes another investment decision, we proposed that consumers should be treated as non-advised for the decision if it is made:

- more than 12 months after the transaction they were advised on, or
- within 12 months of the transaction they were advised on and they have not confirmed that their personal or financial circumstances are unchanged since they received the advice.

- 2.4** We also proposed guidance to remind adviser firms of the obligation they will have, under existing rules, to consider available pathway solutions when they assess suitability for clients who are deciding how to invest drawdown funds.

- 2.5** We also made it clear that our proposals will not apply to consumers taking UFPLS.

#### Feedback received

##### *Triggers for investment pathways*

- 2.6** A few respondent SIPP operators said that investment pathways should be focused on disengaged consumers who enter drawdown and leave funds in cash without making an active decision. These respondents suggested providers should only be required to offer investment pathways to a consumer when they had remained invested largely in cash for 3 or 6 months after entering drawdown.

- 2.7** A few respondents thought that certain types of annuity product, and other products with similar features to an annuity, would be caught by our proposals. Many of these products are commonly described as 'fixed-term annuities'. Some respondents thought that it wasn't sensible for consumers purchasing 'fixed-term annuities' to be offered investment pathways. This was because these consumers had opted to purchase a product with an income and/



or capital guarantee, and which did not require the consumer to choose investments from an available range.

### **'Advised' and 'non-advised' consumers**

**2.8** A number of respondents expressed concerns about the practical application of our proposed rules carving-out 'advised' consumers from the requirement to offer investment pathways. Some argued our approach was too prescriptive, as consumers may struggle to answer the questions, and providers would often already know with a good degree of confidence if an adviser was used (or not). Some respondents suggested alternatives. For example, that the consumer should be considered advised if the product provider was facilitating an ongoing advice charge.

### **UFPLS**

**2.9** Respondents were broadly split on the question of whether non-advised consumers taking UFPLS should be offered investment pathways. Some argued that there was very little difference between taking UFPLS and phased drawdown, and that the typical consumer is unlikely to understand the difference between the two, while the risks faced are the same. Other respondents, however, took the view that consumers taking UFPLS are likely to have made a deliberate decision to keep their pension in their accumulation phase investment strategy.

## **Our response**

### **Triggers for investment pathways**

We do not agree that the requirement to offer investment pathways should only be triggered when a consumer has been invested in cash in drawdown for an extended period. While cash investment was prominent in evidence gathered in the ROR, holding cash is not the only possible harm a consumer who has made an investment decision is exposed to. For example, they may invest in other assets that don't meet their objectives. Further, a wider range of consumers could benefit from investment pathways by keeping the trigger we consulted on. Since the costs to providers of developing and implementing investment pathways would already have been incurred, we do not see a rationale to restrict the offering of investment pathways only to a particular sub-set of non-advised consumers.

We do, however, consider that 'fixed-term annuities' should not be caught by our investment pathway proposals. This is because these products do not require the consumer to choose investments from an available range, and give the consumer a guaranteed level of income and/or return of capital for a price agreed when the product is set up. Therefore, the harm that consumers choose inappropriate investments that do not meet their objectives for retirement is not present. So, if a non-advised consumer decides that they want to purchase one of these products, our rules will now say that their provider will not be required to offer them investment pathways.

### **'Advised' and 'non-advised' consumers**

We have made some changes to our rules and guidance in this area.

Our policy intention is that consumers who previously had, but no longer maintain an active relationship with an adviser, are offered investment pathways.

We have amended our rules to remove the need for providers to ask the consumer whether they are advised if they have clear evidence as to whether the consumer has received a personal recommendation on the specific transaction, or has not. We have provided guidance on what evidence a provider can rely on to reach its conclusion.

We do not consider the fact that the consumer is paying an ongoing adviser charge to be sufficient evidence that the consumer is being advised on the specific transaction. If a consumer who is paying for advice is approaching a provider themselves, this could indicate that they're unaware that they are paying for advice. Therefore, we have added guidance stating that providers should tell these consumers that they are paying an ongoing advice charge and explain what that means in this context, if they wish to proceed on the basis that these consumers are advised.

### **UFPLS**

We recognise some respondents' concerns that drawdown and UFPLS can seem interchangeable to consumers and that some providers could - to avoid implementing investment pathways - change their proposition in favour of consumers' taking UFPLS (rather than entering drawdown in stages). We will continue to monitor the data we receive from providers through our Retirement Income Data Return (RIDR). These data will allow us to track any regulatory arbitrage in this area.

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## **How our rules apply when the consumer enters drawdown in stages**

### **Our proposal**

- 2.10** Where a consumer has taken only part of their tax-free cash entitlement, and not agreed with their provider how they wish to take their remaining tax-free cash entitlement and move funds into drawdown, we proposed that they should have to be offered investment pathways each time they moved funds into drawdown.

### **Feedback received**

- 2.11** Many respondents agreed with the approach we consulted on. Others felt that consumers who want to designate funds to drawdown regularly, but choose not to give instructions to their provider at the outset, should not have to be offered investment pathways each time they designate funds to drawdown. One respondent suggested that even consumers who have given instructions to their provider should be offered investment pathways at each stage, as there is no evidence that the investment decisions these consumers make are prudent.

### **Our response**

We have not made any changes to our approach.

We think that consumers who want to designate funds to drawdown regularly, but who do not have an agreement in place with their provider, should be taken through the choice architecture each time they designate funds to drawdown.

This is because we do not consider that they will necessarily be engaged with their investment decisions. On the other hand, we consider that those consumers who have agreed with their provider at the outset how they will move funds into drawdown have engaged with the decisions they are required to make in drawdown. So, we consider these consumers are less likely to benefit from being shown their investment options on each subsequent designation of funds to drawdown.

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## The providers covered by our rules

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### Our proposal

- 2.12** We proposed that firms offering drawdown to non-advised consumers should be covered by our rules and offer these consumers investment pathways. This includes operators of Self-Invested Personal Pensions (SIPPs). However, as set out in detail in Chapter 4, we also proposed an easement for small providers so that they would not be required to offer pathway solutions themselves.

### Feedback received

- 2.13** Most respondents supported these proposals.
- 2.14** However, some SIPP operators said that they should be outside the scope of our rules. Most of these operators argued that designing or choosing pathway solutions - and offering these - was completely at odds with the SIPP business model. They suggested that the role of a SIPP operator is to provide a pension wrapper and specialist administration services; a SIPP operator is not equipped or able to have any involvement in investment decisions.
- 2.15** One respondent asked us to clarify whether intermediaries and brokers are within scope of our rules.

### Our response

We have not made any changes to our approach.

We have not received any evidence that we consider gives us sufficient reason to depart from the proposals consulted on in paragraphs 5.29 to 5.34 of CP19/5. Our evidence shows that the harm we are addressing through the investment pathways exists in the SIPP market, so we consider that SIPP operators should offer their non-advised consumers investment pathways. But SIPP operators with smaller numbers of non-advised consumers have the option to use the easement proposed in CP19/5. Our final rules and guidance on the easement can be found in Chapter 4.

Brokers and intermediaries are highly unlikely to be subject to the rules in COBS 19.10. As set out in COBS 19.10.2 R, only firms that operate a retail client's personal pension scheme or stakeholder pension scheme will be subject to these rules.

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## 3 Investment pathways: the choices that providers must offer consumers

**3.1** In this chapter, we summarise the feedback we received to our proposals on the investment pathways objectives we are mandating. We also explain our final rules and guidance on our proposal to allow providers to offer only 1 investment solution for each investment pathway, and the choice architecture that providers will use to offer investment pathways.

### Investment pathways objectives

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#### Our proposal

**3.2** We proposed that consumers should be shown the following objectives to help them pick a pathway solution:

- Option 1: I have no plans to touch my money in the next 5 years
- Option 2: I plan to use my money to set up a guaranteed income (annuity) within the next 5 years
- Option 3: I plan to start taking my money as a long-term income within the next 5 years
- Option 4: I plan to take out all my money within the next 5 years

**3.3** We also proposed that we should mandate the wording of the objectives, and that there should be clear labelling requirements on the pathway solutions.

#### Feedback received

**3.4** Most respondents supported the 4 objectives we proposed. Many suggested small tweaks or expressed minor concerns with our approach.

**3.5** A small number of respondents suggested the wording of Option 3 ('I plan to start taking my money as a long-term income within the next 5 years') should be amended to be clear that the income is flexible and not guaranteed. Similarly, a few respondents wanted it to be clearer that this option should be selected by consumers who just want to 'dip in' and take occasional withdrawals.

**3.6** A couple of respondents questioned whether the wording of the options would always make sense to consumers when they reviewed their choice in later years. For instance, the wording of Option 3 might be confusing for consumers who are already taking income.

**3.7** One respondent was concerned that we were giving providers too much freedom to provide information alongside the objective. Its view was that providers must test the language they propose to use with consumers, and that the FCA must then undertake a review and set out good and bad practice.

- 3.8** Several respondents said that the options needed to be kept under review, to see if they could be improved with experience, but also to allow for innovation and the potential for different options to emerge.

### Our response

We have not made any amendments to the wording of the objectives.

Providers have the flexibility to provide their own explanatory text with the options. We consider the minor concerns and issues raised about the wording of the objectives will be best addressed in this text, rather than by trying to further tweak the wording of the options. This includes the concerns mentioned above about Option 3. We agree that Option 3 is likely to be the best option for those who want to take occasional withdrawals, and are confident that providers can use the explanatory text to emphasise this message if they think this is necessary.

The wording of the options has been written and tested with the primary aim of helping consumers with their initial investment decision when entering drawdown. We recognise that when it comes to helping consumers review their initial decision in later years, the wording may not be perfect. However, we consider that the flexibility we have given providers in how they write the annual statements will enable them to explain the options in a way that makes sense to consumers who are already in drawdown. We have slightly amended the rules on the annual statements to make sure that this is the case.

We do not consider that our rules give providers too much freedom to provide additional information to consumers around the investment pathway objectives. Providers will be in a position to have their own insights into what consumers understand, and to design communications accordingly. So, we have not introduced prescriptive rules around what additional information providers can give to help explain the investment pathway objectives to consumers. However, our planned post-implementation review of investment pathways gives us the opportunity to look at the communications provided by providers, and to consider the effectiveness of these.

We agree that the wording of the objectives should not be set in stone, and will need to be periodically reviewed. Our post-implementation review should enable us to identify any immediate issues, but we will need to monitor developments over the longer-term too.

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## The number of pathway solutions that providers can offer for each of the objectives

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### Our proposal

- 3.9** Investment pathways are intended to benefit some of the most unengaged consumers entering drawdown. To ensure maximum engagement, we consulted on a rule that limits providers to one pathway solution for each investment pathway objective. So, consumers do not have to make a further choice between investment solutions.

### Feedback received

- 3.10** Most respondents supported our proposal.
- 3.11** Some respondents asked for clarity on whether pathway solutions could be varied according to the consumer's age or cohort (eg a target date fund), or according to their accumulation product or investment.
- 3.12** Some respondents also suggested that providers need to make the risk profile of the pathway solution clear to consumers. For example, if necessary the provider should tell the consumer that the pathway solution is not suitable for consumers with a low risk appetite or low capacity for risk.
- 3.13** Finally, some respondents said that our proposed rules and guidance were unclear on how and when providers could offer the consumer other (non-pathway) investment solutions, or tools for assessing appetite and/or capacity for risk, when a consumer rejects the pathway solution offered by a provider.

### Our response

We agree that providers should not have to offer the same pathway solution to all consumers selecting the same investment pathway objective. We can see there are circumstances where it would make sense to offer different pathway solutions to different consumers, for instance, where providers offer target-dated funds for consumers in different age ranges. So, we have amended our rules and our Perimeter Guidance manual (PERG) to make this clear. However, a provider is not allowed to present a consumer with more than one pathway solution per investment pathway objective. Also, providers should bear in mind that it is more likely they will be giving a personal recommendation if a consumer thinks that an investment identified by the process is being presented as suitable for them or based on a consideration of their circumstances (see our response below on personal recommendation).

We do not want consumers to select a pathway solution if the risk profile of the solution does not match their attitude to, or capacity for, risk. Providers must describe the riskiness of each investment solution that they offer, to enable consumers to make this assessment. In most cases, existing disclosure rules require providers do this. However, we have added a rule for providers - in COBS 19.10.21 R (1) (b) - to make sure this is always done for pathway solutions.

Our guidance on what providers should do if a consumer is offered a pathway solution but chooses not to select it, is set out in COBS 19.10.22 G and COBS 19.10.23 G. What is appropriate for providers to do at this point is likely to depend on the consumer's reasons for not selecting the pathway solution. So, the guidance includes a range of potential actions, such as reminding consumers of the investment pathway options and encouraging them to take guidance or advice. Following this feedback, we have added guidance to make it clear that the provider could choose, at this point, to offer alternative investment options or to direct the consumer towards any tools it has that will help the consumer make a choice. This could include tools that assess the consumer's appetite and/or capacity for risk.

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## Choice architecture

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### Our proposal

#### ***Choice architecture***

**3.14** We did not propose to prescribe in detail how providers should present investment pathways amongst the other investment options they may offer to their non-advised consumers. However, we did propose a number of requirements to ensure that providers give investment pathways a prominent place in the non-advised consumer journey, including:

- once a provider has confirmed that a non-advised consumer meets the application criteria, they must offer the consumer the investment choices that are available to them, which must include the option of investment pathways
- the presentation of the consumer's option to use investment pathways must have at least equal prominence to the consumer's option to, where applicable:
  - choose other investment options that the provider offers, or
  - stay in their current asset allocation
- if a provider offers investment options for non-advised consumers outside the investment pathways, they must not present these to the consumer alongside the investment pathways objectives or solutions
- before a non-advised consumer finalises an investment selection from outside the investment pathways, they must be given a second opportunity to use the investment pathways
- when providers offer any investment solution to a consumer they must tell the consumer that they may benefit from shopping around, and that they can use the Money and Pensions Service's (MAPS) drawdown comparator tool

#### ***Personal recommendation***

**3.15** We think that providers can offer investment pathways to consumers without giving a personal recommendation. But we recognised that further guidance might help providers design their communications and choice architecture in a way that avoids this risk. So, we proposed guidance on our investment pathways by giving examples in PERG.

## Feedback received

### **Choice architecture**

**3.16** Most respondents were broadly supportive of our proposals for choice architecture. We received a lot of useful feedback on our draft rules and guidance. For example:

- One respondent said that the proposed rules which required the provider to determine whether the consumer is transferring-in - were unclear. For example, where we referred to a 'firm', it is not always clear whether this is a reference to the transferring or the receiving drawdown provider.
- One respondent said that our rules were not sufficiently clear on when a provider can provide information about non-investment pathway options, unless the consumer specifically asks for it. The respondent thought that to be clear, fair and not misleading, the consumer should at least be made aware that other options are available, and how to get more information about them.
- Some respondents were not supportive of our proposal that consumers who choose not to use investment pathways should be given a second opportunity to view investment pathways before they finalise their choice. These respondents argued that this second opportunity would irritate engaged consumers who have already told their provider they don't want to use investment pathways. They also argued it is unbalanced; consumers who choose investment pathways are not reminded of the other options available to them.
- One respondent commented that, in most SIPPs, it will be impossible for the SIPP operator to remind the consumer of their 'investment strategy'. This is because the consumer's current investments will often be across a range of assets; so there will be no clear 'investment strategy' for them as a collection of assets.
- One respondent suggested that more research will be needed on how consumers react to the choice architecture, and how well they understand it, to ensure that its effective in practice.

### **Personal recommendation**

**3.17** Many respondents were comfortable that they could offer non-advised consumers investment pathways without giving these consumers a personal recommendation. Others, however, said that they thought that following our rules would result in a personal recommendation being given by the provider, or the consumer believing that they had been given a personal recommendation by the provider. Some respondents said that the proposed examples provided in PERG were too simplistic, and asked that we provide clearer, more detailed examples. Some respondents suggested that we go further, and introduce a rule that provides a safe harbour for providers offering investment pathways.

## Our response

### **Choice architecture**

Our proposed rules sought to ensure that, if a consumer goes through the investment pathway choice architecture with one provider (Firm A) which then refers (ie transfers) them to another provider (Firm B) for a pathway solution, Firm B will not have to repeat the choice architecture. In light of feedback, we have clarified the wording and set this alongside the other circumstances in which the provider need not take the steps set out later in COBS 19.10 (in COBS 19.10.10 R (3)), instead of making this a separate step in the choice architecture.



In our proposed rules, we explained what options providers should offer consumers, including at what point in the consumer journey providers should offer the consumer the option to select investments without using the investment pathways. If the consumer selects that option, the provider can then show the consumer all the non-pathway investment options it has. Our rules aim to make the process of choosing investments as simple as possible for non-advised consumers. So, we have made rules to ensure that the consumer cannot be inundated with materials about the non-investment pathways options the provider offers before they have had their broader options - including choosing an investment pathway - presented to them. However, our rules do not prohibit providers from marketing these investments to the consumer at other points in the consumer journey (see our response following paragraph 3.13).

Having considered the feedback received, we agree that consumers who choose not to use investment pathways do not need to be given a second opportunity to view investment pathways before they finalise their choice. We have taken into account respondents' views that the requirement is potentially burdensome and unlikely to be effective. We also consider that there is a 'secondary protection' - in the form of the cash warning explained in Chapter 6 - for those consumers who self-select a cash investment, or choose to remain invested in cash. So, we haven't taken forward the proposed requirement.

We agree that, for some non-advised consumers, reminding them of their 'investment strategy' will not be practicable. But we still see value in reminding the consumer of their investment strategy, where this is known to the provider, as this will prompt the consumer into considering whether it meets their objectives for their pot in drawdown. We have amended proposed COBS 19.10.24 R (2) - now COBS 19.10.30 R (1) - to reflect this.

Finally, we agree with the respondent that suggested that further work needs to be done to ensure the choice architecture works well in practice. As set out in paragraph 6.25 of CP19/5, we want to work with providers as they implement investment pathways, to explore how we might help create a shared understanding of what is effective. Our discussions with providers and industry trade bodies on this issue continue. As also set out in CP19/5, we are planning a post-implementation review of investment pathways, beginning a year after our rules are implemented. While the scope of this review is still to be finalised, we may also look at the efficacy of providers' choice architectures in that review.

### **Personal recommendation**

We have made changes in our rules to reflect issues that respondent providers said are likely to arise in interactions with consumers. We consider this will address their concerns that in dealing with these issues they might be giving a personal recommendation. We have made rules around describing the riskiness of investments, communicating with consumers whose behaviour deviates from their stated objective and offering different pathway solutions to different consumers.

We do not consider that complying with our rules will require providers to give a personal recommendation. However, as the existing PERG guidance recognises (at example F(24) of Annex 1 to PERG 8), in a one-to-one format (face-to-face or over the telephone) a consumer is more likely to think that an investment identified by the process is being presented as suitable for them or based on a consideration of their circumstances. Providers using this business model will want to ensure clear communications to avoid misperceptions in this regard. In an online environment, it is simpler for a provider to control clarity of messaging. Providers should note that the examples in PERG give our view on the basic requirements. Providers should take their own view on more complex business models.

We are not able to provide a safe harbour for providers. In other words, we cannot make rules - or disapply requirements in legislation - to give providers a guarantee that in offering investment pathways they will not be providing a personal recommendation. As we explained in PS18/3, the regulatory perimeter is set by Parliament in legislation. We cannot change the perimeter. Where we give perimeter guidance, we are setting out what the courts have already said about the legislation and our views about how the courts may interpret it in the future.

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## 4 Investment pathways: our requirements for providers on the pathway solutions

- 4.1** In this chapter, we summarise the feedback received on how providers should offer pathway solutions to consumers. We also explain our final rules and guidance on our proposal to allow providers not to provide pathway solutions for all investment pathway objectives, including our proposed easement for small providers.

### Requirements for offering pathway solutions

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#### Our proposal

- 4.2** Our proposed rules:
- did not prescribe the investment solution or risk profile providers should adopt for each investment pathway objective
  - allowed providers to offer pre-existing investment solutions for any of the investment pathway objectives as long as they meet the relevant objective
  - prevented providers from offering the same pathway solutions for all the objectives
  - required providers to label pathway solutions clearly with the name of the investment pathways objective they are linked to
  - prevented providers from labelling any other investments in ways that imply they are a pathway solution

#### Feedback received

- 4.3** Most respondents agreed with our proposed rule to prevent providers from offering the same pathway solution for all the objectives.
- 4.4** Also, most respondents agreed with our proposed rules on the labelling of pathway solutions. Respondents strongly supported our proposed prohibition on other, non-pathway investment solutions being labelled in ways that imply they are pathway solutions.

#### Our response

We have not made any changes to the approach set out in CP19/5.

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## Allowing providers not to offer pathway solutions for all - or any - of the objectives

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### Our proposal

**4.5** We proposed to allow providers with fewer than 500 non-advised consumers a year entering drawdown to choose not to offer pathway solutions for any of the investment pathway objectives. These providers would still be required to offer the investment pathways choice architecture. However, if they choose not to offer pathway solutions they would instead have to refer consumers who select an investment pathway objective to either:

- another provider's pathway solutions, or
- the MAPS drawdown comparator tool

**4.6** We described this as the small provider easement in CP19/5.

**4.7** Providers not using the easement would have to provide pathway solutions for at least 2 of the 4 objectives, and will have to refer consumers to another provider's pathway solutions for any objectives for which they don't themselves provide a pathway solution. Unlike providers that qualify for and use the small provider easement, they cannot refer consumers to MAPS, and can only refer consumers to other providers for a maximum of 2 objectives.

### Feedback received

#### *Larger providers*

**4.8** Respondents were divided over our proposals for larger providers, with some supportive, some arguing we should take a more restrictive approach and others a more flexible approach.

**4.9** Some respondents said that larger providers should be required to offer pathway solutions for all 4 investment pathway objectives. Some of these respondents had concerns that consumers could be discouraged from selecting objectives for which their provider did not offer an investment solution, even if this objective was the most appropriate for them.

**4.10** However, a few respondents said that - in their view - it was highly unlikely that larger providers would fail to provide pathway solutions for all the investment pathway objectives, or want to refer to another provider's pathway solutions.

**4.11** Some respondents suggested that larger firms should also be able to direct to the MAPS drawdown comparator tool, rather than another provider. Some of these respondents were concerned that referral to another provider could constitute a personal recommendation.

#### *Small providers*

**4.12** Most respondents supported our proposals for small providers. The proposal was supported by many larger firms as well as smaller ones.

**4.13** Only a few respondents mentioned the proposed level of the easement, and most of these were supportive of it. Some respondents suggested that 'engaged' non-advised consumers should not count towards the 500-consumer threshold.

**4.14** Some respondents asked us to clarify whether the 500-consumer threshold applied at scheme, product, firm or group level. Some suggested that clarity around this point was important, as they were concerned that providers could get around these requirements by spreading consumers across schemes, products, or group entities.

## Our response

### Larger providers

We have not made any changes to our rules and guidance in this area.

Most of the concerns raised by respondents were around providers referring (ie transferring) consumers to another provider for a pathway solution. In the Product Intervention and Product Governance sourcebook (PROD) - specifically, in PROD 6.3.2 R - we set out the various factors that the referring provider must consider when they refer a consumer to another provider for a pathway solution. We consider our rules in PROD address respondents' concerns.

We also recognise the potential for providers to be conflicted where they offer solutions for some objectives but not for others, and for consumers to be influenced by the ease of remaining with their existing provider. In CP19/5, we proposed a rule in PROD 6 to require providers to take action if they become aware that consumers' investment pathway choices are being influenced by a desire not to transfer. Our final rule - PROD 6.3.6 R - has a minor amendment to reflect feedback on our product governance rules (see Chapter 5).

We continue to think that it is right to allow larger providers the flexibility to offer solutions only for some of the investment pathway objectives, as some providers may prefer to specialise. However, the feedback we received and our discussions with providers suggest that most larger providers will choose to offer pathway solutions for all the investment pathway objectives, as there is a clear commercial incentive to retain consumers, rather than transfer them away to competitors. So, we think referral will be relatively rare and the protections set out above are adequate.

Given the concerns raised, we will collect data on referrals, and we are likely to look at referrals in our post-implementation review. In Chapter 5, we set out our record-keeping requirements, which includes points on referral, and discuss how we will collect data ahead of our planned review.

We consider it proportionate to allow small providers to refer to the MAPS drawdown comparator tool, as relatively few consumers will be affected, and because these providers might otherwise find it too burdensome to implement pathways. However, we continue to consider this is not justified for larger providers. This is due to the numbers of disengaged consumers who would be affected, and because designing or selecting investment solutions will be easier for these providers.

### Small providers

We also have not made any changes to our rules and guidance in this area.

We have not carved out 'engaged' non-advised consumers from the 500-consumer threshold. As explained in Chapter 5 of CP19/5, we do not consider there is a viable way of defining and identifying engaged non-advised consumers.

The 500-consumer threshold applies at firm-level in our rules. We consider this is difficult for providers to game.

## 5 Investment pathways: other key elements

- 5.1** In this chapter, we explain our final rules and guidance on some of the other key elements of our investment pathways proposals. This includes product governance for investment pathways, the information that providers should give consumers using investment pathways and the records that providers should keep.

### Product governance requirements applying to providers offering pathway solutions

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#### Our proposal

- 5.2** To help ensure consistency, we proposed to extend the application of Chapter 4 of PROD to capture, in relation to the manufacturing or distributing of pathway solutions, providers of arrangements that do not take the legal form of an insurance contract.
- 5.3** We also proposed that all manufacturers or distributors of pathway solutions will be subject to a new chapter in PROD (PROD 6). PROD 6 creates additional rules and guidance for manufacturers and distributors of pathway solutions, to improve the protections for investment pathway consumers in some key areas. For example, we proposed rules requiring distributors of pathway solutions that are manufactured externally to have regard to factors such as the price and the complexity of the pathway solution, when deciding which pathway solution to distribute.

#### Feedback received

- 5.4** Most respondents were content with our approach to product governance, both in relation to manufacturers and distributors of pathway solutions.
- 5.5** One respondent asked whether it was our intention that a provider referring a consumer to another provider for a pathway solution would need to take into account the charges and other features of the receiving provider's drawdown proposition, rather than just the pathway solution.
- 5.6** Another respondent suggested that our proposed rule in PROD 6, which explained what providers should do when consumers fail to transfer to another provider for a pathway solution, was unclear. The respondent suggested that we need to make clear whether the rule is intended to apply only where consumers choose to remain with the existing provider, or whether it is also meant to apply to consumers who shop around and transfer to a provider other than the identified pathway solution provider.
- 5.7** Finally, a few respondents asked what our expectations were for providers changing pathway solutions. For example, if a provider changed a pathway solution, would this change only apply to consumers selecting the pathway solution in the future? Or would the provider be required to change the investment solution for all those that have already chosen it? Should this be done automatically, or after notification is given?

## Our response

We want providers referring (ie transferring) consumers to another provider for a pathway solution to consider carefully the charges and other product features of the drawdown arrangement through which it is offered when they carry out the compatibility assessment required under PROD 6.3.1 R. We have amended PROD 6.3.2 R to reflect our intention.

Our proposed PROD 6 rule on consumers failing to transfer was intended to apply where the consumer elects to stay with their existing provider rather than transfer to the identified pathway solution provider. We have amended the rule - now PROD 6.3.6 R (1) - to reflect our intention.

We have added guidance - in COBS 19.10.27 G - to clarify our expectations of providers around changing the pathway solutions they offer. In summary, where a provider decides to change the pathway solution they offer for a particular investment pathway option, they may need to consider whether it would be appropriate to move existing consumers to the new pathway solution. We expect providers to move consumers to the new pathway solution when not doing so would cause consumer harm and, depending on the circumstances, be a breach of our rules (including Principle 6). Where providers do wish to change an existing consumer's pathway solution, they should communicate with the consumer appropriately and in good time, in a manner that is clear, fair and not misleading.

## The information that providers should give consumers using investment pathways

### Our proposal

**5.8** In addition to the changes set out in PS19/1, we proposed that consumers using investment pathways must also receive the following within the annual statement:

- A statement reminding them of the current size of their drawdown pot, in pounds and pence, and their investment pathway choice. If the consumer has split their drawdown pot across investment pathways, the statement should show their investment pathways choices and how their drawdown pot is split between these, in pounds and pence.
- Information on the other investment pathways available to the consumer. If the consumer has not split their pot, a reminder of their ability to split their drawdown pot across these (where this option is available).
- A statement reminding the consumer that they can switch their investments at any time (for example, by selecting another investment pathway) or move into another product at any time and that they should shop around before doing so.

**5.9** Our proposed guidance said that if the consumer has not made any changes to their investment pathway within 5 years of entering the investment pathway, or after a

further multiple of 5 years, their provider should consider including in the next annual statement the consumer is due to receive:

- a statement reminding the consumer that 5 (or 10, as relevant) years has elapsed since they selected the investment pathway
- an enhanced prompt to the consumer to review their investment decision

**5.10** These requirements will be triggered if the consumer has any proportion of their drawdown pot in a pathway solution.

### Feedback received

**5.11** Most respondents were content with our proposed approach.

**5.12** Some respondents asked what we would expect of providers if a consumer has chosen an investment pathway and invested in a pathway solution, but later acts in a manner that clearly contradicts the investment pathway objective. The respondents questioned whether we expect the provider to contact the consumer and tell them that they're acting in a manner that's contrary to the investment pathway objective.

**5.13** One respondent suggested that our rules and guidance should make it clearer that the annual statement should prompt the consumer to consider whether the investment pathway objective they have chosen remains appropriate for them, rather than the pathway solution.

**5.14** One respondent asked why we had proposed to add the words '...and decide what to do with their pension fund going forward' to the text in COBS 16.6.8 R (1).

### Our response

We consider that - to comply with their obligations under COBS 14.2 - providers must intervene to provide information if a consumer acts in a manner that clearly contradicts the objective of the pathway solution they've invested in. We have added COBS 14.2.1-A G to give providers guidance on what they should do in these circumstances.

We want the consumer to receive information about their chosen investment pathway in the annual statement to enable them to assess whether their objective for their pot in drawdown still reflects the objective of the pathway solution they're invested in. We have made minor amendments to our rules and guidance to ensure this is clear.

We agree that the wording '...and decide what to do with their pension fund going forward' is not needed in COBS 16.6.8 R (1), so we have deleted it. That the annual statement should prompt the consumer to think about their objectives going forward is implicit in the existing requirement to give the consumer the information necessary to enable them to 'review the decision'.

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## The records providers should keep about investment pathways

### Our proposal

- 5.15** To help providers meet our requirements in 'Senior Management Arrangements, Systems and Controls' (SYSC), we proposed in guidance a non-exhaustive list of the areas where we consider it most important that providers keep good records. For example:
- The number of non-advised consumers who choose to use investment pathways, self-select their investment strategy without using investment pathways, or remain in their current investments.
  - The number of non-advised consumers offered each pathway solution, whether these consumers selected the pathway solution offered, and what action the provider took where a consumer did not select the pathway solution offered.
- 5.16** We also said we would make regular data requests to providers about investment pathways to inform our post-implementation review. Our record-keeping guidance gives providers an indication of the data we may look to collect.

### Feedback received

- 5.17** Most respondents agreed with our proposed record-keeping guidance. However, some raised concerns that parts of the guidance were not clear, particularly where it focused on the actions taken following a consumer's failure to make a selection of a pathway or investment.
- 5.18** Some providers were concerned about the potential burden of our plans to collect data. These providers argued that they need time to make administrative and IT changes to be able to extract the right information from their systems. They urged us to confirm, as early as possible, the full detail of our data requirements.
- 5.19** Some respondents pointed out that FCA already collects a variety of data from pension providers, including ad-hoc requests and the new RIDR (ie REP015 and REP016), which could potentially overlap. They asked for consideration to be given to how these data requirements could be co-ordinated or merged to reduce burden on providers.

### Our response

We have not made any substantial changes to the guidance set out in CP19/5. However, we agree that the guidance was unclear in a few places, and have made amendments to be more specific about what actions should be recorded.

We are not giving providers our precise and final data requirements at this stage. This is because we want to discuss the detailed design of the data request with providers, to ensure we gather good quality information. However, we fully understand why providers want us to set out, as early and precisely as possible, what data we plan to collect from them, and we aim to do so as soon as our plans are sufficiently advanced.

We agree that any data we request on investment pathways must be co-ordinated with our other requests and the RIDR. As we set out in CP19/5, in the future, we may regularise data requests on investment pathways, by creating a new return or adding to an existing one. However, we are unlikely to do this until we are certain of our long-term data needs following the post-implementation review.

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## Implementation timeline

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### Our proposal

- 5.20** We proposed that providers should be given 12 months to implement these changes from the date we publish our final rules and guidance. This timeline appropriately balanced the need to address the consumer harm we have identified with the fact that implementing our proposals will require providers to make significant changes to their systems and processes.

### Feedback received

- 5.21** Most respondents said that a 12-month timeline was challenging. A number of reasons were provided for this view. Some respondent providers said they would need more time to make IT and systems changes to reflect our rules and guidance. Other respondent providers were concerned that the timetable left little time for meaningful input from their IGC or Governance Advisory Arrangement, if our proposals for the extension of their remit are finalised. (Our IGC proposals are highlighted in paragraph 1.20.)
- 5.22** Respondents suggested a variety of alternative implementation timelines. The most popular was that providers should have 18 months to implement these changes from the date we publish our final rules and guidance, rather than 12 months.

### Our response

While we recognise the challenges presented by respondents, we remain of the view that a 12-month implementation period is appropriate.

Delaying implementation, even for a few months, would increase consumer detriment, as our data suggest that around 5,000 pension pots enter drawdown each month without advice being taken.

Further, our easement for small providers - described in Chapter 4 - means that implementation will be less challenging for providers with fewer than 500 consumers entering drawdown each year without taking advice.

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## 6 Ensuring investment in cash is an active decision

**6.1** In this chapter, we summarise feedback on our proposals to ensure that, when non-advised consumers enter drawdown, investment in cash is an active decision. This includes our proposals to ensure consumers who are predominantly invested in cash or cash-like assets are given a warning of the potential risks. We also explain our final rules in this area.

### Application of our proposals and definitions

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#### Our proposals

**6.2** We proposed that our rules on making cash an active decision and providing cash warnings would apply to non-advised consumers when they move funds into drawdown, or transfer funds already in drawdown to another arrangement.

**6.3** We also proposed that the cash warning rules would apply to non-advised consumers who are already in drawdown. Providers would have 6 months from the date our rules come into force to assess which consumers require a warning, and to provide it.

**6.4** We proposed that our rules should:

- extend to investment in 'cash-like assets', such as those defined as 'near cash' in our Handbook
- define 'predominantly' invested in cash as more than 50% of the total value of the consumer's pot in drawdown

#### Feedback received

**6.5** Overall, respondents supported our proposals on how these requirements should be applied. However, some SIPP operators raised a range of practical difficulties.

**6.6** Several respondents thought that we were proposing that these requirements applied each time a drawdown consumer took an action that resulted in most of their funds being held in cash. They were concerned that our rules would be burdensome, require continuous monitoring, and would interfere with their ability to execute quickly investment decisions taken by consumers.

**6.7** Some respondents asked for additional guidance on which consumers should be treated as advised or non-advised.

**6.8** Several respondents suggested that the rules should apply only to cash, and not to cash-like assets. Some said that an investment in a cash-like asset evidenced an active decision and so should not be included in the rules. Some SIPP operators also argued they may not have the expertise to identify cash-like assets.

- 6.9** Some SIPP operators explained that their systems and processes would make it difficult to identify when the threshold (50% of the drawdown fund) had been reached, where pots are partially in drawdown. This is because it is not always clear which assets are in drawdown and which are not, as they only notionally allocate a percentage of the pot to drawdown.
- 6.10** Some also said they do not always have 'live' information on asset allocations from discretionary fund manager (DFM) or stockbroker accounts, and so would not be able to identify, at any given moment, if more than 50% of the fund is in cash.
- 6.11** One respondent also asked whether these rules apply to 'fixed-term annuities'.

### Our response

We have not proposed any requirement for providers to monitor cash holdings throughout the year or issue new cash warnings when consumers make transactions. As set out in CP19/5, our intention is for these rules to apply to consumers when they go through the choice architecture we've mandated (ie to non-advised consumers who move funds into drawdown or transfer funds already in drawdown to another arrangement). We have amended our rules to make this clearer. We consider this will alleviate the concerns raised by SIPP operators about the burden of this requirement and potential interference with the execution of consumers' investment decisions.

We agree that the proposed method for providers to identify non-advised consumers can be improved. So, we have adopted the same, revised approach for this remedy as we have in investment pathways (see our response following paragraph 2.9).

We continue to consider that our rules should cover cash-like investments as well as cash. This is because ROR found evidence of some providers defaulting consumers into cash-like assets, and that these consumers were at risk of the same harms as those invested heavily in cash. We do not think it is unreasonable to expect all SIPP operators to be able to identify which assets meet our definition of cash-like investments. This is because SIPP operators and/or trustees are the legal owners of the assets in their schemes and already have obligations to understand the nature of the investments within their schemes.

We have also amended our rules so that where pots are partially in drawdown, and the provider is unable, despite reasonable efforts, to identify the portion in drawdown, the provider may apply the threshold calculation to the whole pension pot.

In response to feedback that providers may not always have up-to-date information on cash holdings, we have given guidance that providers should take reasonable steps to obtain this information, and should use the most recent information they have access to, when assessing whether over 50% of assets are in cash. In addition, we do not consider that cash should be covered by our rules if it is held in any part of a drawdown pot where DFMs or financial advisers have permission to

execute trades. This is because these rules are designed to protect consumers not receiving professional help with their investment decisions. So, we have amended our rules to exempt the whole drawdown pot, if DFMs or advisors have permission to trade on more than 50% of assets, and where it is less than 50%, to allow that part of the pot to be exempted.

As set out in our response following paragraph 2.9, our investment pathways rules will not be applied to consumers who choose a 'fixed-term annuity' product. Our rule on cash being an active decision will therefore not apply either. We have amended our cash warning proposals for 'fixed-term annuity' consumers, so that a warning is only sent when their product matures.

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## Active decision to invest in cash and initial cash warnings

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### Our proposals

- 6.12** We proposed that providers ensure non-advised consumers entering drawdown, or transferring assets from another fund in drawdown, only invest wholly or predominantly in cash or cash-like assets if they make an active decision to do so. We did not define 'active decision'. However, we proposed that the use of a pre-populated form - either online or on paper - would not be sufficient.
- 6.13** We proposed that, when non-advised consumers have made an active decision to invest wholly or predominantly in cash, their provider must give them a warning about the potential risks of cash investment.
- 6.14** We proposed that this warning would apply to all of a provider's investment options that are wholly or predominantly in cash, including pathway solutions.
- 6.15** We didn't propose to mandate the precise wording of the warning. However, we did propose key messages that the warning should convey. Specifically, that their drawdown pot risks being eroded by inflation and if they plan to invest for the longer-term, they should consider whether their current investment is likely to grow sufficiently.
- 6.16** We also proposed guidance on some additional content for the warning. This included:
- a comparison of the interest/yield currently being paid to the current rate of inflation (both expressed as a percentage)
  - a statement that the provider offers investment pathways (if applicable)
  - a reminder that investments can fall as well as rise and that consumer should consider their attitude to, and capacity for, risk
  - a reminder that the consumer can take advice, or review information on the MAPS website

## Feedback received

- 6.17** Respondents generally supported the principle behind our proposals, but many respondents commented on the proposed content and presentation of the cash warnings.
- 6.18** Some respondents said we should be more prescriptive on the content of the cash warnings to ensure consistency. For example, that we should mandate the inflation index used and provide guidance on how to calculate the interest where the relevant assets are subject to multiple or tiered interest rates. Others said some of the proposed information was unnecessary and too complex. For example, that providers should just state that the rate of interest was less than inflation, and that the value of the cash holding is over 50%. In contrast, other respondents said we should be less prescriptive and just guide, rather than prescribe, the content of the warnings. Some respondents made suggestions to improve the comprehensibility of the information. Suggestions included a pounds and pence figure rather than percentages, or an illustration to show inflation erosion over the medium term.
- 6.19** Some respondents said that the warning could be viewed as a personal recommendation, and therefore advice, by the consumer receiving it.
- 6.20** Some also said they were concerned about warning consumers against cash investment without proposing another investment strategy.
- 6.21** Some respondents said that the cash warnings are likely to cause confusion if given to consumers who have chosen a pathway solution, and could cause them to change their choice, or lose confidence in investment pathways. Some said the warnings should not be sent to investment pathways consumers at all, while others suggested they should be tailored to be less confusing.
- 6.22** One respondent said that consumers who find the warnings unnecessary or annoying should be able to opt out if they wished. Another said that where a provider knows that a consumer has moved their pension savings into cash for a specific reason (ie a planned annuity purchase), they should not need to give the cash warning.

### Our response

In response to the feedback we have received, we have made some minor amendments to the rules and guidance on the messaging in the cash warning, to make this simpler and more effective. In particular, we have simplified and standardised the explanation of how inflation could erode the pension pot. Our final rules require all cash warnings to include a standard explanation or illustration of how inflation erosion would affect a £10k pot over 5 years, assuming 0% interest and using the Consumer Prices Index. We consider that the use of a generic example will be more effective, as it will allow the key messages to be conveyed consistently and simply, enhancing consumer understanding.

As stated in CP19/5, we do not consider that providing the cash warning constitutes a personal recommendation. We have formalised our view by giving additional guidance in PERG. We also do not consider that highlighting the balance of risk and reward of cash investment has the effect of warning a consumer away from cash investment.

We recognise that many consumers who receive a cash warning will need help to consider what action, if any, to take as a result. That is why we have provided guidance that providers could signpost consumers to advice or guidance, or remind them about investment pathways if appropriate.

We agree that it could be confusing for consumers who have chosen a pathway solution to receive initial (and ongoing) cash warnings. We do not want to distract these consumers from the key messages in their annual statement, which will encourage them to review their investment pathway selection. So, we have changed our final rules to exempt pots where over half of the funds are in pathway solutions.

We have considered whether to allow consumers to opt out of cash warnings or for providers to exempt certain consumers, but we think this would add complexity and not benefit consumers.

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## Ongoing cash warnings

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### Our proposals

- 6.23** We proposed that consumers must be given a cash warning if they remained invested in cash after 12 months of being given the previous warning.
- 6.24** We proposed that it should be in the same form as the initial cash warning set out in paragraphs 6.15 and 6.16 above, and the key terms defined the same way.

### Feedback received

- 6.25** Some respondents said that consumers may have become non-advised since they had invested in cash or cash-like assets. However, our definition of non-advised consumers would exclude these consumers from receiving the ongoing warning. Conversely, one respondent said that if a consumer had become advised since investing, this could create problems.
- 6.26** Some respondents argued that our proposed rules on the timing of the ongoing warning were too prescriptive. In particular, they thought the rules should allow the warning to be provided with the annual statement.

### Our response

We do not think it would be proportionate to require providers to monitor whether advised consumers who are invested in cash are continuing to receive advice. However, where previously non-advised consumers start receiving advice, it will be possible for providers to stop sending cash warnings.

Having considered the feedback, we agree that our proposed rules on timing of the ongoing warning were overly prescriptive. We have

changed our rules so that the warning must be provided at least annually. This will allow the warning to be issued with the annual statement or on the policy anniversary, if desired.

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## The records providers should keep about initial and ongoing cash warnings

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### Our proposal

- 6.27** We proposed that providers should keep records that will allow us to monitor their compliance with our requirements (as set out in SYSC 9.1). We set out in proposed guidance a non-exhaustive list of areas where we think it particularly important that providers keep good records.

### Feedback received

- 6.28** Respondents were broadly supportive of our proposals. However, some respondents made similar comments to those made about our record-keeping requirements on investment pathways (see paragraphs 5.17 to 5.19). This included concerns that parts of the guidance were not clear, particularly where it focused on the actions taken following receipt of a cash warning, and that the full detail of any data requests should be provided as early as possible.

### Our response

After considering the feedback, we have amended the guidance to make it clearer in places.

As with investment pathways, we are not yet in a position to give providers our precise and final data requirements (see our response following paragraph 5.19). We will ask for data on cash warnings at the same time as on investment pathways, and will discuss this with providers as soon as our plans are sufficiently advanced.

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## Implementation timeline

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### Our proposal

- 6.29** We proposed that these remedies should be introduced at the same time as our investment pathways proposals, and that providers should be given 12 months to implement these.

### Feedback received

- 6.30** Responses on this point were very mixed. Broadly speaking, respondents viewed these remedies as implementable within 12 months, particularly if the requirements



were simplified. Some respondents said they needed time to implement associated record keeping updates. Some respondents asked us to consider the current volume of changes that they were being asked to make across pensions policy areas. They argued that it would be simpler to implement them all simultaneously, but saying that to do so meant they would need more time.

### Our response

While we recognise the challenges presented by respondents, we remain of the view that as these remedies dovetail with the investment pathways, the 2 sets should be introduced together. Delaying implementation of these remedies, or investment pathways, would increase consumer detriment. So, the implementation period is 12 months.

---

## 7 Actual costs and charges information

**7.1** We consulted on proposals to require firms to provide information on the actual costs and charges consumers (both advised and non-advised) are paying for their pensions post-sale, during the decumulation phase (ie when they are in drawdown or have withdrawn at least 1 UFPLS payment). In this chapter, we summarise the feedback received on our proposals and explain the approach we've taken in our final rules and guidance.

### Our proposals

**7.2** We proposed that:

- Providers of personal or stakeholder pension schemes should provide consumers in decumulation with annual information on all the costs and charges the consumer has paid on their pension pot.
- This information should be provided to consumers in drawdown, and consumers who have withdrawn at least one UFPLS payment.
- It should include transaction costs, be aggregated, and be presented to the consumer as a pounds and pence cash amount.
- To enable some firms to use the same systems and data they currently use to comply with MiFID disclosure requirements, we would not mandate a particular methodology to calculate transaction costs.
- When disclosing actual costs and charges, firms must state whether any adviser remuneration has been paid out of the product.
- These requirements would not apply to products, such as 'fixed-term annuities', where the costs and charges of the product are built into the price.
- Firms would be given 12 months to implement our proposals.

### Feedback

**7.3** Some respondents were concerned that certain actual costs and charges could be unknown, impossible to calculate or extremely difficult to work out, despite the firm taking all reasonable steps to identify them. Various examples were given, including the costs and charges for buying, holding, maintaining and selling commercial property, and the difficulty of getting details of costs and charges from some third parties.

**7.4** While respondents largely agreed with our proposal that where costs and charges are built into the price of a product (such as a 'fixed-term annuity', described in Chapter 2) they should be outside the scope of these requirements, some respondents were concerned that our draft rules and guidance did not accurately reflect our proposal.

**7.5** Some respondents suggested that where a consumer had moved only part of their pension savings into drawdown, and there was no separation in the product of the assets in drawdown and the assets that remained in the accumulation phase, it would be difficult for firms to provide costs and charges information solely for the drawdown element.

- 7.6** One respondent asked whether costs and charges information had to be provided separately to the annual statement required under COBS 16.6, or whether it could be provided within it.
- 7.7** Some respondents asked whether disclosure of costs and charges information in percentage terms should be required in addition to a pounds and pence figure.
- 7.8** Respondents were broadly split on whether 12 months was an appropriate implementation timeframe. Of those who disagreed, some said that 18 or 24 months would be more feasible, given the substantial changes to systems and processes that were required.

### Our response

We are proceeding with the rules and guidance proposed in CP19/5, with some minor amendments to reflect feedback.

Having considered the feedback we accept that, in some circumstances, firms may not have access to information about all the costs and charges paid by consumers. So, we have amended our rules to say that, if a firm does not have the information necessary to comply with COBS 16.6.10 R (1) or COBS 16.6.10 R (2), it must take reasonable steps to obtain it. If, despite having taken reasonable steps, the firm is still unable to comply with COBS 16.6.10 R (1) or COBS 16.6.10 R (2), the firm should provide consumers with a reasonable estimate or provide a written statement to explain what costs and charges are not included in the figure provided. We have included guidance on the expected minimum reasonable steps to be taken to obtain the necessary information.

In CP19/5 it was our intention that where products have bundled costs and charges, ie they are built into the headline price, we would not require firms to disclose costs and charges separately. However, we agree that the draft rules did not make this clear. As a result, we have introduced a new rule - COBS 16.6.11 R - to provide clarity. Firms should note, however, any costs and charges that are unbundled and not included in the headline price, need to be disclosed, for example, any additional costs or charges consumers must pay to make withdrawals from a product. We have amended our rules to say that, if a consumer moves only part of their pension savings into drawdown, the firm must provide costs and charges information either for the proportion in drawdown or for the whole of the consumer's pension scheme. Whichever of these approaches the firm chooses to take, it must - in accordance with COBS 16.6.10 R (2) - make it clear to the consumer whether an identified proportion of their pension scheme, or the whole scheme, is covered by the costs and charges information provided.

We have clarified in COBS 16.6.10 R (1), that firms must provide costs and charges information within the annual statement. As set out in COBS 16.6.8 R, the annual statement must be provided at least annually.

We have also added guidance that provides that, where the consumer takes an UFPLS or partial drawdown, the annual statement must include

the actual costs and charges information in respect of either the proportion of the scheme in decumulation or drawdown, or the whole of their pension scheme.

Our new rules require disclosure of costs and charges in pounds and pence, as evidence suggests consumers are generally better able to understand presentations that use pounds and pence rather than percentages. However, a firm may also disclose costs and charges information in percentage terms, either voluntarily or in response to a consumer's request.

We are introducing a 12-month implementation period, starting from 1 August 2019, to give firms time to make the necessary systems changes required to meet these new rule requirements. This means that only those costs and charges incurred by consumers after the end of the implementation period (ie after 1 August 2020) need to be identified and disclosed to consumers (who are in drawdown or who have withdrawn at least 1 UFPLS payment) in the annual statement.

Firms should note that our rules impose a minimum standard. A firm may choose to disclose costs and charges information that relates to a period starting before 1 August 2020.

If, however, a firm chooses to take advantage of the implementation period, this may mean that the first annual statements produced by that firm after 1 August 2020 (between 1 August 2020 to 31 July 2021) will contain costs and charges information for only part of the year. As set out in COBS 16.6.10 R (6), where a firm provides costs and charges information in the annual statement, they must make it clear to the consumer what period the information covers.

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## 8 Cost Benefit Analysis

- 8.1** In CP19/5, at Annex 3, we included a cost benefit analysis (CBA) of our proposed rules, as required by the Financial Services and Markets Act 2000 (amended by the Financial Services Act 2012). We asked respondents for comments on our CBA.

### Feedback received

- 8.2** Most respondents had no significant comments on our CBA.
- 8.3** Some respondents said that costs would be inflated by considerations we had not considered within our CBA, but they did not provide specific estimates of what these would be.
- 8.4** Some respondents stated that we had overestimated potential benefits. Again, they did not provide evidence to support their position, or propose alternative estimates.
- 8.5** One respondent said that our CBA did not include costs for the development of an offline consumer journey for the investment pathways.

### Our response

Where respondents have not provided evidence to support criticisms of our estimates of costs and benefits, we do not consider it necessary or proportionate to revisit our CBA estimates.

#### Offline consumer journey

We have reviewed our CBA, in light of the feedback on the offline consumer journey for investment pathways. For consumers who cannot or do not wish to access an online consumer journey for investment pathways, providers will need to develop an offline consumer journey. So, we have considered the costs associated with developing an offline journey, which would be additional to the costs in our initial CBA.

To take account of the development of an offline journey for investment pathways, we have estimated the additional costs using the assumptions in the standardised cost model.

#### Offline consumer journey: one-off costs

Adapting investment pathway solutions to cater for an offline journey, will require one-off changes which consist of the following elements: business analysis, design, developing additional customer communications, project management and involvement from senior management. Based on FCA data we estimate the project length is likely to be: 20 days for small providers at a cost of £16,513 per provider, 40 days for medium providers at a cost of £102,391 per provider and 60 days for large providers at a cost of £189,509 per provider. We have assumed that this process will be longer and more complicated for larger

firms, who are likely to have various legacy systems and a more complex product range that will require variations on the offline journey.

We expect this adjustment to affect the same number of firms as in the CBA in CP19/5. That is, around 180 providers, comprising 10 large providers with over 500,000 policyholders each, 12 medium providers with over 50,000 policyholders each and around 160 small providers (97 of whom will implement investment pathways) with fewer than 50,000 policyholders each. The total one off costs would increase by £4.7m (which is less than 15% of the estimated one-off costs).

### **Offline consumer journey: ongoing costs**

In addition, we expect consumers who access investment pathways through an offline journey may have additional queries or follow up actions raised over the phone. To calculate this cost, we assume that consumers will require, on average, an extra 5 minutes during a sales telephone call. Based on the FCA data set out in the CBA in CP19/5, we estimate that the ongoing cost to industry from a longer sales process is £165,000 (which is less than 5% of the estimated ongoing costs).

The total estimated one-off costs for investment pathways will be between £37.2 and £37.7m, and the on-going costs will be between £4.6 and £4.7m. Overall, we continue to expect our remedies to be net beneficial. By requiring investment pathways and enabling more consumers to make an informed choice better suited to their objectives in retirement, we estimate the consumer benefits will continue to offset costs to firms between 2 and 4 years (as in the CBA in CP19/5).

### **RIDR**

Since publishing CP19/5, the latest data from the RIDR have become available. This dataset includes numbers of non-advised consumers in drawdown. We compared our existing dataset, which was based on a sample of the market, with the latest data, to check whether we should revise our assumption that 33% of drawdown consumers are non-advised. We found that this assumption remains valid.

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# Annex 1

## List of non-confidential respondents

Aegon

Age Partnership

Age UK

AJ Bell

Alan Gordon

Alliance Bernstein

Alliance Trust Savings

Aon

Association of British Insurers

Association of Member-Directed Pension Schemes

Aviva

B&CE

Barnett Waddingham SIPP

Blooming Lives

Capita Life & Pensions Regulated Services

Chartered Institute for Securities and Investments

Company Retirement Line Ltd

Curtis Banks

Daniel Elkington

Elston Consulting

Embark

Enhance Support Solutions Ltd

Financial Services Consumer Panel

Hamid Nawaz-Khan

Hargreaves Lansdown

Institute and Faculty of Actuaries

Institute of Chartered Accountants in England and Wales

Interactive Investor

Investment Association

Investment and Life Assurance Group Ltd

James Hay Partnership

Just Retirement

Legal & General

Low Incomes Tax Reform Group

LV=

M & G Prudential

Mercer

MJF SIPP Operator Ltd

National Employment Savings Trust

National Farmers Union Mutual Insurance Society Ltd

Old Mutual & Quilter

PensionBee

Pensions and Lifetime Savings Association

Personal Investment Management and Financial Advice Association

Phoenix Group

ReAssure

Redington

Richard Parkin Consulting

Royal London Group

Smart Pension Ltd



Spire Platform Solutions

Standard Life Aberdeen

St James's Place

Talbot and Muir

Tax Incentivised Savings Association

The Society of Pension Professionals

True Potential Investments LLP

UK Platform Group

Vanguard Asset Management Ltd

Which?

## Annex 2

### Abbreviations used in this paper

|              |  |
|--------------|--|
| <b>CBA</b>   | Cost Benefit Analysis                                  |
| <b>COBS</b>  | Conduct of Business sourcebook                         |
| <b>CP</b>    | Consultation Paper                                     |
| <b>DB</b>    | Defined benefit  |
| <b>DC</b>    | Defined contribution                                   |
| <b>DFM</b>   | Discretionary fund manger                              |
| <b>FCA</b>   | Financial Conduct Authority                            |
| <b>IGC</b>   | Independent Governance Committee                       |
| <b>MAPS</b>  | Money and Pensions Service                             |
| <b>MiFID</b> | Markets in Financial Investments Directive             |
| <b>PERG</b>  | Perimeter Guidance manual                              |
| <b>PROD</b>  | Product Intervention and Product Governance sourcebook |
| <b>PS</b>    | Policy Statement                                       |
| <b>RIDR</b>  | Retirement Income Data Return                          |
| <b>SFGB</b>  | Single Financial Guidance Body                         |
| <b>SIPP</b>  | Self-invested personal pension                         |
| <b>SYSC</b>  | Senior Management Arrangements, Systems and Controls   |
| <b>TPR</b>   | The Pensions Regulator                                 |
| <b>UFPLS</b> | Uncrystallised fund pension lump sum                   |

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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# Appendix 1

## Made rules (legal instrument)

**CONDUCT OF BUSINESS SOURCEBOOK (INVESTMENT PATHWAYS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) 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 (The FCA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 August 2020, save for Part 1 of Annex A, which comes into force on 26 July 2019.

**Amendments to the Handbook**

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

| (1)   | (2)     |
|---|---------|
| Glossary of definitions                                       | Annex A |
| Conduct of Business sourcebook (COBS)                         | Annex B |
| Product Intervention and Product Governance sourcebook (PROD) | Annex C |

**Amendments to material outside the Handbook**

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex D to this instrument.

**Citation**

- F. This instrument may be cited as the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019.

By order of the Board  
25 July 2019

## 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 26 July 2019

Amend the following definition as shown.

*SFGB* the single financial guidance body established under section 1 (Establishment of the single financial guidance body) of the Financial Guidance and Claims Act 2018, named the *Money and Pensions Service* pursuant to regulations made by the secretary of state.

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

*Money and Pensions Service* the single financial guidance body (*SFGB*) established under section 1 of the Financial Guidance and Claims Act 2018.

#### Part 2: Comes into force on 1 August 2020

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

*capped drawdown pension fund* in accordance with paragraph 8 of schedule 28 to the Finance Act 2004, sums or assets held in a *personal pension scheme* or *stakeholder pension scheme* and designated as available for the payment of capped *income withdrawals*.

*flexi-access drawdown pension fund* in accordance with paragraph 8A of schedule 28 to the Finance Act 2004, sums or assets held in a *personal pension scheme* or *stakeholder pension scheme* and designated as available for the payment of unlimited *income withdrawals*.

*investment pathway* the process set out in *COBS* 19.10.14R to 19.10.21R that a *retail client* can use to select a *pathway investment* for investing the sums and assets in their *capped drawdown pension fund* or *flexi-access drawdown pension fund*.

*pathway investment* an investment that corresponds to the *investment pathway* options in *COBS* 19.10.17R(1).

Amend the following definitions as shown.

|                           |     |   |
|---------------------------|-----|---|
| <i>distribute</i>         | ... | (3) <u>(in relation to PROD 1.4.3AG, 1.4.3BR and 1.4.3CG, PROD 1.6.1R and PROD 6) arranging a pathway investment.</u>   |
|                           | ... |   |
| <i>income withdrawals</i> | (a) | (as defined in paragraph 7 of <del>Schedule</del> <u>schedule</u> 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: <ul style="list-style-type: none"> <li>(i) <del>drawdown pension fund (as defined in paragraph 8 of that Schedule)</del> <u>capped drawdown pension fund</u> in respect of an arrangement; or</li> <li>(ii) <del>flexi-access drawdown pension fund (as defined in paragraph 8A of that Schedule)</del> <u>flexi-access drawdown pension fund</u> in respect of an arrangement; or</li> </ul> |
|                           | ... |   |
| <i>manufacture</i>        | ... | (3) <u>(in relation to COBS 19, PROD 1.6 and PROD 6) creating, developing, designing, issuing, operating and/or underwriting a pathway investment.</u>  |





|                |  |  |
|----------------|--|--|
| ...            |  |  |
| <b>16</b>      | <b>Reporting information to clients (non-MiFID provisions)</b>   |  |
| ...            |  |  |
| <b>16.6</b>    | <b>Communications to clients – life insurance, long term care insurance and <del>income withdrawals</del> <u>drawdown pensions</u></b> |  |
| ...            |  |  |
|                | <u>Drawdown pensions: annual statements</u>  |  |
| <u>16.6.7A</u> | <u>R</u>   | <u>In the rest of COBS 16.6:</u>   |
|                |  | (1) <u>“annual statement” is the information required to be provided to a retail client on an annual basis at COBS 16.6.8R;</u>  |
|                |  | (2) <u>“cash terms” means pounds and pence;</u>  |
|                |  | (3) <u>“cash-like investments” includes cash or near cash, units in a regulated money market fund, or units in a fund authorised as a money market fund for the purposes of the European Parliament and Council Regulation on money market funds (2017/1131/EU); and</u>   |
|                |  | (4) <u>“drawdown fund” means either a capped drawdown pension fund or flexi-access drawdown pension fund;</u>  |
|                |  | (5) <u>a retail client is a “non-advised retail client” if a firm has not determined on reasonable grounds that the client has received a personal recommendation in relation to how to invest the sums or assets in their drawdown fund, in accordance with COBS 19.10.10R (4);</u>   |
|                | <u>Income withdrawals - <del>Annual</del> annual statements</u>  |  |
| 16.6.8         | R  | At intervals of no longer than 12 months, <del>from</del> <u>beginning on</u> the date a retail client <u>first</u> takes a pension commencement lump sum or an uncrystallised funds pension lump sum payment, or first makes an <del>an</del> <u>income withdrawals income withdrawal</u> or <del>one-off, ad-hoc or regular uncrystallised funds pension lump sum payments,</del> the relevant operator of a personal pension scheme or stakeholder pension scheme must: |
|                |  | (1) provide the retail client with such information as is necessary for the retail client to review the decision, including where relevant the information required by COBS 13 Annex 2 2.9R ( <u>Additional requirements: drawdown pensions and regular uncrystallised funds pension lump sum payment</u> ), COBS 16.6.8AR (pathway investments) and COBS 16.6.10R (costs and charges disclosure); and   |
|                |  | ...  |

|                |          |  |   |
|----------------|----------|--|---|
| <u>16.6.8A</u> | <u>R</u> | <u>If a retail client is invested in a pathway investment the annual statement must include the following:</u>   |   |
|                |          | (1)  | <u>a short description of each pathway investment the retail client is invested in, including the corresponding investment pathway option under COBS 19.10.17R(1) and the current value of each pathway investment in cash terms;</u>   |
|                |          | (2)  | <u>(for those retail clients invested in two or more pathway investments) how the retail client's drawdown fund is split, in cash terms, across the different pathway investments and the corresponding investment pathway options;</u> |
|                |          | (3)  | <u>a short description of the investment pathway options the retail client is not currently invested in (COBS 19.10.17R(1));</u>  |
|                |          | (4)  | <u>a statement reminding the retail client that they can, at any time:</u>  |
|                |          | (a)  | <u>select a different investment pathway option and change their pathway investment;</u>  |
|                |          | (b)  | <u>select an investment that is not a pathway investment;</u>   |
|                |          | (c)  | <u>(where this option is available) split their drawdown fund across two or more pathway investments;</u>   |
|                |          | (d)  | <u>choose a different product to access their pension savings;</u>  |
|                |          | (e)  | <u>shop around, with an explanation of how they may do so.</u>  |
| <u>16.6.8B</u> | <u>G</u> | <u>If a retail client has been invested in the same pathway investment for 5 years (or a multiple of 5 years) a firm should consider including in the retail client's next annual statement:</u>   |   |
|                |          | (1)  | <u>a reminder of the number of years the retail client has been invested in the same pathway investment; and</u>  |
|                |          | (2)  | <u>a statement that the retail client should review the investment pathway option.</u>  |
| <u>16.6.9</u>  | <u>G</u> | <u>The information provided to the retail client in COBS 16.6.8R(1) is likely to be sufficient for the client to review the decision if it contains at least one of the following (in addition to the information required by COBS 16.6.8AR and COBS 16.6.10R, as relevant):</u> |   |
|                |          | ...  |   |
|                |          | <u>Personal or stakeholder pension schemes in decumulation: actual costs and charges disclosure</u>  |   |
| <u>16.6.10</u> | <u>R</u> | (1)  | <u>The annual statement must include costs and charges information</u>  |

|                |          |      |   |
|----------------|----------|------|---|
|                |          |      | <u>which must be:</u>   |
|                |          | (a)  | <u>based on actual costs and charges (including transaction costs and the cost of advice) charged by the operator or other parties, which have been paid out of the retail client's:</u>  |
|                |          | (i)  | <u>drawdown fund; or</u>  |
|                |          | (ii) | <u>personal pension scheme or stakeholder pension scheme from which an uncrystallised funds pension lump sum payment was paid;</u>  |
|                |          | (b)  | <u>aggregated and totalled; and</u>   |
|                |          | (c)  | <u>expressed in pounds and pence.</u>   |
|                |          | (2)  | <u>When a retail client's personal pension scheme or stakeholder pension scheme is in partial drawdown, the operator:</u>   |
|                |          | (a)  | <u>may include costs and charges information for the whole pension scheme; and</u>  |
|                |          | (b)  | <u>must make clear whether the costs and charges information relates to the whole pension scheme or only to the drawdown fund.</u>  |
|                |          | (3)  | <u>If the operator does not have the information necessary to comply with (1), it must take all reasonable steps to obtain it.</u>  |
|                |          | (4)  | <u>If the operator does not have exact figures for certain costs and charges, despite taking all reasonable steps to obtain them, the operator:</u>   |
|                |          | (a)  | <u>must provide a reasonable estimate of such costs and charges when providing the costs and charges information; or</u>  |
|                |          | (b)  | <u>if it is not possible to provide a reasonable estimate of such costs and charges, must include a written statement, with the costs and charges information, to explain which costs and charges are not included.</u>   |
|                |          | (5)  | <u>The operator must include a written statement with the costs and charges information, stating whether any adviser remuneration, including adviser charges, consultancy charges, commission or commission equivalent, is included in the aggregated costs and charges figure.</u> |
|                |          | (6)  | <u>The operator must make clear what period is covered by the costs and charges information.</u>  |
| <u>16.6.11</u> | <u>R</u> |      | <u>COBS 16.6.10R does not apply where costs and charges are discharged by</u>   |

|                |          |   |
|----------------|----------|---|
|                |          | <u>payment of the fixed price of a drawdown pension product, which has been clearly disclosed to the <i>retail client</i>.</u>  |
| <u>16.6.12</u> | <u>G</u> | <u>Where <i>COBS 16.6.10R(1)(a)(ii)</i> applies, the annual statement must include costs and charges for the whole of the <i>retail client's personal pension scheme</i> or <i>stakeholder pension scheme</i>.</u>  |
| <u>16.6.13</u> | <u>G</u> | <u>The <i>operator's</i> reasonable steps to obtain costs or charges information should include, where relevant, requesting this information from third parties that provide services relating to the <i>retail client's drawdown fund, personal pension scheme</i> or <i>stakeholder pension scheme</i>.</u> |

After COBS 19.9 (Pension annuity comparison information) insert the following new section. The text is not underlined.

## **19.10 Drawdown, investment pathways and cash warnings**

### Definitions

19.10.1 R In *COBS 19.10*:

- (1) “cash-like investments” includes *cash* or *near cash*, units in a *regulated money market fund*, or units in a fund authorised as a money market fund for the purposes of the European Parliament and Council Regulation on money market funds (2017/1131/EU);
- (2) “cash warning” is the warning in *COBS 19.10.38R*;
- (3) “drawdown fund” means either a *capped drawdown pension fund* or *flexi-access drawdown pension fund*;
- (4) a *retail client* is a “non-advised *retail client*” if a *firm* has not determined, on reasonable grounds, that the client has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with *COBS 19.10.10R(4)*;
- (5) “pathway investments exempt firm” is a *firm* which:
  - (a) has elected not to offer *pathway investments*; and
  - (b) is satisfied on reasonable grounds that it is more likely than not to have fewer than 500 of its non-advised *retail clients* designate funds to a drawdown fund in the 12 *months* following the date of the election in (a), taking into account:
    - (i) the number of non-advised *retail clients* who designated funds to a drawdown fund in the preceding 12 *months*;

- (ii) the potential impact of any change in the *firm's* business plans over the next 12 *months*; and
  - (iii) any other relevant factors;
- (6) references to a *firm* “offering” the *retail client* a *pathway investment* mean that the investments are either:
- (a) *manufactured* by the *firm* (F1); or
  - (b) *manufactured* by another *firm* (F2);
- and are available for investment in the drawdown fund operated by F1.
- (7) references to a *firm* (F1) “referring” the *retail client* to a *firm* (F2) offering a *pathway investment* mean that F1 arranges for F2 to give the *retail client* the opportunity to invest in a *pathway investment* available through transfer to the drawdown fund operated by F2, where F2 offers *pathway investments* in accordance with (6)(a) above.

#### Who?

- 19.10.2 R This section applies to an *operator* of a *retail client's personal pension scheme* or *stakeholder pension scheme*.
- 19.10.3 G The application of this section is modified for a *pathway investments exempt firm*.
- 19.10.4 R (1) A *pathway investments exempt firm* must review its status at least once every 12 *months*.
- (2) Any change to a *firm's* status as a *pathway investments exempt firm* must take effect within 12 *months* of the review date.

#### Purpose

- 19.10.5 G The purpose of this section is to help non-advised *retail clients* designating some or all of the funds in their *pension schemes* into a drawdown fund to make an active decision about how to invest those drawdown funds to achieve their retirement objectives.
- 19.10.6 G This section specifies the circumstances where a *firm* dealing with a non-advised *retail client* in relation to the investment of the sums or assets in their drawdown fund must:
- (1) give the *retail client* the opportunity to use the *investment pathways*;
  - (2) offer the *retail client* a *pathway investment* or refer the *retail client* to a *firm* that offers *pathway investments*;

- (3) ensure that *retail clients* investing wholly or predominantly in cash-like investments make an active decision to do so; and
  - (4) provide warnings to *retail clients* investing wholly or predominantly in cash-like investments;
  - (5) remind *clients* about their option to shop around and use *pensions guidance*.
- 19.10.7 G This section does not absolve *firms* of their obligation, when communicating with *retail clients* about their drawdown fund options, to provide such information as is necessary for the *retail client* to make an informed decision, including (where relevant) the information listed in *COBS 19.4.14R*.

When?

- 19.10.8 R Subject to *COBS 19.10.10R*, a *firm* must take the steps in this section when a *retail client* requests to:
- (1) designate some, or all, of the sums or assets in their *pension scheme* to a drawdown fund; or
  - (2) transfer sums or assets already in drawdown into a drawdown arrangement provided by the *firm*.
- 19.10.9 G *COBS 19.10.8R(2)* applies to a drawdown provider when a *retail client* requests to transfer sums to the drawdown provider from another provider. It also applies, for example, when a *retail client* requests to transfer sums into a new drawdown arrangement at the end of a fixed-term arrangement with the same drawdown provider.
- 19.10.10 R The requirements in this section do not apply to a *firm*:
- (1) in relation to sums or assets in a *retail client's pension scheme* that the *retail client* requests to use to purchase a fixed-term product that:
    - (a) provides a guaranteed income, a guaranteed capital return or both, to the *retail client* or the *retail client's* beneficiary; and
    - (b) does not involve any investment risk to the *retail client* if the *retail client* remains in the product for the fixed term;
  - (2) when the *firm* carries out the *retail client's* previous instructions to designate their funds on a regular basis into a drawdown fund;
  - (3) when the *retail client* has been taken through the *investment pathways* by another *firm* (F1) and has been referred to the *firm's* (F2's) drawdown fund to invest in one of the *pathway investments* that the *firm* (F2) offers (see *COBS 19.10.1R(7)*); or

- (4) when the *firm* has determined, on reasonable grounds, that the *retail client* has received a *personal recommendation* in relation to the action referred to in COBS 19.10.8R(1) or (2).
- 19.10.11 G COBS 19.10.10R(1) applies where a *retail client* requests to purchase a fixed-term product, in which the only income or return is intended to be regular income, a capital return or both (payable to the client or the client's beneficiary), with amounts guaranteed and specified at the time the product is purchased. *Firms* may nonetheless agree terms permitting ad hoc withdrawals or early exit, which may or may not be subject to guarantees, with *retail clients* purchasing these products.
- 19.10.12 G A *firm* will not have reasonable grounds for the purpose of COBS 19.10.10R(4) if the determination is based solely on information that:
- (1) is over 12 *months* old;
  - (2) the *retail client* is in, or transferring from, an advised product; or
  - (3) the *retail client* continues to provide *remuneration* to an *adviser* in relation to their *pension scheme* or drawdown fund.
- 19.10.13 G However, a *firm* could have reasonable grounds for the purpose of COBS 19.10.10R(4) if the *retail client* continues to provide *remuneration* to an *adviser* in relation to their *pension scheme* or drawdown fund and the *firm* has reminded the *retail client* of this:
- (1) including an explanation of what this means in the context of the *retail client's* request referred to in COBS 19.10.8R;
  - (2) in a *durable medium*; and
  - (3) within a reasonable time before the *firm* carries out the *retail client's* request referred to in COBS 19.10.8R.

Step 1: offer use of investment pathways

- 19.10.14 R The first step is to ask the *retail client* how they want to select the *investment* for their drawdown fund from the following options:
- (1) use the *investment pathways* (option 1);
  - (2) select investments without using the *investment pathways* (option 2);  
or
  - (3) (where applicable) remain invested in their current investments (option 3).
- 19.10.15 R The option to use *investment pathways* must be presented with equal prominence to options 2 and 3.

- 19.10.16 R If a *retail client* selects option 1, or the *retail client* is unsure about the option to select, or the *firm* is unsure about which option the *retail client* has selected, the *firm* must proceed to step 2.

Step 2: present investment pathway options

- 19.10.17 R The second step is to:
- (1) present the *retail client* with the following *investment pathway* options:
    - (a) Option 1: I have no plans to touch my money in the next 5 years;
    - (b) Option 2: I plan to use my money to set up a guaranteed income (annuity) within the next 5 years;
    - (c) Option 3: I plan to start taking my money as a long-term income within the next 5 years;
    - (d) Option 4: I plan to take out all my money within the next 5 years; and
  - (2) ask the *retail client* to select an *investment pathway* option that corresponds most closely to their current intentions.
- 19.10.18 R A *firm* must not present any other investment options to the *retail client* during step 2 of *investment pathways*.
- 19.10.19 R If a *retail client* selects an *investment pathway* option, the *firm* must proceed to step 3.
- 19.10.20 G If, after the *firm* completes step 2, the *retail client* does not select an *investment pathway* option the *firm* should:
- (1) consider providing the *retail client* with the opportunity to view the *investment pathways* options again or ask if the *retail client* requires further information to make a decision;
  - (2) provide a clear and prominent statement about the availability of advice and *pensions guidance*; and
  - (3) provide the *retail client* with the information in *COBS* 19.10.30R, if applicable.

Step 3: offer pathway investments

- 19.10.21 R (1) The third step is for the *firm* to:
- (a) (i) offer the *retail client* a *pathway investment* that corresponds to the *investment pathway* option selected



in step 2; or

- (ii) refer the *retail client* to a *firm* that offers a *pathway investment* that corresponds to the *investment pathway* option selected in step 2; or
- (iii) (for pathway investments exempt firms only) refer the *retail client* to the *Money and Pensions Service* drawdown comparator;

(b) describe to the *retail client*, using plain language, the level of riskiness of each *pathway investment* (whether offered by that *firm* or by a *firm* to which they refer *retail clients*); and

(c) provide the *retail client* with a clear and prominent statement:

- (i) that other *firms* offer *pathway investments* for the *investment pathway* option selected by the *retail client* and that the *retail client* may benefit from shopping around, with an explanation of how they may do so; and
- (ii) that the *Money and Pensions Service* is available to assist the *retail client* with shopping around for *pathway investments* with an explanation of how they may access the *Money and Pensions Service* and the *Money and Pensions Service* drawdown comparator.

(2) A pathway investment exempt firm need only do (1)(a)(ii) or (iii) and (1)(b) and (c).

19.10.22 G If after the *firm* completes step 3 the *retail client* does not select a *pathway investment* the *firm* should:

- (1) consider providing the *retail client* with the opportunity to view the *investment pathways* options again or ask if the *retail client* requires further information to make their decision;
- (2) remind the *retail client* that they can shop around and explain how they can do that;
- (3) provide a clear and prominent statement about the availability of advice and *pensions guidance*; and
- (4) provide the *retail client* with the information in *COBS* 19.10.30R, if applicable.

19.10.23 G If after the *firm* completes step 3 the *retail client* does not select a *pathway investment* the *firm* may offer other investments and tools the client may use when deciding how to invest their drawdown fund.

## Preparing for step 3

- 19.10.24 R To prepare for step 3:
- (1) a *firm* (excluding pathway investments exempt firms) must be in a position to:
    - (a) offer, or refer to other *firms* offering, a *pathway investment* for each of the *investment pathway* options (see *COBS* 19.10.1R(7) on referring); and
    - (b) offer *pathway investments* for at least two *investment pathway* options;
  - (2) *firms* may offer, or refer to other *firms* offering, the same *pathway investment* for more than one *investment pathway* option, but must not offer, or refer the *retail client* to other *firms* that offer, the same *pathway investment* for all *investment pathway* options;
  - (3) *firms* must be in a position to describe the level of riskiness of each *pathway investment*, whether offered by them or by a *firm* to which they refer *retail clients*; and
  - (4) pathway investments exempt firms must be in a position to either:
    - (a) refer clients to *pathway investments* offered at other *firms*; or
    - (b) refer clients to the *Money and Pensions Service* drawdown comparator.
- 19.10.25 R *Firms* must not offer a *retail client* more than one *pathway investment*, nor refer a *retail client* to more than one *firm* offering a *pathway investment*, for any *investment pathway* option.
- 19.10.26 G *Firms* do not have to offer the same *pathway investment* to all *retail clients* who select the same *investment pathway* option. Example F(33) in *PERG* 8 Annex 1 sets out some considerations for *firms* that offer different *pathway investments* in relation to the same *investment pathway* option.
- 19.10.27 G
- (1) Where a *firm* decides to change the *pathway investment* it offers in relation to a particular *investment pathway* option, the *firm* may need to consider whether it would be appropriate to transfer existing clients to that new investment.
  - (2) This may be the case, for example, if the transfer is required to prevent consumer harm and avoid risking a breach of our *rules*, for example *Principle* 6. This could be the case where the *firm* has determined that the *pathway investment* is no longer an appropriate investment for the *investment pathway* option and the client is likely to suffer harm as a result.

- (3) If *firms* decide to transfer existing clients to a new *pathway investment*, *firms* will need to consider the information needs of their clients, and communicate to them appropriately and in good time, in a manner that is clear, fair and not misleading.
- (4) *Firms* are required to have appropriate arrangements in place (including contractual powers that are fair and transparent and comply with the *CRA*) to enable them to comply with their obligations under the *regulatory system*.

- 19.10.28 R (1) *Firms* must label *pathway investments* clearly using the corresponding option listed in *COBS* 19.10.17R(1).
- (2) *Firms* must not label any other investments as *pathway investments* or mislead a *retail client* into thinking that another investment is a *pathway investment*.

Information, including cash warnings, for clients who have not decided to invest at least 50% of their drawdown fund in *pathway investments*

- 19.10.29 R *COBS* 19.10.30R applies if a *retail client* has:
- (1) been taken through the *investment pathway* (whether or not they proceeded to steps 2 or 3); and
  - (2) not decided to invest at least 50% of their drawdown fund in one or more *pathway investments*.
- 19.10.30 R Before carrying out the *retail client's* request referred to in *COBS* 19.10.8R, the *firm* must:
- (1) if the *retail client* has chosen to remain in their current investments, remind the *retail client*:
    - (a) of their current investment strategy (where this is known to the *firm*); and
    - (b) to check that their current investment strategy meets their current investment objectives;
  - (2) subject to *COBS* 19.10.32R, if carrying out the *retail client's* request referred to in *COBS* 19.10.8R would result in more than 50% of the *retail client's* drawdown fund being invested in cash-like investments:
    - (a) ensure that the *retail client* has made an active decision to invest in cash-like investments; and
    - (b) provide the *retail client* with a cash warning;
  - (3) remind the *retail client* that they can shop around and how to do that, including the option of using the *Money and Pensions Service*

drawdown comparator; and

- (4) provide a clear and prominent statement about the availability of advice and *pensions guidance*.

- 19.10.31 G A *retail client's* signature on a pre-populated form, whether in paper or electronic format, is not, by itself, sufficient evidence of an active decision to invest in cash-like investments.
- 19.10.32 R (1) *COBS* 19.10.30R(2) does not apply where a *retail client* has given a *discretionary investment manager* or a financial adviser permission to *execute* investment decisions, and the sums or assets covered by this permission comprise more than 50% of the *retail client's* drawdown fund.
- (2) When ascertaining whether more than 50% of the *retail client's* drawdown fund is invested in cash-like investments, a *firm* may ignore sums or assets in relation to which a *discretionary investment manager* or a financial advisor has permission to *execute* investment decisions. A *firm* exercising this option must take the steps in *COBS* 19.10.30R(2) if the client's decision would result in more than 50% of the remainder of the drawdown fund being invested in cash-like investments.
- (3) If it is not possible for the *firm* to identify the assets in a *retail client's* drawdown fund, despite making all reasonable efforts, a *firm* may take into account all investments in the *retail client's personal pension scheme* or *stakeholder pension scheme*. In such a case, a *firm* must take the steps in *COBS* 19.10.30R(2) if the client's decision would result in more than 50% of the value of the client's *personal pension scheme* or *stakeholder pension scheme* being invested in cash-like investments.
- 19.10.33 G To ascertain whether more than 50% of a *retail client's* drawdown fund is invested in cash-like investments, a *firm* should take reasonable steps to obtain up-to-date information, and should use the most recent information it has access to.

#### Ongoing cash warnings

- 19.10.34 R When a *firm* has given a *retail client* a cash warning pursuant to *COBS* 19.10.30R(2)(b) or TP 2.8GR, the *firm* must give the client a cash warning at least annually thereafter, while the client remains so invested and remains a non-advised client.
- 19.10.35 G When considering whether to send an annual cash warning, a *firm* may, but is not obligated to, reassess whether a *retail client* has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with *COBS* 19.10.10R(4).

#### Product governance

19.10.36 G A *firm* should ensure that it complies with the product governance requirements in *PROD* in relation to the *pathway investments* they offer.

|          |   |  |   |
|----------|---|--|---|
|          |   | Cash warnings  |   |
| 19.10.37 | G | This section defines a cash warning and how it must be provided. <i>COBS</i> 19.10.30R(2)(b), TP 2.8GR and <i>COBS</i> 19.10.34R set out when a cash warning must be provided. |   |
| 19.10.38 | R | The cash warning must:   |   |
|          |   | (1)  | be provided in a <i>durable medium</i> ;  |
|          |   | (2)  | using plain language, warn the <i>retail client</i> that:   |
|          |   | (a)  | more than half of their eligible drawdown fund is invested in cash-like investments; and  |
|          |   | (b)  | the value of their drawdown fund is at risk of being eroded by inflation; and   |
|          |   | (3)  | include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 pot over 5 years, assuming 0% interest and using a measure of inflation generally accepted in the <i>United Kingdom</i> ; and |
|          |   | (4)  | inform the <i>retail client</i> that if they plan to invest for the longer-term, they should consider whether their current investments are likely to grow sufficiently to meet their objectives.   |
| 19.10.39 | G | The <i>firm</i> should also:   |   |
|          |   | (1)  | (if appropriate) inform the <i>retail client</i> that:  |
|          |   | (a)  | this warning is not advice or a substitute for it;  |
|          |   | (b)  | the value of any investment can fall as well as rise;   |
|          |   | (2)  | explain to and/or illustrate for the <i>retail client</i> that different types of investment have a different balance of risk to potential gain;  |
|          |   | (3)  | provide the <i>retail client</i> with a statement to the effect that (to the extent applicable) the <i>firm</i> offers <i>pathway investments</i> and other investments; and  |
|          |   | (4)  | remind the <i>retail client</i> (in line with the requirements in <i>COBS</i> 19.4) that the <i>retail client</i> can:  |
|          |   | (a)  | shop around (with an explanation of how to do that);  |
|          |   | (b)  | seek advice from a <i>FCA</i> -regulated financial adviser; and   |

|   |   |  |   |
|---|---|--|---|
|   |   | (c)  | review information on the <i>Money and Pensions Service's</i> website.  |
| 19.10.40                                  | G | In the <i>FCA's</i> view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of <i>COBS</i> 19.10.38R(3). |   |
| Warning on expiry of a fixed-term product |   |  |   |
| 19.10.41                                  | G | This section sets out when and how warnings must be given to <i>retail clients</i> who have purchased certain fixed-term products, and what the warnings should include.                             |   |
| 19.10.42                                  | R | <i>COBS</i> 19.10.43R applies where:   |   |
|   |   | (1)  | a non-advised <i>retail client</i> has purchased a fixed-term product within a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> ;  |
|   |   | (2)  | at the end of the fixed term, that product has a fixed cash value payable to the <i>retail client</i> or the <i>retail client's</i> beneficiary; and  |
|   |   | (3)  | the <i>retail client</i> has not given the <i>firm</i> instructions to transfer the full value out of the product.  |
| 19.10.43                                  | R | The <i>firm</i> must provide the <i>retail client</i> with a warning, which must:  |   |
|   |   | (1)  | be provided:  |
|   |   | (a)  | in a <i>durable medium</i> ;  |
|   |   | (b)  | within 28 days of the end of the fixed term; and  |
|   |   | (c)  | at least annually thereafter for so long as the value remains in the product; and   |
|   |   | (2)  | in plain language, warn the client that:  |
|   |   | (a)  | the fixed term of the product has expired;  |
|   |   | (b)  | if applicable, no interest will accrue on the value remaining in the product; and   |
|   |   | (c)  | the value remaining in the product is at risk of being eroded by inflation; and   |
|   |   | (3)  | include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 pot over 5 years, assuming 0% interest and using a measure of inflation generally accepted in the <i>United Kingdom</i> . |
| 19.10.44                                  | G | The <i>firm</i> should also:   |   |

|          |   |     |   |
|----------|---|-----|---|
|          |   | (1) | if appropriate, inform the <i>retail client</i> that this warning is not advice or a substitute for it;   |
|          |   | (2) | remind the <i>retail client</i> (in line with the requirements in <i>COBS 19.4</i> ) that they can:   |
|          |   | (a) | shop around (with an explanation of how to do that);  |
|          |   | (b) | seek advice from a <i>FCA</i> -regulated financial adviser; and   |
|          |   | (c) | review information on the <i>Money and Pensions Service's</i> website.  |
| 19.10.45 | G |     | In the <i>FCA's</i> view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of <i>COBS 19.10.43R(3)</i> . |

## Record keeping

- 19.10.46 R A pathway investments exempt firm must maintain a record of:
- (1) the dates its exemption applies; and
  - (2) how the *firm* assessed that it meets the requirements for the exemption with reference to the criteria in *COBS 19.10.1R(5)(b)*.
- 19.10.47 G A *firm* to which the record-keeping rules in *SYSC 3* (Systems and controls) or *SYSC 9* (Record-keeping) apply should maintain a record of its compliance with the requirements in this section including:
- (1) the number of advised and non-advised *retail clients* entering into drawdown arrangements with the *firm*;
  - (2) a record of how the *firm* determined, on reasonable grounds, that a *retail client* had received a *personal recommendation*, in accordance with *COBS 19.10.10R(4)* (where relevant);
  - (3) the number of *retail clients* who chose each of the 3 options at step 1 of *investment pathways*;
  - (4) the number of *retail clients* who selected each *investment pathway* option at step 2;
  - (5) the total number of *retail clients* who did not select an *investment pathway* option after step 2;
  - (6) in relation to *retail clients* who did not select an *investment pathway* option after step 2, the number who:
    - (a) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;

- (b) moved sums or assets into drawdown but remained invested in their previous investments;
  - (c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected another investment offered by the *firm*.
- (7) the number of *retail clients* offered each *pathway investment* at step 3;
- (8) the number of *retail clients* who selected each *pathway investment* at step 3;
- (9) the total number of *retail clients* who did not select the *pathway investment* offered;
- (10) in relation to *retail clients* who did not select the *pathway investment* offered, the number who:
- (a) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
  - (b) moved sums or assets into drawdown but remained invested in their previous investments;
  - (c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected another investment offered by the *firm*;
  - (d) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a *pathway investment* different to that offered by the *firm* in step 3;
- (11) where a *firm* refers *retail clients* to another *firm's pathway investment* at step 3:
- (a) the number of *retail clients* referred to another *firm's pathway investment*, broken down by *pathway investment* if more than one;
  - (b) the number who transferred to that *firm*;
  - (c) the number who did not transfer to that *firm*;
  - (d) in relation to *retail clients* who did not transfer, the number who:
    - (i) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
    - (ii) moved sums or assets into drawdown but remained



- invested in their previous investments;
- (iii) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a non-*pathway investment* offered by the *firm*;
  - (iv) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a *pathway investment* that did not require transferring to another *firm*;
- (12) where a pathway investment exempt firm refers *retail clients* to the *Money and Pensions Service* drawdown comparator at step 3:
- (a) the number of *retail clients* directed to the *Money and Pensions Service* drawdown comparator;
  - (b) the numbers of those *retail clients* who then transferred to another *firm*;
  - (c) the number of *retail clients* who did not transfer to another *firm*;
  - (d) in relation to *retail clients* who did not transfer, the number who:
    - (i) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;
    - (ii) moved sums or assets into drawdown but remained invested in their previous investments;
    - (iii) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a non-*pathway investment* offered by the *firm*;
- (13) the number of *retail clients* who received a cash warning pursuant to *COBS 19.10.30R(2)(b)* (initial cash warning);
- (14) the number of *retail clients* who received a cash warning pursuant to *COBS 19.10.34R* (ongoing cash warning);
- (15) in relation to *retail clients* who received an initial cash warning, the number of clients who did not receive an ongoing cash warning because:
- (a) they were no longer holding more than 50% of their drawdown fund in *cash-like investments*;
  - (b) they closed their drawdown fund or transferred to another *firm*;
  - (c) the *firm* assessed that the *retail client* was no longer non-

advised;

- (16) evidence of how each *retail client* who received an initial cash warning made an active choice, in accordance with *COBS* 19.10.30R(2)(a), to invest more than 50% of their drawdown fund in cash-like investments;
- (17) the number of *retail clients* who received a warning pursuant to *COBS* 19.10.43R(1)(b) (initial warning on expiry of fixed-term fixed-income product); and
- (18) the number of *retail clients* who received a warning pursuant to *COBS* 19.10.43R(1)(c) (ongoing warning on expiry of fixed-term fixed-income product).

19.10.48 G *PROD* 6.2.2G and 6.3.4G contain further *guidance* on record-keeping for *firms manufacturing or distributing pathway investments*.

Amend the following as shown.

## TP 2 Other Transitional Provisions

| (1)         | (2)  | (3)      | (4)  | (5)                                    | (6)                                    |
|-------------|--|----------|--|--|--|
|             | Material to which the transitional provision applies |          | Transitional provision   | Transitional provision: dates in force | Handbook provisions: coming into force |
| ...         |  |          |  |  |  |
| <u>2.8G</u> | <u>COBS 19.10.30R(2)(b) and 19.10.34R</u>            | <u>R</u> | <u>An operator of a personal pension scheme or stakeholder pension scheme must, within 6 months of 1 August 2020, identify which of its non-advised retail clients have more than 50% of their drawdown fund invested in cash-like investments (subject to COBS 19.10.32R) and provide those retail clients with a cash warning.</u> | 1 August 2020 to 1 February 2021       | 1 August 2020                          |

|             |                                    |          |   |                                  |               |
|-------------|------------------------------------|----------|---|----------------------------------|---------------|
| <u>2.8H</u> | <u>COBS 19.10.43R</u>              | <u>R</u> | <u>An operator of a personal pension scheme or stakeholder pension scheme must, within 6 months of 1 August 2020, identify which of its retail clients have value remaining in an expired fixed term product, such that COBS 19.10.43R applies, and provide those retail clients with warnings as set out in that rule.</u> | 1 August 2020 to 1 February 2021 | 1 August 2020 |
| <u>2.8I</u> | <u>COBS 19.10.47G(13)</u>          | <u>G</u> | <u>A firm to which TP 2.8GR applies should maintain a record of the number of retail clients provided with a cash warning in accordance with COBS TP 2.8GR.</u>   | 1 August 2020 to 1 February 2021 | 1 August 2020 |
| <u>2.8J</u> | <u>COBS 19.10.47G(18) and (19)</u> | <u>G</u> | <u>A firm to which TP 2.8HR applies should maintain a record of the number of retail clients provided with a warning in accordance with COBS TP 2.8HR.</u>  | 1 August 2020 to 1 February 2021 | 1 August 2020 |
| ...         |                                    |          |   |                                  |               |

## Annex C

**Amendments to the Product Intervention and Product Governance sourcebook (PROD)**

In this Annex underlining indicates new text, unless otherwise stated.

**1 Product intervention and Product Governance Sourcebook (PROD)**

...

**1.3 Application of PROD 3**

...

Manufacturing pathway investments

- 1.3.16 **G** A firm that is within the scope of PROD 3 (Product governance: MiFID) when it manufactures pathway investments other than in connection with its operating of a retail client's personal pension scheme or stakeholder pension scheme, is also subject to PROD 6 (Product governance: additional provisions for pathway investments) as guidance with respect to that manufacturing activity (see PROD 1.6.1R(3)).

...

**1.4 Application of PROD 4**

...

Manufacturing and distributing pathway investments

- 1.4.3A **G** A firm that is within the scope of PROD 4 (Product governance: IDD) when manufactures pathway investments other than in connection with its operating of a retail client's personal pension scheme or stakeholder pension scheme, is also subject to PROD 6 (Product governance: additional provisions for pathway investments) as guidance with respect to that manufacturing activity (see PROD 1.6.1R(2)).

- 1.4.3B **R** Where a firm:

- (1) manufactures or distributes pathway investments in connection with its operating of a retail client's personal pension scheme or stakeholder pension scheme; and
- (2) is not otherwise within the scope of the rules or EU regulations in PROD in relation to that manufacturing or distribution activity, then:
  - (a) PROD 4 and PROD 1.4.10G apply; and

- (b) PROD 1.4.4EU applies as a *rule*,  
with respect to that *manufacturing* or *distribution* activity.

1.4.3C G The effect of PROD 1.4.3BR is to apply PROD 4 to any firm, such as a SIPP operator, which:

- (1) manufactures or distributes pathway investments in connection with its operating of a retail client's personal pension scheme or stakeholder pension scheme; and  
(2) before the entry into force of PROD 1.4.3BR, was not subject to the rules or EU regulations in PROD.

...

Effect of provisions marked “EU” for certain manufacturers and distributors of insurance products

1.4.6 R ...

Effect and interpretation of PROD 1.4 and PROD 4 for certain manufacturers and distributors of pathway investments

1.4.6A R A firm to which PROD 1.4.3BR applies must:

- (1) comply with provisions marked “EU” in PROD 1.4 and PROD 4 as if they were rules; and  
(2) read terms or phrases found in PROD 1.4 or PROD 4 as follows:  
(a) terms referred to in column (1) of the table below have the meaning indicated in the same row of column (2) of the table;  
(b) terms relating to insurance or insurance products have the meaning of the corresponding term relevant in the context of pathway investments; and  
(c) terms or phrases which are only relevant to firms manufacturing or distributing insurance products may be disregarded.

This table belongs to PROD 1.4.6AR(2)(a).

| (1)                                       | (2)   |
|---|---|
| “Article 17(1) of Directive (EU) 2016/97” | <u>COBS 2.1.1R</u>                            |
| “Article 25(1) of Directive (EU) 2016/97” | <u>PROD 4.2.1R, 4.2.2R, 4.2.15R, 4.2.29R,</u> |

|  |   |
|--|---|
|  | <u>4.2.33R and 4.2.34R</u>                                      |
| <u>“competent authorities”</u>   | <u>FCA</u>  |
| <u>“ICOBs”</u>   | <u>relevant conduct of business obligations</u>                 |
| <u>“IDD manufacturer product governance requirements (PROD 4.2, equivalent requirements of another EEA State or directly applicable requirements of the IDD POG Regulation)”</u> | <u>PROD 4.2 or equivalent requirements of another EEA State</u> |
| <u>“insurance-based investment products”</u>   | <u>pathway investment</u>                                       |
| <u>“insurance distributor”</u>   | <u>distributor</u>  |
| <u>“insurance distribution activities”</u>   | <u>distribution activities</u>                                  |
| <u>“insurance intermediary and an insurance undertaking”</u>   | <u>firms</u>  |
| <u>“insurance product”</u>   | <u>pathway investment</u>                                       |
| <u>“‘manufacturer’ and ‘manufacturers’ within the meaning of Article 2 of this Delegated Regulation”</u>   | <u>manufacturer</u>   |
| <u>“manufacturing”</u>   | <u>manufacturing</u>  |
| <u>“premiums”</u>  | <u>costs and charges</u>  |
| <u>“shall”</u>   | <u>must</u>   |

...

After PROD 1.5 (Application of PROD 5) insert the following new section, PROD 1.6. The text is not underlined.

## **1.6 Application of PROD 6**

1.6.1 R *PROD 6 applies to a firm:*

- (1) that *manufactures or distributes pathway investments* in connection with its operating of a *retail client’s personal pension scheme or stakeholder pension scheme*;
- (2) within the scope of *PROD 4* when *manufacturing pathway investments*, other than in connection with its operating of a *retail client’s personal pension scheme or stakeholder pension scheme*, as

*guidance* with respect to that *manufacturing* activity;

- (3) within the scope of *PROD 3* when *manufacturing pathway investments*, other than in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, as *guidance* with respect to that *manufacturing* activity.

Amend the following as shown.

#### **4 Product governance: IDD and pathway investments**

...

After *PROD 5* (Extended warranties sold with rent-to-own agreements: customer information and deferred opt-in) insert the following new chapter, *PROD 6*. The text is not underlined.

### **6 Product governance: additional provisions for pathway investments**

#### **6.1 General**

- 6.1.1 R This chapter does not affect the application of other requirements in the *FCA Handbook* or *EU regulations* applying to *firms* within the scope of this chapter. *Firms* within the scope of *PROD 1.3* (Application of *PROD 3*), *PROD 1.4* (Application of *PROD 4*), *PROD 3* (Product governance: MiFID) and *PROD 4* (Product governance: IDD) must continue to comply with those provisions.

#### **6.2 Manufacture of pathway investments**

- 6.2.1 R A *manufacturer* must review its *pathway investments* at least annually to ensure that the *pathway investments*:

- (1) remain consistent with the needs, characteristics and objectives of their identified target market, taking into account the *investment pathway* options in *COBS 19.10.17R(1)*; and
- (2) are being *distributed* to their target market.

- 6.2.2 G A *firm* to which the record-keeping rules in *SYSC 3* (Systems and controls) or *SYSC 9* (Record-keeping) apply should maintain, in relation to its *manufacture of pathway investments*, a record of the process undertaken to approve each *pathway investment*, and of the review conducted for each *pathway investment* to comply with *PROD 6.2.1R*.

#### **6.3 Distribution of pathway investments**

- 6.3.1 R A *firm* must not *distribute a pathway investment* unless it is compatible with the needs, characteristics and objectives of those *retail clients* that fall within the *pathway investment's* target market, taking into account the

*investment pathway* options in COBS 19.10.17R(1).

- 6.3.2 R When carrying out the compatibility assessment referred to in PROD 6.3.1R, *firms* must take into account:
- (1) the price and complexity of the *pathway investment*; and
  - (2) where the *firm* is referring *retail clients* to be transferred to the *personal pension scheme* or *stakeholder pension scheme* operated by another *firm*, they must also take into account:
    - (a) the charges and other product features of that other *firm*'s drawdown product;
    - (b) the financial strength of that other *firm*; and
    - (c) the reliability and efficiency of that other *firm* in relation to its dealings with *retail clients*.
- 6.3.3 R A *firm* must review the distribution arrangements for the *pathway investments* it distributes at least on a two-yearly basis to ensure:
- (1) the distribution arrangements are still valid and up to date; and
  - (2) the *pathway investments* remain compatible with, and are being *distributed* to, their target market in accordance with PROD 6.3.1R.
- 6.3.4 G A *firm* to which the record-keeping rules in SYSC 3 or SYSC 9 apply should maintain, in relation to its *distribution of pathway investments*, a record of the process undertaken to select each *pathway investment*, and of the review conducted for each *pathway investment* to comply with PROD 6.3.3R.

Obligations on firms where retail clients are not acting in their interests

- 6.3.5 R Where a *firm* (A) refers *retail clients* to another *firm* (B), where B can offer a *pathway investment* to the *retail client* if the *retail client* transfers to the *personal pension scheme* or *stakeholder pension scheme* operated by B, both A and B must comply with PROD 6.3.6R.
- 6.3.6 R Where:
- (1) A becomes aware of a pattern of *retail clients* choosing to stay with A and not transferring to B; and
  - (2) A considers that this choice is unlikely to be in the interests of those *retail clients*, having regard to their objectives and characteristics; then
  - (3) A must promptly inform B of its concerns in (1) and (2); and
  - (4) A and B must each take reasonable steps to minimise the potential harm to *retail clients*.



- 6.3.7 G Reasonable steps for the purposes of *PROD* 6.3.6R may include A and B making it easier for *retail clients* to transfer to *the personal pension scheme* or *stakeholder pension scheme* operated by B.

## Annex D

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

## 8 Financial promotion and related activities

...

### 8 Annex Examples of what is and is not a personal recommendation and advice

1

...

| (F) Miscellaneous   |  |   |
|---|--|---|
| (1)<br>Example  | (2)<br>Is there a personal recommendation? | (3)<br>Is this regulated advice for someone other than a firm with an appropriate authorisation?  |
| ...   |  |   |
| <p><u>(31) A firm offers pathway investments in accordance with the requirements in COBS 19.10.14R to 19.10.21R.</u></p> <p><u>The firm interacts with the customer online or in writing.</u></p> <p><u>At step 3 the firm offers the customer a pathway investment that it manufactures.</u></p> | No   | <p><u>Essentially this process involves the firm filtering its investment products based on the investment objectives of the fund. This will generally not be regulated advice for the reasons in PERG 8.30A.12G.</u></p> |
| <p><u>(32) Same as (31) except the firm offers the customer a pathway investment manufactured by another firm and available for investment in the retail client's drawdown fund.</u></p>  | No   | <p><u>This process amounts to filtering as described in example F(31). Therefore, the firm will generally not be giving regulated advice, for the reasons in PERG 8.30A.13G.</u></p>                                      |
| <p><u>(33) Same as (31) except</u></p>  | No, so long as the firm is                 | <p><u>This process involves the firm</u></p>  |

|   |  |   |
|---|--|---|
| <p><u>that a firm offers pathway investments that have been designed for retail clients in various age groups. The firm offers different pathway investments to retail clients who select the same investment pathway option, based on the age of each retail client.</u></p> <p><u>The firm informs the retail client that this is the pathway investment for the relevant investment pathway option and it has been designed for people in the relevant age range. The firm makes clear to the retail client that it is describing the pathway investment's design and investment objectives, and is not presenting the pathway investment as suitable for the retail client.</u></p> | <p><u>merely describing the design and investment objectives of the investment and is not presenting the investment as suitable for the retail client.</u></p> | <p><u>filtering its investment products based on the investment objectives and target age range of the fund. This will generally not be regulated advice for the reasons in PERG 8.30A.12G, so long as the firm is merely describing the design and investment objectives of the investment and is not presenting the investment as suitable for the retail client.</u></p> |
| <p><u>(34) A firm offers pathway investments in accordance with the requirements in COBS 19.10.14R to 19.10.21R.</u></p> <p><u>The firm interacts with the customer on the telephone or face to face.</u></p> <p><u>At step 3 the firm offers the customer a pathway investment that it manufactures.</u></p>   | <p><u>See the answer to example F(24)</u></p>  | <p><u>See the answer to example F(24)</u></p>   |
| <p><u>(35) Same as (34) except that a firm offers the customer a pathway investment manufactured by another firm and available for investment in the retail client's drawdown fund.</u></p>   | <p><u>See the answer to example F(24)</u></p>  | <p><u>See the answer to example F(24)</u></p>   |
| <p><u>(36) A firm gives a cash warning to a retail client in</u></p>  | <p><u>No. This is not a recommendation to buy, sell,</u></p>   | <p><u>No. This is not advice on the merits of buying, holding or</u></p>  |

|   |   |   |
|---|---|---|
| <u>accordance with the requirements in COBS 19.10.38R and the guidance in COBS 19.10.39G.</u> | <u>subscribe for, exchange, redeem, hold or underwrite a particular investment; or exercise or not exercise any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment.</u> | <u>selling a particular investment.</u> |
|---|---|---|

