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22 February 2023

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Dear Sir / Madam,

Financial Services Consumer Panel response to FCA consultation on Proposed Regulatory Framework for Pensions Dashboard Service Firms – CP 22/25

We welcome the opportunity to respond to this consultation on the proposed regulatory framework for pensions dashboard service (PDS) firms. The Panel broadly supports the measures set out in this consultation.

The Panel would like to express the following general observations:

<u>Innovation</u>

Firms are not permitted to charge consumers for the core 'find and view' activity. Therefore, commercial dashboards are likely to be regarded as loss-leaders, with the presumption that, in order to avoid subsiding dashboard costs from other activities within the firm, providers are likely to generate increased business from chargeable products and services derived from the consumer accessing the dashboard. This fact, together with the obligations imposed by the Consumer Duty, should mean that buyers and sellers of PDS have strong incentives to innovate. The Panel accept that some innovation will be of value, particularly where it is focussed on helping consumers to understand and engage with their pensions. However, there is a fine line between providing information that enables consumers to engage with their pensions and encouraging them to take decisions with long-term implications. The Panel believe, therefore, that the need for a 'delicate balance' between consumer protection and innovation is less obvious in the context of these current proposals for regulating PDS firms. The provision of a non-commercial dashboard that is accessible to all consumers is arguably the cornerstone of a sea change in pensions engagement. The Panel therefore believes that consumer protection should be at the forefront of these proposals.

<u>Consumer Duty</u>

The Panel noted that the Duty is mentioned intermittently throughout the document rather than being established clearly as the overarching principle underpinning both the proposed regulations and firms' intended behaviours in all areas under discussion.
For example, at 1,26 of the consultation the FCA states it wishes to ensure that users receive 'fair value' and are made aware of, and how, they are paying for services on a dashboard beyond the core 'find and view' activity; at 2.17 it acknowledges that providers may have commercial incentives to exploit consumer trust, information asymmetry and consumer biases to encourage activity that may not be in the user's best interest. Yet

section 3 does not invoke the Consumer Duty to demonstrate how such outcomes would be delivered and such harms overcome. The Panel believes this is a missed opportunity, and at a critical time as the Consumer Duty becomes a reality for firms, and consumers.

Equality and Diversity Considerations

The Panel note the content on page 15 and the omission of any questions focused specifically on EDI considerations. The final paragraph 2.35 reads 'We will continue to consider the equality and diversity implications of the proposals during the consultation period and welcome your input. We will revisit the implications when making the final rules.' The Panel would like to express their surprise and disappointment by this approach, given the FCA's public sector equality duty. While the digitally excluded may have other mechanisms through which they can obtain pension information, there is a risk that lack of access to a pension dashboard will exacerbate financial inequalities for certain intersectional groups (based e.g. on gender, ethnicity, age, disability).

Development of dashboards

The consultation is fairly limited in setting out the regulation of commercial dashboards over the longer-term. There is a much stronger argument for innovation when there is robust data about consumer behaviour, both in terms of dashboard use and pensions activity. The MaPS dashboard offers an ideal opportunity to test consumer behaviour in response to different innovations.

Our responses to the questions posed in the consultation are included at Annex A below.

Yours sincerely,

Helen Charlton

Annex A – Responses to questions

Chapter 3: High level standards, supervision and enforcement

Q1: Do you agree with the way in which we propose to apply the Senior Management Arrangements, Systems and Controls (SYSC) sourcebook to Pensions Dashboard Service (PDS) firms?

Choose an item.

No comment.

Q2: Do you agree with our proposed approach to fees for PDS firms?

Choose an item.

No comment.

Q3: Do you agree with our proposed application of existing Supervision manual (SUP) rules to PDS firms?

Choose an item.

No comment.

Q4: Do you agree with our proposed approach to notification requirements?

Choose an item.

No comment.

Q5: Do you agree with our proposed approach to regulatory reporting?

Strongly agree

The Panel agree that reporting obligations currently in place with respect to regulation and complaints for FCA regulated firms should also apply to PDS firms.

Q6: Do you agree with our record-keeping proposals?

Neutral

The Panel agree that aggregated data will facilitate understanding of the development of the market, the number of customers using dashboard services, and the ways customers use dashboard services. Regardless of the specific requirements contained in the proposals, in general, firms should design record-keeping systems that enable them to ensure that the consumer journey operates in the best interests of the consumer. This would implicitly include an understanding of how any changes to the consumer journey impact customers.
In addition to the proposed record-keeping obligations, the Panel also suggest that consideration should be given to the following:

- Equality and diversity data that can support meaningful assessments of the impact of digital exclusion on particular groups. For example, understanding the intersectionality of those with a higher-than-average number of pension pots against protected characteristics might encourage those individuals with low pension savings to take appropriate action to support their longer-term financial needs. This would in turn reduce welfare costs.
- Scams reporting could require PDS firms to notify providers or to check with consumers when there is a lot of activity by a consumer within a particular timeframe, or if there is significant change in an activity in response to a change in the consumer journey

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Q7: Do you have any comments on our proposal to apply the same approach to enforcement investigations and actions to PDS firms as we do to other regulated firms, as set out in our Enforcement Guide (EG)?

Choose an item.

No comment.

Q8: Do you have any comments on our proposal to follow the same procedures for decision-making and imposing penalties in relation to PDS firms and individuals set out in our Decision Procedure and Penalties Manual (DEPP)?

Choose an item.

No comment.

Chapter 4: Prudential requirements and wind-down procedures

Q9: Do you agree with our proposed prudential requirements for PDS firms?

Choose an item.

No comment.

Q10: Do you have any suggestions for how we might develop the capital resources requirement going forward, in particular to calibrate it to PDS firms as the market develops?

Choose an item.

No comment.

Q11: Do you think there should be a liquidity requirement for PDS firms going forward?
Choose an item.

No comment.

Q12: Do you agree with our proposed approach to wind-down procedures for PDS firms?
Choose an item.

No comment.

Chapter 5: Conduct standards

Q13: Do you agree with our proposals on general conduct of business rules?
Agree

The Panel agree with the proposals, but we note the omission of the Consumer Duty as the overarching approach to general conduct.

The Panel noted that the Duty is mentioned intermittently throughout the document rather than being established clearly as the overarching principle underpinning both the proposed regulations and firms' intended behaviours in all areas under discussion.
For example, at 1,26 of the consultation the FCA states it wishes to ensure that users receive 'fair value' and are made aware of, and how, they are paying for services on a dashboard beyond the core 'find and view' activity; at 2.17 it acknowledges that providers may have commercial incentives to exploit consumer trust, information asymmetry and consumer biases to encourage activity that may not be in the user's best interest. Yet section 3 does not invoke the Consumer Duty to demonstrate how such outcomes would be delivered and such harms overcome. The Panel believes this is a missed opportunity, and at a critical time as the Consumer Duty becomes a reality for firms, and consumers.

Q14: Do you agree with our proposals on disclosures, signposts and warnings?
Agree

The consultation sets out proposals for the type, presentation, and timing of disclosures, signposts, and warnings. It references (in a separate section) the Consumer Duty, particularly in relation to the consumer understanding outcome. There should be a presumption that commercial dashboards will be used by firms as a gateway to generate business, whether immediately or over the longer term, and that this could determine many of their preferences for the regulation of disclosures, signposts, and warnings.

Q15: We want disclosures, signposts and warnings to be displayed at the most important moment for consumers. Do you have any evidence as to when PDS firms should communicate these disclosures, signposts and warnings?

Neutral

There is a wealth of academic research on consumers' responses to disclosures and warnings.[1] For example, visual aids (colors, icons) and enhanced conspicuity (size and contrast) are just two elements that have been proven to improve the noticeability and recall of warnings.

Warnings are an effective means of communicating benefits and risks to consumers but only if they are designed appropriately for the target audience. Research indicates that a one-size fits all approach is unlikely to be effective due to differences including consumers' initial beliefs and preferences for particular modalities and therefore firms will need to consider carefully how to optimise communications for different cohorts based on age and vulnerability.

There is less available research into disclosures. However, there is clear evidence that dual modality disclosures (video plus audio) achieve higher levels of message recall than print-only or audio-only disclosures. Similarly, improvements to conspicuity (larger font size and greater contrast) and shorter disclosures (10 words or fewer) facilitate better recall and comprehension. Other factors such as distractors and peripheral cues can also impact on the efficacy of warnings. Evaluative disclosures (e.g., 'high' 'good') can be highly dependent on prior knowledge. Other research has considered the impact of 'fear' appeals and reasons why consumers fail to attend to warnings.

There are also lessons to be learned from other countries that have introduced dashboards (e.g., Sweden, The Netherlands, Denmark).

Our general point is that, while the FCA understandably wishes to avoid prescribing how firms display disclosures and warnings, this should not preclude the regulator from requiring firms to employ proven methodologies. Indeed, the wealth of evidence into effective communications combined with the 'gateway' nature of dashboards and the high average value of pension pots, suggests that firms should not be allowed to find their own (potentially slow) routes to the effective communication of warnings and disclosures. Furthermore, any evidence provided by firms on prior consumer behaviours may not be sufficient to support the requirements of the Consumer Duty.

As an additional check on firms' behaviours, the FCA could require firms to use a similar methodology to communicate warnings and disclosures as they use (or will use, if amended for the Consumer Duty) for the communication of other products and services. Where the same

[1] https://books.google.co.uk/books?hl=en&lr=&id=lLA2vrcQN_AC&oi=fnd&pg=PA149&dq=understanding+consumer+disclosures+warnings&ots=iXiBuKT7mm&sig=DbblhALgzDwx9kvPnPs0WmB5WhY&redir_esc=y#v=onepage&q=understanding%20consumer%20disclosures%20warnings&f=false

methodology is not appropriate, firms could be required to explain any differences in the two approaches.
In the absence of appropriate evidence, firms should expect to undertake rigorous consumer testing. The FCA should expect that results across similar cohorts of consumers should be broadly consistent.

Q16: Do you agree with our approach to outsourcing?
Agree

While the Panel agree in general, we remain highly concerned about the new ‘market’ that dashboards will create for scammers.

Q17: Do you agree with our proposals relating to where third parties make dashboard services available?
Strongly agree

Q18: Do you agree with our proposal that data should only be exported to either the customer, the PDS firm or an advice firm in the same group as the PDS firm with the permission to give investment advice?
Strongly agree

We agree that this proposal appropriately prioritises the risks over the benefits. In particular, the introduction of dashboards is likely to lead to an increase in innovations by fraudsters seeking to persuade consumers to share their data. Dashboards will create a new ‘market’ for scammers, and this fact should determine many of the final decisions with respect to the operation and regulation of commercial dashboards.

Q19: Do you agree that the requirements we propose to place around how data are exported and processed ensure an appropriate degree of consumer protection?
Strongly agree

We note that Table 7 in section 5.61 firms will be required to direct customers wishing to share data with a third party to the FCA register. See our response to Q23 also.

Q20: Do you agree that our proposals on post-view services achieve an appropriate balance between allowing scope for innovation and protecting consumers?
Neutral

The provision of post-view services is likely to lead to innovations as providers compete to build relationships that strengthen their own relationships with their customer base. Post-view services should therefore be regarded as a gateway to the (eventual) provision of chargeable products and services by providers. Consequently, the protection of customers should take priority over innovation in the initial provision of post-view services. Further innovations that help consumers to engage effectively with their pensions will be welcomed when their behaviours with regard to dashboards and pensions are better understood. The Panel agree that in the longer-term, the development of pension dashboards requires a ‘delicate balance’ (p85) between consumer protection and consumer engagement.

Q21: Do you agree with our proposals on marketing?
Neutral

The proposals to prohibit PDS firms from marketing any products on a dashboard service, including on post-view services, together with the record-keeping requirements addressed under Q.5, provide some reassurance over the protection of consumers. In particular, the proposal to allow firms to communicate financial promotions for regulated investment advice provides the clearest way for firms to build a route to chargeable products and services. The Panel has longstanding concerns about the opaque nature of fees charged for advice (commissions; frequency) and regards the introduction of pension dashboards as the ideal opportunity for the FCA to set out clearly its expectations in relation to the Consumer Duty.

Q22: Do you agree with our proposals on cookies and similar tracking technologies?
Neutral

Firms should go beyond the PECR where necessary to ensure they meet their obligations under the Consumer Duty. Consumers must be protected from harm and not presented with obstacles that prevent them from easily managing tracking technologies.

Q23: Do you agree with our proposals to protect dashboard users from scams?
Agree

The Panel agree that fake dashboards represent a real risk to consumers. We note the reliance on the ScamSmart campaign and the FCA register to mitigate this risk. However, the current volume of scams, combined with the availability of information of high value to scammers, suggests that current fraud levels, and average fraud per consumer, are likely to increase.

We again note the reliance on the FCA register (as in Q19). The Panel have previously expressed concerns that the Register can be difficult to access and to navigate. Information about a particular firm may be difficult to locate, may be difficult to understand and may not be up to dateThe listings for PDS firms need to be easily accessible, up to date, clear and easy to understand. Finally, the reporting requirements for PDS firms should seek to provide data that will alert firms to potential scams facing their customers (e.g., by indicating different or unusual patterns of use). In general, the nature and effectiveness of mitigations must be highly robust in order to reduce the risks that consumers will face

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Chapter 6: Senior Managers & Certification Regime

Q24: Do you agree with our proposal to apply the Senior Managers & Certification Regime (SM&CR) to PDS firms?
Strongly agree

Q25: Do you agree with our proposals to treat PDS-only firms as Limited Scope firms?
Strongly agree

Q26: Are there any provisions within the Senior Managers & Certification Regime (SM&CR), including the Fit and Proper test for Employees and Senior Personnel (FIT) and the Code of Conduct (COCON), that apply to most firms but should not apply to PDS firms?

Choose an item.

No comment.

Chapter 7: Dispute resolution

Q27: Do you agree with our proposals to apply our complaint handling rules and guidance in the Dispute Resolution: Complaints sourcebook (DISP), including the compulsory jurisdiction of the Financial Ombudsman Service, to PDS firms?

Agree

Yes the Panel agree

Q28: Do you agree with the Financial Ombudsman Service's proposals to exclude activities relating to pensions dashboard services from the voluntary jurisdiction?

Neutral

While the Panel agree that the regulated activities of PDS firms are likely to be within the coverage that the compulsory jurisdiction of the Financial Ombudsman will provide, we suggest that this issue is kept under review with a commitment to an ongoing analysis of data relating to PDS firm complaints to see if any have fallen outside of the CJ. If it is shown that any activities of PDS firms have given rise to complaints that have not been within the CJ then appropriate amendments to the scheme and the Compulsory Jurisdiction of the Financial Ombudsman should be considered.

Q29: Do you agree with our proposals for complaints reporting for PDS firms?

Choose an item.

Yes we agree.

Q30: Do you agree with our approach to redress?

Neutral

Please explain your answer.

While the outcomes listed would appear to adequately cover the different types of awards the Financial Ombudsman may need to make to resolve a complaint against a PDS firm, it is of paramount importance not to fetter or restrict in any way the ability of the Ombudsman to make such binding decisions on firms with outcomes that it considers to be fair. The independence of the Ombudsman is crucial. We would therefore propose that the FCA liaises closely with the Ombudsman to ensure that the Ombudsman has been able to make the decisions it wishes to make against PDS firms and has not been limited by the list proposed by the FCA.

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Q31: Do you agree with our approach to the Financial Ombudsman Service fees and levy?
Agree

The Panel agree with the proposal to charge the case fees and levy from the year the year in the FCA grant the PDS firm permission to undertake the new regulated activity. We agree that the standard case fee is appropriate (currently £750). It is important that case fees reflect the ‘polluter pays’ principle as this should be a corner stone of any redress mechanism. The Panel believe that the practice of offering ‘free’ cases, even if only 3 in a year, is not appropriate and reduces the incentive for firms to do the right thing in the first place. As a result, the Panel believes that the practice of offering ‘free’ cases needs more detailed consideration to assess what impact the practice has on the ability of the Ombudsman Service to incentivise behaviour change and fund all the work it needs to do.
We have no particular comment on the proposed levy except to say that the FOS must be adequately funded to be best prepared for changes in the financial services landscape including new products and services, innovations in delivery, the Consumer Duty, and crucially external influences on firm conduct and consumer behaviour driven by the ongoing impact of Covid-19 and the deepening cost of living crisis. The levy is a key part of the funding mechanism that enables the FOS to improve its preventative work and promote consumer awareness of protections and the ombudsman service itself, sharing of insight, consumer communications and outreach, and working more closely and effectively with the rest of the regulatory family. The sustainability of the FOS should be the main goal and its funding composition should therefore be reviewed periodically. Any funding proposals must incentivise firms to improve their own handling of complaints, as this yields benefits, in terms of the overall costs of the service, while also improving service to consumers through lower waiting times and lower number complaints coming to FOS.

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Chapter 8: Authorisation

Q32: Do you agree with our proposed approach to authorising international PDS firms?
Strongly agree

Yes, the Panel agree. The origin of these firms will be invisible to consumers so the same approach should apply.

Q33: Do you think the combination of proposals in this paper provide adequate scope for an innovative market to emerge, within the parameters set by Parliament?

The Panel is of the view that the parameters set by Parliament, specifically the proscription of fees for the use of commercial dashboards by consumers, provide firms with very strong incentives to innovate in order to grow their business. In fact, we regard this incentive as sufficiently strong that consumer protection should be the predominant criteria determining all aspects of the initial regulatory environment for PDS firms.

Q34: Please provide any comments on our cost benefit analysis

The Panel agree that a largely narrative approach is appropriate. Dashboards operate in several other countries so there is arguably some useful comparative data, but a narrative approach seems proportionate given the longer-term nature of the benefits and the potential for these benefits to extend into other areas of the economy, such as reductions in welfare costs.