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Dear FCA,

Financial Services Consumer Panel response to FCA CP 26/20: Adapting our rules for a changing market: self-invested personal pensions

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation paper (the CP) titled Adapting our rules for a changing market: self-invested personal pensions. We are an independent panel that represents the interests of consumers of financial services including both individuals and small businesses. Our focus is on the outcomes and impacts to these stakeholders.

Before reflecting on the proposals outlined in the CP, we wish to express our alarm regarding the £526 million in uncompensated losses incurred by consumers following SIPP operator failures that occurred between 2011 and 2023 (mostly where consumers incurred losses over the applicable FSCS limit[1]). This will have been devastating to the people who had every intention of providing for their retirement via their SIPP. Furthermore, it erodes trust in the system and discourages investment. While we are disappointed that it has taken so long to address this issue, the Panel is pleased to see that the FCA proposals in this CP seek to reduce the likelihood of this occurring in the future. The data also highlights the need for greater redress cover for all pension assets. Consumers cannot reasonably be expected to manage their pension assets within the current FSCS limits given that an account is intended to be a pot that accumulates over their lives. At a minimum, the Panel strongly argues for an increase in the FSCS limit to £120,000, the same as for deposits. If full protection cannot be implemented, the relevant regulators must prioritise supervisory and enforcement actions to recover assets. The Panel would like to understand what the relevant regulators have done and continue to do to recover the losses noted above.

[1] Currently £85,000 (this was increased from £50,000 in 2019).

In order to ensure that the SIPP market delivers good outcomes for consumers, the Panel encourages the FCA to continue to monitor a variety of information sources – Supervisor concerns, complaints, firm failures, social media more broadly, etc. - and react quickly when issues are identified. Given that the sector has demonstrated significant weaknesses, more regular multi-firm reviews and stronger enforcement actions are also indicated as being necessary.

In Chapter 5, the FCA has provided explanations for issues that were raised in DP24/3 but have not been addressed at this time. Rather than proposing specific solutions, the FCA proposes to rely on the Consumer Duty. Whilst the Panel broadly agrees with this approach, this support is conditional on further steps being taken by the FCA given the FCA's experience with this sector suggests more needs to be done to ensure all firms adhere to the core principles of the Duty. To ensure high levels of compliance with the Duty we encourage the FCA to take specific action including steps such as:

(1) Providing guidance with clear examples of what is and is not acceptable.
(2) Enhancing efforts at the authorisations gateway for sectors / firms that demonstrate a lack of knowledge of the Consumer Duty, published guidance, and or relevant enforcement action.
(3) Ensuring that identified systems and controls weaknesses (including those identified by, but not limited to, enforcement) are appropriately directed to the sector's attention and that similar firms must acknowledge, by attestation, that they are not engaging in the same behaviour(s).
(4) Organising direct supervision and /or repeat multi-firm / good and poor practice reviews until the questionable firm(s) / sector demonstrates adherence to the Consumer Duty.
(5) Implementing Handbook rules when the effect of generally applied business practices in a sector leads to non-compliance with the Consumer Duty.
(6) Taking effective enforcement action where appropriate, which deters future non-compliance by the firm and any other potential wrongdoers, and to publicly announce the actions and outcomes once investigation is complete.

As highlighted by respondents, rules are likely to add costs to adhering firms that are then passed on to consumers, and the Panel is also concerned that they become a "tick-box" exercise rather than creating a good business culture. However, we certainly recognise that rules can be essential for specific circumstances and are especially important for supporting complaint resolution and enforcement.

The Panel urges the FCA to also reconsider the use of unauthorised third-party entities (trustees) having any responsibility for pensions scheme money or assets. We take the view that the FCA should suggest that they are brought into the regulatory perimeter, by looking adopting a similar approach as the proposals being discussed in HM Treasury's consultation on the Appointed Representatives Regime.[2]

Please also refer to our response to DP24/3[3] and the Annex below for our responses to the questions in this CP.

Yours sincerely,

Chris Pond
Chair, Financial Services Consumer Panel

[2] Consultation: The Appointed Representatives Regime - GOV.UK
[3] 20250227-fscp-response-to-pensions-adapting-our-requirements-for-a-changing-market-final.pdf

Annex

Question 1: Do you agree with our proposed due diligence requirements for relevant third parties? If not, please outline why. What challenges or unintended consequences, if any, should we consider? Should we consider, if warranted, further protections for SIPP consumers?

The Panel fully agrees that firms operating SIPPs should be required to conduct appropriate due diligence. However, we do not believe that the proposals go far enough, and we have a concern that, as drafted, the proposals could create confusion. We explain as follows:

- We are concerned that the term "relevant" may not be clear and propose that a relevant third party should be defined as one that provides services that might have any impact on consumer outcomes.
- We believe strongly that any sound business will conduct thorough third-party diligence as a standard practice. We are concerned that implementing these limited rules will lead some firms to believe that these are the only due diligence actions they need to take.
- We do not see the rationale for distinguishing between the core and additional due diligence requirements. These are all part of a basic due diligence process that all authorised firms should be taking regardless of the business they are in. Creating the distinction sends a message about regulatory priorities, which could well be misunderstood by some firms.
- We suggest that the FCA clearly aligns and creates consistency of diligence expectations across the regulatory frameworks, including outsourcing, financial crime, SIPPs, etc. Furthermore, we suggest that it would be helpful to direct users to a single Handbook reference to (a) reduce complexity and (b) to eliminate the possibility of conflicting rules.
- The Panel is mindful that an annual diligence review comes at a cost which is likely to be passed on to consumers. However, we still have serious concerns about the failings in this sector. Therefore, we support an annual diligence review until such point that the sector demonstrates that it meets FCA expectations. At that point, we believe that, unless the SIPP operator has reason for concern, the annual review could be limited to basic checks, such as an FCA register check (or equivalent, depending on the jurisdiction) and internet / AI searches for alerts.
- Social media hype plays a significant role in consumer investment decisions, especially for investors who do not take advice or who are not fully financially literate. In this context, the Panel believes that the FCA should take a broader approach than merely focusing on frauds and scams. If they are not also providing regulated advice, targeted support, or guidance, SIPP operators should be charged with ensuring that consumers are sign-posted to resources such as MaPS to assist with their understanding of any investment they are contemplating.
- Regardless of whether the proposals are implemented as drafted or not, the FCA needs to make it abundantly clear that the Consumer Duty applies and non-compliant firms will be subject to enhanced supervision or enforcement.

Question 2: Do you agree with our proposed approach for proportionate due diligence on investments using asset categories? If not, why not? Do you agree with the asset categories for core and additional due diligence or are further protections needed for some assets to sufficiently protect consumers?

The Panel is supportive of the proposal to differentiate due diligence expectations based on the risks posed by the investible assets. With one exception, we also generally agree with the FCA's approach to the various asset categories. However, we note that while the last paragraph of 3.19 of the section on due diligence of third parties states that SIPP operators are expected to carry out regular checks on third parties, the FCA does not seem to be contemplating regular reviews of investments as this is not mentioned in the discussion relating to SIPP investments. The Panel believes that regular reviews of investments are more critical and should be mandatory.

We do have some additional comments that we urge the FCA to consider:

- We were somewhat surprised that there is no mention of a documented risk assessment for investments, especially given the summary of respondent views in paragraph 3.21: Additional or enhanced due diligence should focus on higher risk, non-standard or speculative assets. Standard, authorised, or lower risk investments should require minimal, lighter-touch checks.
- In the current environment, internet (especially social media) hype is clearly influencing investment decisions, usually to the disadvantage of consumer outcomes. The FCA should include an appropriate assessment of this as a due diligence action, e.g., the volume of mentions in a specific timeframe.
- We are concerned that cryptoassets / tokenisation are not specifically mentioned in this section of the CP, raising a question as to whether firms will address these in a satisfactory manner, these proposals are adequately future proofed, or the FCA intends to closely monitor the markets for potential updates.
- We suggest that the FCA look at the risks associated with particular asset classes that have been raised in other consultations, e.g., CP26/16, and also make specific mention of those assets classes to ensure common understanding and treatment.
- We agree with the core due-diligence requirement relating to reliable asset valuation on an ongoing basis, but we believe the FCA should make it clear that applying the cost basis is not sufficient (for example, this is particularly relevant for assets like private credit).
- The FCA should make sure that terms are defined in such a way that they are clearly understood and include links to relevant references. For example, the distinction between "admitted to trading on a regulated market" and "admitted to the UK Official List" may not be obvious to all firms.

Question 3: Do you agree with our proposed contract and monitoring requirements for SIPP operators to protect consumers where assets are acquired and managed by a third party on behalf of the consumer? Are there any challenges for SIPP operators in meeting these requirements, or further requirements needed to protect consumers?

Regardless of whether the third party is regulated or not, the Panel believes that the SIPP operator must perform due diligence on the third party, both at onboarding and periodically thereafter. At a minimum, there should be regular checks for FCA warnings and restrictions, review of information on file at the Companies House, and internet checks for alerts. We also note that paragraph 3.24 states that the due diligence proposal applies to third parties that acquire **and** manage assets within a scheme. We are unclear if there are circumstances where one third party may acquire the assets, but a different third party would manage those assets. If that is a possibility, the FCA needs to address this gap in wording.

Whilst the intent is logical, the Panel is concerned that the proposals relating to contractual arrangements are too vague. We suggest that, if the FCA has not already done so, there should be a review of the contractual arrangements associated with the issues noted in paragraph 3.23, relevant complaints, and other FCA experience where contractual weaknesses have resulted in consumer harm. This should highlight any common contractual issues that should be specified more clearly; for example, required notification of any concerns re: financial viability of the third party, the need for service level agreements, etc.

The periodic monitoring proposals are generally clear and seem appropriate. However, what is not clear is the FCA's expectation in the event that the SIPP operator breaches their capital adequacy requirements. Required reporting to the FCA, mitigating actions, and communications to clients should be more explicit.

We also raise the concern that the regulatory treatment for SIPP assets is not at the same level as that for authorised fund assets. Although there may be justifiable reasons for this, we would ask the FCA to compare the two frameworks and identify if there are gaps in the SIPP framework that should be addressed.

Question 4: Do you agree with our proposals on governance, monitoring and record-keeping? If not, why not?

The Panel does not disagree with the proposals on governance, monitoring and record-keeping. We would certainly expect SIPP operators to have similar systems and controls already in place, albeit possibly not for due diligence. If the FCA has found that this is not general business practice in the sector, the level of simplicity of the proposals raises serious concerns as to whether the firms are operating at an acceptable standard more broadly.

Question 5: Do you agree an implementation period is needed? If so, is 12 months an appropriate timeframe?

As noted in our response to Question 4, the Panel believes that relevant systems and controls should already be in place; they may need to be expanded to include due diligence. Therefore, we see little justification for a 12-month transition period. However, we also recognise that, if due diligence has not yet been undertaken, it is far more preferable to do it properly rather than quickly.

The Panel is also concerned by the FCA's intention not to apply the proposals to assets acquired prior to implementation. Whilst it may make it more complex, we would expect due diligence monitoring to take place on any investment that is above a particular threshold percentage, to be set by the FCA.

The FCA should bear in mind that allowing firms to continue to get away with poor practices harms trust in the market. Therefore, if a 12-month period is needed for implementation, we urge the FCA to monitor the 98 firms in the sector closely during that period. Any that are not progressing as expected should be subjected to FCA intervention.

Question 6: Do you agree with our proposed high-level scope and approach to introducing a more prescriptive PSM&A regime for SIPPs? What challenges, unintended consequences, or additional protections for consumers or firms should we consider?

As noted in our cover letter, the Panel agrees that significant change is required in the SIPP sector, and we largely agree with the proposed direction of travel. In most cases, we have provided responses to questions where we do not agree with elements of the proposals.

However, there are issues that were raised in the CP that are not the subject of a particular question. For example, the Panel is very concerned with the FCA's approach to discrepancies and treatment of shortfalls in pension scheme money described in paragraphs 4.44 to 4.47. The situations described in these paragraphs are often indicators of weaknesses in a firm's systems and controls, and firms with weak systems and controls are more likely to fail. Any time a firm identifies anything other than a de minimis shortfall in pension scheme money that it cannot immediately resolve, we consider it should be mandatory to notify the FCA. Furthermore, the resolution of these issues should not be left solely to firms to determine the course of action. At a minimum, the FCA should provide guidance, however, the Panel would prefer to see clearly defined rules outlining expected actions.

The same is true for pension scheme assets, as noted in paragraphs 4.61 to 4.63.

Question 7: Are there areas where our proposed PSM&A requirements create complexity for firms operating across both regimes (including

CASS)? If so, what mitigations would be possible to address these complexities?

We would agree that there should be as much consistency as possible across the SIPP and CASS regimes, and both should apply the appropriate level of rigour. In the longer term, we would prefer to see a single regime that applies to all client assets, with the use of thresholds, carve-outs or exceptions where indicated. This would function as a single source of truth, which should reduce costs and increase compliance.

Question 8: Do you agree with our proposal that firms should establish and maintain an internal record of pension scheme money, including money held indirectly by third parties? What challenges do SIPP operators face in meeting this requirement?

Yes, the Panel is in complete agreement that SIPP operators must establish and maintain an internal record of pension scheme money, regardless of how it is held. In today's automated world, there is no justification for any other approach. Transaction details are available almost real-time and automated notifications can easily be set up, even in the most basic accounting environments. If a SIPP operator or a third-party cannot support this, the Panel would seriously question whether they should be allowed to provide this service to consumers.

We would also challenge the FCA's proposal in paragraph 4.32 that firms could have up to 10 business days to allocate scheme money to the appropriate account. Any firm with decent accounting practices should be able to allocate client money much more quickly. We cannot understand any justification for this length of time, as it exposes the consumer to risk if there is an extreme financial event. Furthermore, we suspect that firms that would take this long are also the more likely to fail. Allowing this length of time will make resolution that much more difficult, a concern raised by the FCA early in the consultation.

The Panel would also urge the FCA to make it clear that any bank account must be with a regulated entity approved to hold client money. Although that might have been perceived to be a given historically, this is no longer necessarily the case.

Question 9: Do you agree with our proposals for pension scheme money reconciliations, including the frequency of reconciliations and the treatment of indirectly held scheme money as money rather than an asset? What challenges do firms face in meeting these requirements?

The Panel fully supports the FCA's proposals for pension scheme money reconciliations. These expectations are simply aligned with basic good practice and do not impose any unnecessary burden on firms.

Question 10: Would firms prefer to be able to calculate the scheme money obligation using the net negative add-back method?

No response.

Question 11: Do you agree with our proposal that firms must record and maintain data on investment holdings and transactions, including those made through third parties?

Yes, the Panel fully supports the proposal that firms must record data on investment holdings and transactions, including those made through third parties. In today's automated environment, the firm should be made aware of any activity on any account for which it is ultimately responsible in a timely fashion. The firm should be copied on any transaction confirmations or notifications, including those entered into by third parties.

Question 12: Do you agree with our proposals for pension scheme asset checks and reconciliations? What challenges do firms face in meeting these requirements?

The Panel fully supports the FCA's proposals for pension scheme asset checks and reconciliations. These expectations are simply aligned with basic good practice and do not impose any unnecessary burden on firms.

We would urge the FCA to make it clear that the verification of assets held in physical form must also include the verification of the existence of the asset itself; this should not rely exclusively on review of the relevant documentation.

Question 13: Do you agree with our proposals for pension scheme asset valuations?

The Panel understands and agrees with the FCA that frequent valuations of assets that require specialist expertise is likely to come at increased costs to consumers. We also agree with the FCA that firms must include a recent valuation within their asset holdings record and that they must ensure that these valuations are reasonable, credible, and sufficiently up to date.

However, we would also urge the FCA to ensure that firms assess the interim risks to particular asset classes they hold at the same frequency as reconciliations, based on publicly available information or information that the firm holds. The FCA should provide guidance as to the importance of communicating with clients and the FCA in situations where the firm believes that material impairment has become more likely.

Question 14: Do you agree with our proposed auditing requirements for the PSM&A regime? What challenges do firms and auditors face in meeting these requirements?

The Panel fully supports the proposal that SIPP operators should commission an annual audit to verify that their firm systems and controls are adequately designed and operating as they should; any material weaknesses and / or discrepancies must be reported by the auditor and the SIPP operator to the FCA. Although it's not stated in the CP, the auditor must be independent from the firm.

Question 15: Do you think the new PSM&A regime warrants the introduction of a new regulatory return, and if not, what existing or alternative information should the FCA use to assess whether firms are meeting the requirements of the new regime?

Given the size of the SIPP market and the significant historical issues noted in this CP, the Panel believes that a regulatory return is important. Not only will this provide the FCA with important data with which to monitor the market and firms, it will also encourage SIPP operators to develop proper internal reporting mechanisms that will help them better manage their business. Over the long term, quality data and reporting should lead to a reduction in the number of firm failures and the corresponding losses to consumers. The FCA should collaborate with SIPP operators to understand and define data requirements that are relevant to both.

Question 16: Do you think that a monthly reporting obligation is proportionate, or would less frequent reporting be more appropriate for a Pension Scheme Money and Asset Return? If so, how frequent (for example, quarterly)?

The Panel considers that technology has advanced to a point where financial services firms should build data collection and reporting mechanisms that require a minimal amount of human intervention and which can be submitted at the push of a button and, therefore, could be easily submitted on a monthly basis. The FCA should work with firms to design the Pension Scheme Money and Asset Return to accomplish this. However, if this is not yet fully feasible, the Panel would support either monthly or quarterly reporting depending on the amount of the SIPP operator's assets under administration.

Question 17: Do you agree that an implementation period is needed? If so, is a two-year period appropriate, with an additional year available for dependencies on third parties?

The Panel believes that the FCA's proposed implementation period is extremely generous, especially given our concurrence with the FCA's comment that these "represent minimum standards for operating SIPPs". We are concerned about ongoing consumer harm in the sector and that significant damage could occur over a three-year period. Therefore, we would prefer that the implementation period is set at one year, with an additional year granted by the FCA for firms that demonstrate that they are progressing at pace and pose no harm to consumers. We also expect the FCA to closely monitor the firms during the implementation period to ensure that material risks are not emerging.