FINANCIAL CONDUCT AUTHORITY

Handbook Notice No.53

March 2018

Contents

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1 Overview

Legislative changes

1.1 On 22 February 2018, the Board of the Financial Conduct Authority made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
17/43	Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018	FCA 2018/7	1.3.18

1.2 On 7 March 2018, the Board of the Financial Ombudsman Service made the relevant changes to the Handbook in the instrument listed below, subject to the consent and approval of the FCA. On 22 March 2018, the FCA Board also made changes to the Handbook in the instrument listed below, and consented to the making and amendment of the scheme rules by the Financial Ombudsman Service Ltd, and approved the fixing and variation of standard terms as made by the Board of the Financial Ombudsman Service Ltd.

CP	Title of instrument	Instrument No.	Changes effective
17/39	Dispute Resolution: Complaints (Politically Exposed Persons and Pensions Ombudsman) Instrument 2018	FOS 2018/1; FCA 2018/13	1.4.18

1.3 On 7 March 2018, the Board of the Financial Ombudsman Service made the relevant changes to the Handbook in the instrument listed below, subject to the consent and approval of the FCA. On 22 March 2018, the FCA Board consented to the making and amendment of the scheme rules by the Financial Ombudsman Service Ltd, and approved the fixing and variation of standard terms as made by the Board of the Financial Ombudsman Service Ltd.

CP	Title of instrument	Instrument No.	Changes effective
FOS	Fees Manual (Financial Ombudsman Service Case Fees 2018/19) Instrument 2018	FOS 2018/3	1.4.18

1.4 On 22 March 2018, the Board of the Financial Conduct Authority made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
17/44	Fees (Payment Systems Regulator) Instrument (No 6) 2018	FCA 2018/9	1.4.18
17/39	Fees (Payment Services) (No 4) Instrument 2018	FCA 2018/11	23.3.18
17/16	Conduct of Business Sourcebook (Pension Transfers) Instrument 2018	FCA 2018/15	1.4.18; 1.10.18; 6.4.19
17/32	Retirement Interest-only Mortgages Instrument 2018	FCA 2018/16	23.3.18
17/20	Consumer Credit (Staff Incentives, Remuneration and Performance Management) Instrument 2018	FCA 2018/19	1.10.18
N/A	Handbook Administration (No 48) Instrument 2018	FCA 2018/20	23.3.18; 1.4.18; 2.4.18; 15.8.18

Summary of changes

1.5 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

1.6 Consultation feedback is published in Chapter 3 of this Notice or in a separate Policy Statement.

FCA Board dates for 2018

1.7 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

April	26
May	24
June	28
July	26
September	27

October	25
November	15
December	13

2 Summary of changes

2.1 This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 22 February 2018 and 22 March 2018. It also describes changes made by the Board of the Financial Ombudsman Service to its rules and standard terms on 7 March 2018, with the approval of the FCA Board. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see www.bankofengland.co.uk/pra/Pages/publications/default.aspx

Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018 (FCA 2018/7)

2.2 Following consultation in Consultation Paper (CP) 17/43,[1] the FCA Board has made changes to the FCA Handbook section listed below:

CONC 6

2.3 It also adds a new section to CONC, **CONC TP 7A**.

2.4 In summary, this instrument makes changes to the Handbook in order to reduce the number of customers with problem credit card debt, and to incentivise firms and customers to address problem credit card debt and agree the best route to tackle this debt where it develops.

2.5 This instrument came into force on **1 March 2018**. Feedback has been published in a separate Policy Statement.[2]

1 CP17/43 'Credit card market study: Persistent debt and earlier intervention remedies - feedback on CP17/10 and further consultation' (December 2017)

2 PS18/4 'Credit card market study: persistent debt and earlier intervention – feedback to CP17/43 and final rules' (February 2018)

Dispute Resolution: Complaints (Politically Exposed Persons and Pensions Ombudsman) Instrument 2018 (FOS 2018/1) (FCA 2018/13)

2.6 Following consultation in CP17/39,[3] the FCA Board has approved changes to the Voluntary Jurisdiction rules by the Financial Ombudsman Service, and has made changes to the FCA Handbook sections listed below:

Glossary
DISP 1, 2 and TP 1

2.7 It also adds a new section to DISP, **DISP 1 Annex 4G**.

2.8 In summary, this instrument makes changes to the Handbook in order to provide politically exposed persons (PEPs), their family members and known close associates with access to the Financial Ombudsman Service for certain complaints. It also makes changes relating to firms making consumers aware of the availability of the Pensions Ombudsman (TPO) in addition to requirements relating to the Financial Ombudsman Service, where relevant.

2.9 This instrument comes into force on **1 April 2018**. Feedback is published in Chapter 3 of this Notice.

Fees Manual (Financial Ombudsman Service Case Fees 2018/19) Instrument 2018 (FOS 2018/3)

2.10 Following consultation,[4] the Board of the Financial Ombudsman Service has made, and the FCA Board has approved, changes to the FCA Handbook sections listed below:

FEES 5, 5 Annexes 2R and 3R
DISP 4

2.11 In summary, this instrument makes and amends rules relating to the payment of fees under the Compulsory Jurisdiction and fixes and varies the standard terms for Voluntary Jurisdiction participants relating to the payment of fees under the Voluntary Jurisdiction. It also updates the lists of constituent firms in the Charging Groups and makes minor changes to the volumes in the group fee arrangements calculations.

2.12 This instrument comes into force on **1 April 2018**. Feedback will be published by the Financial Ombudsman Service.

3 CP17/39 'Quarterly Consultation Paper No 19' (December 2017)
4 'Consultation on our plans and budget for 2018/2019' (December 2017)

Fees (Payment Systems Regulator) Instrument (No 6) 2018 (FCA 2018/9)

2.13 Following consultation in CP17/44,[5] the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
FEES 9 and 9 Annex 1R

2.14 It also deletes **FEES TP 12**.

2.15 In summary, this instrument makes changes to the Handbook in order to make the allocation process and method of Payment Systems Regulator (PSR) fees proportionate, simple, sustainable and efficient to administer.

2.16 This instrument comes into force on **1 April 2018**. Feedback will be published in a separate Policy Statement.

Fees (Payment Services) (No 4) Instrument 2018 (FCA 2018/11)

2.17 Following consultation in CP17/39,[6] the FCA Board has made changes to the FCA Handbook section listed below:

FEES 5 Annex 1R

2.18 In summary, this instrument makes changes to the Handbook in order to ensure that registered account information service providers (RAISPs) contribute to the funding of the Financial Ombudsman Service.

2.19 This instrument comes into force on **23 March 2018**. Feedback is published in Chapter 3 of this Notice.

Conduct of Business Sourcebook (Pension Transfers) Instrument 2018 (FCA 2018/15)

2.20 Following consultation in CP17/16,[7] the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
COBS 9, 19, TP 2 and Sch 1
SUP 12

2.21 It also adds the following new sections to COBS, **COBS 19 Annex 4A, 4B, 4C and 5**.

5 CP17/44 'PSR regulatory fees: Policy decision on the approach to the collection of PSR regulatory fees from 2018/19 and further consultation on the fees allocation method' (December 2017)
6 CP17/39 'Quarterly Consultation No 19' (December 2017)
7 CP17/16 'Advising on pension transfers' (June 2017)

2.22 In summary, this instrument makes changes to the Handbook in order to ensure that consumers will be more likely to receive suitable advice about whether or not to transfer a pension based on their personal circumstances; and to help them to make informed decisions and give them confidence in the advice that is being provided.

2.23 This instrument comes into force on **1 April 2018** for Annex A Part 1, Annex B Part 1 and Annex C; **1 October 2018** for Annex A Part 2 and Annex B Part 2; and **6 April 2019** for Annex B Part 3. Feedback will be published in a separate Policy Statement.

Retirement Interest-only Mortgages Instrument 2018 (FCA 2018/16)

2.24 Following consultation in CP17/32,[8] the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
MCOB 1, 4, 5, 5A, 7, 10, 10A and 11

2.25 In summary, this instrument makes changes to the Handbook in order to improve access to mortgage borrowing for older consumers with reliable retirement incomes, including some of those with maturing interest-only mortgages but who do not have sufficient funds to fully repay.

2.26 This instrument comes into force on **23 March 2018**. Feedback is published in Chapter 3 of this Notice.

Consumer Credit (Staff Incentives, Remuneration and Performance Management) Instrument 2018 (FCA 2018/19)

2.27 Following consultation in CP17/20,[9] the FCA Board has made changes to the FCA Handbook section listed below:

CONC 2

2.28 In summary, this instrument makes changes to the Handbook in order to ensure that the requirements we place on firms in respect of systems, controls and risk management adequately reflect the importance of staff incentives and performance management to the risk of consumer harm.

2.29 This instrument comes into force on **1 October 2018**. Feedback will be published in a separate Policy Statement.

8 CP17/32 'Quarterly Consultation Paper No 18' (September 2017)
9 CP17/20 'Staff incentives, remuneration and performance management in consumer credit – findings from our thematic review and proposed new rule and guidance' (July 2017)

Handbook Administration (No 48) Instrument 2018 (FCA 2018/20)

2.30 The Board has made minor changes to various modules of the FCA Handbook, as listed below. These changes were not consulted on separately because they are minor amendments which correct or clarify existing provisions which have previously been consulted on. None of these changes represents any alteration in FCA policy.

Glossary
SYSC TP 6
TC TP 9
GEN TP 1
FEES 5, 6, 10 and TP 10
GENPRU 2
BIPRU 4, 7, 8, 11 and TP 2
COBS 1, 3 and 10A
BCOBS 7
CASS 6
SUP 3, 13 Annex 1AR, 15 Annex 3R, 16, 16 Annex 16AR, 18AR and 18BG
COMP 6

2.31 This instrument also makes changes to material outside the Handbook, namely the MiFID 2 Guide (**M2G**).

2.32 In summary, the amendments this month are as follows:

- Change to rename the Glossary term 'standing data' to 'firm details' in line with an FCA-wide change to refer to 'firm details' instead of 'standing data' including consequential changes to replace 'standing data' cross references in the Glossary definitions of 'composite insurer', 'discretionary investment manager', 'non-discretionary investment manager' and 'own account trading firm' with 'firm details'.

- Consequential changes to the Glossary definition of 'standardised approach' to remove references to BIPRU 6 and 10 which no longer exist in the Handbook (see PS13/10).[10]

- Consequential changes to the Glossary definition of 'compensation costs' to remove references to COMP 3.3.3R and 11.2.3R which refer to extraneous PRA material that is obsolete in our Handbook.

- Deletion of the Glossary definition 'occupational pension fund management business' as it represents extraneous PRA material and is obsolete in our Handbook.

10 PS13/10 'CRD IV for Investment Firms' (December 2013)

- Correction to the Glossary definition of 'OPS firm' to refer to the 2013 Local Government Pension Scheme Regulations as opposed to the 2014 Regulations.

- Changes to mark the time-limited transitional provisions in SYSC TP 6(1), (2), (3) and (4), TC TP 9.1, GEN TP 1.3(3) 15 and 16 and FEES TP 10.1 as expired.

- Consequential changes to update cross references to FEES 4.2.6R (which was deleted by instrument FCA 2017/6) to instead refer to FEES 4.2.7ER-JR (which were added by FCA 2017/6) as appropriate. These changes ensure that the old provisions which had read across to the Financial Ombudsman Service, Financial Services Compensation Scheme and Pension Wise are updated with the new provision references.

- Consequential changes to GENPRU and BIPRU to remove cross references to 'operational risk capital requirement', 'concentration risk capital component' and 'consolidated operational risk requirement' which were deleted from the Glossary of definitions by instrument FCA 2013/79 (in line with the deletion of BIPRU 10 by instrument FCA 2013/76).

- Consequential changes to COBS 1.1.1ACR and 1.1.1ADG to update cross references to refer to COBS 1.1.1AR(1) in line with instrument FCA 2017/39.

- Correction to COBS 3.5.2R(4) to fix a typographical error originating in instrument FCA 2007/3.

- Minor change to COBS 10A.4.1R to take account of a MiFID II amending directive. The change copies-out the amendment at EU level.

- Minor changes to BCOBS 7.3.4G(3), 7.5.6G(3) and (4), 7.7.3G(2) and TP 1(13) to correct and clarify amendments made by instrument FCA 2017/78.

- Consequential change to update a cross reference in CASS 6.3.9R to now refer to CASS 6.3.6AR (as CASS 6.3.6R was replaced with this provision when we made changes to implement MiFID 2).

- Consequential changes to replace the renamed expression 'standing data' with 'firm details' in SUP 3.3, 15 Annex 3R, 16.3, 16.10 and 16 Annex 16AR.

- Minor changes to SUP 13 Annex 1AR Part 1, 2 and 3 to the wording of question in forms to reflect the final EU Passporting Technical

Standard (which was not available at the time we made updates to these forms to implement MiFID 2).

- Changes to SUP 16 Annex 18AR Part 2, Question 6 and SUP 16 Annex 18BG Section J, Part 2 to align the text with IDD-related drafting which was included in instrument FCA 2017/58.
- Changes to COMP 6.3.2R and 6.3A.2R to clarify the drafting in line with the original Policy intention (see amending instrument FCA 2017/58).
- Changes to M2G to correct minor errors originating in instrument FCA 2017/63.

2.33 These changes come into force on **23 March 2018** except as follows:

- Part 2 of Annex A (Glossary of definitions), Part 2 of Annex E (FEES), Part 2 of Annex K (SUP) and Annex L (COMP) come into force on **1 April 2018** immediately after the changes made by the Financial Services Compensation Scheme (Funding and Scope) Instrument 2017 (FCA 2017/58) come into force
- Part 3 of Annex A (Glossary of definitions) comes into force on **2 April 2018** immediately after the changes to the definition of 'OPS firm' made by the Handbook Administration (MiFID 2) Instrument (FCA 2017/65) come into force, and
- Annex I (BCOBS) comes into force on **15 August 2018** immediately after the changes made by the Banking (Information about Current Account Services) Instrument 2017 (FCA 2017/78) come into force.

3 Consultation feedback

3.1 This chapter provides feedback on consultations that will not have a separate Policy Statement published by the FCA.

CP17/39: Quarterly Consultation Paper No 19 – Chapter 4

Dispute Resolution: Complaints (Politically Exposed Persons and Pensions Ombudsman) Instrument 2018

Background

Access to the Financial Ombudsman Service for politically exposed persons (PEPs)

3.2 The Financial Ombudsman Service was set up under the Financial Services and Markets Act 2000 (FSMA) to quickly and informally resolve complaints about financial services. The Financial Ombudsman Service has a compulsory jurisdiction (CJ)[11] and a voluntary jurisdiction (VJ)[12].

3.3 A complainant is eligible to complain to the Financial Ombudsman Service if they fall within a class of person specified as eligible (eg consumer or micro-enterprise) in the rules for the CJ or the VJ. These rules are set out in our Dispute Resolution: Complaints sourcebook (DISP) for firms.

3.4 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Regulations') provide for enhanced due diligence when firms are dealing with PEPs, their family members or known close associates. The term 'PEP' refers to someone who holds prominent public office.

3.5 The Regulations amend FSMA to require that the rules for the CJ must provide that individuals identified by firms as PEPs, their family members, and known close associates are eligible to complain to the Financial Ombudsman Service about any acts or omissions by the firm as a result of that identification, or such an identification being incorrect – as a new class of persons eligible to complain to the Financial Ombudsman Service.

3.6 In Consultation Paper (CP) 17/39[13], published in December 2017, we jointly consulted with the Financial Ombudsman Service on adding rules to DISP to give effect to this requirement, so that these individuals can complain to the Financial Ombudsman Service under its CJ and VJ in relation to complaints regarding an act or omission from the date that the Regulations came into force. As noted in CP17/39, some of these individuals may already be eligible to complain to the Financial Ombudsman Service under existing classes of eligible complainant, for example as consumers.

Referrals to the Pensions Ombudsman (TPO)

3.7 Firms are required to provide eligible complainants with information about the Financial Ombudsman Service, and make eligible complainants aware of their right to refer their complaint to the Financial Ombudsman Service when responding to a complaint.

11 The FCA is responsible for setting the scope of the CJ, which generally applies to complaints relating to regulated activities and certain other activities such as payment services and lending money.

12 The Financial Ombudsman Service is responsible for setting the scope and standard terms for the VJ, which may cover complaints that cannot be dealt with under the CJ.

13 CP17/39 'Quarterly Consultation No 19' (December 2017)

3.8 Some complaints about personal pension schemes may be considered by the Financial Ombudsman Service or by TPO. The schemes updated their Memorandum of Understanding (MoU) which refers to this overlap in December 2017. Against this backdrop, in CP17/39 we consulted on adding guidance to DISP relating to firms making eligible complainants aware of TPO, and their right to refer their complaint to TPO, where relevant, in addition to requirements regarding the Financial Ombudsman Service.

3.9 In CP17/39 we also consulted on updating DISP to state that complaints about the administration of an occupational pension scheme (which are outside of the Financial Ombudsman Service's jurisdiction) should be referred to TPO, to reflect the Department for Work and Pensions' (DWP) decision to move this dispute resolution function from the Pensions Advisory Service (TPAS) to TPO by 1 April 2018.

Feedback

Access to the Financial Ombudsman Service for PEPs

3.10 We received six responses to these proposals, and respondents were generally in support of the proposals.

3.11 One respondent commented that the rules should more closely reflect the drafting of the Regulations.

3.12 Another respondent raised concerns regarding these individuals being able to complain about judgement-based identifications required by the Regulations.

Referrals to the Pensions Ombudsman

3.13 We received nine responses, and respondents were broadly in support of the proposals.

3.14 Some respondents commented that the prescribed wording set out in DISP 1 Annex 4G should be phrased less definitively, and only include TPO's website (without wider contact information).

3.15 Some respondents queried whether firms can refer eligible complainants to TPO in the summary resolution communication, as well as in final response letters. There were also queries relating to the effective date of the changes, TPO's time limits, and what firms would need to pay to TPO to look into complaints.

3.16 However, some respondents disagreed with the proposals on the basis that eligible complainants could find it difficult to decide which scheme to refer their complaint to, and because there are existing arrangements between the Financial Ombudsman Service and TPO to cross-refer complaints where they may be more appropriately dealt with by the other scheme. One respondent stated that the MoU between the schemes is unclear, and some respondents stated that there should be a comparative note for consumers to assist with the decision of which scheme to refer their complaint to.

3.17 Outside of the scope of the consultation and our remit, we received feedback relating to the schemes being able to consider the same complaints, and several respondents stated that there should be one relevant or predominant ombudsman rather than two – though there were mixed views on which scheme this should be.

3.18 We also received feedback that it would be helpful to retain reference to TPAS in DISP, as it will continue to be able to assist consumers with information and guidance on pension matters.

Our response

Access to the Financial Ombudsman Service for PEPs

3.19 As required by FSMA, we have made these rules – with small amendments to the rules consulted on to more closely reflect the drafting of the Regulations as highlighted in the feedback we received. Specifically, we have added:

- PEPs, their family members and known close associates can complain to the Financial Ombudsman Service about such identification being incorrect, and
- the transitional provisions apply from 26 June 2017 (rather than 22 June 2017), the date that the Regulations came into force.

3.20 FSMA, as amended by the Regulations, requires these complaints to be within the Financial Ombudsman Service's jurisdiction. We have issued guidance[14] for firms regarding the enhanced customer due diligence measures in respect of PEPs, which covers the identification of PEPs. The Financial Ombudsman Service considers complaints on a fair and reasonable basis, and having regard to relevant information – such as our guidance for firms in respect of PEPs.

Referrals to the Pensions Ombudsman

3.21 We have made the guidance with small amendments to the provisions consulted on to reflect some of the feedback to the consultation. Specifically, we have added:

- firms can refer eligible complainants to the availability of TPO, in addition to the Financial Ombudsman Service, in the summary resolution communication, and
- firms should refer consumers' general requests for information or guidance on pension matters to TPAS.

14 FG17/6 'The treatment of politically exposed persons for anti-money laundering purposes' (July 2017)

3.22 We consider that the guidance reflects that some personal pension complaints may be considered by the Financial Ombudsman Service or TPO, and sets out how firms may raise awareness of this. This guidance does not replace requirements for firms regarding the Financial Ombudsman Service, and we expect firms to have regard to our Principles when making reference to TPO.

3.23 Information on TPO's time limits can be found on its website[15]. TPO does not specifically charge firms to consider complaints, and is funded by grant-in-aid, which is paid by the DWP and largely recovered from the general levy on pension schemes administered by the Pensions Regulator[16].

3.24 The Financial Ombudsman Service and TPO jointly published their MoU[17] and a pension complaint help sheet[18] in December 2017. These documents contain information relating to the difference between the schemes, and could help consumers decide which scheme to refer their complaint to. Consumers may contact either scheme for further assistance[19].

3.25 The instrument comes into force on 1 April 2018.

Cost benefit analysis and compatibility statement

3.26 Our comments on the cost benefit analysis, and our compatibility statement in CP17/39 remain valid.

Equality and diversity issues

3.27 We did not receive any specific comments from respondents on equality and diversity implications of the proposals. However, some respondents noted that awareness of the option of two ombudsman schemes could make it difficult for consumers to decide who to refer their complaint to. We recognise that this could affect some consumers with protected characteristics, and have provided information to assist consumers in paragraph 3.24.

3.28 The changes made by this instrument are listed in Chapter 2 of this Notice.

15 https://www.pensions-ombudsman.org.uk/our-process/
16 http://www.thepensionsregulator.gov.uk/
17 http://www.financial-ombudsman.org.uk/assets/pdf/2017-12-01-MoU-between-The%20Pensions-Ombudsman-and-the-Financial-Ombudsman-Service.pdf
18 http://www.financial-ombudsman.org.uk/assets/pdf/pension-complaints.pdf
19 The Financial Ombudsman Service – http://www.financial-ombudsman.org.uk/contact/index.html
The Pensions Ombudsman – https://www.pensions-ombudsman.org.uk/contact-us/

CP17/39: Quarterly Consultation Paper No 19 – Chapter 5

Fees (Payment Services) (No 4) Instrument 2018

Background

3.29 Following the revised Payment Services Directive (PSD2), implemented in the UK by the Payment Services Regulations 2017, a business which provides only account information services may apply to us, the FCA, to become a registered account information service provider (RAISP).

3.30 RAISPs fall under the definition of payment service provider (PSP) and are subject to the compulsory jurisdiction (CJ) and voluntary jurisdiction (VJ) of the Financial Ombudsman Service. The Financial Ombudsman Service is an independent service for settling disputes between financial services firms and their customers.

3.31 We are responsible for setting the scope of the CJ, and the CJ generally applies to complaints relating to regulated activities and certain other activities, such as payment services and lending money. The Financial Ombudsman Service is responsible for setting the scope and standard terms for the VJ, and the VJ may cover complaints which cannot be dealt with under the CJ.

3.32 RAISPs are in the same group as authorised payment institutions for the purposes of FCA fees. In CP17/39,[20] we proposed that RAISPs in the CJ should, as fee-paying payment service providers, sit in industry block 11 for fees to fund the Financial Ombudsman Service, and pay the same fee as authorised payment institutions.

3.33 For the funding of the Financial Ombudsman Service, authorised payment institutions are currently required to pay a levy of £0.0007 per £1,000 of relevant income, subject to a minimum levy of £75 per year, plus case fees.[21]

3.34 We also proposed an accompanying change to the Handbook Glossary to include RAISPs within the definition of fee-paying payment service providers.

Feedback

3.35 We received feedback from two industry bodies.

3.36 One organisation suggested that the approach should be reconsidered given that the account information service activity does not generate revenue.

20 CP17/39 'Quarterly Consultation Paper No 19' (December 2017)
21 https://www.handbook.fca.org.uk/handbook/FEES/5/Annex1R.html

3.37 The other expected the income generated per RAISP customer to be significantly lower than the income generated per customer by payment service providers involved in initiation or execution of payment transactions.

Our response

3.38 Having considered the responses, we do not propose to change our approach to including RAISPs in industry block 11 for fees to fund the Financial Ombudsman Service.

3.39 The amount paid by RAISPs (£0.0007 per £1000 of relevant income) will be in proportion to the income of the firm. If the relevant income is zero, there will be a minimum payment of £75 per year. We consider this amount to be proportionate because of the need to properly fund the Financial Ombudsman Service which may consider a number of disputes between customers and RAISPs each year.

3.40 Industry block 11 relies on the definition of income for FCA fee-block G3 in FEES 4 Annex 11R. Two respondents have raised questions about the appropriateness of this definition for RAISPs. No concerns were raised when we proposed to include RAISPs in fee-block G3 in March 2017 and we are not convinced that account information service activity does not generate revenue. We are aware of providers that generate revenue for example through subscriptions, marketing fees from product recommendations, or fees from partner businesses, eg lending firms. Since the definition did not form part of the present consultation, we will consider these responses in the context of the definition in FEES 4 Annex 11R. Meanwhile, we would welcome evidence on the income generated by RAISPs compared with that generated by payment institutions involved in executing payment transactions.

Cost benefit analysis and compatibility statement

3.41 Under section 138I of FSMA, we, the FCA, are not required to carry out a cost benefit analysis in relation to fees rules.

Equality and diversity issues

3.42 We have considered the equality and diversity issues that may arise from the proposals in this Chapter. Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

3.43 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP17/32: Quarterly Consultation Paper No 18 – Chapter 9

Retirement Interest-Only Mortgages Instrument 2018

Background

3.44 In Consultation Paper (CP) 17/32[22] we made a number of proposals to facilitate a market in 'retirement interest-only mortgages'. These are loans for older consumers where the lender will not seek repayment of the loan until a specified life event (usually the customer's death or move into residential care). At that point the loan is repaid through the sale of the property. The proposals aimed to improve access to mortgage borrowing for older consumers with reliable retirement incomes, including some of those with maturing interest-only mortgages without sufficient funds to fully repay them. Retirement interest-only mortgages will not be appropriate for older consumers who cannot demonstrate their ongoing ability to afford to make interest payments.

3.45 Our specific proposals were to:

- Create a new defined term of a 'retirement interest-only mortgage' and to change the treatment of loans meeting this definition from being regulated under our equity release standards to instead treat them as standard mortgages.
- Restrict the sale of retirement interest-only mortgages to older consumers.
- Remove the requirement to give irrelevant risk warnings about the need for savings to repay the capital outstanding.
- Make clear that for these mortgages, sale of the property at the occurrence of a specified life event is an acceptable repayment strategy.
- Require that if the loan is being used to draw income, the suitability assessment where advice is given must take into account tax and benefit implications, or the customer must be referred to a source of information on this. For all sales, we proposed a disclosure to the same effect.
- Oblige the lender to disclose any restrictions on others living in the property (such as family members or a new spouse) it chooses to impose.

22 CP17/32 'Quarterly Consultation Paper No 18' (September 2017)

- Require disclosure that a lifetime mortgage may be available and more appropriate.

3.46 We also proposed to correct the Glossary definition of a lifetime mortgage, by re-ordering the text, to restore the intention that entry into all lifetime mortgages be restricted to older consumers above a certain age.

Feedback

3.47 We received 41 responses, including 13 from individual consumers, as well as from consumer organisations and lenders, intermediaries and trade bodies across both the lifetime and standard mortgage markets. The feedback that we received was generally supportive of our policy intention to make changes that might facilitate greater access for older borrowers. The responses also highlighted some concerns and raised a number of smaller and more technical questions.

3.48 Equity release firms and many other respondents questioned a consequence of our proposal, which was to allow execution-only sales in some circumstances. They argued that advice should be compulsory, as it is under our equity release rules.[23] The key reasons suggested for compelling advice were: to ensure that customers would be told about products across both equity release and standard mortgage markets, and that older, vulnerable[24] consumers would risk repossession if failing to keep up payments on a retirement interest-only mortgage.

3.49 Several respondents requested additional guidance on assessing affordability, particularly for joint applications, and there was also some confusion as to whether existing exemptions from conducting an affordability assessment would continue to apply.

3.50 We were asked by some whether retirement interest-only mortgages should only be available to a firm's existing interest-only customers, or if they could be used for additional borrowing or on an unencumbered property. Lenders also wanted confirmation that they would not be compelled to offer retirement interest-only mortgages either to new customers or those with maturing interest-only mortgages.

3.51 Some respondents questioned whether our proposed disclosure and advice standards on tax and benefits implications went far enough. They pointed out that drawing down funds and holding these as savings could also have tax and benefits implications.

23 Advice is required for equity release sales because of the relative unfamiliarity of the product, the risk of equity erosion, and the potential inflexibility in terms of switching costs because of the early repayment charges that may be involved.

24 Our Occasional Paper on the Ageing Population showed that older consumers are not necessarily vulnerable though they are more likely than other groups to experience transient or permanent vulnerability. It also showed that many older consumers have considerable assets like sizeable pension funds and housing equity, which can make lending to them less risky than to younger borrowers. See 'Occasional Paper 31 – Ageing Population and Financial Services' (September 2017).

3.52 Finally, the consultation helped to identify a number of consequential changes needed to support our proposals. These primarily related to:

- necessary but minor modifications to product disclosure to ensure our expectations are clear on the illustration and calculation of the Annual Percentage Rate (of charge) (APR or APRC), and how to estimate the term length
- redundant disclosure wording
- the need for a firm to review retirement interest-only customers' repayment strategies at least once during the mortgage term
- which set of rules relating to Section 5 'Overall cost of this mortgage' of the Key Facts Illustration (KFI) and for Section 7 'Are you comfortable with the risks?' apply to a retirement interest-only mortgage
- the trigger for required disclosures if a retirement interest-only mortgage was entered into via a contract variation, and
- whether a retirement interest-only mortgage was subject to the Mortgage Credit Directive and would, in due course, need to be illustrated with a European Standardised Information Sheet (ESIS). Even if the directive does not apply, some respondents said they would like to illustrate such loans with an ESIS.

3.53 21 respondents gave views on the correction of the Glossary definition of a lifetime mortgage. All were in favour.

Our response

3.54 We continue to consider that advice should not be compulsory for the sale of retirement interest-only mortgages. Advice will not mitigate the chief risks identified by respondents and, indeed, we already have a number of mitigants in place. For example, the risk of repossession is mitigated by our responsible lending rules and our rules on how to treat customers in payment difficulty.

3.55 Integrating the currently separate standard and lifetime mortgage markets would be a significant policy intervention, beyond the scope of the consultation in CP17/32. In the absence of this, compelling advice for retirement interest-only mortgages would not ensure that consumers get advice taking account of specific products from both markets. However, we have required an alternative finance disclosure compelling the seller to highlight the existence of other options. Armed with this information consumers will be able to seek advice on these other options should they wish it.

3.56 In practice most retirement interest-only mortgages will be sold with advice as our standard mortgage rules require this. For example, advice is required if the sale is interactive or the mortgage is used to consolidate debt. Exceptions include if the customer is high net worth or is a professional customer (such as a mortgage broker).

3.57 In our final rules we have given additional guidance on affordability assessments for joint applications for retirement interest-only mortgages. Given the inevitability of a life event occurring during the course of the contract, we have made clear that lenders should take into account the ability of a single borrower to pay the loan, looking at evidence such as whether pensions are payable to the surviving spouse. Our existing rules state that an affordability assessment must be carried out where a change to an existing mortgage contract is likely to be material to affordability. We have given new guidance to make clear that a change from a mortgage with a set term to a retirement interest-only mortgage would constitute a material change and an affordability assessment must be conducted.

3.58 We envisage retirement interest-only mortgages as an additional option alongside downsizing or equity release, not just as a solution for customers with maturing interest-only mortgages. A retirement interest-only mortgage will not be the default option for customers with maturing interest-only mortgages and, as with all lending, the decision to offer these mortgages will be a commercial judgement.

3.59 We have made the changes suggested to the illustration, making it more relevant to a retirement interest-only mortgage. Customers will be required to give an estimate of the term and, where the customer is unable to do so, firms must make a reasonable estimate to be used in the illustration and calculation of the APR or APRC. We have removed disclosure wording that is not relevant to a retirement interest-only mortgage and waived the standard requirement for firms to review interest-only customers' repayment strategies at least once during the mortgage term. We have made clear that Section 5 of the KFI for a retirement interest-only mortgage should be based on rule 5.6.32R of the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) and Section 7, on MCOB 5.6.59R. We have added a new section to MCOB 7.6 with rules to ensure that the illustration and the other disclosures specific to a retirement interest-only mortgage are given if the loan results from a contract variation.

3.60 A retirement interest-only mortgage is not subject to our Mortgage Credit Directive (MCD) rules.[25] It can, therefore, be disclosed using a standard KFI. For firms that wish to illustrate with an ESIS, we have

25 Technically, it remains within the category of loans our Glossary refers to as 'MCD exempt lifetime mortgages' even though a retirement interest-only mortgage is now carved out of the lifetime mortgage definition.

made clear that they can do so and that firms can diverge from the requirements in MCOB 5A where it is necessary to do so.

3.61 Finally, we have widened the application of the disclosure and advice standards on tax and benefits implications, requiring these in all cases where capital is drawn down.

Correcting the lifetime mortgage definition

3.62 The final rules are unchanged from those consulted on.

Cost benefit analysis and compatibility statement

3.63 The cost benefit analysis and compatibility statements remain unchanged from that published in CP17/32.

Equality and diversity issues

3.64 The equality and diversity assessment in CP17/32 remains unchanged. We did not receive any responses challenging our view that the proposals should have a positive impact on some older consumers and that they are not well suited to the needs of younger consumers.

3.65 The changes made by this instrument are listed in Chapter 2 of this Notice.

4 Additional information

Making corrections

4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

4.2 This Notice is published on the FCA website and is available in hardcopy.

4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.

4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.

4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at: www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.

4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

4.7 This Notice, and the feedback to which Paragraph 1.3 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 (the Act). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details on the back cover).

Handbook Notice 53

This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 22 February 2018 and 22 March 2018; and the rules and standard terms made by the Financial Ombudsman Service on 7 March 2018.

It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

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However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597
Fax: 0207 066 0991
Email: firm.queries@fca.org.uk
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