

Freedom & Choice in Pensions: The Government's Response and FCA Guidance Guarantee Consultation

Following their consultation on the Budget 2014 pension reforms, HM Treasury have now set out its response on various aspects especially the Guaranteed Guidance, and the Financial Conduct Authority has published a consultation going into more detail on implementation.

- Provision of Guaranteed Guidance will be limited to organisations reviewed by the Treasury as being independent with no “actual or potential conflict of interest”. This includes MAS and TPAS as well as other “trusted, consumer-facing organisations” including Citizens Advice and Age UK.
- The FCA will establish a new separate oversight regime to set and maintain standards and monitor compliance, and the Treasury will enact legislation to provide the FCA with the duties and powers to do this.
- The FCA has started in this role by publishing a consultation on the Guaranteed Guidance delivery, setting out the high level standards, as well as “signposting” duties for pension providers and the funding process.
- The standards themselves are very close to what the CII proposed in its consultation response, including a section on professional standards.

Next Steps:

- The FCA consultation closes on 22 September and then it will set out final standards and rules in late autumn. The near-final rules concerning the levy is expected in the FCA annual consultation in October.
- Meanwhile the Treasury and Department for Work and Pensions will be taking forward two pieces of legislation: the *Pensions Schemes Bill* and the *Pensions Tax Bill* which will implement the reforms, and be publishing a progress update in the Autumn.

Background

The Chancellor announced in his Budget statement major reforms to the de-cumulation market aimed at enhancing customer choices at the point of retirement, and assisting customers in making those choices. It comes as part of a wider package encouraging savings. His speech and a detailed HM Treasury (HMT) consultation set out:

- reforms to the pensions rules so that all consumers are offered the full range of options at the point of retirement (lump sum, drawdown or annuity) regardless of the size of their accumulated pension;
- an interim step of easing the trivial commutation and other limits to improve flexibility; and
- a “Guidance Guarantee”: from April 2015, all consumers retiring with a DC pension to be offered at-retirement guidance that is impartial, face-to-face, and free at point of use.

Following the Budget, the consultation closed on 11 June. During that period, the FCA developed thinking on what the Guidance could look like, and organised two workshops comprising stakeholders in the pensions market. The CII participated in these workshops and also liaised directly with the FCA/HMT in the development of standards.

Who should give the Guidance

An overwhelming proportion of consultation respondents representing both industry and consumer interests argued that the Guidance should be de-linked from pension providers or any other financial services firm with a vested interest. Most indicated that the existing “utilities” especially the Money Advice Service (MAS) and the Pensions Advisory Service (TPAS) are already well-placed to deliver the Guidance. The Treasury’s resultant view is:

- provision of the Guidance Guarantee will be limited to such utilities which “are independent and have no actual (or potential) conflict of interest”;
- they will work with MAS and TPAS to “build on their existing capability”;
- the Government will also work with a range of “trusted consumer-facing organisations” starting with Citizens Advice and Age UK.
- The Treasury will be responsible for assessing and designating these Guidance “delivery partners” as official Guidance providers, to prevent unscrupulous firms promoting themselves off as such.

The FCA’s cost-benefit analysis stated that they see little cost for MAS and TPAS to upscale to deliver the Guidance in the volumes predicted. They state that “the operational nature of delivering the guidance service to the standards [summarised below] will be similar to the way in which [MAS and TPAS] currently operate their existing services”.

Guidance Guarantee oversight

The FCA will be given duties and powers to set and maintain standards for the Guidance Guarantee and to monitor compliance on an ongoing basis. While the HMT will be designating the delivery partners for Guaranteed Guidance, the FCA will be responsible for ensuring the standards are complied with; and

Policing: HMT will maintain ultimate sanction on the Guidance delivery. While the FCA will issue recommendations about conduct in relation to subsequent standards compliance, it will be HMT that will ensure that any “remedial action is undertaken on the basis of these recommendations”.

Complaints handling: delivery partners will be expected to have in place a complaints handling framework, to allow the public to register any complaints about the Guidance or whether it falls short of FCA standards. An independent adjudicator function will be established to handle complaints outside the scope of the individual delivery partners.

Guidance Guarantee standards

The FCA proposed in its consultation a set of Guaranteed Guidance standards. They reflected in many ways the standards that the CII had submitted in its response to the Treasury consultation. As with the CII submission, the FCA approached this by first setting out what the Guidance is to achieve; summarising the overall customer journey; and then going into some detail on the content.

Overall principles of Guidance

This describes the objectives of what the Guidance Guarantee is to achieve. We had termed these “design principles”:

FCA Standards	What the CII had proposed
<p>The objective of the Guidance Guarantee is to empower consumers to make informed and confident decisions on how they use their pension savings in retirement.</p> <p>The Guidance will inform, educate and help empower pension savers. It will equip consumers with information about their options when accessing their pension savings.</p>	<p>We think that the desired outcome from the provision of the Guidance Guarantee can best be defined as “customers make their decisions in the knowledge and appreciation of the key facts related to their choices”.</p>

The guidance is not intended to stray into areas such as specific product or provider recommendations, which would be better handled by an authorised IFA.	[The Guidance is] not regulated financial advice and stops well short of the point of product purchase: experience shows that this is possible provided those giving the service are adequately trained to understand the regulatory boundary
Discuss consumer’s relevant options and provide key facts and information on the consequences of each. Based on the information provided by the consumer, set out other issues for consideration.	[The Guidance] makes clear to customers what is being offered, its limitations, and available recourse in the event of detriment; The customer accepts responsibility regarding the suitability of their choices
The guidance will not tell consumers which option to choose or recommend a particular product, provider or adviser. Ultimately, consumers will be responsible for the decisions they make.	There is a clear distinction between Guidance and the execution of the customer’s decisions

Overall customer journey

The FCA then summarising the overall customer journey, presenting what we had described as “design standards”. These were in-turn divided into the various stages of this journey:

- Setting out the scope, purpose and limitations of the session and request relevant information:

FCA Standards	What the CII had proposed
Set out that the guidance will provide the consumer with information to help them understand their options when accessing their pension savings	Ensure the customer understands the process, its purpose, and what they can and cannot expect
Request relevant information about the consumer’s pension entitlement	Ensure the customer understands the process, its purpose, and what they can and cannot expect
Request relevant information about the consumer’s financial and personal circumstances. For example: other/future income sources, capital expectations, tax status, entitlement to state benefits, debt position, plans for retirement, dependants, spouse/partner, health, homeowner/renting, plans for retirement.	Gather as much relevant information as is appropriate so that the customer is more readily able to identify and discuss their financial needs and to agree what actions may need to be taken Establish with the customer their key financial concerns. Included personal/financial circumstances, current pension arrangements, main options, specialist options, relevant consumer protection.

- Discussing the options, including key facts and consequences, and set out other issues for consideration. We had called this process “identifying and agreeing priorities and options”:

Discuss the relevant options, and key facts and consequences of each, including financial consequences, e.g. tax implications. While not exhaustive, the broad categories of options include:	Identify and agree what the customer’s priorities and options are in such a way that the customer can make informed decisions about what steps they need or want to take to progress
While not exhaustive, the broad categories of options include: <ul style="list-style-type: none"> • Taking income via a formal retirement income product; for example, an annuity or drawdown product (including other income generating products that may emerge). • Taking cash, which could be used for any purpose including providing ad hoc income or a rainy day fund. • A combination of these options. • Not taking any action at that time. 	Identify, as appropriate, a suitable referral Arrange to discuss the customer’s needs in more detail Identify ways of addressing needs identified earlier on in the process

- Setting out next steps for the consumer to take forward and appropriate signposting to further sources of information, guidance or advice. We had called this “Referring the customer to further financial information or advice”:

FCA Standards	What the CII had proposed
<p>Inform the consumer where they can get further information, guidance or information.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • debt advice services, state benefits information and other relevant websites • regulated financial advice • information on how to shop around • other web support tools 	<p>Inform and assist the customer regarding where they can go next to action the information and guidance they have been given</p>
<p>Give the consumer a record, which sets out: the relevant options and key facts and consequences of each, information on next steps and appropriate signposting to further sources of information, guidance or advice.</p>	<p>We had not suggested this, but think it is a good idea.</p>

Content of the guidance (delivery standards)

Finally, the FCA went into some detail on the content of the guidance, in much the same way as we set out some more details under what we labelled “delivery standards”. These were divided into thematic sub-sections.

- Delivery of guidance (what we labelled quality and consistency):

<p>The delivery partner must ensure that the consumer experience of the guidance is consistent and of good quality across the range of delivery channels.</p> <p>The delivery partner must deliver the guidance with due skill, care and diligence.</p> <p>The delivery partner must not recommend specific products, providers or financial advisers to the consumer or sell any products directly or indirectly to the consumer.</p>	<p>Impartial, technically correct, current, clear, and relevant to customer’s personal circumstances</p> <p>Clear methods of ensuring that guidance is delivered to consistent levels</p>
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- Complaints management:

<p>The delivery partner must establish an appropriate complaint management system to investigate complaints arising in connection with the delivery of its service.</p> <p>For complaints beyond resolution or scope of delivery partner, HMT will create an independent adjudicator function, to which these complaints can be escalated as appropriate.</p>	<p>[The Guidance] makes clear to customers what is being offered, its limitations, and available recourse in the event of detriment;</p> <p>Process to ensure that guidance provided is correct and has been helpful to customer;</p> <p>Process in place to monitor competence standards for those involved in guidance process.</p>
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- Communication:

<p>The delivery partner must have due regard to the needs of the consumers using the service and communicate in a way that is clear, fair and not misleading.</p>	<p>Methods of communication appropriate for customer</p> <p>Customers know what their retirement options and choices are as a result of guidance provided to them</p>
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- Guidance input (what we had termed “appropriate information gathering”):

FCA Standards	What the CII had proposed
<p>The delivery partners must agree the information (pension entitlement and other personal and financial details) that will be requested during the guidance session.</p> <p>The delivery partners must use this information when developing the content of the session, as well as the tools that will support the range of delivery channels, such as web pages.</p>	<p>Process clearly stated, and information easily accessible by customer</p> <p>Provides the relevant information needed to understand customer's financial position</p>

- Systems and controls:

<p>The delivery partner must establish and maintain such systems and controls as are appropriate to ensure that it meets its obligations under these standards, as well those applicable to its operations more generally, including protection of consumer information (e.g. Data Protection Act).</p>	<p>Robust processes in place to ensure effective record keeping of guidance provided to individual customers and data gathered</p>
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- Professional standards (what we had termed “knowledge and understanding”):

<p>The delivery partner must ensure that all those fulfilling [the below roles] are competent and have sufficient knowledge and expertise to deliver the guidance or design any processes or tools:</p> <ul style="list-style-type: none"> • delivering the guidance over the phone or in person; or • approving the design of any processes and tools, including web-based material. 	<p>Clear roles and responsibilities</p> <p>Staff trained, and regularly monitored and assessed as remaining competent</p>
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FCA requirements for regulated firms

The FCA consultation also covered the role of regulated financial services firms, and set out rule changes that will apply to contract-based pension schemes and retirement income providers. They set out proposals on how their regulation of activities relating to pension and retirement provision should adapt to facilitate the Guidance implementation to provide adequate information.

Signposting customers to guidance

The FCA indicate that signposting is about more than simply referring to the existence of the Guidance Service. They propose that in signposting their customers to the Guidance Service providers should:

- Clearly set out that the guidance is available and that it is a free impartial Guidance Service to help consumers understand their options;
- Show clearly how the Guidance Service can be accessed by giving the website details and phone number² and making it clear that face-to-face guidance is available to those who want it; and
- Provide the customer with the information they will need to make an informed decision about that pension pot (either with or without use of the guidance).

Format for signposting: the regulator suggested waiting for the Guidance Service to develop before considering a standardised, separately branded, format to facilitate the interface with the Guidance. For example, it may be possible for firms to provide this information by email in a format that can be easily uploaded to the Guidance Service systems. Developing a template should be something the delivery partners and the industry—both contract and trust-

based—should work on together to put in place as soon as they are able. As this work continues, the FCA will decide whether the use of such a template should be required under the Handbook or whether the industry and the delivery partners have developed an appropriate market solution that firms could follow.

Timing of the signpost

The COBS provision of the Wake-Up Pack is the opportune time to signpost customers to the guidance. This means that:

- providers will have to signpost the customer to the Guidance 4-6 months before their *intended, nominated or selected retirement date* (the date selected by the customer either at the outset of the pension contract or since);
- this is unless the customer has requested a statement in the past 12 months;
- providers will also have to remind the customer at least 6 weeks before the intended retirement date; and
- a signpost to the Guidance will also have to be made if customers contact the provider to access their pension fund prior to receiving a Wake-Up Pack. This will minimise the impact on firms as they can integrate it into their existing processes.

For customers who have received a pack absent of a Guidance signpost (for example in the final months to April 2015), the FCA propose a transitional provision to ensure those who receive their wake-up packs before April 2015 still receive the signpost information at the six week reminder date. The service will be highlighted in the MAS leaflet that is referred to in the rules on the information to be included in the Wake-Up Pack.

Preventing the guidance being undermined

Pension providers, trustees and employers are likely to remain the first point of contact for their customers when they are starting to think about taking their pension. The regulator states that “it is right that providers should be able to speak to their customers about their options in general and about the products they can offer.”

However, the FCA reflected many stakeholders’ concerns that providers may seek to circumvent the spirit of the Guidance Guarantee, and for this reason stated that “this kind would likely be a breach of the requirement to act in the best interests of customers (the client’s best interest rule in COBS 2.1.1R) and the principle to treat customers fairly” and proposed to add guidance setting out that “firms should not do anything to actively discourage their customers from taking the guidance.” This would include:

- holding themselves out as providing the Guidance Guarantee themselves;
- suggesting the Guidance is unnecessary or not useful; or
- obscuring the information that customers need to enable them to access the Guidance.

Next steps

The FCA consultation closes on 22 September: it sets 19 questions for stakeholders including financial services firms. After this time, the FCA will set out final standards and rules in late autumn. The near-final rules concerning the levy is expected in the FCA annual consultation in October.

Meanwhile the Treasury and Department for Work and Pensions will be taking forward two pieces of legislation: the *Pensions Schemes Bill* and the *Pensions Tax Bill* which will implement the reforms, and be publishing a progress update in the Autumn.

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