



House of Commons
Work and Pensions Committee

**Pension freedom
guidance and advice:
Financial Conduct
Authority Response to
the Committee's First
Report of Session
2015–16**

**Fourth Special Report of Session
2015–16**

*Ordered by the House of Commons
to be printed on Wednesday 6 January 2016*

HC 719
Published on Friday 8 January 2016
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

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Fourth Special Report

The Work and Pensions Committee published its First Report of Session 2015–16, *Pension freedom guidance and advice* ([HC 371](#)), on 19 October 2015. The Financial Conduct Authority’s response was received on 23 December 2015 and is appended to this report.

The Government previously published its response to the Committee’s report, as a Command Paper ([Cm 9183](#)), on 17 December 2015.

Appendix: Financial Conduct Authority response

Introduction

- 1.1 The Financial Conduct Authority (FCA) welcomes the Work and Pensions Committee’s Report on pension freedoms (the Report).
- 1.2 The Report makes several recommendations which relate specifically to the FCA. We have set out in this document our initial response to these recommendations, and, where appropriate, we describe our next steps in implementation. Our response also includes some comments on several other sections of the Report which touch on issues of relevance to the FCA.
- 1.3 The FCA regulates personal pensions, stakeholder scheme providers, work-based personal pension schemes and advice in the pensions market. We have the power under legislation to set minimum standards and rules. Firms have to meet these standards and comply with FCA rules and principles; we supervise this using a range of tools including firm-by-firm supervision, sectoral analysis and consumer insight surveys, complaints reporting and firm data, thematic reviews and studies of competition in the market.

Pensions data

- 2.1 The Committee recommend that **‘government publish, or require its regulators to publish, statistics on Pension Wise and the advice and pensions markets on a quarterly basis’**. (Para 17).
- 2.2 We agree with the Committee that further data would assist with effective scrutiny of uptake of the pension freedoms. In our Retirement Income Market Study (‘the Market Study’), published in March 2015¹, we stated that we would monitor “the market to track market developments, consumer behaviour and outcomes, as well as the take-up of the Pension Wise service”. In order to achieve this, we continue to collect a range of data to ensure that our work is

¹ MS14/3.3 Retirement Income Market Study published 26 March 2015 - <https://www.fca.org.uk/your-fca/documents/market-studies/ms14-03-3>

fully informed on the operation of the market, some details of which are set out below.

- 2.3 In mid-September, we published our first data collection report, outlining our findings on the barriers that customers face when seeking to access the pension freedoms². The Pensions Regulator (TPR) published the results of its data collection at the same time, and these contributed to the Government's consultation on pension transfers and early exit charges. We are awaiting the outcome of this consultation, at which stage we will consider any appropriate next steps in light of relevant data.
- 2.4 We will publish our next set of data on the uptake of the Pension Freedoms in early January, and then at regular intervals going forwards. The publication of full statistics on the uptake of Pension Wise is a matter for Government.
- 2.5 Going forward, we are collecting sales data for those customers who have accessed their pensions either as regular income or lump sum withdrawals e.g. annuities, drawdown and Uncrystallised Funds Pension Lump Sum (UFPLS). The data breaks down by pot size, age of consumer, whether the sale was advised and the product options selected e.g. joint life annuity. We are also asking for data on the size of firms' back books of pension business in order to put the sales in context. We will publish summary statistics on all of our data collections in this area.
- 2.6 Additionally, we developed a survey to capture information on charges on decumulation products. We sent this data request to firms on November 25, and will publish the findings in Q2 2016.
- 2.7 In the broader context of the retirement market, in April this year we announced our intention to conduct the Retirement Outcomes Review³ in the first half of 2016 as a follow up to the Market Study. Within this, we will repeat the quantitative consumer research we undertook as part of the interim phase of the Market Study but we will update this to take account of market developments.

Scams

- 3.1 The Committee recommend that **'the FCA tighten its scam awareness and reporting requirements for regulated firms'**. (Para 25). We agree with the Committee that scams have a very significant impact on those affected, and should not be accepted as a 'fact of life'. We welcome the Committee's commitment to continue to monitor activity in this area.

2 Pension freedoms data collection exercise: analysis and findings published 16 September 2015 - <https://www.fca.org.uk/news/pension-freedoms-data-collection-exercise-analysis-and-findings>

3 Announced in our 2015/16 Business Plan - <http://www.fca.org.uk/static/channel-page/business-plan/business-plan-2015-16.html>

- 3.2 We take scams and the risk of scams very seriously and we welcome the Committee's positive comments on our work to promote awareness, in particular our ScamSmart campaign.
- 3.3 We work with firms to ensure that they are taking the necessary steps to protect consumers. As part of our ongoing supervision activity, we review pension advice provided by firms and individuals to confirm the appropriate steps have been taken to ensure suitability and good outcomes for customers. We have developed specific literature for authorised pension providers to distribute when their customers approach them seeking to transfer their pension to self-administered schemes. We will also continue to assess the issues raised in our 2014 review⁴ of firms' annuities sales practices.
- 3.4 Our Unauthorised Business Department (UBD) takes action against firms and individuals who undertake regulated financial services business without authorisation. This includes unauthorised financial advice and some of the underlying investment schemes present in pension unlocking activity.
- 3.5 The UBD can use a number of enforcement tools to tackle those engaging in unauthorised business, including civil court action to halt activity and freeze assets, insolvency proceedings and, for the most serious cases, criminal prosecution. So far in 2015 UBD has secured, in total, 11 convictions in criminal proceedings with combined custodial sentences totalling 55 years across all of our work.
- 3.6 More generally, we are co-ordinating efforts across our supervisory, intelligence and enforcement functions in relation to pensions and continuing to work closely with other regulators and law enforcement agencies to tackle this problem. We are actively involved in cross-government initiatives including Project Bloom. This multi-agency project seeks to share expertise and maximise impact by delivering a more closely coordinated approach to reducing the harm caused by pension liberation schemes.
- 3.7 We recognise that pensions unlocking is closely linked to the fraudulent investment schemes where the funds often end up. Not all of these schemes fall within the FCA's remit and we work closely with the Police, the Insolvency Service, the Serious Fraud Office and other law enforcement agencies. For example, we support Operation Broadway which is a City of London Police led initiative targeting criminals carrying out investment frauds.

Pension Wise

- 4.1 The Committee recommend that **'the FCA strengthen its rules and guidance for pension providers around Pension Wise signposting and risk warnings;**

⁴ See Annuities Sales Practices, December 2014: <http://www.fca.org.uk/static/documents/thematic-reviews/tr14-20.pdf> and also Thematic Review of Annuities, February 2014: <http://www.fca.org.uk/static/documents/thematic-reviews/tr14-02.pdf>

and assure compliance through mystery shopping exercises. The Committee further recommend that **‘the number and proportion of customers that contact Pension Wise having been signposted there by each provider should be tracked and published in regular statistics’** (para 32).

- 4.2 We reviewed our rules on retirement risk warnings as part of our Consultation Paper on the pension reforms (CP15/30), published in October⁵. In this, we made clear that we considered the risk warnings remain an appropriate response to our concerns, although we are consulting on removing the requirement for firms to use the question and answer part of the process for pots of less than £10,000 where there are no safeguarded benefits. Instead, firms will be required to give more generic risk warnings that are appropriate to the way in which the consumer is accessing their savings.
- 4.3 We have been monitoring the delivery of risk warnings through our ongoing supervisory work. Thus far, we have found that firms have put in place clear processes to deliver the relevant risk warnings, and they are being delivered at the appropriate time. However, we found that the format in which they are being delivered varies, and we have identified examples of good, poor and non-compliant practice which we believe have an impact on the effectiveness of risk warnings. For example we believe that some firms are not personalising warnings sufficiently, and therefore consumers are unable to understand how the risks apply to them. Firms adopting better practices are using follow-up questions in calls to ensure that customers fully understand the warnings. We have provided feedback to firms, where necessary, asking them to address our concerns, and we will continue to monitor this.
- 4.4 We use mystery shopping as a part of our supervisory toolkit. This allows us to observe how firms interact with consumers and provide insights that may not be available through other means. We have assessed, and continue to assess the signposting of Pension Wise through other tools, including reviewing the documents that firms give to customers and listening into calls.
- 4.5 The role of the FCA with regard to Pension Wise is to monitor the Pension Wise Designated Guidance Providers’ (DGPs) compliance with our standards. We are considering using mystery shopping as part of our supervision of DGPs. Thus far, we have found the DPGs to be complying with our standards, but we will continue to monitor this. HM Treasury collect data on the use of Pension Wise, and so the publication of this sits with them.
- 4.6 The Committee recommend that **‘the Government work with the FCA and guidance providers to develop a more holistic Pension Wise service that offers more personalised support’** (Para 37). We are supporting government work to develop the service, including options to make the service more

5 CP15/30 Pension Reforms – proposed changes to our rules and guidance, published 1 October 2015
<https://www.fca.org.uk/news/cp15-30-pension-reforms>

personal. In particular we are helping HM Treasury identify where possible changes could be achieved within our existing rules on the advice/guidance boundaries and where changes fit within our standards or, where appropriate, where changes to our standards should be considered to allow the improvements.

- 4.7 The Committee recommend **‘that the Government announce a clear timetable for a pensions dashboard’ (Para 39)**. As we discussed during our oral evidence to the Committee, we support work towards a pensions dashboard. This was recommended in our Retirement Income Market Study and is being taken forward by DWP alongside industry. We are one of a number of interested stakeholders and we will provide the necessary regulatory support for the introduction of such a system.

The advice market and regulatory clarity

- 5.1 The Committee express concern about the provision of guidance and advice for those accessing the new freedoms, and **‘the provision in the middle ground between free guidance and traditional but expensive face-to-face advice’ (paragraph 59)**. The Committee’s view is that it is the role of the regulators **‘to enable innovation and market entry by adapting to the changed circumstances (paragraph 60)’** This is part of our role, alongside consumer protection and promoting competition. We note that enabling innovation and market entry is one feature of well-functioning markets. As part of our drive to encourage innovation in the interests of consumers, we set up Project Innovate last year. Thus far, we have supported over 175 firms and held a robo-advice forum looking at automated advice models.
- 5.2 The Committee believes that **‘Understandably risk-averse providers are hesitant to bring new advice or pension products to market because of insufficient clarity surrounding the regulations that govern their operations’ (paragraph 61)**. Thus far, this is not our experience. We note that providers did not introduce new products at the start of the freedoms, but this is largely due to the significant changes required by industry in order to get ready for the changes required, and uncertainty about how consumers would respond. Now that providers have had time to see the freedoms bed in, we are starting to see new products emerge and examples of automated advice models are starting to come on stream. We are supporting providers with this process, through supervision, Project Innovate, which particularly supports new advice platforms, and the Financial Advice Market Review (FAMR), which we jointly chair with HM Treasury.
- 5.3 The Committee recommend that **‘the Government and the FCA, as part of the Financial Advice Market Review (FAMR) clarify the distinction between guidance and advice; the definitions of safeguarded benefits; and protections in providing advice to insistent clients’ (paragraphs 63 and 64)**.

The FAMR call for input, published jointly with HM Treasury in October⁶, acknowledges that consumers as well as firms may struggle to understand the distinctions between different types of advice. The FAMR is seeking views on whether consumers understand the language used in this area and aims to address this question directly as part of the review, with the intention of making recommendations ahead of the Budget in 2016.

- 5.4 Safeguarded benefits are defined in the Pension Schemes Act 2015 as benefits other than money purchase or cash balance benefits. Providers have asked us and DWP for clarification of whether or not certain guarantees should be considered safeguarded benefits. Our rules refer to the statutory definition, and therefore it is for DWP to clarify the definition, which would assist providers. The DWP have published a consultation on possible simplification to the valuation of pensions with a guaranteed annuity rate (GAR) for the purposes of the advice safeguard. We are working with DWP to produce further information on the definition of statutory benefits.
- 5.5 We published a factsheet on insistent clients in June 2015⁷, which clarified our expectations for advisers. Nonetheless, we are aware that advisers remain concerned about how they should treat insistent clients. Our current pensions consultation paper (CP15/30) requests further views from advisers on how we could amend our rules to provide more certainty and why advisers consider that professional indemnity insurance acts a barrier to undertaking insistent client transactions. We are mindful that FAMR will be looking more broadly at the issue of financial advice, and we will be feeding a range of data into this, including our work on insistent clients.
- 5.6 The Report recommends that **‘the FCA bring forward new stronger rules and guidance for standardised language, and transparency in pricing, for pensions and associated advice.’** Once in place, the Committee recommends that **‘these rules are strictly enforced’** (paragraph 65).
- 5.7 The issue of jargon and technical terms is not new in the pension and retirement environment, but the pension freedoms have led to the introduction of new terms such as UFPLS. We know that all too often consumer communications are technical, making it difficult for consumers to understand the information. It is essential that information empowers consumers to make informed decisions about products and services.
- 5.8 Our Discussion Paper on smarter communications⁸ looked at how industry, regulators and consumer organisations can work together to deliver

6 Financial Advice Market Review (FAMR) Call for input published 12 October 2015 - <https://www.fca.org.uk/your-fca/documents/famr-cfi>

7 FCA Factsheet No.035 published 8 June 2015 - <https://www.fca.org.uk/static/documents/factsheets/fs035-pension-reforms-insistent-clients.pdf>

8 DP 15/5 – Smarter Consumer Communications: <http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html>

information to consumers in smarter and more effective ways. We have challenged industry to look at language and terms, reducing the jargon to make consumer communications easier to understand. To deliver this, we are working with the industry and the Association of British Insurers (ABI) on this through their Pension Language Steering Group, which aims to produce the first version of a Common Protocol by the end of the year. We remain committed to an industry-led solution, but along with Government we stand ready to act if this does not prove forthcoming.

- 5.9 The Committee recommend that, **where [Government and FCA] data point to clear problems and potential remedies, they should act more quickly than their review timetables imply where our data point to clear problems and potential remedies (Para 67).**
- 5.10 We recognise the Committee’s concerns about the need for the FCA to act quickly in the face of evidence of consumer detriment. We agree that it is vital to respond swiftly to significant risks, and we are working to ensure that FCA resources are in place to allow us to do so. Nonetheless, we must make sure that any work that we do is proportionate, rooted in evidence, and fits with our statutory objectives.
- 5.11 While we have focused our resources on our key priorities, we have retained greater flexibility to use resources on emerging issues when necessary and therefore the option to act swiftly where needed. When considering any intervention, we aim to use the most appropriate tool in pursuit of our objectives. This will be proportionate to the issue and could range from changes to our Handbook to enforcement action.

Long-term concerns

- 6.1 The Committee recommend that **‘legislation for default [decumulation] options only be introduced if long-term monitoring of the consumer outcomes from pension freedom indicates that it is necessary’ (Para 75).** Providers are offering default options as part of auto-enrolment, and this tends to be drawdown. However, as part of the pension freedoms, consumers are not required to take any particular option, and are encouraged to explore the whole range of options open to them.
- 6.2 We continue to emphasise the importance of consumers shopping around to look at all the options. In our recent pensions consultation paper⁹ we consulted on rules requiring timely, relevant and adequate information to allow for and encourage shopping around.
- 6.3 Our CP also contained a discussion section on lifestyling investment strategies, which are designed to automatically switch investment to less volatile assets in

9 CP15/30 Pension Reforms – proposed changes to our rules and guidance, published 1 October 2015
<https://www.fca.org.uk/news/cp15-30-pension-reforms>

the years approaching a customer's selected retirement date. This reminds firms of their responsibilities to ensure that any such investment strategies remain appropriate in the new environment, where they will likely need to reflect the greater number of options around retirement and therefore the increased uncertainty over consumer behaviour at retirement. Firms will also need to provide customers with sufficient information to help them make an informed decision about the suitability of their current and future investment strategies.

- 6.4 The Committee state that they **will continue to consider the impact of the pension freedoms during this Parliament (paragraph 77)**. We agree with the Committee that the provision of guidance and advice is crucial to the success of the freedoms and look forward to working with the Committee again on this in the future.