

SPP response to the FCA discussion paper

“DP23/5: Advice Guidance Boundary Review – proposals for closing the advice gap”

1. Introduction

- 1.1. Many Society of Pension Professionals (SPP) members, including trustees of DC occupational schemes that do not have FCA-authorisation, have previously indicated that the existing advice boundary can sometimes act as a constraint on the services and support they are able to provide. As a result, SPP supports the FCA decision to review the guidance and advice boundary and welcomes the opportunity to respond.
- 1.2. Rather than commenting on the many aspects of the review, SPP has restricted its comments to those most relevant to the pensions industry i.e. Is there a role for the 3 proposals (further clarifying the boundary, targeted support, and simplified advice) outlined in the consultation document?

2. Executive summary

- 2.1. **SPP agrees that further clarifying the boundary could be helpful for some including smaller firms, ‘start ups’ and pension trustees.**
However, SPP does not expect this to materially affect larger, more established firms assessment of what constitutes guidance compared to regulated advice
- 2.2. **SPP believes that the FCA’s proposal to create a new targeted support regime, which sits between guidance and regulated activity, could create an opportunity for firms to be able to better support consumers but only if properly considered and carefully implemented.**
- 2.3. **SPP supports the idea of simplified advice in principle.**
However, SPP believes that greater clarity is needed on the scope/nature of products and services that may be advised on under this proposal.

3. Consultation response

- 3.1. **Proposal 1 – Further clarifying the boundary**
- 3.2. SPP agrees that further clarifying the boundary could be helpful for some including smaller firms, ‘start ups’ and pension trustees. However, SPP does not expect this to materially affect larger, more established firms assessment of what constitutes guidance compared to regulated advice
- 3.3. As the FCA knows, the boundary for investment advice is not relevant to trustees of occupational pension schemes when they are providing support to members about the options available to them but as noted in the discussion paper, *“The boundary may become relevant if the trustees (or any other person) are, for example, steering a member towards an FCA-regulated product...”*

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- 3.4. It is therefore vitally important that pension trustees receive clear guidance if the advice and guidance boundary is to be properly understood and uniformly applied. The discussion paper references the joint TPR and FCA guidance published in 2021, but this still left trustees to determine for themselves where the line between information and promotion or advice is. To maximise the chances of success, any clarification should address that omission.
- 3.5. SPP very much agrees that better guidance is needed for pension trustees and that this must be considered in light of the Department for Work & Pensions (DWP) proposals on decumulation, to ensure that guidance and expectations are aligned.
- 3.6. SPP is pleased to note that the FCA has indicated in DP 23/5 that it intends to work closely with the DWP as their respective work progresses. However, on previous occasions joint working has not necessarily led to regulatory alignment, instead resulting in varying requirements. For example, the stronger nudge to pensions guidance. As a result, SPP trusts that such misalignment, regardless of how minor it is perceived to be, will be avoided here.
- 3.7. **Proposal 2 – Targeted Support**
- 3.8. SPP believes that the FCA’s proposal to create a new targeted support regime, which sits between guidance and regulated activity, does create an opportunity for firms to be able to better support consumers, if it is given due consideration prior to implementation.
- 3.9. It is imperative that the opportunity for inappropriate business proposals from ‘bad actors’ are mitigated and clear rules are set by the FCA.
- 3.10. To ensure that firms are able to best support all types of consumers, this should not be limited to an 'opt in' model and firms, who wish to, should be permitted to embed this within their service. Focusing only on those who have opted in means that support can only be provided to those who are sufficiently engaged to 'opt in' and is likely to have a disproportionate impact to some groups of consumers, such as those who have been automatically enrolled into their pension.
- 3.11. If the rules permitted firms to target groups of consumers with the aim of them avoiding a wide range of foreseeable harms ranging from unsustainable withdrawals to highlighting withdrawals which trigger tax liabilities, in order for firms to be able to successfully implement this, further detail will be required from the FCA in a number of areas.
- 3.12. For example, information about the products and investments covered, greater detail on the types of support that might be offered (including specific guidance targeting pension trustees) and the nature of any customer facing disclosure requirements.
- 3.13. Further exploration of the concept of “people like you” will also be needed to enable firms to determine whether their existing target market assessment process is sufficient for these purposes.
- 3.14. SPP acknowledges that there will be some concerns about consumers investing potentially life-changing sums of money in investment products because “people like you” have done so and that doing so risks a new wave of mis-selling scandals. There is a risk, albeit small, that the same could be said in the pensions market. This must be guarded against by ensuring proper checks and balances (see 3.17 below) to avoid any repeat of the pension mis-selling scandals of the past.

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- 3.15. The FCA has indicated that it does not expect the offer of targeted support to affect firms' existing obligations. However, in order to give firms the necessary clarity in navigating their existing regulatory obligations against their options under this proposal, a clear articulation from the FCA will be required on its view of how "targeted support" exceeds the existing regulatory perimeter – and in particular the interplay with the concept of a "personal recommendation" given that a semi-personalised recommendation will be being provided based on "similar" individuals.
- 3.16. It would be useful to have clarification on the FCA's expectations of how targeted support will be an improvement on authorised firms' existing responsibilities under the Consumer Duty, particularly in the context of the existing duty to avoid causing foreseeable harm to customers.
- 3.17. Were the FCA to introduce a new regulated activity, or a sub-permission within the current RAO 2001 "advising on investments" activity, firms would require the FCA to set out a clear regulatory framework in order for them to assess the commercial viability of offering targeted support to customers. The FCA must be mindful that its thresholds and expectations are not disproportionate such as to preclude such parties from offering targeted support, particularly trustees, as this could otherwise also be at odds with the FCA's objective of support being made available to many more mass-market consumers.
- 3.18. The proposals currently indicate that targeted support might be used to support wealth decumulation decisions, whilst also identifying decumulation as too complex a topic to be permitted to provide "simplified advice" under proposal 3. This apparent inconsistency needs to be addressed.
- 3.19. **Proposal 3 – Simplified Advice**
- 3.20. SPP supports the idea of simplified advice in principle but believes that greater clarity is needed on the scope/nature of products and services that may be advised on under this proposal.
- 3.21. As already highlighted, the proposals currently indicate that targeted support might be used to support wealth decumulation decisions, whilst also identifying decumulation as too complex a topic to be permitted to provide "simplified advice" under proposal 3. This apparent inconsistency should be addressed.
- 3.22. SPP recognises the difficulty of creating Handbook rules that capture all information required in situations where simplified advice could be provided, but without regulatory certainty, the risk is that firms may struggle to sufficiently differentiate their own processes for providing "simplified advice" from those in place for "advising on investments". This would mean that it would not be commercially viable for firms to make a "simplified advice" offering that also delivers value for money to customers.

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4. About The Society of Pension Professionals

- 4.1. Founded in 1958 as the Society of Pension Consultants, today SPP is the representative body for a wide range of providers of pensions advice and services to schemes, trustees and employers. These include actuaries, accountants, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and pension specialists.
- 4.2. Thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds.
- 4.3. The SPP seeks to harnesses the expertise of its 85 corporate members - who collectively employ over 15,000 pension professionals - to deliver a positive impact for savers, the pensions industry and its stakeholders including policymakers and regulators.

5. Further information

- 5.1. For more information about this consultation response please contact the lead author Jasmine Smiley or SPP Chief Executive Fred Emden at: info@the-spp.co.uk or telephone the SPP on 0207 353 1688.
- 5.2. To find out more about the SPP please visit the SPP web site: <https://the-spp.co.uk/>
- 5.3. Connect with SPP on LinkedIn at: <https://www.linkedin.com/company/the-society-of-pension-professionals/>
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