THE SOCIETY OF PENSION PROFESSIONALS

making pensions work

The Society of Pension Professionals (SPP) response to the FCA's CP25/17: Supporting consumers' pensions and investment decisions: proposals for targeted support

1. Introduction

1.1. The SPP supports the concept of targeted support for pensions.

1.2. We also agree with the FCA's observation that targeted support is likely to benefit consumers in three main ways i.e. 1) improved alignment of savings decisions and preferences, increasing welfare and, in many cases, return on savings, investments and pensions 2) reduced fees and charges, and 3) an increase in consumer confidence (and financial resilience).

1.3. However, we do have concerns with some of the proposals contained in this FCA consultation document and have therefore sought to highlight potential barriers to success and areas of concern, making various suggestions for improvement as a result.

1.4. We very much hope that the FCA finds the below response of use and would be happy to discuss any of these issues further.

2. Executive summary

2.1. **On balance, SPP members preferred the term "better position" rather than "better outcome".**
This is because 'better position' better described what targeted support is designed to achieve, was easier to measure and reduces the potential for confusion with terminology already in place under the FCA's Consumer Duty.

2.2. **The question relating to whether or not these proposals are sufficiently future proof is fundamentally flawed.**
By its very nature proposed new rules can never be future proof given markets tend to evolve faster than laws, financial products and technology can change dramatically in a relatively short period of time, and asking if proposed rules are "future proof" ignores the reality that the future will likely invent problems we cannot foresee, from unpredictable crises to rapid technological advancements.

2.3. **In some areas, the current proposals will restrict the level of support that could be made available to consumers and could therefore be detrimental to consumers.**
For example, in relation to decumulation and annuities (please see 3.18-2.20 below for further detail).

2.4. **It is important for the FCA to recognise that the majority of pension scheme trustees will lack the resources to set up the systems and gain the authorisations necessary to provide targeted support directly to their members.**
As a result, most will partner with third parties for decumulation solutions. Please see 3.22-3.32 below for further details.

2.5. **It is not clear to the SPP why a recommendation to consolidate into or out of a particular product for the purpose of pension consolidation should be excluded from targeted support**.
In both the accumulation and decumulation phases, consolidation may be an integral piece of any suggestion to achieve a better outcome, the proposals to exclude targeted support in relation to consolidation also appear to be inconsistent with wider policy objectives to promote consolidation and encourage members to seek better value for money. Please see 3.57-3.61 below for further information.

2.6. **There is some concern about the Financial Ombudsman Service (FOS) having jurisdiction over targeted support.**
This stems from the previously unpredictable nature of some FOS decisions e.g. applying latterly set standards retrospectively. It is hoped that the current review of FOS and likely overhaul of the way it adjudicates cases, will go some way to allaying these industry concerns. Please see 3.112-3.113 below for further details.

2.7. **The issue of direct marketing rules represents a tangible barrier to targeted support.**
The SPP believes that there would be significant merit in the development of ICO and/or FCA guidance defining parameters within which a targeted support message (clearly labelled as such) would not be regarded as “direct marketing”. Please see 3.125-3.138 below for further details.

2.8. **The FCA needs to make a clear differentiation between existing authorised firms seeking to add targeted support to their permission, and firms seeking new authorisation to be able to offer targeted support.**
A firm which is already following the rules in COBS, PROD and the Consumer Duty, plus all other relevant rules, should not need to explain how it will take existing rules and apply them to the new proposition. Please see 3.140-3.145 below for more details.

3. Consultation response

3.1. **Q.1 Do you have any comments on our proposed ‘better outcomes’ purpose statement?**

3.2. The purpose statement is useful in outlining the intention and desired outcome for the Targeted Support regime.

3.3. **Q.2 Do you agree with our use of the term ‘better outcomes’ rather than ‘better position’? Would the choice of terms impact when and how you might expect to deliver targeted support?**

3.4. The term 'better position' was probably a better description of what targeted support is designed to achieve i.e. helping customers improve their financial position. ‘Better position’ also appears to be more measurable as it is possible to undertake a comparison as to whether someone is in a better position fairly quickly where as a “better outcome” is something that may not be known for many years.

3.5. The term ‘better outcome’ is also remarkably similar to terminology already in place under the FCA’s Consumer Duty -“better outcomes’ under targeted support and ‘good outcomes’ under Consumer Duty. Using ‘better position’ would therefore appear to provide a much clearer distinction between the two concepts.

3.6. **Q.3 Do you foresee any challenges in meeting the requirements to ensure the suitability of recommendations made through the targeted support framework?**

3.7. There should not be any challenges in meeting the suitability requirements, provided that all parties understand what 'suitability' means in this respect, and provided that the FCA understands that there may well be only a small number of common characteristics for a particular group e.g. a group of existing investors holding high charging funds, or a group of clients holding only cash in their S&S ISA etc.

3.8. **Q.4 When considering our proposals as a whole, are there any proposed requirements you think we do not need, where we can rely instead on the Consumer Duty? If so, please explain why the additional requirements contained in our proposals are not needed.**

3.9. The SPP does not believe there needs to be a requirement to include additional information offered by the customer when determining which segment they would fit into. Where a firm appropriately identifies all including and excluding characteristics for a consumer to fit into a particular segment, we believe that it is very unlikely that there is any additional information that would invalidate that decision.

3.10. **Q.5 Are our proposed rules sufficiently future-proof and outcomes focused to accommodate changes in technology? If not, why not?**

3.11. SPP members felt this question somewhat challenging given it was felt to be fundamentally flawed. By its very nature proposed new rules can never be future proof given markets tend to evolve faster than laws financial products and technology can change dramatically in a relatively short period of time, and asking if proposed rules are “future proof” ignores the reality that the future will likely invent problems we cannot foresee, from unpredictable crises to rapid technological advancements.

3.12. It was broadly agreed that good regulation strikes a balance between resilience and flexibility rather than “future proofing” in an absolute sense and on that basis these proposals appear reasonable providing they can be flexed in the future without the need to start this process again.

3.13. **Q.6 Are there any situations where firms want to deliver targeted support but based on our proposed rules would feel unable to do so? Please explain why.**

3.14. A key objective of these proposals is to enable firms to provide ready-made suggestions to groups of consumers with common characteristics or circumstances.

3.15. We believe that in some areas, the current proposals will restrict the level of support that could be made available to consumers and could therefore be detrimental to consumers.

3.16. Many consumers will hold multiple pension pots from their time with different employers and as highlighted by the FCA, lack access to advice. This includes advice around consolidating their pension pots, which in some circumstances would be likely to provide consumers with a better outcome. The issue of pot consolidation may become more apparent with the future introduction of the Pensions Dashboard.

3.17. While there may be additional aspects that need to be considered when approaching a targeted support solution around pension consolidation, controls could be put in place which would enable support in some circumstances and flag the need for further advice in others.

3.18. We also believe that a similar approach should be taken when it comes to consumers who may wish to consider an annuity when making a retirement income decision.

3.19. The FCA’s data shows that there is a real lack of consumer knowledge and understanding when it comes to making a decision at the point of decumulating pension assets, and many consumers still default into an annuity product without shopping around.

3.20. While it may not be appropriate for a targeted support model to recommend a particular type of annuity, there should be more scope within the final rules to help consumers where an annuity may be the most appropriate option for them. This would provide consumers who wish to consider an annuity with a better experience and provide them with a greater level of information, support and outcome than is received today.

3.21. **Q.7: Based on our proposals in this paper, do pension scheme trustees want to provide a form of support like targeted support to their members? If so, is this support intended solely for "in-scheme" benefits, or does it also include FCA-regulated investments?**

3.22. Many pension scheme trustees are aware of the challenges facing their members (particularly in a DC context) and aim to support those members in making decisions and signposting options, particularly where they are unable to afford regulated advice.

3.23. It is likely that certain pension schemes, such as master trusts and other larger schemes, will welcome the further scope to engage with and support their members under the new targeted support regime, either directly or through partnering with FCA-authorised firms. However, we anticipate that the majority of pension scheme trustees will lack the resources to set up the systems and gain the authorisations necessary to provide targeted support directly to their members. Other pension schemes, although they may have the resources may not wish to do so for other reasons.

3.24. There is a risk that the new targeted support regime could inadvertently make it harder for pension schemes that do not provide regulated targeted support to support their members, by forcing them to take steps to ensure they do not inadvertently stray over the line and provide targeted support in addition to ensuring they do not inadvertently stray over the line and provide advice, particularly where they facilitate access to FCA-regulated products e.g. referring members to a specialist drawdown provider as part of the decumulation options offered by the scheme.

3.25. The SPP would therefore welcome updated guidance from the FCA and TPR on where employers and trustees can provide support on financial matters without needing to be subject to FCA regulation (as issued in March 2021). Pension scheme trustees will need assurances that introducing the new targeted support regime will not inadvertently create uncertainty concerning their ability to support their members or comply with any obligations to provide support in future, particularly the guided retirement requirements under the Pension Schemes Bill.

Guided retirement

3.26. The SPP welcomes the FCA's recognition that its proposals for targeted support will be developing in parallel to the requirements in the Pension Schemes Bill for trustees of relevant schemes to design, and make available, default pension benefit solutions. It is helpful that the FCA has confirmed that:

a) it recognises there are key distinctions between the two regimes – including that targeted support seeks to support consumers in making "informed choices", whereas guided retirement concerns solutions for "consumers that do not or cannot engage";

b) it considers that support that relates solely to 'in-scheme' occupational pension scheme investments will generally not involve trustees carrying out regulated activities without being authorised (or exempt); and

c) the FCA will continue to work closely with TPR and will consider the relevance of its joint guidance.

3.27. As referenced above, there is considerable overlap between the terminology proposed for the two regimes – for instance, the aim to provide a *"better outcome"* for members/ clients, and the requirement to assess whether certain solutions are *"suitable"* for certain groups of members/ clients. There are also several overlapping features across the two regimes – including, identifying consumer segments or "subsets" of scheme membership, pre-defining solutions for those groups, and providing information concerning those solutions with the aim of ensuring they are aligned with the appropriate group.

3.28. The SPP would therefore welcome assurances that the regulation developed and applied to targeted support will not restrict or inhibit the communications in relation to default pension benefit solutions, in the context of that different, mandatory regime.

3.29. In particular, the SPP would welcome further clarification from both the FCA, and TPR, to provide confidence that trustees or providers will not inadvertently breach any new requirements relating to the targeted support framework, when:

a) implementing "transfer arrangements" (as currently provided for in section 43 of the 2025 Bill); and/ or

b) providing and/or gathering of information (under sections 44 and 45 of the 2025 Bill).

3.30. We also note that the FCA has developed specific proposals, and restrictions, concerning how annuities will be addressed under the targeted support regime. Given default pension benefit solutions must be *"designed to provide a regular income"*, trustees will need the flexibility to develop how they use annuities within such solutions. We would therefore welcome clear assurances that the targeted support regime will not constrain the ability of an occupational pension scheme to purchase and hold annuities in the trustee's name as scheme investments on behalf of members.

3.31. The use of innovative solutions involving annuities to help address the longevity challenge in the DC context is likely to be a very important part of the solution to the DC decumulation challenge. It is very important that there are safe spaces for trustees to develop these innovate solutions involving annuities, and enter into arrangements with regulated third parties to implement those solutions, without fear of straying over the line for regulated targeted support or regulated advice. Many trustees will not be willing or able to become regulated for these purposes and it is very important that this does not restrict their ability to provide and communicate solutions involving annuities, whether to be made available in-scheme or through an arrangement with a third party, which would be in their members' best interests and would create better outcomes in the currently under-served area of DC decumulation.

3.32. It would be very unfortunate and contrary to Government policy if the targeted support initiative (which is positive and has great potential to improve member outcomes) were to inadvertently damage member outcomes by restricting member communications and stifling innovation in relation to the use of solutions involving annuities in the very important and evolving area of DC decumulation.

3.33. **Q.9 Do you have any other comments on our proposals around pre-defining situations to provide targeted support?**

3.34. The SPP has no specific comments to make here.

3.35. **Q.10: Do you agree with our proposal that firms can make reasonable assumptions when designing targeted support journeys? If not, why not? In your answer, please set out examples of assumptions you may choose to make when designing targeted support journeys.**

3.36. Yes – the key word here is “reasonable” It would be impossible to do this without assumptions, but it is what reasonable entails that should be considered. Things such as appetite for risk and life expectancy might be examples as will non personal matters such as investment growth and inflation, indeed some things should not be assumed where they may not follow clear trends (wider wealth, dependants). It is vital guidance is provided so assumptions between firms are consistent.

3.37. Regarding 2.58 in the consultation paper, it is important that any assumptions are clearly set out and explained, along with helping people understand how they can choose options that are appropriate if the assumptions are not met for an individual. Not disclosing these should only be an option if carefully considered and justified (if at all).

3.38. Over time AI learning and pooling of behavioural data (such as spending with open banking) could enhance this but care should be taken where such systems could serve to drive decisions.

3.39. **Q.11: How could firms decide between when to make an assumption and when to pre-define a common characteristic of a consumer segment?**

3.40. Where research has determined that there are trends in both needs (perceived or otherwise) aims and beliefs. All assumptions should be evidenced based. Guidance on common characteristics could be provided centrally.

3.41. **Q.12: Do you agree with the rest of our proposals for the design of consumer segments in particular around excluding characteristics and the sufficiently granular principle? If not, what aspects do you consider need to be changed and why?**

3.42. The proposals (and specifically the draft COBS chapter 9B) require firms to define a consumer segment at a sufficiently granular level that enables the firm to assess whether a ready-made suggestion would be suitable for an individual within that consumer segment.

3.43. While definition of the consumer segment involves creation of a *hypothetical* natural person, allocation of a consumer/client to that consumer involves the processing of personal data relating to that *actual* natural person/data subject.

3.44. For UK GDPR purposes the processing activity is highly likely to be regarded as "profiling", defined by UK GDPR Article 4 as: "*any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements*".

3.45. The proposed COBS 9B 4.12 states that "*Firms are reminded of their obligation to comply with the principles of data minimisation and data accuracy in Articles 5 (c) and 5(d) of the General data protection regulation respectively*". This reminder is too narrowly focused and risks misleading firms by suggesting that relevant data protection issues are limited to compliance with Articles 5(c) and 5(d). However, the processing activities required to identify an individual as falling within a sufficiently granular consumer segment will engage other key aspects of UK GDPR – including the requirement to identify and meet transparency obligations in respect of the appropriate lawful basis for processing (under UK GDPR Article 6 and 13 or 14), the need to inform data subjects of their right to object where the lawful basis is "legitimate interests" under Article 6(1)(f) and also of the right to object to processing under Article 21 – which may be a conclusive objection if processing is considered to be for "direct marketing purposes".

3.46. In addition to finding a lawful basis under Article 6, firms may also be required to identify an applicable condition under UK GDPR Article 9 where allocation of an individual to a consumer segment or exclusion of that individual from a consumer segment depends on "special category" data. In our view, Article 9 would be engaged where a firm applies "excluding characteristics" such as a "significant health issue that was likely to affect their individual life expectancy" (para 2.50). Given that obtaining explicit consent is likely to be impracticable in the context of Targeted Support, it is likely that the only potentially available condition would be Article 9(2)(g): "*processing is necessary for reasons of substantial public interest, on the basis of domestic law which shall be proportionate to the aim pursued and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject*". However, the availability of this condition would seem to require legislative amendment in the form of a new paragraph in Data Protection Act 2018, Schedule 1 to ensure that there is a valid basis in domestic law meeting the criteria set out in Article 9(2)(g). Without specific amendment to UK GDPR/Data Protection Act 2018 there would be a material risk that the profiling activities required in relation to "excluding characteristics" would face significant – and possibly insurmountable – challenges in terms of UK GDPR compliance. We would also highlight the need to consider whether the allocation of an individual to a consumer segment is carried out in a way that would constitute automated decision making ("**ADM"**) under UK GDPR Article 22 (and under the revised provisions likely to take effect in December 2025 by virtue of a commencement order in relation to the relevant sections of Data (Use and Access) Act 2025).

3.47. **Q.13: Would it be valuable to produce illustrative case studies to support firms in determining whether consumer segments are sufficiently granular? Would our choice to do this impact your intention to deliver targeted support?**

3.48. Yes, indeed it is essential. Any providers will want reassurance they are doing this correctly. A framework they can use to protect themselves from future criticism and claims (this will be a common theme as well) is essential.

3.49. **Q.14 Do you agree with our proposals around the scope of ready-made suggestions, in particular, our proposal that the targeted support regime only captures support that constitutes a personal recommendation? In your response, please explain whether our proposal impacts how you wish to deliver targeted support to your customers?**

3.50. We agree with the proposal that the targeted support regime only captures support that constitutes a personal recommendation. This is because any other service provided to a customer should either be advice or guidance as already understood and defined. Any service involving full KYC and a personal recommendation for an individual customer will be advice, and any non-personalised service involving the provision of information, prompts, nudges and suggestions, but not recommendations, will be guidance.

3.51. **Q.15: Do you agree with our proposals for targeted support on annuities, including banning suggestions for a particular annuity?**

3.52. Please see our above response to question 7 relating to the potential role of annuities in default pension benefit solutions.

3.53. **Q.16 Do you agree with our proposals for introducing a break between an annuity suggestion and the subsequent sales journey, to encouraging shopping around? If not, why not?**

3.54. The natural journey in this instance is that the customer is directed towards an annuity broking service. Therefore, a break isn't necessary due to the broker undertaking a full customer fact find to determine the right annuity product for the customer's circumstances.

3.55. It is also worth noting our comments above in response to question 7 around the potential role of annuities in default pension benefit solutions.

3.56. **Q.17 Do you agree with our proposal to prevent firms from suggesting consolidation into or out of a particular product for the purpose of pension consolidation? If not, do you see any way in which targeted support could be used to help consumers with decisions about pensions consolidation including when given in conjunction with support that constitutes a personal recommendation?**

3.57. We note that draft COBS 9B.4.32 provides that, "*A ready-made suggestion must not include a recommendation to consolidate any of the pension arrangements that a client holds."* However, it is understood that the intention is that a firm could provide guidance to a consumer as to the merits of consolidation, provided that it does not make a recommendation in relation to consolidation into a particular product (draft COBS 9B.2.6(1)). The SPP would welcome clarification that, under the current proposal, it would be acceptable to recommend consolidation as an outcome of a targeted support journey, provided that this does not involve a suggestion as to which product should be used for the purposes of consolidation (or not, as the case may be).

3.58. On the wider question, it is not clear to us why a recommendation to consolidate into or out of a particular product for the purpose of pension consolidation should be excluded from targeted support. While we recognise the concern that providers of targeted support may be indirectly incentivised to recommend their own products, this concern is not specific to consolidation. It has been proposed that SYSC 3 and 10 are sufficient to address this concern more widely, and there does not appear to be any clear logic for taking a different approach in relation to consolidation.

3.59. In both the accumulation and decumulation phases, consolidation may be an integral piece of any suggestion to achieve a better outcome, and this restriction blurs the boundaries of what can and cannot be included in a suggestion. Indeed, it could lead to anomalous situations. For example, a member with a single pension pot could be recommended a particular drawdown product, but a member with two pension pots could not (or could only be given the recommendation in relation to a single pension pot and with no guidance on consolidation, as providers may be concerned that this is too closely connected to the targeted support recommendation). This could lead to disparate levels of support for different members and leave those who need to make more complex decisions with a lower level of support.

3.60. The restriction also appears to be inconsistent with wider policy objectives to promote consolidation and encourage members to seek better value for money. The restriction would prevent members being given targeted support to identify the “best value” of their current pension arrangements (or an alternative better value arrangement) for the purposes of consolidation.

3.61. Performance metrics for pension arrangements around charges and investment returns are capable of objective verification and would provide a basis for reporting on and reviewing recommendations made through targeted support. In due course, the value for money framework would assist with this.

3.62. In the SPP’s view, targeted support could extend to consolidation, provided appropriate safeguards are in place (e.g. conflict management procedures, clear and transparent member communications, and FCA supervision). We think these customer protections should be enhanced by duties on the firm to (i) ensure they only direct individuals to destinations which, objectively, are designed to provide best value for money; (ii) report on the percentage of recommendations directing individuals to a provider’s own products; and (iii) report (e.g. to the IGC) as to how they remain consistent with Consumer Duty obligations. It is highly likely that an individual’s current workplace arrangement will be providing best value for money, and more innovative investment approaches, particularly in the period until providers are able to arrange bulk transfers from aged defaults without consent. The FCA could therefore consider a principle that a firm would have to provide additional rationale where recommending consolidation into a fund other than an individual’s current active arrangement.

3.63. If the FCA does not consider it appropriate to permit targeted support to be provided in relation to consolidation at this stage, the SPP would suggest that this be kept under review and reconsidered when the new Value for Money framework is in operation, as this will provide a clear basis on which targeted support recommendations as to consolidation could be justified.

3.64. **Q. 18: Do you agree with our proposal to exclude investments subject to marketing/distribution restrictions from the targeted support proposals, except where a component part of a suitable investment provides exposure to these products? If not, why not?**

3.65. Yes, the SPP agrees with this proposal. Pensions may be underpinned by illiquid assets but packaged appropriately. This should only be undertaken where there is regulatory oversight of the packaged product.

3.66. **Q.19: If high-risk products were included, what products should be included? How would firms ensure the suitability of suggestions given these suggestions would be designed for consumer segments based on limited data?**

3.67. As per question 18 some suitable options may include higher growth assets with associated risk profiles e.g. stocks and shares ISAs or pension funds that invest in infrastructure or unlisted equities. This may be appropriate, and indeed it could be a worse outcome for people to use options where lack of growth potential brings about inflation risk. Regulation of the products in question should cover this i.e. recommending a regulated pension investment option with a proportionate exposure to these assets is likely be acceptable whereas recommending investment in cryptocurrency is probably not. A grey area is self-select funds within a regulated product. These product providers should highlight solutions for use in this manner - avoiding extremes – i.e. an adventurous fund that invests in an LTAF may be acceptable, but the LTAF itself may not be.

3.68. **Q.20 Are there specific situations where firms might hold other information not covered by excluding characteristics that would render ready-made suggestions unsuitable?**

3.69. We agree with the observation at para 2.99 of the consultation that; *“If firms establish their excluding characteristics correctly, there should not generally be other information that would render a ready-made suggestion unsuitable, but this will be for firms to determine in light of the particular context”.* We do not have any specific situations to suggest.

3.70. **Q.21 Do you agree with our proposals for firms handling additional information volunteered by consumers during the targeted support journey?**

3.71. We note the observation at para 2.101 of the consultation paper that, *"a firm appropriately pre-defining the common characteristics (including and excluding) of their consumer segments should mitigate some of the risk that firms encounter information in the course of providing targeted support that would result in the firm having to conduct real-time assessments".* However, we see no viable alternative to the proposal set out at para 2.102 – not least because additional information volunteered by consumers during the targeted support journey might have a bearing on the firm's continuing ability to meet the purpose test for UK GDPR purposes and (as a result) could call into question the continuing validity of their lawful basis for processing and of any condition relied upon in relation to special category data (for example, a positive change in a person's health might result in their no longer having an "excluding characteristic").

3.72. **Q.22 Are there any other aspects of our proposed approach to the verification process which you consider need to be changed? Please explain your rationale.**

3.73. The principal change (explained in our response to Q43 below) would require conformation (whether through legislative amendment or through Information Commission guidance) that the design and verification process relating to targeted support should be regarded as a "regulatory communication" and not as direct marketing.

3.74. This is clearly important in relation to the actual sending/transmission of targeted support and the operation of the direct marketing rules set out in the Privacy and Electronic Communications Regulations 2003 (**PECR**).

3.75. However, it is essential to note that the processing activities required to identify an individual as falling within a consumer segment would constitute "profiling" and would fall within the wider concept of "direct marketing purposes" under UK GDPR, engaging the individual's absolute right to object under UK GDPR Article 21(2). PECR operates as *lex specialis* in relation to UK GDPR, applying and prevailing over UK GDPR only at the moment of sending/transmission of unsolicited direct marketing by electronic mail. The greater part of the processing activities relating to targeted support will be subject to UK GDPR and so the design and operation of targeted support must address the question of whether data acquisition, preparation and analysis for the purposes of targeted support must be treated as "direct marketing purposes".

3.76. **Q.23 Do you agree with our intention around leveraging PROD and Consumer Duty to ensure consumer protection and that targeted support services are of high quality?**

3.77. Yes, we agree with the proposals to leverage PROD and the Consumer Duty as part of targeted support.

3.78. **Question 24: Do you agree with our proposal on monitoring outcomes and identifying significant adaptations of products? If not, why not?**

3.79. The SPP does not have a particular view on this question

3.80. **Q.25 Beyond monitoring outcomes, are there any specific areas, with reference to our draft Handbook proposals, that you wish to provide comments on?**

3.81. We do not have any other specific areas within the draft Handbook proposals that we wish to comment on.

3.82. **Q.26 Do you agree with the information that we are proposing firms would be required to disclose as part of a targeted support journey? Are there any additional aspects you think firms must disclose, for example, any reasonable assumptions made?**

3.83. We agree that it is beneficial to disclose information as part of the targeted support journey within the communication process and agree with the proposals put forward.

3.84. However, for targeted support to be effective, advising consumers of the characteristics which led to them receiving the support should perhaps extend also to what is not used. As highlighted in our response to Question 21 of the initial consultation paper (CP24/27), each provider will only see part of a picture at any one time, rather than having a more holistic view of an individual's relevant data[1].

3.85. Furthermore, the premise of targeted support – that consumers are grouped together by common characteristics – allows for different characteristics to be used things for different products, even with the same provider.

3.86. Focusing on this aspect, it is accepted that individuals will have multiple pension pots over the course of their working life – and all potentially with different providers. There is a danger that, whilst targeted support is not intended to lead to homogenised output, differentiated only by branding, the *perception* of consumers could be that things are interchangeable – so a piece of targeted support on one pension plan could be viewed as being applicable to another (even if no such targeted support from any other plan has been issued).

3.87. There is therefore some merit in the idea of including some of the common characteristics that have not been used, alongside those that have. This would have the benefit of allowing consumers to compare targeted support communications across providers, to better inform them of where something is relevant. By way of example – grouping smokers together is likely quite relevant for annuity purchases – but perhaps less so for those same individuals when considering changing contribution rates. The 'things not considered' list does not have to be exhaustive (in the same way those that are used is not expected to be) – but would provide relevant information to consumers, especially if they then go on to seek paid-for advice.

3.88. It is also worth highlighting a point made in the FCA findings from the behavioural research – that in *the investment experiment, participants found targeted support more supportive, easy to understand and clearer than guidance.* There is a challenge to ensure it is clear to consumers where targeted support sits within the overall advice/guidance framework – and for it to be seen as complimenting, rather than supplanting, more tailored services.

3.89. With regards to assumptions, whilst the SPP agrees in principle that disclosing assumptions has some benefit, care needs to be taken to strike the balance between presenting assumptions which could impact actions taken; assumptions which are relevant, meaningful and would be understood by consumers and assumptions which providers can demonstrate some evidence via historic analysis as to being reasonable to flag. The presentation of any assumptions also needs careful consideration to emphasise that, like the common characteristics used, these are communicated in a way so as not to infer greater weight or reliance on them than intended.

3.90. In addition, whilst specifically looking through the prism of shaping decumulation options, we believe there is some insight to be gained from the Institute for Policy Research's paper, '*Downhill all the way*', which looked at the spending habits of a dataset of more than 100,000 pensioners over a 51-year period from 1958 to 2019. This evidenced the great many ways individuals actually spend their money, highlighting that not only is there no 'one size fits all' approach to decumulation, but the variables (and characteristics) which providers may now make assumptions on for targeted support could have limited application in the real world – or at least, not as meaningful without collecting additional data (which may require consideration against GDPR requirements).

3.91. **Q.26 Do you agree with the information that we are proposing firms would be required to disclose as part of a targeted support journey? Are there any additional aspects you think firms must disclose, for example, any reasonable assumptions made?**

3.92. The SPP does not have a particular view on this question

3.93. **Q.27 Do you require any further guidance on the use of risk warnings in marketing for mainstream investment products?**

3.94. The SPP does not have a particular view on this question

[1] **The SPP response to the FCA Consultation Paper CP24/27: Advice Guidance Boundary Review – proposed targeted support reforms for pensions, February 2025:**
https://the-spp.co.uk/wp-content/uploads/SPP-response-to-the-FCA-Guidance-Review-13.2.25.pdf?v=7863v

3.95. **Q.29 Should we require that every consumer exited from a targeted support journey must be signposted to other forms of support? Or do you agree is it sufficient for firms to consider whether this is appropriate? Are there particular scenarios where this needs to be required?**

3.96. As with many other aspects of the targeted support journey, a key question is whether signposting or communication of other forms of support constitute direct marketing or whether they can be treated as regulatory communications.

3.97. Consequently, it would be essential to make clear whether a requirement to signpost other forms of support could be relied upon as to provide a boundary between direct marketing and regulatory communication. Without that clarity, firms would face the risk of "signposting" sent without consent, or in circumstances where all requirements of "soft opt-in" cannot be met, being unlawful direct marketing for the purposes of PECR and constituting an infringement under UK GDPR.

3.98. **Q. 30: Do you agree with the proposed framework for costs and charges set out above and in draft rules?**

3.99. The big question here is who provides the advice. The option to provide for free or charge makes sense, but the old adage regarding a free lunch rings true – a product provider will likely offer for free but direct to their products (appointed representative style). Not allowing this will restrict who will offer this, but it will lead to 'tied guidance'. Removing commission makes it harder for whole of market firms to offer this service, assuming it will not be IFAs, who will stick to their existing model. It could be argued that the onus is on the whole of market providers to demonstrate value relative to the fee charged, but it feels like the individuals who would be convinced by this would take advice. On the basis this solution is designed to support people who wouldn't take advice, it stands to reason that the same cohort wouldn't pay for this. Taking fees from policies (advising charging) could be an option, but even here people would likely still choose the 'free' option.

3.100. **Q.31 Do you agree with the proposed application of existing Handbook requirements to targeted support? If not, please specify where additional considerations should be taken into account.**

3.101. We note that a firm providing targeted support would be undertaking an activity that is currently a regulated activity. Under targeted support, the proposed Handbook requirements that would apply would be lighter than the requirements that would apply if that same firm was to provide advice akin to targeted support now. We therefore agree with the proposed application of existing Handbook requirements.

3.102. **Q.33 Do you agree with the proposed application of the MiFID business, IDD, and designated investment business regimes to targeted support, including the proposed application of the COBS framework?**

3.103. The SPP does not have a particular view on this question.

3.104. **Q. 34 Do any of our positions relating to COBS 19 adversely impact your intention to bring targeted support to market, or the effectiveness of your targeted support customer journeys? Are there any other areas of COBS 19 that you wish to raise?**

3.105. The SPP is generally supportive of the proposals relating to COBS 19 requirements and welcomes the FCA's proposal that firms can use targeted support flexibly throughout the pensions journey and the recognition of the potential benefit in increased flexibility in the design of investment pathways options in light of targeted support proposals. This would allow other options to be presented to customers when they first access cash, such as suggesting a type of annuity, or an annuity as a method of access.

3.106. As outlined in our response to Q7 above, the use of innovative solutions involving annuities to help address the longevity challenge in the DC context is likely to be a very important part of the solution to the DC decumulation challenge. We would therefore welcome changes which do not stifle the ability of trustees to provide and communicate solutions involving annuities, whether to be made available in-scheme or through an arrangement with a third party, which would be in their members' best interests and would create better outcomes in the currently under-served area of DC decumulation.

3.107. **Q. 35 What specific changes are needed to investment pathways to enable the effective delivery of targeted support to consumers when accessing their tax-free cash? Please consider how such changes can benefit consumers in light of the important role investment pathways currently serves.**

3.108. Investment pathways should not be changed to accommodate targeted support. It should be acknowledged that not all firms will have the data or sophistication to be able to offer effective targeted support. Existing regimes will therefore need to continue to be able to stand alone, without relying on firms providing targeted support as a supplement.

3.109. **Q.36 Does the current prudential framework capture the possible risks from targeted support as a firm scales up its activities?**

3.110. Our members did not have any comments on this question.

3.111. **Q.37 Do you believe that a bespoke scalar is required for targeted support, and if so, what metrics should the scalar be based on?**

3.112. Our members did not have any comments on this question.

3.113. **Q.38 - Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the Financial Ombudsman, to all authorised firms providing targeted support?**

3.114. Several SPP members have expressed concern about the Financial Ombudsman Service (FOS) having jurisdiction over targeted support. This concern is borne out of a general fear that the FOS has previously made decisions that seem arbitrary and unpredictable, applying latterly set standards retrospectively. This is of particular concern when firms will be providing a free service, with potentially very broad liabilities, without the certainty that the FOS would act reasonably when considering the support given. If these concerns are not addressed, it could result in firms deciding not to offer targeted support, when they otherwise would have.

3.115. The SPP very much hopes that the current review of the FOS, and subsequent overhaul of the way it adjudicates cases, will go some way to allaying these industry concerns.

3.116. **Q.39: Do you think that the FCA and the Financial Ombudsman should publish specific guidance setting out how cases about targeted support will be considered?**

3.117. Yes, the SPP very much agrees that specific guidance setting out how cases will be considered should be published. This would be a key step in giving firms the confidence that they can provide targeted support while quantifying the risks and potential liabilities associated with that support process and its outcomes.

3.118. Many organisations who might provide this service will see the risk as disproportionate to the reward (given few will charge for it). There needs to be clear guidance as to what is acceptable and what is not, and what actions, if followed, will protect firms from future claims as assessed by these bodies. The potential for a PCP or PPI situation is high, especially as some products are very long term and sensible decisions at the time may not be optimum with future developments. For example, many pension providers contracted people back into S2P on the basis it was very unlikely contracting out would offer better outcomes. However, that was on the basis S2P existed. The change to a flat rate state pension meant that this action was ultimately less optimal for many, but this does not make the initial approach erroneous.

3.119. **Q.40: Is anything else needed to give firms and/or consumers sufficient clarity and certainty about how cases regarding targeted support will be handled?**

3.120. So far as possible, detailed examples should be given. In areas such as SIPP operation, firms have generally found detailed examples in the perimeter guidance to clarify risk, mitigation and developing good practice. The more examples and scenarios the better. These examples should cover a range of matters including:

- Jurisdiction (including when cases should be dealt with by other bodies, such as the Information Commissioner's Office or the Pensions Ombudsman);
- The types of liability that sit with firms providing targeted support and the types of liability that will not be incurred by firms (for example, could firms face repercussions if reasonable support is given, but a customer is disadvantaged as a result of changing/failing markets?); and
- How firms providing targeted support are expected to behave and provide the service. In our experience, the trend whenever large-scale changes are introduced is that it takes the industry a period of time (in the 3-4 year range) to find a settled position. Clear and transparent guidance will help reduce the risk of firms incurring liability in the period before an industry-settled position around delivering targeted support is reached.

3.121. Introducing a right of appeal from the Financial Ombudsman would also help to give firms and customers clarity around how cases would be handled. This would provide an additional layer of protection against unpredictable decisions and may help promote greater consistency across Financial Ombudsman decisions with similar facts. This, in turn, would result in greater confidence across the industry in firms' ability to deliver targeted support and help customers achieve better outcomes.

3.122. **Q.41: Do you agree with the Financial Ombudsman's proposal to (a) exclude pre-regulation activities from the VJ and (b) expand the scope of the VJ to cover activities carried on after regulation day from an EEA or Gibraltar establishment?**

3.123. The SPP does not have a particular view on this question.

3.124. **Q. 42 Do you agree with the proposal to allow FSCS compensation for claims relating to targeted support?**

3.125. The SPP does not have a particular view on this question

3.126. **Q. 43 Does the issue of direct marketing rules representing a barrier to targeted support need to be resolved before firms offer targeted support?**

3.127. <u>The focus on "direct marketing rules" is too narrow</u>

3.128. Chapter 7 of the consultation paper focuses on the Privacy and Electronic Communications Regulations 2003 (PECR), and in particular on PECR Regulation 22, which governs direct marketing sent by electronic mail. PECR bites <u>only</u> at the moment the message is sent. Preparatory processing of personal data (e.g. compiling direct marketing lists) is governed by UK GDPR rather than by PECR. This is significant because guidance or legislative change that addresses only PECR would miss most of the activities required for targeted support.

3.129. Chapter 2 of the consultation paper describes the process of arriving at a sufficiently granular "consumer segment" – groups of consumers in a common situation and, where relevant, sharing common characteristics.

3.130. Having defined a "consumer segment", allocating individuals to that segment necessarily involves processing personal data. Further, it falls within the UK GDPR definition of "profiling" i.e. "*any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements".*[2]

3.131. Processing personal data in order to allocate an individual to a consumer segment requires a lawful basis under UK GDPR Article 6. It is likely that Article 6(1)(f) ("legitimate interests") would be the most appropriate lawful basis. If so, then it would be necessary (i) to conduct a "legitimate interests assessment" (LIA) including a "balancing test", weighing the firm's interest in sending targeted support against the impact on data subject's rights and freedoms, (ii) to inform data subjects of the purpose for processing and of its lawful basis, and (iii) inform data subject of their right to object to that processing. The cost and complexity of conducting an LIA and of data subject communications would have to be factored into the impact of targeted support.

3.132. <u>The concept of "direct marketing purposes" under UK GDPR is wider than "direct marketing" under PECR.</u>

3.133. UK GDPR "direct marketing purposes" include preparatory activities such as data collection, data cleansing, compilation of lists, profiling and allocation of individuals. UK GDPR Article 21(2) gives data subjects an absolute right to object to processing of their personal data for those wider "direct marketing purposes". Consequently, even before sending a message (and engaging PECR), firms would face significant cost, complexity and risk of conclusive objection.

3.134. It is also possible that targeted support might involve the processing of "special category" data – e.g. relating to health. In those cases, it would be necessary to identify an appropriate condition under UK GDPR Article 9/Data Protection Act 2018 Schedule 1. Again, if that processing were for "direct marketing purposes" then data subjects would have an absolute right to object.

3.135. It is therefore essential that any guidance and/or legislative change aiming to facilitate targeted support looks not only to PECR but also to UK GDPR.

3.136. <u>A simple extension of "soft opt-in" to auto-enrolled pension providers might not fully address the issue.</u>

3.137. A provision that merely purported to extend "soft opt-in" to auto-enrolled providers might not work. The most recent extension of "soft opt-in" (to charities) in the Data (Use and Access) Act 2025 can (barring a very odd and highly improbable circumstance) work only prospectively. This is because soft opt-in is available only where all elements of PECR Reg 22(3) or of the new Reg 22(3A) are met. Crucially, this includes a requirement that "the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of their contact details for the purposes of direct marketing by the charity, at the time that the details were initially collected". Given that soft opt-in had not previously been available to charities it is extremely unlikely that charities will have given a means of refusal in relation to personal data/contact details that they already hold. If the intention were to enable auto-enrolled pension providers to rely on a form of soft opt-in in respect not only of newly obtained data but also in respect of data already held, then any legislative amendment would have to expressly address that point.

3.138. <u>Is "targeted support" direct marketing?</u>

3.139. The FCA consultation paper and its 2024 joint statement with the ICO recognise the distinction between "direct marketing" and regulatory messages. A regulatory message does not engage PECR Reg 22 and (crucially) would not fall within the wider UK GDPR concept of "direct marketing purposes".

[2] **GDPR, Article 4:**
https://gdpr-info.eu/art-4-gdpr/

3.140. Consequently, there would be significant merit in the development of ICO and/or FCA guidance defining parameters within which a targeted support message (clearly labelled as such) would not be regarded as "direct marketing". Arguably, the boundary could be drawn at the point where recommendation of a type of measure/product becomes a recommendation for a specific provider or product. Having received targeted support identifying the type of measure/product would allow the recipient to solicit further information/product details (falling outside PECR Reg 22, which applies to unsolicited direct marketing).

3.141. **Q.44 Do you agree with our proposed approach to authorising firms who wish to provide targeted support? Can you suggest any ways in which our approach might be streamlined, whilst retaining the necessary robustness of our gateway?**

3.142. The FCA needs to make a clear differentiation between existing authorised firms seeking to add targeted support to their permission, and firms seeking new authorisation to be able to offer targeted support. We believe this would support the proposed timeline for the implementation of targeted support that has been suggested.

3.143. Firms with existing authorisation and permissions, must satisfy all the relevant rules and guidance for the activities which they already carry out, should be fast tracked through the variation process for targeted support. Based on past experience, an alternative route will slow this process down and add additional burden that is not needed.

3.144. For example, a firm which is already following the rules in COBS, PROD and the Consumer Duty, plus all other relevant rules, should not need to explain how it will take existing rules and apply them to the new proposition - the firm is already bound to follow these rules and also the new rules for targeted support - this is a given.

3.145. One point which the FCA has raised in the consultation paper in respect of authorisation is a clear barrier to the delivery of targeted support - the 5th bullet of 8.8 –

3.146. *"Evidence that firms have developed a clear end to end customer journey for targeted support and conducted testing to ensure it will operate as intended."*

3.147. This statement would require firms to have fully built and tested any targeted support solutions before even applying for the variation, which is both unnecessary and commercially unviable. The FCA does not approve individual solutions and services (and is often at pains to emphasise this) but is instead assessing the firm at a high level (which should be based on what the firm already does). The firm should be assessed against its proposal and the existing arrangements as a given in the absence of contra-indicators. When firms build their solutions, they are obliged to test them and review them, but these activities should not be a prerequisite for the variation process.

3.148. **Q.45: Do you agree with our proposal to not introduce new record keeping requirements which relate directly to the provision and outcomes of targeted support? Please explain the reasons for your answer.**

3.149. Yes, the SPP agrees that no new record keeping requirements should be introduced. This is because we agree with the FCA that existing requirements for firms to monitor outcomes and hold relevant data records are likely to be more than enough for targeted support services.

3.150. **Q.46: How would you assess whether your targeted support service is delivering intended outcomes for consumers?**

3.151. The SPP agrees that it is difficult to measure outcomes exactly. As a membership body with a diverse range of members, it is likely that those members who do decide to offer targeted support will measure success in different ways, we therefore have no further comments to make on this question.

3.152. **Q.47: Which specific advice and suitability requirements do you think should be reconsidered or modified in a revised COBS 9/9A to give firms the confidence to offer simplified advice while maintaining an appropriate level of consumer protection?**

3.153. The SPP does not have a particular view on this question.

3.154. **Q.48: Are there specific aspects of FCA guidance (such as aspects of FG17/8) which you think are helpful (or unhelpful) and could inform our approach when proposing clearer rules and updating our Handbook guidance?**

3.155. The SPP does not have a particular view on this question

3.156. **Q.49 Do you agree that we should update our guidance on the advice boundary at the same time as we set out perimeter guidance for firms providing targeted support? Which FCA guidance on the boundary should we focus on keeping, reviewing and/or simplifying?**

3.157. The SPP does not have a particular view on this question.

3.158. **Q.50 Do you have any comments on our equality and diversity considerations (see Annex 9)?**

3.159. The SPP does not have a particular view on this question.

3.160. **Cost benefit analysis**

3.161. Since publication of this consultation paper, updated figures paint an even bleaker picture of the challenge faced, with 15m people not adequately saving for their retirement[3], rather than the 12.5m quoted.

3.162. The SPP agrees with the FCA's observation that targeted support is likely to benefit consumers in three main ways i.e. 1) improved alignment of savings decisions and preferences, increasing welfare and, in many cases, return on savings, investments and pensions 2) reduced fees and charges, and 3) an increase in consumer confidence (and financial resilience).

3.163. However, in relation to specific cost benefit analysis that estimates targeted support is likely to have a net positive impact of between £663m to £39,876m, with a central estimate of £5,678m (2025/26 prices), including the most significant monetised benefit of an increase in wealth for consumers, estimated at between £125m and £4,811m per year, with a central estimate of £732m, the SPP is not in a position to comment on the likely accuracy of such figures.

4. About The Society of Pension Professionals

4.1. The SPP is the representative body for a wide range of providers of advice and services to pension schemes, trustees and employers. Our work harnesses the expertise of our membership, striving for a positive impact on pension scheme members, the pensions industry and its stakeholders.

4.2. The breadth of our members is a unique strength for the SPP and includes actuaries, lawyers, professional trustees, DC consultants, investment managers, providers, administrators, covenant assessors, and other pension specialists, delivering a wide range of services.

[3] **DWP Official Statistics, Analysis of future pension incomes, published July 2025:** **https://www.gov.uk/government/statistics/analysis-of-future-pension-incomes-2025**

5. Further information

5.1. For more information about this consultation response please contact SPP Director of Public Policy & PR at: phil.hall@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 us on LinkedIn at: https://www.linkedin.com/company/the-society-of-pension-professionals/

5.4. Follow us on X (Twitter) at: https://twitter.com/thespp1

Thursday 28 August 2025