

FCA Policy Statement PS21/21—the stronger nudge to pensions guidance—feedback on CP21/11 and final rules and guidance

Pensions analysis: On 1 December 2021, the Financial Conduct Authority (FCA) published its final rules and guidance for firms to implement a ‘stronger nudge’ for pension consumers to use Pension Wise. Beth Brown, counsel at Mayer Brown, examines the latest rules and guidance, the implications for pension providers and consumers, and what happens next.

This analysis was first published on Lexis®PSL on 28 January 2022 and can be found [here](#) (subscription required).

What was the background to the policy statement?

Back in 2015, the government introduced various pension freedoms. Essentially, the government introduced more flexibility for defined contribution (DC) pension savers to access their pension pots, such as the ability to take their entire pot as a cash lump sum or designate it for a drawdown (ie an arrangement where money can be taken throughout a person's life while keeping it invested so the pension pot can continue to grow) rather than purchase an annuity (ie giving a pension pot to an insurance company in exchange for a regular guaranteed income in retirement). However, with great flexibility comes great responsibility. While pension consumers benefited from the pension freedoms, it was essential that they understood the decisions they were making. With this in mind, the government created Pension Wise. Pension Wise, now offered by the Money and Pension Service through Money Helper, provides free and impartial guidance about options for accessing DC pension savings. In light of the fact that few pension consumers are using Pension Wise, the FCA has introduced new rules and guidance to increase Pension Wise take up at the point a pension consumer accesses their DC savings.

What changes does the policy statement introduce?

Under the new FCA rules, when a pension consumer of a personal or stakeholder pension has decided, in principle, to access their DC pension savings or transfer their DC pension pot to another pension provider for the purpose of accessing their pension savings, their existing pension provider must:

- refer them to the Pension Wise guidance
- explain the nature and purpose of the Pension Wise guidance
- offer to book a Pension Wise guidance appointment—if the pension consumer accepts this offer, the pension provider must book the appointment or provide the consumer with sufficient information to enable them to book the appointment themselves. The pension provider will also have to record whether the pension consumer received the Pension Wise guidance or whether the pension consumer opted out of receiving the Pension Wise guidance

Pension providers required to comply with these new requirements will have to do so by 1 June 2022.

In recognition of the importance of ensuring consistent outcomes for consumers, whether they have a personal pension, stakeholder pension or an occupational trust based or contract based pension scheme, the Department for Work and Pensions (DWP) has also now responded to its consultation on draft regulations which require trustees to ensure that individuals seeking to access, or transfer, for the purpose of accessing, their flexible benefits have received or opted out of receiving appropriate pensions guidance from Pension Wise. The regulations, which come into force on 1 June 2022 as well, will apply on receipt of an application or a communication in relation to an application in relation to members and other beneficiaries aged 50 and over, but do not apply where a request is for any purpose other than accessing flexible benefits.

The FCA rules for providers of personal or stakeholder pensions and the DWP regulations for trustees of occupational pension schemes are deliberately similar. The main difference between the two regimes relates to how consumers can opt out of the Pension Wise guidance. The FCA rules allow pension consumers to opt out in the same communication with their provider as that used to initiate contact, while the DWP's regulations require scheme members to opt out through a separate active communication with trustees unless a specified exemption applies.

What are the implications for pension providers and pension consumers?

Pension providers will have to ensure that they put processes in place to comply with the new requirements before 1 June 2022.

From the pension consumers' perspective, the changes should enable them to obtain better retirement outcomes by helping them make informed decisions when accessing their DC pension savings.

The FCA has said that the new rules aim to:

- encourage the use of the free, impartial guidance that is available to help pension consumers make informed decisions about the options available to them
- make taking Pension Wise guidance a natural part of the consumer journey when consumers decide to access their pension savings
- help protect pension consumers from poor outcomes and prevent harm to pension consumers who do not have the information they need to make informed decisions about how to access their pension savings

What happens next?

The changes come into force on 1 June 2022. Hopefully the stronger nudge for pension consumers to use Pension Wise will help consumers make informed decisions which, in turn, will lead to better retirement outcomes.

Interviewed by Jennifer Philips

[Beth Brown](#) is a counsel at Mayer Brown and provides advice to trustee and employer clients on all aspects of pensions with a particular focus on defined contribution governance, pensions insolvency and risk transfer matters. Beth was shortlisted for two Professional Pension Women in Pension awards in 2019.

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