Improving outcomes for unadvised consumers with non-workplace pensions—FCA issues new guidance and rules for providers

Pensions analysis: The Financial Conduct Authority (FCA) has published a policy statement with the outcome of its consultation on non-workplace pensions (NWPs). Respondents to the consultation were broadly in support of the FCA's proposals to introduce new protections for consumers using NWPs for their retirements savings. The policy statement sets out new rules and guidance that NWP providers will need to comply with by 1 December 2023. Andrew Block, partner, Henry Corrigan, senior associate, and Esther Farley, apprentice solicitor at Mayer Brown consider the consultation, its outcome, and the implications for pension providers and consumers.

This analysis was first published on Lexis®PSL on 13 January 2023 and can be found here (subscription required).

What is the background to the consultation?

In recent years, in part linked to the introduction of automatic enrolment, workplace pensions have been the focus of increased regulation. However, the increased focus has not applied to NWPs, which include individual personal pensions, stakeholder personal pensions and Self-Invested Personal Pensions (SIPPs).

As the demand for NWPs continues to grow, the FCA has been in dialogue with the industry to understand what steps it should take to improve outcomes for consumers with NWPs. In particular, the FCA is concerned with risks as a result of a lack of consumer engagement, the complexity of products and charges and the number of unadvised consumers.

The FCA opened a consultation on proposals for new protections for NWP consumers in November 2021. The consultation proposed that firms providing NWPs should be required (with certain exceptions) to offer a default investment option for consumers who have not received advice. The FCA proposed that the default option should be compatible with the needs of a typical non-advised consumer and would be available for consumers to choose alongside other investments.

The consultation also proposed that cash warnings should be issued to notify NWP consumers who had invested substantially in cash. The purpose of the notification would be to notify consumers that their pension pot was at risk of depletion from inflation. It was proposed that such warnings would be mandatory where thresholds were met and consumers were more than five years away from normal minimum pension age (currently 55).

What was the outcome of the consultation?

In the FCA's policy statement, the industry feedback was broadly in support of the FCA's proposals and the FCA stated that it will amend its rules and guidance to require providers of NWPs to offer a default investment option and give cash warnings.

Despite receiving feedback that was not fully supportive on these points, the FCA maintained its position that:

- a single default option should be provided without the need for non-advised consumers to answer detailed questions (this should not limit NWP providers ability to offer alternative investment options alongside the default option)
- firms which provide only legacy NWPs (and not new business) will be excluded from the new requirements
- the default option should be offered to non-advised consumers at the point they enter into a NWP (rather than providers identifying unengaged consumers)
- SIPPs which do not offer a menu of investments (so called 'empty wrapper' SIPPs) will be exempt from the requirements

- the thresholds for issuing a cash warning would be a consumer having 25% of NWP assets as cash or £1,000 of cash for six months
- cash warnings would only be required up to five years before normal minimum pension age (but this would not prevent providers continuing to give cash warnings up to retirement)
- assessment of cash holdings should be carried out every three months but providers should not issue warnings if they consider it inappropriate to do so because of volatile market conditions

Two areas where the FCA has made changes in light of feedback received are:

- firms will have flexibility in naming their default option provided that the name is clear and distinguishes the option from other offerings (rather than being required to name the option the 'Standardised Investment Solution')
- lifestyling will be required unless the provider determines that needs of the consumer make lifestyling inappropriate

What are the implications for pension providers and consumers and what happens next?

Providers of NWPs will need to consider the new requirements with their advisers so that they can ensure compliance by 1 December 2023. The main requirements will be to:

- offer all new consumers the option to invest in a suitable default option that meets the requirements of the Conduct of Business sourcebook (COBS) and the Product Intervention and Product Governance sourcebook (PROD), and
- set up a process for reviewing consumers cash holdings and issuing cash warnings

For consumers looking to save for their retirement using a NWP, the FCA hopes these changes will develop a system to help unadvised consumers achieve the best possible outcomes when saving into a NWP. More widely, the FCA hopes that by alerting consumers with large cash holdings in a NWP that their retirement savings may be at risk from inflation consumers will be better protected from those risks.

Interviewed by Banita Kalia

Andrew Block is a partner in the Pensions practice at Mayer Brown. Andrew advises trustees and employers in relation to all types of UK pension schemes, including project work such as rule re-writes, scheme mergers and the pensions aspects of corporate reorganisations, as well as day to day advisory work.

Henry Corrigan is a senior associate in the Pensions practice at Mayer Brown, and advises trustees and employers on a broad range of pensions law, issues and practice. Henry has advised trustee clients on day to day advisory work as well as projects such as consolidations, entry into the Pension Protection Fund, scheme wind-ups and bulk annuity transactions.

Esther Farley is an apprentice solicitor in the Pensions team at Mayer Brown.