Consumer Investments Advice Policy
Financial Conduct Authority
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Dear FCA team

# *DP23/5 Advice Guidance Boundary Review – proposals for closing the advice gap*

*Thank you for launching this consultation regarding proposals for closing the advice gap. This is an important issue in pensions (our area of expertise) as in our view there is currently a risk that many pension scheme members are making irreversible sub-optimal decisions particularly on their retirement options because they do not have easy access to affordable appropriate support.*

*In this submission to your inquiry, we set out a number of comments based on our experience in this area, and answer some of your specific questions in section 4.*

## 1. Who we are

LCP is a firm of financial, actuarial, and business consultants, specialising in pensions, investment, insurance, energy, health and business analytics. We have around 1,100 people in the UK, including over 170 partners and over 300 qualified actuaries.

The provision of pensions related actuarial, investment, covenant, governance, pensions administration, benefits advice and directly related services, is our core business. About 80% of our work is advising trustees and employers on all aspects of their pension arrangements both defined benefit and defined contribution, including investment strategy. The remaining 20% relates to insurance consulting, energy, health and business analytics.

LCP is authorised and regulated by the Financial Conduct Authority and is licensed by the Institute and Faculty of Actuaries in respect of a range of investment business activities.

## 2. LCP's involvement in this area

We do not advise members or individuals and have no financial links with any financial advice firms. However, it is important to us and to our clients that members of the pension schemes we advise make good decisions.

In 2012, LCP led the way in the industry as lead authors of the voluntary "Code of Good Practice for Incentive Exercises" that is still widely used by employers and trustees and is now owned by The Pensions Regulator (TPR).

In 2017 we published our first in a series of joint papers with Royal London entitled "*Helping DB members make better retirement decisions: the role of schemes, advisers, regulators and government*". The paper called for better provision of information to members by schemes, and for schemes to consider appointing "non-contingent-charging" IFAs to assist members. Since then, we have worked with a number of high profile pension schemes to do just that (both DB and DC) and we have continued to publish a number of papers on the topics of member support, DB pension transfers and member options.

In April 2021, to coincide with the joint publication by the TPR and the FCA of updated guidance to employers and trustees we hosted a webinar with guest speakers including Edwin Schooling Latter (the then Director at the FCA). We have met with the FCA on a number of occasions to discuss certain aspects of this guidance.

## 3. LCP's response to your consultation

Many employers and trustees, rightly so, encourage pension scheme members to seek financial advice when they are considering their retirement options as this can be one of the most significant financial decisions of a member's life and is often irreversible. However, because of the challenges members have in finding a suitable adviser, and the costs of obtaining advice, they are aware that few members take up such advice.

Employers and trustees are nervous about the risks of providing information or support that could later be perceived as inappropriate guidance or advice and therefore tend to be very cautious with their communications with members. Communications tend to follow statutory requirements and also be very generic. This means that they are not always provided in a timely way, and they are not always that helpful to the members who are the decision makers. The vast majority of pension scheme members tend to follow default pathways rather than make active decisions.

It is also worth noting that some financial product providers may push people towards in-house products or more profitable routes for the firm and therefore are conflicted. However, trustees don't have the same conflict, so in our view the FCA can and should take a lighter-touch approach towards what trustees do, as they are acting in the interests of members and should not get unnecessarily caught by rules designed to protect consumers from potentially predatory providers.

### 3.1. DB pension transfer advice

We note that the scope of the FCA's review does not include advising on transferring out of a DB scheme or giving up other safeguarded rights. We agree that simplified advice or targeted advice would not be appropriate for DB transfer advice.

However, we have a strong view that the March 2021 guidance ("Guide for employers and trustees on providing support on financial matters without needing to be subject to FCA regulations") should be changed (and also the underlying regulations if required) in relation to the provision of drawdown illustrations, as we think the current position creates more risk for consumers. We explain this in the paragraphs that follow.

In order to help members, and to avoid generic technical communications to members, a number of larger DB schemes provide benefit illustration figures online including comparisons of the scheme retirement options with a transfer out option. In our experience schemes are not seeking to encourage members to transfer out (on the contrary, as this would go against the generally accepted legal requirements on trustees) but are merely trying to support members with their decision making at retirement.

Prior to the joint TPR and FCA March 2021 guidance, many trustees also illustrated (in very sensible balanced ways) some of the possible outcomes of transferring, including income drawdown approaches. In our view, this approach is far better than simply showing the very large transfer value number in isolation, which would be misleading and could bias people towards transferring. However, the March 2021 guidance bans the practice of providing this additional helpful information. This currently leads to trustee communications which are less helpful to members, and arguably biased (as a result of this TPR and FCA guidance).

Note that the current TPR and FCA guidance does permit schemes to point members to MaPS tools. However, we do not consider the MaPS tool to provide a clear comparison with a DB benefit – for example the life expectancy is lower than a typical DB member and there is no allowance in the MaPS tool for pension increases that the member would otherwise receive in the DB scheme. This is therefore misleading.

Further we note the latest guidance for FCA regulated advisers (Helping firms provide more support to customers making investment decisions | FCA) states that "*Where a customer asks a firm how much they can withdraw from their pension each year to maintain a desired standard of living throughout retirement. The firm can explain that this is uncertain and the reasons why and direct the client to tools which may help them, such as an online calculator, where personal information or parameters for a query are input and controlled by the customer*" is not advice. Therefore, for consistency, we think that trustees and employers (and other providers) should also be able to provide such tools, with inputs controlled by the customer.

We therefore call on TPR and the FCA to amend its March 2021 guidance to allow trustees to provide sensible benefit illustration tools to members to help close the "advice gap".

### 3.2. DB retirement options (excluding transfer advice)

Most DB schemes offer a range of options for members at retirement (eg whether to convert part of their pension into tax-free cash, options around Additional Voluntary Contributions (AVCs) and whether to take the pension at “normal retirement age” or early or late). Further, some schemes provide additional options such as a pension increase exchange option or a levelling/temporary/bridging pension option and a full cash out (if benefits are less than £30,000 in value).

Trustees tend to communicate these options in a factual way. They do not give recommendations or indeed steer members in any direction, and recommend members take advice on such options. Most members **do not** take advice on these options.

Sometimes the terms for these options are poor (eg sometimes the lump sum conversion factors are hardcoded into rules at a rate of 9:1 – which means the cash on offer is poor value, relative to the pension). The Trustees generally do not comment on the “value” of the options, given the risk that this would lead to bias in decision making. But this creates risk of sub-optimal decisions for members.

Clearly, these decisions are important for members, and for many members the ultimate “cost” of making a poor decision would be many £1000s, but in our experience members do not know where to go for such advice or support. Pension Wise only covers DC pension pots. And it is very difficult to confidently find the advice you need, because financial advisors are set up to provide advice on products, and many are not experts in options **within** DB schemes.

We therefore request that one outcome of your advice gap review confirmation (via new guidance or otherwise) is that trustees (and their administrators) can, if they choose, provide more helpful targeted support to members in such situations (such as using ‘people like you’ approaches).

We also ask that TPR and the FCA provides guidance to advisers on the provision of restricted or simplified advice in such situations (eg where the member is not interested in a DB transfer or abridged advice has concluded a DB transfer to be inappropriate).

### 3.3. DC accumulation advice and support

Although our main concerns centre around decumulation advice and support (see next section), there are also areas where we believe trustees could better support members when they are accumulating savings. For example, the level of contributions being paid, investment choices made by members, and the frequency of trades being undertaken. All of these areas could be better supported if there were clearer guidelines allowing trustees to be more pro-active in their support with members, which in turn should lead to better outcomes for their members. In many instances, we see trustees restricting their actions due to the legal view around concerns of crossing into advice. We would like to see clear examples which trustees can use as a basis for their actions (such as using ‘people like you’ approaches).

In addition to the above, if the recent “lifetime provider” initiative is implemented, then employees will need support on whether they should join their employer’s pension arrangement or an alternative. Simplified advice and/or targeted support could be helpful in such circumstances, but there would need to be clear protections for employees to prevent such support being influenced by inappropriate financial kick-backs. In addition, we would recommend that guidance for employers is reviewed in order for them to be able to promote their arrangement fairly (given that in many cases it could be of considerably better value to members) without stepping over the advice boundary.

### 3.4. DC decumulation advice and support

We do not agree that pensions decumulation decisions should be excluded from simplified advice. Currently, the majority of pension scheme members do not take advice on decumulation because it is expensive to do in detail, and many advisors require members to transfer to their products before providing advice, which also adds additional cost. We believe there should be guidance and simplified advice solutions readily available to members throughout their retirement, that are unbiased by selling products or controlling the money. These should be affordable to members. None of this is possible at the moment because of the tight regulatory framework.

If the current policy on trustees offering a default decumulation product to members comes about, the FCA will need to change its guidance to support Trustees in choosing and communicating the product, implementing the default transfers to the product, and enabling them to appropriately promote the product, given that for many members it is likely to offer better value than market alternatives. For those schemes who have already appointed decumulation solutions, many are unable to promote these arrangements due to the concerns around giving advice and as such, take-up has been low.

## 4. Our answers to specific consultation questions

**Q9: Do you agree that the scenarios outlined are appropriate for a new targeted support regime? Please suggest any other specific scenarios where targeted support might be appropriate and could benefit consumers.**

Yes, we agree that the two examples relating to supporting wealth decumulation decisions are ones which cause clients concern with regards to risk in decumulation. We believe these are clear examples where members could inadvertently choose sub-optimal decisions and as such, require a greater level of and easier access to support. It would require the provider in each example to be able to ascertain important data points to identify whether the member is at risk of a poor decision, much of which will be outside of their provision, for example, other benefits or savings held elsewhere. In our view, there should be a duty of care on the provider which the targeted support regime would support. It would also support customer protections such as the developments around vulnerable customers.

**Q23: Do you agree that pensions decumulation should be out of scope for simplified advice, and why?**

We do not agree that pensions decumulation decisions should be excluded from simplified advice. Currently, the majority of pension scheme members do not take advice on decumulation because it is expensive to do in detail, and many advisors require members to transfer to their products before providing advice, which also adds additional cost. We believe there should be guidance and simplified advice solutions readily available to members throughout their retirement, that are unbiased by selling products or controlling the money. These should be affordable to members. None of this is possible at the moment because of the tight regulatory framework.

**Answers to both Q34 and Q35. Q34: How do trustees feel the advice boundary restricts the support they want to give, including around decumulation, taking into account DWP's proposals? Do any other regulated activities or regulatory requirements constrain the support trustees wish to provide? Please give examples. Q35: Are there any considerations concerning the investment advice boundary for non-authorised persons you wish to raise?**

We find that trustees are often unable to provide helpful support to members as it can be seen as too close or crossing the advice boundary. This includes members saving for retirement, taking decisions at retirement, and also those making decumulation decisions during retirement.

It should also be noted that trustees are not those who are "on the frontline" having telephone conversations and replying to queries from scheme members in real-time about their options and decisions. Because of the risk of future litigation, it is understandably drummed into pension administrators from the start of their career not to risk straying into being seen to give advice. This also means that members are currently unable to get helpful support on what options are best for them from this source.

We request that one outcome of your advice gap review confirmation (via new guidance or otherwise) is that trustees (and their appointed administrators) can, if they choose, provide more helpful targeted support to members including regarding their retirement options within their DB and DC occupational pension schemes (such as using 'people like you' approaches) or in DC accumulation the level of contributions being paid, investment choices made by members and the frequency of trades being undertaken.

We call on TPR and the FCA to amend its March 2021 guidance to allow trustees to provide sensible benefit illustration tools to DB members to help close the "advice gap". In order to help members, and to avoid generic technical communications to members, a number of larger DB schemes provide benefit illustration figures online including comparisons of the scheme retirement options with a transfer out option. In our experience schemes are not seeking to encourage members to transfer out (on the contrary, as this would go against the generally accepted legal requirements on trustees) but are merely trying to support members with their decision making at retirement. Prior to the joint TPR and FCA March 2021 guidance, many trustees also illustrated (in very sensible balanced ways) some of the possible outcomes of transferring, including income drawdown approaches. This is now not permitted. In our view, the pre-2021 approach is far better for members than what is permitted by the FCA now, which has the potential to bias people towards transferring.

We ask that the TPR and FCA provides guidance to advisers on the provision of restricted or simplified advice around DB pension options at retirement, in the situation where the member is not interested in a DB transfer or abridged advice has concluded a DB transfer to be inappropriate.

We ask that TPR ensure that, as the government's policies relating to "lifetime provider" and "default decumulation approaches" are implemented by government then, concurrently, the FCA amends its rules (with legislative changes as needed) to ensure that unauthorised trustees and employers are enabled to: choose relevant products, communicate about and appropriately promote defaults, and implement any transfers to products that are necessary.

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## About Lane Clark & Peacock LLP

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