

REGULATORY BAROMETER

1st October 2021



ABOUT THIS DOCUMENT

The purpose of this document is to provide an overview of current and upcoming regulatory matters that may be of interest to the Operators/Administrators of personal pension schemes (and in some matters, the Administrators/Practitioners of SSASs). For each item there is a brief summary including the source (i.e. regulatory/legislative changes) along with the relevance to firms, timelines and suggested actions the firm may wish to consider.

The symbols (below) are RAG-rated to indicate the impact of each of the items:

- Red = High impact
- Amber = Medium impact
- Green = Low impact.



Where applicable, also included is a reference to where further information can be obtained. Where used, the symbols (below) are RAG-rated to indicate the impact of each of the items - red = high impact / green = low impact. The RAG-ratings are purely indicative and it will be for firms to decide the relevance and impact based on their circumstances.

This document is high-level and is not a substitute for taking relevant professional/legal advice. Rather, we hope this document will be useful in assisting firms in their regulatory planning and our aim is to provide updates on a periodic (hopefully quarterly!) basis.

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FCA 2021/22 Business Plan

The business plan sets out the FCA's consumer priorities which include enabling consumers to make effective investment decisions, delivering fair value in a digital age and the new Consumer Duty. Within each of these the FCA set out the outcomes they want to achieve and the work planned to meet these outcomes. In total there are five consumer priorities and those that we have listed above are the ones relevant to pension providers. In the next pages within this issue we provide further details on work that is now underway – the FCA's Consumer Investment Strategy and Consumer Duty.

Also relevant to pension providers is the FCA's priority to ensure people can choose appropriate pension products (included in the wholesale market priorities section). Work planned to meet their aims under this priority include seeking views on how to increase value for money in pensions (the FCA have recently issued DP21/3: Driving Value for Money in Defined Contribution Pensions, this being a joint initiative with the Pensions Regulator), consulting on changes for non workplace pension providers to help ensure consumers are offered an appropriate default solution (potentially investment pathways for funds in accumulation), assessing the effectiveness of FCA rules to help consumers make choices at the point of retirement, implementing the nudge to MoneyHelper's Pension Wise (CP21/11). The stronger nudge to pensions guidance was issued in May 2021) and supporting cross-government work to create pensions dashboards.

Priorities across all markets include ESG, international priorities (to include the move from the temporary permissions regime), fraud strategy, financial resilience and resolution (to include the Investment Firms Prudential Regime) and operational resilience. This latter item includes among other matters, the switch from analogue to digital phone lines – this item is covered as a separate point later.

The 2021/22 business plan was published in July 2021, commentary on this was included in the Enhance August 2021 monthly update which included links the business plan as follows:

A link to the full business plan:

www.fca.org.uk/publication/business-plans/business-plan-2021-22.pdf

In line with recent communications from the FCA there is a good summary of the business plan here or a link to a webinar providing the same:

www.fca.org.uk/publications/business-plans/2021-22

In line with recent communications from the FCA there is a good summary of the business plan here or a link to a webinar providing the same:

<https://www.fca.org.uk/multimedia/inside-fca-podcast-nikhil-rathi-business-plan-and-transforming-fca>

Consumer Investments: Strategy and Feedback Statement



In line with their priority within the 2021/22 business plan to enable consumers to make effective investment decisions, the FCA have published a new consumer investment strategy which provides details of the work they will be doing to ensure consumers can invest with confidence. This sets out a package of measures that the FCA will work on over the next three years covering four areas of focus – mainstream investments, higher risk investments, scams and redress. This is wide ranging and brings together work already being undertaken such as the consultation on the Consumer Duty, the Pensions Consumer Journey Call for Input, Stronger nudges to pension guidance consultation, the final guidance on the fair treatment of vulnerable customers and the new Investment Firms Prudential Regime



Many of the measures set out in this strategy will and, in some cases, already do apply to operators of personal pension schemes, for example the vulnerability guidance is already in place, Consumer Duty will impact on all regulated firms and the new rules on pension guidance will be relevant to operators of personal pension schemes.



As this is an overarching strategy there will be different timelines for the subsequent work within each of the measures set out by the FCA. More information is provided in the following pages on vulnerability guidance and Consumer Duty which Enhance consider to be the most relevant for operators of personal pensions at the current time.



Currently there are no actions stemming directly from the strategy, however various measures, once implemented will require action from operators of personal pensions. We suggest that firms familiarise themselves with the FCA's strategy in order that this can be considered in ongoing business planning.



Further information sources include:

FCA Consumer Investments: Strategy and Feedback Statement

www.fca.org.uk/publications/corporate-documents/consumer-investments-strategy

Vulnerable Clients



This was covered in our May 2021 issue of the Regulatory Barometer. This item has been retained as a standing item for two reasons: 1) This applies to all regulated firms and the FCA have stated that firms can be expected to be asked to demonstrate how their business model, culture and actions ensures fair treatment of vulnerable customers. This is high on the FCA's agenda as can be seen from the FCA's 2021/22 Business Plan and the Consumer Investment Strategy. 2) Since the March issue the FCA has published some useful FAQs, a link to which can be found in the 'information sources' below.



As this guidance applies to all firms, this includes the operators of personal pension schemes. Members of personal pension schemes are equally liable to vulnerability as any other product, albeit the age profile of scheme members will have an impact. Due to the ongoing focus in this area it remains relevant to operators of personal pension schemes.



There is no specific timeline for this guidance to be considered and implemented although firms are reminded that 'Principle 6 - Customers' interests' applies to all firms at all times meaning that if not already done so, firms should be taking account of the FCA's guidance, especially given the scrutiny promised by the FCA.



Within their guidance, the FCA have outlined six actions that firms should be taking, linked to: 1) Understanding customers' needs; 2) Evaluating the skills and capability within the firm; 3) Considering the impact of product service and design on vulnerable clients; 4) Building vulnerable client support into customer service; 5) Ensuring that client-facing communications take account of vulnerable customers; and, 6) An ongoing monitoring and evaluation process is in place to assess the firm's understanding of vulnerable clients and how the firm's actions 1-5 have affected outcomes for vulnerable consumers.



Further information sources include:

FCA Finalised Guidance:

www.fca.org.uk/news/press-releases/fca-launches-guidance-firms-fair-treatment-vulnerable-customers - this links to the complete guidance for firms.

FCA FAQs in relation to the Guidance:

www.fca.org.uk/publication/documents/guidance-fair-treatment-vulnerable-customers-faqs.pdf

Enhance updates: '202101 Regulatory Update FG21.1 vulnerable customers' - this provides an overview for Sipp firms of the finalised guidance; and, '202009 Regulatory Update GC2003 vulnerable customers' which sets out questions that personal pension scheme operators should be considering when thinking about their approach to vulnerable clients.

Consumer Duty



The FCA have commenced consulting on a new consumer duty. The first consultation paper was published in May 2021, Enhance issued a regulatory update at this time setting out the details. As set out in the FCA's business plan this is one of their consumer priorities for the 2021/22 year and also links into the FCA's consumer investment strategy. Within the consumer duty, the FCA are proposing a new consumer principle setting out the overall standard of behaviour that the FCA want to see from firms supported by cross cutting rules and four outcomes.



These will be high level rules and guidance that will affect all regulated firms including operators of personal pension schemes. The Consumer Duty expands on FCA Principles and 'acting in the client's best interests' rule (concepts that have become often used by the FOS in support of complaint decisions), and arguably adds some narrative as to how a firm may demonstrate (or not) that they have met their obligations to a consumer.



The aim is for the new rules to be in place by 31 July 2022. The initial consultation on the scope and structure of the rules closed on 31 July 2021 with a follow up consultation due 31 December 2021



As this is in consultation phase there is currently no action required from firms. However it is clear from the business plan and consumer investment strategy that this is core to the FCA's future regulation and a higher standard of care and expectation will be required from firms. It is therefore something that firms should be aware of and consider in ongoing business planning.



Further information sources include:

CP 21/13 A new Consumer Duty:

www.fca.org.uk/publications/consultation-papers/cp21-13-new-consumer-duty

Enhance updates: '202105 Regulatory Update CP21-13 A new Consumer Duty' - this provides an overview of the consultation for operators of personal pension schemes

Transfer of data – EU



As reported in the May issue of the Regulatory Barometer the UK is classed as a 'third-country' by the EU and so in relation to transfers of data from the EU to the UK, an 'adequacy' decision is required to confirm the EU is satisfied the UK will process and protect data to the same standard as the EU. The EU approved the adequacy decisions for the EU GDPR and therefore data can continue to flow from the EU to the UK. The decision is expected to last until 27 June 2025. Data transferred from the EU to the UK for the purposes of UK immigration control is not included in the adequacy decision.



The EU adequacy decision applies to the whole of the UK. For businesses that receive personal data from the EU or the EEA, the data can continue to flow as before and no further action needs to be taken. Businesses that have offices or branches in the UK and the EEA, or customers in the EEA, need to comply with both UK and EU data protection regulations. These firms will also need to designate a representative in the EEA.



The UK GDPR took effect from 1 January 2021. The EU adequacy decision is now applicable in relation to transfers of data from the EU to the UK and is expected to last until 27 June 2025



Providers that process data in the EEA and the UK or which offer services to individuals in the EEA should consider their data protection policy, including privacy notices, to ensure these are aligned with both UK and EU GDPR rules. They may also need to appoint a representative in the EEA to deal with European authorities. Providers that process data that has been transferred from the EEA to the UK do not need to taken any further action as this is now covered by the EU adequacy decision. All providers should review privacy information and other data protection documents to update any references to the EU.



The ICO have the following pages in relation to data protection and the EU Adequacy decision:

<https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/overview-data-protection-and-the-eu>

The ICO have a useful interactive tool that can be used to identify which data protection laws apply:

ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/end-of-transition-interactive-tool-for-small-businesses

The following provides further details on when a European representative should be appointed:

ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/data-protection-now-the-transition-period-has-ended/the-gdpr/european-representatives

OTHER MATTERS

Normal minimum pension age (“NMPA”)



In the May 2021 issue of the Regulatory Barometer we included details of the the Treasury consultation to increase the NMPA to 57 from 2028. The response and policy were issued in July 2021 and legislation will be introduced in the Finance Bill 2021-22.



The draft legislation will include protection of pension ages below age 57 by introducing a window which will allow individuals to join a pension scheme by 5 April 2023 where the scheme rules on 11 February 2021 provide an ‘unqualified right’ to take pension benefits below age 57. To be an ‘unqualified right’ the pension scheme rules must expressly state that benefits can be drawn from 55 (rather than referring to the NMPA or its underlying legislation)



The revised NMPA does not take effect until April 2028, however the date of 5 April 2023 will become key in determining whether a member has a protected pension age; furthermore, the date of 11 February 2021 is key to determining whether there is an unqualified right to take pension benefits below age 57.



Any actions will depend on whether the scheme rules expressly state that benefits can be drawn from age 55. If they do then firms will need to ensure their records can identify members with a protected pension age (PPA). In addition a member will be able to protect their PPA on transfer and so schemes that don’t have a unqualified right may receive transfers in with a PPA attached to the transfer. If not already included, it is also suggested that within client literature firms start referring to the 2028 increase in the NMPA.



The consultation response can be found at:

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004018/NMPA_consultation_response_July_2021.pdf

The policy paper can be found at:

www.gov.uk/government/publications/increasing-the-normal-minimum-pension-age-for-pensions-tax/increasing-the-normal-minimum-pension-age-for-pensions-tax

OTHER MATTERS

Landline telephones – switch from analogue to digital



While this has been on the Government's agenda since 2019 – see the Ofcom link in the information section – and the current network will operate until the end of 2025, as part of a firm's operational resilience planning firms should perhaps start considering this now.



The switch applies to all phone users.



The current analogue network will close at the end of 2025 hence firms do have time to effect the switch-over, however if not already on a firm's radar, this should be now. Enhance recently switched our landline to digital and overall the process was relatively straightforward, however we only had one line to switch across. Within their recent 'Regulatory Round-up' the FCA also reminded firms of this, hence it is on the FCA's radar as well.



There are no specific actions other than if not already planning for this switch-over, now is perhaps the time to start thinking about it. Within the information sources below, we have included a link to the 'Future of Voice' website, hosted by the Broadband Stakeholder Group which comprises both telecoms suppliers, Ofcom and the Government. This website includes useful information about the switch.



The original Ofcom statement can found here:

www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/future-fixed-telephone-services

Further information can be found at the Broadband Users Group website here:

www.futureofvoice.co.uk

ARCHIVE

Archived items – these are items included in previous issues of Enhance’s Regulatory Barometer which are either ongoing or complete

Item	Issue	Status
Investment Pathways (data collection)	May 2021	Ongoing - Investment pathway regulations are in force and firms should now be collecting data as per guidance provided by the FCA
Drawdown pensions - annual statements	May 2021	Ongoing – firms should be issuing annual drawdown statements with the required disclosures
SM&CR - Conduct Rules	May 2021	Ongoing – all relevant staff should have completed training on the conduct rules and SMFs should, on a continuing basis, ensure that proper conduct is embedded into the firm’s culture
Covid-19 Resilience testing/analysis	May 2021	Ongoing – firms should continue to monitor service delivery and consider evaluating what worked well/not so well during the height of the pandemic
Managing Pension Schemes Service	May 2021	Ongoing - Providers should ensure that they have signed into Pension Schemes Online for all scheme administrator IDs that they use. The list of schemes that will need to be migrated onto Managing Pension Schemes Service will be available from 19 October 2021
Pension Schemes Act 2021	May 2021	Keep a watching brief on the requirements with regards to the Pensions Dashboard



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